

## UN Expert Mechanism on the Rights of Indigenous Peoples

### **Submission to EMRIP study**

We refer to the call for input to the study on “Laws, legislation, policies, constitutions, judicial decisions and other mechanisms in which States had taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration”.

States play a pivotal role in safeguarding the rights of Indigenous Peoples, and this paper delves into the measures undertaken by states in both legal principles and the execution of judicial rulings concerning Indigenous Peoples' rights. The focus is specifically on the Nordic states, with particular attention to the Sámi People.

The implementation of the Declaration on the Rights of Indigenous Peoples can be a protracted process. Notably, Norway, Sweden, and Finland have not adopted a comprehensive approach to implement the Declaration. Varied state approaches to the Declaration are evident, as exemplified by the divergent stances of Canada and Norway. Despite an initial endorsement of the Declaration, Norway has downplayed its legally binding nature. However, the Norwegian Supreme Court has clarified that the Declaration must be considered a foundational document in international law, partly due to its reflection of customary international law (Supreme Court decision HR-2018-456-P).

In Sweden, persistent disagreements surround the management of hunting and fishing rights in reindeer herding areas. Political attempts to resolve this issue have proven unsuccessful. The Swedish reindeer herding industry strategically identified a pivotal case and rallied collective support. While the Supreme Court actively invokes the Declaration in the case, it also makes an interesting observation about ILO Convention No. 169. Despite Sweden not ratifying the convention, the Supreme Court acknowledges its relevant articles as expressions of general principles under international law (Supreme Court decision T 853-18).

In Finland, the Sámi argued that the Sámi Parliament Act violates the Sámi people's right to self-determination. After unsuccessful attempts at a political resolution, the case reached the UN Human Rights Committee and the Committee on the Elimination of Racial Discrimination (CCPR communication No. 2668/2015 and CERD communication No. 59/2016). The victory achieved

highlights the potential impact of judicial decisions in advancing Indigenous Peoples' rights. Despite these successes, the Sámi Parliament Act in Finland remains non-compliant with international law, prompting an engagement by EMRIP to align it with the Declaration.

Judicial decisions have proven effective in upholding Indigenous Peoples' rights, necessitating political follow-up. Nevertheless, Nordic courts historically served as instruments of assimilation and suppression for Indigenous Peoples, with persistent challenges including judges' limited knowledge of Indigenous cultures and laws. While lower court levels exhibit scant familiarity with Sami culture or law, there is a Sámi court at a lower level in Norway within a Sámi area, enabling cases to be conducted in the Sámi language, with judges possessing expertise in Sámi matters and Indigenous Peoples' Rights.

In Supreme Courts, judges must possess knowledge about Indigenous Peoples and their rights, including the Declaration. A commendable example is the Norwegian Supreme Court's organization of a seminar in 2022 on Sámi and Indigenous Peoples' rights for judges and legal assistants. Participation in events and discussions can mitigate challenges in interpreting the Declaration and the Human Rights of Indigenous Peoples.

Moreover, the Saami Council underscores the role of activism as a potential initiative for Indigenous Peoples, citing resistance to wind industry projects in Norway. In a landmark 2021 decision, the Norwegian Supreme Court ruled that Norway had violated the Sámi People's human rights in a wind farm project on the Fosen peninsula (Supreme Court decision HR-2021-1975-S). Despite winning the case, the government's failure to respect the ruling sparked protests and activism by Indigenous and local youth, highlighting the imperative of campaigns and activism to uphold the rule of law when governments disregard judicial decisions. It was only following the demonstrations, and more than a year after the court ruling, that the government conceded to the existence of a human rights infringement. Despite this, the case is not yet to be solved by the government.

Best regards,



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