

Report to the United Nations – Norway's compliance with the  
Covenant on Civil and Political Rights 2005–2009



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## 1. Article 1 of the Covenant on Civil and Political Rights

The Covenant on Civil and Political Rights has been implemented in Norwegian law by giving it priority over other laws in the event of a conflict between the Covenant provisions and other Norwegian legislation, see section 3 of the Human Rights Act.

As regards article 1 of the Covenant, developments have shown that the term “self-determination” is dynamic and constantly changing. The term has become increasingly relevant in the Norwegian Sami-political debate in recent years (among other things in the debate concerning the Finnmark Act and the proposed Nordic Sami Convention), as efforts have been made to fulfil Norway’s obligations to the Sami as an indigenous people pursuant to international law.

### 1.1 The Norwegian authorities’ view on the Sami’s right of self-determination

In connection with the work done on the UN Declaration on the Rights of Indigenous Peoples, the Norwegian authorities supported recognition of the principle that indigenous peoples have a right of self-determination. When adopting the declaration, Norway nevertheless chose, contrary to the express will of the Sameting, to make a vote explanation whereby the right of self-determination was interpreted subject to the modifications set out in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. Norway emphasised in this connection that the right of self-determination is not to be interpreted as authorising or encouraging actions that will lead to the division or weakening of the territorial integrity or political unity of sovereign, independent and democratic states.

There is agreement in Norway that this problem is theoretical and most unlikely to arise, and Norway’s vote interpretation is therefore immaterial to the situation in Norway. The Sameting would emphasise that the Sami have never asserted any right of severance. Given that the Norwegian authorities nevertheless constantly emphasise this problem, the Sameting wishes to point out that the effect of this focus is to marginalise the Sami as a people, and thus also to reduce the Sami’s opportunity to exercise control over their own economic, cultural and social development.

While the Norwegian authorities recognise in principle that the Sami have a right of self-determination, the Norwegian authorities nevertheless find it difficult to accept that the Sami as a people have a right of self-determination pursuant to Article 1 of the CCPR. There are currently no examples of measures or processes that have been put into effect in Norway for the purpose of incorporating into Norwegian law the Sami’s right of self-determination pursuant to Article 1 of the CCPR. Instead, Norway has chosen not to clarify its position on Article 1 of the CCPR, and has thus explicitly made a delimitation against it in processes linked to the fulfilment of its international-law obligations to the Sami as an indigenous people. After the completion of these processes, the Norwegian authorities have nevertheless chosen to cite them in international reporting as examples of the fulfilment of Article 1 of the CCPR. This applies, for example, to the agreement between the Sameting and the Norwegian authorities relating to consultation procedures, which the Norwegian authorities have emphasised was exclusively an implementation of the obligations in Article 6 of ILO Convention No. 169. The Sameting will discuss the consultation agreement in more detail below, in the section related to Article 27 of the CCPR.

## 1.2 The Sameting's formal position and budget procedures

The agreement on consultation procedures does not cover budget-setting. The government and the Sameting agree that a duty to consult also applies in relation to budget-setting, and that procedures for the setting of Sameting budgets must be clarified through a separate process. An inter-ministerial working group was established in 2006. Its members were drawn from the ministries and the Sameting, and it was to consider the formal position of the Sameting and prepare a proposal regarding budget procedures. The working group submitted its unanimous proposal in March 2007, after evaluating various models.

In 2008, the government put forward a proposal that was not based on the working group's unanimous proposal. Instead, the government chose to base its proposal on the current situation, in which an input meeting is held with state secretaries from various ministries. The Sameting was not consulted, and has rejected this solution.

Even though the process has stopped for a period, the Sameting believes that further consultation on the matter will enable a solution to be found that satisfies indisputable international-law provisions.

The 2006 working group also made a joint proposal regarding revision of the Sami Act in order to clarify that the Sameting is a self-contained body that is independent of the Norwegian authorities, on the basis that this is already the factual and legal position of the Sameting. The Norwegian authorities have signalled that they wish to consult further with the Sameting on this matter.

## 1.3 Draft Nordic Sami Convention

The Nordic Sami Convention is a joint Sami-policy platform drawn up by a committee of experts appointed by Norway, Sweden and Finland in cooperation with the Sami parliaments. The convention is based on international conventions, declarations and agreements.

The convention is a fundamental instrument that recognises the Sami as one people with equal rights, across national borders in the Nordic countries. It is therefore important that the convention be ratified by all three states – Norway, Sweden and Finland – to help ensure that the Sami enjoy positive social development that protects their basis of existence and recognises their right of self-determination.

The Sameting believes that the draft Article 3 of the Sami Convention concerning self-determination expresses the same right of self-determination as Article 1 of the CCPR/ICESCR. The preparation of a Nordic Sami convention may therefore be regarded as a step in the process of securing explicit confirmation by all Nordic states that the Sami are a people with a right of self-determination as defined in Article 1 of the CCPR/ICESCR. Sweden gave such confirmation in its 2006 report to the UN.

## 1.4 The need for a national body to monitor breaches of the human rights of the Sami

The Sameting is advocating the establishment of an independent monitoring mechanism that is mandated to monitor breaches of the human rights of the Sami. Any body of this kind must have solid knowledge of Sami culture and society, as well as a complete overview of Norway's international-law obligations to the Sami as an indigenous people. The Centre for Human Rights currently conducts general monitoring of the human rights situation in

Norway, but lacks culture-specific expertise as regards the circumstances of the Sami. The Sameting will enter into dialogue with the Norwegian authorities with the aim of granting the Resource Centre for the Rights of Indigenous Peoples (GALDU) the necessary resources, and making the centre a national institution for the human rights of the Sami.

## **2. Article 27 of the Covenant on Civil and Political Rights (CCPR)**

### **2.1 Language and culture conservation**

#### **2.1.1 Coordination of accessory agencies through the establishment of resource centres for children who are exposed to abuse and violence (Barnehus – Children’s Houses)**

The Sameting refers to Norway’s report regarding the establishment of Children’s Houses in Norway. The intention of the national rollout of Children’s Houses is for all expertise to be gathered in one place, so that children only have to tell their stories once. These Children’s Houses have not acquired the Sami language and cultural expertise needed to provide Sami children with the service to which they are entitled. Accordingly, Sami children are unable to exercise their right to use their language or their right to enjoy their culture. The Sameting has initiated consultations with the government, requesting that the rights and needs of Sami children pursuant to Article 27 of the CCPR be safeguarded when Children’s Houses are established. The first consultation meeting took place on 17 December 2008, but agreement has yet to be reached. Neither minutes nor a progress schedule for the matter have been produced, despite repeated reminders from the Sameting.

#### **2.1.2 Interpretation service for Sami patients**

Sami patients encounter a public health and social service that does not have sufficient Sami language expertise or cultural understanding to offer a Sami-language service. Many Sami patients currently find that they are unable to use their mother tongue in dealings with the public health service, and that communication with health service personnel is difficult. Sami patients who visit health institutions offering a national service for specific patient groups find that they are not offered an interpreter. The Sameting is in dialogue with central public health authorities with the aim of agreeing a solution that safeguards the right to use one’s own language, see Article 27 of the Covenant. The Sameting has conducted an evaluation of its health-related and social projects. The evaluation shows that the projects that the Sameting has supported have had a positive effect as regards highlighting what the Sami represent and increasing local awareness in municipalities. However, the Sameting continues to struggle to make health authorities include their duty to safeguard the rights of Sami patients in their strategic governing documents. This problem has been raised with the Norwegian authorities. The Sameting expects consultations to be initiated in relation to this matter.

#### **2.1.3 Sami prisoners**

Sami prisoners in Norwegian prisons also face difficulties as regards being able to use their own language. The Norwegian authorities are to establish a working group in dialogue with the Sameting that is to survey the need for resources and special measures for Sami prisoners and convicted persons, and consider the establishment of an independent resource centre for Sami language and culture.



#### **2.1.4 Sami children's experience of the child welfare authorities**

Sami children who receive help from the child welfare service encounter a service with deficient language and cultural expertise. Sami children find that they are sent to foster homes and child welfare institutions that lack expertise in the Sami language and culture. Even though the Norwegian Child Welfare Act states that account shall be taken of ethnic and cultural considerations when making placements, there are several examples of placement outside the Sami environment. Equally, there are many examples of deficient follow-up of Sami culture and language while children are in the care of the child welfare authorities. The Sameting believes that these matters are breaches of Article 27 of the Covenant.

The Sameting has initiated consultations with central child welfare authorities concerning implementation and follow-up of Sami children's rights pursuant to Article 27 of the CCPR in applicable regulations.

#### **2.1.5 The education sector**

The Sameting finds that the Sami community faces many challenges linked to basic education, higher education and research. There is a need for further practical development of processes involving state authorities and the Sameting, based on international law.

The Education Act grants Sami pupils at basic-education level an individual right to teaching in the Sami language. In cases in which teaching cannot be provided using in-house teaching staff, teaching is to be provided by alternative means, such as remote teaching. This right cannot currently be said to be sufficiently safeguarded outside of the geographical area that the Education Act defines as the Sami district.

The Sameting would emphasise that local Sami communities currently face major challenges linked to extensive school closures. Some closures have already been decided, while others are planned. The school closures are hitting smaller, rural Sami communities hard, and threatening settlement in these areas. In November 2008, the Sameting Council requested an emergency meeting with four ministers regarding the school closures and Norway's regional policy, but has yet to receive a reply. The Sameting is powerless in the face of the national policy of centralising educational facilities, something which particularly affects small Sami communities.

#### **2.1.6 The Eastern Sami**

The Eastern Sami are in an exposed and culturally critical situation. In a short time, they have gone from making up the majority of the population in their areas to being a minority. The reason for this is, not least, the national political importance of the border areas. Eastern Sami culture is in the process of disappearing as a result of hard-handed assimilation policies and discrimination. Accordingly, the Eastern Sami are currently the weakest group among Norwegian Samis, and very few of them remain today. The Sami Law Committee therefore evaluated various special measures directed at the Eastern Sami.

During the process linked to the Finnmark Act, the Sameting (referring to the Sami Law Committee's proposal), proposed that separate statutory provisions should be included in both the Finnmark Act and the Sami Act that provide authority for implementing special measures to protect Eastern Sami culture. The Sameting also proposed special rules relating to Eastern Sami sea-salmon fishing grounds and Eastern Sami river fishing in Neiden in order to strengthen these aspects of traditional Eastern Sami culture. The Norwegian authorities did not respond to these proposals during the process linked to the Finnmark Act.

The Sameting therefore stated in its May 2005 declaration of support for the Finnmark Act that safeguarding Sami rights in Eastern Sami areas pursuant to domestic and international law is the next step in the effort to protect rights in Finnmark. At the same time, it emphasised that work on these issues must be initiated speedily, and must be given priority.

The government has not followed up on measures to safeguard and strengthen the Eastern Sami's material cultural base as proposed by the Sami Law Committee and the Sameting. However, the Sameting regards the building of the Eastern Sami museum as a positive measure that supports Eastern Sami culture.

## **2.2 Consultations**

As regards the content of the consultation agreement, the Sameting would refer primarily to Norway's periodic report, and would add that the agreement was the product of a lack of consultation on the government's original Finnmark Act proposal and subsequent consultations between the Sameting and the Storting.

The Sameting and the Norwegian authorities agreed that constant debate about the content of the duty to consult was unfortunate, and a joint project was therefore initiated that led to the adoption of the "Agreement between the Sameting and state authorities relating to consultation procedures" [*Avtale mellom Sametinget og statlige myndigheter om konsultasjonsprosedyrer*]. In this connection, the Sameting also wanted the right of self-determination pursuant to Article 1 of the CCPR to be included as one of the agreement's fundamental legal principles. However, the state authorities proceeded on the basis that the agreement was purely a concretisation of the obligation to consult contained in Article 6 of ILO Convention No. 169.

The duty to consult highlights that state authorities are in fact required to seek agreement with the Sameting in good faith. The procedures are an important tool that helps to ensure that the decisions that are made have legitimacy among the Sami population, through their democratically elected body. Accordingly, the Sameting must have the opportunity to exert real influence on the process and the result. For this reason, provisions have been put in place that require the Sameting to be given full information at all stages of the process, and account to be taken of the Sameting's view during the further processing of the matter.

### **2.2.1 The implementation of the consultation agreement**

Since the confirmation of the consultation agreement by Royal Decree in July 2005, the Sameting has consulted with the state authorities on many matters.

The Sameting's position has been strengthened on a general basis by the fact that various ministries have become more aware of the need to include the Sameting in important processes. The Sameting has been involved in several good consultation processes, and several ministries have acknowledged that, pursuant to the consultation agreement, the Sameting has to be consulted with the aim of achieving agreement. The consultation processes with the Ministry of the Environment regarding the new Planning and Building Act and new Nature Diversity Act, as well as several other processes, are good examples of consultation with full information at all stages and a willingness on both sides to achieve agreement.

Unfortunately, the consultations regarding the new Planning and Building Act and Nature Diversity Act do not consistently represent the general experience. There have been several cases in which the state authorities have not respected the consultation agreement and the underlying international-law obligations. For example, the government chose to end consultation about structural measures for the fishing fleet without a mutual understanding between the parties that there was no need for further consultation, without the ministry having provided full information about all relevant circumstances at all stages of the processing of the matter, and without an assessment being made of the effects of the measures in question on Sami fisheries by reference to international-law obligations. This was done even though the minister had promised to "... prepare a memorandum setting out how the proposals in question may affect Sami interests, by reference to international-law obligations" (see minutes of the consultation meeting on 26 February 2007). The government also chose to publish a draft revised Reindeer husbandry Act before consultations with the Sameting had been concluded and without the Sameting having been given full information about the government's assessments and interpretations of the proposed statutory amendments.

The Sameting has also noted that no consultation took place about, among other things, the national health plan and the management plan for the Barents Sea.

The Sameting has faced challenges connected to the fact that, in a number of situations, there has been very little or no scope for real consultation with the state, as the government has in reality already made the decisions. The Sameting understands that it can be difficult to reach agreement within government on large and complex matters, but nevertheless takes the view that this cannot justify a failure to conduct real consultation.

A general problem in various major resource-legislation cases has been that the state authorities have actively sought to delimit indigenous-people rights by referring them to parallel or subsequent special processes. In reality, this constitutes a disclaimer of responsibility by individual ministries and a disclaimer of the state's obligations to the Sami as an indigenous people pursuant to international law. Moreover, the result in these cases has often been that while extensive new legislation has been adopted, the consideration of questions related to Sami rights and Sami participation has been postponed until the next revision of the entire body of laws, which often lies a long way in the future.

### **2.2.2 Planning and Building Act**

Sami culture, commercial activity and social life are under pressure from the rest of the wider Norwegian society, in many ways. There is therefore a need for rules that ensure that Sami culture, commercial activities and social life are safeguarded in the planning of municipalities and counties.

Land rights are of great importance to Sami commercial activity and settlement, to cultural belonging, and to the continuation and development of social life. Traditional Sami trade forms require extensive use of large land areas. Two matters are decisive in the management and exploitation of the environment and land areas. One is the clarification of land ownership. The other is the statutory framework governing environmental and resource management.

The Sameting has reached agreement with the Ministry of the Environment regarding a new planning part in the Planning and Building Act. It will provide that the purpose of land planning is to safeguard the natural basis for Sami culture, commercial activities and social



life. The Sameting will be given a right to object in cases that may undermine this objective. This statutory amendment is an important acknowledgement of Sami commercial activities based on uncultivated land.

Sami interests have also been made a fundamental consideration in the application of the Act, meaning that the Act's planning provisions must be interpreted in the light of these interests. The Act establishes a good basis for safeguarding the material Sami cultural base in connection with land planning.

The Sameting would nevertheless like to point out that if the Act is to ensure effective follow-up involving real participation by the Sami, the Sameting must be granted instruments and resources for this purpose. The government has not provided for this in its draft legislation.

### **2.2.3 The Nature Diversity Act**

Following extensive consultation, the Sameting and the state authorities reached agreement regarding the Act relating to management of the diversity of nature (the Nature Diversity Act), which entered into force in July 2009.

The Act recognises and emphasises that traditional Sami knowledge should be part of the knowledge base for the making of public decisions that affect the diversity of nature. Accordingly, Sami knowledge that can contribute to the sustainable use and protection of nature (including the knowledge of practitioners of Sami culture commercial activity) will be better integrated with scientific knowledge before authority is exercised.

The Sameting notes the inclusion of a provision concerning the giving of emphasis to directly affected Sami interests. This will ensure that the interests of the natural basis for Sami culture will be assessed and sufficiently emphasised in the application of the Act (see Article 27 of the Covenant on Civil and Political Rights). The Sameting would point out that the text of the proposition clarifies that the consultation agreement between the state authorities and the Sameting remains fixed.

The Sameting would point out that the area-preservation rules in the Act uphold the principle that protection may also be used to safeguard the natural basis for Sami culture and commercial activities in Sami areas. The Sameting would point out that the same applies in relation to Sea Sami culture in connection with marine preservation plans affecting Sami areas. The Sameting would further point out that the proposition text clarifies that the case-processing guidelines for protection and management planning that affects Sami areas remain fixed, and that practitioners of Sami culture and commercial activities are to be included in the case-processing.

The Act also permits the appointment of a separate body to act as the administrative authority for a protected area. Following special consultations, agreement has been reached on the establishment of local area-preservation boards, whose Sami members are to be appointed by the Sameting. The details of this new administrative system for protected areas still need to be finalised, and it needs to be implemented.

### **2.2.4 The Ocean Energy Act**

Through consultations, the Sameting has reached agreement with the government regarding the content of a new Ocean Energy Act. The Storting has yet to consider the government's bill.

The Sameting would emphasise the significance of the fact that the Act contains a separate ‘emphasis provision’ applicable to decisions under the Act that may affect Sami interests. Further, it would point out that this should have a considerable transfer value in respect of future legislative processes relating to areas in relation to which this obligation (which is apparent from Article 27 of the CCPR), has not been incorporated into Norwegian law. The Sameting also notes that the comments on this provision state that consultations are to be held pursuant to the consultation agreement between the state authorities and the Sameting in connection with proposals to open up land areas and the processing of licence cases.

#### 2.2.5 The Minerals Act

The Ministry of Trade and Industry consulted the Sameting regarding the Minerals Act in the period January 2007–September 2009. No agreement was reached regarding the bill. A unanimous Sameting rejected the bill, which was nevertheless adopted by the Storting. In this case, there was no real dialogue regarding the content of the bill, which made the process very difficult. The government chose to clarify its views on the consideration of Sami rights in the bill before the Sameting had been consulted in-depth regarding these. The result was that the consultations were not characterised by good faith and the aim of achieving agreement.

The Act contains no separate ‘emphasis provisions’ applicable to Sami cultural interests outside Finnmark. Further, it contains no provisions or clarification related to the fact that the consultation agreement remains fixed as regards plans for mineral-related activity, or provisions guaranteeing the Sami participation in the proceeds of mineral extraction in Sami areas.

#### **2.2.6 Reports to the Storting on structural measures for the fishing fleet and on king crab, and the Marine Resources Act**

While the question of the Sami’s right to marine resources has been considered by the Coastal Fisheries Committee, three large-scale, parallel processes have taken place in the Norwegian marine sector. The government has delivered two Reports to the Storting: one on structural measures for the fishing fleet and one on king crab. In addition, a new Marine Resources Act has been adopted. The Sameting has been consulted during all three processes, and has strongly disagreed with the fact that the government has postponed consideration of the indigenous-people question in all three processes.

The Marine Resources Act entered into force on 1 January 2009. The Sameting emphasised throughout the entire consultation process that the state of Norway would breach its international-law obligations to the Sami as an indigenous people if the Marine Resources Act did not recognise and protect the Sami people’s right to exploit renewable marine resources, and grant the Sami as an indigenous people the right to participate in their management.

The consultations on the Marine Resources Act have not produced agreement regarding the content of the Act. The Sameting finds it necessary to emphasise that any future support for the Marine Resources Act as a whole can only be given once agreement is reached on specific statutory provisions based on the statement of the Coastal Fisheries Committee relating to the entire Sea-Sami area. The decisive factor in the Sameting’s final position on this issue will be whether the Act as a whole at last will be within the framework of indisputable international law.

## 2.3 Material culture

### 2.3.1 The Finnmark Act

The Finnmark Act was adopted by the Storting in May 2005, and entered into force on 1 July 2006. (Chapter 5 of the Act relating to the mapping and recognition of existing rights entered into force on 14 March 2008.) The plenary assembly of the Sameting gave its unanimous support to the bill in May 2005, ahead of the Storting's resolution.

Extensive and fundamental changes were made to the government's original proposal. The spirit and principles of the bill were altered from focusing on the question of the rights of the public to the natural resources of Finnmark to establishing that the overarching purpose of the Act is to safeguard, in particular, Sami culture, including reindeer husbandry, the use of uncultivated land, commercial activities and social life.

This was one of the Sameting's principal demands, just like the demand that international law should be given a central role in the bill. The Finnmark Act has given the Sameting an instrument for influencing land use administration in the county by issuing its own guidelines for altered use of uncultivated areas.

As regards resources, the Finnmark Act contains some changes that accord with the Sameting's wishes. Rural areas and the resource use of their inhabitants have been recognised by means of the special right to exploit renewable resources in traditional settlement areas. This provision, along with the provision regarding local management of such resources, will be an important instrument for ensuring continued settlement in the rural areas.

The proposal concerning a "Finnmark Commission" and a special court represents very important progress. The proposal is based on known principles, but not all positive elements are stated explicitly in the Act. Section 29 provides that the commission is to identify established rights under applicable national law. Moreover, the commentary on the Act states clearly that Sami customs are to form part of the basis for the commission's decisions.

The Finnmark Act is the first important step in the process of recognising the Sami's rights to land and resources. Many questions that the state authorities will have to follow up on still remain. Perhaps the greatest limitation of the Finnmark Act is that it only applies to part of the traditional Sami area in Norway.

### 2.3.2 The Finnmark Fisheries Act

In connection with the adoption of the Finnmark Act, the Storting instructed the government to conduct, as soon as possible, a study of the right of the Sami and others to fish in the sea off Finnmark. Following consultations with the Sameting, an expert committee was appointed, which took the name "Coastal Fisheries Committee". The report of the Coastal Fisheries Committee, NOU 2008: 5 "*Retten til fiske i havet utenfor Finnmark*" [The right to fish in the sea off Finnmark], was delivered on 18 February 2008. The report was submitted for public consultations in the middle of April 2008.

The situation of Sami fisheries has been critical in recent years. During the delivery of the Coastal Fisheries Committee's report, Committee Chairman Carsten Smith (a former Chief Justice of the Norwegian Supreme Court and a representative in the United Nations **Permanent Forum** on Indigenous Issues), stated that:

*“Several factors have brought about the current critical situation of the Sea Sami. However, one of the most material culturally destructive factors has been a hundred-year-long norwegianisation policy, which has affected the Sea Sami particularly strongly. The state now has an opportunity – and presumably the final opportunity – to correct some of the adverse effects of this policy.”*

The Coastal Fisheries Committee itself summed up its proposals in 12 main points:

1. It is established as a principle that people who live along the fjords and the coast of Finnmark have a right to fish in the sea off Finnmark on the basis of historic use and the rules of international law on indigenous peoples and minorities.
2. This right to fish applies to all ethnic groups.
3. The right includes a right to fish for personal consumption, a right to begin a fishing business and, further, a right for professional fishermen to fish an amount that provides a financial basis for a household, either as a sole occupation or in combination with other commercial activity. This is a right that the individual fisherman has vis-à-vis the fisheries authorities, and which does not require the fisherman to purchase a quota.
4. The right indicates the committee’s positive response on the question of a minimum quota. The minimum quota applies not only to vessels under 10 metres, but to all fishermen resident in Finnmark.
5. People resident along individual fjords have a special right to fish in those fjords, called the fiord right in the Act. A regional governing body may, following a more detailed assessment, permit fishing by others.
6. Fishermen resident outside Finnmark have the same right as Finnmark fishermen to fish outside of the fjords.
7. A regional governing body, called the Finnmark Fisheries Administration in the Act, will be established. Finnmark County Council and the Sameting will each appoint three board members. This governing body will lay down rules regarding vessel size and the use of fishing gear in the sea up to four nautical miles outside the sea boundaries.
8. The regional governing body will be given authority to receive and allocate quotas and permits and implement other measures to promote fjord and coastal fishing in Finnmark. The quotas allocated in this way are to be personal and incapable of resale.
9. The state will have a statutory obligation to give the regional governing body sufficient resources, in the form of capital, quotas or fishing permits, to secure the material basis for Sea Sami culture and other coastal culture in Finnmark.
10. The committee also emphasised several individual measures that will help to strengthen fjord and coastal fishing in Finnmark.
11. Any claims for recognition of rights related to fjord and coastal areas off Finnmark are to be dealt with by the Finnmark Commission.

12. In summary, the committee's proposal involves a special coastal fisheries zone in Finnmark, referred to as the Finnmark Zone in the Act.

In May 2008, the plenary assembly of the Sameting, following an overall evaluation (for the purposes of which it was assumed that the report of the Coastal Fisheries Committee would not be substantially amended), resolved to recommend to the Storting the adoption of the expert group's draft bill in its current form.

### **2.3.3 Fishing for sea salmon**

During the last two years, the Norwegian authorities have adopted regulations that have imposed material limitations on sea-salmon fishing. Consultations with the Sameting have not produced agreement. The Norwegian authorities have established a committee that has proposed a licensing scheme for sea-salmon fishing, but consultations have not led to agreement regarding this committee's mandate.

During the consultations, the Sameting pointed out that a licensing scheme would mean individual landowners losing their fishing rights. A licensing scheme would limit the opportunity to pursue a traditional Sami trade. The scheme must not conflict with the obligations under Article 27 of the CCPR to protect the material basis of Sami culture. Given that such interference with the right of ownership will clearly have negative consequences for a threatened Sami culture, and that the state is obliged to combat such negative consequences, it is difficult to see how the interference can be justified. These matters have not been considered in connection with either the regulations that limit sea-salmon fishing or the potential introduction of a licensing scheme.

### **2.3.4 The Sami Law Committee south of Finnmark**

In November 2007, the Sami Law Committee published its report NOU 2007: 13 "*Den nye sameretten*" [The new sami law]. The Sami Law Committee south of Finnmark proposed three new acts: a survey and recognition act, a Hålogaland common land act (landowner management of areas to be identified in Troms and Nordland counties), and a case-processing and consultation act. The Sami Law Committee also proposed changes to the Mountain Act (the right of common use of areas in Southern Norway), the Mining Code, the Nature Conservation Act, the Planning and Building Act, the Reindeer Husbandry Act and the Outdoor Recreation Act. The Sami Law Committee also considered the need for legislative changes related to coastal and fjord fishing, but decided to leave the suggestion of concrete measures in this area to the Coastal Fisheries Committee.

In its report, the Sameting proceeded on the basis that the solutions chosen for areas south of Finnmark must satisfy indisputable international-law requirements, and that the overall solution chosen must not be worse than that introduced for Finnmark by the Finnmark Act. The Sameting considers it to be important that thorough and directed efforts are now made to enshrine in law the Sami's property, usage and participation rights relating to land and resources.

### **2.3.5 Reindeer husbandry**

In Norway, Sami reindeer husbandry is a commercial activity with its rights linked to Sami ethnicity. It is a commercial activity that is specific to the Sami culture, and differs from other industries due to, for example, its organisational form, the fact that the value base consists of experience-based knowledge about nature and the reindeer, and the role of the Sami language

and culture. The operational method and organisation of reindeer husbandry are determined by boundaries imposed by nature.

It is a serious matter that all reindeer grazing areas in Norway are in constant conflict with public and private interests, and that in most cases this leads to reductions in the areas available for reindeer husbandry. Reindeer husbandry is pitched against major social interests and obligations, such as the need for green energy (wind farms, hydroelectric plants and electricity transmission networks), the activities of the armed forces, the protection of beasts of prey, the development of infrastructure, recreation, holiday cabin development, traffic in uncultivated areas, and the development of local communities. Norway has an obligation to facilitate Sami participation such that Sami needs and Sami opinions on the situation are illuminated, respected and valued, and such that these matters in practice form the basis for decisions that directly affect the reindeer husbandry industry.

The Sameting is aware of the problems that the reindeer husbandry industry is experiencing due to a lack of clarification of internal legal relations and relations between different Sami *siidas*<sup>1</sup>. The Finnmark Commission is not to consider these matters. The Sameting considers this to be problematic, and considers legal clarification to be desirable, preferably by the Finnmark Commission also reporting on internal relations within the reindeer husbandry sector.

#### **2.3.6 Management of beasts of prey**

The Sameting does not currently have sufficient influence on beast-of-prey policy and management. The Sameting considers it crucial that the beast-of-prey committees have sufficient Sami expertise, and that it is ensured that the committees include Sami representatives and that Sami interests are safeguarded. The Sameting is not satisfied with the fact that it only appoints one of five members of the beast-of-prey committees in the Sami areas. The Sameting would point out that the Norwegian authorities are required to implement specific measures through consultation with the Sameting to satisfy their obligations under Article 27 of the CCPR.

#### **2.3.7 Levy conditions in the context of reindeer husbandry**

The Sameting believes that the current levy conditions applicable to those engaged in reindeer husbandry should be amended.

The current levy conditions are unreasonable, as the agriculture enjoys more favourable levy conditions than reindeer husbandry. There are no sensible arguments indicating that agriculture should be favoured over other primary industries. Reindeer husbandry is an important bearer of Sami culture, and an important trade in the Sami community. The Sameting believes that these levy conditions are not consistent with the intentions of Article 27 of the UN Covenant on Civil and Political Rights.

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<sup>1</sup> Translator's note: A reindeer husbandry group, including people, animals and buildings