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SAMI SELF-DETERMINATION

AUTONOMY AND SELF-GOVERNMENT: EDUCATION, RESEARCH AND CULTURE

John B. Henriksen
(red.)



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Preface

This issue of *Gáldu Čála* has been compiled in connection with Gáldu's project «*Sami Self-Determination: Scope and Implementation*». The publication is based partially on discussions that took place during three workshops on Sami self-determination which Gáldu – The Resource Centre for the Rights of Indigenous Peoples - organised in Guovdageaidnu (Kautokeino) in October 2009: (i) Sami self-determination in the education sector (14 - 15 October 2009), (ii) Sami self-determination as regards research (19 - 20 October 2009), and (iii) Sami cultural self-determination (22 - 23 October 2009). The project is being funded by the Ministry of Labour and Social Inclusion and the Sami Parliament in Norway.

The first part of the publication discusses autonomy and self-government. The second part of the publication focuses on possible content for and the implementation of Sami autonomy in the following sectors: education, research and culture. This segment attempts to reflect the highlights of the discussions during the three workshops that Gáldu organised in October 2009.

The publication should be viewed in connection with Gáldu Čála no. 02/2008 – «*Sami Self-Determination: Scope and Implementation*», which contains the report from the international conference on Sami self-determination that Gáldu and the Sami University College organised in Alta, in February 2008.

The right to self-determination has long been considered a right that accrues to a country or territory's aggregate population, regardless of ethnic, linguistic, historical and cultural differences. Today, however, it is internationally recognised that several peoples within a specific nation state may be entitled to self-determination. The UN's Declaration on the Rights of Indigenous Peoples, which recognises that indigenous peoples are entitled to self-determination, is a response to this trend in international law.¹

The Declaration on the Rights of Indigenous Peoples confirms that indigenous peoples are entitled to self-determination and that, by virtue of this, they are entitled to decide their own political position and to freely promote their own economic, social and cultural development.² After the adoption of the Declaration on the Rights of Indigenous Peoples, there is, in other words, no longer any question of whether indigenous peoples are entitled to self-determination, but rather of how this right can be implemented within the framework of existing nation states.

The Declaration on the Rights of Indigenous Peoples also recognises that indigenous peoples are entitled to self-determination in the form of autonomy and self-government in matters related to their local or internal affairs.³ This constitutes an important point of departure for Gáldu's project, including this publication.

The goal of this publication is not to try to prescribe how Sami self-determination should be achieved, but rather to provide input into the public debate about the possible content of the right to self-determination and its implementation in the Sami context.

Magne Ove Varsi
Director

1 United Nations Declaration on the Rights of Indigenous Peoples (Document Number: A/61/L.67, 13 September 2007); adopted on 13th of September, 2007, UN General Assembly

2 Cf. Article 3 of the Declaration on the Rights of Indigenous Peoples

3 Cf. Article 4 of the Declaration on the Rights of Indigenous Peoples

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Introduction

The idea that a people has the right to make decisions about its society and to determine how it should be organised, has roots that date back to the Age of Enlightenment in the 1700s. As a principle and a right, self-determination has played a key role and function in the development of social systems the world over.

Through the ages, self-determination has changed from being an ideological and political principle to being recognised as a universal collective human right that applies to «all peoples». The historic development indicates that self-determination is a dynamic concept that has consistently managed to adapt relative to general social trends and to prevailing norms and values in the world at large.

Recognition of the right to self-determination, as articulated in the main instruments of international law and as a fundamental collective human right for all people, is an expression of a basic tenet that all people have same dignity, rights and freedoms.⁴ The right to self-determination was, however, interpreted and practised for a long time in a manner that was not particularly consistent with such a basic tenet because numerous peoples, including indigenous peoples, were cut off from enjoying this right.

The right to self-determination was of central importance for the decolonisation of Africa and Asia. In this context, the right to self-determination was considered to be a right of the general public in a specific territory to establish a separate nation state, regardless of the ethnic composition of the population. Secession and the formation of nations are therefore still strongly associated with the exercise of the right to self-determination. This is also occasionally

an issue in the domestic debate on Sami self-determination. The Sami's need for recognition of the Sami's right to self-determination is often linked to the question of the State's territorial integrity or secession, not least because this became an issue in connection with the parliamentary elections and the Sami parliamentary elections in 2009.⁵

For a long time, however, key Sami politicians have sought to nuance the debate on Sami self-determination, not least by emphasising that the need for recognition of the Sami people's right to self-determination is not related to a desire to secede from existing nation states.

President of the Sami Parliament Egil Olli stated the following at Gáldu's international conference on Sami self-determination in February 2008:⁶ «*I have noted that in several contexts certain states have found it necessary to state that indigenous peoples' right to self-determination is limited to the opportunity to form their own state. In that context, I would like to emphasise that the right to self-determination under international law does not, in itself, open the door to secession. From Sami quarters there is not, nor has there ever been, any desire for secession. Accordingly, the question puts a damper on the debate, rather than helping to further promote understanding and the development of indigenous peoples' right to self-determination in general. The natural and most constructive point of departure for the debate would be to focus more on the core content of the right of self-determination, i.e. that the Sami can freely make decisions about their economic, social and cultural development and, for their own ends, freely dispose of their natural resources.*»

4 See, for example, the identical first articles in the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights.

5 During the election campaigns in the run-up to the parliamentary election and the Sami parliamentary election in 2009, Prime Minister Jens Stoltenberg (Labour) stated that Sami self-government is a misnomer. He explained this by saying that «it gives all the wrong connotations. We are not talking about secession; we are one country. What we wanted to accomplish was for the Sami and Norwegians to co-exist. Conservative Party chair Erna Solberg did not express support for more Sami self-determination either, pointing out, among other things, that the Sami should not have any territorial authority.» http://www.nrk.no/kanal/nrk_sami_radio/valg_2009_sami_radio/1.6755432, Election 2009 Sámi Radio, 1 September 2009, Self-government is a misnomer.

6 *Sami self-determination: scope and implementation*, Gáldu Čála no. 02/2008, Chapter 3.1, page 38, (Ed.) John B. Henriksen. The periodical is available on the Internet: <http://www.e-pages.dk/grusweb/43/>

Lars Anders Baer, former president of the Sami Council and the Sámediggi – the Sami Parliament in Sweden, has also on several occasions called attention to the fact that the Sami side has always tried to find practical, realistic solutions to the question of Sami self-determination, which are well within the framework of international law. Baer also underlines that the Sami are not seeking any form of secession from the nation states.⁷

International normative development has now progressed considerably further than what is reflected in the domestic debate on Sami self-determination. There is now broad international concord that the right to self-determination is not limited merely to a traditional colonial situation, since more than one nation in a given territory or in a state may have the right to self-determination⁸ – e.g. like the situation in Norway.

It is recognised that the State of Norway has been established on the territory of two peoples: the people of Norway and the Sami. There are no grounds under international law to indicate that only one of these two peoples is entitled to self-determination. In other words, this is a situation where there are competing collective rights that have to be adapted to each other within the parameters of the established nation state. In many respects, this is the essence of the debate about the implementation of the Sami's' right to self-determination. The challenge is to find political and legal solutions which ensure that both peoples can exercise their right to self-determination in a manner acceptable to them.

The UN Declaration on the Rights of Indigenous Peoples establishes a normative basis and framework for solutions which take account of indigenous peoples as well as the majority population's right to self-determination. Article 4 of the Declaration on the Rights of Indigenous Peoples states that by virtue of their right to self-determination, indigenous peoples are entitled to autonomy or self-government in matters relating to their internal and local affairs, as

well as the right to ways and means for financing their autonomous functions.⁹

The Declaration on the Rights of Indigenous Peoples is otherwise very clear about the fact that indigenous peoples' right to self-determination cannot be exercised at variance with the State's territorial integrity. Article 46 (1) of the Declaration on the Rights of Indigenous Peoples limits the implementation of the right to self-determination in respect of the principle of respecting the State's territorial integrity. Further, indigenous peoples' right to autonomy and self-government, used here as almost synonymous concepts, must by definition be understood to be limited to the exercise of self-determination within the parameters of existing nation states.

The idea of self-government or autonomy for internal and local affairs is not a new concept in the Norwegian political and legal context, given that the country's municipalities have been granted municipal self-government. Granted, this self-government is delegated to the municipalities under national legislation, and it is thereby different from any Sami self-government scheme based on international law and the Sami's status as a people. The similarity is that both Sami self-government and municipal self-government in actual practice will have to be considered a functional distribution of power between the State and the municipalities and the Sami as a people, respectively. Like municipal self-government, Sami autonomy or self-government will help improve the democratic system and help resolve and avert conflicts between local communities and the State.

1. The right to self-determination

This segment of the publication takes a human rights approach to the question of implementation of Sami self-determination, based on the right to self-determination being recognised as a universal collective human right. The UN Declaration on the Rights of Indigenous Peoples stresses that in the implementation of

7 Lars Anders Baer (2000), *The right of self-determination and the case of the Sami*, Operationalizing the right of indigenous peoples to self-determination, Pekka Aikio & Martin Scheinin (eds.). John B. Henriksen (2008), *The continuous process of recognition and implementation of the Sami people's right to self-determination*, Cambridge Review of International Affairs, Volume 21, Number 1, March 2008, pages 29-30.

8 Henriksen, John B, Scheinin, Martin, Åhrén, Mattias (2005), *Background material for the Nordic Sami Convention*, Annex 3: *The Sami people's right to self-determination*, included in Nordic Sami Convention, Draft by the Finnish-Norwegian-Swedish-Sami expert group, submitted on 26 October 2005, page 299, ff.

9 Article 3 of the Declaration on the Rights of Indigenous Peoples: «*Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*» Article 4 of the Declaration on the Rights of Indigenous Peoples: «*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.*»

their right to self-determination, indigenous peoples are entitled to autonomy or self-government in internal and local affairs.

Recognition of the right to self-determination as a collective human right is expressed, among other places, in Article 1 in two of the most important conventions on Human Rights that have been adopted by the UN, i.e. the UN Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The UN General Assembly describes the right to self-determination as a universal and permanent right.¹⁰ The right to self-determination is further embodied in a series of international and regional instruments.

The World Conference on Human Rights has otherwise also clearly stipulated that the right to self-determination is to be regarded as an integral part of international human rights legislation, and that the development of the world order must in its entirety be based on the principles in the UN Convention, including respect for all peoples' right to self-determination.¹¹ The right to self-determination is not limited to being an independent right, because it is also a key prerequisite for the implementation of other human rights (civil, political, economic, social and cultural rights).

The Declaration on the Rights of Indigenous Peoples which recognises that indigenous peoples are entitled to self-determination can also be considered recognition of the fact that indigenous peoples are often in a situation that bears similarities to a colonial situation. This recognition is an important normative reason for the international community's recognition of indigenous peoples' collective rights, including the right to self-determination. This is expressed not least in the preamble to the Declaration on the Rights of Indigenous Peoples, where concern is expressed that indigenous peoples continue to suffer from the historic injustices to which they have been subjected as a result of colonisation and dispossession of their lands, territories and resources.¹² The situation of the Sami has not

been reviewed to any great extent in the light of theories of colonial law, despite the fact that there are many similarities between the historical development of Sami territories and traditional colonial situations. For example, the Sami historical legal basis for land and resources in Finnmark County was not recognised on the pretext that the Sami were nomadic and that their use and presence did not result in the acquisition of rights. This reasoning and mindset are strikingly similar to the 'terra nullius' principle that was based on the idea that an area was unclaimed territory, which the British colonial powers used as a legal argument to acquire indigenous peoples' territories in Australia. The Norwegian State's reason for state ownership in Finnmark County was otherwise also the fact that the area had once been a colony.¹³

1.1 The status of human rights under Norwegian law

The nation state's sovereignty over its own territory is a principle of international law. The state's sovereignty is, however, subject to limitations ensuing from its voluntary accession to international agreements and through the development of international customs. The development of the protection of human rights, including indigenous rights, through international conventions has severely reduced the nation states' freedom of action.

Protection of indigenous rights under international law is established through legally binding covenants, international customs, general principles of international law and international practice. Further, there are different international instruments, including declarations, resolutions and action plans which, along with the other international regulations, establish the international legal framework for indigenous rights. The UN's Declaration on the Rights of Indigenous Peoples is a case in point.

International human rights are an expression of rights and freedoms for individuals (individual rights) and peoples (collective rights). In

10 UN General Assembly, document A/C.3/SR.397 (1952)

11 Vienna Declaration and Programme of Action (1993), A/CONF.157/23, 12 July 1993

12 See §6 of the preamble to the Declaration on the Rights of Indigenous Peoples: «Concerned that indigenous peoples have suffered from historic injustice as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.»

13 Norwegian Public Report (NOU) 2001:34, *Sami customs and interpretations of the law*, Chapter 1.11 Sami customs and interpretation of the law in Finnmark County – a victim of Norwegian nation building and colonial legal theories?

Internet link: <http://www.regjeringen.no/nb/dep/jd/dok/nouer/2001/nou-2001-34/35/11.html?id=379815>

principle, these rights apply regardless of legal or social system.¹⁴ Human rights are to be regarded as universal rights that establish thresholds for which encroachments a nation state per se can make on these rights, or allow others to make.

The states that have endorsed a covenant on Human Rights undertake a commitment to comply with the provisions of the covenant. Such a covenant is to be viewed as a contract between the individual state and the community constituted by the other parties to the covenant.¹⁵

In 1994, a new provision on human rights was added to Norway's Constitution - §110c. This provision states that it is incumbent upon the State's authorities to respect and protect human rights. §110c of the Constitution has been followed up through subsequent legislation. The Stortinget (Norwegian parliament) has tried to achieve this, not least by adopting an act to strengthen the position of human rights under Norwegian law (Human Rights Act)¹⁶ and by the incorporating important Human Rights covenants into Norwegian law.

The Human Rights Act covers several of Norway's commitments under international law in the area of human rights, including the UN Covenant on Civil and Political rights, and the UN Covenant on financial, social and cultural rights. The provisions of these two covenants, and the other conventions that have been incorporated are, pursuant to the Human Rights Act, considered Norwegian law, cf. § 2 of the Human Rights Act. The relationship to other Norwegian legislation is stated in §3 of the Act, which stipulates that «the provisions of conventions and protocols that are mentioned in §2 shall, in the event of a dispute, take precedence over provisions in other (Norwegian) legislation».

The question of whether there is a conflict in a specific case is different from the question of what applies once a conflict has been confirmed. The question of whether there is a conflict in a specific case is not governed by the

Human Rights Act, and this must be resolved according to common principles of legal interpretation. If the interpretation of a human rights standard and a Norwegian law disclose contradiction, the human rights standard shall, however, be applied to the legal issue.¹⁷

§3 of the Human Rights Act does not curtail the Storting's authority to revoke the rule of precedence with regard to a legal resolution, and the rule of precedence can also be abandoned in the event a new act is adopted.¹⁸ From this perspective, the Human Rights Act has no higher precedence than other Norwegian legislation. The covenants are not given the same precedence as the Constitution, but they have the same rank as formal Norwegian laws. Although legislators have not given the Covenants on Human Rights the same rank as the Constitution, the Human Rights Act is nevertheless an expression of legislators' desire to strengthen the position of the rights, especially in the event of any dispute.

1.2 Collective human rights

Collective human rights establish rights and freedoms for certain groups or peoples within a nation state, and stipulate corresponding obligations for the State to respect and protect such rights and freedoms. The right to self-determination and the right to development are examples of collective human rights that accrue to «all peoples». Further, indigenous rights are generally articulated as collective rights.

The subjects of legal rights and duties relating to the right to self-determination are groups of people who fulfil the criteria that are usually posed for being recognised as a 'people', e.g. that they have an economic community, territorial affiliation, common history, traditions, ethnic identity, language and culture.¹⁹ Today there is broad consensus that the Sami are to be regarded as a people in the sense of international law.

The common Article 1 in the Covenant for Civil and Political Rights and the International Covenant on Economic, Social and Cultural

14 Torkel Opsahl, Government authority and human rights, volume 2, (1995), p. 219. See also Erik Mjose, Human rights (2002), p. 25, Njål Høstmælingen, International human rights (2003), pp. 27-28.

15 Njål Høstmælingen, International human rights (2003), p. 341.

16 Act no. 30 of 21 May 1999,

17 Norwegian Public Report (NOU) 2002: 12, *Legal protection against ethnic discrimination*, Chapter. 5.2.3

18 Norwegian Public Report (NOU) 1993: 18, p. 167

19 Cf. The Kirby definition: International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, UNESCO, Paris, 27-30 November 1989.

Rights confirms the right of «all peoples» to self-determination, and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. This provision in common Article 1 also recognises that to promote their own purposes, «all peoples» can freely dispose of their natural wealth and resources, and that a people must not under any circumstances be dispossessed of their means of subsistence.

The UN's Human Rights Committee, whose mandate is to supervise nation states' implementation of the Covenant on Civil and Political Rights, has on several occasions recognised that certain indigenous peoples, including the Sami, are entitled to self-determination under Article 1 of the Covenant. The Committee has asked Norway to report on how the Sami people's right to self-determination under Article 1 of the Covenant is envisaged to be implemented, including the implementation of the resource dimension of the right to self-determination.²⁰ The Committee has otherwise on several occasions, also called attention to the Sámediggi – The Sami Parliament's role in relation to the right to self-determination.

Earlier, it was assumed that the right to self-determination did not include the Sami, cf. *inter alia*, the Sami Rights Council's report on the Sami's legal status (NOU 1984:18).²¹ The development of international law has nevertheless shed new light on the right to self-determination, not least as a result of the General Assembly's recognition of indigenous peoples' right to self-determination through adoption of the Declaration on the Rights of Indigenous Peoples in September 2007.

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.²² The wording is identical to the wording of a comparable provision in Article 1 (1) in the above-mentioned

two UN covenants of 1966, which establishes that: «*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*»²³ The difference is that the Declaration on the Rights of Indigenous Peoples specifically identifies indigenous peoples as legal entities relative to the right to self-determination, while the UN covenants identify «all peoples» as legal entities.

The natural interpretation of this is that the UN General Assembly, by adopting the Declaration on the Rights of Indigenous Peoples, has expressly acknowledged that indigenous peoples have the same right to self-determination as what «all peoples» have pursuant to the common Article 1 (1) of the two covenants mentioned. This means that the Sami people have the same right to determine their political position and to promote their own economic, social and cultural development as the Norwegian people, and as Finnish, Russian and Swedish people.

The Nordic states' point of view and proposal during the work with the Declaration on the Rights of Indigenous Peoples must be considered to be indicative of their recognition that indigenous peoples are entitled to self-determination, providing they respect the State's territorial integrity.²⁴ Sweden has otherwise also on several occasions, through periodic reporting to the UN's covenant agencies, expressly acknowledged that indigenous peoples, including the Sami people, have the right to self-determination in compliance with the common Article 1 of the UN the Covenants on Human Rights adopted in 1966 (The Covenant for Civil and Political Rights and the International Covenant for Financial, Social and Cultural rights).²⁵

The Nordic expert group that was appointed by the governments and the Sami parliaments in Finland, Norway and Sweden, and given a mandate to draw up a proposal for a Nordic Sami Convention, also concluded that the Sami

20 United Nations Human Rights Committee, UN document CCPR/C/79/Add.112 (1999)

21 Norwegian Public Report (NOU) 1984:18, Chapter. 6.11.7. The peoples' right to self-determination, page 341 - 342

22 UNDRIP Art. 3: «Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.»

23 The Covenant for Civil and Political Rights & the Covenant for Financial, Social and Cultural rights, Art. 1 (1): «All 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.»

24 Carsten Smith, *New law for one nation in three countries*, (article on the proposed Nordic Sami Convention) <http://www.galdu.org/web/index.php?artihkala=267&giella1=nor>

25 E/C.12/SWE/5, 6 September 2006; CCPR/C/SWE/6 5 December 2007

have the right to self-determination by virtue of being a people in conformity with the rules of international law, and that the Sami people have the right to make decisions about their own economic, social and cultural development and, for their own ends, to dispose of their natural resources.²⁶

Sami self-determination must be implemented in a timely manner within the framework of international law, and in a manner as takes into account the states' right to territorial integrity. Only under special circumstances does international law recognise a people's right to secession and to establish their own state. For example, in cases of military occupation and long-lasting, severe abuses of the human rights of the peoples concerned. In all other situations, people in multi-ethnic states have to arrive at arrangements for exercising the right to self-determination which do not call for the establishment of a new state or in any manner change national borders.

Based on international law, the Sami people and the states, respectively, must cooperate to arrive at arrangements for implementing the Sami's' right to self-determination, i.e. schemes that do not question or change current national borders or the states' territorial integrity.²⁷ The Declaration on the Rights of Indigenous Peoples and international law otherwise establish this as a central condition for the implementation of the right to self-determination. Article 46 (1) of the Declaration on the Rights of Indigenous Peoples establishes that the provisions of the Declaration shall not be interpreted as implying that anyone has any right to engage in any activity or to perform any act that could be construed as authorising or encouraging action which would dismember or impair, totally or in part, the territorial integrity or political unity of States.²⁸

1.3 Autonomy - International law

There are a large number of autonomy schemes on a global basis that guarantee indigenous peoples and minority interests different kinds of autonomy and self-government. Such

autonomy schemes have not traditionally been entrenched in international law. They have frequently been implemented in response to historical national conditions, political conflicts, ethnic differences, or national political and legal processes.

A review of existing autonomy schemes in Europe indicates that these have generally been instituted in response to national political and legislative processes. The concept of autonomy is embodied in the constitutions of several European countries, either as (1) a fundamental constitutional right, (2) by virtue of recognition of a more specifically defined autonomy as a constitutional right, or (3) by virtue of the establishment of autonomy as an *ad hoc* solution.

However, only the Spanish Constitution recognises autonomy as a first-level constitutional right. The Finnish Constitution is limited to recognising a more specifically defined autonomy as a constitutional right, by virtue of linguistic and cultural autonomy for the Sami in Finland. Other European constitutions that mention autonomy do not define autonomy as a constitutional right, but limit themselves to prescribing specific autonomy schemes. Further, there are examples of autonomy schemes that have a certain constitutional status by virtue of constitutional precedence.

In other parts of the world, there are many examples of autonomy schemes for indigenous peoples based on historical or modern agreements (treaties) between indigenous peoples and states or former colonial powers, e.g. in Canada, New Zealand and the USA.

In the context of Europe, it is only the self-government scheme in Greenland that is expressly based on international law and the right to self-determination. The new Self-Government Act for Greenland recognises that the people of Greenland are to be regarded as a people with the right to self-determination in conformity with international law.²⁹ The autonomy scheme on Åland was set up with the League of Nations' help at a point in time when self-determination was not yet recognised as a

26 The Nordic Sami Convention, draft of the Finnish-Norwegian-Swedish-Sami expert group, submitted on 26 October 2005, Article 3 in the proposal for a Nordic Sami Convention (page 11), cf. the comments to Article 3, pages 194 - 196

27 Draft from the Finnish-Norwegian-Swedish-Sami expert group, published on 26 October 2005, pages 194-196

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

29 Act on Greenland Self-Government, Preamble: «Recognising that the people of Greenland is a people pursuant to international law with the right of self-determination...»

right.³⁰ The self-government scheme on the Faeroe Islands is not based on international law either; it is generally a function of constitutional practice in Denmark.³¹

Sanders (1986) is, however, of the opinion that the right to autonomy is first and foremost an expression of a principle of international law.³² Sanders observes that the right to autonomy is linked to the right to self-determination, and that the existence of autonomy schemes must be considered an expression of or a consequence of international customary law.³³ The right to autonomy has also gradually been recognised as a principle of international law based on the right to self-determination. The adoption of the Declaration on the Rights of Indigenous Peoples is an example of this.

While Hannum (2006) also links autonomy to the right to self-determination, he is of the opinion that recognition of indigenous peoples' right to self-determination represents a redefinition of the right to self-determination.³⁴ Hannum also expresses the opinion that the right to autonomy and self-government, as articulated in the Declaration on the Rights of Indigenous Peoples, very closely approximates the maximal content of the right to self-determination in the 21st century.³⁵ He observes that the Declaration on the Rights of Indigenous Peoples' provision regarding autonomy and self-government [Article 4] implies a functional distribution of power between indigenous peoples and the State. He emphasises that the recognition of indigenous rights, including such functional distribution of power as prescribed by the Declaration on the Rights of Indigenous Peoples, can help resolve and avert conflicts between indigenous peoples and the State or the majority population.³⁶

Anaya (2008) disputes that the Declaration on the Rights of Indigenous Peoples represents a redefinition of the right to self-determination.³⁷ He justifies this by referring to the fact that the right to self-determination has always been a dynamic right. Anaya is of the opinion that the right to self-determination must always be implemented in a manner that best responds to such violations of the right to self-determination facing the peoples in question. In other words, he argues that international law, including the Declaration on the Rights of Indigenous Peoples, establishes an adequate remedial right to self-determination.³⁸ Anaya contends that implementation of indigenous peoples' right to autonomy contributes significantly to strengthening national democracy, because autonomy schemes for indigenous peoples will help improve their political and legal position and will enable them to effectively represent their own views in general political processes.³⁹ Loukacheva (2004) concurs with the view that, in the context of human rights, autonomy must be viewed as a natural component of the right to self-determination.⁴⁰

Even though autonomy was previously to a limited extent considered to be part of the right to self-determination, adoption of the Declaration on the Rights of Indigenous Peoples has led to indigenous peoples' right to autonomy now being regarded as a right based on the right to self-determination. This ensues directly from the wording of the Declaration on the Rights of Indigenous Peoples Article 4: «*Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.*»

30 The League of Nations was the UN's predecessor

31 Markku Suksi (1998), *On the entrenchment of autonomy*, *Autonomy: Applications and implications*, Ed. Markku Suksi, 151-71, Kluwer Law International

32 Douglas Sanders (1986), *Is autonomy a principle of international law?* *Nordic Journal of International Law* 55 (1/2)

33 Sanders: «autonomy for specific populations is a principle of customary international law, based on an assertion of a common practice of leading states.»

34 Hurst Hannum (2006), *Self-Determination in the Twenty-First Century*, *Negotiating Self-Determination*, Hurst Hannum & Eileen F. Babbitt (eds.) (2006).

35 Hannum refers to Article 31 in the draft of the Declaration on the Rights of Indigenous Peoples. This provision is included as Article 4 in the final Declaration, although it was paraphrased to some extent.

36 Hurst Hannum (2006), *Self-Determination in the Twenty-First Century*, *Negotiating Self-Determination*, Hurst Hannum & Eileen F. Babbitt (eds.) (2006)

37 James Anaya (2008), *The Right of Indigenous Peoples to Self-Determination in the Post Declaration Era*, *Sami Self-Determination: Scope and Implementation*, *Gáldu Čála* No. 2/2008, John B. Henriksen (ED.)

38 Anaya argues, in other words, in favour of «*remedial self-determination*» as a response to «*sui generis violation of self-determination*» (specific violations of the right to self-determination).

39 Ibid, Anaya: «To devolve governmental authority onto indigenous communities is to diminish their vulnerability in the face of powerful majority or elite interests and to enhance the responsiveness of government to the unique interests of indigenous communities and their members.»

40 Natalia Loukacheva (2004), *Article on Autonomy and Law*, *Concluding Remarks*, Faculty of law, University of Toronto

Article 4 of the Declaration on the Rights of Indigenous Peoples emphasises that indigenous peoples, in implementing *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 such autonomy functions*. In other words, the right to autonomy is derived in this case from the general right to self-determination.

1.4 Types of autonomy

Autonomy and self-governance⁴¹ are often determined by the degree of actual and formal independence that autonomous units have in their political decision-making process. Hannum and Lillich describe autonomy and self-government as follows:⁴²

«Autonomy and self-government are determined primarily by the degree of actual as well as formal independence enjoyed by the autonomous entity in its political decision-making process. Generally, it is understood to refer to independence of action on the internal or domestic level, as foreign affairs and defense normally are in the hands of the central or national government, but occasionally power to conclude international agreements concerning cultural and economic matters also may reside with the autonomous entity.»

If one presumes such an understanding of autonomy, autonomy schemes will by definition not represent any kind of threat in respect of the State's territorial integrity, since such schemes would then necessarily have to be implemented within the constitutional framework of the State.

There is no legally binding definition of the concept of autonomy. This is *inter alia* due to the fact that autonomy has not traditionally been considered a legal concept, but rather a description of certain types of political structures and arrangements. The concept «autonomy» is largely used as a common designation for a large number of political and legal

structures that comprise various degrees of self-government and self-determination. For example, there is a significant difference between the autonomy which the Finnish Constitution grants the Sami in Finland (linguistic and cultural autonomy), and the autonomy granted to the Kuna people in Panama (territorial and political autonomy).

Naturally, it is not possible to prescribe a homogeneous type of autonomy and self-government for indigenous peoples. Existing autonomy schemes for indigenous peoples can be classified in different ways: (1) territorial autonomy, (2) institutional autonomy without clear territorial affiliation, implemented through traditional or modern indigenous peoples' institutions, (3) objectively limited autonomy, e.g. limited to language and culture, (4) autonomy relative to legislative regulations and the administration of justice, e.g. by virtue of accepting indigenous peoples' application of customary law in the regulation of certain matters in indigenous communities.

Assies (1994) distinguishes between three types of autonomy:⁴³ (1) Local or regional autonomy where ethnicity has no formal importance, but where administrative borders are drawn up in a manner that puts indigenous peoples in a majority position in the area in question, and thereby effectively established self-government for indigenous peoples within the established national administrative system (e.g. the Nunavut territory in Canada). (2) Types of autonomy in which the self-government scheme is formally linked to ethnicity and territory, and where only indigenous peoples can exercise authority within more specifically delimited legal frameworks (e.g. the autonomy schemes in Kuna Yala in Panama and the Indian reservations in the USA). (3) Types of ethnically-based autonomy not linked to a particular territory (e.g. the Sami Parliament in Norway).

Dahl (1992) also distinguishes between three types of autonomy, which partially overlap with Assies' description:⁴⁴ (1) Regional self-government that is not ethnically based, but which is geographically delimited in a manner

41 The terms «autonomy» and «self-government» are, in this context, used as synonyms.

42 Hurst Hannum & Richard B Lillich, *The Concept of Autonomy in International Law*, page 218

43 Willem J. Assies (1994), *Self-determination and the «new partnership»*. *Indigenous Peoples' experiences with self-government*, ed. Willem J. Assies and A. J. Hoekema, 31-71. International Work Group for Indigenous Affairs and the University of Amsterdam.

44 Jens Dahl (1992), *Development of indigenous and circumpolar people's rights*, Nordic Arctic Research on Contemporary Arctic Problems, Proceedings from Nordic Arctic Research Forum Symposium, ed. Lise Lyck, Ålborg University Press

that puts indigenous peoples in a majority position (e.g. Nunavut in Canada and Greenland). (2) Ethno-political self-government, under which special groups are granted specific rights by virtue of their status as indigenous peoples. Such rights are not defined in geographical terms, even though these are, in a certain way, related to special indigenous peoples' territories. In some cases, such rights also apply outside indigenous peoples' traditional territories (e.g. the Sami in Finland and Norway). (3) Self-government based on land claim agreements between the State and the indigenous peoples in question. Such agreements are usually aimed at ensuring indigenous peoples economic ownership of specific territories (e.g. Alaska Native Settlement Act of 1971 in the USA).

Beyond what appears in the proposed Nordic Sami Convention, as of today, there are few ideas regarding possible forms of Sami autonomy. Åhrén (2008) is one of the few who has put forward general views about what Sami autonomy ought to be based on. He is of the opinion that the Sami are entitled to an autonomy that is ethnically defined, at the same time as it is associated with a reasonably defined territory.⁴⁵

1.5 Indigenous peoples' internal affairs

A people's right to promote its own economic, social and cultural development is often described as the internal aspect of the right to self-determination. For example, the UN Committee on the Elimination of Racial Discrimination describes the internal aspect of the right to self-determination as the right of all people to pursue freely their economic, social and cultural development without outside interference:⁴⁶ «*The right to self-determination of peoples has an internal aspect, that is to say, the right of all people to pursue freely their economic, social and cultural development without outside interference.*» This means that items or

areas of society which are of significance for the Sami's economic, social and cultural development in the first place must be considered an internal Sami matter, and that the Sami are entitled to autonomy schemes that guarantee that this right can actually be exercised as a collective right.

Article 4 of the Declaration on the Rights of Indigenous Peoples establishes that indigenous peoples have the right to self-determination in matters relating to their internal and local affairs. The Declaration nevertheless does not contribute to a more specific definition of the concept «*internal and local affairs*».

The other provisions of the Declaration on the Rights of Indigenous Peoples nevertheless provide certain clarifications with a view to understanding the concept of «*internal and local affairs*». For example, Article 14 of the Declaration establishes that indigenous peoples have the right to establish and control their educational systems and institutions. This speaks in favour of education generally having to be considered an internal matter for indigenous peoples.

Further, the original wording of this provision on autonomy, as laid down in Article 4, offers some guidance to the understanding of what lies in the concept of indigenous peoples' «*internal and local affairs*». The original proposal for the Declaration on the Rights of Indigenous Peoples, as adopted by the UN's working group for indigenous peoples⁴⁷ and the Sub-Commission on Human Rights⁴⁸, listed the specific areas considered to be indigenous peoples' internal and local affairs.⁴⁹ The original proposal for the provision on the right to autonomy was worded as follows:

«Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal

45 Mattias Åhrén (2008), *Culture and natural resources*, Sami self-determination: Content and implementation, Gáldu Čála No. 2/2008, John B. Henriksen (Ed.). Among other things, Åhrén contends the following: «*As a conclusion, one might say that recent advances in international law have not entailed a right to self-determination that applies specifically to indigenous peoples. On the other hand, the general right to self-determination has evolved to cover i) a colonisation context and ii) the right of all citizens to exercise all political rights, e.g. the right to participate in elections, on an equal footing. The general right to self-determination – in the cases in which two or more people share the same territory within a state – has developed to include a right to autonomy that is ethnically defined, but associated with a reasonably defined territory.*»

46 The UN Committee on the Elimination of Racial Discrimination (CERD), General Comment No. 21 on the Right to Self-determination, 15 March 1996

47 UN Working Group on Indigenous Populations (This group no longer exists.) The UN Human Rights Council has established a new thematic mechanism for indigenous rights which, in different ways, carries forward some of the work assigned to this working group: UN Expert Mechanism on the Rights of Indigenous Peoples.

48 The Sub-commission on Prevention of Discrimination and Protection of Minorities (This mandate no longer exists; it has been replaced by a new body: The UN Human Rights Council Advisory Committee).

49 UN document E/CN.4/Sub.2/1994/Add.1, 20 April 1994 (The current Article 4 was Article 31 in the original proposal).

and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.»

In other words, the original text proposal recognised that the following matters are to be regarded as indigenous peoples' «internal and local affairs»: Culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management and the environment. This list was, however, not included in the final text of Article 4. The main explanation for this was that such lists are often considered to be exhaustive, and some areas that should be regarded as internal affairs could thereby be left out. The original list nevertheless establishes a sound platform and point of departure for the work to identify internal Sami affairs.

One major challenge for the Sámediggi – The Sami parliament and the State will be to reach a common understanding of what is to be regarded as Sami «internal and local affairs». Since the adoption of the Declaration on the Rights of Indigenous Peoples, the debate on whether international law warrants autonomy is of little interest in the Sami context.

1.6 The UN Declaration on the Rights of Indigenous Peoples

Certain states, including the government of Norway, often point out that the United Nations Declaration on the Rights of Indigenous Peoples does not establish any commitments for the states because it is not a legally binding convention. This appears *inter alia* in the latest White Paper on Norwegian Sami Policy: «*The UN Declaration on Indigenous Rights was adopted by the UN General Assembly on 13 September 2007. The declaration is not a legally binding instrument of international law, but will offer important guidance in the further efforts to determine what rights indigenous peoples have. The declaration will be of particular importance in the countries in*

which indigenous peoples live, and which have not ratified ILO Convention No. 169»⁵⁰

Despite the fact that the Declaration on the Rights of Indigenous Peoples is not, formally speaking, legally binding in the same way as a convention, this does not necessarily imply that the Declaration is not binding on the states, not least since certain provisions in the Declaration are based on international customary law and are an expression of common principles of international law.

For example, there is broad international consensus that the right to self-determination is based on international customary law. Some would also regard the right to self-determination as being *jus cogens*, a peremptory norm of international law. International customary law develops through general practice. General practice in a human rights context is largely limited to the states' multilateral behaviour. In other words, general human rights practice develops primarily through the states behaviour and voting record at the UN.⁵¹

As mentioned above, there is considerable international agreement that the right to self-determination is an expression of international customary law. If this is the case, the Declaration on the Rights of Indigenous Peoples cannot automatically be set aside on the grounds that it does not establish any clear legal obligations in respect of the states. The fact that the right to self-determination is expressly recognised in the Declaration on the Rights of Indigenous Peoples, without reservations that impact what is already regarded as current international law, makes it natural to regard the Declaration as formal acknowledgement or confirmation that the general right to self-determination also includes indigenous peoples. If this is taken as the point of departure, it is of less judicial importance that the recognition of indigenous peoples' right to self-determination is not expressed formally in a declaration adopted by the UN General Assembly or in a binding (ratified) covenant under international law.

The latest White Paper on Norwegian Sami Policy (*Report No. 28 to the Storting*) helps

⁵⁰ Report No. 28 (2007-2008) to the Storting on Sami policy, chapter. 2.3.6

⁵¹ Høstmølingen, Njål (2003) *Internasjonale menneskerettigheter*, Universitetsforlaget, pages 94-95

clarify the Norwegian government's understanding of the content of the Sami's' right to self-determination. The government expresses here that the Sami's' right to self-determination must generally be regarded «*as a right to influence co-determination*» and «*the right to participation and empowerment*». Sami autonomy is expressly limited here to «*cultural and linguistic autonomy*».⁵² This does not accord well with the General Assembly's recognition of indigenous peoples' right to self-determination and the broad international consensus on the right to self-determination entrenched in international customary law.

Norway made a special explanation of its voting in connection with the adoption of the Declaration on the Rights of Indigenous Peoples in the General Assembly in September 2007. Norway gave the following explanation of its voting relative to the right to self-determination:⁵³ «*The recognition of the right to self-determination referred to in this Declaration requires that indigenous peoples have full and effective participation in a democratic society and in decision-making processes relevant to the indigenous peoples' concerns. Several articles in the Declaration specify how the right to self-determination may be exercised. The Declaration emphasises that the right to self-determination shall be exercised in conformity with international law. Consultation with the peoples involved is one of the measures outlined in the Declaration. As a State party to International Labour Organisation's Convention No 169, concerning Indigenous and Tribal Peoples in Independent Countries, Norway has implemented the consultation requirements specified in that Convention. Self-determination is furthermore exercised through the Sami Parliament, which is an elected body with decision-making and consultative functions within the framework of the applicable legislation. The Government has also signed an agreement with the Sami Parliament in which it sets out procedures for consultations between the Government and the Sami Parliament. Norway is of the opinion that the Declaration is to be understood within the framework of the United Nations Declaration on Principles of International Law concerning*

Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by Resolution 2625 (XXV) of 24th of October, 1970.»

The Norwegian explanation of its voting tries to limit the Sami's' right to self-determination to a right to consultations on matters that concern them in compliance with the provisions of ILO Convention No. 169. The Declaration on the Rights of Indigenous Peoples cannot automatically be equated with the ILO convention since the Declaration's contents also reflect the development in international law after the adoption of the ILO convention in 1989, including recent international case law and international customary law. The ILO convention does not address the right to self-determination. This is clearly expressed in Article 1 (3) of the ILO convention, which establishes that the concept «people» in the convention shall not be perceived as having any impact on the rights that can otherwise be associated with the concept in international law. In actual practice, this is a legal delimitation relative to the right to self-determination. The ILO convention's substantive provisions recognise indigenous peoples' right to *co-determination* in matters that concern them, while the Declaration on the Rights of Indigenous Peoples recognises that indigenous peoples are entitled to *self-determination* in certain matters. The obligation to consult is considerable relative to the implementation of indigenous peoples' right to co-determination, but is not necessarily adequate for implementation of the right to self-determination.

The Declaration on the Rights of Indigenous Peoples distinguishes between indigenous rights based on their right to self-determination, and their rights within the framework of the nation state's general political system. The Declaration on the Rights of Indigenous Peoples distinguishes between indigenous peoples' right to take independent decisions on matters relating to their internal and local affairs, and their right to participate in external decision-making processes that could affect their rights. Indigenous peoples' right to be consulted on matters that affect them is relevant relative to external

52 Report No. 28 (2007-2008) to the Storting on Sami policy, Chapter 2.3.6

53 Norway's explanation of the vote cast at the UN Annual General Assembly on 13th of September, 2007 by Ambassador Løvold; UN document A/61/PV.107 (Official records), page 22

decisionmaking processes where people other than indigenous peoples have the decision-making authority. However, the State's consultation obligation represents no guarantee that Sami opinions will be protected in cases that are of great importance to them. This was e.g. the case in the mineral legislation process in Norway.⁵⁴

Articles 3, 4 and 5 of the Declaration are, collectively, key to understanding indigenous peoples' right to take their own independent decisions, while Article 18 stands out as the main provision relative to indigenous peoples' right to participate in external decision-making processes. Article 3 recognises indigenous peoples' right to self-determination, and Article 4 clarifies that indigenous peoples' right to autonomy or self-government in internal and local affairs is an integral part of their right to self-determination. Article 5 must be interpreted in the light of these two provisions and Article 18. Article 5 stipulates that indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully in the political, economic, social and cultural life of the State. Article 18 concerns indigenous peoples' right to participate in external decision-making in matters which could affect their rights.

This legal distinction between internal and external decision-making processes indicates that the State's consultation obligation and the principle of indigenous peoples' independent and informed consent are primarily relevant in relation to external decision-making processes – processes where people other than the indigenous peoples in question have the right or authority to take decisions.

The Sámediggi – The Sami Parliament in Norway appears to have a significantly different understanding of the right to self-determination, as expressed in the Norwegian explanation of its voting and in White Paper No. 28. This was, for example, expressed during the international conference on Sami self-determination that Gáldu organised in Alta in February 2008.

Sami Parliament President Olli mentioned in this context that *«it is the interpretation of the wording in Article 1 of the UN Covenants that forms the legal point of departure and framework around the substantive content of the right to self-determination, as articulated in the Declaration on the Rights of Indigenous Peoples and the proposed Nordic Sami Convention.»* The Sami Parliament president argued further that the Sami parliaments in Finland, Norway and Sweden *«cannot see that there is any basis in international law for asserting that the Sami's' right to self-determination should be interpreted differently than the right to self-determination that other people have under international law. It is not up to the individual country to freely interpret, delimit and define indigenous peoples' right to self-determination at variance with the view the UN's member states have expressed in the UN Declaration on Indigenous Rights. If so, this could serve to undermine the very meaning of both the right to self-determination and international law as such.»*⁵⁵

Compared with the Norwegian government's understanding of the Declaration on the Rights of Indigenous Peoples, the Sámediggi's – The Sami Parliament's view appears to be far more in conformity with the point of view that several UN bodies and mandates have adopted as regards the content of the contents of the Declaration on the Rights of Indigenous Peoples, including indigenous peoples' right to self-determination.

The UN's Special Rapporteur for indigenous peoples' human rights emphasises that the Declaration on the Rights of Indigenous Peoples is an expression of international consensus on the content and scope of indigenous rights based on already existing international human rights norms and practices, including the practices that have developed in the light of the UN Covenant on Civil and Political Rights.⁵⁶ The special rapporteur also points out that the Declaration on the Rights of Indigenous Peoples was adopted by an overwhelming majority, and that no State expressed that the basic principles were not acceptable.

54 Prop. No. 43 (2008-2009) to the Odelsting, Recommendation No. (2008-2009) to the Odelsting, Decision No. 94 (2008-2009) to the Odelsting, Act-2009-06-19-101

55 Gáldu Čála no. 02/2008, Chapter 3.1

56 Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, S. James Anaya, UN Document A/HRC/9/9, 11 August 2008

The special rapporteur also emphasises that the Declaration on the Rights of Indigenous Peoples does not establish new or special rights for indigenous peoples that differ from already existing universal human rights, but that the Declaration instead applies these rights to indigenous peoples' special cultural, historical, social and economic situation.⁵⁷ He further underlines that the Declaration on the Rights of Indigenous Peoples is also to some extent an expression of international customary law and principles of international law.⁵⁸

The UN's expert mechanism for the rights of indigenous peoples (EMRIP) reflects a similar perception in the study on indigenous peoples' right to education. EMRIP concludes that the Declaration is consistent with already existing legally binding human rights instruments and international jurisprudence, and that the Declaration's substantive provisions should be considered to be the application of current legally binding rules relative to indigenous peoples' special situation.⁵⁹

The UN Permanent Forum on Indigenous Issues (UNPFII) has stated that even though the Declaration on the Rights of Indigenous Peoples is not a covenant, it nonetheless has a certain legally binding effect, not least because it is a human rights instrument that is commensurate with already existing legally binding norms.⁶⁰

The UN Committee on the Elimination of Racial Discrimination, which is the surveillance agency for the bodies for the UN Convention

on the Elimination of All Forms of Racial Discrimination, has on several occasions requested that the State parties interpret their own convention obligations in the light of the provisions of the Declaration on the Rights of Indigenous Peoples and ILO Convention no. 169 on Indigenous and Tribal Peoples.⁶¹

As mentioned earlier, sources of international law are not limited to ratified conventions. The statutes of the UN International Court of Justice describe what should be regarded as primary and secondary sources of international law, respectively.⁶² Primary sources of law are treaties to which the State parties have acceded, as well as international customary law and general principles of international law that are accepted in so-called civilised states, cf. the statutes, Article 38 (1), litrae a-c.⁶³ Despite the fact that the statutes are not directly binding other than for the International Court of Justice, they are nevertheless an expression of what other international bodies, including surveillance agencies for human rights, would rely on as sources of law when they are to take a position on specific cases or legal issues.

1.7 Proposal for a Nordic Sami Convention

The proposal for a Nordic Sami Convention⁶⁴ was drawn up on the basis of prevailing international law, including the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and it is an important

57 Ibid., para 40

58 Ibid., para 41: «Albeit clearly not binding in the same way that a treaty is, the Declaration relates to already existing human rights obligations of States, as demonstrated by the work of United Nations treaty bodies and other human rights mechanisms, and hence can be seen as embodying to some extent general principles of international law. In addition, insofar as they connect with a pattern of consistent international and State practice, some aspects of the provisions of the Declaration can also be considered as a reflection of norms of customary international law. In any event, as a resolution adopted by the General Assembly with the approval of an overwhelming majority of Member States, the Declaration represents a commitment on the part of the United Nations and Member States to its provisions, within the framework of the obligations established by the United Nations Charter to promote and protect human rights on a non-discriminatory basis.»

59 Report of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), *Study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education, Annex, Expert Mechanism Advice No. 1 (2009)*, para 7, UN Document A/HRC/12/33, 31 August 2009

60 UN Permanent Forum on Indigenous Issues (UNPFII), *Report of the eighth session (18-29 May 2009), Annex, General comment on Article 42 of the UN Declaration on the Rights of Indigenous Peoples*, para. 6 & 7, UN Document E/2009/43, E/C.19/2009/14, Economic and Social Council, Official Records, Supplement No. 23 Para 6: The Declaration is the most universal, comprehensive and fundamental instrument on indigenous peoples' rights. It is the legal framework of the Forum, together with resolution 2000/22 of the Economic and Social Council. The Declaration is not a treaty and it accordingly does not have the binding force of a treaty. However, this does not at all mean that the Declaration is without any legally binding effect. The adoption of any human rights instrument by the United Nations aspires to some binding force. The binding value of the Declaration must be seen in the wider normative context of the innovations that have taken place in international human rights law in recent years.

Para 7: The Declaration forms a part of universal human rights law. The basic principles of the Declaration are identical to those of the main human rights covenants. In this way the Declaration affirms, in Article 3, the right of indigenous peoples to self-determination, in terms that restate the common provisions of Article 1 of the two 1966 international covenants. The human rights treaty bodies will need to refer to the Declaration, as their practice already indicates, whenever dealing with indigenous rights. The Declaration is not the instrument of a specialized agency that binds only the State parties, but is a general instrument of human rights.

61 CERD/C/ECU/CO/19; CERD/C/NIC/CO/14; CERD/C/FJI/CO/17; CERD/C/USA/CO/6

Cf. Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, the rights of indigenous peoples, UN Document A/HRC/10/51, 14 January 2009, para. 16: «The Committee [on the Elimination of Racial Discrimination] has further noted the role of the Declaration as a normative reference by indicating that the Declaration could be used as a guide to interpret the State party's obligations under the Convention on the Elimination of all Forms of Racial Discrimination as far as it relates to indigenous peoples.»

62 Høstmælingen, Njål (2003) *Internasjonale menneskerettigheter*, Universitetsforlaget, page 84

63 International Court of Justice

64 The Nordic Sami Convention, i.e. the draft from the Finnish-Norwegian-Swedish-Sami expert group submitted on 26 October 2005

document of principle in any discussion of Sami self-determination because the proposal is based on prevailing international law.

The draft convention establishes a sliding scale for the right to self-determination under which the Sami would be granted a varying degree of self-determination and empowerment on the basis of how important a case or a field is for the Sami people. This sliding scale runs from a full and exclusive right for the Sami to make their own decisions without external interference (this refers to internal Sami affairs) to a right to be informed and apprised of non-Sami decision-making processes. In this way, the draft convention seeks to strike a balance between the majority population and the Sami people's legitimate right to self-determination. This approach is in conformity with the normative framework established by the Declaration on the Rights of Indigenous Peoples, cf. Section 1.4 above.

Article 3 of the draft convention recognises that the Sami have the right to self-determination as a people in conformity with the rules of international law, and that the Sami, insofar as it ensues from such rules and provisions, are entitled to freely pursue their own economic, social and cultural development, and for their own ends, to freely dispose of their natural resources.

Article 14, third subsection, confirms that the Sami parliaments in the Nordic countries are to have responsibilities that make it possible for them to effectively promote the Sami people's right to self-determination under the rules of international law and the provisions of the Sami Convention. The expert group justifies this by pointing out that the Sami people have the right to self-determination, and that the Sami parliaments are the natural administrators of the Sami's right to self-determination.

The draft convention's Article 15, first subsection, advocates that the Sami parliaments have the right to adopt *independent resolutions* on the questions they are entitled to decide pursuant to national or international law. The expert group points out that the reference to international law is aimed at the future, since it is expected that the international rules that apply to indigenous peoples' legal status can be

developed to give indigenous peoples more empowerment to take decisions. Today it can be confirmed that the expert group was right in their assumptions about the development of international law. The Declaration on the Rights of Indigenous Peoples which recognises that indigenous peoples have the right to autonomy in internal affairs was adopted two years after the recommendation was submitted by the expert group.

Article 16, first subsection, of the draft convention confirms that in questions of significant importance for the Sami, the government authorities are to negotiate with the Sami parliaments before adopting decisions. Further, it appears from the second subsection of the provision that the State shall not adopt or allow initiatives which to a significant extent can harm the basic conditions for Sami culture, Sami industries or the Sami community, unless the Sámediggi – The Sami Parliament in question agrees to this. In other words, on matters of great importance or which could significantly harm the basic conditions for Sami culture, Sami industries or the Sami community, consultations are not enough. This means that it is suggested that the Sámediggi – The Sami Parliament here be granted authority if the proposed activity or initiative could cause substantial damage to the material basis for Sami culture. This is consistent with current standards of international law, including Article 27 of the Covenant for Civil and Political Rights. The Sami Rights Council that studied the question of rights to and the disposal and use of land and water in traditional Sami territories outside Finnmark County, expresses a similar interpretation of the protection of cultural values in Article 27 of the Covenant for Civil and Political Rights. The Committee concluded *inter alia* that Article 27 of the Covenant for Civil and Political Rights establishes «*an absolute shield*» against infringement on the material exercise of Sami culture by not under any circumstances initiating infringements that can be equated with a denial of the right to practice one's culture.⁶⁵

Article 17 of the draft convention contains provisions about the Sami parliaments' rights during the preparation of other matters, includ-

65 Norwegian Public Report (NOU) 2007:13 – The new Sami right, page 918

ing the right to be informed and apprised of decision-making processes of less importance for the Sami community.

The draft convention represents a constructive, practical approach to how the right to self-determination can be implemented in a Sami - Nordic context.⁶⁶ The draft covenant is based on the rules and provisions of international law, including the provisions on the right to self-determination, and seeks to apply these in a manner which, in principal, equates the competing rights to self-determination of the Sami and the majority population.

2. Sami autonomy: Education, research and culture

Through the project «*Sami Self-Determination: Scope and Implementation*» in 2009, Gáldu brought together a number of Sami disciplines and resource people for sector-specific workshops to contribute to the efforts to determine the possible content of the right to self-determination in the Sami context, based on their knowledge about and practical experience within different sectors of society.

The point of the workshops was to bring together disciplines and resource persons in an informal framework for open discussions of problems associated with the possible content and implementation of the right to self-determination. The resource people were invited to take part in the seminars in their personal capacities.

2.1 Sami self-determination in the education sector

Gáldu's Seminar on Sami self-determination in the education sector was held at *Diehtosiida* in Kautokeino on 14 – 15 October 2009. The programme for the seminar consisted of lectures, plenary discussions and working groups. The seminar was composed of individuals with broad expertise and experience relative to queries relating to education and other social issues, cf. the enclosed seminar programme (Appendix 1) and list of participants (Appendix 2). The following problems formed an over-

arching framework for discussions during this workshop:

Issues

- 1) *Is there a need for more Sami self-determination in the education sector and, if so, why, and what consequences (positive/negative) might ensue from such self-determination in the education sector?*
- 2) *Is education an internal Sami matter and, if so, why?*
- 3) *Do national borders have any bearing on what is regarded as an internal Sami matter?*
- 4) *Is today's Sami community in a position to accept more responsibility for education, and what structural changes, if any, are required to achieve genuine Sami self-determination in the education sector?*
- 5) *Which distribution of authority and responsibility ought to exist between the Sámediggi and central government authorities, respectively, as regards the education sector?*

2.1.1 Is there a need for more Sami self-determination in the education sector?

The bulk of the discussion during the seminar focused on education at the primary, lower secondary and upper secondary level, and was based on the experience of the seminar participants. There was broad consensus among the seminar participants that in reality, there is currently no form of Sami self-determination in the educational sector in Norway.

There was agreement that the Sami influence on educational issues, not least when it comes to the development of and the setting of syllabi and teaching plans, is so insignificant that it cannot be considered any form of self-determination. It was pointed out that Sami influence is currently exercised through different types of statements from Sami institutions and through Sami participation in processes relating to educational issues, as well as through state consultations with Sami institutions on such matters. There was broad consensus that neither the right to state opinions, consultations nor other participation in edu-

66 The United Nations Declaration on the Rights of Indigenous Peoples had not yet been adopted by the General Assembly when the proposal for a Nordic Sami Convention was drawn up. Accordingly, it was the draft of the Declaration that was the point of departure for the Nordic expert group's work. There is, however, little difference between the original draft and the final Declaration. The main provision (Article 3) in the Declaration about the right to self-determination was adopted as proposed in the draft.

cation-related processes entails genuine Sami self-determination in the educational sector.

There was broad consensus that there is a need for Sami self-determination at all levels in the educational sector. This was generally explained by pointing out that the Sami are a separate nation and an indigenous people with the right to self-determination pursuant to international law, and that it is therefore natural that this right be recognised and implemented in the educational sector. Reference was also made to the principles of equality and gender parity, in other words, that the Sami must genuinely be given the same opportunities as others to develop an education system that is appropriate for their mentality, objectives, culture, values, educational methods and traditional knowledge.

There was also broad agreement that the national school system has by and large contributed to colonising the Sami's way of thinking, and that a separate Sami school scheme can help decolonise their way of thinking. It was suggested that a high-quality education system based on the Sami mentality and Sami values would be of conclusive importance to the development of the Sami community.

There were discussions of whether demands for Sami self-determination in the educational sector might instil fear in society-at-large about the intentions underlying such a demand, and whether this would help foster new dividing lines between the Sami and others, as well as within the Sami community. There was nonetheless agreement that any fears associated with Sami self-determination in the educational sector would be unwarranted, and that such self-determination would not result in new barriers or dividing lines in the community. It was said that Sami self-determination in the educational sector would help foster greater acceptance for the idea that the Norwegian state exists on the territory of two peoples, Sami and Norwegians, since such self-determination can be considered a sign of respect for the equality of these two peoples.

Asta Mitkijá Balto argued that it is necessary to develop a methodical analytical tool to evaluate the educational sector in the context of

self-determination. Balto presented a potential analytical tool that takes its point of departure in *five basic questions*. She contended that the answers to these basic questions give a good indication of whether there is Sami self-determination in the educational sector today, or whether there is a form of Sami co-determination, or perhaps a more limited Sami influence within the educational sector.⁶⁷

Five basic questions that indicate the degree of Sami self-determination

- 1) *Is the Sami's the right to self-determination, also in the educational sector, embodied in national statutory provisions (statutory self-determination)?*
- 2) *Is the Sami's right to be consulted in matters that may affect them directly formally recognised and implemented at the national level (formalised right to consultation)?*
- 3) *Is the Sami's right to participate in decision-making processes formally recognised and implemented at the national level (right to participation)?*
- 4) *Are the Sami entitled to make statements on matters that may have an effect on them (the right to make statements)?*
- 5) *Does one experience silence on the part of the central government authorities in response to Sami proposals and viewpoints in cases of direct importance for the Sami (silence on the part of the authorities)?*

The seminar participants broadly agreed that the statutory Sami self-determination would give the best guarantee for genuine implementation of the right to self-determination. It was argued that this refers in particular to the Sami's right to self-determination in internal and local affairs. It was explained that genuine Sami self-determination is difficult to achieve and implement unless the substance of the right to self-determination is clarified through national statutory provisions.

This is commensurate with the view that the Sami parliaments appear to have on this question. Sami Parliament President Egil Olli stated *inter alia* the following at Gáldu's international conference in February 2007:⁶⁸ «*The specific*

67 Asta Mitkijá Balto presented these five questions during her introductory lecture, based on the question whether there is a need for more Sami self-determination in the educational sector.

68 Gáldu Čála no. 02/2008, Chapter 3.1

content of the right to self-determination will have to be implemented and rendered concrete, inter alia, through national legislation in our different states. Legislative processes related to the environment, resources and land rights will be very important here. Since the Nordic states have expressed that the Sami are entitled to self-determination, I also have clear expectations that this right will be taken into account and rendered concrete in national legislative processes. It is obvious that such legislative processes cannot be the province of the government alone. Consultations and negotiations are necessary.»

Some seminar participants referred to the fact that the right to self-determination is embodied in prevailing Norwegian legislation through the incorporation of relevant international covenants on human rights into the Human Rights Act of 1999.⁶⁹ However, it was also ascertained that, like a number of other internationally recognised human rights, the right to self-determination suffers from what might be described as an implementation gap, i.e. little or no implementation.

Johan Strömngren spoke on the State's international human rights obligations with respect to the protection and implementation of Sami rights, including obligations associated with the right to education, as well as cultural and linguistic rights.⁷⁰ He also explained §§ 110a and 110c of the Constitution. He concluded that it is necessary to implement special legislative measures to ensure the implementation of the Sami's right to self-determination, not least with reference to the fact that §110c of the Constitution requires the central government authorities to respect and protect human rights.

Strömngren was of the opinion that the Sami Act's language provisions do not fully implement the Sami's linguistic rights under international law, and referred in particular to the European Charter for Regional or Minority Languages. Strömngren argued that it is important to ensure that the language rules in the Sami Act are fully consistent with the State's obligations under international law.

Strömngren pointed out that the geographical areas identified by the Sami Act's language

rules as being the area of application for the Sami Language Act are far smaller than the traditional area of Sami settlement. This means that Sami who live in traditional Sami territories, but outside the administrative area for the Sami Language Act, do not have the same protection for their linguistic rights as Sami who live inside the administrative area. He further pointed out that the Sami areas with the weakest protection for these rights are also the areas in which the Sami language and culture are most threatened.

Strömngren explained that there are several factors which indicate that there is also a need to bring the provisions of the Education Act that involve Sami education into line with the State's commitments under international law. He referred to the fact that access to instruction in and on the Sami language is closely linked to the administrative area for the Sami Language. He was of the opinion that neither Chapter 3 of the Sami Act about the Sami Language nor Chapter 6 of the Education Act on Sami education guarantees the implementation of the Sami's right to self-determination in the areas of language and education. Strömngren also pointed out that problems with a view to harmonising the Sami Act and the Education Act complicate the implementation of the State's international commitments. He reported that the Sami Act and the Education Act make no mention of the Human Rights Act of 1999, which incorporates human rights provisions that are relevant relative to Sami language and education, and which otherwise also contain a special provision about the precedence of the incorporated covenants in the event of any conflict between other national legislation and the provisions of the covenant.

There was agreement that consultations between central government authorities and relevant Sami institutions help strengthen the Sami influence in decision-making processes that affect Sami interests. Some seminar participants stated that the procedures for consultations between the central government authorities and the Sámediggi (the consultation agreement between Government and Sami Parliament of 2005) helps strengthen Sami

69 The UN Covenant on Civil and Political Rights, and the UN International Covenant on Economic, Social and Cultural Rights of 1966, cf. common article 1

70 Johan Strömngren talked about what structural changes were regarded as necessary for achieving Sami self-determination in the educational sector

influence in matters that have a bearing on the Sami, and that the agreement is an important contributing factor for the implementation of the State's commitments under international law to consult the Sami on such matters.

It was argued that it is important to reach agreement between the central government authorities and the Sámediggi whenever consideration is being given to incorporating legislation or measures that could have an impact on Sami rights or interests. It was pointed out that the consultation agreement comprises a large number of areas including daycare centres, education and research. It was also remarked that it is very positive that the procedures for consultations have been formalised through an agreement between the Norwegian government and the Sámediggi – The Sami Parliament.

Other seminar participants were of the opinion that implementation of the State's duty to consult the Sami should not be regarded as the implementation of the Sami's right to self-determination. Some described the consultation obligation and participation in decision-making processes to be an expression of *the right to co-determination* in compliance with the provisions of ILO Convention No. 169, which they considered to be different from *the right to self-determination* as this right is embodied in the UN Covenants on Human Rights of 1966 and United Nations Declaration on the Rights of Indigenous Peoples. It was said that it is necessary to distinguish between Sami decision-making processes in their own internal affairs and external decision-making processes at the national, county and municipal levels. The obligation to consult is relevant in cases in which the decisions are taken by others, that is, not by the Sámediggi – The Sami Parliament or other relevant Sami decision makers.

Some seminar participants pointed out that the Sámediggi – The Sami Parliament's right to make statements on issues that the parliament believes affect the Sami cannot be seen as self-determination, since this is merely a right to make statements on issues, but other bodies will take the final decision. There were examples cited, of statements and proposals made by the Sámediggi – The Sami Parliament, that have been met with silence on the part of

authorities. Reference was also made to the fact that the Sami had drawn up a concrete Sami education plan which the central government authorities have not taken into account in their final decisions regarding the content and form of the educational programme. Reference was also made to the fact that the Sámediggi – The Sami Parliament had once commissioned a public study on Sami education, and that this plan was never followed up by the State.

There was broad consensus that the general structures that are already in place, e.g. organisational, financial, social, pedagogical and technical structures, often make it difficult to implement Sami self-determination in the educational sector. Jan Henry Keskitalo reported on some of these challenges in a special presentation on structural challenges one faces in connection with the implementation of the right to education for Sami children and young people. He argued that existing financial, social and political structures govern education processes because they are conclusive for setting the parameters for educational programmes, teaching plans, teaching materials, management and control routines within the educational sector and the legal framework for educational programmes. He concluded that existing financial, social and political structures have a negative impact on the opportunity for full implementation of the right to education for all Sami and that it is, in particular, Sami children and young people who live outside the so-called core Sami areas who are victims of existing structural problems. He argued that the Norwegian school system is generally ill-equipped to provide for Sami children's rights and needs, and that this is especially true of schools outside core Sami areas.

Keskitalo was of the opinion that the implementation of Sami self-determination in the educational sector would require a comprehensive review of existing structures. He also pointed out that there are currently no credible statistics about the conditions for Sami education, underlining that it is necessary to collect better information about the situation in local Sami communities. He emphasised that the responsibility for this rests not only with the central government authorities, but that the Sámediggi also has an independent responsi-

bility to implement specific measures for procuring such data.

The seminar participants identified a number of challenges in the education sector. There was broad agreement that these are highly relevant relative to the implementation of the right to self-determination within the education sector, and relative to Sami individuals' right to education:

Some of the main challenges

- The lack of reliable information about how Sami education should be in order to satisfy the State's obligations under international law in respect of the Sami
- Limited information and teaching materials on Sami children's rights, and a lack of knowledge about among teachers and school administrators on Sami children's rights, and on international human rights
- Insufficient information about what is required for the implementation of Sami children's right to education
- A lack of knowledge about the division of responsibilities with a view to the implementation of Sami education
- The oversight function in respect of Sami schools is assigned to institutions that do not have sufficient knowledge about the Sami community and Sami rights under international law
- The Sámediggi has not been assigned any special tasks or formal functions relative to Sami schooling and education, despite the fact that education is of fundamental importance for the development of the Sami community
- Weak financial parameters place limits on the development of a separate Sami school system
- The authorities' failure to accept the need for a separate Sami school and a separate Sami education system, and
- Sami training/education must always be adapted to and adjusted in respect of national educational plans and framework conditions.

There was broad consensus that the Sámediggi – The Sami Parliament, in collaboration with relevant Sami institutions, should initiate a process aimed at getting local Sami commu-

nities involved in obtaining a more comprehensive overview of the challenges the Sami community faces in the education sector. Such a process could help identify and illuminate the main challenges within the education sector, including problems of a structural nature that have to be resolved before it will be possible to achieve Sami self-determination in the education sector. It was suggested that the Sámediggi – The Sami Parliament should try to implement such a process on its own initiative.

2.1.2 Is education an internal Sami affair?

Based on Article 4 of the Declaration on Indigenous Peoples, which stipulates that in implementing their right to self-determination, indigenous peoples are entitled to autonomy or self-government on matters relating to internal affairs, the seminar participants were encouraged to discuss and take a position on whether education is, in their opinion, a Sami affair.

There was agreement among the participants that education must be considered an internal Sami affair, and that the Sámediggi is the natural authoritative agency for Sami education. This was explained, *inter alia*, by the fact that education is of fundamental importance for the financial, social and cultural development of the Sami community, and that the Sami must therefore be in control of the content and form of educational programmes themselves. It was contended that education is also a prerequisite for shaping the Sami future in a manner that is compatible with the Sami's own interests, needs and ranking of priorities.

Certain participants pointed out that today's situation, i.e. that the Sami must deal with educational systems in four different countries, has highly negative consequences for the Sami's sense of solidarity. It was concluded that education is important for the design and development of the Sami's common future, and that the Sami parliaments have a right and an obligation to try to obtain control of the education sector, and thereby to contribute to the administration of the Sami's common culture, language, values, history, traditions and knowledge.

A common Sami teachers' training programme was identified as a prerequisite for reaching goals of Sami self-determination in the educational sector, since teachers' education is

one of the cornerstones in every educational system. In that connection, it was emphasised that the teachers' education programme at the Sami University College should be strengthened. The conclusion was that it is important for the university college's teachers' training programme to be formally approved by the authorities in Finland and Sweden, on a par with national teachers' training programmes. It was pointed out that this is a prerequisite for a common Sami educational system in future.

There was agreement that national borders basically carry no importance for what should be regarded as an internal Sami affair, since the Sami are to be seen as one people with a common history, culture, language and traditions. Meanwhile, it was mentioned that, in actual practice, national frontiers establish legal, administrative and political borders that Sami must deal with at present, especially in primary school and at lower and upper secondary levels. National borders were found to be less problematic when it comes to higher education, except for the fact that the programme at the Sami University College does not entail the same status and expertise in Finland and Sweden as in Norway.

2.1.3 Is the Sami community in a position to accept responsibility for the education sector?

The seminar participants were encouraged to discuss and take a position on the question of whether today's Sami community would be able to accept more responsibility for education, and which structural changes would be required to achieve Sami self-determination in the education sector.

There was consensus among the participants that the Sami community does have the requisite expertise to accept full responsibility for the education of Sami children and young people, on the condition that sufficient financial resources are made available by the nation states. It was concluded that the Sami community already has a sufficient number of academics and resource persons to take full responsibility for education. In that connection, it was also pointed out that in many geographical areas the level of education among the Sami is far higher than the level of education among the majority population.

There was consensus that the goal of a common Sami educational system should be that Sami schools should maintain academic standards that are at least as high as in ordinary national schools in the respective nation states. There was also consensus that the Sami parliaments should bear the ultimate political responsibility for Sami education. Further, it was concluded that it would be natural to establish a Sami Directorate for Primary and Secondary Education to be responsible for educational affairs, with the Sámediggi – The Sami Parliament as the ultimate political authority in matters relating to Sami education.

2.1.4 The division of authority between the Sámediggi and the State

Finally, the participants were asked to discuss and take a position on the question of how authority and responsibility should be distributed between the Sámediggi – The Sami Parliament and the central government authorities, respectively, on educational questions.

There was broad consensus that the Sámediggi – The Sami Parliament ought to bear the political responsibility for Sami education, including the use of resources and the stipulation of teaching plans. Further, there was agreement that the Sámediggi – The Sami Parliament, formally as well as in actual practice, should be assigned supervisory responsibility for Sami education. In addition, there was broad agreement that the State's responsibility for Sami education ought to be limited to the responsibility for ensuring funding for Sami education, including the administration of such education. It was said that the State, in collaboration with the Sámediggi – The Sami Parliament, is duty-bound to ensure that the Sami education system satisfies international minimum standards for education. It was also contended that the Nordic states should take joint responsibility for harmonising national rules of law and regulations to ensure implementation of a common Sami educational system across national borders.

There was consensus that one of the goals of a Sami educational system should be for non-Sami people living in Sami territories to be integrated and offered the same education as Sami children and young people, especially since this would help reduce and avert future

conflicts between the Sami and the majority population.

2.2 Seminar on Sami self-determination as regards research

Gáldu's seminar on Sami self-determination in the research sector was held at *Diehtosiida* in Kautokeino from 19 to 20 October 2009. The seminar programme consisted of lectures and plenary discussions. The seminar consisted of individuals with broad expertise and experience in the fields of higher education and research, cf. the enclosed seminar programme (Appendix 3) and list of participants (Appendix 4). The following problems formed the framework for the discussions at this workshop:

Problems

- 1) *Is there a need for more Sami self-determination in research and, if so, why, and what consequences (positive/negative) can ensue from such self-determination?*
- 2) *Is research an internal Sami affair and, if so, why?*
- 3) *Do national borders have any bearing on what is regarded as an internal Sami affair?*
- 4) *How should authority and responsibility be distributed between the Sámediggi – The Sami Parliament and central government authorities, respectively, relative to the research sector?*
- 5) *Which structural changes, if any, are required to achieve genuine Sami autonomy in the research sector?*

The workshop opened with a lecture by Dr. Jelena Porsanger, PhD., which was followed by discussions about the paradigm shift in indigenous research. It was pointed out that the basic tenet of modern indigenous research is that indigenous peoples should not be passive research objects, but active participants. This principle is fundamentally very different from past research on indigenous peoples, which characterised indigenous peoples as being considered passive and often also exotic research objects. Attention was called to the fact that attempts used to be made to define, dogmatise and explain indigenous peoples through research theories that were considered objective. More contemporary thought has, how-

ever, resulted in a more reflective approach to indigenous research, which is more dynamic and inclusive. Porsanger pointed out that including indigenous peoples' own knowledge in the research, building capacity among indigenous peoples and including contributions by researchers who themselves originate from indigenous peoples, as well as raising awareness and getting indigenous peoples involved in the research, have strongly contributed to a shift in indigenous research. Porsanger underlined that there is not broad agreement that indigenous peoples' interests, needs, knowledge, know-how and experience should form the platform for indigenous research; including the reason for producing new knowledge about the indigenous people or community in question.

Porsanger emphasised that even though indigenous knowledge is based on a different epistemology (theory of knowledge) than common western research-based knowledge, this knowledge is still often just as scientific as other knowledge. The fact that indigenous peoples often acquire knowledge and understanding of the surrounding world (ontology) and that they often have values and norms (axiology) that differ from those of society-at-large, does not make their knowledge less scientific than other knowledge. She identified a number of factors which she designated as important challenges facing indigenous research, including:

Some of the main challenges facing indigenous research

- Respect for indigenous peoples' right to knowledge and intellectual property rights; ensure that indigenous rights to their own knowledge are fully respected
- Safeguard indigenous knowledge from being misinterpreted or misused
- Help correct stereotypical ideas about indigenous peoples
- Contribute knowledge and studies on indigenous peoples in a manner that enables indigenous peoples to identify with these portrayals
- Uphold and respect individuals/communities that own or possess indigenous knowledge, and which, through their knowledge, have contributed to research
- Report back to individuals/communities on

the results of research to which they have contributed by sharing their knowledge and participating, to ensure that indigenous peoples are seen as genuine participants and do not continue to be passive research objects.

Porsanger argued that it is important that Sami research be strengthened to ensure a viable future. Research on Sami conditions requires research resources within the Sami community. It is considered important to pave the way for Sami researchers and research groups, so that they can contribute to reinforcing Sami Research, defining research priorities, and developing research methods and theories.

Some called attention to the fact that, through knowledge production, indigenous research, like other research, must seek to be independent of political authorities and special interest groups. There was broad consensus that Sami self-determination in the research sector would primarily be important at a general level, since the Sami community could to a greater extent establish its own research priorities, including how to apply resources.

Someone pointed out that in what is described as Sami research up to today has had a strong focus on language and social science research, and been less concerned with other important subjects such as natural science and legal topics.

There was broad consensus that there is a need to reinforce Sami research, and that the Sami themselves should to a greater extent be able to stipulate their own research priorities. It was pointed out that discussions about Sami self-determination as regards research should not be polarised into a debate about «separation» or «integration», because there should be room for both. There was consensus that there is a need to sustain and strengthen special Sami institutions for higher education and research.

Dr. of Law Ánde Somby argued that there is a need for a dedicated, time-limit, efforts to strengthen Sami research. This would allow the Sami and Norwegian communities to work together to help the Sami community recover after several hundred years of injustice and oppression. He proposed that research be promoted over a period of 20 years to help mitigate the negative effects of past policies, and to

build up research capacity in the Sami community. Some called attention to the fact that the responsibility for this is not merely the province of the State, and that more Sami efforts should also be made to promote Sami research.

2.2.1 Is there a need for more Sami self-determination as regards research?

The seminar participants were encouraged to take a position on the question of whether there is a need for more Sami self-determination in the research sector and, if so, why. They were also asked to evaluate what consequences Sami self-determination could have for the Sami community.

Someone responded that there is already a high degree of self-determination in the research sector, since researchers can in principle set their own research priorities. There was nonetheless broad agreement among the seminar participants that at the collective level, there is a need for more Sami self-determination in the research sector, not least with a view to research priorities, organisation, quality assurance, accreditation and the funding of Sami research at Sami institutions. It was pointed out that Sami research groups should have far more autonomy than what the case is today. There was broad consensus that the stipulation of quality criteria for and the accreditation of Sami researchers are also important elements in the implementation of Sami self-determination in the research sector. Certain seminar participants were also of the opinion that setting up a special Sami University would strengthen autonomy in Sami research, since it would offer more opportunities for setting independent research priorities and could help ensure that Sami research will be granted more financial resources.

There was also agreement that it would not be natural to expect a strong institutional Sami influence in respect of research priorities in non-Sami research institutions, even if they to a certain extent also are involved in research relative to Sami issues.

Certain participants emphasised that research-based knowledge has a bearing on political decisions. For that reason, it was said that it is important that Sami research also addresses issues that are relevant to political

decisions that affect the Sami community. It was mentioned that more Sami self-determination as regards research, including research priorities and the funding of research projects, might pave the way for additional knowledge production that can be used as a knowledge base for important social policy decisions. In that connection, it was stated that Sami research does not currently focus on problems related to science, economy or law to any great extent, despite the fact that legal issues and problems associated with environmental management and the utilisation of natural resources are key issues in the Sami community. This ranking of priorities means *inter alia* that Sami research does not contribute enough to the public debate on these issues. Further, it was said that Sami research does not currently address issues associated with mineral extraction, predator issues, nature conservation, etc. Some mentioned today's lack of debate about problems associated with Sami research priorities and the role of research as support for social policy decisions.

There was consensus that financial parameters for Sami research and the processes for the allocation of research support do not do much to pave the way for Sami self-determination in the research sector. This issue is discussed in more detail in Section 2.2.4 below.

2.2.2 Is research an internal Sami affair?

The seminar participants were encouraged to take a position on the question of whether research is an internal Sami affair, and whether national borders have any importance relative to what should be considered an internal Sami affair.

There was broad agreement that national borders basically carry no importance for what should be regarded as an internal Sami affair, since the Sami are to be seen as one people with a common culture, language, traditions and values. The Sami community is a transnational community, where national borders are generally merely formal legal and political demarcations of the respective states' territories and sovereignty. Within the Sami community, national borders are of less importance. There was nevertheless agreement that national borders present formidable challenges to the Sami people when it comes to the goal of safeguarding and developing the Sami language,

culture, industries and society across national borders. Some participants argued that there is a need to reduce the importance of national borders for the Sami, so that Sami community life can be conducted across national borders in a more natural and unimpeded manner.

There was broad consensus that certain aspects of research are to be regarded as internal Sami affairs, while other aspects can be considered to be of a more pronounced universal nature. Some argued that research cannot be regarded as «internal» in the same way as Sami culture and language, but that the Sami community nevertheless has a legitimate right to control certain aspects of Sami research, including stipulating the general ranking of priorities for Sami research, the organisation of such research, administration, quality assurance and the preparation of a code of ethics for Sami research. Someone contended that research that applies to Sami conditions, regardless of who is performing the research, must be adapted to the type of code of ethics that is required by the Sami's status as an indigenous people.

Some contended that all research, including Sami research, must be free and independent and without political guidance. However, it was also argued that this should not impede political initiatives to stimulate Sami research groups, and not least to focus on research in areas of special importance to the Sami community and fields in which Sami researchers have an advantage. It was said that it is important to establish good conditions for research, based on the need for knowledge in the Sami community. However, attention was also called to the fact that the usefulness of Sami research is not limited to the Sami community since society-at-large and other indigenous peoples will also benefit from the results of Sami research.

Research priorities were identified by some seminar participants as an internal Sami affair since this is an important prerequisite for achieving the goal that Sami research ought to be able to respond relative to the actual need for knowledge in the Sami community. Several participants expressed that research communities face clear challenges in their efforts to identify the Sami community's need for knowledge. It was argued that Sami researchers

should be far more active in terms of communicating with the Sami community to try to identify society's need for knowledge. That being said, it was also pointed out that Sami research must still address problems that few or no one has articulated because this is also an important task for research.

2.2.3 The division of authority between the Sámediggi and the State

The seminar participants were encouraged to discuss and take a position on the question of which distribution of authority and responsibility they believe there should be between the Sámediggi – The Sami Parliament in Norway and the central government authorities with a view to Sami research. The seminar participants expressed very congruent views relative to this question and they can be summarised as follows:

Distribution of authority and responsibility

In the same way as central government authorities establish frameworks for national research, the Sami Parliament has to have the authority to establish frameworks for Sami research. Meanwhile, it was underlined that academic freedom has to be protected and guaranteed, and that the Sámediggi – The Sami Parliament shall neither regulate nor conduct Sami research.

The Sámediggi – The Sami Parliament ought to play a key part in articulating and surveying the need for knowledge in the Sami community, including the need for commissioned research.

The State's main task relative to Sami research should be to pave the way for the maintenance and reinforcement of Sami research, not least by contributing financial resources to Sami research that are commensurate with the need for knowledge in the Sami community and Sami research priorities.

The State must ensure that institutions that have Sami research as their main task are guaranteed sufficient funding to perform such research

In consultation with the Sámediggi – The Sami Parliament, the State should promote cooperation between Sami and other research institutions in the country and across national borders.

The State should generally pave the way for research that is based on the need for knowledge in the Sami community, taking into account the linguistic and cultural conditions in the Sami community.

It was nevertheless pointed out that as of today, the Sámediggi – The Sami Parliament has limited expertise in the world of academia, and that it does not appear to have given priority to research and higher education as institutions. For example, at the administrative level, the Sámediggi – The Sami Parliament has a relatively large educational department, but this department lacks expertise when it comes to research. Some seminar participants contended that as of today, institutionally speaking, the Sámediggi – The Sami Parliament gives precedence to basic education rather than to higher education and research. It was also pointed out that the Sámediggi – The Sami Parliament does not pave the way for the development and production of Sami teaching materials for Sami higher education.

The conclusion of the discussion about the distribution of authority and responsibility between the Sámediggi – The Sami Parliament and the central government authorities was, in many ways, that the Sámediggi – The Sami Parliament, in principle, ought to have the authority to establish parameters for Sami research and to undertake a general ranking of priorities for Sami research, but that the Sámediggi – The Sami Parliament should act like an institution would not, as of today, be in a position to fully deal with such a task.

2.2.4 Structural challenges

Insufficient financial allocations for Sami research and decision-making processes in connection with applications for research funding were identified as representing general structural challenges relative to bringing Sami self-determination to fruition in the research sector. Certain participants were *inter alia* of the opinion that the process for allocating support for research suffers from a lack of transparency and insight. In that connection, it was pointed out that research projects for which funding is applied from the Research Council of Norway are subject to anonymous objective assessments, and that this is not satisfactory from the applicant's vantage point.

Today, research that applies to Sami conditions is generally funded through the Research Council of Norway's Programme for Sami Research.⁷¹ The programme's paramount objective is to strengthen Sami research and help shed light on the diversity and variations in Sami communities by conducting research in areas such as: (1) language, traditional knowledge, oral traditions and literature; (2) cultural expressions; (3) demography and demographic trends; (4) living conditions and quality of life; (5) childhood conditions for children and young people; (6) modern Sami society-building, and (7) resources and legal conditions. It was argued that the Sami programme administers insufficient funds compared with existing Sami research needs and initiatives and that, for that reason, we need more financial resources for Sami research. There was broad consensus that today's financial parameters place strict constraints on Sami research and that this is one of the most prominent challenges facing Sami research. Certain seminar participants were of the opinion that the establishment of a separate Sami Research Council would promote Sami self-determination in respect of research.

There was also broad agreement that Sami research itself can increase its autonomy by applying for alternative funding for research projects, in addition to State financing, e.g. EU funding and funding from different private foundations. It was pointed out that a series of foreign foundations, for example, the Rockefeller and Ford foundations, help fund research projects that apply indigenous peoples' issues.

2.3 Seminar on Sami cultural self-determination

Gáldu's seminar on Sami cultural self-determination was arranged at *Diehtosiida* in Kautokeino from 22 to 23 October 2009. The seminar programme was a mixture of lectures and plenary discussions, cf. the enclosed seminar programme (attachment 5) and list of participants (attachment 6). The following problems formed the framework for the discussions at this workshop:

Issues

- 1) *How should the concept of culture be understood in the Sami context?*
- 2) *Do today's Sami have the opportunity to freely determine their own cultural development, and what changes, if any, are required to achieve Sami cultural autonomy and, if applicable, why?*
- 3) *Is culture an internal Sami affair and, if so, why?*
- 4) *Does the State have any part to play relative to Sami culture?*
- 5) *Do national borders have any bearing on what is regarded as an internal Sami affair?*
- 6) *Does Sami cultural autonomy mean anything to the development of the Sami community?*

2.3.1 Cultural self-determination – an international law perspective

The workshop began with a lecture by Mattias Åhrén on the Sami's right to practise, preserve and develop their own culture under international law. Åhrén was of the opinion that the concept of culture in the Sami context must be defined very broadly, so that in principle, it covers the whole Sami community and Sami way of life, including the use of land and natural resources. He was of the opinion that the Sami's collective right to culture can be equated with their right to self-determination, because a nation's collective right to culture and identity is closely related to the right to self-determination. He referred, among other things, to the fact that under international law, there has been a parallel development and recognition of the collective right to culture and identity and the right to self-determination. Åhrén reported on the trend in international law as regards the collective right to culture and self-determination, including the right to autonomy. He identified three important phases in this trend: (1) the development of jurisprudence relative to the understanding of Article 27 in the UN Covenant on Civil and Political Rights, (2) the adoption of ILO Convention No. 169 on Indigenous and Tribal Peoples in independent countries, and (3) international recognition of indigenous peoples' right to self-determination.

71 <http://www.forskningsradet.no/servlet/Satellite?c=Page&pagename=samisk%2FHovedsidemal&cid=1228296590860>

Åhrén mentioned that by way of introduction, through the interpretation of Article 27 of the Covenant for Civil and Political Rights, there was recognition of indigenous peoples' collective right to culture. The right to culture, as embodied in Article 27 of the Covenant for Civil and Political Rights, is worded as a right for individuals who belong to minorities. Article 27 establishes that individuals who belong to minorities should not be denied the right to enjoy and practise their culture along with the other members of the community. Åhrén pointed out that the UN's Human Rights Committee - the covenant agency with the mandate to monitor the implementation of the Covenant on Civil and Political Rights – gradually by indigenous standards developed an interpretation of Article 27 that underlines the fact that this provision also has a collective dimension.⁷² This can be seen *inter alia* in the Committee's hearing of a Sami appeal from Sweden (*the Kitok case*), in which the Committee concluded in 1988 that Sami reindeer husbandry, by virtue of being a collective traditional Sami business activity, is within the purview of Article 27 of the Covenant of Civil and Political Rights.⁷³ Since then, on several occasions, the Committee has pointed out that under Article 27 of the Covenant for Civil and Political Rights, the states have a positive obligation to respect indigenous peoples' collective rights.⁷⁴ Åhrén also emphasised that the Committee's practice also indicates that Article 27 of the Covenant for Civil and Political Rights must be interpreted in the light of Article 1 of the Covenant for Civil and Political Rights, which deals with the right to self-determination.⁷⁵ He concluded that this shows that it is difficult, legally speaking, to establish a clear distinction between indigenous peoples' collective right to culture and their right to self-determination.

Åhrén described the adoption of ILO Convention No. 169 on Indigenous and Tribal

Peoples in Independent Countries in 1989 as the next step in the international development of recognition of indigenous peoples' collective rights. The ILO convention establishes explicit protection for indigenous peoples' collective rights. One important objective of the convention is to help ensure that indigenous peoples can exist as an independent people within the framework of the states in which they live, not least by exercising control over their own institutions, their ways of life and economic development, and by preserving and developing their identity, culture and language.

He underlined that the ILO Convention's Article 2 (2) (b) establishes an obligation for the State to protect indigenous peoples' collective right to culture. Further, Article 7 of the convention establishes that indigenous peoples, insofar as possible, are entitled to exercise control over their own economic, social and cultural development. This provision is closely related to the right to self-determination, because a people, by virtue of its right to self-determination, is entitled to take decisions about its own economic, social and cultural development. Further, Article 23 of the convention establishes that handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Åhrén concluded that the ILO convention recognises and establishes protection for indigenous peoples' collective right to culture. It was underlined that even if the ILO convention is quiet about the right to self-determination, it nonetheless contains provisions that are closely related to the right to self-determination.

Åhrén described recognition of indigenous peoples' right to self-determination as the third phase in the international recognition of indige-

72 *Ivan Kitok v. Sweden* (Communication No. 197/1985), Views adopted on 27th of July, 1988, Report of the Human Rights Committee, GAOR, Forty-third session, Suppl. No. 40 (A/43/40). *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada* (Communication 167/1984), views adopted on 26th of March, 1990, Report of the Human Rights Committee, GAOR, Thirty-Eighth session, Suppl. No. 40 (A/38/40). *Ilmari Lämsman et al. v. Finland* (Communication No. 511/1992), Views adopted on 26th of October, 1992, Report of the Human Rights Committee, Vol. II, GAOR, Fiftieth session, Suppl. No. 40 (A/50/40). *Jouni E. Lämsman et al. v. Finland* (Communication No. 671/1995), Views adopted on 30th of October, 1996, Report of the Human Rights Committee, Vol. II, UN Doc. No. A/52/40).

73 *Ivan Kitok v. Sweden* (Communication No. 197/1985).

74 General Comment 23 (50), UN Doc. CCPR/C/21/Rev.1/Add.5, para. 6.2. Concluding Observations on Finland, UN Doc. CCPR/C/79/Add. 91, para. 10, on New Zealand, 7th of August, 2002, UN Doc. CCPR/C/75/NZL, para. 4, on Guatemala, UN Doc. CCPR/CO/72/GTM, and on the Philippines, UN Doc. CCPR/CO/79/PHIL.

75 *Mahuika loc. cit.* (note 98), para. 9.2. Martin Scheinin, *Indigenous Peoples' Rights under the International Covenant on Civil and Political Rights*, page 9. General Comment No. 23 (50) (art. 27), UN Doc. CCPR/C/21/Rev. 1/Add. 5, para. 7.

nous peoples' collective rights. He recalled that the Human Rights Committee, through its practices, has recognised that indigenous peoples are entitled to self-determination, and that the UN General Assembly has recognised indigenous peoples' right to self-determination through the adoption of the UN Declaration on the Rights of Indigenous Peoples. It was otherwise also pointed out that Sweden, through its periodic reporting to the UN's convention agencies, has recognised that indigenous peoples, including the Sami, have the same right to self-determination as all other peoples according to the common Article 1 of the UN covenants of 1966.⁷⁶

Åhrén reported on the reason for and the content of Article 1 of the Declaration that recognises that indigenous peoples – at the individual level and collectively as a people – are entitled to take advantage of all the rights and basic freedoms as expressed in the UN pact, the UN Declaration on Human Rights and other international human rights instruments. He also stated that Article 2 of the Declaration expressly stipulates that indigenous peoples and individuals belonging to indigenous peoples are equal to all other individuals and people. Åhrén maintained that Article 3 of the Declaration recognises that indigenous peoples have the same right to self-determination as all other peoples, including the right to determine their own economic, social and cultural development, while Article 4 emphasises that indigenous peoples, in implementing the right to self-determination, have the right to self-determination or self-government in matters relating to their internal and local affairs. Based on the view that Sami culture is to be regarded as an internal Sami affair, Åhrén concluded that the Sami's right to self-determination also includes culture and cultural affairs. He also mentioned that Article 31 of the Declaration supports the conclusion that indigenous cultures are to be regarded as internal affairs for indigenous peoples, and that their collective right to culture is also included in their right to self-determination. He emphasised that modern international law recognises that indigenous peoples are entitled

to self-determination, and that this right must not be confused with the right of co-determination, which is a less comprehensive right than the right to self-determination. He concluded that this means that in the area of culture, the Sami are entitled to cultural autonomy.

Åhrén then analysed indigenous rights related to specific cultural aspects and expressions. He pointed out in that connection that the Declaration on the Rights of Indigenous Peoples establishes protection for indigenous peoples' right to a collective identity and their cultural heritage. Pursuant to Article 5 in the Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to maintain and strengthen their distinct cultural institutions. Article 11 establishes that indigenous peoples have the right to practise and revitalise their cultural traditions and customs, and that according to Article 13, they have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies and literatures.⁷⁷ He also observed that Article 31 of the Declaration expressly recognises indigenous peoples' right to control and manage their cultural heritage, including their traditional cultural expressions.

He was of the opinion that the Sámediggi – The Sami Parliament has an important task and a general responsibility when it comes to the implementation of Sami cultural autonomy, underlining at the same time that the responsibility does not rest with the Sámediggi – The Sami Parliament alone. He noted that in a cultural context it is also necessary to take into account that the responsibility for implementing Sami cultural autonomy is in some cases at the local level within different sectors, and at a pan-Sami level. He mentioned that a large part of the Sami culture is specific to certain Sami regions, e.g. southern Sami, northern Sami and Skolt Sami. He emphasised that such regional and cultural variations must be respected in full, and that the Sámediggi – The Sami Parliament does not have the right to override regional cultural priorities. He also pointed out, however, that certain parts of Sami culture and cultural heritage are not of a local nature, but

⁷⁶ Sweden's periodic report to the UN's Human Rights Committee: The UN document CCPR/C/SWE/6, 5 December 2007, §§ 5-6, and Sweden's periodic report to the UN Committee for Financial, Social and Cultural Rights, UN document E/C.12/SWE/5, 6 September 2006, §§ 7-9.⁷⁶ Sweden's periodic report to the UN's Human Rights Committee: The UN document CCPR/C/SWE/6, 5 December 2007, §§ 5-6, and Sweden's periodic report to the UN Committee for Financial, Social and Cultural Rights, UN document E/C.12/SWE/5, 6 September 2006, §§ 7-9.

⁷⁷ Cf. also Article 12 (1) and Article 15 of the Declaration.

of a pan-Sami nature. This part of Sami culture refers to the Sami nation as a whole, and so it must therefore be protected at a pan-Sami level. Finally, he pointed out that certain parts of Sami culture must be analysed on the basis of a sectoral approach. Åhrén was of the opinion that even if the Sámediggi – The Sami Parliament has an important role to play relative to the various cultural sectors, the parliament must nonetheless respect that the expertise in the various cultural sectors rests with the Sami cultural organisations. Sami cultural organisations, e.g. organisations that are concerned with yoiks, literature and duodji (traditional Sami handicrafts), should therefore have a key role in the implementation of Sami cultural autonomy.

2.3.2 The concept of culture

The seminar participants were encouraged to discuss the question of how the concept of culture should be understood in the Sami context, not least in the light of Gunn Britt Retter's lecture on the concept of culture in the Sami context. Retter was of the opinion that the concept of culture is to be regarded as a general term for a people's values, language, traditions, traditional knowledge, lifestyle and other common characteristics, which they maintain and try to pass on to new generations. She called attention to the fact that Sami language and culture can only be maintained if the material basis for Sami culture is safeguarded, including the Sami's right to and access to use their own lands and natural resources. Retter was also of the opinion that a dynamic local Sami community is a prerequisite for preserving and passing on Sami culture.

There was agreement among the seminar participants that it is difficult to arrive at an unequivocal definition of culture, not merely in the Sami context, but also culture in the general context. All the same, it was agreed that the concept of culture is intended to describe existing phenomena and distinctive features in a society. There was broad consensus that the concept of Sami culture is normally used to describe and identify phenomena and expressions that are alive and are maintained in the Sami community, as opposed to what is usually described as «museum culture». There was also concord about it being necessary to dis-

tinguish between a general concept of culture and a sector-based concept of culture.

Some seminar participants were of the opinion that if one tries at all to define the concept of culture in the Sami context, the definition must be comprehensive enough to comprise all of Sami society, including Sami industries, lifestyles, values, languages, cultural expressions, etc. Some contended that dynamic local Sami communities where the people practise Sami industries and businesses such as reindeer husbandry, agriculture, hunting and trapping etc. are absolute prerequisites for a dynamic Sami culture.

Some participants argued that dynamic traditional Sami local communities are an absolute prerequisite for the general Sami culture. It was said that Sami culture in urban areas or cities will not survive without dynamic traditional Sami local communities, while the Sami culture in the local Sami communities does not depend on the urban Sami environment. Some seminar participants disagreed strongly with such a description and understanding of Sami culture, arguing that one can also have dynamic Sami culture in urban areas, and that Sami culture, like all other culture, is not static because it continuously develops and changes. Someone underlined that one can have a Sami community and exercise Sami culture in urban areas, and that access to land and resources is not always a prerequisite for Sami cultural practices.

Other participants pointed out that no culture exists in isolation, and that Sami culture is therefore continuously influenced by other cultures and values. It was also pointed out that it might be useful to distinguish between the right to culture and how one chooses to exercise this right. In that connection, it was pointed out that it must be up to the Sami as rightsholders to decide how this right shall be exercised and to draw the dividing line between Sami culture and other culture. It was underlined that this in no way implies that all that is not Sami will or should be rejected. It was argued, for example, that art, including Sami art, is independent, and Sami artists must have opportunities to express themselves in ways that some may not consider to be Sami forms of expression.

There was broad consensus that it is natural

and understandable that every attempt to define Sami culture will be influenced by the frame of reference of the person in question, including personal experience, as well as their historical, linguistic and geographical frame of reference. It was explained that the Sami, in addition to their common frame of reference by virtue of Sápmi and common «Sami-ness», also have other frames of reference that are related to regional, local and personal factors. This was exemplified by the fact that Sami artists, who all focus on Sami culture, can have totally different understandings of Sami culture, and that some Sami artists put more emphasis on traditional factors in their definition of Sami culture, while others have a more dynamic understanding of culture. In that connection, reference was made to the discussion about what is to be regarded as Sami yoiks, e.g. whether yoiks performed in a different way from what is usually described as «traditional yoiks» are to be regarded as Sami yoiks or music.

There was consensus that there are many factors that unite the Sami, but that there are also very great differences between Sami regions and local communities. This means that it is difficult to arrive at any pan-Sami understanding of the concept of Sami culture. The concept of culture must be understood in a way that is sufficiently dynamic to also include local Sami cultures.

2.3.3 Do the Sami have the opportunity to determine their own cultural development today?

The seminar participants were encouraged to discuss the question of whether the Sami today have the opportunity to freely determine their own cultural development, and what changes might be required to achieve Sami cultural autonomy and, if so, why.

It was pointed out that there is now general agreement in principle in society that the Sami themselves should decide their own cultural development, and that forced assimilation is not acceptable. This was considered a good point of departure for more Sami cultural autonomy and Sami cultural sovereignty. Notwithstanding, the participants identified a number of factors considered to entail clear challenges relative to the goal of strengthening Sami cultural autonomy:

Despite the official acknowledgement that the State of Norway has been founded on the territory of two peoples – Norwegians and Sami – this nevertheless does not come sufficiently to the fore in Norwegian-Sami policy. Important general framework conditions for Sami culture, in particular financial parameters, are still largely determined and governed by central government authorities.

Sami cultural development is impeded by poor financial parameters, and by the fact that increased financial grants are required for Sami cultural purposes. It was, for example, shown that today's low financial transfers for Sami art and cultural organisations serve to erode the basis for the practice of Sami culture.

The Sami's use of land and resources in their own territories is an important material prerequisite for Sami culture. The lack of clarification about questions of rights has had an adverse impact on Sami culture. Some contended that it is necessary to have strong legal protection for the common Sami areas in Norway.

Sami industries are also important bearers of culture and a material prerequisite for Sami culture. Weak legal protection for such industries stands out as a fundamental problem for the exercise of Sami culture, e.g. relative to Sami fishing, hunting and rough pasturing.

It was pointed out that even though Sami reindeer husbandry has relatively strong legal protection under Norwegian law, the areas used for reindeer husbandry are under tremendous pressure from society-at-large, not least as a result of the competing interests of society-at-large that are associated with these areas. Someone also mentioned that the Sami reindeer husbandry today is no longer a question of the practice of culture to any great extent, since the industry now has a very strong focus on the bottom line, not least as a result of the State's financial framework conditions for reindeer husbandry.

Some participants underlined that one must take into account that the Sami live in a country with great material affluence, and that this also creates new financial demands on the Sami community, which may be at the expense of cultural interests. Among other things, it was pointed out that if reindeer herders are to have approximately the same material standard of living as other segments of the Sami com-

munity, it is necessary to have financial support from the State which, in some cases, is probably not congruent with principal cultural interests.

Some participants argued that the Sámediggi ought to bear overall political responsibility for traditional Sami industries because these industries form an important material basis for Sami culture. Sami control of its industries ought to be considered a natural part of Sami cultural autonomy.

Sami cultural autonomy established by law in national legislation is an important prerequisite for genuine Sami cultural autonomy.

2.3.4 Is culture an internal Sami affair?

The seminar participants were asked to take a position on the question of whether culture should be regarded as an internal Sami affair, and whether the State has any role to play relative to Sami culture. The participants were also encouraged to take a position on the question of whether national borders have any importance relative to what should be considered an internal Sami affair.

There was consensus that Sami culture is an internal Sami affair, and that the State's role is primarily to serve as a facilitator. There was consensus that the State's role is primarily to ensure the requisite legal protection for Sami culture and to pave the way for funding for Sami cultural autonomy.

Reference was made to Article 4 of the Declaration, which establishes that indigenous peoples have the right to ways and means for financing their autonomous functions. It was also stated that the Sami's right to cultural autonomy establishes a common responsibility for those countries in which the Sami live, also as regards ways and means. Among other sources, reference was made to Article 36 of the Declaration, which establishes that indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts and cooperation, including activities for cultural purposes, and that the states are responsible for facilitating this cross-border cooperation. There was agreement that national borders in principle carry no importance for what should be regarded as an internal Sami affair, since the Sami are one people living in four countries. There was also agree-

ment that national borders should not be an impediment to the exercise of Sami culture. It was underlined that Sami cultural autonomy should apply all Sami territory.

Some seminar participants were of the opinion that the adoption of any Nordic Sami Convention, in the form proposed by the Nordic expert group, would add to Sami self-determination, including cultural autonomy, in a manner that is commensurate with the states' commitments under international law in respect of the Sami.

2.3.5 Is cultural autonomy of importance for social development?

The seminar participants were asked to discuss and take a position on the issue of whether Sami cultural autonomy is of significance relative to the development of the Sami community.

There was agreement among the seminar participants that Sami cultural autonomy is an important prerequisite for social development that is commensurate with Sami values, interests and needs. In that connection, reference was made to earlier submissions and arguments in favour of Sami cultural autonomy. There was also agreement that it is necessary to engage in an internal Sami process under which one seeks to clarify one's ranking of priorities and opinions before establishing a concrete dialogue with central government authorities on the content and implementation of Sami cultural autonomy. It was underlined that many aspects of Sami culture are of a pan-Sami nature and interest, and for that reason, that Sami cultural autonomy should also be discussed in such a pan-Sami perspective. There was broad-based agreement that the Sami parliaments and Sami cultural organisations have a special responsibility in this respect, not least with a view to initiating such an internal process regarding the content and implementation of Sami cultural autonomy.

2.4 Sami self-determination and finances

Questions associated with the financial aspects of Sami self-determination were a recurring topic during all three workshops. The Sami Parliament's Director General Rune Fjellheim delivered lectures on self-determination and finances at two of the seminars.⁷⁸ This chapter is generally based on these two lectures.

⁷⁸ The seminars were on self-determination in this field of research and cultural autonomy, respectively.

Fjellheim took his point of departure in the UN Declaration on the Rights of Indigenous Peoples which states that by virtue of their right to self-determination, indigenous peoples are entitled to autonomy or self-government in matters that concern their internal and local affairs, and the right to ways and means for such autonomy schemes.⁷⁹ He said that Articles 3 and 4 of the Declaration on the Rights of Indigenous Peoples, along with other relevant provisions of international law, form the basis for the Sami's right to self-determination and for setting up a self-government scheme.

Fjellheim questioned whether the current scheme for financing the Sámediggi's operations and Sami policy initiatives is appropriate for Sami self-determination. He pointed out that Sami policy initiatives have historically been financed over the central government budget, but that certain grants have been transferred to the Sámediggi – The Sami Parliament over time, and designated as grants for Sami matters.

Fjellheim was of the opinion that today's funding scheme is not particularly appropriate for giving the Sami community and the Sámediggi – The Sami Parliament an opportunity to develop their own Sami policy initiatives or instruments. He ascertained that today's budget regime and management of Sami policy instruments are not consistent with the idea of Sami self-determination and the Sami's right to establish their own autonomy schemes for internal and local affairs. Today's scheme means that the Sámediggi – The Sami Parliament cannot in actual practice take decisions about the financial, social and cultural development of the Sami community.

Fjellheim reported on today's budget model in the field of Sami policy. He observed that the budget model sets the stage for the Sámediggi – The Sami Parliament to have some budgetary latitude as a result of the parliament's independent and autonomous position as an elected political body. Sectoral ministries with responsibilities related to Sami policy allocate money to the Sámediggi – The Sami Parliament as a general allocation. These allocations are added

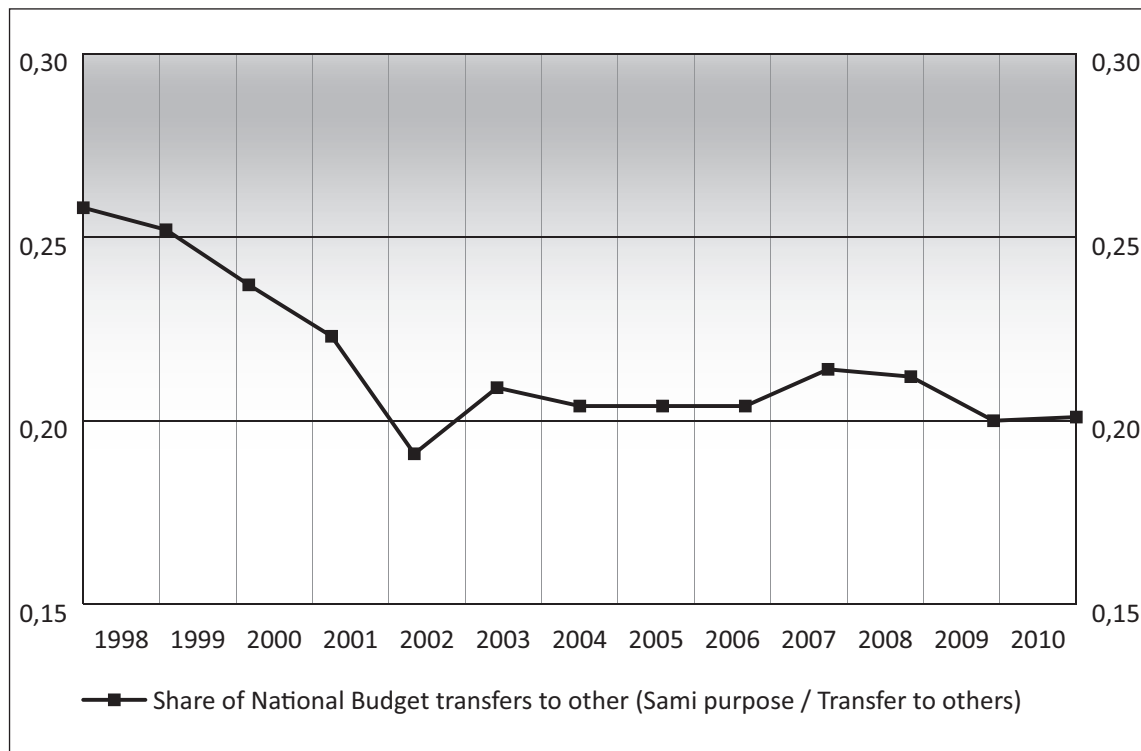
together by the Sámediggi – The Sami Parliament and then distributed for a variety of special objectives. Formally speaking, it is up to the Sámediggi – The Sami Parliament to distribute this general allocation. In 2009, these allocations aggregated about MNOK 388. He pointed out, however, that most of the Sámediggi – The Sami Parliament's allocations consist of transferred schemes that the State has administered previously, and that the parliament therefore has little opportunity to rank its own priorities. Many of these transfers have a history that predates the Sámediggi – The Sami Parliament considerably.

Fjellheim stated that since the establishment of the Sámediggi – The Sami Parliament in 1989, there has been relatively weak real growth in grants for Sami policy purposes, especially if one does not take into account the allocations set aside for the construction of the Sami Parliament Building. He mentioned that during the period from 1998 to 2001, there was a genuine decline in grants for Sami purposes, but that there has been a certain real growth since. Fjellheim pointed out *inter alia* that overall grants for Sami purposes had seen genuine growth of 47 per cent from period 1998 to 2010. During the same period, the increase in other policy areas, expressed as what is described as *Transfers to other (less the National Insurance Scheme and the Government Pension Fund Global)*, has climbed by 88 percent.⁸⁰

Fjellheim reported that as of today, the Sámediggi – The Sami Parliament administers only about 40 per cent of the aggregate annual grants for Sami purposes, while the remaining 60 per cent is administered by the State. He also pointed out that a mere 7 per cent of the Sámediggi – The Sami Parliament's budget for 2008, comparable to about MNOK 22, is based on the Sámediggi – The Sami Parliament's own ranking of priorities, while the remaining 93 per cent has been set aside for initiatives that the Sámediggi – The Sami Parliament has «inherited» from the State. He concluded that this bears witness to the fact that as of today the Sami do not have genuine self-determination. He was of the opinion that

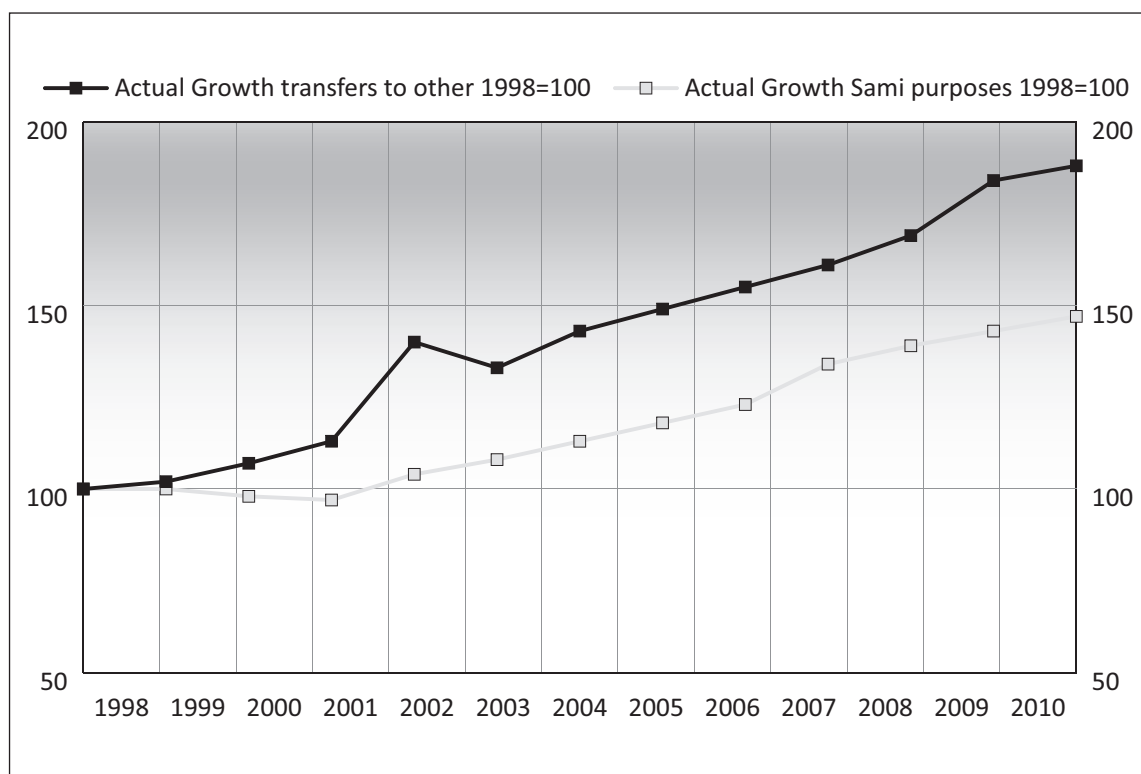
79 See Article 4 of the Declaration on the Rights of Indigenous Peoples

80 Total transfer to other (Table 1.5 p. 236, National Budget 2010, Prop. 1 – «Yellow Book» for 2004-2010, Table 1.2, p. 217, White Paper No. 1 (2003-2004) «Yellow Book» for the years 1998-2003), less transfers to the Government Pension Fund Global and the National Insurance Scheme



the Sámediggi – The Sami Parliament risks becoming a steward of the State’s Sami Policy, unless one manages to secure a significantly different funding scheme. He exemplified this *inter alia* by pointing out that of the MNOK 17 increase in allocations in 2009, the State had earmarked MNOK 10 (60 per cent) for specific objectives in advance.

There was broad-based agreement among the seminar participants that this is not much given the fact that the Sámediggi – The Sami Parliament now bears the general political responsibility for the development of the Sami community. It was also agreed that it was difficult to develop genuine Sami autonomy or self-government unless there is a radical re-



vamping of the funding for Sami policy activities. Several participants argued that today's funding scheme can go a long way towards eroding the Sámediggi's – The Sami Parliament's position in the Sami community, since it might be more

expedient for Sami institutions and special interest groups to deal directly with the State since the Sámediggi – The Sami Parliament has little say about the financial framework conditions for activities in the Sami community.

3. Conclusion

There is broad-based agreement that the Sami have the right to self-determination as a people in accordance with the rules of international law, including the right to make decisions about their economic, social and cultural development, and to freely manage their natural resources for their own purposes. The Sami's right to self-determination ensues from provisions embodied in several instruments of international law, including the UN Covenant on Civil and Political Rights, the International Covenant on Financial, Social and Cultural Rights, and the UN Declaration on the Rights of Indigenous Peoples.

The Declaration on the Rights of Indigenous Peoples contains provisions which the global community considers to be the minimum standards for indigenous rights. The implementation of these rights is imperative for indigenous peoples' ability to survive as a people. This also applies to the Sami people.

The Declaration on the Rights of Indigenous Peoples recognises that indigenous peoples have the right to self-determination, and that, in the implementation of this right, they are also entitled to autonomy or self-government in matters relating to their internal and local affairs, and the right to ways and means for such autonomy schemes. Autonomy and self-government are often identified by the degree of the actual and formal independence they have as autonomous units in political decision-making processes. Autonomy schemes represent no threats to the State's territorial integrity since such schemes must naturally be implemented within the constitutional framework of the State.

The Declaration on the Rights of Indigenous Peoples is not formally a legally binding instrument in the same way as an international covenant that has been ratified by the State. However, that does not mean that the Declaration is not significant relative to the assessment of the states' obligations in respect of indigenous peoples. The Declaration on the

Rights of Indigenous Peoples is in compliance with provisions that are embodied in legally binding conventions and international customary law. There is broad international agreement that the right to self-determination is based on international customary law, and that it expresses a pre-emptory norm of international law (*jus cogens*).

The Declaration on the Rights of Indigenous Peoples distinguishes between indigenous rights based on their right to self-determination, and their rights within the framework of the nation state's general political system. The Declaration on the Rights of Indigenous Peoples distinguishes between indigenous peoples' right to take independent decisions on matters involving their internal local affairs, and their right to participate in external decision-making processes that can have an impact on them. Indigenous peoples' right to be consulted on matters that affect them is relevant relative to decision-making processes where it is people other than indigenous peoples who have decision-making authority.

The Declaration on the Rights of Indigenous Peoples establishes that the State, in collaboration with the indigenous peoples in question, shall implement appropriate initiatives, including legislative initiatives, to bring the provisions of the Declaration to fruition.

Gáldu's workshops on Sami self-determination showed that there was broad consensus among seminar participants that education, research and culture, respectively, are to be regarded as internal and local Sami affairs, where it would be natural to have extensive Sami autonomy and self-government, cf. Chapter 2. Bringing Sami autonomy to fruition within these areas requires a more detailed dialogue between the Sámediggi – The Sami Parliament and the central government authorities to identify the terms for and scope of Sami self-determination, including the economic aspects of self-determination.

Appendix 1: Programme

Seminar on Sami self-determination in the education sector

Seminar on Sami self-determination in the education sector

Wednesday, 14 October 2009

- 09:00 – 09:15 Opening, Gáldu, Magne Ove Varsi
09:15 – 10:00 Background and objectives, John B. Henriksen
10:00 – 10:45 Is there a need for more Sami self-determination in the educational sector?
Asta Mitkijá Balto
10:45 – 11:00 Coffee
11:00 – 12:00 Discussions and wrap-up
12:00 – 01:00 Lunch
01:00 – 02:00 What structural changes are required to achieve Sami self-determination in the educational sector? Jan Henry Keskitalo and Johan Strömgren
02:30 – 02:45 Coffee
02:45 – 03:30 Discussions and wrap-up
07:00 p.m. Dinner

Thursday, 15 October 2009

- 09:00 – 09:15 Introduction to the «cafe model»
09:15 – 12:00 Group discussions, break-away room, including coffee

Topics for discussion:

Is there a need for more Sami self-determination in the education sector and, if so, why, and what consequences (positive/negative) can ensue from Sami self-determination in the education sector?

Is education an internal Sami matter and, if so, why?

Do national borders have any bearing on what is regarded as an internal Sami matter?

Is today's Sami community in a position to accept more responsibility for education, and what structural changes, if any, are required to achieve genuine Sami self-determination in the education sector?

Which distribution of authority and responsibility ought to exist between the Sámediggi and central government authorities, respectively, relative to the education sector?

- 12:00 – 01:00 Lunch
01:00 – 02:30 Plenary discussions
02:30 – 02:45 Coffee
02:45 – 03:30 Summary and closing, John B. Henriksen and Magne Ove Varsi

Appendix 2: List of participants

Seminar on Sami self-determination in the education sector

1. Balto, Asta Mitkijá	Sami University College, Associate Professor
2. Eira, Márjá M. H.	Kautokeino lower secondary school, teacher
3. Eskonsepo, Berit Nystad	University of Tromsø, Language consultant
4. Gaup, Nils Ole	Independent Consultant/Interpreter
5. Guttorm, Trygve	Sami upper secondary school, Inspector
6. Halonen, Lars- Joar	Lavangen Language Centre, director
7. Hansen, Janne	Gáldu, Senior Adviser
8. Henriksen, John B.	Gáldu, Project Coordinator
9. Varsi, Magne Ove	Gáldu, Director
10. Keskitalo, Jan Henry	Sami University College, Assistant Professor
11. Magga, Ulla- Maarit	Sami University College, student
12. Nikkinen, Olav Sara	Kautokeino upper secondary school, teacher
13. Sara, Margrete	Sami University College, student
14. Sárgon, Sollaug	Kautokeino upper secondary school, teacher
15. Skum, Inga Berit S.	Bálgá mánáidgárdi – kindergarten, director
16. Strömgren, Johan	Sami University College, PhD research fellow
17. Wuolab, Anne	Gáldu, Project Team Member

Appendix 3: Programme

Seminar on Sami self-determination in the research sector

Seminar on Sami self-determination in the research sector

Monday, 19 October 2009

- 09:00 – 09:15 Opening, Gáldu, Magne Ove Varsi
09:15 – 10:00 Background and objectives, John B. Henriksen
10:00 – 10:45 Challenges related to the economic aspects of self-determination, Rune Fjellheim
10:45 – 11:00 Coffee
11:00 – 11:45 A paradigm shift in indigenous research, Jelena Porsanger
11:45 – 12:00 Questions, comments and discussions
12:00 – 01:00 Lunch
01:00 – 01:45 Sami self-determination – research, Ánde Somby
01:45 – 02:45 Questions, comments and discussions
02:45 – 03:15 Coffee
03:15 – 03:45 Summary, John B. Henriksen
07:00 p.m. Dinner

Tuesday, 20 October 2009

- 09:00 – 12:00 Plenary discussions:

Topics for discussion:

Is there a need for more Sami self-determination in the research sector and, if so, why, and what consequences (positive/negative) can ensue from Sami self-determination in the research sector?

Is research an internal Sami matter and, if so, why?

Do national borders have any bearing on what is regarded as an internal Sami matter?

Is today's Sami community in a position to accept more responsibility for research, and what structural changes, if any, are required to achieve genuine Sami self-determination in the research sector?

Which distribution of authority and responsibility ought to exist between the Sámediggi and central government authorities, respectively, relative to the research sector?

- 12:00 – 01:00 Lunch
01:00 – 02:30 Plenary discussions
02:30 – 02:45 Coffee
02:45 – 03:30 Summary and closing, John B. Henriksen and Magne Ove Varsi

Appendix 4: List of participants

Seminar on Sami self-determination in the research sector

1. Fjellheim, Rune	Sámediggi, Director General
2. Porsanger, Jelena	Sami University College, Associate Professor
3. Somby, Ánde	University of Tromsø, Associate Professor
4. Gaup, Nils Ole	Independent Consultant/Interpreter
5. Sara, Mikkel Nils	Sami University College, Assistant Professor
6. Østmo, Liv	Sami University College, Assistant Professor
7. Hansen, Janne	Gáldu, Senior Adviser
8. Henriksen, John B.	Gáldu, Project Coordinator
9. Varsi, Magne Ove	Gáldu, Director
10. Wuolab, Anne	Gáldu, Project Team Member
11. Balto, Asta Mitkijá	Sami University College, Associate Professor
12. Mathiesen, Svein D.	Sami University College, Professor
13. Helander, Kaisa	Sami University College, Assistant Professor
14. Helander, Nils Øivind	Sami University College, Professor
15. Vars, Laila Susanne	Sámediggi in Norway, Vice President

Appendix 5: Programme

Seminar on Sami cultural self-determination

Seminar on Sami cultural self-determination

Thursday, 22 October 2009

- 09:00 – 09:15 Opening, Gáldu, Janne Hansen
09:15 – 10:00 Background and objectives, John B. Henriksen
10:00 – 10:45 Challenges related to the economic aspects of self-determination, Rune Fjellheim
10:45 – 11:00 Coffee
11:00 – 11:45 The Sami's' right to practice, preserve and develop their own culture - the perspective of international law, Mattias Åhrén
11:45 – 12:00 Questions, comments and discussions
12:00 – 01:00 Lunch
01:00 – 01:45 The concept of culture in the Sami context – what does that include? Which impact does cultural autonomy have on the development of the Sami community? What does cultural autonomy entail in actual practice? Gunn Britt Retter
01:45 – 02:15 Questions, comments and discussions
02:15 – 02:30 Coffee
02:30 – 03:00 Summary, John B. Henriksen

Friday, 23 October 2009

- 9:00 – 12:00 Plenary discussions:

Topics for discussion:

How should the concept of culture be understood in the Sami context?

Do today's Sami have the opportunity to freely determine their own cultural development, and what changes, if any, are required to achieve more Sami cultural autonomy and, if applicable, why?

Is the question of culture an internal Sami matter and, if so, why? Does the State have any part to play relative to Sami culture?

Do national borders have any bearing on what is regarded as an internal Sami matter?

What impact does cultural autonomy have on the development of the Sami community?

- 12:00 – 01:00 Lunch
01:00 – 02:30 Plenary discussions
02:30 – 02:45 Coffee
02:45 – 03:30 Summary and closing, *John B. Henriksen and Janne Hansen*

Appendix 6: List of participants

Seminar on Sami cultural self-determination

1. Fjellheim, Rune	Sámediggi, Director General
2. Gaup, Elisabeth Utsi	Sami University College, Project Manager
3. Gaup, Ingor Ánte Ailu	Organisation - STS Chair
4. Hansen, Janne	Gáldu, Senior Adviser
5. Henriksen, John B.	Gáldu, Project Coordinator
6. Hætta, Isak Samuel	Organisation – SDR/SGS, board member
7. Kemi, Karen Inga	Organisation – ICR, Project Manager
8. Kåven, Brita	Organisation – SDR general secretary / Interpreter
9. Olsen, Henrik	Centre for Northern People, Manager
10. Oskal, Berit Margrethe	Interpreter
11. Oskal, Ellen	Organisation Juiggiid searvi - Chair
12. Porsanger, Jelena	Sami University College, Assistant Professor
13. Retter, Gunn Britt	The Sami Council
14. Sara, Ándde	Sami University College, Associate Professor
15. Wuolab, Anne	Gáldu, Project Team Member
16. Østmo, Liv	Sami University College, Assistant Professor
17. Áhrén, Mattias	Sami Council President



John B. Henriksen

Law graduate from the University of Tromsøe. MSc in International Politics from the University of Bristol. Former adviser for the Sámi Parliament and for the Norwegian Ministry of Foreign Affairs, and a Human Rights Coordinator for the Sámi Council. He has practiced as a lawyer and has worked at the Office of the United Nations High Commissioner for Human Rights in Geneva. Member of the Legal Affairs Committee that presented a draft proposal for a comprehensive anti-discrimination legislation in Norway (2000-2002), and participated in the group of experts that presented the draft Nordic Sámi Convention (2003-2005). Head of the UN Expert Mechanism on the Rights of Indigenous Peoples from October 2008. He has issued a number of publications. He is currently acting as an independent adviser on questions of international human rights and as a special adviser for Gáldu.

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.



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