

R E P O R T

for the period ending 31 May 2003, in accordance with article 22 of the Constitution of the International Labour Organisation, from the Government of Norway, on the measures taken to give effect to the provisions of the

**CONVENTION NO 169 CONCERNING INDIGENOUS AND TRIBAL PEOPLES,
1989**

ratification of which was registered on 19 June 1990.

I - II

1. Proposed Finnmark Act

1.1 Introduction

The Government introduced on 4 April 2003 a Bill to regulate legal relationships and administration of land and natural sources in the county of Finnmark. The Bill is currently being considered by the Storting. The Storting's Standing Committee on Justice has carried out rounds of consultation, and in October 2003 is scheduled to travel around Finnmark where it will meet with the Sami Parliament, Finnmark County Council and the chairmen of the municipal councils of the five Sami municipalities. The Sami Parliament demanded changes to the new Act in a resolution dated 20 May 2003. At the request of the Justice Committee, the Ministry of Justice has commissioned two professors at the University of Oslo to produce an independent assessment of the international law aspects of the Act by the end of October 2003.

1.2 The Act

The main objective of the new Act is to replace the uncertainties and controversy about land and water rights in Finnmark with a permanent arrangement designed to protect Sami interests. The Act will provide security and predictability in terms of protecting the natural resources underlying Sami culture and the inhabitants' use of outlying land, and promote a positive development of business and commerce based on sustainable development of resources. The Sami Parliament, being the representative agency of the Sami people, will be secured influence over land administration. The Act will ensure that rules of international law concerning indigenous peoples and minorities are complied with and that the natural resource base for Sami culture enjoys effective protection under the law. The Act does not encroach on established rights.

Even though the Sami constitute the majority population in the inner part, Sami and Norwegians live side by side in Finnmark County. Sami interests therefore need to be balanced against the interests of the remainder of the population in the county if the regime is to come across as just and unifying. Against this background, the Act builds on a future administrative arrangement for Finnmark based on the principle that there should be no differences in rights for the inhabitants of Finnmark based on ethnicity. This model will invite cooperation between all ethnic groups in Finnmark.

The Act provides for the establishment of a new agency to which the State (i.e. Statsskog SF) will transfer its ownership and right of disposal over the lands in question. The new agency, to be named *Finnmarkseiendom* ("the Finnmark Estate"), will be a legal personality in its own right and independent of the State authorities. The State will not be able to instruct the agency or control its operations. The Finnmark Estate will own and administer land and natural sources in Finnmark on behalf of all inhabitants of the county, both Sami and Norwegian.

The board of the Finnmark Estate will comprise three members elected by the Sami Parliament and three by Finnmark County Council. All six board members shall reside in Finnmark. A further board member, without voting rights, will be appointed by the State. The latter member will ensure a continual dialogue between the Finnmark Estate and central authorities. The board will elect its chairman itself. Since the chairmen will not have a double vote, the members appointed by the Sami Parliament can prevent decisions from being adopted. In the event of a tied vote, however, the State-appointed member can have the matter in question referred to the Ministry for decision if operation of the Finnmark Estate depends on a decision being taken.

In addition to its influence on the composition of the board, the Sami Parliament is empowered to lay down guidelines for assessing how changed usage of outlying land will affect Sami culture, reindeer husbandry, business activity and community life. The guidelines shall be employed by the Finnmark Estate and all public authorities who deal with matters concerning changed use of outlying land. Should two members of the board hold that a decision is counter to the Sami Parliament's guidelines, they can request to have the matter submitted directly to the Sami Parliament, even if a majority of the board votes in favour of the decision. If the Sami Parliament supports the minority, the majority can bring the matter before the King for final decision.

The interests of the Sami reindeer husbandry community in particular are assured by virtue of the seat they are assigned on the board of the Finnmark Estate, and by the fact that the independent legal basis for reindeer husbandry is enshrined in the Act. The Sami Parliament's guidelines and the board's procedural rules will also serve to protect reindeer husbandry interests in any future decisions on disposal over outlying areas.

For a closer description of the Finnmark Act, reference is made to Proposition to the Odelsting No. 53 (2002-2003). An English translation of the text of the Act and of Chapters 1 and 7 of the above Proposition to the Storting is enclosed. The Sami Parliament has sent the ILO its own translation of the text of the Act. The translation enclosed herewith would seem to provide a better rendition of the Act. For example, the translation "the Finnmark Estate" gives a clearer indication than the translation "Finnmark Land Management Commission" that *Finnmarkseiendommen* is an independent ownership body.

1.3 Relationship to the Convention

In the following, comments are given on the Act's relationship to the Convention. We also take the opportunity to comment on some of the observations made by the Sami Parliament in its letter to the ILO of 10 June 2003. We also refer to a separate letter on the issue. The Sami Parliament's comments refer both to the procedural treatment of the issue in relation to Articles 6 and 7 of the Convention and to substantive aspects related to Articles 12 to 15.

1.3.1 Procedural treatment, Articles 6 and 7

Report of the Sami Rights Commission, NOU 1997:4

"The natural resource base for Sami culture" and statements from the consultative bodies were the basis for the work of framing the Finnmark Act. In its letter to the ILO the Sami Parliament asserts that the present or previous governments have indicated that solutions other than the proposal of the Sami Rights Commission could not be given consideration. This is not correct. In all legislative processes, reports and studies - while an important basis - will never be binding on the government and the Storting. Accordingly both the present government and previous governments have consistently stated that work on the Finnmark Act is based on the report of the Sami Rights Commission, collated with the extensive consultative material.

Nor is it the case that the Sami Parliament itself has sided with the proposals of the Sami Rights Commission. During its proceedings in 1999 the Sami Parliament came out against the proposal of the majority of the Sami Rights Commission regarding a unified land and property administration for the entire county of Finnmark, and supported the minority proposal for a division into two entities: a Finnmark land administration and a Sami land administration. After renewed consideration of the issue in 2003, the Sami Parliament now appears to be more receptive to the idea of establishing a single agency for Finnmark County.

Where the pre-legislative stage is concerned, the government has - in addition to the standard procedure of circulating the report of the Sami Rights Commission's report to relevant bodies for comment - initiated a separate contact process with the Sami Parliament and Finnmark County Council. Contact meetings have been held between the Sami Parliament, the County Council and the responsible ministry. There have also been informal political contacts. During this process information has been given on solutions other than that embodied in the commission's proposal. The Sami Parliament has been invited to present concrete proposals during the contact process.

In keeping with Article 6, the government has sought to achieve agreement through information and discussion. This has been useful, although failing to achieve agreement as desired.

It should, in addition, be noted that consultation required by Article 6 refers to the State's overall treatment of the matter. As mentioned by way of introduction, the Storting's Justice Committee has extended its contacts to include, among others, the Sami Parliament and Finnmark County Council. While it will only be possible to evaluate the overall process once the legislative procedure is completed, the aim of

achieving the highest possible degree of agreement has been the guiding precept throughout.

In regard to Article 7 it is emphasised that a main aim of the Act is to give both the Sami people and the remainder of the population in Finnmark greater influence over the county's development, based on the obligation to protect the natural resource base for Sami culture. That is why the State is relinquishing its ownership role and is passing its owner's right of disposal to the Finnmark Estate. As indicated by description under 1.2 above, the Sami Parliament will have substantial influence over this new ownership body, appointing as it does one half of the board's voting members. Moreover, the Finnmark Estate and public authorities will have to take due account of the Sami Parliament's guidelines when dealing with land issues.

Where issue is concerning changed use of outlying land are concerned, the Finnmark Estate will be required to assess what significance any such changes will have for Sami culture, reindeer husbandry, business activity and community life. The Finnmark Estate shall base its assessments on the Sami Parliament's guidelines for dealing with these issues. Changing the use made of outlying land will in all cases require a majority of four. Moreover, a minority of two may, if it believes a decision to be in conflict with the guidelines, have the matter referred to the Sami Parliament. The Sami Parliament is by this means assured substantive influence over land administration in the county even though it is not entitled to appoint the majority of members of the board of the Finnmark Estate.

Although the Sami Parliament has levelled criticism and has called for changes to the Act, it should be noted that the Sami Parliament has not rejected the Act or asked for it to be returned to the government.

1.3.2 Substantive issues in connection with Articles 12 to 15

Sami rights and Sami use of lands exist throughout Finnmark. The Sami Rights Commission has provided no basis for defining land rights within the county, and the State's transfer of ownership and right of disposal to the Finnmark Estate makes this unnecessary at the outset. Indeed the Sami Parliament now appears to be more receptive to a solution involving a single unified property.

The transfer of ownership and right of disposal from the State to the Finnmark Estate involves precisely a recognition of "right of ownership and possession", cf. Article 14 paragraph 1. The Act builds on a recognition of Sami rights based on traditional use of lands and fresh water. It recognises the independent legal basis for Sami reindeer husbandry, and affirms collective use based on immemorial usage. The legal status of local users and Sami reindeer husbandry is expressly recognised, see section 5 of the Act.

Moreover, the Sami Parliament is assigned significant influence in the Finnmark Estate and over land use, cf. the description above.

Against the background of international law and, in particular ILO Convention Article 15, changes are also proposed to the Mining and Quarrying Act in respect of Finnmark which are designed to secure Sami influence by ensuring that Sami interests are taken into account and safeguarded via the procedural rules contained in the Mining and Quarrying Act.

The Act explicitly recognised that special legal conditions apply at the local level in the Tana, Alta and Neiden watercourses, and provides for the adoption of new rules on this basis at a later stage once the agreement with Finland has been clarified.

Any further identification of rights must be considered in conjunction with specific usage or property rights for particular individuals or groups, and cannot be achieved by passing a law. The Finnmark Estate will be duty bound to consider seriously all demands for special rights on its lands and to act on such demands if there are found to be sufficient grounds for doing so. The right to bring cases to the courts is not curtailed. Moreover, with the establishment of the Inner Finnmark district court – making extensive use of the Sami language and located in the Sami municipality of Tana - local usage, perceptions of the law and customs can be expected, to a greater degree than previously, to be reflected, as and when appropriate, in court proceedings.

In conclusion, mentioned should be made of the assertion by the Sami Parliament in its letter to the ILO that the State will be free to expropriate land without providing compensation. This is not correct. On the contrary, full compensation must be made to the Finnmark estate as it must to other landowners apart, however, from in the case of national parks, land for public (county municipality or municipality) purposes, and where the State needs land for certain public services for the good of the population, see section 18 of the Act. This means that municipalities can acquire land for schools without having to pay for it, whereas the State must pay full compensation for national highways, military facilities, industrial facilities etc. National parks provide effective protection for land areas for Sami reindeer husbandry, and rules for the use of such lands must be drawn up taking due account of traditional usage, which will also benefit Sami activities other than reindeer husbandry.

A key aim of the Act is to secure the natural resource base for Sami culture in Finnmark, and at the same time to ensure that all inhabitants of the county have a reasonable measure of influence over land administration. In a county with a mixed population and in which the Sami Rights Commission has not found cause to define land and property rights on an ethnic basis, this appears to be a reasonable and balanced solution which protects Sami interests through representation on the board of the Finnmark Estate in combination with other instruments that the Act provides for with a view to safeguarding Sami interests.

2 Reappointment of the Sami Rights Commission

The Sami Rights Commission was appointed as early as in 1980 and was given a very wider-ranging mandate. All issues of significance for the legal and political status of the Sami were to be studied and assessed, and necessary changes proposed. The Sami

Rights Commission's second interim report, on "The natural resource base for Sami culture" was published in 1997 and focused above all on legal relationships in Finnmark. This report and the statements received from consulted bodies formed, as mentioned, the basis for the task of framing the Finnmark Act. As regards the Sami Rights Commission's earlier work and reports, reference is made to previous reports to the ILO.

The Sami Rights Commission was reappointed on 1 June 2001. Much of the mandate from 1980 has been fulfilled, although the task of assessing the use and administration of land and natural assets in Sami areas *outside* Finnmark county has yet to be addressed. Moreover, the new mandate has been adjusted to take account of legal developments in Norway and elsewhere and of Sami policy developments.

The new mandate asks the Commission to produce a general study of issues bearing on the Sami population's legal status as regards its right to, disposal over and use of lands and waters in areas used by the Sami outside Finnmark County.

The Commission is expected to describe legal developments and the situation in the Sami areas. It will look into customs, perceptions of the law and legal rules as well as actual usage of lands and waters.

In addition the Commission will assess the desirability of changes in the state of the law, and in the event what such changes should consist in. The importance of preserving and safeguarding the Sami culture and way of life will be key in this context. The relationship to other groups' rights and interests will also be examined. The focus will be on how the Sami local population's rights and interests are to be balanced against, and function together with, the rights and interests of the wider local population and other groups. One concern will be how to dampen possible conflicts between different activities such as reindeer husbandry, agriculture, fisheries, industry and nature conservation. The study is in this respect expected to be an important contribution to resolving issues related to rights to lands and waters south of Finnmark.

3 Establishment of Inner Finnmark district court

The Storting resolved in the spring of 2001 to establish a new court, Inner Finnmark district court (*Sis-Finnmárkdiggegoddi*). This will be the country's first bilingual court. It will be located in the Sami municipality of Tana and start working on 1 January 2004. It will be an ordinary first-instance court servicing all inhabitants within its judicial district, which comprises the municipalities of Karasjok, Kautokaino, Nesseby, Porsanger and Tana. These municipalities are all within the Sami language administrative area. In the appointment process much importance has been attached to applicants' knowledge of both Sami language and culture. The new district court judge is from Tana municipality and is a Sami Speaker.

In addition new procedural rules will be drawn up for the courts to lay the basis for use of Sami written language. Moreover, the establishment of Inner Finnmark district court will provide a good opportunity to further develop the Sami language. A project

designed to develop a written Sami legal terminology has been initiated under the auspices of the Ministry of Justice and Tana municipality. In this connection specialist groups have been set up to compile and systematise terminology. Last year the Ministry of Justice granted NOK 250,000 to the project. The same amount has been granted this year. The Ministry of Local Government and Regional Affairs has granted NOK 300,000 to the same project.

The aim of establishing Inner Finnmark district court and initiating the language development project is to encourage the Sami population to view the legal system as more accessible, and to enhance the legal system's knowledge of Sami customs and Sami perceptions of the law.

Articles 2, 5, 6 and 7

1. The Nordic Sami Conference in 1986 approved the Sami flag. The Sami flag has according to provisional regulations been raised at official events at the Sami Parliament and along with the Norwegian flag in celebrating the Sami Peoples Day February 6. By revised legislation adopted 11 April 2003 the Sami flag is accepted along with the Norwegian flag at all official buildings in Norway. The Sami Parliament may decide on more detailed regulations on the use of the Sami flag. The use of the Sami flag at official buildings should contribute to demonstrate the recognition of the Sami as the indigenous people of Norway and the Sami culture, language, institutions and way of life.

2. As previously reported, the Sami Parliament is constituted by 39 members from all together 13 constituencies covering the whole country. Each constituency is represented by three representatives. Everyone entitled to vote at the municipal council elections and who are enrolled in the Sami electoral register is entitled to vote. After the last elections to the Sami Parliament held in 2001 worries have been raised because of the decrease in the number of female representatives. In this period (2001-2005) there are just seven female representatives. Likewise there seem to be too few enrolled in the Sami electoral register, specially in the coastal areas compared to the estimated numbers of peoples of Sami heritage living there. With financial contribution from the Government, studies have been performed to learn ways and means how to obtain a better gender balance amongst the representatives and how to call on a broader participation in future elections. The Government will together with the Sami Parliament assess possible actions how to deal with these issues. The Sami Parliament activities are financed by the state budgets.

3. The Ministry of Local Government and Regional Development is in charge of coordinating Sami affairs within the Government, and meetings are held with the Sami Parliaments leadership early in the budgetary processes to discuss both the budgetary needs and the budgetary terms. These meetings could also include other ministries. In 2003 there were allocated proximately 520 mill. NOK in the state budget for special

measures and programs for the Sami population in Norway. 212 mill. are administrated by the Sami Parliament, whilst the rest of the allocation includes economic support to the reindeerherding samis and special measures established for sami educational purposes, healthcare programs and a legal aid office, and is administered by the respective ministries in charge of those sectors.

4. The Sami Parliament has since its very beginning had the responsibility to administer the state grants to Sami organisations and, and grants to Sami culture, businesses and linguistic purposes. Since the adoption of the Sami Act in 1987 there has been a general assumption that the Sami Parliament should have a substantial degree of influence and self-government in carrying out these policies. Since 1999 the Sami Parliament has received parts of its budgets as a lump-sum allocation which it may decide on according to its own priorities. This budgetary system has been established with the understanding that the Government, or the ministeries, do not have any authority to give instructions to the Sami Parliament. However, the ministry in charge of the sector within which the budgetary funding has been allocated, will still in formal terms carry the constitutional responsibility towards the Storting (Parliament), including also the responsibility for the budgets used or distributed by the Sami Parliament. The Sami Parliament does also influence in general policies by being represented in a number of boards and committees. This also includes participation in committees preparing for revised legislation that will have an impact on the Norwegian society in general.

Representatives appointed by the Sami Parliament took part in the commission that proposed a revised district court structure. This commission proposed the establishment of a new district court in the Inner Finnmark where a majority of the population are Sami-speaking or bilingual. The Inner Finnmark District Court will be in function from January 2004, and it will be staffed with a judge and officers fluent in Sami language.

To facilitate for the Sami Parliaments possibilities to pronounce their priorities in terms of general developments within the territories where they live, the Sami Parliament have been authorized to appoint members to some committees appointed by the Government to prepare for new legislation that is deemed to be of particular sami interest for the Sami population.

The Sami Parliament was represented in the committee appointed to prepare for new regional and municipal planning legislation.

The draft legislation presented by the committee in Mai 2003 proposes in section 1-1 Purpose, scope and main festures, to include the following; It [the law] shall secure

protection of valuable landscapes and nature and cultural environments and secure the natural resources for the sami culture.

The Sami Parliament is currently represented in a committee appointed to prepare for new and up-dated legislation concerning the maritime resources. The Committee shall present its report and proposals for new legislation within the end of 2004. The request for a Sami Parliament appointed representative was made in recognizing that the Sami population has a particular interest in the management and harvesting of the fisheries and other maritime resources, specially in the fjords and coastel waters in the northern part of the country.

Protection of cultural property

Delegation of authority to the Sami Parliament in 2001

On 25 May 2000 the Sami Parliament resolved that the Parliament's subordinate councils, including the Council for Sami Cultural Heritage, should be reorganised and placed under the Sami Parliament as from 1 January 2001 through the establishment of a special departmental structure. The Council for Sami Cultural Heritage was accordingly organised in its own department: the Sami Department for Environment and Cultural Heritage. The reorganisation required changes in the regulations to the Cultural Heritage Act whereby powers were assigned to the Council for Sami Cultural Heritage. On 17 January 2001 the regulations were duly amended in order to transfer authority under the Cultural Heritage Act (No. 50 of 9 June 1978) directly to the Sami Parliament for a three-year period. The new arrangement entails that the paramount authority has the right of instruction and power to set aside decisions in cases concerning protection of Sami cultural property. The arrangement will be reviewed in 2003.

Increased appropriation for Sami purposes in 2003

The Government, the Ministry of the Environment, has doubled its appropriation to the Sami cultural heritage administration for 2003 to NOK 2 million. In contrast to previous years, the appropriation will be transferred directly to the Sami Parliament, giving the this Parliament greater responsibility for disposal of resources.

Land use planning

As from 1 January 2001 the Sami Parliament is empowered to raise objections in planning matters coming under the Building and Planning Act. This power was previously assigned to the Council for Sami Cultural Heritage, and was passed to the Sami Parliament when the Council for Sami Cultural Heritage was placed under the Sami Parliament in January 2001.

Agenda 21

The Rio declaration establishes that indigenous peoples and their societies play a vital role in the management and development of the environment due to their knowledge and traditional practices. A distinctive Sami perspective on environmental protection refers to the safeguarding of traditional Sami trades and the Sami way of life. In Norway this perspective is promoted through a special Sami LA 21 project. The project has raised the Sami Parliament's aspirations in the sphere of environmental protection policy, partly by integrating environment and sustainability objectives into its ordinary activity, partly by presenting concrete proposals for follow-up through a focus on an indigenous-peoples Agenda 21. The government will take the Sami perspectives into account in its further processes and efforts for sustainable development.

Employment Labour market measures

Article 20

Labour market measures in Finnmark, as in Norway in general, are aimed at unemployed and occupationally handicapped people. The Public employment office (PES) has a whole range of different labour market measures programmes. Lately it has been arranged relatively many courses in information technology. Further on some labour market measures within Norways plan of action for combating poverty have been started. Relatively many of the participants in these programmes are coming from the reindeers husbandry industry, mostly sami. The aim with the programmes is to re-educate people for new occupations and to give people work practice.

Article 25

The plan for health and social services to the Sami population (NOU 1995:6) has been followed up by a government plan of action, presented in September 2001. The Sami Parliament has participated on an advisory basis in the preparation of the plan. The government has transferred resources to the Sami Parliament for funding of projects which adopt aspects of NOU 1995:6, and the Sami Parliament has been furnished with administrative capacity to handle project applications and to give policy signals to the government. Projects are now spreading to municipalities outside the area covered by the language regulations in the Sami Act. The plan of action particularly directs focus towards strengthening of the competence in the Sami language and cultural aspects in the services, as a responsibility for the different levels of authorities and service providers.

The state has recently taken over ownership of hospitals and other specialised health care, organised through regional health authorities (RHA) under the Ministry of Health. The RHA for Northern Norway will have a vital role in implementing measures in the above mentioned plan, and will be responsible for continuing the funding for the specialist physicians centre and the psychiatric institutions in Inner Finnmark. These institutions are integral parts of the general health service, but have special responsibilities towards the Sami population. These psychiatric institutions will strengthen their national responsibilities towards the Sami population through the plan for strengthening of psychiatric services in Norway.

Important development work is done at the university hospital in Tromsø, called "Sami service centre", but still the interpretation service and other arrangements for Sami patients are lacking or inadequate in other hospitals.

The government, the Ministry of Health, has established a Centre for Sami health research, belonging to the University of Tromsø and located in Karasjok. Social services are also within the mandate for the centre. A health and living conditions survey among areas with Sami and Norwegian population is now carried out by the centre. Research on the Sami patients' experiences and evaluation of both the primary and specialist health services may be carried out in the future. This is due to the authorities need for better data as a prerequisite for adopting measures to improve the services.

The care for the elderly Samis has got a special focus under one of the so-called educational care institutions, also located in Karasjok.

Grant scheme for Sami day-care centres

The government, the Ministry of Children and Family Affairs, has since the mid-1980s operated a grant scheme earmarked for Sami day-care centres. The scheme is designed to compensate for the additional expenses incur in terms of developing Sami language and culture. The grants are spent on language tuition at day-care centres, translations and purchases of educational materials.

As from 1 January 2001 responsibility for the above scheme was transferred to the Sameting (Sami Parliament). This was commensurate with assigning the Sameting greater authority and responsibility for matters concerning the Sami population. The Sameting has drawn up new guidelines for the grants. The purpose of the grants is to safeguard and promote the development of Sami language and culture in Sami day-care centres and in day-care centres with Sami children. In 2001 the scheme encompassed about 1,000 Sami children at 44 day-care centres.

EDUCATION

Legislation

Norwegian internal legislation, which has throughout been revised to meet the changing needs of society, provides a sound foundation on which to build up an education for the Sami people that promotes the preservation and evolution of their culture.

The Norwegian education system is governed by a number of laws and regulations. Most measures for the Sami population, as for the population as a whole, are initiated within the framework of ordinary legislation. In some areas special regulations have been needed to meet needs in the Sami population.

Education Act (Art. 27, 28 and 31)

The Act relating to primary and secondary education (Education Act) came into force on 1 August 1999 together with regulations to the Act. The Education Act replaced the previous Primary Education Act. The new act contains a number of amendments relating to the Sami population.

Definitions

The terms *Sami* and *Sami district* are defined in the Education Act, thereby giving greater precision to the rights provisions attached to these terms in the Act.

Right to tuition in Sami and through the medium of Sami

In Sami districts all primary and lower secondary school pupils have the right to receive tuition in Sami and through the medium of Sami. Over the entire country Sami pupils in primary, lower secondary and upper secondary school have an individual right to receive tuition in Sami. Each municipality is empowered by law to issue regulations requiring all pupils in Sami districts to be given tuition in Sami.

Outside Sami districts, if at least ten pupils (Sami or not) in a municipality wish to receive tuition in and through the medium of Sami, the Education Act entitles them to such tuition as long as there remain at least six pupils in the group.

Authority over and content of Sami education

In order for the Sami themselves to decide how their culture is to be transmitted, the Education Act empowers the Sami Assembly to decide the Sami content of national curricula and to establish syllabuses in Sami language subjects, and in specific Sami subjects (doudji, i.e. handicrafts, and reindeer husbandry) within a time frame and resource framework set by the ministry. In order to secure the Sami Assembly substantive influence over syllabuses for other subjects for pupils with Sami in their curriculum, the Sami Assembly is responsible under the Education Act for drawing up these syllabuses while the government/ministry retains the authority to endorse them. This division of roles gives a good basis for close collaboration in the drawing-up process.

Responsibility for development of specifically Sami teaching aids and materials has also been transferred to the Sami Assembly.

ECONOMIC AND ADMINISTRATIVE MEASURES

Education facilities for the Sami are administered and implemented through the medium of the ordinary education system. In some areas, however, special measures are needed in the form of administrative entities, institutions, operation of buildings and subsidy schemes.

Sameting (Sami Parliament), education department (Art. 27, 30, 31)

The educational responsibilities that were assigned to the Sameting were essentially synonymous with the government's specific tasks in relation to Sami education. They require administrative capacity and educational competence on the part of the

Sameting. To this end the secretariat to the Sami Education Council was transferred by the ministry to the Sameting on 1 January 2000. The Sami Education Council under the ministry was concurrently closed down.

The new department of the Sameting retains the administrative tasks it had under the secretariat to the Sami Education Council. These involve responsibility for:

- education measures for the Sami population in general
- preparing and adapting syllabuses within the Sameting's sphere of responsibility
- approving school textbooks
- providing guidance to personnel at day-care centres, primary and lower-secondary schools, upper-secondary schools and adult education institutions
- following-up on work being done on printed guidance material
- promoting various measures related to post-qualifying education and competence development
- providing expert guidance to education authorities at all three levels of public administration

The Sameting's education department contains a unit devoted to developing Sami teaching material for use in day-care centres, primary and lower-secondary schools and upper-secondary schools.

See also the chapter entitled "Education Act" as regards the Sameting's new role in Sami education.

New special education measures

A number of special measures were instituted in August 2000 aimed at strengthening Sami education. The measures refer to the administration at the Sameting's education department, competence building in the school system and strengthening the Sami College.

Primary and lower-secondary school measures in the South Sami area (Art. 28)

The South Sami indigenous groups are dispersed across a large geographical area. Two boarding schools have been established to promote the distinctive qualities of the Sami language and culture. The Sami school in Snåsa is a municipal boarding school, wholly funded by the State. The Sami school for mid-Norway in Hattfjelldal is a state-owned boarding school.

In 1995 the government, the Ministry of Education and Research, appointed a working group to assess the education situation for South Sami pupils. The working group has completed its mission. Its main recommendations were:

- to establish permanent education facilities in South Sami at college level.
- to focus on the development of teaching aids and materials.
- to focus on supplementary distance education and use of IT.

- to build up a South Sami competence centre for language, education and culture.
- to establish a specialist educational network for guidance of schools, pupils and parents.
- to develop a new organisational and subject structure for South Sami education.

2004 will see the completion of a five-year project which, based on the above recommendations, is to establish a coherent educational programme for South Sami pupils at local schools based on alternative educational methods.

Primary and lower-secondary school measures in the North Sami area (Art. 28)

Boarding schools in Finnmark

Nomadism and dispersed settlement patterns necessitated lodging for children of school-age. After World War II the government, the State took over responsibility for building and running primary and lower-secondary boarding schools in Finnmark. Modern means of travel and modernisation of reindeer husbandry has enabled the ministry to close down the boarding schools in Finnmark and transfer the buildings to local authorities.

Boarding school in Troms

The Sami school in Målselv in Troms is a municipal boarding school whose operating expenses are met by the State. The school provides education based on the Sami curriculum in North Sami and also tuition in the North Sami language as a subject.

The Sami population in Troms is widely dispersed and constitutes a small minority in the respective municipalities. Some parents apply to send their children to the Sami school in Målselv in order to expose them to a North Sami setting and the language both at school and at the boarding facility. Sami circles wish to maintain the school as an educational and resource centre for North Sami language and culture. A new Sami boarding school in Målselv was ready in time for the school-year 1997-1998.

Before-and-after-school activities programmes (Art. 29)

Before-and-after-school activities programmes are fully developed throughout the Sami areas. Capacity in relation to the number of applicants is generally excellent in the Sami areas. Special Sami-language facilities exist in the municipalities of Nesseby, Tana, Karasjok and Kautokeino. In response to a call from parents, the local authorities in Tysfjord have established a position for a Sami-language assistant on the before-and-after-school activities programme. There are no indications of calls for Sami-language measures to be incorporated in such programmes in other localities, although in many communities Sami measures exist both at day-care centres and as a school subject. In contrast to day-care centres, before-and-after-school activities programmes do not receive separate support for Sami-language facilities.

Upper-secondary education for Sami (Art. 20, 21, 22, 26 and 27)

Like other Norwegian young people, young Sami who have completed primary and lower-secondary schooling or the equivalent are entitled, upon application, to three years' full-time upper-secondary education. This provides a basis for higher education, vocational competence or partial competence (see *Education Act section 3-1 and section 3-2*).

The *Sami upper-secondary school* in Karasjok and the *Sami upper-secondary school and reindeer husbandry school* in Kautokeino are state schools established for Sami pupils. Tuition in the Sami language is also given at the majority of ordinary upper-secondary schools in Finnmark and at some schools in Troms and Nordland.

Reindeer husbandry was approved as a subject under the Education Act in 2001. The Sameting drew up the syllabus in conjunction with the Sami Reindeer Herders' Association in Norway. The subject now belongs under the education council for duodji (Sami handwork, sloyd and handicraft), which already existed as a subject. Special support is given through the *Reindeer Husbandry Development Fund* to reindeer husbandry entities which take on apprentices.

Three consultants' reports in 2000 evaluated Sami upper-secondary education. In its budget for 2002 the government, the Ministry of Education and Research, granted project funds to the Sameting for the purpose of further developing the quality of Sami upper-secondary education with a basis in the above reports.

In September 2001 the ministry appointed a working group to consider which body should have overarching responsibility for the two Sami upper-secondary schools. The following authorities were represented in the working group: the State, the Sameting, Finnmark county municipality, Kautokeino municipality, Karasjok municipality, a pupils' representative from each of the two Sami upper-secondary schools and a representative of the board of the two schools. The report was published in August 2002. The committee recommended transferring the two Sami upper-secondary schools to the Sameting. The report has been circulated for comment on a general basis and is now being considered by the Sameting which has been given an extended deadline for comment.

The Sami College / Sámi allaskuvla (Art. 26)

The *Sámi allaskuvla / Sami College* was established in Kautokeino in 1989 with North Sami as its language of tuition, research and administration both for students and staff to meet the particular need for Sami education. With a student capacity of 165 and 60 members of staff, the College is the smallest state-run institution of higher education in Norway.

Sámi allaskuvla is headed by a board whose external members and alternates are appointed by the Ministry of Education and Research at the recommendation of the college council and the Sameting.

Since its establishment the Sami College has had a key responsibility for Sami teacher training. In 1995 the college was given nodal responsibility for Sami teacher training and consequently responsibility for the further development of Sami teacher training at the national level and for creating collaborative networks with related circles in Norway and elsewhere. In this context the college has had a coordinator function for South Sami at Nord-Trøndelag College and for Lule Sami at Nordland College.

The College has developed a series of courses specifically adapted to Sami students which can be taken either as part of teacher training or as post-teacher training by teachers and others with a variety of educational backgrounds:

Sami language, bilingual pedagogics, multi-cultural understanding, special pedagogics, Sami handicraft/duodji, yoik and narrative art, practical-pedagogical training in duodji, physical education, mathematics, Norwegian, journalism.

Some courses are offered on a decentralised basis.

In the period 1989-2001 106 general teachers and 50 pre-school teachers graduated from the Sami College. In the same period 554 students took examinations in Sami language at various levels, 94 took examinations in other Sami topics and 123 in various aspects of special pedagogics.

A Sami network of support nodes is currently being developed within the *State support system for special needs education*. Responsibility for managing this process rests with the Sami College. Fully fledged, this mission will require the equivalent of three full-time positions. The unit will provide education services to individuals and systems and will produce and disseminate knowledge in this field.

University of Tromsø (Art. 26)

The University of Tromsø has a key responsibility for research, education and dissemination with particular relevance to North Norway, including the Sami field which is among the institution's main focal areas. The University of Tromsø is a centre of gravity in Sami education and research. It offers tuition in the *Sami language*, literature and culture up to post-graduate level with associated research activity. At Tromsø Museum research is done in *Sami history, archaeology and ethnography*. Sami topics are integrated in a number of other subjects.

In the period 1983-2002 a total of 23 doctoral theses were produced in the humanities, social sciences, natural sciences and law with a Sami and/or indigenous-people theme. Almost 200 Sami language examinations have been taken at undergraduate level. Eleven candidates completed a second degree (approx. master's degree), one in Lule Sami language.

In 1990 the board of the University of Tromsø established a *Centre for Sami Studies* in order to prioritise and coordinate research and education with relevance to the Sami communities. The Centre's overarching aim is to respond to the needs of both the Sami and the Norwegian community's need for systematisation and generation of new insight into phenomena and processes of significance for the Sami language, culture and community life. The Centre will function as a resource in relation to the Sami communities.

Other college facilities (Art. 26)

Sámi allaskuvla is the only college to offer a complete Sami teacher-training programme. *Bodø College* offers tuition in *Lule Sami language and culture, and duodji*. *Nord-Trøndelag College* offers *South Sami language and culture*. *Nesna College* offers a half-year unit in *South Sami language* as and when required.

The above courses can be offered as part of basic training for teacher-training students or as post-qualifying education for teachers and others who need these languages in their professions. Building up facilities for small Sami language communities dispersed over a wide area and in different regions is a particular challenge. *Nord-Trøndelag College* was assigned a key responsibility in the field of South Sami language and culture in 1987.

Bodø College currently has a position as *research fellow in Lule Sami*, and *Nord-Trøndelag College* a position as *research fellow in South Sami*. The government, the Ministry of Education and Research, will assess the need for research fellow positions in the Sami sphere on a continual basis.

Instruction in reindeer husbandry at the *Agricultural University of Norway* started in 1976 as a voluntary one-month. About 600 students have completed the course. The course is designed to familiarise students with the industry and enable them to view it in the context of their various involvements in nature management. The course has generated many undergraduate papers and post-graduate theses in reindeer husbandry. The College has had an assistant professorship in reindeer husbandry since the end of the 1980s.

Student welfare

A student welfare foundation was established in Inner Finnmark in 1995. The foundation runs the student day-care centre and student accommodation in Kautokeino as well as other welfare facilities for students at the Sami College. Pupils at the Sami upper-secondary school and the Reindeer Husbandry School in Kautokeino, and the Sami upper-secondary school in Karasjok, have access to relevant welfare facilities by agreement between the school-owner and the foundation.

Adult education measures (Art. 26)

Primary and lower-secondary education for adult Sami

The institution FB Fjernundervisning offers two distance-education course programmes in Sami: Davvin 1-4 and Sámás 1-3. The courses are fully funded by the government, the State, and are free-of-charge to participants who complete the courses.

Everyone over the age of 16 in need of primary and lower-secondary education is entitled to such education free of charge. This also applies to persons who have completed primary and lower-secondary education at an earlier stage. The tuition must be organised for adults and tailored to the needs of the individual.

L97, the *national curriculum for the 10-year primary and lower-secondary school*, was incorporated in primary and lower-secondary education of adults as from the school year 1999-2000. At the same point *L97S*, the *Sami curriculum for the 10-year primary and lower-secondary school*, was incorporated in primary and lower-secondary education of adult Sami in the Sami curriculum's sphere.

The government, the *Ministry of Education and Research*, has developed a guide to primary and lower-secondary education for adults, adapted to L97. The guide contains a chapter that deals with adjustment to tuition of Sami adults based on the *Sami curriculum for the 10-year primary and lower-secondary school*. The guide was produced by the ministry in conjunction with the *Sami Education Council* and the *Sameting*.

Upper-secondary education for adults

Anyone born prior to 1978 who has not completed upper-secondary education is entitled to such education free of charge. The tuition must be organised for adults and tailored to the needs of the individual.

Higher education

Persons over the age of 25 can be admitted to colleges and universities without having completed upper-secondary education. Admission is based on assessment of the individual's documented work experience. Each college considers what criteria need to be met.

Real competence

Persons lacking formal upper-secondary competence can have their real competence assessed in relation to formal upper-secondary schooling with a view to approval, or to establishing the conditions for approval, of their competence on a par with formal upper-secondary schooling.

Sami adult education associations

Requirements on adult education associations which are to receive state grants were considered by the Storting in the autumn of 1991, and the new requirements took effect on 1 January 1992. With a view to safeguarding the existence of Sami adult education associations, special rules for approval such associations have been made to allow for cases where the ordinary criteria are not met. Three approved Sami adult education associations are now in existence.

SUBSIDY SCHEMES

Sami language classes in primary and lower-secondary school (Art. 26)

In order to help to meet the additional outlays on Sami tuition at primary and lower-secondary schools, municipal authorities are eligible for subsidies for bilingual teaching capacity and special language measures. The bulk of the funds granted go to municipalities in the counties of Nordland, Troms and Finnmark.

A number of municipal authorities claim that actual expenses on bilingual teaching capacity in schools greatly exceed the grants available. Several reports on this have been produced in recent years. The allocation criteria employed for grants for *special language measures* have now been changed twice since the last report on Convention No. 169. It is too early to say what the municipalities' response to the new allocation criteria will be. For the school year 2002-2003 the distribution of pupils across the various language measures was as follows:

<u>Language offering</u>	<u>No. of pupils</u>
Sami as first language	1,037
Sami as second language	754
Sami language and culture	827
North Sami	2,538
Lule Sami	138
South Sami	122

Language measures in upper-secondary education (Art. 26)

Subsidies for extra tuition in the Sami language are given at the same rates as in the case of subsidies in respect of foreign-language pupils and apprentices at upper-secondary schools. Subsidies for Sami language tuition are provided in respect of all pupils who take Sami as a subject regardless of level.

Pupil numbers at the two Sami upper-secondary schools

Institution	1993-1994	1999-2000	2001-2002
Karasjok – general studies	120	118	88
Kautokeino – vocational studies	110	68	71
TOTAL	230	186	159

Pupil numbers at county-municipal schools in Finnmark offering Sami

Subject	1993-1994	1999-2000	2001-2002
Sami as first language			
Sami as second language			
Sami as B, C or elective subject			
Total			

Recruitment measures / Student and pupil measures (Art. 26)

Grants

Education support is given in accordance with the Act on education support for pupils and students. Separate grants are given to pupils from North Troms and Finnmark. The scheme applies to students living away from home while undergoing upper-secondary education. In addition separate grants are given to Sami young people from Finnmark. The Sameting has allocated these funds since 1993.

Study leave with pay

As from 1979 teachers at primary and lower-secondary schools have been able to apply for study leave with pay to take one year's further education in Sami. The condition is that the teacher has not taken such leave previously, and that he or she makes a commitment to teach at primary or lower-secondary level in a mixed-lingual district. The commitment period has now been reduced to two years.

Since 1994 the National Education Offices/County Governors of Nordland, Troms and Finnmark have awarded, respectively, four, three and five leaves of absence to study Sami and Finnish. As from the autumn of 2002 the county governor of Nord-Trøndelag has also been granted two authorisations for South Sami teachers.

The above leaves of absence are in addition to the study-leave arrangements available via the teaching-aids scheme for schools in North Norway. While the leave arrangements under the latter scheme are wider in scope than this specific study-leave arrangement, but can also be utilised for further education in Sami-related subjects.

Reduction of education loans

Recipients of loans from the State Education Loan Fund who are working in Finnmark or in one of the seven municipalities in Nord-Troms coming under the teaching-aids scheme have their study loan reduced by 10 per cent of the original loan amount, subject to an upper limit of NOK 16,500 for each year of employment in the area covered by the teaching-aids scheme.

Grants for Sami tuition

Grants are available for extra Sami language tuition for Sami pupils. The grants are given to pupils and apprentices who receive tuition in Sami elsewhere than the two Sami upper-secondary schools.

All pupils at the county-municipal upper-secondary schools in Finnmark who wish to do so receive tuition in Sami (North Sami) at the school they are attending. In other counties responsibility for Sami tuition is assigned to the particular school. In Troms, Nordreisa upper-secondary school will also be responsible for distance tuition in Sami. In Nordland, two upper-secondary schools have responsibility for Sami at the upper-secondary level: Hamarøy upper-secondary school for Lule Sami and Mosjøen upper-secondary school for South Sami.

In the school year 2001-2002 tuition in Lule Sami was introduced for the first time as the first language of upper-secondary education. This is a natural consequence of the fact that Tysfjord municipality has provided tuition in Lule Sami as the first language of primary and lower-secondary education since 1991.

Admission quotas for Sami applicants

Special measures for increasing the recruitment of Sami applicants to higher education have been in operation for some time. Several institutions still employ quotas specifically for Sami applicants.

The University of Tromsø has established quotas for Sami students for most subjects where admission is restricted. This applies to admission to medicine, psychology, law, pharmacy, fishery science, fish health, aquaculture, agricultural science and engineering. To qualify for admission via the quota arrangement, applicants must meet the requirements for inclusion in the Sami census, although they need not actually be included in the Sami census. Applicants with a command of Sami are given priority.

The quota arrangement in respect of Sami students is a clear reflection of the university's responsibility for producing and disseminating knowledge in the best interest of the Sami community. In this respect the arrangement is parallel to the scheme applying to North Norwegian applicants in a number of subjects.

Sami quotas have also been established at other institutions for certain subjects. The University of Bergen has for a number of years earmarked up to two places for Sami-speaking Sami at the Faculty of Medicine.

At Finnmark College up to 10 per cent of places in the regional quota are earmarked for Sami students. A quota arrangement is also practised for admission to media technology courses at Lillehammer College and Stavanger College; to orthopaedic engineering, dispensary and dental technician studies at Oslo College; and to veterinary science at the Norwegian School of Veterinary Science. To gain admission via these quotas, applicants must document a knowledge of Sami.

PRIMARY AND LOWER-SECONDARY EDUCATION: CONTENT, TEACHING AIDS AND GUIDES (Art. 28, 29, 30 and 31)

The overarching aims of education are contained in the curriculum for primary and lower-secondary education, upper-secondary education and adult education. Here Sami language and culture are described as part of the “*common heritage whose protection is a particular responsibility for Norway and the Nordic countries. This heritage must be given scope for further development in schools with Sami pupils in such way as to strengthen Sami identity and our shared knowledge of Sami culture*” (L97, p. 19).

Schools anchored in the Sami language and culture are an important tool in the effort to strengthen Sami identity. Education for Sami pupils must have a content and quality that secure the pupils fundamental knowledge and contribute to vivifying the Sami cultural heritage in such a way as to inspire the pupils to participate in local cultural life as active members of the Sami and the Norwegian community.

The Sami are a part of Norway’s population. Knowledge of Sami history and culture will be highly important in developing positive attitudes to the Sami people. The curriculum for 10-year primary and lower-secondary schools (L97) embodies the belief that all pupils at Norwegian schools should build up fundamental knowledge of various aspects of Sami language, culture and community life.

Plan for the development of Sami teaching aids

Since 1995 the Sami Education Council / Sameting have operated a *Strategy for the Development of Sami Teaching Aids* and an *Action Plan for Special Pedagogical Teaching Aids for Sami Users*.

The plan for development of teaching aids covers day-care centres, primary and lower-secondary schools, upper-secondary schools and special pedagogical teaching aids. Nordic cooperation along with a broader international collaboration has been established to draw up programmes for the development of teaching aids. The Sameting’s education department is involved in extensive collaboration with media enterprises such the Norwegian Broadcasting Corporation, publishers and IT firms on video programmes, educational computer programmes and other teaching resources.

The Sami curriculum for 10-year primary and lower-secondary education (L97S)

Two equal curricula for 10-year primary and lower-secondary schools have been drawn up in connection with Reform 97: L97 and L97S Sami.

L97 Sami is based in Section 110a of the Norwegian Constitution and the Act on the Sameting and other Sami Legal Matters – The Sami Act. The curriculum is also a follow-up to ILO Convention No. 169, ratified by Norway in 1990.

The statutory basis for the Sami curriculum for 10-year primary and lower-secondary education is the Act relating to Primary Education. The curriculum applies to all pupils in the administrative area for the Sami language.

The Sami curriculum contains the following main elements:

- A preface setting out the legal basis for a separate Sami curriculum
- A curriculum for primary and lower-secondary schools, upper-secondary schools and adult education – general section
- Principles and guidelines for primary and lower-secondary education based on the Sami Curriculum
- Syllabuses for the subjects

The four elements together constitute a binding and coherent curriculum for the education provided.

The Sami curriculum takes its basis in the Sami communities' distinctive features and needs. Education of Sami pupils shall build on a basis of knowledge, culture and values which is adapted to the Sami communities. One of its overarching aims is to ensure a positive development of Sami pupils' identity and functional bilingualism. Their education shall collectively enable pupils to develop a positive self-image and good attitudes to their own language, own culture and own local community.

As part of the introduction of the Sami Curriculum, plans have been drawn up for post-qualifying education and guides related to L97S Sami. Subjects for which separate syllabuses have been drawn up in L97 Sami are given priority.

An overall plan exists for post-qualifying education in the following subjects:

- Sami as the first language
- Sami as the second language
- Norwegian as the second language for pupils whose first language is Sami
- Sami language and culture

Supplementary plans for post-qualifying education have been drawn up in the following subjects:

- social science
- duodji
- music
- home economics
- natural science and environmental subjects
- Knowledge of Christianity with orientation to religion and life stances

The Sami Education Council has drawn up a resource book for teachers who will be teaching various aspects of Sami language, culture and community life. The resource book can be used for developing competence in teaching material that illuminates aspects of the Sami language and culture in L97 and L97 Sami.

In the course of 2003 the Sami College will complete its evaluation reports on the Sami Curriculum. The ministry aims to assign the Sameting a key role in putting the reports' recommendations into practice.

Syllabuses for upper-secondary education

The Sami Education Council has played an active role in the design of syllabuses by virtue of the fact that it has recommended members for the syllabus groups, commented on relevant syllabuses and translated the syllabuses into Sami. All syllabuses have been ratified by the ministry. The syllabuses give scope for local adjustment.

An advisory council has been set up for training in the subject duodji. It is an advisory body to the authorities within its specialist field. Within its field the council has responsibility for :

- working to promote the quality of duodji teaching
- commenting on, and taking initiatives vis-à-vis the ministry in, issues relating to vocational training in duodji within the council's sphere in working life and in schools
- contributing to the development of duodji as a trade and school subject

Since the school year 2002-2003 the advisory council for duodji has also had responsibility for the subject reindeer husbandry. The Sameting has devised the syllabuses for reindeer husbandry.

SAMI RESEARCH

The Research Council of Norway

The Research Council of Norway has supported Sami research since it was founded in 1993. Research on Sami themes was also supported prior to this, mainly via the Norwegian Council for Science and the Humanities.

In the period 1993 to 2002 the Research Council granted approx. NOK 79 million in support to Sami research. The supported projects totalled 107, comprising 57 research and development projects, 32 doctoral grants and 31 other research grants. The support covered 24 subject fields of which the largest were:

- social anthropology (14)
- linguistics and philology
- cross-disciplinary humanistic and social science subjects (25)

Competence centre for indigenous people's rights

A competence centre for indigenous people's rights is under construction in Kautokeino. A board has been established and an administrative head appointed.

The institution will engage in documentation, dissemination, information and network building. It will also identify areas where research is called for but will not engage in research itself.

Sami archive

The Sami archive will develop Sami historical archives. It will secure Sami research material, thereby serving institutions which carry on research proper. As from 1 January 2002 the Sameting took over responsibility for administering the Sami archive.

Nordic Sami Institute (NSI)

The Nordic Sami Institute in Kautokeino has existed since 1973. It is a Nordic institution dedicated to Sami research mainly financed by the Nordic Council of Ministers. The NSI attaches importance to the use of the Sami language in its activities.

All Nordic countries are represented on the board of the NSI. Three members are appointed at the recommendation of the Sameting in Norway, Sweden and Finland. The other two are appointed by the Nordic Council of Ministers.

The institute employs about 25 persons, equivalent to 20 full-time positions and has a budget of NOK 10 million.

The NSI collaborates on a permanent basis on research and researcher-recruitment with universities in Norway, Sweden and Finland. The institute also participates in international cooperation on indigenous peoples outside the Nordic area.

I – II and IV

The Selbu case and the Svartskogen case

The Supreme Court's judgments in the Selbu case and the Svartskogen case are of key significance when it comes to property law in relation to immemorial usage as a basis for legal rights in Sami areas. Proposition to the Odelsting (parliamentary bill) no. 53 for 2002-2003 entitled "*Concerning an Act on legal matters and administration of land and natural resources in Finnmark County*" discusses the above judgments and the new development they reflect. Point 3.1.8 states:

“The geographical extent of reindeer husbandry rights has been a key issue in recent years.

Much of the reason for the attention given to this issue is to be found in the Supreme Court's judgment in the Korssjøfjell case (Supreme Court Reports 1998 p. 1217). Up to that point both the reindeer husbandry community and the reindeer husbandry administration held the clear view that reindeer husbandry rights existed within the boundaries of the Sami reindeer grazing areas, cf. the Reindeer Husbandry Act section 2. In the Korssjøfjell judgment, however, the Supreme Court concluded, after a concrete assessment of evidence based on general principles of property law, that, in a specific area within the administrative boundaries, reindeer husbandry rights had not been established by immemorial usage. The Supreme Court also dissociated itself from the notion that there is a presumption of reindeer husbandry rights in outlying areas within the administrative boundaries.

The same issue was to the fore in the Aursund judgment (Supreme Court Reports 1997 p. 1608). Here too the Supreme Court concluded that reindeer husbandry rights had not been established in an area within the administrative boundaries of the Sami reindeer grazing area. Indeed the first judge to deliver

his opinion stated explicitly (p. 1617) that neither the “the distinctive characteristics of reindeer husbandry, the nature of reindeer, their migration for food or the topography suggested that acquisition of rights by immemorial usage should be subject to significantly less stringent requirements here than elsewhere in property law”.

The above judgments left the impression that it was difficult for the reindeer husbandry community to win acceptance for their contentions regarding usage as a basis for legal rights. The Supreme Court’s judgment in plenary session in the Selbu case (Supreme Court Reports 2001 p. 769) adds finer distinctions. In its wake followed the Svartskog judgment (Supreme Court Reports 2001 p. 1229). The two latter judgments appear to suggest a new development in property law in Sami areas.

In the Selbu case the Supreme Court concluded that internal Norwegian rules were sufficient to justify reindeer husbandry law in the area. In the view of a majority of the Supreme Court it was not necessary to base this result on rules of international law. The majority nonetheless established that the Sami have indigenous people status in Norway under the ILO Convention Article 1.1(b), and that Norway’s international law obligations pursuant to Article 14 of the same Convention are in principle also applicable to Sami in Sør-Trøndelag.

In its assessment of whether the requirements as to immemorial usage are met, the Supreme Court stated that account has to be taken of the special conditions evident in reindeer husbandry. The requirements need to be adapted to the Sami’s and reindeer’s use of the area, and account must be taken of the fact that the Sami have led a nomadic way of life. Factors cited for other grazing animals cannot automatically be transferred to reindeer grazing. The first judge to deliver his opinion asserted that reindeer husbandry requires a large land area, and that area use varies from year to year. Hence it was unreasonable to require reindeer to have grazed in a particular area each year. Moreover, the Sami’s nomadic way of life meant that an interruption in grazing, even if of long duration, could not preclude the acquisition of rights. It was also pointed out that acquisition of rights was not in principle ruled out even if grazing had been confined to “*streifbeite*” (grazing on neighbouring properties).

A unanimous court acknowledged that this particular case presented methodology issues associated with Sami culture and way of life. It was pointed out that the Sami were late in adopting a written language, and that the court needed to take into account the fact that the Sami were nomads and by and large employed organic, perishable materials, and that physical evidence of reindeer husbandry is hard to find. The Supreme Court therefore called for caution to be shown in drawing conclusions from an absence of concrete information on the Sami’s presence in an area.

Being a decision reached in plenary session, this judgment will be a central source of law in any subsequent cases of a comparable nature.

The Svartskog judgment (Supreme Court Reports 2001 p. 1229) is an example of the linkage between customary law and international law in the sphere of property law. The case concerned a dispute about whether Sami landowners and rightholders in Manndalen in the county of Troms had, through immemorial usage, acquired property rights to a 116 square kilometre area, "Svartskogen", at the head of the valley. The area was purchased by the State in 1885 for the benefit of reindeer husbandry.

The Supreme Court concluded that the State had lost its proprietary rights to this area. Against the background of the competence restrictions inherent in Section 2 of the Act on Outlying Land (requiring a decision on whether or not the State is the rightful owner), the Supreme Court has not resolved who should be the recipient of the ownership position that the State has lost. The case is singular since it entails that a local community, essentially comprising Sami inhabitants, was effectively awarded proprietary rights to a sizeable area of outlying land which the community had utilised immemorially.

Where property law is concerned, it should be noted that the conditions for acquisition via immemorial usage were, in principle, assessed in the normal manner. What can be deduced from these judgments is that the Supreme Court applied well known principles of property law, but on Sami premises and in keeping with international law. It appears that the Supreme Court applied the legal norm afforded by applying international law texts to the property law analysis in question. Hence the court's decision was based on Sami usage and the Sami view of, and attitude to, the ownership issue. In the Selbu judgment this was particularly apparent in the court's assessment of nomadic use, and in the Svartskog judgment it was apparent in the court's assessment of good faith and in relation to the traditional Sami view of the concept of ownership."

The judgments are also discussed in Proposition to the Storting no. 33 (2001-2002), entitled *Supplementary report to Report to the Storting no. 55 (2000-2001) on Sami policy*.

Reindeer Husbandry Act

In conjunction with the negotiations on a reindeer husbandry agreement (economic agreement for the reindeer husbandry industry) for the year 1998-1999, the Sami Reindeer Herders' Association in Norway requested the appointment of a commission to review the Reindeer Husbandry Act. In the ensuing discussions between the Reindeer Herders' Association and the State it was agreed to initiate a limited review focusing on management, administration and internal conditions in the industry. Fundamental rights-related issues were to be addressed by the Sami Rights Committee as part of its further work.

A law committee of 11 members (later reduced to 10) was appointed in November 1998. The committee was given the following mandate:

“The committee shall review the Reindeer Husbandry Act (No. 49 of 9 June 1978) with a view to amending provisions dealing with:

1. Management and administration of reindeer husbandry.
2. Internal conditions in the reindeer husbandry industry, including the individual reindeer owner’s legal status.”

The committee’s recommendations were presented on 15 March 2001 and printed as NOU (Norway’s Official Reports) 2001:35.

Reindeer husbandry is firmly anchored in culture and tradition. An important concern for the committee was to formulate rules that build on the culture and traditions of reindeer husbandry. Hence the new law would take a basis in the *siida*, the fundamental social and working unit in reindeer herder society. The challenge facing the committee was to devise rules that suited the various *siida* arrangements but at the same time ensure that the rules were not so accommodating as to lose their legal significance. The committee also planned for a large measure of internal self-governance in the industry, while concurrently taking care to promote predictability and legal safeguards in the interests of the individual reindeer owner.

The committee’s recommendations have been circulated for comment. The government, the Ministry of Agriculture, is currently working on a Bill to be introduced to the Storting in the 2003-2004 session. The ministry is basing its work on the law committee’s recommendations, consultative comments from relevant bodies, and general political and *lex ferenda* guidelines. In that connection reference can be made to Report to the Storting no. 33 (2001-2002) entitled *Supplementary report to Report to the Storting no. 55 (2000-2001) on Sami policy* which states that the government, when framing laws and rules, will, where appropriate, seek to take into account Sami Customs, traditions and interests.

Reindeer grazing convention with Sweden

The Reindeer Grazing Convention between Norway and Sweden of 9 February 1972 deals with cross-border reindeer husbandry between the two countries. Under the Convention Swedish Sami reindeer herders are entitled to summer grazing pastures in Norway and Norwegian Sami reindeer herders are entitled to winter grazing pastures in Sweden. One reindeer grazing district in Norway is entitled to summer grazing in Sweden.

Under Article 69 of the Convention, a mixed Norwegian-Swedish reindeer grazing commission was appointed in 1997 to elucidate the question of whether, after the expiry of the Convention (on 1 May 2002), Sami reindeer herders in one country still needed reindeer grazing pastures in the other country in the grazing areas stipulated in the Convention or in parts of such areas. The Commission issued its recommendations on

18 May 2001. The recommendations contain an assessment of the existing Convention and a draft version of a new Convention. The recommendations have been circulated for comment.

Negotiations are now under way with Sweden on a new reindeer grazing convention. The Norwegian delegation has the following mandate:

“The negotiations shall be conducted with a basis in the mixed Norwegian-Swedish reindeer grazing commission’s recommendations presented on 18 May 2001, taking into account the statements received during the round of consultation.

A negotiated result shall lay the basis for a sustainable and positive development of Norwegian reindeer husbandry which takes due account of Norway’s national and international legal obligations towards its own indigenous population and of the environment and natural assets.

In addition to the permanent expert on environmental issues, the delegation must assess what need exists to bring in experts in other fields and what specific issues and problems should be given closer consideration. Expenditure in this connection must not exceed the finances made available.”

Since it was clear that much work remained to be done before a new Convention could take effect, the two countries have agreed to extend the present convention by three years to 30 April 2005. A new Convention shall have entered into force by this date at the latest.

The Aursund case

The Aursund case is also mentioned in the discussion of the Selbu case and the Svartskogen case.

The Supreme Court’s judgment in the Aursund case was published on 24 October 1997, (cf. Supreme Court Reports 1997 p. 1608). The Supreme Court concluded that reindeer husbandry had not been established in an area within the administrative boundaries of the Sami reindeer grazing area. In connection with the reindeer husbandry negotiations for the 1998-1999 agreement, the Sami Reindeer Herders' Association called for the authorities to detail what action they would take in the situation that has arisen in the South Sami areas in the wake of the Supreme Court’s judgment in the Aursund case. The Government expressed a clear will to protect the economic basis for South Sami reindeer husbandry, the premise being that such protection would primarily be achieved through lease agreements. It was also stipulated that the outlays on lease agreements and/or expropriation of grazing rights should be paid by the State. Reference is made to Proposition to the Storting no. 49 (1997-98) and Report to the Storting no.18 (1997-98). On 6 April 1998 Riast Hylling reindeer grazing district demanded, with reference to the Reindeer Husbandry Act section 31, the expropriation of reindeer grazing rights in areas encompassed by the Supreme Court’s decisions of 1897 and 1997, an area of about 121 square kilometres.

The above reindeer grazing district has also filed a complaint with the United Nations Human Rights Committee against the background of the Supreme Court's judgments in the Aursund case and Norway's obligations towards indigenous peoples under international law. After several exchanges of information and contentions between the parties, a majority of the Human Rights Committee concluded on 25 October 2002 that the complaint would not be taken up for consideration insofar as the question of contravention of the UN Convention's Article 26 is concerned. The Committee pointed out that this case had taken a disproportionate length of time, and urged the Norwegian State to rapidly secure a clarification of the reindeer-husbandry situation to the north and north-west of Aursunden.

Against the background of the expropriation application the Ministry of Agriculture appointed a negotiating committee whose mandate was to prepare a draft for a long-term grazing agreement. The State negotiating committee held negotiations with an appointed landowner committee representing a majority of the landowners – in all 58 persons. The parties produced a draft agreement in 2000. The agreement entailed building a virtually unbroken cordon fence of about 40 kilometres. It subsequently turned out that only about 38 per cent of the landowners wished to accede to the agreement. Riast Hylling reindeer grazing district responded that they did not accept the agreement and maintained their application for expropriation. In the course of 2001 the landowners who were parties in the Aursund case in 1997 notified the Ministry of Agriculture what fencing course was acceptable to them and suggested a number of changes to the draft agreement.

In the autumn of 2002 the agriculture minister inspected the area in question and met the landowners involved and Ryast Hylling reindeer grazing district. The minister expressed the clear view that the government does not wish to expropriate grazing rights for the benefit of the reindeer husbandry community, but would seek to arrive at an agreement solution. After the meetings an enquiry was sent to Røros municipality and the County Governor of Trøndelag to elicit their view of the proposed fencing course.

The Ministry of Agriculture's assessment of the situation is that greatest urgency attaches to achieving a solution for the area north of Aursunden. To this end a new draft agreement for this area was forwarded in April this year. Responses from the landowners show virtually 100 per cent support for the new draft agreement. The agreement entails some adjustments in relation to the negotiated agreement of 4 February 2000, including a change which better protects reindeer herders' interests when moving reindeer as well as clearer guidelines to how non-performance and disputes in relation to implementation of the agreement should be dealt with. Moreover, two adjustments are made to the fencing course.

In the revised national budget the government proposed to the Storting an increase in the appropriation for establishing agreements both for landowners north of Aursunden and for the rest of the area – a total of NOK 4.4 million. Subject to the Storting's approval of the increase when it deals with the revised national budget on 20 June, the

Ministry of Agriculture will send the landowners north of Aursunden an agreement for signing. The ministry expects construction of the cordon fence to start after the agreement is formalised, and that the area will be leased free of charge to Riast Hylling reindeer grazing district. Where rest of the area is concerned, the ministry aims to forward a new agreement before the summer holidays.

V

Reference is made to previous report.

VI

This report will be communicated to the Confederation of Norwegian Business and Industry, the Confederation of Trade Unions in Norway, the Confederation of Norwegian Commercial and Service Enterprises, the Federation of Norwegian Professional Associations, the Confederation of Higher Education Unions in Norway, the Confederation of Vocational Unions, the Norwegian Association of Local and Regional Authorities and the Sami Parliament.

Oslo, October 2003

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