

Sami: Indigenous Peoples of the North*

Ambassador Raimo Anttola**

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I. SAMI PEOPLE¹ AND HISTORY

The Sami people are among the European indigenous peoples,² like the Inuit³ in Greenland. Numbering around 80,000, the Sami in the north have

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** Ambassador Extraordinary and Plenipotentiary of Finland to the Republic of the Philippines. Mr. Aris Gulapa helped in the progress and evolution of this article to its present form.

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1. For a more thorough discussion, see SAMI PARLIAMENT, *THE SAMI IN FINLAND* (1999). Also available at <http://virtual.finland.fi/finfo/english/saameng.html>. (last accessed Dec. 18, 2002).
2. See Helge Salvesen, *Sami Aedan: Four States - One Nation?*, in *ETHNICITY AND NATION BUILDING IN THE NORDIC WORLD* 106 (Sven Tagin ed., 1995). See also *Kitok v Sweden*, Human Rights Committee Decision, UN Doc A/43/40, at 221 (discussing the Sami in Sweden); Julie Debeljak, *Indigenous Rights: Recent Developments in International Law*, 28 INT'L J. LEGAL INFO. 266, 283 (2000) (clarifying and commenting on the *Kitok* case).

For our purposes, the case is significant as an example of an individual member of a minority community bringing a case against the minority community; that is, it is an illustration of the fear of France and the United States that individual and collective rights may clash. The Committee not only upheld the community rights of the Sami, but also adequately dealt with the "clash" of rights. The Committee decided that the exclusion from membership of the community as of right was justified on the basis that *Kitok* was not totally excluded from the community. *Kitok* could still be permitted, albeit not as of right, to graze and fann his reindeer, to hunt and to fish. This decision can be criticised on a number of levels; however, it is a clear indication that the Committee views itself as being capable of settling conflicts between individual members of the community and the community.

See also Gail Osherenko, *Indigenous Rights in Russia: Is Title to Land Essential for Cultural Survival?*, 13 GEORGETOWN INT'L ENV'TAL L. REV. 695, 698 (2001).

their own history, language, livelihood, and culture,⁴ establishing their own identity and way of life.

The Sami region reaches from Central Norway and Sweden through the northernmost part of Finland and into Kola Peninsula, thus partly covering Norway, Sweden, Finland, and Russia. Presently, there are about 7,500 Samis in Finland; more than 4,000 of whom live within the region bordered by Sweden, Norway, and Russia. The area covers 35,000 square kilometers.

All three Nordic countries have their own Sami representatives, the Sami Parliaments, elected from among themselves. These representatives possess advisory status. Interestingly, the indigenous peoples in the Nordic countries have also established a well-functioning cross-border co-operation, providing a foundation for the Sami culture's development and raises the public awareness in our countries of their respective cultures. For instance, in February 1997, the Sami Parliaments of Finland, Norway, and Sweden

The Russian Federation lists forty-four distinct indigenous peoples with populations under 50,000 as having special rights and protections under the Constitution and federal laws and decrees. These rights are linked to the category known since Soviet times as the *malochislennykh narodov* ("small-numbered peoples"), a term that is often translated as "indigenous minorities" in order to distinguish the Nenets, Evenki, Khanty, Sami, Chukchi, and other indigenous peoples with populations under 50,000 from the large indigenous groups. (italics supplied)

- Kristian Myntti, *The Nordic Sami Parliaments*, in *OPERATIONALIZING THE RIGHT OF INDIGENOUS PEOPLES TO SELF DETERMINATION* 203 (Pekka Aikio & Matti Scheinin eds., 2000) (discussing the Sami in Norway).
3. See Nancy Doubleday, *Aboriginal Subsistence Whaling: The Right of Inuit to Hunt Whales and Implications for International Environmental Law*, 17 DENV. J. INT'L L. & POL'Y 373, 375 (1989) (discussing the cultural traditions of the Indigenous Communities of Inuits in Greenland).
 4. Lawrence Watters, *Indigenous Peoples and the Environment: Convergence from a Nordic Perspective*, 20 U.C.L.A. J. ENV'TAL L. & POL'Y 237, 251 (2001/2002) (citations omitted). The Sami, while living within the contemporary political boundaries of the Nordic countries, are a distinct ethnic group, with their own language and culture. They have had the status of a minority, in one form or another, since the Middle Ages. From time immemorial, they were hunters and gatherers who gradually split into subcultures that varied according to livelihood and ecological adaptation. From the sixteenth century onward, it was possible to identify major groups. There are the coastal and river Sami, where fishing is vital; the mountain Sami, semi-nomadic reindeer herders, also migrate long distances between the tundra and the taiga; the forest Sami; and, the eastern Sami. The last two groups migrate in the same ecological zone in a semi-nomadic pattern throughout the year.

agreed to institutionalise their co-operation within a new Sami Parliamentary Council.⁵

In Finland, a people is considered indigenous if their ancestors have inhabited the area before it has been conquered, or settled, or before the present borders have been delineated. In the context of the right to suffrage, people are considered to be Sami if they regard themselves as such and have learned Sami as their first language or have at least one parent or grandparent who has done so. In addition, such group must possess social, economic, cultural, and political institutions coupled with the fact that they consider themselves as indigenous.

Moreover, a person is considered a Sami if he has at least one ancestor who has been recorded as a "Lapp" in the historical land-tax books (1695-1935).⁶ The Lapps are, historically, the ancestors of the Sami.⁷ They derived their main income from traditional Sami sources of livelihood such as reindeer herding, fishing, and hunting in an area which they permanently owned by paying land taxes to the State. Those areas are now administered by the Finnish government as "public lands." In these areas, all local people are entitled to herd reindeer, fish, and hunt.

The present official definition of a Sami has been in force since 1996.⁸ This definition is still disputed by Sami Parliament as many Lapps have moved to Lapland. In Finland and Norway, the Samis are authorized to use their own language with government authorities.

The history of the Sami in Finland, as in other Nordic Countries, has usually been presented in a way that does not conform with the history of the people. Emphasis has been placed on the status of the main population, and consequently, has been undervalued. Nevertheless, sufficient information on archaeology, biology and linguistics is available. There are documents, literature, and information on the traditions available to provide a genuine Sami history.

Biologically, the Sami are a European indigenous population to which other populations have assimilated later on. The Sami language has much influence from the Basque language. Although the Sami and the Finns originally had a common language during the early Christian Era, they became two distinct groups in terms of language and living area. Under

5. Statement on behalf of the Nordic Countries by Ms. Viola Furubjelke, Chairperson, Standing Committee on Foreign Affairs of Sweden, G.A. 3rd Comm., 54th Sess., Agenda item 113 (November 1, 1999).

6. The Swedish Code of Law Carl IX (1783).

7. Watters, *supra* note 4, at 240.

8. Finnish Parliament Act (1995).

Swedish rule (1551-1808), the Sami, as citizens, were comparable to the peasants with respect to the exercise of their rights and duties.

II. LIVELIHOOD AND LAND OWNERSHIP

Sami culture is based on the diverse and sustainable use of their territory⁹ in order to fulfil the basic needs of the people. In the use of natural resources, the Sami have relied on knowledge, gathered over millennia, on the behaviour of nature and animals, fishing and hunting,¹⁰ as well as gathering

9. Watters, *supra* note 4, at 253-4 (citations omitted). Over the last 150 years, development encroached on the traditional region of the Sami. This occurred while they faced a parallel loss in authority. As a result of both forces, their way of life, dependent on access to land and water, became vulnerable. The traditional customs and the collective use of resources, even the sacred sites where they had gathered, were increasingly threatened. In the twentieth century, dramatic change came with the occupation of Norway by Nazi Germany in April 1940. Much of the fiercest action took place in Finnish Lapland and Norwegian Finnmark as the German army withdrew in April 1945. Reconstruction took many years.

In addition, significant impacts arose from agriculture, mining, timber harvesting and expansion of hydro-power. Development brought new roads, rail lines, airports, towns and large-scale tourism. Over time, external forces created pressures on an ecosystem that had always supported a pastoral culture and the sustainable use of resources. In turn, the land the Sami had used collectively was placed in jeopardy within the legal system itself, established by the state for the dominant society, similar to developments in other countries, notably the United States, Australia and New Zealand.

Moreover, in the past, organization, use of land, disposition of resources and rights of inheritance were dealt with by the Sami as a community. Disputes were settled by a council (*sii'da*) and later, by a district court. This assured continuity in community rights to land within a tradition that prevailed until at least the 1760s, as clearly documented in court records.

10. *Länsman et al. v. Finland*, Communication No. 511/1992, U.N. Hum. Rts. Comm., CCPR/C/52/D/511/1992 (1994) (discussing that reindeer herding is part of Sami culture); *J.E. Länsman v. Finland*, Communication No. 671/1995, CCPR/C/58/D/671/1995, pars. 2.1-2.4, 10.1-10.5 (emphasizing that the Sami right to reindeer herding is protected). Osherenko, *supra* note 2, at 704-05.

The case of *J. Länsman v. Finland* concerned a challenge by Sami reindeer herders in northern Finland to plans of the Finnish Central Forestry Board to approve logging and construction of roads in a 3000 hectare area used by the Muotkatunturi Herdsmen's Committee as winter pasture and spring calving grounds. The U.N. Human Rights Committee reiterated its previous decisions in *Kitok v. Sweden* and *I. Länsman et al. v. Finland* establishing the test for a violation of rights of minorities under Article 27 [of the International Covenant on Civil and Political Rights (ICCPR)] to enjoy their own culture. The Committee stated that measures with only a limited impact on the way of life

nature's product.¹¹ Nowadays, handicraft-making proves to be a popular source of livelihood among the Sami. Their way of living has turned into a mixture of all these activities, and sometimes, is also combined with small-scale agriculture.

The Sami homeland is divided into private farm (10%) and "public" lands (90%). The Sami practice agriculture, forestry, and, to some extent, fishing within their private lands. As reindeer herding¹² remains an integral part of Sami life, it is tied to extensive use of such both private and "public

and the livelihood of persons belonging to a minority will not necessarily amount to a denial of the rights under Article 27. The activity that has occurred or been approved for the future must be of such proportions as to deny the authors [claimants] the right to enjoy their culture in that area.

See also Debeljak, *supra* note 2, at 293 (commenting on the *Lansman* case). Debeljak reiterates:

In *Lansman v. Finland*, the Finnish government allowed quarrying in Sami areas. The Sami complained that the quarrying disturbed reindeer and that the environmental impact harmed the Sami culture and sacred sights. The Committee decided that the quarrying of 30 cubic miles was not so substantial that it effectively denied the Sami the right to enjoy their culture under Article 27 [ICCPR]. This decision was based on the fact that the Sami had been considered and consulted during the decision making process, and that the quarrying did not appear to have any adverse impact on reindeer herding.

11. TOM SVENSSON, INSTITUTE FOR COMPARATIVE RESEARCH IN HUMAN CULTURE, *THE SAMI AND THEIR LAND* 31-32 (1997).
12. Bendicit Kingsbury, *Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law*, 34 N.Y.U. J. INT'L L. & POL. 189, 214 (2001). See also Council Decision 95/1 Adjusting the Instruments Concerning the Accession of New Member States to the European Union, 1995 O.J. (L 38) 1, 10-11 (reindeer herding has a fundamental place in Sami culture, a place recognized in Protocol 3 to the accession agreements governing the entry of Sweden and Finland into the European Community). It provides:

THE HIGH CONTRACTING PARTIES, RECOGNIZING the obligations and commitments of Sweden and Finland with regard to the Sami people under national and international law, NOTING, in particular, that Sweden and Finland are committed to preserving and developing the means of livelihood, language, culture and way of life of the Sami people, CONSIDERING the dependence of traditional Sami culture and livelihood on primary economic activities, such as reindeer husbandry in the traditional areas of Sami settlement, HAVE AGREED on the following provisions, Article 1 Notwithstanding the provisions of the EC Treaty, exclusive rights to reindeer husbandry within traditional Sami areas may be granted to the Sami people. Article 2. This Protocol may be extended to take account of any further development of exclusive Sami rights linked to their traditional means of livelihood . . ."

lands."¹³ For fishing and hunting, "public lands" outside their own farm lands are utilized. However, Finnish law does not grant the Sami any special right to use "public land" when practicing their traditional livelihoods.¹⁴ The Finnish reindeer herding region consists of the Sami Homeland and certain areas southward. Approximately 40% (100,000) of all the reindeer population live within the Sami homeland. The material foundation of the Sami is still being destroyed in a judicially unclear situation. The Sami have repeatedly demanded the State to return their lands. Under present circumstances, the State allows free economic competition, effectively barring the Sami from using areas and nature in their homeland. Thus, Sami is still estranged from their ancestors' lands and waters and from their use in the ways specific to Sami culture.

III. LANGUAGES AND MASS COMMUNICATION

In Finland, three Sami languages are spoken. The official status of the Sami language in the comprehensive school system dates back to the 1980s. According to present legislation, Sami speaking pupils within the Sami Homeland are to be taught in Sami during their basic compulsory schooling. At upper secondary school level, it is no longer mandatory. In 1994, Sami high school graduates took the mother tongue exam for the first time. Despite these developments, a large number of Sami are still not fluent with their mother tongue since the language has been taught only recently.¹⁵ In higher levels of education, two northern universities have courses for further

13. BJORN AARSETH, *THE SAMI PAST AND PRESENT* 2 (1993).

14. See generally KRISTIAN MYNTTI, *THE NORDIC SAMI PARLIAMENTS, in OPERATIONALIZING THE RIGHT OF INDIGENOUS PEOPLES TO SELF-DETERMINATION* 203, 205 (Pekka Aikio & Martin Scheinin eds., 2000). Many of the special government regulations relevant to reindeer herding are applied not on the basis of ethnicity, but to geographic localities.

15. Lauri Malksoo, *Language Rights in International Law: Why the Phoenix Is Still in the Ashes*, 12 FLORIDA J. OF INT'L L. 431, 454 (2000) (citing Marjut Aikio, *La Langue Saami en Finlande*, in LES MINORITES EN EUROPE. DROITS LINGUISTIQUES ET DROITS DE L' HOMME 397 (Henry Giordan ed., 1992). It is questionable whether international human rights law can make very far-reaching prescriptions in the situation where the language strategies differ because of historic and policy reasons. In many countries, the linguistic peculiarities become even more unique and complex because of indigenous peoples. Even countries with far-reaching language rights — like Canada and Finland — the linguistic rights of indigenous peoples pose additional concerns. Often, they are overlooked or ignored.... In Finland where the Swedish speaking minority has generous linguistic rights, the native people of Sami in Northern Finland did not enjoy any substantive promotion-oriented language rights until recently. There is a trend to deal with the linguistic rights of the indigenous people as a special problem in law.

study of the Sami language. Also a special quota has been introduced in the University of Lapland for students who desire to study the language.¹⁶

In the field of mass communication, the Sami Radio Station, as well as television, sends programmes daily to Sami. Since 1992, Sami have had the right to use the Sami language. Official government employees are not obliged to know the language. However, translation or interpretation is provided in instances where the officials do not speak the language. The Sami also have the right to receive documents and information in their language and to use the same with authorities. It can also be included as a native language in the official census. For instance, the Sami Language Office, set up by the Sami Parliament, ensures that public buildings and road signs are bilingual, Finnish/Sami. This is in addition to various announcements by the authorities and notices in newspapers, which are also presented in the same manner.¹⁷ Hence, these linguistic rights do not adequately secure the future of the language since they only mandate translation and interpretation.¹⁸

16. Sami, available at <http://www.eurolang.net/Languages/Sami.htm> (last accessed Dec. 18, 2002). Since the language act there has been an increase in the number of people learning Sami at school from primary to third level and in theory everybody has access to it throughout the whole school cycle. The language used in schools is North Sami as this is the language used by 70% of Sami-speaking schools. Inari and Skolt are however used also in schools but to a much lesser extent. Providing the necessary service in the child's own language at pre-primary level is the responsibility of the local authority but official day-care centers run through Sami are still few and far between. There are however some private Sami-speaking pre-schools which have been set up by parents. At primary level, Sami is the only language of instruction and as the child moves through the early years of secondary school subjects taught through the language become fewer and fewer. This is mainly due to a shortage of teachers and teaching materials. In the 'Lukio' or higher level secondary schools, Sami is used in the teaching of two subjects only. Sami can be studied as a third level subject at the universities of Helsinki, Oulu and Rovaniemi (Lapland). Also a quota of places is reserved in certain university training programmes for Sami-language students at the Universities of Lapland and Oulu. The Sámi Allaskuvla in Norway takes in students from other states including Finland and here tuition is in Sami and the qualification by agreement is valid in the other Scandinavian states.

17. *Id.*

18. Sami, *supra* note 17. The national broadcasters of Finland, Sweden and Norway co-operate in their provision of Sami-language programmes for these countries. Broadcasts in the language throughout the Nordic countries amount to approximately 12 hours per week i.e. 4 to 6 hours for each country. Newspapers have been published in the language since the 1870s and publications for schools have been appearing in the language since 1978 when the language first started being used in schools.

IV. JUDICIAL AND POLITICAL DEVELOPMENT

The twenty-one members of the Sami Parliament are elected by the Sami every four years. The Parliament represents the Sami, both nationally and internationally, attending to matters that concern the language and culture of the Sami and their position as an indigenous people. Legislation on cultural autonomy aims to bring the Sami people to a level where they can exert more administrative and political influence in matters that concern them. In turn, this provides a framework for organizing within legislation the tasks and jurisdiction of the Sami administration *vis-a-vis* the municipality and State administration.

The Sami have, since 1991, been heard in the Finnish Parliament on matters concerning them. Recently, a Sami Language Bill, which mandates that by 2004, authorities in the Sami homelands must offer services in the Sami language, has also been enacted. Thus, at least one person in every government office must speak Sami. However, in practice, inadequate funding has delayed the progress of Bill's enforcement.

In 2000, Finland enacted a New Constitution which attempts to further enforce Sami autonomy, thereby improving the financial resources for the Sami administration.

The enforcement of the constitutional right of the Sami to their culture, however, has not materialized. Although they are entitled to "public lands," the law fails to recognize the Sami people's *special* right to reindeer herding, fishing, and hunting. Therefore, in terms of legislation, this issue between the State and the Sami remains unsettled notwithstanding the grant of similar rights to other citizens. Clearly, the constitutional right of the Sami to their property has not achieved the same status as that of other citizens. In 1999, the Office of the Chancellor of the Office of Justice already recommended to the Ministry of Justice that the issue of land ownership Sami be settled as soon as possible. Unfortunately, the work has not yet progressed. The State has not granted enough resources. Within the international arena, Finland has not yet ratified the ILO Convention No. 169¹⁹ concerning indigenous peoples.

Land ownership rights of the Sami remain unsettled. Surprisingly, a considerable part of the rest of the population wish to be registered as Sami. The possibility for them to be considered as Sami is clear. The new legal definition of the Sami may result in the growth of the existing Group of Sami (7,500 people) even against the will of the Sami Parliament to include more than 100,000 people. Consequently, this constitutes a major catastrophe for real indigenous Sami people.

19. ILO Convention No. 169, June 27, 1989, reprinted in 28 I.L.M. 1382 (1991).