



# GÁLDU ČÁLA

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## SAMI SELF-DETERMINATION

**AUTONOMY AND ECONOMY – THE AUTHORITY AND AUTONOMY OF THE SÁMEDIGGI  
IN THE HEALTH AND SOCIAL SERVICES SECTOR**

**John B. Henriksen**  
(ed.)





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## Preface

This issue of *Gáldu Čála* has been compiled under the auspices of the project "*Sami self-determination: content and implementation*". The project has been financed by the Ministry of Government Administration, Reform and Church Affairs together with *Sámediggi* in Norway.

The publication is based on three workshops on Sami self-determination which *Gáldu – Resource Centre for the Rights of Indigenous Peoples* arranged in Kautokeino in November 2010, on the topics: (1) *Sami autonomy and economy*, (2) *the Sámediggi's authority*, and (3) *Sami autonomy in the health and social services sector*.

This issue of *Gáldu Čála* should be viewed in connection with the two previous issues of the journal: *Gáldu Čála* No. 02/2008 and *Gáldu Čála* No. 02/2009. *Gáldu Čála* No. 02/2008 contains the report of an international conference on Sami self-determination which *Gáldu* and *Sámi allaskuvla / Sámi University College* organised in Alta, in February 2008. *Gáldu Čála* No. 02/2009 addresses issues related to Sami self-determination in the education, research and culture sectors based on three seminars in 2009.

At *Gáldu – Resource Centre for the Rights of Indigenous Peoples* – it is hoped that this publication, along with earlier publications on this topic, will contribute to the public debate on the possible content and implementation of self-determination in the Sami context.

*Janne Hansen*  
Acting Executive Director

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## Introduction

The right to self-determination is a recognised international political and legal principle. Throughout history, the principle has contributed to positive solutions for territorial and ethnic conflicts on different continents. Over time, the understanding and application of the principle have developed at the same pace as society in general.

The UN's predecessor, *the League of Nations*, recognised self-determination as a fundamental principle, not least in relation to the work of preventing State abuse of people without their own nation states.<sup>1</sup> The United Nations (UN) has further developed the international interpretation of the principle of self-determination, and thus made a valuable contribution to the development of the understanding of and respect for the principle that all peoples have the right to determine their own development. The UN has, for example, acknowledged that self-determination is not only to be considered an ideological and political *principle*, but also a *right* that accrues to *all people*.

Until fairly recently, the right to self-determination was nevertheless largely considered to be a right that only accrued to the general population within a national state or a particular territory. Thus the exercise of the right to self-determination has, in actual practice, been closely related to decolonisation and the establishment of new independent nation states, not least in Africa.

Today there is a broad international consensus that more than one people can have the right to self-determination in a nation state or a territory. The exercise of the right

to self-determination in such situations basically represents no threat to a state's territorial integrity, since the right to self-determination, under normal circumstances, does not grant a people the right to unilateral secession from an existing nation state. There is broad international recognition of the fact that the right to self-determination cannot be implemented through territorial secession, unless one is in a traditional colonial situation, or in a situation in which the state in question is fundamentally and perpetually undemocratic or oppressive in relation to a people.

The UN Declaration on the Rights of Indigenous Peoples<sup>2</sup>, which was adopted by the UN General Assembly in September 2007, is a result of the gradual emergence in international law, of an understanding of the right to self-determination. The Declaration on the Rights of Indigenous Peoples acknowledges that indigenous peoples are entitled to self-determination and that, by virtue of this right, they themselves can freely determine their own political position and freely promote their own economic, social and cultural development (Article 3). The wording of Article 3 of the UN Declaration on the Rights of Indigenous People is identical to the wording of the common Article 1 (1) of the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. The only difference is that Article 3 of the Declaration on the Rights of Indigenous People identifies "indigenous peoples" as a legal entity in respect of the right to self-determination, while common Article 1

<sup>1</sup> The League of Nations was established by the Treaty of Versailles on 29 April 1919. The League of Nations was officially opened on 10 January 1920. The United Nations (UN) was established by the UN Charter of 26 June 1945. The UN Charter entered into force on 24 October 1945. The agreement to transfer the assets and archives of the League of Nations to the United Nations was signed on 18 April 1946. The General Assembly of the League of Nations decided unanimously on 20 April 1946 that the League of Nations would be dissolved.

<sup>2</sup> United Nations Declaration on the Rights of indigenous Peoples (UN document: A/61/L.67, 13 September 2007)

in the two aforementioned international covenants identifies “all human beings” as the legal entities for this right.

The Declaration on the Rights of Indigenous Peoples also recognises that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions (Article 4). Recognition of indigenous peoples’ right to autonomy or self-government represents a historic international legal development trend, since this is the first time the right to autonomy or self-government has been so clearly recognised in a universal instrument of international law.

Although the Declaration adopted by the UN’s General Assembly is not binding in the same way as a ratified covenant, the Declaration on the Rights of Indigenous Peoples still establishes new international minimum standards for indigenous rights. As it is apparent from Article 43 of the Declaration, rights recognised in this Declaration constitute minimum standards for the survival of the world’s indigenous peoples, and their dignity and social welfare.

The states shall, through consultation with and in cooperation with the indigenous people in question, implement appropriate initiatives, e.g. legislation, to fulfil the goals of this declaration. The declaration requires UN member states to adopt expedient initiatives, e.g. legislation, to fulfil the goals of this declaration. Upon adopting the Declaration on the Rights of Indigenous Peoples, states have undertaken a commitment to ensure that indigenous peoples can benefit from the rights embodied in the Declaration, including the right to self-determination.<sup>3</sup>

The development of international law indicates that the right to self-determination is a dynamic right, continuously adapting to societal trends. Through the adoption of the Declaration on the Rights of Indig-

enous Peoples, the vast majority of the UN’s member states endorse the view that indigenous peoples, like all other peoples, have the right to self-determination. The preamble to the Declaration on the Rights of Indigenous Peoples establishes that the UN Charter, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Declaration and the Programme of Action from the World Conference on Human Rights (the Vienna Conference) affirm that it is of decisive importance that “All peoples have the right of self-determination and by virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development”<sup>4</sup> The preamble also establishes that nothing in the Declaration on the Rights of Indigenous Peoples can be used to deny a people the right to self-determination when the Declaration is exercised in compliance with international law.<sup>5</sup>

The Declaration on the Rights of Indigenous Peoples also confirms that indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law (Article 1).<sup>6</sup> The right to self-determination is recognised as a universal human right for all peoples, and Article 1 of the Declaration also encompasses the right to self-determination.

The Declaration on the Rights of Indigenous Peoples further establishes that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights (Article 2). Any discrimination of indigenous people in relation to the implementation of their right to self-determination would be in breach of this anti-discrimination rule.

<sup>3</sup> Declaration on the Rights of Indigenous Peoples. Articles 38 and 39

<sup>4</sup> See Clause 16 of the Preamble

<sup>5</sup> See Clause 17 of the Preamble

<sup>6</sup> See, *inter alia*, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights

Even though the Declaration on the Rights of Indigenous Peoples recognises that indigenous people have the right to autonomy or self-government in matters that involve their "internal and local affairs", it nevertheless does not regulate details with a view to the specific issues or areas of society to which this right applies.

It must, nonetheless, be emphasised that the Declaration is clear about the right to self-determination; that indigenous peoples have the right to maintain and strengthen their own distinct political, legal, economic, social and cultural institutions, while retaining the right to participate fully in the state's political, economic, social and cultural life.<sup>7</sup> In other words, the exercise of indigenous people's collective right to self-determination places no limits in relation to the rights that indigenous individuals have with respect to their participation in decision-making processes, by virtue of their individual rights, including their civil and or democratic rights. Indigenous individuals' participation in the political, economic, social and cultural life of the state can therefore not be considered to be the same as the exercise of indigenous people's collective right to self-determination.

The implementation of provisions of the Declaration on the Rights of Indigenous Peoples, including the provisions related to the right to self-determination, requires collaboration between nation states and indigenous peoples. The Declaration on the Rights of Indigenous Peoples states, categorically, that nothing in the Declaration may be construed as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial

integrity or political unity of sovereign and independent States.<sup>8</sup>

Indigenous people's right to self-determination within the parameters of modern international law, including standards that are enshrined in the Declaration on the Rights of Indigenous Peoples, can therefore not be considered a threat to the territorial or political integrity of the State. The public debate in Norway on Sami self-determination indicates, nonetheless, that issues related to the territorial and political integrity of the State should, at regular intervals, be the subject of discussions, usually as arguments against recognition and the implementation of Sami self-determination.

The following chapters seek to shed light on three different topics related to self-determination, based on workshops that Gáldu - Resource Centre for the Rights of Indigenous Peoples – organised in November, 2010. *Chapter 1* sheds light on some of the main challenges facing the Government and the Sámediggi as regards financing Sami autonomy or self-government. *Chapter 2* contains an independent written contribution by Professor Lars-Erik Borge, Norwegian University of Science and Technology (NTNU), in which he discusses the Sámediggi's financing on the basis of financing in the municipal sector in Norway. Municipal financing is a relevant frame of reference because Norway has acceded to international agreements on local self-government, which bear significant similarities to the international legal obligations that the State has to the Sami people. *Chapter 3* discusses issues related to the Sámediggi's authority in the light of the right to self-determination. *Chapter 4* explores the question as to whether there is a need for Sami autonomy in the health and social services sector and, if so, of what nature and to what extent.

<sup>7</sup> See Article 5 of the Declaration on the Rights of Indigenous Peoples

<sup>8</sup> See Article 46 (1) of the Declaration on the Rights of Indigenous Peoples

# 1. Sami autonomy and economy

The State's appropriations over the national budget for Sami purposes establish important parameters for the development of Sami society. The Declaration on the Rights of Indigenous Peoples establishes that peoples are entitled to ways and means for financing their autonomous functions. However, the Declaration provides no further guidance on the scope and nature of the State's financing obligation.

Having a satisfactory scheme for financing the Sámediggi's activities and Sami policy initiatives is not just a question of rights, but it is also a basic prerequisite for the development of Sami society.

## 1.1 International standards

Despite the fact that current international regulations are vague about the State's obligation to contribute to financing of indigenous people's autonomy or self-government, they nonetheless establish certain parameters for discussing how to finance Sami autonomy or self-government.

Article 4 of the Declaration on the Rights of Indigenous People recognises that indigenous people, in the exercise of their right to self-determination, are entitled to autonomy or self-government in matters involving their internal and local affairs, as well as the right to ways and means for the financing their autonomous functions.<sup>9</sup> This provision contains three main elements: (i) recognition of indigenous people's right to autonomy or self-government; (ii) establishment of a financing obligation for the State and responsibility for adapting any alternative financing schemes for indigenous people's autonomous functions; (iii) recognition of the fact that having satisfactory financing schemes is a basic prerequisite for the implementation of indigenous people's right to self-determination.

It is natural to construe this provision as the establishment of a commitment on the part of the State to contribute the necessary economic resources for the efficient implementation of Sami self-determination. This can be handled through direct State appropriations, and by the State, in collaboration with the Sámediggi, paving the way for the establishment of alternative revenue systems for Sami society.

The Declaration on the Rights of Indigenous Peoples further states that the state, through consultations and cooperation with the indigenous peoples concerned, shall take the necessary measures, including legislation, to meet the Declaration's objectives (Article 38). The implementation of the Declaration's provisions on self-determination requires ways and means, and a financing system that makes this feasible.

ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries addresses the right to self-determination. It is nevertheless noteworthy what Article 6 (1) (C) of the Convention states; that the governments shall establish means for the full development of indigenous peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

The draft Nordic Sami Convention, submitted by a Nordic expert group appointed by the governments and the Sámediggi in Finland, Norway and Sweden, assumes that the States are, under international law, responsible for providing the ways and means needed to implement the provisions in a future Sami Convention, including the right to self-determination.<sup>10</sup> The expert group justifies this by pointing out that the individual Sami and the Sami people collectively would find it difficult to exercise their rights without the necessary financial resources.<sup>11</sup>

<sup>9</sup> Article 4

<sup>10</sup> Proposal for a Nordic Sami Convention, Article 47; *Nordic Sami Convention, Draft from the Finnish-Norwegian-Swedish-Sami expert group, submitted on 26 October 2005*

<sup>11</sup> *Ibid.*, page 276

In other words, international law establishes a commitment for the State to furnish the ways and means required to ensuring that indigenous peoples can benefit from their rights, including the right to self-determination. State appropriations for Sami purposes can therefore not be considered to be purely political decisions, since international legal standards establish certain general parameters for the State's financial obligations to the Sami as a people. However, international law gives no further guidance with a view to what is considered "necessary" or "sufficient" financial resources, or regarding how such financing schemes should or ought to be set up and administered.

Inadequate regulation of these questions is, among other things, due to the fact that establishing the scope and nature of the ways and means must take into account the particular factors that apply in each individual country. This is in compliance with the general principle for the State's obligation to implement economic, social and cultural human rights. The State's ability to implement such rights is largely dependent on the country's resource base, including its financial resources. States with healthy economies are in better position to implement resource-intensive rights, e.g. the right to education and social services, than their poor counterparts. This is why it is accepted that certain human rights are made subject to progressive implementation based on available resources to a country. International regulations about economic, social and cultural rights commit the States to progressive implementation of the rights.<sup>12</sup> Such gradual implementation is the measure for the fulfilment of these rights merely because there is broad consensus that some states, due to their economic situation, will need time for full implementation.<sup>13</sup> In practice, this means that stricter requirements will apply to the implementation of economic, social and cultural rights in affluent countries than

what is the case in poor countries. This is a consequence of the expectation that all countries will initiate the necessary measures to implement their own commitments under international law within the parameters of the individual state's own financial resources.<sup>14</sup>

The European Charter of Local Self-government (ECLS) is a regional normative instrument for the implementation of local self-government, e.g. municipal autonomy.<sup>15</sup> Though ECLS cannot be applied directly to Sami autonomy or self-government, since such autonomy or self-government falls outside the scope of the instrument, it would nevertheless be of interest to determine whether some of the principles embodied in this instrument might be relevant to Sami self-determination. Article 3 (1) of the ECLS denotes local government as the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

Article 1 of the ECLS establishes that local self-government shall be recognised in national legislation and in the Constitution, where possible. The purpose of this principle is to ensure the actual implementation of local autonomy. Article 4 (1) of the ECLS provides that local authorities' fundamental competency and responsibilities shall be established under the Constitution or by law. The main principle is that local authorities' competency shall normally be unabridged and undivided, unless otherwise determined by law. In Norway, this is mainly handled through the Local Government Act.

The principle of legislative recognition of self-government is also absolutely applicable and relevant, relative to ensuring the implementation of Sami self-determination. The Sámediggi in Norway has, on several occasions, argued that Sami self-determination must be ensured and imbued with content through national legislation.<sup>16</sup>

<sup>12</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)

<sup>13</sup> Høstmæligen, Njål (2003) *International human rights*, University Press, page 45

<sup>14</sup> ICESCR, Article 2 (1); The UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3 (1990)*, para 3

<sup>15</sup> European Charter of Local Self-Government, European Treaty Series No.122, Strasbourg, 15 October 1985. Ratified by Norway in 1989.

<sup>16</sup> Gáldu Čála no. 2/2008, Chapter 3.1 (President of the Sámediggi Egil Olli), page 36

Article 9 (3) of the ECLS establishes that a certain percentage of the resources at the disposal of the local authorities are to be generated from local taxes and fees that they themselves, within the limits of the law, have the authority to stipulate. As regards State appropriations to local authorities, Article 9 (7) of the ECLS ascertains that these, insofar possible, should not be earmarked for specific purposes. In other words, appropriations should not reduce local authorities' fundamental right, within their spheres of responsibility, to determine their own policies. In many ways, these provisions reflect some of the issues in the debate on the content and implementation of Sami self-determination. The Sámediggi contends that State appropriations for Sami policy purposes are earmarked to too great an extent, and that such earmarking effectively serves to reduce the Sámediggi's opportunities to determine and implement its own policies. Further, in Norway, there has been a debate on whether the use of certain natural resources in Sami territories should be subjected to a special indigenous surcharge. In many areas, the provisions of the ECLS can provide a source of inspiration and guidance in the debate on the content and implementation of Sami self-determination, including the economic aspects of self-determination.

## 1.2 Seminar on Sami autonomy and economy

Gáldu – Resource Centre for the Rights of Indigenous Peoples – assembled a number of professionals and resource persons for a workshop on *Sami autonomy and economy* on 1st and 2nd November, 2010. The venue of the seminar was Diehtosiida in Kautokeino. The programme included presentations and discussions. Participants were individuals with broad expertise and experience in the field in question; cf. the enclosed seminar programme (Appendix 1) and the list of participants (Appendix 2). The following issues formed a general thematic framework for the seminar:

### Issues

- 1) *Does the Sámediggi manage to set its own priorities in the budgetary process between the Sámediggi and the Government today?*
- 2) *How well does the current financing scheme work for the Sámediggi in the light of its responsibility for the Sami population, and their expectations of the Sámediggi as a democratically elected body for the Sami in Norway?*
- 3) *Does today's financing scheme for Sami policy initiatives facilitate the implementation of Sami autonomy or self-government?*
- 4) *Which criteria should apply to any new model for financing the Sámediggi?*
- 5) *Which conditions must be taken into account in connection with building up and financing a Sami level of authority in Norway?*

### 1.2.1 The Sámediggi's influence on the budgetary process

The professional part of the seminar kicked off with a presentation by Vibeke Larsen, member of the Sámediggi Executive Council. Larsen reported on the interaction between the Sámediggi and Norway's central government authorities in the annual budget process. The presentation also covered the challenges facing the Sámediggi in relation to the Sami population's expectations of the Sámediggi as a democratically elected body.

She mentioned, by way of introduction, that budgetary issues are not covered by the current procedures for consultations between central government authorities and the Sámediggi.<sup>17</sup> She said that there was agreement that budgetary issues be kept outside the general consultation procedures, since such questions raise a number of special issues for discussion. She stated that, as of today, the Sámediggi and the

17 Procedures for consultations between central government authorities and the Sámediggi were signed by the Minister of Local Government and Regional Development and the President of the Sámediggi on 11<sup>th</sup> May, 2005; the Sámediggi's plenary assembly endorsed the procedures on 1<sup>st</sup> June, 2005. The procedures were established by Royal Decree on 28<sup>th</sup> June, 2005; the procedures apply to the central government administration.

Norwegian government have not agreed on special procedures for budgetary issues.

Larsen then reported on the Sámediggi's internal procedures for the annual budget. The Sámediggi invites Sami institutions and organisations to a dialogue on their future budgetary needs, often through meetings. The Sámediggi Executive Council then draws up its draft budget, which is submitted to the Sámediggi General Assembly.

The annual dialogue with the State authorities regarding the budget commences in December/January with a meeting with the state secretaries from the relevant ministries. The Sámediggi's political administration then usually meets with the Minister of Finance in February/March. These political talks are subsequently followed up through contact meetings with the ministries at the administrative level. The annual budget process between the State authorities and the Sámediggi concludes with a meeting with the Norwegian Parliament's Standing Committee on Local Government and Public Administration.

Larsen pointed out that there are few examples of the Sámediggi receiving any appreciable support from the Government for its budgetary needs. According to Larsen, this is due, *inter alia*, to the individual ministry largely adopting budgetary decisions without taking the Sámediggi's priorities and budgetary needs into account. Another demanding challenge in the budget process today is that there is lack of coordination among the sectoral ministries, in view to accommodating Sami budgetary needs. Larsen also considered it quite problematic that the increases in appropriations for Sami purposes are generally granted as earmarked appropriations. She maintained that such earmarking effectively deprives the Sámediggi of the opportunity to decide and implement its own Sami policy and financial priorities.

Larsen further expressed that one main problem with the budgetary process between the Sámediggi and the Government

is that the respective ministers and ministries display little willingness to enter into a genuine dialogue with the Sámediggi about the budget. She said that at the budget meetings between the Sámediggi and the Government, the State's representatives receive inputs from the Sámediggi, but without providing any feedback or viewpoints on the Sámediggi's suggestions. Larsen expressed that this puts the Sámediggi in a very difficult situation relative to the Sami community as well as the need to develop long-term priorities and strategies.

She proceeded by pointing out that the current financing scheme precludes the efficient exercise of the authority assigned to the Sámediggi, not least through legislation. This is because the transfer of authority from the State to the Sámediggi is not, as a rule, accompanied by the necessary ways and means. The Sámediggi's authority to object, pursuant to the Planning and Building Act, has not been followed up with the necessary increases in financial appropriations. According to Larsen, the transfer of authority should be followed up with additional appropriations to ensure that the Sámediggi can perform its duties and tasks in a responsible manner. She observed that the Sámediggi had reported a need for MNOK 3 in increased appropriations to be able to exercise the authority it has now been assigned, pursuant to the Planning and Building Act, but has received no support for this request.

Larsen continued that for the 2011 budget year, the Sámediggi had asked for a budgetary expansion of MNOK 67 (e.g. wage hikes and inflation), but that the increase was limited to MNOK 14. This increase corresponds to just approximately 20 per cent of the Sámediggi's reported budgetary needs. She added that 73 per cent (MNOK 10.2) of the increase will go to the coverage of general wage hikes and inflation, while the remaining share of the increase of MNOK 3.8 was granted in the form of earmarked appropriations.<sup>18</sup>

<sup>18</sup> The Sámediggi's budgetary framework for 2011:

- Needs presented on the part of the Sámediggi: NOK 67 000 000 (excl. wage hikes and inflation)
- The Norwegian government's increase: NOK 14 024 000
  - Earmarking: NOK 3 850 000
  - Wage hikes and inflation: NOK 10 174 000 (3.1%)

According to Larsen, this clearly illustrates that the Sámediggi has little opportunity to perform its obligations in respect of the Sami community, since the State authorities take so little account of the Sámediggi's ranking of priorities. This results in State appropriations for the Sami being far from commensurate with the needs of the Sami community. She concluded that it is important that the Sámediggi promptly initiate genuine negotiations with the State regarding the existence of general financial parameters for the Sámediggi's activities.

Larsen emphasised that the local Sami community has great expectations of the Sámediggi as a political player in Norway. She said that, among other things, the Sámediggi, as the Sami's supreme governing body, is to help build up Sami democracy and be a promoter of Sami social development. She was of the opinion that these expectations are often unachievable due to the current financing scheme for the Sámediggi. She further observed that the Sámediggi can effectively contribute to the development of the Sami community, if the framework conditions so allow. She pointed out that the Sámediggi has managed to meet the expectations of the Sami community every time the framework conditions have allowed the implementation of the Sámediggi's own priorities; e.g. within the areas of cultural affairs and economic development. According to Larsen, it is highly unlikely to achieve correspondingly positive development in these areas without the Sámediggi's political priorities and the financial solutions.

Larsen was of the opinion that the gap between the Sámediggi's lack of authority and the expectations that the Sami have of their own elected body, represents one of the greatest challenges to Norway's Sami policy. In that regard, she pointed out that the Sámediggi is the only elected body in Norway that does not have its own revenue system.

Larsen referred to the fact that in 1999, the Sámediggi was organised as an entity with special powers to fulfil the objec-

tive, which was that the Sámediggi was to have considerable freedom and the opportunity to set its own priorities for the development of Sami culture and society.<sup>19</sup> She pointed out that White Paper No. 28 (2007-2008) states that *"It is important that the Sámediggi to a greater extent than today is involved in the work of drafting the budget for Sami purposes and for the Sámediggi"*. She noted that it further states in the report that *«The Government will facilitate the establishment of a mechanism for regular consultation meetings between the minister of finance, the minister responsible for Sami affairs and the Sámediggi, prior to the Government's first budget conference. The Government will invite the Sámediggi to consultations to set up such budget procedures.»*<sup>20</sup> Larsen ascertained that agreement has not yet been reached on such budget procedures, and moreover, that this process had not made the headway that the Sámediggi justifiably might have expected in the light of the objectives expressed in White Paper No. 28 (2007-2008).

She expressed that Sami affairs are not, in her opinion, given the necessary priority in connection with the Norwegian Government's budgetary work, and that the increases requested in the Sámediggi's budget do not appear to be given priority by the Norwegian Government. She exemplified this by referring to the fact that the increase in the budget for 2011 for Sami purposes is 3.5 per cent, while other purposes have seen increases of no less than 7 per cent, e.g. sectors such education and culture. Furthermore, she pointed out that if one disregards appropriations that the Norwegian Government has earmarked for specific purposes for the Sami, the Sámediggi has experienced negative real economic growth over the past 12 years.

Larsen argued that modern Sami society is still in the establishment phase, so it is important that the Sámediggi gets genuine opportunities to promote Sami social development. The Sámediggi must be given genuine freedom and the opportunity to

<sup>19</sup> White Paper No. 28 (2007-2008)

<sup>20</sup> White Paper No. 28 (2007-2008), section 8.5

adopt and implement its own political and economic priorities. She also contended that it is important that Sami institutions are associated with the Sámediggi organisationally, as well as in connection with their budgets.

Larsen concluded that today's financing scheme, including the Norwegian Government's practice of earmarking appropriations for Sami purposes, means that in many areas the Sámediggi is no more than a *de facto* administrator of the State's Sami policy.

Several seminar participants were of the opinion that the current financial scheme demonstrates that, as of today, there is no genuine Sami autonomy or self-government. Some participants observed that today's scheme points in the direction of the State wanting to maintain the Sámediggi as an advisory body. Individual participants also questioned whether the Sámediggi itself is far too modest when it comes to posing clear demands to the State regarding the financing scheme. One of the participants said that part of the problem may lie in the fact that the Sámediggi has, over time, become a streamlined bureaucratic institution that does not differ much from Norwegian institutions. Individual participants were of the opinion that today's situation is surprising, given the State's obligations to the Sami under international law.

One of the seminar participants felt that in many areas, the Sámediggi appears to encounter the same problems as the Sami municipalities experience in relation to the State. In this context, it was said that there is limited understanding on the part of the State for the fact that uniquely Sami issues make it costly, time-consuming and resource-intensive to implement Sami policies. One prime example was the cost of bilingual municipal services. It was also said that Sami municipalities get limited assistance from the Sámediggi when it comes to increasing appropriations to Sami municipalities. It was argued that the Sámediggi has a responsibility for ensuring closer collaboration with Sami municipalities, since the "Sami community" exists, in point of fact, in those municipalities.

Some seminar participants emphasised that Sami organisations and institutions easily fall victim to the State and the Sámediggi's 'game' regarding self-determination. It was said that the Sami theatre, Beaivváš Sámi Nášunálateáhter, is an example of this. It was pointed out that after its budget was placed under the auspices of the Sámediggi in 2002, the increases in annual appropriations for Beaivváš Sámi Nášunálateáhter have largely been limited to covering wage hikes and inflation.

One seminar participant submitted that the fragmentation of Norway's Sami policy creates major challenges for the Sami community. The person in question was of the opinion that State authorities appear to want to put the Sámediggi on 'the back burner' and to undermine its activities. The situation of the Sami theatre Beaivváš Sámi Nášunálateáhter was used as an example of the undermining of the Sámediggi's role in the Sami community. The person in question felt that the Beaivváš case helps to identify one main problem: The Sámediggi must bear the political burden resulting from the lack of growth in appropriations for the Beaivváš, since the theatre's budget is formally under the auspices of the Sámediggi, but in reality it is the State that sets the financial parameters for the theatre.

Some participants believed that the Beaivváš case corroborates, in a variety of ways, the perception that the Sámediggi is often simply an administrator of the State's Sami policy. There was broad consensus that the current situation serves to undermine the Sámediggi's position and reputation among the Sami.

A seminar participant was of the opinion that today's situation should not be considered an expression of any 'bad will' on the part of the State. The person in question felt that all the challenges are rather of a structural nature, due not least to weak inter-ministerial cooperation on budgetary issues. The same person also disagreed that the Sámediggi is primarily an administrator of the State's Sami policy, since the Sámediggi has relatively strong political influence; meaning it is not without political clout.

Someone put forward the idea that one major problem is that the Sámediggi was established as an elected body without its own revenue system, and that this must necessarily have an impact on its opportunity to exercise authority. It was also contended that it is important that the Sámediggi is able to initiate genuine consultations and negotiations with the Government on budgetary issues. Moreover, it was submitted that more financial autonomy for the Sámediggi is an absolute prerequisite for achieving genuine Sami autonomy in different areas of society. Some argued that the Sámediggi's mandate, as embodied in the Sami Act, does not tally with the latest developments in international law, nor with the fact that the Sámediggi has gradually been assigned more responsibilities that fall to an authoritative body.

### 1.2.2 Does today's financing scheme help facilitate Sami autonomy?

The Sámediggi's Director General Rune Fjellheim reported on the current scheme for financing Sami policy measures and the Sámediggi's operations otherwise. Fjellheim began by referring to an intervention he had made at Gáldu's international conference on Sami self-determination in Alta in February 2008 (the conference report was published in Gáldu Čála No. 2/2008).<sup>21</sup> Fjellheim said that he continues to stand by what he expressed at the conference in Alta, not least that the so-called 'proportional model' would seem to be a possible alternative to today's financing of the Sámediggi.

Fjellheim stated, by way of introduction, that the Sámediggi has a variety of different tasks: (i) elected body, (ii) authoritative agency, and (iii) advisory agency. He emphasised however, that the Sami right to self-determination is generally administered by the Sámediggi as the elected body representing the Sami people in Norway.

He expressed that today's scheme presents a problem for both the Norwegian Government and the Sámediggi, since

appropriations for Sami purposes, in his opinion, do not appear to be a high priority for the Norwegian Government. He justified this by explaining that during the period between 1998 and 2011, there had been approximately 50% higher real growth in budgetary items for other purposes, as compared to real growth in appropriations for Sami purposes, cf. Figure-1.

Fjellheim stated that one of the main challenges associated with the implementation of Sami self-determination is that political statements from authorities at the central government do not always reflect in their actions. He exemplified this by referring to White Paper No. 28 (2007 – 2008), in which the Norwegian Government states that Sami self-determination can entail that the Sámediggi has *"a right to take decisions alone on matters that affect the Sami only; that is, cultural and linguistic autonomy. Examples might be measures related to the Sami language and the Sami development fund."*<sup>22</sup> He pointed out that the Government, in the same White Paper, demonstrates that this principle is not fully respected in practical politics, since in the same White Paper and on its own initiative the Government launches a special plan of action for the Sami language. He uses this example to illustrate how limited the Sámediggi's authority really is - even in relation to the Sami language – an area in which, according to the Norwegian government, the Sámediggi has the right to "take decisions alone". He said that this is by no means a unique example of the government, on its own initiative, deciding on Sami policy issues without the Sámediggi's participation. He remarked that roughly 90 per cent of the measures on the Sámediggi's budget have this same type of background. In the light of this, he supports the view expressed earlier by Council Member Vibeke Larsen; that in many areas the Sámediggi is only an administrator of the State's Sami policy.

Fjellheim argued that it is necessary to recognise that the fact of the State of

21 Gáldu- Resource Centre for the Rights of Indigenous Peoples *Gáldu Čála No. 2/2008, Sami Self-determination: Content and implementation*, John B. Henriksen (ed.), cf. Chapter 3.9. The publication is available (in Norwegian and Sami) on the Gáldu website: [http://www.galdu.org/govat/doc/samisk\\_selvbestemmelse.pdf](http://www.galdu.org/govat/doc/samisk_selvbestemmelse.pdf)

22 White Paper No. 28, pages 35-36

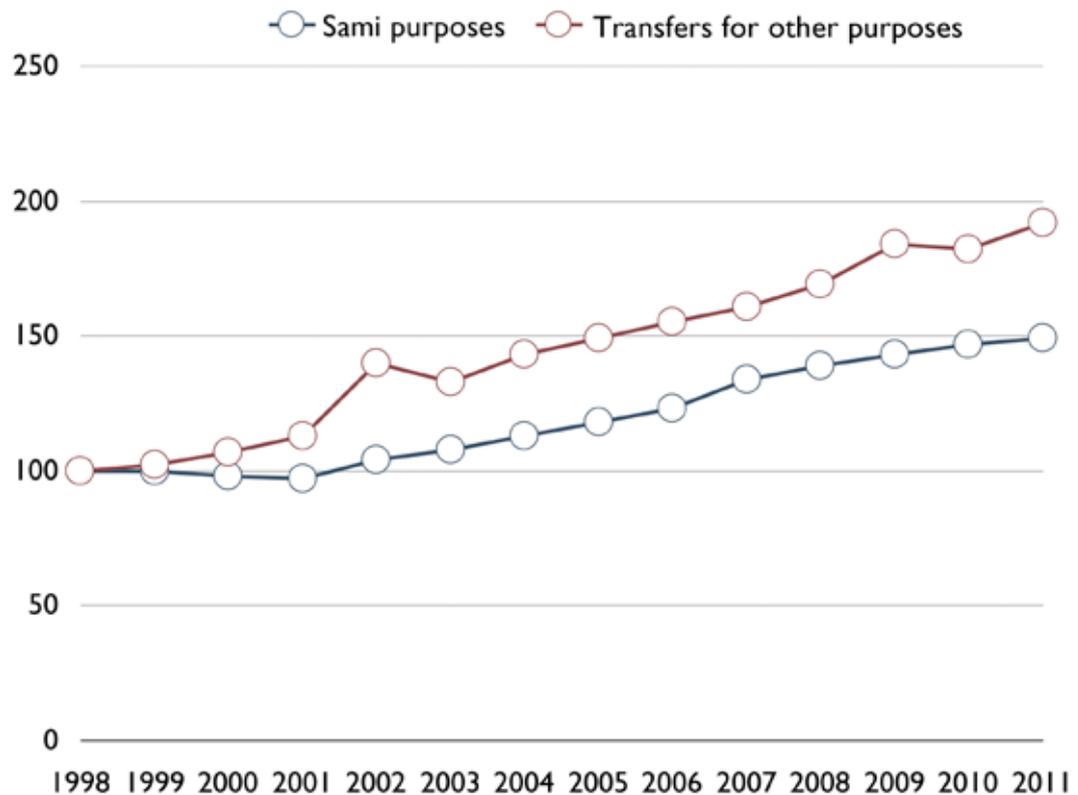


Figure 1: Real growth for Sami purposes vs. transfers for other purposes

Norway being based on the territory of two peoples, Sami and Norwegian, must also be reflected in routine political practice. He pointed out that the Norwegian government budget for 2011 (cf. appropriations for Sami purposes, p. 3), states that *"the Norwegian government presumes that the State of Norway was originally established on the territory of two peoples, Sami and Norwegians, and that both peoples have the same right and the same entitlement to develop their culture and language."* Fjellheim endorsed this principle, but also pointed out that this statement does not reflect the current political situation in Norway because the real growth in appropriations for Sami purposes lags far behind the real growth in appropriations for other purposes. He argued that the government budget shows that only one of the two peoples currently determines the budgetary frameworks for the development of Sami culture and language.

Fjellheim proceeded with the Sámediggi's role as an advisory body. According to him, this role requires relatively substantial financial resources since the Sámediggi

is expected to be involved in matters that affect Sami society. He mentioned that the Sámediggi's archives, or the number of incoming and outgoing documents in the Sámediggi system, are an applicable indicator of the scope of the Sámediggi's role as an advisory body. He further pointed out that in 1999, the Sámediggi had about 18 000 incoming and outgoing documents. By 2009, the annual volume of documentation had increased to about 33 400 documents. The increase in annual volume of documentation in the Sámediggi system is, according to Fjellheim, an indication of the fact that the Sámediggi's role and duties as an advisory body have increased tremendously in recent years. See Figure 2.

According to Fjellheim, 10 years ago, the Sámediggi had an annual volume of documents that had a scope comparable to the annual volume of documents in an average State sectoral ministry, but that, as of today, the Sámediggi has a volume of documents surpassed by only four sectoral ministries/directorates: The Norwegian Water Resources and Energy Directorate (NVE), the Ministry of Justice, the Ministry

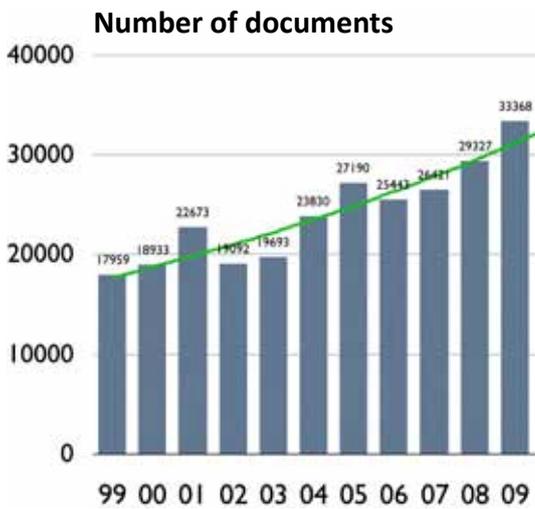


Figure 2: Number of documents in the Sámediggi system (The Sámediggi's annual volume of documents).

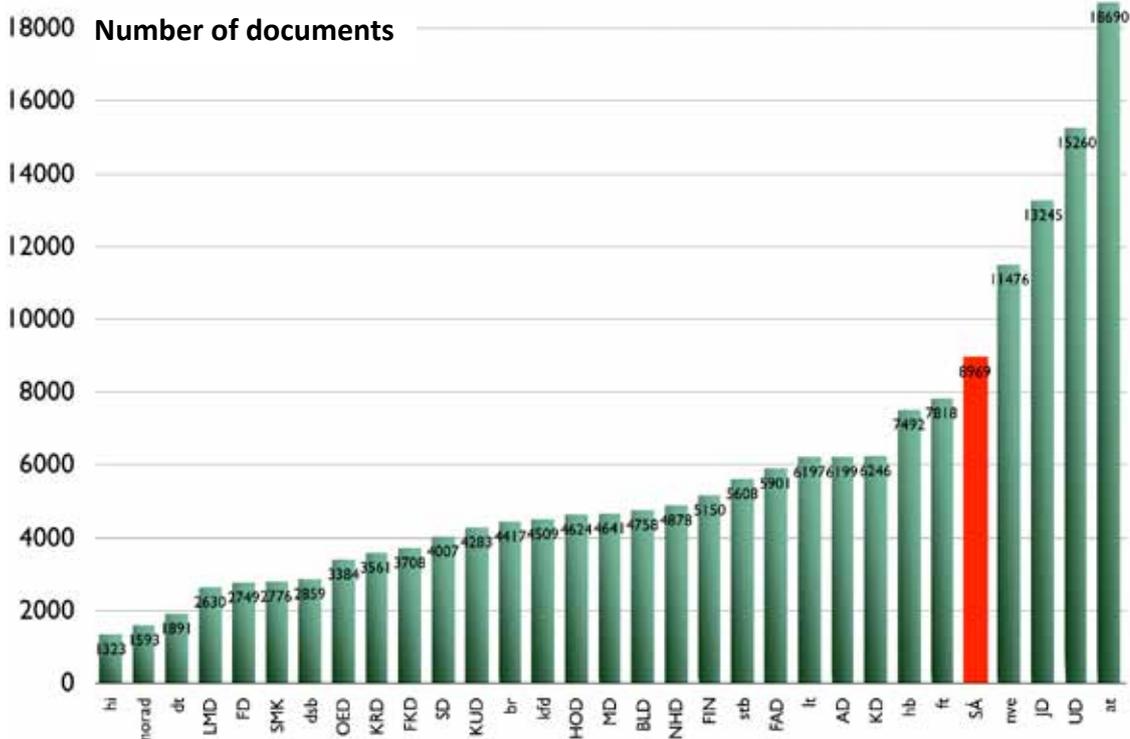


Figure 3: Number of documents handled by different state institutions from 18 May – 1 September 2010. See the footnote for an explanation of the abbreviations used on the figure.<sup>23</sup>

of Foreign Affairs, and the Norwegian Labour Inspection Authority.<sup>24</sup> See Figure 3.

Fjellheim stated that despite the fact that the Sámediggi has an annual volume of documents surpassed by only four large ministries/directorates, the Sámediggi is nevertheless the fourth smallest institu-

tion/agency, with only 131 employees. See Figure 4. Fjellheim further pointed out that the annual workload for the Sámediggi can also be illustrated by comparing the average number of documents processed per employee of the Sámediggi, compared with average number of documents per

23 Abbreviations: Institute of Marine Research – hi; NORAD – NORAD; Data Inspectorate – dt; Ministry of Agriculture and Food – LMD; Ministry of Defence – FD; Office of the Prime Minister – SMK; Directorate for Civil Protection and Emergency Planning – DSB; Ministry of Petroleum and Energy – OED; Ministry of Local Government and Regional Development – KRD; Ministry of Fisheries and Coastal Affairs – FKD; Ministry of Transport and Communications – SD; Ministry of Cultural Affairs – KUD; Brønnøysund Register Centre – br; Climate and Pollution Agency – kfd; Ministry of Health and Care Services – HOD; Ministry of the Environment – MD; Ministry of Children, Equality and Social Inclusion – BLD; Ministry of Trade and Industry – NHD; Ministry of Finance – FIN; Directorate of Public Construction and Property – stb; Ministry of Government Administration, Reform and Church Affairs – FAD; Civil Aviation Authority – lt; Ministry of Labour – AD; Ministry of Education – KD; Norwegian State Housing Bank – hb; Financial Supervisory Authority of Norway – ft; Sámediggi – SA; Norwegian Water Resources and Energy Directorate - nve; Ministry of Justice – JD; Ministry of Foreign Affairs – UD; Norwegian Labour Inspection Authority – at.

24 The verification period for the measurement is from 18 May - 30 September 2010.

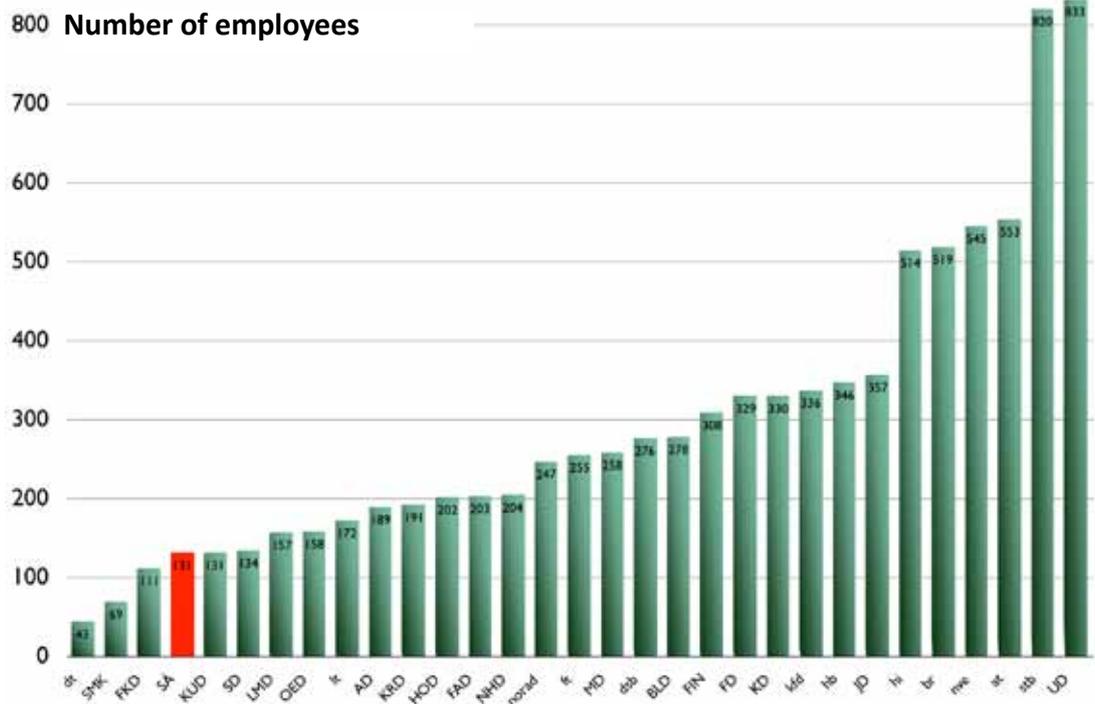


Figure 4: Number of employees in different State institutions. See the footnote for an explanation of the abbreviations used on the figure.<sup>25</sup>

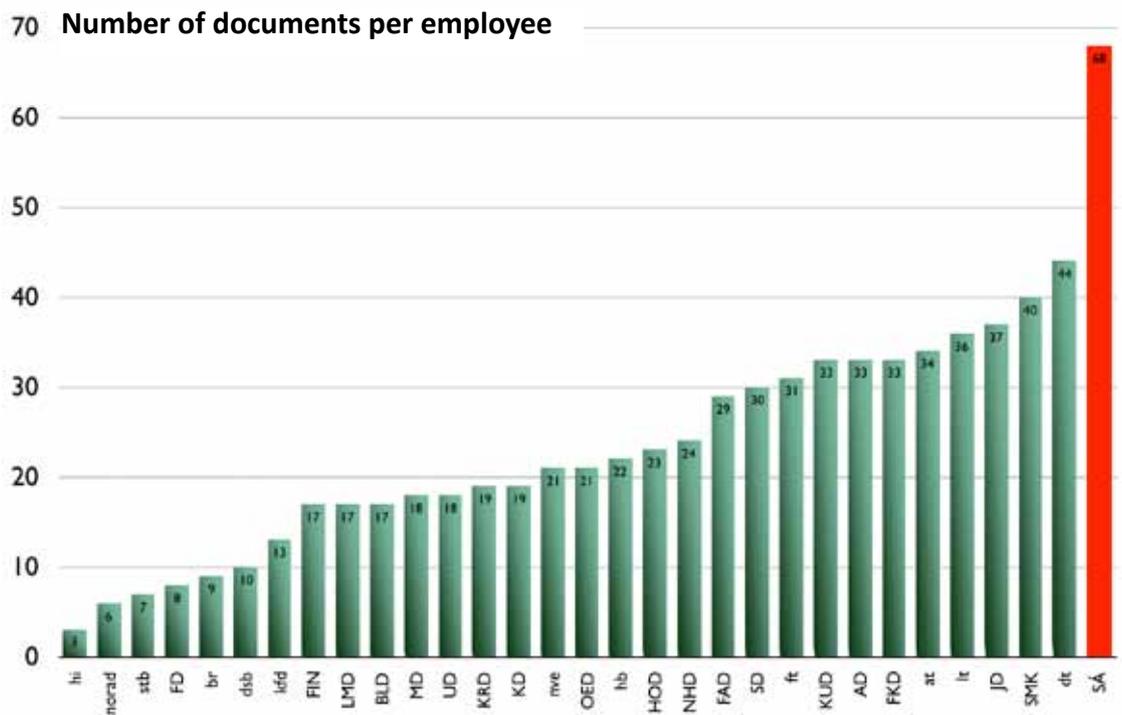


Figure 5: Number of documents per employee in different state institutions. See the footnote for an explanation of the abbreviations used on the figure.<sup>26</sup>

<sup>25/26</sup> Abbreviations: Institute of Marine Research – hi; NORAD – norad; Data Inspectorate – dt; Ministry of Agriculture and Food – LMD; Ministry of Defence – FD; Office of the Prime Minister – SMK; Directorate for Civil Protection and Emergency Planning – DSB; Ministry of Petroleum and Energy – OED; Ministry of Local Government and Regional Development – KRD; Ministry of Fisheries and Coastal Affairs – FKD; Ministry of Transport and Communications – SD; Ministry of Cultural Affairs – KUD; Brønnøysund Register Centre – br; Climate and Pollution Agency – kfd; Ministry of Health and Care Services - HOD; Ministry of the Environment – MD; Ministry of Children, Equality and Social Inclusion - BLD; Ministry of Trade and Industry – NHD; Ministry of Finance – FIN; Directorate of Public Construction and Property – stb; Ministry of Government Administration, Reform and Church Affairs - FAD; Civil Aviation Authority – lt; Ministry of Labour – AD; Ministry of Education – KD; Norwegian State Housing Bank – hb; Financial Supervisory Authority of Norway – ft; Sámediggi – SÁ; Norwegian Water Resources and Energy Directorate - nve; Ministry of Justice – JD; Ministry of Foreign Affairs – UD; Norwegian Labour Inspection Authority – at.

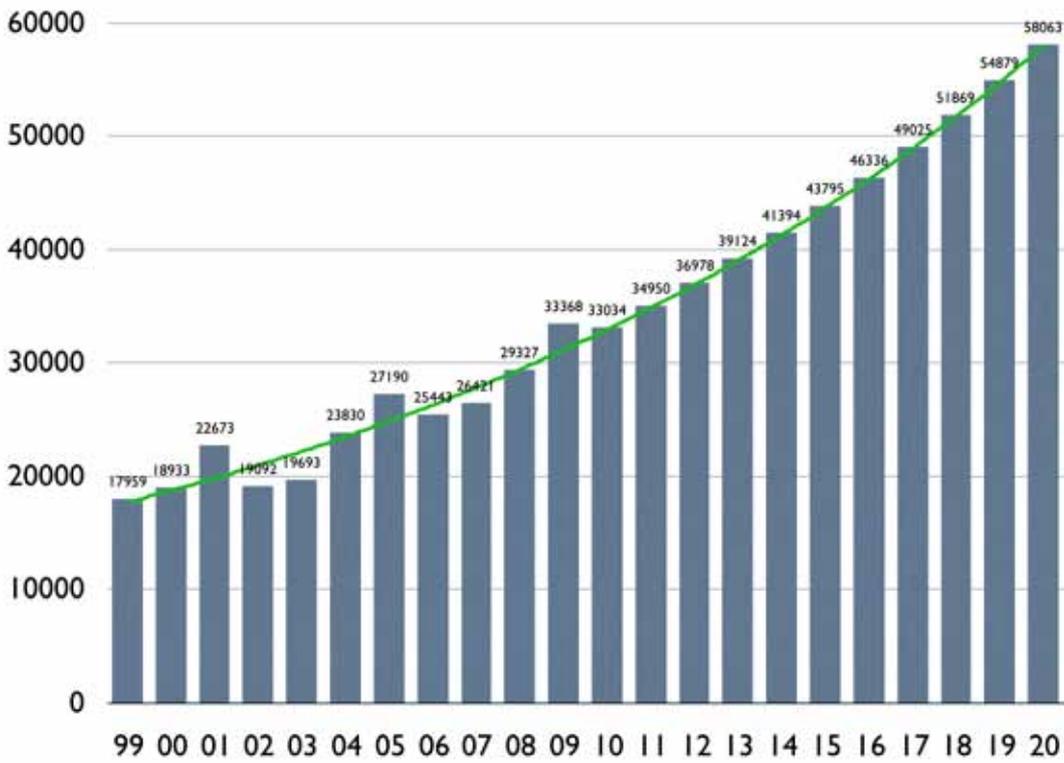


Figure 6: Prognosis for the trend in the Sámediggi's volume of documents.

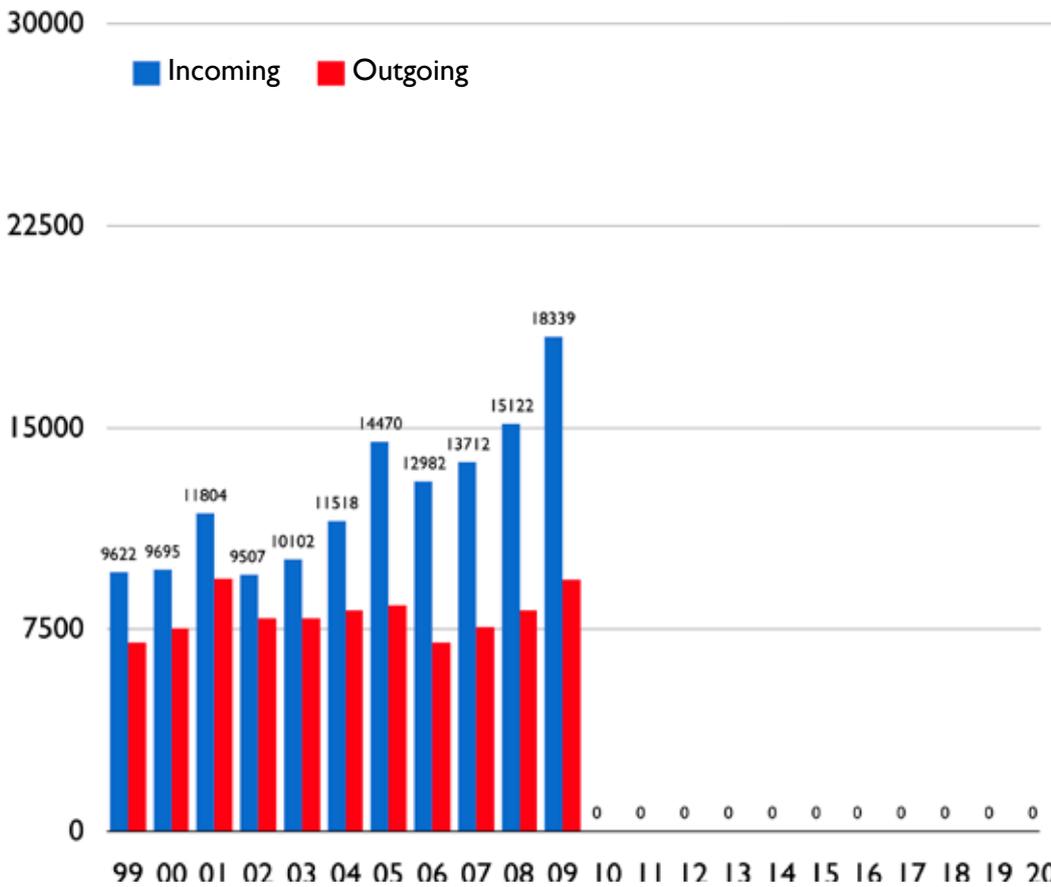


Figure 7: Incoming and outgoing documents in the Sámediggi parliamentary system from 1999 to 2009.

employee in comparable State agencies/institutions. See Figure No. 5. Fjellheim emphasised that the Sámediggi does not keep track of the number of queries or documents received by the Sámediggi, because it must deal with all queries. He added that if the increasing trend in the volume of documents continues to rise at the same pace as from 1999 to 2009, the Sámediggi's volume of documents in 2020 will amount to roughly 58 000 documents. See Figure No. 6.

The relationship between the volume of incoming and outgoing documents in the Sami parliamentary system from 1999 to 2009 is illustrated in Figure No. 7. It is evident here that the incoming document flow has doubled during this period, while the outgoing document flow has remained relatively stable during the same period. Fjellheim stated that, among other things, the Figures reflect that the electoral role for the Sámediggi has tripled since the Sámediggi was founded in 1989. Further, the Figures show that the Sámediggi has been granted more influence and authority in different matters, not least as warranted by the Planning and Building Act, and that the Sámediggi's enhanced political authority and influence have led parties to seek to cement stronger relations to the Sámediggi.

Fjellheim concluded that the dialogue with the State regarding resources for the Sámediggi does not function satisfactorily. He was of the opinion that it is absolutely decisive that this dialogue be strengthened, not least because the gap between the Sámediggi's formal role/authority and its genuine capacity is widening at an alarming rate. He said that the current situation is undermining the Sámediggi's authority with a view to budgets. In that connection, he referred *inter alia* to the negative experiences related to financial appropriations for Beavvváš Sámi Nášunálateáhter.

According to Fjellheim, there is, for example, a need to clarify the role of the Sámediggi in the framing and administration of Sami policy. He argued that a number

of principles put forward by the Norwegian government appear to be exceedingly unsettled. He pointed out that one would be justified in raising questions about what the Government reads into the principle that the Sámediggi, in certain cases, has the "sole right to decide".<sup>27</sup> He also said that it is necessary to look at which resources must normally be at the Sámediggi's disposal in order for "the right to genuine and effective participation in the exercise of public authority that affects both the Sami and the society of which they are a part".<sup>28</sup> He concluded that there is no question of genuine Sami self-determination until the Sami alone can take decisions on the development of Sami society at large, e.g. in relation to how to build Diehtosiida, premises for the Beavvváš and Saemien Sijte, or how to launch a plan of action for the Sami language.

The comments and questions from the participants of the seminar, after Fjellheim's presentation, largely coincided with viewpoints expressed after Vibeke Larsen's presentation, cf. Chapter 1.2.1.

### 1.2.3 Structure and financing of a Sami level of authority in Norway

A brief presentation by Professor Per Selle, from University of Bergen, shed light on some problems related to financing of the Sámediggi.

Given the weak real growth in the Sámediggi's budgets, Professor Selle questioned its possible cause. He said there was an enthusiastic start when the Sámediggi was established, currently however, in many ways, it is treated just like other public institutions when it comes to finances. He stressed that this trend is not necessarily ascribable to bad will on the part of the State authorities, rather, many other factors contribute to the situation.

Selle pointed out that the State system suffers from many constraints, for example, inter-ministerial coordination presents a demanding challenge in this respect. He said that this is a common problem, and

27 White Paper No. 28, pages 35-36

28 White Paper No. 28, page 36

that the Sámediggi is not the only organisation to be affected by the constraints inherent in the State system. Selle stated that weak horizontal State coordination appears to be a major problem. This means, for example, that in connection with its operations and on budgetary issues, the Sámediggi has to deal with a wide variety of highly complex sectoral ministries.

Selle also emphasised that the State's new management philosophy ("*new public management*") also establishes clear challenges and constraints in relation to the appropriation of means to the Sámediggi. According to Professor Selle, this new management model entails inter alia that financing is not allocated unless it is clear how efficiently such resources will be used by the recipient. He added that far more emphasis is placed on cost control today than what it was the case earlier.

Professor Selle said it cannot be ruled out that the current political climate and shifts of power between the different political parties may have a certain negative impact on Sami policy issues. He cited an example, that one must not ignore the fact that the Party of Progress' (FrP) political progress and critical attitude to Sami policy initiatives can impact on Government decisions. FrP has so much political support, such that it must be assumed that its views on Sami policy issues can have a bearing on decisions taken by the Norwegian Government and the ministries.

Selle contended that the Sámediggi ought to try to achieve a new and improved scheme for consultations with central government authorities on issues relating to appropriations for Sami purposes, and on the budget for the Sámediggi. He further emphasised that the Sámediggi ought to try to strike the best possible balance between the Sámediggi's role as an advisory agency and an administrative body. In other words, he was of the opinion that the Sámediggi must consider whether it is necessary to stipulate clearer priorities for its own activities, not least due to the resource situation.

Professor Selle made reference to what Council Member, Vibeke Larsen and Direc-

tor General, Rune Fjellheim said earlier in the seminar; that the Sámediggi, as a result of the current financing scheme is, mostly in effect, no more than an administrator of the State's Sami policy. He disagreed with the contention that the Sámediggi is only an administrator of the State's Sami policy. He observed however, that the political situation had changed dramatically since the Sámediggi was founded, and that the Sami, through the Sámediggi, currently wield significantly greater political influence in matters that concern them than what was the case earlier. He concluded that the Sámediggi has relatively great political power in certain areas.

### 1.3 Conclusion

An adequate financing scheme for the development of the Sami community, including the Sámediggi's activities, appears to be a basic prerequisite for achieving Sami self-determination in the form autonomy or self-government.

It must be assumed that Sami autonomy or self-government almost by definition implies that the Sámediggi, as the Sami's supreme governing body, is to have the right and the ability, on its own account and in the best interests of the Sami people, to regulate and administrate a large proportion of the public affairs in the Sami community.

However, the potential content of Sami self-determination still appears to be relatively unclear. There are several reasons for this: the Sámediggi and the State government authorities seem to have different perceptions of what Sami self-determination implies. The Government seems to be placing relatively more emphasis on the Sámediggi's right to have a say in decision-making processes that affect the Sami, rather than the Sámediggi's right to take independent decisions. The approach of the Sámediggi, on the other hand, seems to focus on the nature of an issue and its impact on the fundamental conditions for Sami language, culture and community, in determining what authority the Sámediggi ought to possess. The Sámediggi assumes

the Sami have status as a people with the right to self-determination enshrined in the common Article 1 in the International Covenant on Civil and Political Rights, and the International Covenant on Social and Cultural Rights. For its part, the Government appears to be of the opinion that indigenous people's right to self-determination differs in nature from the general right to self-determination as embodied in the two said UN covenants.

The fact that the State and the Sámediggi do not have coinciding perceptions of the basis in international law for Sami self-determination, and that they have relatively divergent views on the content of the right of self-determination, impacts directly on the financing scheme for the Sámediggi.

There appear to be several major challenges related to the financing scheme, or what may also be described as the economic aspects of the right of self-determination in the Sami context.

The main challenge seems to be that the Sámediggi's economic and political priorities are rarely taken into account in the State budget process. The combination of the Sámediggi's limited support for its own economic and political priorities, and the fact that the Sámediggi lacks its own revenue system, means that the Sami people's elected body rarely, on its own account and in the Sami population's interests, has the capacity to regulate and manage public affairs in the Sami community. Further, the lack of statutory regulation of the Sámediggi's basic competence and responsibility in the context of self-determination mean that economic issues are largely treated as purely political issues. State allocations for Sami purposes can however, be considered purely political decisions because international legal standards establish certain overall parameters for the State's financial obligations in respect of the Sami people.

The substantive domestic legal protection of Sami autonomy or self-government is extremely weak compared to what is the case for local self-government in general. Local self-government in Norway, as regulated by the Local Government Act, is

based *inter alia* on the European Charter of Local Self-government (ECLS). The ECLS has determined that local authorities' fundamental competence and responsibility should be established under the Constitution or by law. The main principle is that local authorities' competence shall normally remain full and exclusive except as provided for by the law.

Widespread State earmarking of appropriations for Sami purposes in practice also limits the Sámediggi's right and ability to deal with public affairs in the Sami community. About 90 per cent of the measures in the Sámediggi's budgets are measures that the Government has initiated and set financial parameters for, which are then subsequently entrusted to the administration of the Sámediggi. The annual increases in State appropriations for Sami purposes largely come in the form of earmarked grants. This manner of appropriation restricts the Sámediggi's basic right to determine its own policies within the Sami political jurisdiction. This is not in compliance with the principles upheld in relation to general local self-government. For example, ECLS establishes that State appropriations to local authorities should insofar as possible not be earmarked for special purposes.

How the Sámediggi and the State work together on budgetary issues is decisive for the development of Sami self-determination. Today the nature of this interaction offers the Sámediggi very limited possibilities for developing its own Sami policy. Consequently, in many administrative areas, the Sámediggi ends up as an agency for managing the State's Sami policy. However, this does not mean the Sámediggi does not have any influence and authority in the Sami policy area. The Sámediggi's lack of support in relation to its budget, nonetheless, serves to undermine its authority regarding budgeting and its status in the Sami community.

The latest study by the Sámediggi Executive Council on the Sámediggi's budget trends clearly shows that there is considerable Sami dissatisfaction with the current

situation.<sup>29</sup> In its statement, the Sámediggi Executive Council expressed that the Council *”based on the Sámediggi’s overall budget trend, the absence of routines and processes between the Government and the Sámediggi regarding the situation and the development needs of and the budgetary priorities for Sami institutions, and the weakening of the Sámediggi’s legitimacy, the Sámediggi Executive Council is of the opinion that unless the budget situation for the Sámediggi improves, it should be considered whether to transfer administrative and government responsibility for several Sami institutions and purposes to the responsible sectoral ministries- including Beaviváš Sámi Našunálateáhter- to the Ministry of Culture. The Sámediggi Executive Council is prepared to exercise administrative and managerial responsibility for Sami institutions if the Government paves the way for a binding and genuine strengthening and development of those institutions. Procedures and parameters for such progress must, in the event, be established after consultations between the Sámediggi and the Government. Institution building is fundamental for the preservation and development of Sami society and Sami democracy. The*

*Sámediggi Executive Council wishes to submit this study in order to initiate a debate and to get feedback on how to address these challenges.”*

Many of the challenges facing the implementation of Sami self-determination appear to be such that they could largely be remedied by the application of principles that have already been recognised as fundamentally important for ensuring local self-government; including statutory regulation of self-government, guidelines for the State financing scheme, etc. Given the challenges involved in budgetary issues, one prerequisite for making headway is to improve the interaction between the State and the Sámediggi. This can hardly be achieved without agreeing on procedures for consultations, or negotiations between State authorities and the Sámediggi on budgetary issues. Such procedures would establish a formal platform and framework for dialogue on the demanding challenges related to the economic aspects of self-determination. It seems clear that it is difficult to imbue Sami self-determination with genuine content unless these fundamental challenges can effectively be remedied.

29 Sámediggi plenary, item no. 42/10, [http://innsyn.e-kommune.no/innsyn\\_sametinget\\_norsk/wfdokument.aspx?journalpostid=2010027991&dokid=288056&version=7&variant=A&ct=RA-PDF](http://innsyn.e-kommune.no/innsyn_sametinget_norsk/wfdokument.aspx?journalpostid=2010027991&dokid=288056&version=7&variant=A&ct=RA-PDF)

## 2. Financing the Sámediggi's activities

This chapter contains an independent written contribution by Professor Lars-Erik Borge of the Norwegian University of Science and Technology (NTNU), in which he discusses the Sámediggi's financing compared to the financing of Norway's municipal sector.<sup>30</sup>

### 2.1 Professor Lars-Erik Borge: Financing the Sámediggi's activities:

#### 2.1.1 Introduction

Since its establishment in 1989, the Sámediggi has received its financing exclusively in the form of appropriations over Norway's national budget. Until the budget reform in 1999, the appropriations consisted of earmarked subsidies destined for relatively detailed purposes. The budget reform entailed a transition to net budgeting, and it has given the Sámediggi more budgetary freedom of action within the framework of the appropriations granted by each individual ministry. However, it is still questionable as to whether the financing system gives the Sámediggi sufficient influence on the Sami people's economic, social and cultural development, as specified in the international covenants to which Norway subscribes.

In 2006, a working group, comprising members from the Sámediggi and the ministries, was appointed to examine the Sámediggi's formal position and budget procedures.<sup>31</sup> The working group assumed that the possibilities for the Sámediggi to set their own priorities were to be strengthened by establishing new budget procedures. The group evaluated three alternatives to the current budget procedure. Two of the alternatives may be viewed as improvements on the current scheme, featur-

ing consultations and negotiations, respectively, between the Sámediggi and the State regarding the budget. The third alternative suggests that the Sámediggi be granted a certain percentage of the government budget. The working group concluded that today's scheme, supplemented by negotiations between the Sámediggi and the State, would satisfy Norway's obligations under international law and pave way for the Sámediggi to set its own priorities.

This article discusses the Sámediggi's financing as compared with the financing of Norway's municipal sector. Municipal financing is a relevant frame of reference because Norway subscribes to international agreements on local self-government that have significant similarities to Norway's obligations under international law that apply to Sami policy. Part 2 of the article compares the provisions of international agreements on Sami self-government and local self-government, while Part 3 compares today's municipal financing with the financing of the Sámediggi. Part 4 discusses three alternative models for financing the Sámediggi's activities: (i) State financing based on independent financing, (ii) a local variety financed by taxes and (iii) the right of the Sami to impose taxation.

#### 2.1.2 Indigenous people's right to self-determination and municipal autonomy

Norway subscribes to several international covenants that set a framework for Norway's Sami policy. The International Covenant of 1996 on Civil and Political Rights contains provisions on the protection of minorities entailing, *inter alia*, that where ethnic, religious or linguistic minorities exist, they shall not be denied the right to enjoy their own culture, to profess and

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<sup>31</sup> The Working Group's report is available (in Norwegian) at: [http://www.regjeringen.no/nb/dep/ad/dok/rapporter\\_rapporter/2007/sametingets-formelle-stilling-og-budsjet.html?id=464586](http://www.regjeringen.no/nb/dep/ad/dok/rapporter_rapporter/2007/sametingets-formelle-stilling-og-budsjet.html?id=464586).

practice their own religion, or to use their own language. ILO Convention No. 169 on Indigenous and Tribal Peoples applies to the Sami in Norway. The main principle in this convention refers to the rights of indigenous peoples to preserve and further develop their own culture and the authorities' obligation to support this work. The ILO convention also establishes that indigenous and tribal peoples are entitled to set their own priorities for their development process and, insofar as possible, to manage their own economic, social and cultural development. The Convention also obliges the government to consult the peoples concerned, when it considers introducing legislation or administrative measures which may affect those peoples directly. Further, the State is subject to certain obligations to finance the institutions and initiatives of indigenous peoples and tribal peoples.

In 1985, the UN appointed a working group to evaluate the rights of indigenous peoples and, if need be, to develop new standards. The work concluded in 2007 with the General Assembly adopting a declaration on the rights of indigenous peoples. The Declaration is not binding in the same way as a convention, but it is nonetheless considered an important instrument for establishing norms for international customary law. Articles 3 and 4 of the Declaration cover indigenous people's right to self-determination and self-government, as well as to ways and means of financing tasks related to their economic, social and cultural development:

- Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Article 3);
- Indigenous peoples, in exercising their right to self-determination, have the right to their internal and local affairs, as well as ways and means for financing their autonomous functions (Article 4).

along with 44 other countries, Norway has signed the Council of Europe's Charter of Local Self-government. The basis of this charter is that the local authorities are fundamental for every democratic political government. The central articles in this context are Articles 3 (defining local self-government), 4 (dealing with competence and the duty of consultation) and 9 (dealing with financing):

- Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs (Article 3.1);
- Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority (Article 4.2);
- Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way, in the planning and decision-making processes for all matters which concern them directly (Article 4.6);
- Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers (Article 9.1);
- Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law (Article 9.2);
- A certain proportion of the resources available to local authorities are to come from local taxes and charges which, pursuant to the limits of the law, have the authority to determine the rates for (Article 9.3);
- As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction (Article 9.7).

As regards local or municipal autonomy,

A comparison of selected articles from the UN's Declaration on the Rights of Indigenous Peoples and the Council of Europe's Charter on Local Self-Government provide the basis for some interesting observations. First of all, the Sami's right to self-determination appears to be more unconditional than the issue of local self-government. The articles on local self-government use the wording: "pursuant to the limits of the law", "within the limits of the law" and "within national economic policy", but no comparable reservations were taken in the Declaration on the Rights of Indigenous People. One might say that local self-government (at least in Norway) is to some extent similar to a derivative branch of government, while the Sami's right to self-determination is more fundamental and exists by virtue of the Sami being a separate people.

Secondly, the Charter on Local Self-Government contains very specific provisions about areas of local government responsibility and financing. The Charter states that local authorities shall be responsible for a substantial share of public affairs, that the local authorities shall to some extent be financed through local revenues, that the local authorities shall be able to influence their own revenues (tax autonomy) and that as far as possible, grants to local authorities should be received as general subsidies that are not earmarked for specific purposes. These provisions are construed to mean that the financing system must be worded so that it supports local self-government. Local revenues (tax and user payments) contribute to financial autonomy in relation to the State, and framework financing makes local democracy more legitimate because the municipalities have the freedom to spend their revenues as they deem fit. Article 4 of the UN Declaration on the Rights of Indigenous Peoples can be said to have the same intentions, but it is not very specific about how the financing system should be designed. This is probably because the indigenous population is more heterogeneous than municipalities and regions in different European countries, and because the financing of institutions like the Sáme-

diggi must still be described as being in its infancy.

### 2.1.3 Financing for the municipal sector and the Sámediggi

The above discussion shows that Norway has ratified international agreements that have significant similarities to the obligations under international law that apply to Sami policy. Accordingly, it is of interest to compare the financing models selected for the municipal sector and the Sámediggi, respectively.

#### *The municipal sector's financing*

Norway's municipal sector is responsible for important national welfare services in the education as well as the health and social services sectors. Within education, the municipalities have responsibility for day care and primary school, while the counties are responsible for secondary education. The municipalities are also responsible for the primary health service and for nursing and care for the elderly and the physically challenged, as well as for child welfare and social services. Responsibility for dental health rests with the county municipalities. Further, the county municipalities have a significant responsibility in the communications sectors, scheduled public transport and county roads, and regional development. The municipalities are responsible for water, sewer and waste collection and also municipal roads. Both administrative levels provide cultural services.

*Table 1: The municipal sector's financing, 2011*

Source of income	Amount (NOK billion)	Share (%)
User co-payment, etc.	45.8	13.1
Tax revenues	138.3	39.7
General subsidy	126.8	36.4
Earmarked subsidies	18.4	5.3
Interest income, etc.	14.6	4.2
Other income	4.5	1.3
<b>Total</b>	<b>348.4</b>	<b>100.0</b>

*Comment: Includes only revenues within the municipal scheme.*

The financing scheme for the municipal sector is a combination of local financing through taxes and users' co-payments, equalisation through general subsidies and earmarked subsidies to stimulate particular areas of service. Table 1 gives an overview of local government financing in 2011. It appears that local revenues (tax and user co-payments) account for more than half the municipal sector's revenues. While these are somewhat more modest than in the other Nordic countries, they are nonetheless, high by international standards. Income tax and wealth tax, which account for the major part of tax revenues, are strictly regulated in the sense that, in practice, the State stipulates the municipal and county tax rates. Tax autonomy for the municipalities is limited to property tax (accounts for roughly 5 per cent of tax revenues) and user co-payments. Tax autonomy is even more limited for county municipalities which cannot charge property tax and which have limited user co-payments.

Limited tax autonomy entails that the municipal sector's revenue framework is largely determined at the State level when the government budget is drawn up. The municipal sector at the Norwegian Association of Local and Regional Authorities (KS) is involved in the budget process through the so-called consultation scheme. The main objective of the scheme is to reach a common understanding of what can actually be achieved within the parameters of the municipal sector's revenues. In that connection, the Norwegian Technical Calculation Committee for Wage Settlements (TBU) is drawing up a report on the financial situation in the municipal sector, and how the sector's expenses have been influenced by demographic trends and goal achievement in recent years. The consultation scheme is not a negotiation institution; it is the State that adopts the financial framework for the municipal sector.

The annual financial processes are influenced by demographic trends, shifting of tasks between administrative levels, new initiatives and the general macroeconomic situation. Firstly, an estimate is made of the anticipated growth in the municipal

sector's aggregate revenues. Then a plan is devised for balanced development between tax and general subsidies to ensure approximately equal revenue growth in municipalities with tax surpluses and tax deficits, respectively. Such a balanced development between tax and general subsidies is achieved by setting the rates for the municipal and county taxes (tax rates). During periods of strong growth in the tax bases (income and assets), there will typically be a need to reduce tax bases to create room for sufficient growth in the general subsidy within a given level of overall revenue growth.

TBU uses different indicators to shed light on revenue trends over time. Common to all these indicators is that they make adjustments for price trends and, in certain cases, also for population growth and changes in age demographics. Selected indicators for the revenue trend from 2002 to 2010 are illustrated in Table 2. It is evident from the aggregate revenues (adjusted for task transfers between administrative levels) that there was real growth of some 24 per cent from 2002 to 2010, which corresponds to average annual growth of 2.7 per cent. This has been construed to indicate that revenue growth from 2002 to 2010 has allowed growth of some 24 per cent in municipal production of services. These are means available to the sector for financing new tasks, reforms, demographic changes, and improvements in general welfare. Revenue growth is, to some extent, linked to the increase in the number of residents serviced by the municipal sector. Taking population growth into account during the period, real growth was reduced to less than 16 per cent or 1.8 per cent annually.

The growth in aggregate revenues indicates how much the offer of services can increase, and this is especially interesting from the population perspective since that is an expression of the development of services that can be expected by the residents. Growth in aggregate revenues does not necessarily mean that the municipal sector has more room to manoeuvre. This is related *inter alia* to parts of the growth in aggregate revenues being linked to new

Table 2: Revenue trend in the municipal sector, 2002-2011

	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Total revenues										
Fixed prices	100	100.6	104.3	107.9	114.0	115.7	116.8	121.3	124.1	
Fixed prices per resident	100	99.9	103.1	106.0	111.2	111.8	111.5	114.4	115.6	
Independent revenues										
Fixed prices	100	99.5	102.9	105.8	112.4	111.5	111.5	114.8	116.9	
Fixed prices per resident	100	98.9	101.7	103.9	109.6	107.8	106.5	108.2	108.8	

Comments: Revenues are measured as an index where the level in 2002 was set at 100. Total revenues are adjusted for task transfers between administrative levels, while independent revenues are also adjusted for task transfers.

responsibilities and not entailing additional freedom of action. The municipal perspective is taken into consideration through the development of independent revenues, adjusted for task transfers and task changes. Independent revenues consist of taxes and general subsidies that municipalities and county municipalities can spend at their own discretion, under current regulations and legislation.

Table 2 indicates that the growth in independent revenues was far lower than the growth in aggregate revenues from 2002 to 2010. This means that a considerable percentage of the income growth has been linked to new responsibilities, and/or has come in the form of earmarked subsidies. The main contributor is the day care reform that was implemented during this period

and financed through earmarked subsidies.

Two other central indicators of the municipal sector's freedom of action are tax revenues and independent revenues, measured as a percentage of aggregate revenues. Both taxes and general subsidies are revenues that municipalities and county municipalities can dispose of freely, meaning that the share of independent revenues can therefore serve as an indicator of local freedom of action. While the general subsidies are transfers from the State, tax revenues are payments from a municipality's own households and industry. The tax aspect is the key indicator of the financing system's local base. The trend in the tax proportion and the share of independent revenues from 2002 to 2011 are illustrated in Figure 1. The proportion of independent

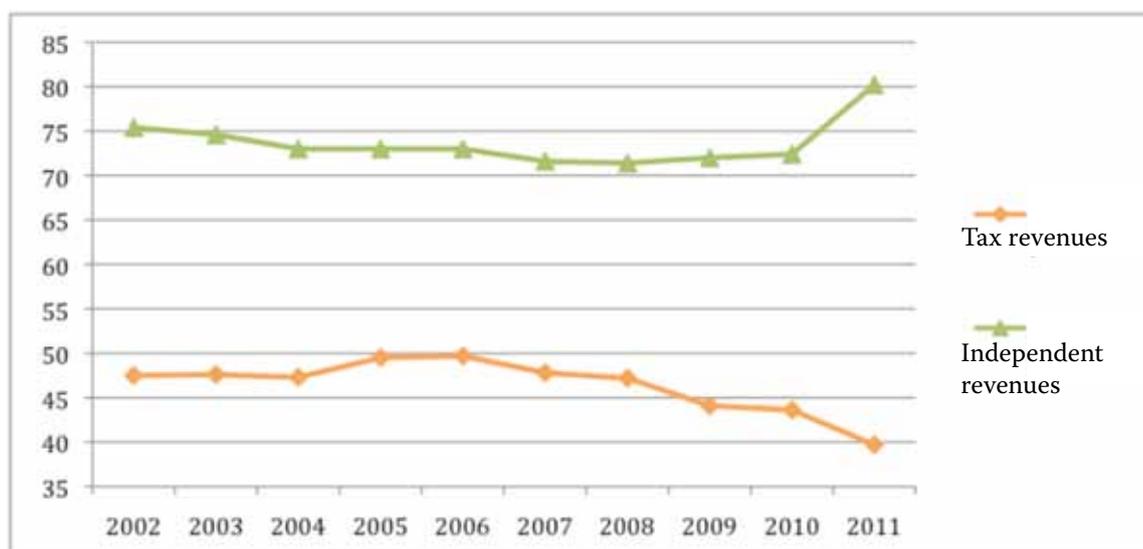


Figure 1: Tax and independent revenues as a percentage of aggregate revenues (%), 2002-2011

revenues was relatively stable, or declined slightly, up to 2010. In 2011, the share of independent revenues will escalate steeply as a result of the transition to a financing framework for day care centres. In recent years, the tax share has been reduced significantly, i.e. from 50 per cent in 2006 to 40 per cent in 2011. A lower tax share has been an explicit goal for the current Norwegian Government, and has helped ensure that the financing of the municipal sector has become less firmly entrenched in the local community.

#### *The Sámediggi's financing*

The Sámediggi has authority in relation to culture, language, training, cultural heritage and industry. However, it can get involved in any matter that which, in the opinion of the Sámediggi, affects the Sami. In 2011, the Sámediggi's budget totalled MNOK 350, representing less than half the overall appropriations for Sami purposes made in the central government. Since the transition to net budgeting in 1999, the Sámediggi has received its financing from the various ministries over the so-called «50-items».<sup>32</sup> The individual ministry draws up objectives and guidelines for their different appropriations, but within these parameters, the Sámediggi has significant budgetary freedom. The appropriations are earmarked in the sense that they must be used for the purposes (ministry) to which they are linked, but the Sámediggi is free to determine how those ways and means are to be used to achieve the general objectives. The discretion to distribute resources supports the Sámediggi's independent position and contributes to a more effective use of resources by better enabling the Sámediggi's bodies to evaluate how best to achieve the goals.

It is an established practice that budget meetings are organised between the Sámediggi and the ministry responsible for Sami issues (currently the Ministry of Government Administration, Reform and

Church Affairs; FAD). The Sámediggi also maintains a dialogue on budgetary issues with other involved ministries. As part of this process, the Sámediggi proposes new initiatives and programmes, but it is the State that decides which initiatives and programmes are given priority. The working group that considered the Sámediggi's formal position and budget procedures, concluded that the State rarely prioritised the measures that were given the highest priority by the Sámediggi, and that ways and means were allocated to measures that were not mentioned by the Sámediggi.

There is little doubt that the financing of the Sámediggi is more centralised than the financing of municipalities and county municipalities. There are two factors that contribute to this. First of all, the Sámediggi gets all of its financing from State subsidies, while local taxes and indirect user payments account for more than half the municipal sector's revenues. Secondly, all the Sámediggi's revenues are to a certain extent earmarked, while three-quarters of the municipal sector's revenues are discretionary within current legislation and regulations. In short, one can say that the financing of the Sámediggi has a weak local base, and that the absence of independent financing limits the Sámediggi's chances to taking new initiatives on its own account. The following section outlines alternative financing models for the Sámediggi that have been inspired by the financing of the municipal sector.

#### **2.1.4 Alternative financing models for the Sámediggi**

The following three alternative models were presented for the financing of the Sámediggi's activities. The models have taken their inspiration from the financing of the municipalities and entail framework appropriations, tax, finance and/or Sami tax exemption.

<sup>32</sup> In 2011, the Sámediggi received grants from the Ministry of Administration, Reform and Church Affairs, the Ministry of Education, the Ministry of Agriculture and Food and the Ministry of the Environment.

*Model 1: State financing with independent revenues*

Model 1 perpetuates the current practice where the Sámediggi is financed exclusively by appropriations over the national budget. The difference is that parts of the appropriation consist of independent revenues or framework appropriations that the Sámediggi can use at its discretion under current legislation and regulations. The framework transfers shall be allocated over FAD's budget in the same way as the municipal sector's framework appropriations are appropriated over the budget of the Ministry of Local Government and Regional Development. It would be natural that most of the revenues be derived from framework appropriations. The funds left on the individual ministries' budgets, can, if necessary, be earmarked somewhat more specifically than today.

The greatest advantage of Model 1 is that it makes a clear distinction between general framework appropriations and earmarked appropriations. Since the Sámediggi gets the bulk of its revenues as government transfers, the chances to set its own priorities would be greater than today. This would also include the opportunity to take new initiatives on their own account. In this way, the Sámediggi would gain more influence on the framing of Sami policy.

Model 1 can be combined with different schemes for stipulating overall transfers to the Sámediggi. An obvious alternative is to continue current programmes with budget meetings and dialogue with the ministry responsible for Sami Affairs and other involved ministries. However, one might ask whether this scheme gives the Sámediggi sufficient influence in relation to the obligations that Norway has undertaken under international law. Another alternative involves negotiations between the State and the Sámediggi about how to organise financing. This would give the Sámediggi a certain influence over the overall transfers, and also on the distribution between framework appropriations and earmarked transfers. In relation to the consultation scheme between the State and the municipal sector, this alternative will lead to more

genuine negotiations between the parties. Such a negotiation strategy was discussed earlier by the working group that studied the Sámediggi's formal position and budget procedures, and they drew parallels to the annual collective bargaining between the State and the trade organisations involved in agriculture and reindeer husbandry.

A scheme for calculation must be developed as a platform for the dialogue or negotiations between the State and the Sámediggi. The calculation must accommodate a set of indicators which describe the Sámediggi's finances, and which furnish a reliable platform for establishing a common understanding of the situation. Indicators must be devised for the development of the Sámediggi's aggregate revenues, adjusted for price hikes and changes in duties (as in Table 2 for the municipal sector) and the distribution of framework appropriations and earmarked transfers (as in Figure 1 for the municipal sector). Responsibility for this work rests with an expert group with representatives from the Sámediggi, the State and independent experts. The expert group would have a far narrower mandate than the Technical Analysis Group for Sami statistics.

*Model 2: Local basis through taxation*

Model 1 implies that the Sámediggi would still get its revenues exclusively through appropriations over the government budget. Even though the model offers more room to initiate its own measures and some influence on the framework revenues through negotiations, one might ask whether the financing is sufficiently autonomous relative to the wording in Article 4 of the UN Declaration on the Rights of Indigenous Peoples.

Model 2 implies that the Sámediggi's financing would have a stronger local base, as some revenues would come in the form of tax revenues. This calls for the definition of a Sami tax base and an appropriate tax rate. One possible solution would be to let the tax base constitute ordinary revenues from the 22 municipalities in Sami territory in Northern Norway. Most of these municipalities are located in Nord-Troms

and Finnmark counties, where taxpayers pay 25 per cent tax on ordinary income. Taxes are shared between the municipality, the county municipality and the State. In 2011, the tax breakdown was 11.3 per cent for the municipalities, 2.65 per cent for the county municipalities and 11.05 per cent for the State.<sup>33</sup> An income tax to the Sámediggi would imply that parts of the State tax revenues from the Sami municipalities would be earmarked for the Sámediggi. Tax to the Sámediggi would be calculated on the basis of the aggregate tax base in the municipalities. From the vantage point of the taxpayers, there would still be a division between municipality, county and State. Compared with Model 1, the Sami income tax would replace most of the framework appropriations.

In the municipal scheme, the municipal and county tax rates are set through annual resolutions in connection with the government budget. The point of this is to ensure that tax-rich and subsidy-dependent municipalities achieve roughly the same income growth. Relative to the Sámediggi, there would not be the same need for annual adjustments of the tax rate. It might be more natural to 'lock' the tax rate at the initial level so that parts of the Sámediggi's revenues grow 'automatically' at a pace commensurate with the level of affluence in the Sami municipalities. Alternatively, stipulation of the tax rate can be a topic for discussion in the annual budget negotiations between the State and the Sámediggi.

The greatest advantage of Model 2 is that the Sámediggi would have more autonomous financing that might help clarify its independent position. Further, a link would be established between value creation in the Sami municipalities and the Sámediggi's revenues; augmenting the Sámediggi's interest in paving the way for economic development that strengthens the basis for settlement and employment. However, Model 2 would also entail some disadvantages. The Sámediggi's revenue base would be more sensitive to economic cycles and less predictable. And if the Sami

municipalities were to experience strong depopulation or low income growth, the Sámediggi's revenues would not grow in synch with the general growth in affluence in Norwegian society. The dimensioning of tax revenues must strike a balance between advantages and disadvantages.

### *Model 3: Sami right of taxation*

Models 1 and 2 would give the Sámediggi an opportunity to initiate its own measures because revenues can be spent with greater discretion, and to exercise influence on the overall revenue parameters through negotiations with the State. In both models, the Sámediggi can, on independent grounds, initiate new measures financed by changing priorities within the independent financing (framework appropriations or tax revenues). In Model 2, growth in tax revenues would 'automatically' also provide a basis for financing new measures using 'fresh funds'. In Model 1, financing, based on 'fresh funds,' would only be possible after negotiations with the State, and that would also be a possibility with Model 2. This must not be construed as criticism of the models. As long as the State is providing the finances (either through transfers or by foregoing tax revenues) it must also have some measure of control over the total revenue parameters.

More freedom to finance new initiatives, using 'fresh funds,' could be achieved through a right of taxation for the Sami. A Sami right of taxation implies that the Sámediggi be authorised to tax those who benefit from the measures financed by the Sámediggi. It would, for example, be possible to envisage that the Sámediggi is granted the right to independent taxation of the individuals registered on the electoral roll for the Sámediggi. Tax autonomy could be linked to general income as in Model 2. Model 3 could be established by transferring a certain proportion of the tax on general income from the State to the Sámediggi. Initially, this could be done in a neutral manner so that the taxpayers' collective level of taxation and the Sámediggi's

<sup>33</sup> In the rest of the country, the state tax rate is 14.05 per cent, and the collective tax on ordinary income is 28 per cent

collective level of revenues remain the same.<sup>34</sup> In subsequent years, the Sami tax rate could be changed in two ways. First, the tax rate could be changed by negotiations between the State and the Sámediggi, as outlined in Model 2. Any increase in the Sami tax rate would then be countered by equal changes in the State tax rate so that the tax-payers' collective level of taxation would remain the same. Second, the Sámediggi could itself decide to finance new initiatives through tax hikes, which would imply an increase in the tax-payers' total level of taxation.

The greatest advantage of Model 3 is that the Sámediggi could take new initiatives using 'fresh funds' without having to negotiate with the State. The model would also facilitate good decisions since the usefulness of new measures would have to be assessed in the light of the increased tax burdens on the Sami taxpayer. The model would, however, entail a new type of uncertainty for the Sámediggi. Sami tax exemption would entail a danger that the State would pay less for the financing of new initiatives. Another problem with Model 3 would involve those who might get a free ride; for example, if an individual taxpayer could evade the Sami tax by removing his/her name from the electoral roll for the Sámediggi. This problem could be reduced if the tax were, instead, to be linked to settlement in the Sami municipalities. Meanwhile, this solution would also be problematic because the Sámediggi would thereby be given the authority to tax non-Samis.

### 2.1.5 Closing comments

The article discusses the Sámediggi's financing against the background of how Norway's municipal sector is financed. Three alternative financing models were outlined, based on varying degrees of financial autonomy. Model 1 perpetuates the current practice where the Sámediggi is financed exclusively over the government budget, but would nevertheless imply more freedom of action since a large part of the revenues would be framework appropriations. By negotiating with the State, the Sámediggi could also gain a certain influence on the aggregate revenues and the distribution between framework appropriations and earmarked subsidies.

Models 2 and 3 are based on financing through taxation and would entail major changes compared with the current financing scheme. Financing through taxation affords greater financial autonomy and supports the Sámediggi's independent position. Model 2, without the right of taxation, would be fairly simple to implement and would give the Sámediggi more opportunities to initiate its own measures through 'automatic' revenue growth. Model 3, with a Sami right of taxation, would give unlimited opportunities for the Sámediggi to initiate its own measures with the support of the Sami population, but implementation would be complicated.

<sup>34</sup> In other words, the Sámediggi's tax revenues would be offset by reduced transfers from the State.

### 3. The Sámediggi's authority

It seems natural to expect that the Sámediggi – as the Sami's elected body – would have the authority and responsibilities which would make it possible for them to try to ensure that the Sami people's right to self-determination would be brought to fruition in compliance with the rules and provisions of international law. Accordingly, the Sámediggi's authority situation appears to be a central topic in the debate on the content and implementation of Sami self-determination.

Gáldu – Resource Centre for the Rights of Indigenous Peoples – therefore found it natural to organise a round table seminar under the auspices of the project on Sami autonomy to learn more about the situation with a view to authority in respect of the Sámediggi in Finland, Norway and Sweden. The situation in Norway forms the overarching framework for the project on Sami self-determination, which is a natural consequence of Gáldu being a State institution in Norway, and because the project is financed by the Norwegian Ministry of Government Administration and Church Affairs and the Sámediggi in Norway. The project seeks, nevertheless, to address issues that involve the Sami in other countries where this seems natural. Political and legal developments and the situation in Finland, Norway and Sweden, respectively, at any given time, have a reciprocal effect on Sami policy issues in the respective countries, including the question of the Sámediggi's authority and responsibilities. Gáldu thus found it natural to invite former and current representatives of the three Sámediggi to a round table seminar on the Sámediggi's authority. Former and current presidents and vice presidents of the Sámediggi in Norway were invited. As regards the Sámediggi in Finland and Sweden, the invitation was extended to present

and former presidents of their respective Sámediggi. Invitations were also extended to individuals with key positions in the respective Sámediggi, ref. the enclosed List of participants (Appendix 4). However, several of those invited were unable to participate in the round table seminar.

The goals of the round table seminar were to bring together individuals with intimate knowledge of the Sámediggi's activities and with practical political experience in questions of relevance to problems related to the Sámediggi's authority in the light of the right to self-determination.

The round table seminar was organised at the Thon Hotel in Kautokeino on 6 – 7 November 2010. Seminar participants were invited to discuss problems from the list of topics below. Otherwise, see the seminar programme (Appendix 3).

#### **List of topics for the round table seminar**

1. *What formal and informal authority do the Sámediggi exercise today?*
2. *How has the development of the Sámediggi's authority been since their establishment?*
3. *Is the Sámediggi's authority in keeping with the right of indigenous peoples to self-determination, as expressed, for example, in the UN Declaration on the Rights of Indigenous Peoples?*
4. *Is more Sami self-determination a high-priority task for the Sámediggi and, if so, why?*
5. *The UN Declaration on the Rights of Indigenous Peoples recognises that in implementing their right to self-determination, indigenous peoples are entitled*

*to autonomy or self-government in internal and local affairs, and they have the right to ways and means to finance such autonomous functions;*

- a Which items/areas can reasonably be designated as internal or local Sami affairs in the light of the UN Declaration on the Rights of Indigenous Peoples?*
  - b Do today's financing schemes pave the way for the Sámediggi to implement Sami autonomy or self-government?*
  - c How have the financing schemes developed since the founding of the Sámediggi?*
- 6 *Views on possible strategies for strengthening the Sámediggi's authority and self-determination, i.e. necessary processes between the State authorities and the Sámediggi to achieve Sami self-determination in compliance with international law.*

### **3.1 The Sámediggi's authority**

The seminar participants from the three countries reported on lessons learned and exchanged views about the development of the situations with a view to authority for the respective Sámediggi.

#### **3.1.1 The Sámediggi in Norway**

There was agreement among the seminar participants from the Norwegian side that the Sámediggi in Norway, through its political activities over time, has acquired considerable informal influence and authority. The Sámediggi's formal authority has also been strengthened in certain fields since it was founded. Some of the seminar participants pointed out that, in many cases, the general public does not distinguish between the Sámediggi's formal authority and its informal political influence. This means that most people are of the opinion that the Sámediggi's formal authority is far more extensive than what is actually the case.

There was agreement among the semi-

nar participants from the Norwegian side that the Sámediggi's collective authority and influence, formal as well as informal, has been strengthened significantly since it was founded. It was added that when the Sámediggi was established, in principle, it had no authority beyond that of being a hiring authority.

Some of the participants suggested that even though the Sámediggi's collective authority has gradually been strengthened, it is nevertheless much limited as of today that one cannot rightfully say that the Sámediggi has duties and authority that enable it to effectively help bring Sami self-determination to fruition in compliance with the rules and provisions of international law.

In this context, reference was made to the fact that the UN Declaration on the Rights of Indigenous Peoples, recognises that indigenous peoples have the right to self-determination, including the right to autonomy or self-government in internal and local affairs (Articles 3 and 4). Meanwhile, it was said that the current situation is not solely due to State reservations with a view to Sami self-determination, and that the unresolved situation with regard to the content and implementation of Sami self-determination is also due to the lack of internal Sami processes and decisions on these issues.

The participants were of the opinion that the draft, Nordic Sami Convention, establishes a good framework for further discussions on the content and implementation of Sami self-determination. It was stated that the negotiations on the Sami Convention will entail that on the part of the central government as well the Sami, it will be necessary to discuss and exemplify these issues in more detail. This is a prerequisite for concluding the negotiations on the Sami Convention.

Several seminar participants representing Norway pointed out that the Sámediggi's lack of political and administrative authority as regards Sami reindeer husbandry demonstrates that the development of authority has been limited. In this context, it was stated that the Sámediggi is in the

minority on the National Reindeer Executive. Some participants were of the opinion that the Sámediggi's lack of authority and influence relative to several other central areas, e.g. the management of the fishery and mineral resources in Sami territories, are also indicative of the Sámediggi's limited authority. However, it was emphasised that in other key areas, the Sámediggi has achieved an acceptable level of authority and influence. In that connection, it was pointed out that in the negotiations on the Finnmark Act the Sámediggi largely saw its objectives fulfilled, even though it is still legitimate to ask whether the Finnmark Act fully satisfies international law. There was broad agreement that the Sami, through the Finnmark Act, have earned a right to participate in decisions that affect land and resources in Finnmark, and that the law represents a strengthening of the Sámediggi's authority in an area of fundamental importance.

The procedures for consultations between the State authorities and the Sámediggi were identified by several participants as another example of political advances that had contributed to strengthening the Sámediggi's authority and influence in cases that affect the Sami in Norway. The lack of procedures for consultations between state authorities and the Sámediggi on budget issues was described as very problematic, though, because it adversely limits the Sámediggi's political authority and ability to develop and implement its own policies. It was said that the lack of procedures and processes for dealing with developmental needs and budgetary priorities, along with the State's practice of earmarking appropriations for Sami purposes, contribute in no small way to undermining the Sámediggi's legitimacy and authority. Although there was agreement that the Sámediggi, through current procedures for consultations, has gained more influence in matters that affect the Sami, some participants nonetheless argued that the Sámediggi has had problems making itself heard on some more 'weighty' issues, especially in matters involving natural resources in Sami areas. It was said that the Sámediggi

has, however, enjoyed relatively great success in matters affecting the Sami language and culture, as well as in educational issues. One of the participants disagreed that the Sámediggi has special influence on educational issues, citing the fact, in that connection, that the Sámediggi has not been allowed to have its own plan of action for Sami education. It was also pointed out that the Norwegian government, on its own initiative and through the latest White Paper on Norwegian Sami policy, adopted a plan of action for Sami language; an area which, according to the seminar participant in question, is obviously an internal Sami affair.

Several seminar participants emphasised that the Sámediggi has obtained positive results through the procedures for consultations, and that in many cases it would not otherwise have been possible to obtain the same results in the absence of such procedures. It was mentioned that it is a general problem that agreements reached during consultations within the parameters of these procedures are not always followed up in the budget process. One of the participants was critical of the consultations between the central government authorities and the Sámediggi being exempt from public disclosure; the person in question was of the opinion that it is important and necessary to have more transparency on issues that are subject to consultations, not least with a view to democratic principles.

Someone also stated that the Sámediggi, due to the weaknesses in the current procedures for consultations, should consider establishing a special consultation mechanism with the Storting- Norway's national assembly. In this context, reference was made to the positive experience the Sámediggi gained from the consultation process with Stortinget's Standing Committee on Justice in the run-up to the adoption of the Finnmark Act. It was also mentioned that the draft Nordic Sami Convention assumes that the national assembly, including its committees, should, in response to requests, receive representatives of the Sámediggi so that they can report on questions of importance to the Sami, and that

the Sámediggi ought to be given an opportunity to be heard during the national assembly's discussions of matters that affect the Sami people in particular (Article 18).

Some argued that the dialogue in the process that resulted in the Finnmark Act, i.e. genuine negotiations between the Standing Committee on Justice and the Sámediggi, ought to be a role model for future processes between the Government authorities and the Sámediggi. In that connection, it was also said that it is important to distinguish between consultations and negotiations, and that the dialogue with the State authorities should in some cases be in the form of negotiations. This applies in particular to cases of fundamental importance to Sami culture, language, industries and society.

There was general consensus that current procedures for consultations between the central government authorities and the Sámediggi are not regarded as the exercise of Sami self-determination, despite the fact that the procedures have considerably strengthened the Sámediggi's influence in matters affecting the Sami and the Sami community.

Several seminar participants were of the opinion that the Sámediggi is currently struggling to achieve positive results in respect of important Sami social issues, including the recognition and implementation of Sami self-determination because there is "a strong Sami policy head wind" at present. It was pointed out in that connection that there is a political group in the Sámediggi, the Party of Progress that is actively working to have the Sámediggi closed down

Other seminar participants chose to focus more on the results achieved by the Sámediggi. For example, it was pointed out that one can openly discuss Sami self-determination today, without it engendering fears or many negative reactions. It was said that this, in itself, is a great step forward, and that it shows that the Sámediggi has been able to influence the social debate in the right direction. It was also pointed out that the Sami actively participated in the multilateral negotiations

on the UN Declaration on the Rights of Indigenous Peoples, proving that the Sami collectively have the ability and willingness to represent their own interests and rights in an international context. It was said that the Sámediggi's ability and willingness to take responsibility for its own development, not least in an international context, is a prerequisite for the exercise of Sami self-determination.

Further, reference was made to the fact that the Sámediggi currently has formal authority in several important areas, including the authority to adopt regulations that apply to Sami teaching plans, the authority to adopt regulations pursuant to the Finnmark Act, and the right to object as laid down in the Planning and Building Act. There was broad consensus that the further development of the Sámediggi's authority, and the exercise of such authority, require that the Sámediggi's financial resource situation be commensurate with its authority and tasks. In this context, it was pointed out that the transfer of authority to the Sámediggi often takes place without the Sámediggi getting the additional resources it needs.

The Sámediggi's lack of influence and authority in reindeer husbandry issues was discussed by several seminar participants. It was said that today's situation is a result of several factors. It was mentioned that since the establishment of the Sámediggi, the main reindeer husbandry organisation, the Sami Reindeer Herders' Organisation of Norway (NRL), has not supported the Sámediggi being granted authority in questions related to reindeer husbandry. It was said that NRL's position is *inter alia* because the reindeer herders have not, through the election scheme, been allocated regular seats in the Sámediggi. Despite the fact that there was broad consensus that, in principle, it would be natural for the Sámediggi to have authority in questions related to reindeer husbandry, since reindeer husbandry is a traditional Sami industry and an important material prerequisite for Sami culture, it was not considered realistic for the Sámediggi to have such authority in the foreseeable future.

Further, it was said that the reindeer husbandry industry's consent is essential for the Sámediggi to be able to have jurisdiction in reindeer husbandry issues, but that as of today, there is nothing to indicate that the reindeer husbandry industry would like to be subject to a Sami authoritative agency. Without such consent, the Sámediggi will, according to some seminar participants, not possess the political legitimacy required in respect of the reindeer husbandry industry. It was also argued that another condition for the acquisition of jurisdiction in matters related to reindeer is that such authority could have an impact on its administrative authority, since the Sámediggi would find it difficult to be a steward of the State's reindeer husbandry policy.

There was broad consensus that it is not very realistic to expect that the Sámediggi either should or could have the authority to establish law in the usual sense. On the other hand, it was said that it would be natural, in certain cases, for the Sámediggi to be granted regulatory authority. Some participants were, nonetheless, of the opinion that it should be determined whether the Sámediggi can be granted some form of normative authority in 'internal affairs', not least with a view to Sami language, culture and education.

By the same token, no one was of the opinion that it would be natural for the Sámediggi to have any form of tax authority. This was initially because it would be difficult to translate the concept into practice, not least as there has been no clear definition of Sami territory. On the other hand, some seminar participants suggested that it would be natural to consider whether or not the Sámediggi should be given the authority to assess and administer taxes on natural resources on Sami territories

### 3.1.2 The Sámediggi in Sweden

The seminar participants from Sweden emphasised that the Sámediggi in Sweden differs significantly from the Sámediggi

in Finland and Norway because, in addition to being an elected Sami body, it is also a Swedish State authoritative agency. There was agreement that this distribution of roles is a demanding challenge for the Sámediggi in Sweden, not least because, in some cases, it can be difficult to reconcile the role of the Sámediggi as a democratically elected Sami body with the tasks that ensue from the role of being a State authority.

It was said that the elected part of the Sámediggi has relatively low status in Sweden, and that State authorities have only, to a limited extent, taken account of the Sámediggi's opinions and political priorities. One main problem is that the Sámediggi has little influence on State decision-making processes that affect the Sami in Sweden. It was argued that the Sámediggi in Sweden has far less political influence in State decision-making processes than the Sámediggi in Finland and Norway have, in comparable processes. Mention was made of the fact that on several occasions, the UN has pointed out that the Sámediggi in Sweden should be given more influence on issues that affect the Sami. The UN Human Rights Committee has, for example, on several occasions expressed concern about the Sámediggi's limited influence and role in decision-making processes in matters that involve the Sami, including matters that affect the Sami's economic activities and industries, and matters relating to land and resources in Sami territories (mineral extraction, hydropower, forestry and the privatisation of land areas).<sup>35</sup>

There was broad consensus that one major problem is that the Sámediggi in Sweden is not solely an elected Sami body; and that because the Sámediggi is also a State authoritative agency, the State, directly or indirectly, to some extent ends up governing and controlling the Sámediggi's activities. Among other things, it was argued that it is important that in future, the Sámediggi becomes purely an elected Sami body. It was argued that this would be a natural

<sup>35</sup> CCPR-CO-74\_SWE (2002), paragraph 15, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/413/72/PDF/G0241372.pdf?OpenElement>; CCPR/C/SWE/CO/6 (2009), paragraph 20, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/422/07/PDF/G0942207.pdf?OpenElement>

development and consequence of the Riksdagen, the Swedish parliament, adopting an amendment to its Constitution, recognising the Sami as a separate people.

Some seminar participants also pointed out that a lack of financial resources places clear constraints on the Sámediggi's possibilities to develop and implement its own policy. It was stated that the State's appropriations for Sami purposes should be given priority and be earmarked for tasks that the Sámediggi has by virtue of being a Swedish State authoritative agency, and that this takes place at the expense of the tasks that the Sámediggi has as an elected Sami body. Further, it was pointed out that State appropriations for the Sámediggi's political activities are also earmarked to a great extent. It was pointed out that the Government largely controls the Sámediggi's activities through appropriation directions for the State's financial grants for Sami purposes. The appropriation directions describe the objective of the individual appropriation item and establish more detailed conditions for the use of these means. It was said that the wording of the reporting requirements often represents a clear earmarking of the appropriations

The participants from Sweden concluded that the Sámediggi in Sweden has limited self-determination. This is because the Sámediggi has a limited mandate and, given its dual role and responsibilities it can, only to a limited extent, perform the tasks that should naturally be assigned to a democratically elected Sami body. It was said that today's situation does not tally well the Constitutional amendment that recognises the Sami as a people, and the fact that Sweden has, on several occasions before UN covenant monitoring bodies for Human Rights, recognised that indigenous peoples, including the Sami in Sweden, are entitled to self-determination<sup>36</sup> in compliance with the UN's Human Rights conventions of 1966.<sup>37</sup>

*“Supported by the right to self-determination, indigenous peoples can freely determine their political position and freely pursue their economic, social and cultural development. The right to self-determination may, however, not be interpreted to mean that it allows or encourages any action that might wholly or partially divide or constrain the territorial integrity or political unity of sovereign and independent states acting in compliance with the principles of equal rights and self-determination for people and thus have a Government that serves all of the people in the territory without discrimination of any kind. The Sami are recognised as an indigenous people.”<sup>38</sup>*

The seminar participants from Sweden concluded that a strengthening of the Sámediggi's mandate and tasks as a democratically elected body is a prerequisite for the development of genuine Sami self-determination in Sweden. It was pointed out that the draft Nordic Sami Convention furnishes a good framework for the development of Sami self-determination, and that the Sámediggi therefore has great expectations of the results of the ongoing negotiations on the Sami Convention.

### 3.1.3 The Sámediggi in Finland

The Sami in Finland enjoy special constitutional protection as an indigenous people.<sup>39</sup> Further, §121 (4) of the Constitution states that the Sami have cultural and linguistic autonomy within a geographically limited area- *“The Sami, in their homelands, enjoy linguistic and cultural autonomy in accordance with what is determined by law.”* The concept ‘Sami culture’ is considered to comprise the Sami's collective culture, including traditional Sami industries such as reindeer husbandry, hunting and fishing.<sup>40</sup> This linguistic and cultural autonomy is limited to the Sami homeland area, which covers the three northernmost

<sup>36</sup> E/C.12/SWE/5 (2006), paragraf 7-8, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/441/36/PDF/G0644136.pdf?OpenElement>  
CCPR/C/SWE/6 (2007), paragraf 5, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/456/75/PDF/G0745675.pdf?OpenElement>

<sup>37</sup> UN Covenant on Civil and Political Rights; UN Covenant on Economic, Social and Cultural Rights

<sup>38</sup> Ibid, 30

<sup>39</sup> The Constitution (731/1999), §17, subsection 3

<sup>40</sup> The Nordic Sami Convention, draft by the Finnish-Norwegian-Swedish-Sami expert group (2005).

municipalities in Finland, Enontekiö, Enare and Utsjoki, as well as the reindeer husbandry area "Lapin Palis kunta" in Sodankylä Municipality<sup>41</sup>

The Sami Act contains detailed provisions regarding implementation of the Sami's linguistic and cultural autonomy. Among other things, the Act establishes that the authorities have an obligation to negotiate with the Sámediggi in respect of specific matters that affect Sami interests within the Sami homeland area.

§5 of the Finnish Sami Act establish that "to the Sámediggi fall the tasks that involve the Sami language culture as well as their position as an indigenous people. Among the tasks that fall to the Sámediggi, it can take initiatives in respect of the authorities and make presentations, as well as make reports. In so doing, the Sámediggi also has decision-making rights which are enshrined in this or another act."<sup>42</sup>

Further, it ensues from §6 of the Sami Act that "the Sámediggi shall, in the tasks entrusted to it, represent the Sami in national and international contexts." The reason for this provision is that the Sámediggi is a democratically elected Sami body, and that the Sámediggi is thereby the institution in Finland that can represent Sami interests with the greatest legitimacy.

Pursuant to §9 of the Sami Act, central, regional and local authorities are required to negotiate with the Sámediggi on matters that directly or indirectly affect the Sami. This obligation is enshrined in §9 of the Sami Act:-

- 1) *social planning;*
- 2) *the care, use, leasing and disposal of the State's lands, conservation areas and wilderness areas;*
- 3) *applications for permission with a view to the mineral mining, as well as the execution of the concession;*
- 4) *amendments to legislation or administrative procedures that apply to industries that are part of the Sami culture;*
- 5) *development of instruction in Sami or in the Sami language and of social and health services, as well as*

- 6) *other comparable tasks which can impact the Sami language, culture or their position as an indigenous people.*

*To comply with the obligation to negotiate, the competent authority shall prepare the Sámediggi for the possibility that it will be heard and negotiate on the issue. Where the Sámediggi does not take advantage of the opportunity, this does not prevent the authorities from continuing to deal with the task."*

A natural linguistic understanding of the wording in the provision regarding the duty to negotiate indicates that the State's duty is far more extensive than an obligation to consult the Sámediggi on matters covered by the provision. This is clear, *inter alia*, from the last subsection in the provision; it says in this context that the authoritative agency in question shall "make the Sámediggi aware of the possibility for being heard and negotiating on the issue".

The seminar participant from the Finnish side expressed that the State's duty to negotiate is not practiced in keeping with the wording of the provision. He said that dialogue between State authorities and the Sámediggi takes place in the form of consultations, and that they cannot be described as genuine negotiations. Further, it was submitted that the consultations are not usually satisfactory, since the Sámediggi's influence is, in reality, severely limited. It was also remarked that the Sámediggi in Finland generally has very limited authority and influence in cases that affect the Sami. The Sámediggi's chances to exercise influence in matters that involve the Sami community are limited, *inter alia*, by the Sámediggi's lack of financial resources. For example, the Sámediggi's weak economy places clear limits on the opportunity and ability to explore and prepare initiatives in matters that affect the Sami community. The Sámediggi has few employees and therefore does not have the capacity to follow up on all matters in a satisfactory manner.

<sup>41</sup> Roughly 50 per cent of the Sami population in Finland lives in the Sami homeland area.

<sup>42</sup> Sami Parliament Act (974/95). Entry into force 1 January 1996.

However, the Sámediggi has relatively great political power in some areas. Riksdagen's adoption of the Sami Language Act is one example in this respect, since the Act was generally adopted in compliance with the Sámediggi's original draft bill. It was nevertheless concluded that the Sámediggi in Finland currently has little influence and limited authority in issues that affect the Sami and Sami society. The seminar participant from Finland also expressed that the Nordic Sami Convention, provided it is adopted in keeping with the Nordic expert group's proposal, will in a positive way, strengthen the authority of the Sámediggi and its influence on issues that affect the Sami.

### **3.2 The situation with regard to authority in the light of principles of international law**

There was agreement that the Sámediggis' situation with a view to authority is far from fully compliant with modern standards laid down by international law regarding the right to self-determination. The Sámediggis have limited formal decision-making authority, meaning that there is a limit to how much they can do to set the stage for the development of the Sami community.

There was also broad consensus that the fact that the Sámediggis' part in decision-making processes is limited to consultations between central government authorities and the Sámediggis is not satisfactory in the light of how international law recognises indigenous people's right of self-determination. It was said that it is natural, as well as necessary that the dialogue between the State authorities and the Sámediggis in certain areas be conducted in the form of genuine negotiations. This is because consultations do not to a satisfactory extent ensure effective Sami influence on issues of special importance for Sami culture, Sami industries and the Sami community.

Reference was made, *inter alia*, to the draft Nordic Sami Convention, which advocates that the Sámediggis be accorded such tasks and such authority as needed to make it possible for them, more

effectively, to ensure that the Sami people's right of self-determination will be brought to fruition. It was pointed out that the draft convention seeks to establish a sliding scale for the Sámediggi's authority; depending on how relevant an issue is to the Sami community, and to the basic criteria as regards Sami language, culture, industries and community life. The draft convention presumes that the Sámediggis, in certain situations, have the right to take decisions independently, while in other cases it establishes conditions that require Sámediggi consent before the government authorities allow or adopt initiatives which, to a significant extent, can harm the basic conditions for Sami culture, Sami industries or Sami community life. In addition, the draft convention advocates a duty of consultation in cases that are not covered by the Sámediggis' decision-making right, and in cases that do not require their independent, informed consent in advance. In matters that have the least impact on Sami society, the draft convention prescribes a duty of disclosure to inform the Sámediggis of planned initiatives.

Several seminar participants pointed out that international law establishes an absolute threshold for government authorities to adopt or allow resolutions which could, to a significant degree, harm the basic conditions for Sami culture, Sami industries or Sami community life, without Sami approval. It was said that this ensues from Article 27 of the UN Covenant on Civil and Political Rights, which all the Nordic countries have ratified. In many cases, the Sámediggis, as the supreme Sami bodies in the individual countries, will be the right agencies for granting such permission.

Some participants also emphasised that the Sámediggis should have the right to be represented on public councils and committees when they are dealing with issues that involve Sami interests. Reference was made to the fact that the Sámediggis, to some extent, already today have the authority to appoint representatives to public councils and committees; but that far too often, the Sami are not included on important public committees and councils

that deal with issues of importance to Sami society. Someone said that it would seem to be natural for the Sámediggi to hear all cases that involve Sami interests before decisions are taken by a public authority.

### 3.3 What can be designated as internal or local Sami affairs?

On the basis of Article 4 of the UN Declaration on the Rights of Indigenous Peoples, seminar participants discussed the question of what might be described as matters that affect the Sami's internal and local affairs. Article 4 of the Declaration on the Rights of Indigenous People recognises that indigenous people, in the exercise of their right to self-determination, are entitled to autonomy or self-government in matters involving their internal and local affairs, as well as the right to ways and means for the financing of their autonomous functions.

Many areas of concern were described by the participants; as internal or local internal Sami affairs, including Sami language, culture, education, research and traditional knowledge. Other areas include: customs, industries, health and social services, management of Sami history and knowledge, Sami archives, natural resources on Sami territory, spiritual values, the local community, and common institutions. Someone contended that a particular field may also be considered internal or local Sami affairs, even if people other than Sami are also involved. In that connection, it was pointed out that the management of natural resources on Sami territory should also generally be a duty and a right that accrue to local Sami communities, despite the fact that others will be affected by such local management in many cases. Several participants emphasised that the Sami's authority, in relation to the management of natural resources on their own territories, is absolutely decisive for the development of Sami society.

Further, it was argued that setting priorities for the development of Sami society, including for the land areas which the Sami live in or use, are to be regarded as an internal Sami matter. This was explained, *inter alia*, by saying that the management

of land areas and resources is in many ways at the heart of the Sami's right to freely determine their own economic, social and cultural development.

There was broad consensus that a major challenge to implementing Sami self-determination is that, as of today, the Sami have not undertaken the requisite internal Sami processes to clarify the content of self-determination and how it might possibly be accomplished through practical politics. It was said that the States' understanding of the right to self-determination also represents a formidable challenge to the efficient implementation of this right. Several seminar participants expressed that the negotiations on the Nordic Sami Convention will be decisive when it comes to understanding and implementing Sami self-determination. It was agreed that the Sámediggi must give this process high priority, since the results of the negotiations will have lasting consequences for Sami social development.

### 3.4 Conclusion

The discussions at the round table seminar show that the Sámediggi in Finland, Norway and Sweden consider implementation of the right to self-determination to be a crucial, high-priority issue. The situation with a view to authority for the Sámediggi establishes a framework for the Sami's empowerment and opportunity to influence and govern its own development.

The authority of the Sámediggi can be described and analysed on the basis of the right of indigenous people to participate in decision-making processes that affect them. The right of indigenous people to participate in decision-making processes is recognised as a fundamental right in the UN Declaration on the Rights of Indigenous Peoples. Article 18 of the Declaration establishes that *"Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."*

The Declaration on the Rights of Indigenous Peoples contains some 20 provisions which, in a variety of ways, recognise indigenous people's right to participate in decision-making processes. The right of participation is expressed as: (a) the right of self-determination; (b) the right to autonomy or self-government; (c) the right to participate; (d) the right to be actively involved in decision-making processes; (e) the duty of the State to obtain indigenous people's free and informed consent; (f) the duty of the State to seek to conclude voluntary agreements with indigenous peoples; (g) the duty of the State to consult and cooperate with indigenous peoples and (h) the duty of the State to implement measures in collaboration with indigenous peoples.<sup>43</sup>

ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries also contains several provisions which, in a variety of ways, recognise indigenous people's right to participate in decision-making processes that could affect their rights, interests and society.<sup>44</sup>

The UN Declaration on the Rights of Indigenous Peoples distinguishes between internal (intrinsic) and external (extrinsic) decision-making processes. Indigenous people are entitled to autonomy or self-government in internal and local affairs (Article 4), at the same time as they have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions in the country (Article 5), and to participate in decision-making in matters which would affect their rights (Articles 18 and 19).<sup>45</sup> These provisions originate in Article 3 of the Declaration on the Rights of Indigenous People, which recognises that indigenous peoples have the right of self-determination, and that, by virtue of this right, they can freely determine their political position, and freely pursue their own economic, social and cultural development

The Declaration on the Rights of Indigenous Peoples offers no specific definition of

what is considered to be internal or external decision-making processes. However, it is usually assumed that external decision-making processes encompass State and other public decision-making processes, where parties other than indigenous peoples have decision-making authority. In such external decision-making processes, indigenous peoples have the right to participate in a variety of ways, including in consultations and through the State's duty to get their independent, informed consent.

The form of participation required in external decision-making processes will depend on the nature of the case and its importance to indigenous communities. For example, Article 10 of the Declaration on the Rights of Indigenous People establishes that indigenous people should not be forced to move from their own territories, and that moving cannot take place without the relevant indigenous people's free and informed consent. This must be compared with Article 15 (2), which is limited to establishing an obligation on the States to consult and cooperate with indigenous peoples to adopt effective measures to fight prejudices and eliminate discrimination against indigenous peoples. In the same way as the draft Nordic Sami Convention, the Declaration on the Rights of Indigenous Peoples establishes a sliding scale for indigenous people's participation in decision-making processes based on the importance of a matter for indigenous people's culture, industries and community life.

The term "internal decision-making processes" usually refers to processes in which indigenous peoples have the right to adopt their own decisions. This applies to their internal and local affairs, and to their collective decisions relative to external decision-making processes. Several provisions in the Declaration on the Rights of Indigenous Peoples are closely associated with the right to autonomy or self-government. This refers *inter alia* to the rights of indigenous peoples to maintain and strengthen

43 See the Declaration on the Rights of Indigenous Peoples, articles 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 38, 40, 41.

44 See ILO Convention 169, articles 2, 4-7, 15-17, 22, 23, 25, 27-28, 33.

45 UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), progress report on the study on indigenous peoples and the right to participate in decision-making, A/HRC/15/35 (2010), [http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/Progress\\_report\\_2010.pdf](http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/Progress_report_2010.pdf)

their distinct political, legal, financial, social and cultural institutions (Article 5). Also, and indigenous people's 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 (Article 14).

The principle of indigenous people's independent, informed consent in advance is an important element in indigenous people's right of self-determination, and their right to participate in decision-making processes. The UN's Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is of the opinion that indigenous people's independent, informed consent is an integral part of their right of self-determination, and that this right must therefore be practiced through their own decision-making processes. EMRIP also says that since indigenous people's free and informed consent originates with their right to self-determination, they also have the right to determine the outcome of a matter to the extent that it affects them. EMRIP concludes that indigenous people's free and informed consent impacts the right to be consulted and to be involved in such decision-making processes.<sup>46</sup>

In the discussions on the Sámediggi's authority in the light of principles of international law, it is necessary to develop a sliding scale based on the nature and importance of the matter for Sami language and culture, Sami industries and Sami community life. In internal and local affairs, it is natural to assume that the Sámediggi alone would be able to adopt final

decisions, without external intervention. In decision-making processes where others have the authority to take decisions, the Sámediggi have the right to be involved in different ways; depending on the nature of the case and how strongly it affects Sami society. The discussions at the round table seminar show that the Sámediggi's authority and their opportunity to exercise effective influence in cases that affect the Sami remain limited.

There was broad agreement among the seminar participants that today's authority situation for the Sámediggi is not in compliance with the most recent trends in international law, especially as regards recognition of the right of indigenous peoples to self-determination. This perception coincides with the conclusion drawn by the UN Special Rapporteur on the Rights of Indigenous Peoples in its report on the situation for the Sami people in the Sápmi region in Finland, Norway and Sweden ("*The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*").<sup>47</sup> The Special Rapporteur states that it is necessary to strengthen the Sámediggi's autonomy and self-government authority, and to help improve their ability and possibility to participate in and effectively influence decision-making processes in matters that affect the Sami. The Special Rapporteur concludes *inter alia* that measures are needed to ensure that the Sami people, within their respective states as well as across borders, can take advantage of their rights in compliance with modern standards of international law, including their right to self-determination.

<sup>46</sup> Ibid. 39, para 41. See also UN document A/HRC/18/42, 17 August 2011, cf. Annex, Expert Mechanism Advice No. 2 (2011), Page 22, ff.; [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42_en.pdf)

<sup>47</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya (2011) (Advanced Unedited Version), para 37 and 71, <http://unsr.jamesanaya.org/country-reports/the-situation-of-the-sami-people-in-the-sapmi-region-of-norway-sweden-and-finland-2011> . cf.. final report in document A&HRC&18&35&Add. 2, 06 June 2011, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-35-Add2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-35-Add2_en.pdf)

## 4. Sami autonomy in the health and social services sector

Gáldu – Resource Centre for the Rights of Indigenous Peoples – arranged a workshop on *Sami autonomy in the health and social services sector* on 8 – 9 November, 2010 at Diehtosiida in Kautokeino. The seminar programme consisted of presentations and discussions. The seminar was made up of individuals with expertise and experience in the field in question, cf. the enclosed seminar programme (Appendix 5) and the list of participants (Appendix 6). A large number of the invited Sami experts from the health and social services sector were prevented from participating due to other commitments. The following issues formed a general framework for the seminar:

### Issues

1. *Trends in the health and social services sector in relation to the protection of the Sami's needs and rights;*
2. *Is there a need for or is it desirable to have Sami autonomy in the health and social services sector?*
3. *Should the health and social services sector be regarded as an internal or local Sami matter – wholly or partially – and, if so, why?*
4. *How can Sami self-determination be implemented in the health and social services sector?*
5. *What responsibilities should or can the Sámediggi have in the health and social services sector?*

### 4.1 Development in the health and social services sector in relation to the protection of the Sami's needs and rights

Ragnhild Lydia Nystad<sup>48</sup>, Professional Development Nurse at the National Teaching Nursing Home for the Sami population, reported on the development of health and social services for the Sami. She said that the initiative to strengthen the Sami's rights and to attend to the Sami's needs in the health and social services sector was initially taken by Sami health and social workers in the 1970s - 1980s, who had organised Sami organisations established by Sami doctors, nurses and social workers.

Nystad stated that the Sámediggi has continued this initiative. Since its establishment, the Sámediggi has opted to give priority to matters relating to health and social services for the Sami. Quite early on, the Sámediggi established a special committee for health and social affairs, even though it had no formal responsibility or authority relative to institutions considered to be Sami health care institutions. Further, the Sámediggi established a scheme to provide its own reports on Sami health and social services in an attempt to ensure continuous improvement of the health of the Sami population.

According to Nystad, this led to the Ministry of Health and Social Affairs appointing its own committee to study issues relating to the health and social situation for the Sami in Norway. One general objective of the work was to ensure genuine availability and the greatest possible degree of equality of results when using health and social services, regardless of ethnic affiliation. One of the committee's main responsibilities is to propose measures that would help make health and social services available to the

48 Former Sámediggi MP and vice president of the Sámediggi in Norway.

Sami, as to the Norwegian population. The Committee's work resulted in a separate plan for health and social services for the Sami population in Norway (Norwegian Public Report (NOU) 1995:6).<sup>49</sup>

According to Nystad, this resulted in a substantial strengthening of mental health services for the Sami in Norway. She also pointed out that the University of Tromsø has established Sami Health Research with institutional units in Karasjok, Skånland and Tromsø. Further, it was pointed out that *Health North* has established institutions that offer child welfare expertise, and which are also supposed to look after the Sami's needs and pave the way for necessary measures for Sami children and families. Nystad stated that many advances had been made, at the same time as some areas have seen a worsening of the services available to the Sami. She said that somatic specialist services for the Sami have deteriorated as a consequence of fewer specialists and a reduction in the services offered. Nystad also stated that although the interpreting service for Sami users in the health and social services sector has been improved, this programme still does not work in a satisfactory manner, as seen from Sami users' vantage point.

She said that the Sámediggi is an important driver and communicator of Sami views of the central government authorities in health and social services issues, which are of importance to the Sami population. It was said that the Sámediggi plays an important role as a trendsetter in the work to develop health and social services that take into account the Sami's special needs, especially their linguistic and cultural needs. Today, the Sámediggi tries to perform these tasks through consultations with the State authorities. Further, the Sámediggi exercises influence through its opportunity to nominate Sami representatives to *Health North* and the respective health enterprises.

Nystad concluded that the offer of health and social services for the Sami population

has developed in a positive direction, but that these are still not well enough adapted to the Sami's cultural and linguistic needs. She pointed out this is the case for the primary health service, as well as substance abuse treatment services, the specialist health service and the hospitals. She emphasised the specialist psychiatric health service as the service that is best adapted to the Sami's cultural and linguistic needs.

According to Nystad, it is difficult to give an easy answer to the question of why no one has yet developed health and social services for the Sami population that are fully adapted to their special situation and needs. She listed several other possible reasons which, individually or collectively, may furnish the background for the current situation:-

- Inadequate prioritisation of the development of health and social services for the Sami.
- A lack of human resources, including Sami-speaking health care personnel.
- A lack of political pressure by the Sami on the central government authorities when it comes to healthcare and social services for the Sami.

Nystad also concluded that even if the Sami, for example through the Sámediggi, increased their influence today on issues relating to the health and social services situation for the Sami, they would nonetheless, not have self-determination in the health and social services sector at this point. She justified this by pointing out that today's situation is not commensurate with the principle enshrined in the draft Nordic Sami Convention, which specifies that the State, in collaboration with the Sámediggi, shall ensure that health and social services in the Sami settlement areas are organised so that the Sami in these areas are guaranteed health and social services that are fully adapted to their linguistic and cultural background. She also showed that the draft Sami Convention assumes that account

49 Plan for health and social services for the Sami in Norway, handed down by a committee appointed by the Ministry of Health and Social Services on 24 October 1991; submitted to the Ministry on 16 February 1995; <http://www.regjeringen.no/Rpub/NOU/19951995/006/PDFA/NOU199519950006000DDDPDFA.pdf>

should be taken of language and cultural background for Sami patients and clients also outside the Sami homelands.<sup>50</sup>

Some seminar participants pointed out that certain areas of the health and social services sector have made great headway in ensuring that Sami patients' and users' linguistic rights and needs are met. For example, the Sami language is already used in treatment situations for cases involving children and family affairs.

Several seminar participants indicated that it is difficult to clearly define the requirement that health and social services be adapted to Sami 'cultural needs'. It was said that this is a great challenge in individual treatment situations, and that health care personnel often lack any form of guidance to help them in this context. There was broad consensus that it is necessary to clarify this in more detail, not least through research on how health care personnel can best look after Sami 'cultural needs' in a health and social services context.

#### **4.2 Is there a need for Sami autonomy in the health and social services sector?**

The discussions about whether there is a need for or whether it is desirable to have Sami autonomy in the health and social services sector were moderated by Ragnhild Lydia Nystad. By way of introduction, she stated that "it is crucial that the Sami people have the right to make decisions about their own health and which services they want adapted to Sami culture and language, without necessarily having to administrate these services themselves." Further, she confirmed that the Sami have individual, as well as collective rights that call for health and social services to be organised and adapted to Sami culture and language. She pointed out that the Sami are entitled to health and social services of the same quality as the services available to the rest of the population of the country.

Nystad emphasised that the Sámediggi's role and responsibility are to develop general health and social policy for the Sami

community and, in collaboration with the responsible central government authorities, to plan a programme for strengthening the Sami people's health and social services situation. She stated that the Sámediggi's responsibilities include the following:

- Contribute to the development of political schemes and mechanisms for ensuring that the Sámediggi effectively and genuinely can influence central government decisions on health and social issues that affect the Sami.
- Establish a good working relationship with the Minister of Health and the Stortinget's Standing Committee on Health and Care.
- Make long-term plans and set Sami policy priorities for the health and social services sector.
- Actively contribute to cross-border cooperation on questions of importance for the health, care and social situation of the Sami, including cooperation with the Sámediggi Parliamentary Council and the Sámediggi in the other countries.
- Try to educate a sufficient number of Sami healthcare workers, not least by continuing and strengthening the Sami grant and affirmative action figures of importance for the health and social services sector.

Nystad concluded, however, that the Sámediggi neither can nor should administrate or organise health, care and social services for the Sami in Norway. She was of the opinion that regional health enterprises (RHF) and the health enterprises (HF) have the necessary qualifications to organise and manage the specialist health services, and that the municipalities should still be responsible for providing health and social services at the local level.

Several seminar participants argued that there is a need to clarify what is meant by the concept "Sami self-determination in the health and social services sector", as this remains relatively unclear. It was argued that it is necessary to clarify the content, if any,

<sup>50</sup> Draft Nordic Sami Convention, Article 29 (Health and Social Services).

of the right of self-determination and its practical implementation in the health and social services sector, not least to ensure that the public debate on these issues is as specific and nuanced as possible.

There was relatively broad agreement that the Sámediggi's role and duties in the health and social services sector should be of a general nature. The Sámediggi ought to focus on general and central decision-making processes related to health and social issues. It was said that would not be natural for the Sámediggi to get involved in individual cases, including the establishment and location of health care institutions. The Sami right to self-determination in the health and social sector was described by several participants as a right to lay down the framework conditions for providing health and social services to the Sami population. Further, it was said that it would also not be natural for the Sami to set up their own health care institutions, as it would be more expedient to adapt ordinary services to the Sami's special needs.

Some seminar participants were, however, not in agreement as to whether the Sámediggi should deal with questions related to the establishment and location of health care institutions. This was explained as being due to the fact that the hospital structure and health coverage in Finnmark County, for example, is also a Sami matter, not least because Sami patients encounter formidable challenges and stigmatisation in Norwegian health care institutions.

### **4.3 Are health and social issues to be regarded as internal or local Sami affairs?**

Muotka stated that issues relating to health and social services must basically, and in principle, be considered internal Sami affairs. She added, however, that it would nonetheless be expedient to develop adaptation strategies to ensure satisfactory health and social services for the Sami within the framework of the existing system. She said that in this context, parallels could be drawn between the health and social services sector and the education sector, since these two sectors had the

same need for adaptations to accommodate Sami rights and needs. She was of the opinion that adaptation is the most realistic strategy, not least as a result of lack of capacity in the Sami community. The lack of human and economic resources makes it difficult to envisage Sami autonomy in the health and social services sector, e.g. in the form of separate institutions.

Muotka agreed that the Sámediggi's task and role in the exercise of Sami self-determination in the health and social services sector should primarily be of a general nature. She said that the Sámediggi ought to be the supplier of conditions and the agency that develops general policies on health and social issues that affect the Sami in Norway. She added that the Sámediggi ought to be the Sami body that conducts consultations on these issues with State health authorities at the administrative and political levels. Further, she said that the Sámediggi ought to appoint Sami representatives to the health enterprises, and set standards for the content of the health authorities' assignment documents for the health enterprises with a view to questions of importance to the Sami population.

Muotka observed that the overall political objectives of the Sámediggi's efforts in relation to health and social issues must be to achieve a comprehensive and equal offer of health and social services to the Sami population – an offer that is equal to the offer available to the rest of the population of the country.

There was broad agreement among seminar participants that it is difficult to envisage a situation in which the Sami have "pure autonomy" in the health and social services sector, not least because it would not be expedient for the Sami to set up and administer their own health and welfare institutions outside the current system. The seminar participants seemed to be in relative agreement that Sami autonomy must primarily be expressed in the form of efficient Sami influence and structuring of the health and social services available to the Sami in Norway.

Silje Karine Muotka nonetheless suggested that it might be prudent to explore

whether internal Sami self-determination on health issues might best be achieved through a separate Sami health enterprise. She said that such a body could be a co-ordinating unifying link in Sami health questions. Further, she justified the idea of a separate Sami health enterprise by saying that it would ensure a uniform Sami health programme, at the same time as it would ensure that there is an institution that bears a special responsibility for building up institutional expertise to meet Sami users' needs. She stated further that a Sami health enterprise would also ensure qualitative guidance on Sami health issues to other health enterprises, counties, municipalities and knowledge institutions. It was argued that a Sami health enterprise would counteract fragmented, incoherent institution-building in the health and social services sector.

No agreement was reached among the seminar participants on the issue of a separate Sami health enterprise. Among other things, it was contended that the Sami population's needs and rights in the health and social services sector can best be secured within the framework of existing structures. Some were also of the opinion that, in actual practice, it would be difficult to set up a Sami health enterprise, not least as a result of the shortage of human resources in Sami society.

Several seminar participants expressed that the Sámediggi already exercises significant influence on matters related to Sami health and social services issues, and that it has generally obtained good results in this sector. In that connection, reference was made *inter alia* to the fact that the discussion of Sami conditions in the Norwegian Government's Assignment Document to the health enterprises is largely a result of the Sámediggi's dialogue and consultations with central health authorities. It was said that even if the consultation process with central health authorities often takes a very long time, in some cases up to several years, the Sámediggi and the health authorities have nevertheless arrived at unified solutions in most cases, in keeping with the Sámediggi's priorities.

Some seminar participants pointed out that ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries and the UN Convention on the Rights of the Child constitute the normative foundation in international law for the Sámediggi's efforts to promote Sami rights and needs in the health and social services sector. The Convention on the Rights of the Child provides strong support for the legal principle, that what is best for the child shall always weigh heavily in decision-making processes and in individual decisions that affect children. Further, it was said the Sámediggi, in the dialogue with the State government, takes its point of departure in Article 25 of the ILO convention. This provision establishes that the Government shall ensure that satisfactory health services are available to indigenous peoples, and that the Government is responsible for providing resources to equip them for planning and offering such services, so that they can enjoy the highest attainable standard of physical and mental health. The provision also ascertains that health services, insofar as possible, shall be based in the local community. And also such services shall be planned and administrated in collaboration with the indigenous people in question, taking into account their economic, geographical, social and cultural conditions, as well as their traditional preventative methods, treatment practices and medicines.

Someone observed that in addition to the ILO Convention and the Convention on the Rights of the Child, the Sámediggi should invoke the UN Declaration on the Rights of Indigenous Peoples in its dialogue with central government health authorities. Further, it was contended that even if the Declaration on the Rights of Indigenous Peoples is not binding in the same way as a ratified convention, the instrument nonetheless establishes strong and binding guidelines on indigenous rights. The Declaration on the Rights of Indigenous Peoples is commensurate with already existing legally binding international standards. The provisions in the Declaration on the Rights of Indigenous Peoples seek to apply already

existing standards with a view to indigenous people's special historical, economic, linguistic and cultural situation. It was also pointed out that the ILO convention does not cover the right to self-determination, and that it is largely limited to establishing a duty of consultation for State authorities, while the Declaration on the Rights of Indigenous Peoples is clear relative to indigenous peoples having the right of self-determination, including autonomy or self-government in matters that affect their internal and local affairs<sup>51</sup> The Declaration on the Rights of Indigenous Peoples therefore establishes a strong right for indigenous people to stipulate and formulate priorities and strategies for the development of their own society. It was said that Declaration on the Rights of Indigenous Peoples should, in a Sami context, therefore be a natural part of the normative framework for discussions about future strategies and solutions in the health and social services sector.

There was broad consensus that, at the practical political level, Sami autonomy in the health and social services sector means that State authorities must be considered to have a duty to take into account the Sami's own health and social services policy priorities. This applies to the framing of relevant legislation, to the development of plans and programmes, and to the Sami's own priorities being incorporated into the health and social services available to the Sami.

Several participants underlined that the goal for Sami self-determination must be to ensure that health and social services for the Sami are developed and structured on Sami terms. Someone referred to the fact that the principle that Sami must be given an offer equal to that given to the rest of the population, also implies that the content of the services must take account of Sami users' requirements and needs. This means, *inter alia*, that Sami users must be able, regardless of domicile, to choose a high-quality offer of treatment, where Sami language, culture, life and understanding of illnesses are among the basic tenets in the

encounter between users and therapists

Someone pointed out that there are special challenges related to the Sami health-care situation that extend beyond linguistic and cultural understanding, not least as a result of the understanding of life that the Sami have developed over the generations, both as individuals and as a people. It was also said that special challenges may be associated with any genetic vulnerability, socio-economic disadvantages, preclusion from natural resources, and ethnic and political oppression.

It was said that Sami self-determination could potentially be implemented at different levels in the health and social sector, not least by reinforcing the role of the local Sami community in the shaping of health services – as part of the internal self-determination and empowerment in the health and social services sector. Someone also pointed out that strengthening health-related Sami organisations and establishing Sami user organisations could help promote Sami influence and self-determination in the health and social services sector

President of the Sámediggi, Egil Olli, gave a thorough briefing on the Sámediggi Executive Council's health and social policy priorities and work. He said that the Sámediggi Executive Council considers it fundamental and important that Sami patients are offered health and social services equal to the services offered to the rest of the population of the country. According to the President of the Sámediggi, this implies, for example, that the offer of health and social services is to be adapted to Sami linguistic and cultural needs. He added that the Sami have no such programme, as long as Sami patients do not have an opportunity to use the Sami language in a treatment situation and the health worker has no knowledge of Sami culture and understanding of life. He also said that the Sámediggi – as the Sami's supreme governing body – is and will continue to be the most important supplier of conditions for the development of health and social services for the Sami population.

The President of the Sámediggi in

<sup>51</sup> Declaration on the Rights of Indigenous Peoples, Articles 3 and 4.

Norway stated that the Sámediggi actively takes advantage of the procedures for consultations between the central government and the Sámediggi to pursue its health and social policy priorities and objectives. He said that they had good experience of such consultations on health and social issues. The President of the Sámediggi stated further that the Sámediggi's consultations on health and social issues rest on the platform of Article 25 of the ILO Convention. This provision recognises an important element in the right to self-determination, since it establishes that health and social policy are to be developed and implemented in cooperation with the indigenous people in question. He expressed that such collaboration between central government authorities and indigenous peoples is of fundamental importance in the debate regarding the content of self-determination within the sector.

The President of the Sámediggi observed that an individual's rights to health and social services are well protected under the law in Norway, and that Sami individuals have the same rights as other individuals. The challenge is to implement these rights in a way that guarantees that the Sami experience genuine equality with the other residents of the country. To accomplish this, it is important that the Sami collectively, as a people, are given an opportunity to effectively participate in the planning and development of health and social services for the Sami population.

#### 4.4 Conclusion

International human rights standards establish that "every human being is entitled to the enjoyment of the highest attainable standard of health."<sup>52</sup> Although international standards allow gradual realisation of this right in compliance with a state's economic situation, a state's difficult financial situation does not absolve it from respecting, protecting and implementing the right

to health.<sup>53</sup> The right to health services has strong protection under Norwegian law, and it also covers the Sami population. What is of special interest, in the question of the implementation of health services for the Sami population, is whether there is any form of direct or indirect discrimination of Sami when it comes to the application of the right to health care. Such an issue might be relevant in a Norwegian context if it could be shown that other groups in the community were receiving a large proportion of the health resources at the expense of other groups, including the Sami. This issue is especially relevant where the lack of health policy measures in respect of the Sami population's special needs is explained as a result of lack of resources. The UN Committee for Economic, Social and Cultural Rights, which is the surveillance body for the UN Covenant on Economic, Social and Cultural Rights, has, through its general comment on the right to health, established that states shall ensure the right to access to health care on a non-discriminatory basis, especially for vulnerable and marginalised social groups. In other words, States are required to ensure that the distribution of health services is not merely formally, but also genuinely equal.<sup>54</sup>

The right to social security is a collective term that comprises the right to social welfare, support for medical assistance in the event of illness, unemployment benefits, care for the elderly, rights related to occupational accidents, family life, parental leave, disability and survivors' benefits.<sup>55</sup>

In a Norwegian context, the Sami occupy a special position among ethnic and cultural minorities. The Sami have lived within what are now Norway's national boundaries long before Norway became a nation state. Norway has recognised the Sami as an indigenous people, meaning that their legal status is different from that of other minorities.<sup>56</sup> As an indigenous people, the

52 International Covenant on Economic, Social and Cultural Rights, Article 12.

53 Ibid., Article 2 (1).

54 The UN Committee on Economic, Social and Cultural Rights, CESCR General Comment No. 14, para 43.

55 International Covenant on Economic, Social and Cultural Rights, Articles 9, 10, 11, 12; see also ILO Convention No. 102 (enumerates which nine rights are included under the designation social security).

56 Njål Høstmælingen (2003), *International Human Rights*, page 329.

Sami are entitled to special protection, not least when it comes to implementing the right to health and social security.

The UN Declaration on the Rights of Indigenous Peoples has several provisions of relevance to the Sami's right to health and social security. Article 21 establishes that indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including health and social security. The States have a duty to implement effective measures, possibly including special measures where appropriate, for ensuring continuous improvement in indigenous people's financial and social conditions. Article 23 establishes that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. The provision in Article 23 emphasises that indigenous peoples have the right to be actively involved in developing and determining health and social programmes through their own institutions. Article 24 recognises that indigenous people have a right to their traditional medicines and to maintain their health practices. Further, it establishes that individuals who belong to an indigenous people have the same individual rights as others to the highest attainable standards for physical and mental health, and that the states shall take the measures needed to gradually ensure full implementation of this right.

Article 25 of ILO Convention No. 169 establishes that governments shall ensure that satisfactory health services are made available to indigenous peoples, and shall provide the ways and means needed to enable them to provide and offer such services on their own account and under their own control, so that they can benefit from the highest attainable standards of physical and mental health. It has also been ascertained that insofar as possible, health services should be focused on the local community, and be planned and administrated in collaboration with the indigenous peoples in question and take into account their special circumstances, including linguistic, social and cultural factors.

Protecting the Sami's right to the best

possible physical and mental health assumes that the health and social services provided to the Sami people not only formally have the same rights as other segments of the population of the country, but that the Sami also receive the same services, in actual fact. Among other things, this means that health and social services must be adapted to the Sami's special linguistic, cultural and social situation. This can be hard to achieve unless the Sami's own representative institutions are effectively given an opportunity to set their own priorities and participate in the planning of health and social services for the Sami. To achieve equal health and social services for the Sami population, in many cases, it will be necessary to implement special measures for the Sami in this sector.

All international covenants by which Norway is bound, and which expressly or implicitly prohibit discrimination on ethnic grounds, state either directly or assume through precedent that only subjective discrimination is unlawful. Differential treatment based on objective, reasonable criteria, and which is necessary to promote a legitimate purpose, is allowed under international law. It seems clear that it is possible to make special arrangements intended to promote, strengthen and preserve Sami languages, culture, industries and community life otherwise, even if, for example, ethnic Norwegians are thereby subject to indirect discrimination.

International law offers several sources of legal authority to warrant differential treatment of ethnic groups or individuals in a manner that is special for them, i.e. a type of affirmative action. One of the most important platforms for such rights is Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which is construed to mean that the State has the ability to and, to a certain extent an obligation to, implement affirmative action to ensure that individuals belonging to minorities and/or indigenous cultures can speak their own language and enjoy their own culture.

Article 1 (4) of the International Convention on the Elimination of All Forms of

Racial Discrimination also allows positive measures to be introduced for securing adequate advancement for certain ethnic groups or individuals requiring such protection or such measures as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms. In short, international provisions warrant affirmative action, but also require that it be discontinued once the goal of the affirmative action has been achieved.

International case law recognises that neutrality in legislative and administrative practices, and formal equal treatment, are often not enough to prevent discrimination of a minority or an indigenous people. Equal treatment of different circumstances can, on the contrary, sustain the difference. Different circumstances must also, in some cases, be treated differently to achieve genuine equality.

The UN's Human Rights Committee has, for example, in its statements regarding Article 27 of the International Covenant on Civil and Political Rights (ICCPR), assumed that affirmative action will not only be allowed, but in certain cases, will also be necessary. The requirement regarding equal treatment under Article 26 of the IC-

CPR, according to the committee, does not preclude differential treatment of a minority or an indigenous people, as long as the intention is to rectify past injustices and achieve genuine equality between groups of people.<sup>57</sup> *“The right not to be discriminated against in the enjoyment of the right guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”*

Gáldu's workshop on Sami autonomy in the health and social sector demonstrates broad consensus among the seminar participants that Sami self-determination in this sector can best be implemented by increasing Sami influence on the planning of services within the framework of already existing structures and institutions. The Sámediggi's opportunities to set priorities and to pave the way for the development of health and social services for the Sami were considered key elements in the exercise of Sami self-determination in this sector. There was also consensus that it is necessary to introduce special measures for the Sami population to ensure equal health and social services.

57 The Human Rights Committee's General Comment No. 23, reproduced in UN document CCPR/C/21/Rev.1/Add.5, §§ 6.1 and 6.2

## Appendix 1:

### Programme

#### Seminar on Sami autonomy and economy

*Diehtosiida, Guovdageaidnu*

#### Tuesday, 2 November 2010

- 9:00 a.m. – 9:10 a.m. Opening session, *Chairman, Lars Anders Baer, Gáldu Executive board*
- 9:10 a.m. – 9:20 a.m. Background and objective, featuring *John B. Henriksen, Gáldu*
- 9:20 a.m. – 10:00 a.m. The Sámediggi's opportunity to rank its own priorities in the budgetary process between the Sámediggi and the State. The current financing scheme in the light of the Sámediggi's responsibility to the Sami population and the Sami population's expectations of the Sámediggi as an elected body for the Sami in Norway.  
*Vibeke Larsen, Sámediggi, Council Member*
- 10:00 a.m. – 10:20 a.m. Questions and comments
- 10:20 a.m. – 10:30 a.m. *Coffee break*
- 10:30 a.m. – 11:10 a.m. Does today's financing scheme for Sami policy initiatives facilitate the implementation of Sami autonomy or self-government? Which criteria should apply to any new model for financing the Sámediggi?  
*Rune Fjellheim, Director General of the Sámediggi*
- 11:10 a.m. – 11:20 a.m. Questions and comments
- 11:20 a.m. – 12:30 p.m. *Lunch at Diehtosiida*
- 12:30 p.m. – 1:10 p.m. Structure and financing of a Sami level of authority in Norway.  
*Per Selle, Professor, Department of Comparative Politics, University of Bergen*
- 1:10 p.m. – 1:30 p.m. Questions and comments
- 1:30 p.m. – 2:30 p.m. Discussions
- 2:30 p.m. – 3:30 p.m. Summary and closing

## **Appendix 2:**

### **List of participants**

#### **Seminar on Sami autonomy and economy**

1. Vibeke Larsen, Sámediggi, Council Member
2. Rune Fjellheim, Sámediggi, Director General
3. Per Selle, Professor, Department of Comparative Politics, University of Bergen
4. Andde Sara, Sámi Allaskuvla, Senior Lecturer
5. Anne Marie Gaino, Kautokeino Municipality, Deputy Chief Administrative Officer
6. Haukur Gunnarsson, Theatre Manager, Beaivváš Sámi Nášunálateáhter
7. Lisa Baal, Head, SEAD/Sami special education support
8. Aili Keskitalo, President, National Association of Norwegian Sami
9. Lemet-Jon Ivvar, Sámi Allaskuvla
10. Jarle Jonassen, Sámediggi, Chair of the Plenary
11. Lill W. Kalstad, Sámediggi
12. Sunniva Skålnes, Sámediggi
13. Janne Hansen, Gáldu, Acting Executive Director
14. John B. Henriksen, Gáldu, Project Coordinator
15. Heidi Salmi, Project Manager
16. Lars Anders Baer, Chairman, Gáldu Executive board

## Appendix 3: Programme

### Round table seminar on the authority of the Sámediggi

*Diehtosiida, Guovdageaidnu*

Moderator: *Lars Anders Baer, Chairman, Gáldu Executive board*

#### Saturday, 6 November 2010

12:00 p.m. – 1:00 p.m.	<i>Lunch, Thon Hotel</i>
1:00 p.m. – 1:10 p.m.	Opening session, <i>Chairman, Lars Anders Baer, Gáldu Executive board</i>
1:10 p.m. – 1:20 p.m.	Background, <i>John B. Henriksen, Project Coordinator</i>
1:20 p.m. – 5:00 p.m.	Round table seminar
7:00 p.m.	<i>Dinner, Thon Hotel</i>

#### Sunday, 7 November 2010

9:00 a.m. – 12:00 p.m.	Round table seminar
12:00 p.m. – 1:00 p.m.	<i>Lunch, Thon Hotel</i>
1:00 p.m. – 4:00 p.m.	Round table seminar
4:00 p.m. – 4:30 p.m.	Summary and closing

#### List of topics

- 1) How much authority do the Sámediggis have today, including both formal and informal authority?
- 2) How has the Sámediggi's authority developed since the Sámediggi was founded?
- 3) Does the Sámediggis' authority currently coincide with recognition of the fact that indigenous peoples have the right to self-determination, not least as expressed in the UN Declaration on the Rights of Indigenous Peoples and the draft Nordic Sami Convention?
- 4) Is more Sami self-determination a high-priority task for the Sámediggis and, if so, why?
- 5) The UN Declaration on the Rights of Indigenous Peoples recognises that in implementing the right to self-determination, indigenous peoples are entitled to autonomy or self-government in internal and local affairs, and have the right to ways and means for financing such autonomous functions.
  - a) Which matters/areas can reasonably be described as internal and local Sami affairs in the light of the UN Declaration on the Rights of Indigenous Peoples?
  - b) Do the current financing schemes for the Sámediggis facilitate the implementation of Sami autonomy or self-government in internal and local affairs?
  - c) How has the development of the financing scheme (scope and autonomy with a view to setting own priorities) been since the establishment of the Sámediggi(s)?
- 6) Strategies for strengthening the Sámediggi's authority and self-determination, and which processes are required between the State and Sami authorities to achieve Sami self-determination in compliance with modern international law?
- 7) Other questions, if any.

## **Appendix 4:**

### **List of participants**

#### **Round table seminar on the authority of the Sámediggi**

1. Egil Olli, President of the Sámediggi, Norway
2. Marianne Balto, Vice President, Sámediggi, Norway
3. Aili Keskitalo, Former President of the Sámediggi, Norway
4. Johan Mikkel Sara, Former Vice President, Sámediggi, Norway
5. Ragnhild Nystad, Former Vice President, Sámediggi, Norway
6. Ole Henrik Magga, Former President of the Sámediggi, Norway
7. Mary Mikalsen Trollvik, Former Vice President, Sámediggi, Norway
8. Jarle Jonassen, Chair of the Plenary, Sámediggi, Norway
9. Ingrid Inga, President of the Sámediggi, Sweden
10. Lars Anders Baer, Former President of the Sámediggi, Sweden
11. Tuomas Aslak Juuso, Sámediggi MP, Finland
12. Patrik Kansa, Administrative Director, Sámediggi, Sweden

Janne Hansen, Acting Executive Director, Gáldu

John B. Henriksen, Project Coordinator, Gáldu

Heidi Salmi, Project Manager, Gáldu

**Appendix 5:****Programme****Sami autonomy in the health and social services sector**

Diehtosiida, Guovdageaidnu

**Monday, 8 November 2010**

12:00 p.m. – 1:00 p.m.	<i>Lunch at Diehtosiida</i>
1:00 p.m. – 1:10 p.m.	Opening session, <i>Chairman, Lars Anders Baer, Gáldu Executive board</i>
1:10 p.m. – 1:30 p.m.	Background and objectives; relevant international provisions - <i>John B. Henriksen, Project Coordinator, Gáldu</i>
1:30 p.m. – 2:10 p.m.	Trends in the health and social services sector in relation to the protection of the Sami's needs and rights. Is there a need for Sami autonomy in the health and social services sector? - <i>Ragnhild Nystad, Professional Development Nurse at the National Teaching Nursing Home for the Sami population</i>
2:10 p.m. – 2:30 p.m.	Questions and comments
2:30 p.m. – 2:40 p.m.	<i>Coffee break</i>
2:40 p.m. – 3:15 p.m.	Sami National Competence Center for Mental Health Services (SANKS)
3:15 p.m. – 3:35 p.m.	Questions and comments
3:35 p.m. – 5:00 p.m.	Discussions
7:00 p.m.	Dinner

**Tuesday, 5 November 2010**

9:00 a.m. – 9:45 a.m.	What responsibility should or can the Sámediggi have in the health and social services sector? Should the health and social services sector be regarded as an internal or local Sami matter – wholly or partially – and, if so, why? <i>Aili Keskitalo, President, Norwegian Sami Association</i>
9:45 a.m. – 10:00 a.m.	Questions and comments
10:00 a.m. – 10:45 a.m.	Dealing with Sami self-determination in the health and social services sector today and tomorrow <i>Ellinor Marita Jåma, Council Member, Sámediggi</i>
10:45 a.m. – 11:00 a.m.	Questions and comments
11:00 a.m. – 1:00 p.m.	Debate
1:00 p.m. – 1:30 p.m.	<i>Lunch at Diehtosiida</i>
1:30 p.m. – 2:30 p.m.	Summary and closing

## **Appendix 6: List of participants**

### **Seminar on Sami autonomy in the health and social services sector**

1. Egil Olli, President of the Sámediggi, Norway
2. Ragnhild Nystad , Professional Development Nurse at the National Teaching Nursing Home for the Sami population
3. Aili Keskitalo, President, National Association of Norwegian Sami
4. Silje Karine Muotka, Sámediggi, Chair, Childhood, Care and Education Committee
5. Eilif Nordvang, Social Worker, Family Welfare Centre
6. Lisbeth Westerheim, Adviser, Sámediggi
7. Ingeborg Larsen, Adviser, Sámediggi
8. Janne Hansen, Acting Executive Director, Gáldu
9. John B. Henriksen, Project Coordinator, Gáldu
10. Heidi Salmi, Project Manager, Gáldu
11. Ellinor Marita Jáma, Council Member, Sámediggi
12. Lars Anders Baer, Chairman, Gáldu Executive board

## Appendix 7: European Charter of Local Self-Government

### Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

### Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

### Part I

#### Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

#### Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

#### Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
4. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

### **Article 5 – Protection of local authority boundaries**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

### **Article 6 – Appropriate administrative structures and resources for the tasks of local authorities**

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

### **Article 7 – Conditions under which responsibilities at local level are exercised**

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

### **Article 8 – Administrative supervision of local authorities' activities**

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local autho-

rities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

### **Article 9 – Financial resources of local authorities**

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

### **Article 10 – Local authorities' right to associate**

1. Local authorities shall be entitled, in

exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

#### **Article 11 – Legal protection of local self-government**

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

### **Part II – Miscellaneous provisions**

#### **Article 12 – Undertakings**

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
  - Article 2,
  - Article 3, paragraphs 1 and 2,
  - Article 4, paragraphs 1, 2 and 4,
  - Article 5,
  - Article 7, paragraph 1,
  - Article 8, paragraph 2,
  - Article 9, paragraphs 1, 2 and 3,
  - Article 10, paragraph 1,
  - Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as

from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

#### **Article 13 – Authorities to which the Charter applies**

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

#### **Article 14 – Provision of information**

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

### **Part III**

#### **Article 15 – Signature, ratification and entry into force**

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

**Article 16 – Territorial clause**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

**Article 17 – Denunciation**

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

**Article 18 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 15;
- d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e. any notification received in application of the provisions of Article 13;
- f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter. Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.





### **John B. Henriksen**

Has Law degree from the University of Tromsø and MSc in international politics from the University of Bristol. He is also former adviser to the Sámediggi and the Norwegian Ministry of Foreign Affairs; and was a Human Rights Coordinator for the Sami Council. He worked as a lawyer, and at the UN High Commissioner's Office in Geneva. Member of the Legal Affairs Committee that proposed new national legislation against ethnic discrimination in Norway (2000-2002), and member of the expert committee that developed a proposal for the Nordic Sami Convention (2003-2005). Henriksen was a first chair of the UN's Expert Mechanism on the Rights of Indigenous Peoples from October 2008, of which he was a member until June 2011. He is an author of several publications. He is currently working as an independent adviser on international human rights issues, and as a special adviser to Gáldu.



### **Lars-Erik Borge**

His main fields of research are public economics and political economics. Borge has headed public committees on municipal financing and tax issues. He currently chairs a technical calculating committee for municipal and county municipal economics.

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

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



# GÁLDU

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