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Supervisor:

Gail Osherenko, Institute of Arctic Studies, Dartmouth

College

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The Sami People and the Northern Sea Route: Juridical,

Social and Cultural Concerns

Authors:

Lars-Nila Lasko (1) with Gail Osherenko (2)

Addresses:

(1): Swedish Sami Parliament, Bergmästaregatan 6,

98133 Kiruna, Sweden.

(2): Institute of Arctic Studies, Dartmouth College,

6214 Steele Hall, Hanover, New Hampshire, 03755, USA.

Date:

1 March 1999

Reviewed by:

Frank Horn, Juha Joona and Kristian Myntti, The

Northern Institute for Environmental and Minority Law,

University of Lapland, Rovaniemi, Finland.

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FOREWORD - INSROP WORKING PAPER

INSROP is a five-year multidisciplinary and multilateral research programme, the main phase of which commenced in June 1993. The three principal cooperating partners are Central Marine Research & Design Institute (CNIIMF), St. Petersburg, Russia; Ship and Ocean Foundation (SOF), Tokyo, Japan; and Fridtjof Nansen Institute (FNI), Lysaker, Norway. The INSROP Secretariat is shared between CNIIMF and FNI and is located at FNI.

INSROP is split into four main projects: 1) Natural Conditions and Ice Navigation; 2) Environmental Factors; 3) Trade and Commercial Shipping Aspects of the NSR; and 4) Political, Legal and Strategic Factors. The aim of INSROP is to build up a knowledge base adequate to provide a foundation for long-term planning and decision-making by state agencies as well as private companies etc., for purposes of promoting rational decisionmaking concerning the use of the Northern Sea Route for transit and regional development.

INSROP is a direct result of the normalization of the international situation and the Murmansk initiatives of the former Soviet Union in 1987, when the readiness of the USSR to open the NSR for international shipping was officially declared. The Murmansk Initiatives enabled the continuation, expansion and intensification of traditional collaboration between the states in the Arctic, including safety and efficiency of shipping. Russia, being the successor state to the USSR, supports the Murmansk Initiatives. The initiatives stimulated contact and cooperation between CNIIMF and FNI in 1988 and resulted in a pilot study of the NSR in 1991. In 1992 SOF entered INSROP as a third partner on an equal basis with CNIIMF and FNI.

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PROGRAMME COORDINATORS

• Yuri Ivanov, CNIIMF Kavalergardskaya Str.6 St. Petersburg 193015, Russia Tel: 7 812 271 5633 Fax: 7 812 274 3864 E-mail: cniimf@neva.spb.ru • Willy Østreng, FNI P.O. Box 326 N-1326 Lysaker, Norway Tel: 47 67 11 19 00 Fax: 47 67 11 19 10 E-mail: sentralbord@fni.no • Hiroyasu Kawai, SOF Senpaku Shinko Building 15-16 Toranomon 1-chome Minato-ku, Tokyo 105-0001, Japan Tel: 81 3 3502 2371 Fax: 81 3 3502 2033 E-mail: sofkawa@blue.ocn.ne.jp

The Sami People and the Northern Sea Route: Juridical, Social and Cultural Concerns

by

Lars-Nila Lasko

with Gail Osherenko

Lasko is the director of the Sami Parliament in Sweden. Lars-Nila Lasko is a Sami himself and a lawyer. He has worked as a judge at the Court of Haparanda in northern Sweden, as head of the Department of Law at The Nordic Sami Institute in northern Norway and been president of the main Sami organization "Same Ätnam" in Sweden and chair of the Committee of Law at the Sami Council. Lasko has served as an expert in Sami law questions in several governmental Committees in Sweden and in the Nordic countries. Lasko has for several years represented the Swedish Ministry of Foreign Affairs on minority and indigenous questions in The United Nations.

This report was reviewed by Frank Horn, Juha Joona and Kristian Myntti, of The Northern Institute for Environmental and Minority Law, University of Lapland, Rovaniemi, Finland. The report has been updated to incorporate many of the comments of the reviewers. The review and the author's comments to the review are found at the end of the report.

The report has been edited and supplemented by Gail Osherenko, Senior Fellow, Institute of Arctic Studies at Dartmouth College and supervisor of INSROP IV.4.1. The authors wish to especially thank Deborah Robinson, Research Fellow, and Jennifer Anderson, student intern, both at the Institute of Arctic Studies, Dartmouth College, for their invaluable assistance in editing and preparing this manuscript for publication.

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Abbreviation /full name in original language /english translation:

FFS^1	Finsk Författnings Samling	Finnish Law		
NOK	Norwegian Krone		•	
NOU^2	Norges Offentlige Utredning	Norwegian State Commission Report		
NRK³	Norsk Rikskringkastning	Norwegian State Radio		
NRL	Naturresurslagen	Act regarding Husbandry of Natural Resources		
NRL	Norske Reindriftssamers Lar	ndsforbund	Norwegian Sami Reindeer Hearders	
NSR	Northern Sea Route			
NSR	Norske Samers Riksforbund	and Norwegian Sami Association		
Prop. ⁴	Proposition	Governmental bill (Sweden)		
RF⁵	Referingsformen	Swedish Constitution		
RF ⁶	Regeringsformen	Finnish Constitution		
RN	Reindriftsnytt	Reindeer news (Norway)		
RO ⁷	Riksdagsordningen	Swedish Constitution		
RBL	Renbeteslagen Reinde	eear Industry A	ct of 1928 (Sweden)	
RNL	Rennäringslagen	Reindeear Ind	ustry Act of 1971 (Sweden)	
S.	sida	page (p.)		
SFS ⁸	Svensk Författnings Samling Swedish Law			
SLF	Samenes Landsforbund	Norwegian Sa	mi Union (SLF)	
SameL	Sametingslagen	Sami Parliament Act		
SKSFS ⁹	Skogsstyrelsens Författnings Samling	Forestry Board	d Code	
SÖ ^{10 11}	Statens Överenskommelser	The Swedish States International Agreement		
SOU ¹²	Svensk Offentlig Utredning	Swedish State	Commission Report	

¹ All Finnish laws are printed in chronological order and has the abbreviation "FFS" and the number of the year and the law. All Finnish laws are printed in Swedish and Finnish, and some in Sami.

² All printed reports from a commission appointed by the Norwegian State has the abbreviation "NOU" and the number of the year and report in chronological order.

³ This is the abbreviation for the Norwegian State Company for Broadcasting in Norway.

⁴ All bills from the Government of Sweden to the Parliament of Sweden are printed in chronological order and has the abbreviation "Prop" and the number of the year and the bill.

⁵ Several Constitutional Acts in Sweden forms together the Swedish Constitution.

⁶ Several Constitutional Acts in Finland forms together the Finish Constitution.

⁷ Several Constitutional Acts in Sweden forms together the Swedish Constitution.

8 All Swedish laws are printed in chronological order and has the abbreviation "SFS" and the number

of the year and the law.

The Swedish Forestry Board make recommendation about forest law questions for regional and local governmental organs. This recommendations are printed in chronological order and has the abbreviation "SKSFS" and the number of the year and the recommendation. This is only recommendations. However, the recommendations are normally followed by the courts, wood companies, regional and local governmental organs ¹⁰ SÖ is also a common abbreviation in Sweden for "Skolöverstyrelsen" (National Agency for

Education)

11 All international agreements made by the Swedish State are printed by the Ministry of Foreign Affairs and has an official translation to Swedish. All international agreements made by the Swedish State are printed in chronological order and has the abbreviation "SO" and the number of the year and the agreement

All printed reports from a commission appointed by the Swedish State has the abbreviation "SOU"

and the number of the year and report in chronological order.

1 INTRODUCTION

The Northern Sea Route (NSR) is described in general terms as the shipping route from the Bering Strait to northern Europe following the Arctic coastline. This is the shortest distance by sea from Japan to Europe (approximately 6900 nautical miles via the Northern Sea Route). INSROP, the International Northern Sea Route Programme, is a five-year multidisciplinary and multilateral research programme designed to investigate the possibilities for commercial navigation through the North-East Passage. The programme is based on a mutual agreement of cooperation between three principal partners: the Ship and Ocean Foundation. Japan, the Central Marine Research and Design Institute, Russia and the Fridtjof Nansen Institute, Norway. The Sami occupy the westernmost end of the NSR which exerts considerable political, economic, and social influence on the Barents Euro-Arctic region. With increased use, the NSR will stimulate economic activity in the region, directly affecting Sami interests and rights. The NSR must develop policies to protect Sami rights and culture, to include them in any benefits, and to mitigate any adverse consequences to their livelihood and culture. The paper describes in some detail the political and legal institutions of the Sami likely to be encountered by the users and promoters of the NSR. It describes the network of Sami organizations, governmental and non-governmental, that regulate relations between the Sami as a distinct ethnic group and the four nation states (Norway, Sweden, Finland, and Russia) within which they reside. The paper also describes the international organizations and institutional framework, which are increasingly important in ethnic and indigenous affairs today.

1.1 Sami - A people of northern Europe

Sami were formerly known as Lapps or Laplanders by outsiders. The word Sami (Sápmi) means originally "human being" or just "the people". The word Sápmi is also the name of their homeland. According to old Sami legends the Sami People are the sons and daughters of the sun.

But, who is a Sami? There is no easy answer to this question as the Sami do not have

their own country in which to have citizenship. At present, there is no agreed legal definition of a Sami in any of the countries where the Sami live. On the other hand the Norwegian Sami Assembly Act in Norway, the Finnish Sami Thing (Assembly) Act in Finland and the Swedish Sami Act in Sweden provide a nearly or partly common definition of who is entitled to vote in and be elected to the Finnish, Swedish or Norwegian Sami Assemblies (Sami Parliaments). The definitions of a Sami in the Sami Parliaments' acts refer to the Sami language. In Norway and Sweden, anyone whose language in the home is Sami, or whose mother's or father's or grandparents' language in the home was Sami (objective requirement), and who self-identifies as a Sami (subjective requirement) has the right to vote in and be elected by their respective Sami Assembly. In Finland a person who himself or at least one of his parents or one of his grandparents learned Sami as his first language (objective requirement) and who self-identifies as a Sami (subjective requirement) has the right to vote in and be elected by the Sami Assembly. In other words, the Sami language is the objective condition for defining a Sami, while self-perception is the subjective condition. Language may, however, be a subjective condition, because it is not easy to prove objectively that a grandparent spoke Sami two generations ago.2: The Sami Council, which is the Sami's highest cooperative body, has a similar definition in its Sami policy as the definition of a Sami in Finland.

These subtle variations in the various laws are crucial, as they may in the future have a decisive impact on determining who is entitled to enjoy special Sami rights. The Sami Parliament of Sweden in June 1998 suggested to the government of Sweden that Sami in the Sami register shall have fishing and hunting rights. These subtle variations are also crucial in deciding who could be a "new" Sami. In Sweden, a non-Sami could learn the Sami language and speak it at home and thus have the right to vote or to be elected to the Sami Parliament if he or she also considers him/herself to be Sami. This is not possible in Finland. The definition of a Sami in Sweden and Norway is therefore more open than the definition in Finland.

¹ This definition was also valid in Finland before 1 January 1996 according to the Finnish Sami Delegation Ordinance.

² According to the new Sami Parliament Act of Finland, from 1 January 1996 it is possible for a person to choose between the objective and subjective conditions for Sami identity.

In Finland, a new alternative definition was adopted by the Finnish Sami Parliament in 1995.3 The new definition in the 1995 Finnish Sami Thing (Assembly) Act broadened the definition of a Sami and abandoned the three-generation bridge to a Sami-speaking grandparent. Now all those who descend from a formerly recognized Sami person have been entered in the Sami electoral list as well as those who descend from a person who has been entered or could have been entered in a land, taxation or population register as a Mountain. Forest or Fishing Lapp. The new definition will forever embrace all descendants to anyone who belonged to these two new categories. Opponents of the broadened definition are attempting to reintroduce the original, more restrictive definition. The old definition in the Finnish Sami Language Act continues to be applied with respect to that Act. In addition, the Skolt Sami have their own definition in the Finnish legislation.

Unfortunately, the legal definitions (or variant) relying on objective and subjective criteria are accepted only in three of the four countries where Sami live, Finland, Norway, and Sweden, but not in Russia. Lack of an overall, mutually accepted legal definition creates a number of problems, the least of which is enumeration of the Sami population.

1.2 Sami census

⁵ Reviewers' note.

In the Nordic countries and Russia, there may be between 50,000 and 100,000 Sami, but the figures are very uncertain, due in part to the lack of a consistent legal definition of Sami identity. There has never been a comprehensive census of the entire Sami population in the countries where Sami live, but estimates show approximately 40,000 Sami living in Norway, 17,000 in Sweden, 6,000 in Finland, and 2,000 Sami in Russia.⁵ Expanded use with the NSR will directly affect the Sami population in Norway and Russia, and could have indirect effects on the inland Sami of Finland and Sweden.

1.3 The area of distribution of the Sami

The current distribution of Sami people stretches from the easternmost parts of the

³ This definition is valid from 1 January 1996 according to the Finnish Sami Parliament Act from 17 July 1995. ⁴ This information comes from reviewers Horn et al.

Kola Peninsula in Russia, west through Northern Finland and Northern Norway, and as far south as the Parish of Idre in Sweden, including Northern Dalarna, and the corresponding area in Norway. The fact that the Sami live in four separate states: Russia, Finland, Sweden, and Norway, makes the Sami subject to four separate legal systems, thus causing them difficulties ranging from the movement of reindeer across national boundaries to administration of issues which affect all Sami. Legally, issues common to all of Sápmi are international questions, subject to international law, further complicating Sami legal issues.

1.4 The language of the Sami

The language of the Sami belongs to the Finno-Ugric family of languages. Thus, Sami is related to Finnish, Estonian, and Hungarian. Sami is often referred to as one language, although Sami is technically divided into three dialects: Eastern Sami, Central Sami, and Southern Sami.

Fig. 1. Percent of Sami by country

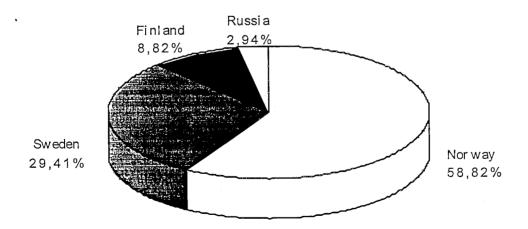


Fig. 2. The number of Sami and country

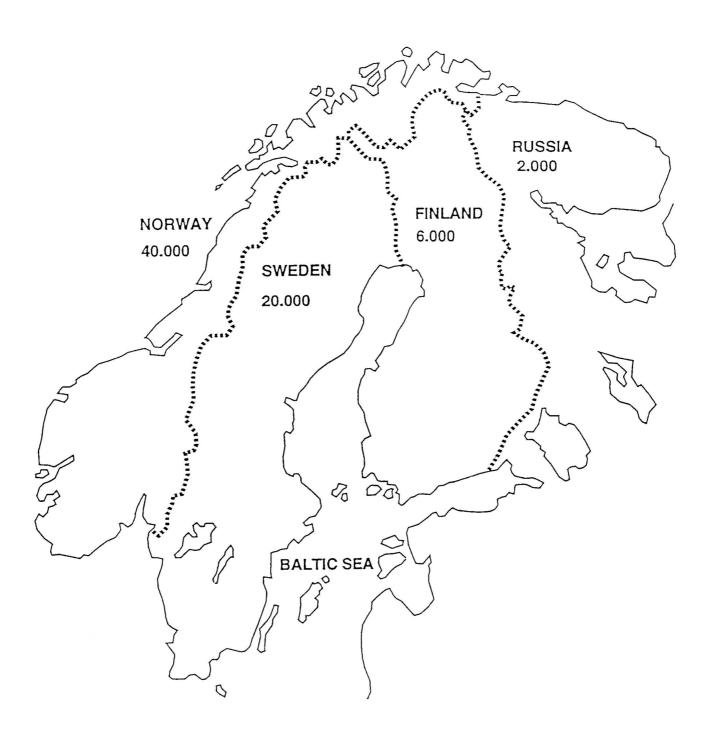
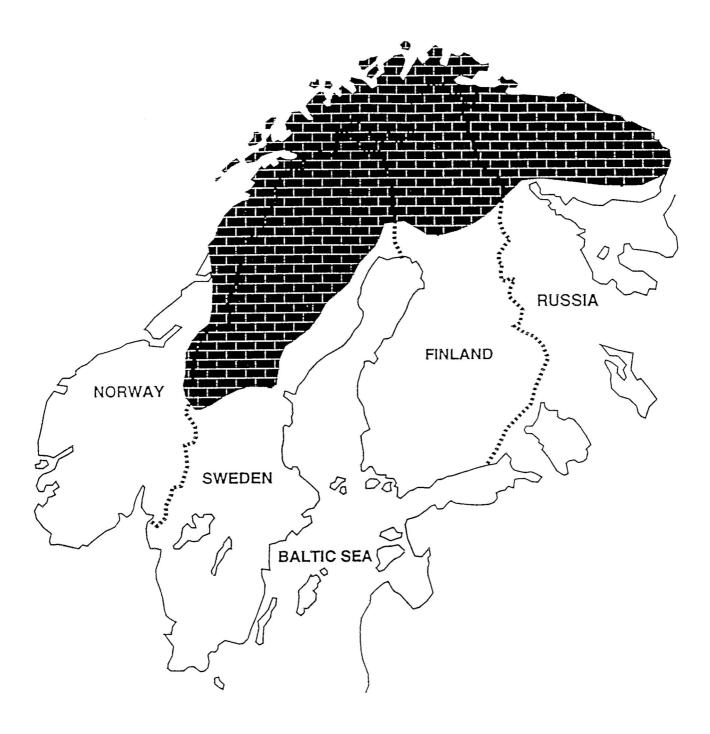


Fig.3. Present geographical distribution of the Sami



Source: Israel Ruong, *The Lapps in Sweden* (Stockholm: The Swedish Institute for Cultural Relations with Foreign Countries, 1967), p. 10.

The Sami language in unprotected by law in Russia and Sweden, but separate Sami Language Acts give the language a legal status in Norway and Finland. At present, it is difficult for Sami to communicate with the authorities in their mother tongue in Russia and Sweden. For example, Sami in Sweden cannot use Sami in Swedish courts according to the Swedish Administration Act because anyone who is reasonably proficient in Swedish does not have the right to a legal interpreter. The fact that many Sami are more fluent in Sami than Swedish is not acknowledged by the law.

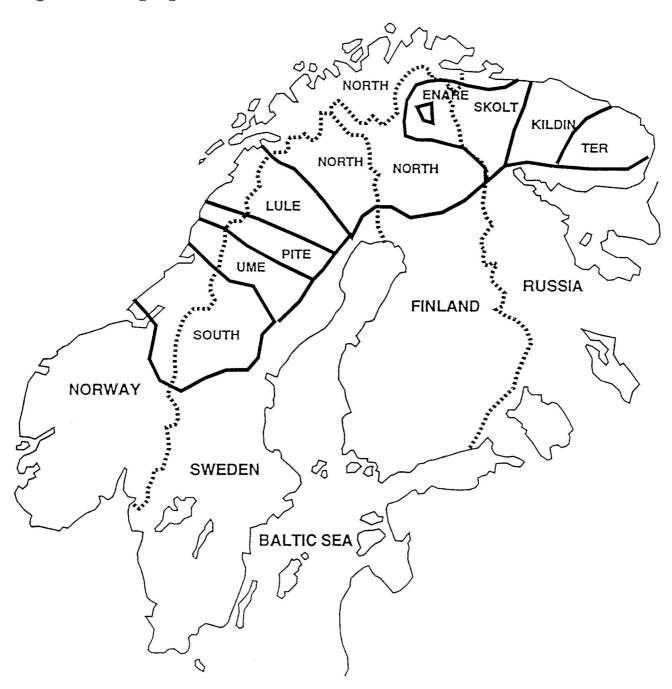
In 1982, the Sami Rights Inquiry was given the task of reviewing the position of the Sami language in Sweden, resulting in a proposed language act in 1989. The government of Sweden, however, has not yet introduced any Sami language bill to the parliament of Sweden. However, the Sami Parliament Act from 1992⁶ does assign the Sami Parliament responsibility for the Sami language. The Sami Parliament in Sweden, created in August 1993, is now working on a successor to the 1989 proposed Sami language act. Thus, prospects are improving for the legal position of the Sami language in Sweden. From a legal perspective, the Sami language in Sweden has the best status in schools, since the primary Education Acts⁷ in Sweden give a limited legal status to the Sami language within the educational sphere.

In Russia, the Sami language has no legal status, but education in some schools is provided in the Sami language. As the Sami language is the most important cultural medium, efforts to preserve the language are crucial to cultural continuity. Both Norway and Finland have adopted Sami language acts, which came into force in 1992.

⁶ Sametingslagen (SFS 1992:1433).

⁷ Chapter 8 paragraph 1 in The School Act from 1985 (Skollagen) (SFS 1985:1100). The first School Act in Sweden concerning Sami education is from 1962. Ordinance of subsidy to home language-training in kindergarten from 1988 (Förordning om statsbidrag till hemspråksträning i förskola)(SFS 1988:266).

Fig.4. Sami languages



Nordic Sami Institute, The Sami People (Karasjok, Norway 1990).

1.5 Sami commerce

Sami industries, including reindeer keeping, handicrafts, fishing and hunting, help to maintain Sami culture and traditions, while providing the Sami with opportunities to work locally. Although only a very small percentage of Sami obtain their primary income from traditional Sami occupations, these industries are of major significance for the entire Sami population. Many Sami engage in a Sami industry either as an extra source of income or to provide for domestic needs.

1.5.1 Reindeer keeping

Reindeer keeping is one of the most specifically Sami industries and has had a major influence on Sami culture. Reindeer keeping is practiced throughout the Sami area in varying forms. Among the Sami industries, only the reindeer industry is regulated by law. In the legal systems of Norway and Sweden, reindeer herding Sami have been accorded official status due to the need for regulation of land use conflicts between the reindeer industry and other non-Sami industries, such as farming. Additionally, Sweden and Norway have acknowledged that reindeer keeping is one of the most important factors influencing the continuation of Sami culture. The importance of reindeer herding has affected the policy-making and legislation of these nation states where they affect Sami society.

Legislation regarding the reindeer industry differs in each of the Fenno-Scandinavian countries, but is commonly based on prescription from time immemorial, meaning that the right to breed reindeer cannot be abolished simply by changing the law. The right to keep reindeer is a fundamental right, but how infallible is this right? When investigating the possibilities of strengthening the legal position of Sami in matters connected with reindeer herding, it is of utmost interest to ascertain the current status of reindeer herding in civil law. A number of such points are clarified as a result of the Skattefjäll ("Taxed Mountains") case. One point at issue in that case was whether the Sami, rather than the State, were the rightful owners of the Skattefjäll pasture mountains in the county of Jämtland, Sweden. The Supreme Court disallowed the Sami's claim to superior title, but its judgment included important pronouncements on the legal status of the Sami. According to Sweden's Supreme Court,

Sami rights to certain lands are strongly protected, based on prehistoric use or use from time immemorial. Use rights, in common with proprietary title, are safeguarded against expropriation without compensation. The Skattefjäll case made it clear that the reindeer herding rights of the Sami are based on immemorial prescription use from time immemorial. a ruling that has important bearing on the status and security of Sami reindeer herding livelihoods. In Sweden, however, the reindeer herders have the burden of proving that they have such rights. This is an increasing problem in Sweden in the outer borders of the reindeer herding area, on lands close to the Baltic Sea and in the southernmost Sami reindeer herding areas. There are no exact juridical borders for the reindeer herding areas, and very few court cases have addressed the issue of which lands and waters are inside the traditional Sami reindeer herding areas based on rights from times immemorial (independent of any special agreement to winter grazing on private property). In 1998 landowners in Sweden initiated six court cases claiming that reindeer herders had no rights to their land. In Norway, the burden of proof is on the landowners rather than the reindeer herders. There, the Reindeer Herding Act requires the landowners to prove that there are no Sami rights to their land. Whether the burden of proof rests on the landowners as in Norway or on the reindeer herders as in Sweden, it can be difficult to prove whether reindeer herding occurred on the land in the last 20, 30, 40 or even 50 years. Also in Finland a number of cases (e.g. Angeli, Mirhaminmaa) have involved the rights of (Sami) reindeer herders that were endangered by other forms of land uses (forestry, road construction, mining) before Finnish Courts, the UN Human Rights Committee and the Strasbourg Court.

In Sweden and Norway, the right to keep reindeer affects subsidiary rights other than the right to keep reindeer, including fishing and hunting rights. Reindeer keeping requires large areas of land. Thus, the reindeer industry has to exist alongside other industries and other forms of land use, and conflicts occur. At present, large-scale forestry inflicts the greatest damage on reindeer herding. Clear-cutting, scarification, forest fertilization, and the construction of forest roads adversely affect reindeer habitat. Extensive clear-cutting in some areas has resulted in a shortage of reindeer moss, an important winter food source. Furthermore, snow packs more heavily in open spaces than in the forest, which makes it

more difficult for the reindeer to get at the food supply. The most serious damage of all. however, is caused by modern methods of scarification. Plowing of a clear-cut area destroys reindeer pasture for many years. Hydropower development, mining, peat extraction, and road building are other examples of activities potentially harmful to reindeer herding. Tourism and outdoor recreation can also cause major problems.

The reindeer industry is dependent on effective protection of its grazing areas. Although the laws provide some protection against major interference, the degree of protection varies among areas. For example, the winter grazing areas in Sweden are less well protected than the summer grazing areas, even though the winter grazing areas are the most crucial lands for reindeer husbandry and are vitally important to the continued existence of the reindeer industry.

Legal protection of the reindeer industry applies only to major interference with the reindeer grazing areas. In effect, the legislation disregards the cumulative impact of minor interferences although, taken together, minor disturbances may constitute major interference with land use by the reindeer industry. Current reindeer herding acts do not include any general safeguards for the right of reindeer herding nor for reindeer herding as an economic activity. Although large-scale forestry at present inflicts the greatest damage on reindeer herding, reindeer herding is completely defenseless against forestry. Furthermore, legislation gives the reindeer industry little opportunity to influence the use of land by other industries and interested parties. Paragraph 308 in the reindeer herding act states that no landowner or land user can take steps in the use of land that create "considerable inconvenience" for reindeer herding in reindeer grazing areas above (generally, north) of the "cultivation border". 10 There are no special protections of reindeer herding-grazing areas below (generally, south) of the "cultivation border". 11

⁸ The new paragraph 30 in the Reindeer herding act is from 1991.
9 "Avsevärd olägenhet" in Swedish.
10 The "cultivation border" (Odlingsgräns) was set up in the 1800s as the northernmost border for Swedish settlement. A new northernmost border (Laplandborder) (Lappmarksgräns) for Swedish settlement was established in the late 1800s.

11 The major forest industry is south of the "cultivation border."

1.5.2 Sami handicraft

Sami handicraft, or *duodji* as it is called in Sami, has formed part of Sami cultural life for several thousand years. Sami handicraft has deep roots and ancient traditions in Sami culture, which has given Sami handicraft a special status within Sami culture. Virtually all Sami have links with Sami handicraft. While many Sami have lost touch with traditional Sami industries, such as the reindeer industry, fishing and hunting, or with the Sami language, Sami handicraft thrives in most Sami homes. In addition to providing utility goods, Sami handicraft has a symbolic value for the Sami identity, expressed either in Sami objects, such as the Sami costume, or in the Sami way of thinking. Sami handicraft is one of the most important factors in the Sami culture.

Duodji is a difficult term to define since it not only includes what is traditionally regarded as handicraft, but also describes Sami art and design. Thus, duodji is a means of expression. Previously, Sami handicraft supplied the demand for utility goods; it was part of everyday life and was a necessity for survival. With changes in society as a whole, Sami society and handicraft have also changed. Sami handicraft today is an industry which provides employment for many Sami as well as the opportunity for Sami to stay in their home areas.

For many Sami, whether they are reindeer keepers, Sami fishers or Sami farmers, Sami handicraft provides an important supplementary income, enabling Sami to pursue their primary occupations. As a secondary industry, Sami handicraft provides work within the Sami area. Thus, Sami handicraft has increased in importance. If Sami handicraft is to stay alive, it must be able to survive as a traditional Sami activity; this requires actions on the part of governments to ensure access to raw materials and protection of intellectual property rights.

Among raw materials for Sami crafts, timber has central significance as can be seen from the quantity of wooden handicraft products made. The 1972 Department of Industry Consulting Inquiry shows that approximately 40% of the handicrafts produced are made of either wood or reindeer horn. According to the Sami Handicraft Consulting Inquiry, 181 kilograms of wood and 150 kilograms of horn are used annually by each Sami craftsperson.

The right to take wood for handicraft products is potentially the factor of greatest importance for Sami handcrafters. The right to take wood for handicraft purposes includes, but is not limited to, felling trees and the right to take roots.

The right to take wood for handicraft production is not uniformly regulated by law. In Norway, only those Sami who keep reindeer have a statutory right to take wood for handicraft production. Thus, Sami whose main industry in Norway is Sami handicraft have no such legal right. In Sweden, those Sami whose main industry is Sami handicraft have a statutory right to take wood for handicraft production. In Sweden also those Sami who keep reindeer have a statutory right to take wood for handicraft production. In Finland and Russia. there are no special rights for Sami artisans. It is true that Sami handicraft is less protected in Finland than in Norway and Sweden. The Finnish Sami, however, try to keep Sami handicraft in the hands of the Sami. The goal of the Sami Training Centre in Inari (Saamelaisalueen koulutuskeskus) is to require all participants in their Sami handicraft courses to know the Sami language. In Sweden, a 3-year Sami handicraft course of education at the Jokkmokk People's College (Samernas Folkhögskola) uses Sami as one of the languages of instruction. In Norway, Sweden and Finland there are also opportunities to learn Sami handicraft at grammar school level and in colleges. In Sweden, since 1946 there have been three state consultants in Sami handicrafts at the Sami handicraft foundation "Sami Duodji". Furthermore, the areas where Sami artisans obtain their wood are not specifically protected for Sami artisans.

There is no direct legal protection of Sami handicraft. Traditional Sami patterns and objects can thus be copied freely by non-Sami, which has led to the emergence of a large market for what is known as false Sami handicraft. Sami handicraft is also dependent on raw materials from other Sami industries. For example, reindeer horn constitutes the basic material for Sami knives. Eighty percent of all reindeer horn is exported to Asia, leading to sharp increases in the domestic price of reindeer horn, which makes it more difficult to obtain. Changes are needed in Fenno-Scandinavian export legislation, as well as other legal protections of Sami handicraft.

1.5.3 Sami fishing

Sami fishing is the oldest branch of Sami industry, with a long tradition in Sami culture. Of the two types of Sami fishing, sea fishing and inland fishing, sea fishing is carried on only in Norway and Russia, where there is a distinct Sami fishing culture. Sami inland fishing is carried on throughout the entire Sami area. In Sweden and Norway, only Sami who keep reindeer have a statutory right to fish, which means that other Sami fishers in those countries have no statutory right to fish without permit and must apply for special licenses.

In Finland, the situation is different. When the new Finnish Fishing Act was adopted in 1982, the living conditions in the municipalities of Inare, Enontekiö, and Utsjoki, were considered, by the Finnish Parliament to be incompatible with the permit requirements of the new law. The 1982 Fishing Act expressly excluded application by these three municipalities and, instead, left in place the old Finnish Fishing Act of 1951 that accords usufruct fishing rights for the local population, both Sami and non-Sami. The inhabitants of other municipalities must obtain fishing permits in order to fish for a livelihood on Government land. According to the 1995 Finnish Skolt Act, Skolts may fish on state-owned land without a license.

Special salmon-fishing rules apply to the Tana river in the Utsjoki Municipality because it is a border river between Norway and Finland. These rules are based on a convention between the two countries. Also special fishing rules apply to the Tornio and Mounio river¹² in the Enontekiö Municipality because it is a border river between Sweden and Finland. These special fishing rules are based on a convention between these two countries.

1.5.4 Sami hunting

Hunting has also long been practiced by Sami, and with fishing is the oldest branch of Sami industry. Today, hunting provides supplementary income for many Sami. Hunting also still has an important function in Sami identity. Hunting rights for Sami are strongly protected in Norway and Sweden. The Parliament of Sweden adopted a major change in

¹² It is the same river, but has two different names for two different parts of the river.

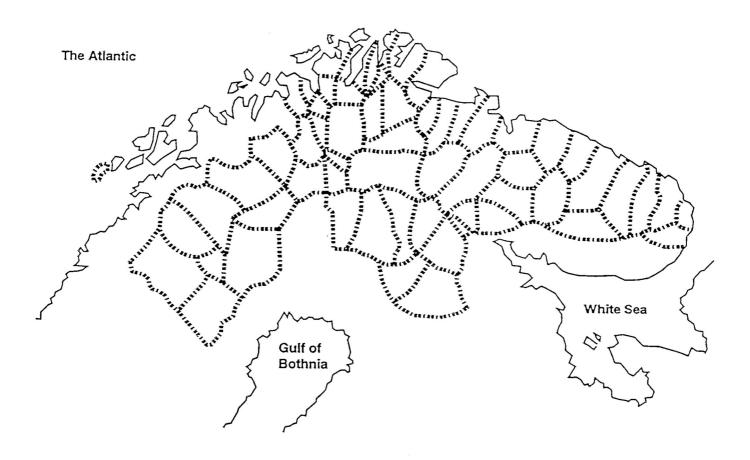
hunting rights in 1993, granting permission for non-reindeer herding Sami and non-Sami to hunt north of the "cultivation border", "Odlingsgränsen", for small animals and birds. Sami and several lawyers have asserted that passage of this law was beyond the authority of the Parliament. In the spring of 1998, the Swedish government asked the Sami Parliament of Sweden to investigate the problem and make recommendations to the government how to address the conflicts over hunting for smaller animals and birds above the farming border. The Sami Parliament of Sweden, in June 1998, suggested to the government of Sweden that Sami in the Sami register shall have fishing and hunting rights. There are no special hunting rights in Finland and Russia for the Sami. A special hunting regime, however, has been applied in Northern Finland, from which both Sami and non-Sami have equally benefited."

2 SAMI POLITICAL ORGANIZATIONS AND THE SAMI POSITION IN THE POLITICAL SYSTEM OF THE DIFFERENT STATES

2.1 Traditional Sami organization system

Since time immemorial, the Sami People are known to have been organized in *siida*, villages, each with its own population, geographic area, social and legal system. The whole Sami area was divided into *siidas* (see Figure 5), which were a form of stateless local democracy. The Sami People never formed any state. The size of the *siida* was determined by the resources available in the area. Since the economy of Sami was originally based on hunting and trapping, and later on reindeer herding, families hunted and trapped in the areas the *siida* assigned to the family by the chief of the *siida* or the *siida* assembly. The size of each area depended on family size and need. Relatively long-established joint enterprises, such as reindeer hunting and fishing, existed within the *siida*..

Fig. 5 Northern and eastern *siida* (village) areas during the hunting culture period. The map was drawn by Ø. Vorren on the basis of his own research and literature sources. (F. Hultblad, T.I. Itkonen, K. Nickul and I. Ruong)



The areas and boundaries of *siidas* in Sweden provided the basis for governmental construction of reindeer herding organizations such as *Lappskatteland*, and later for *Lappbyar* and *Samebyar*. (See Reindeer Herding).

Source: The Sami People, p. 28.

2.2 Modern Sami organizations

Until this century, there were Sami associations. The first local Sami association was founded in 1904, in Tärnaby, Sweden. The foundation of several other local Sami associations in Sweden and Norway followed soon thereafter. The first main association, founded in 1918, *Lapparnas Centralförbund* (Central Association of Sami), was dissolved after only two years for economic reasons. Many of the Sami associations before World War II in Sweden and Norway survived only a short time, usually disintegrating owing to lack of funds. In Russia and Finland, there were no attempts to form ethnic associations.

After World War II, several Sami associations were founded with a stable economic base. The oldest Sami main organization, Same Ätnam, was founded in 1945 at Jokkmokk, Sweden, following the well-attended Sami youth meeting in Sorsele, Sweden, in 1944. In Norway, the first major Sami organizations — Norske Reindriftssamers Landsforbund (Norwegian Reindeer Herders Association) (NRL) and Sami Searvi (Sami Society) both were founded in 1948.

Sami cooperation at a Nordic level began with the foundation of the Nordic Sami Council in 1956, in Karasjok, Norway, following the first Nordic Sami meeting in Jokkmokk, Sweden the same year. In 1993, the Nordic Sami Council changed its name to the Sami Council after Russia's Sami Association of Kola became a member of the council.

The Sami organizations have played a key role in the development of Sami political power and increased legal rights. Improvements in the legal and political status of the Sami have usually been initiated by demands from one of the Sami organizations.

2.2.1 Sami organizations at the national level

In 1980, the Sami Council adopted a declaration at the Nordic Sami Conference in Tromsø as follows:

- 1. We Sami are one people and national boundaries will not hinder the community of our people.
- 2. We have our own history, our traditions, our own culture and our own language. From our parents we have inherited the rights to land and water and our economic rights.
- 3. It is our inalienable right to protect and develop our industries and our communities

in accordance with our common conditions and together we wish to protect our land, natural resources and national heritage for future generations.

The "Sami are one people and national boundaries will not hinder the community of our people." The current state system of governance, however, divides the Sami ethnic group among four different nations — Russia, Finland, Sweden and Norway — and this, in turn, has influenced Sami organization. The Sami have adapted in part by building their own organizations within nation states. Sami have organized internationally to address the common interests of the entire Sami ethnic group. However, to understand Sami joint international organizations (common agencies for the entire Sami population), one must first understand the Sami national bodies.

Sami organizational structure has been affected by the legal systems of the four countries, particularly in Sweden and Norway. Reindeer keeping is officially recognized as one of the most important Sami cultural factors in Norway and Sweden; thus, reindeer keepers have been accorded special legal status. The Reindeer Herding Acts in Sweden and Norway have divided the Sami into two groups: reindeer keepers, who have legal rights, and non-reindeer keepers, who have no or few legal rights. The reindeer herding legislation in Norway and Sweden has solidified and deepened the preexisting division of the Sami population into herders on non-herders. The non-herders have no or few special Sami rights. In addition, land use conflicts between the reindeer industry and other non-Sami industries, such as farming, have led the governments to regulate land use. This attention to reindeer herding has affected the nation states' policies regarding the Sami which, in turn, have influenced the Sami's organizational structure. This has resulted in the division of the Sami organizations into reindeer and non-reindeer associations.

Only a small number of the whole Sami population are members of a main Sami organization. The Sami reindeer herders are very well organized in Sweden and Norway due to reindeer herding acts that require every herder to be a member of a local Sami village in Sweden, or district in Norway. Furthermore, Sami reindeer herding organizations base their membership on membership in such local Sami villages or districts.

2.3 Sami organizations in Norway

Throughout Norway, there are local Sami organizations from Oslo in the south to Finnmark in the north. There are several main Sami organizations: the National Association of Norwegian Sami Reindeer Herders (Norske Reindriftsamers Landsforbund, NRL), the Norwegian Sami Association (Norske Samers Riksforbund, NSR), and the Norwegian Sami Union (Samenes Landsforbund, SLF) and Norwegian Sami People Union (Samenes folkeforbund, SÁL). The first of these is a reindeer herding association, while the latter three are regarded as non-herding associations.

The Norwegian Sami Association was founded on November 30, 1968, in Kautokeino, Norway, by four local Sami associations in the northernmost county of Norway, Finnmark, combined with *Sami Searvi* (Sami Society). The local Sami associations in Finnmark were founded at different times beginning in 1959 and lasting through the 1960's. NSR was established to culturally, socially, and economically strengthen the position of the Sami people in Norway. Membership in NSR is open to local Sami associations in Norway. NSR has a seat on the Sami Council.

NSR played an active role in the establishment of the Sami Parliament in Norway, as will be discussed below. Before establishment of the Sami Parliament in Norway, NSR formed a Sami Party with the same name and goals as the association. Today, NSR is the largest party in the Sami Parliament of Norway.

The National Association of Norwegian Sami Reindeer Herders (NRL) is the oldest of the main Sami organizations that exist in Norway today, and is also a member of the Sami Council. NRL was founded in Tromsø, Norway, in June of 1948 to promote the interests of Sami reindeer herders. Membership in NRL is open to all Sami reindeer herders and to reindeer districts in the Sami reindeer grazing area. NRL has played an active role supporting reindeer herders in many ways, including the establishment of the Sami Cultural Agreement of 1976. The Sami Cultural Agreement is an extended reindeer herding agreement formed between the NRL and the Ministry of Agriculture in Norway, which channels subsidies to reindeer herding. The agreement has been re-negotiated every one or two years since 1976.

The Norwegian Sami Union (SLF), founded in 1979, works to culturally, socially,

and economically strengthen the position of Sami in Norway. Membership in SLF is open to local Sami associations in Norway and to individual Sami. SLF has played an active role supporting the coastal Sami. SLF is opposed to the idea of the Sami parliament, the Sami electoral register, and the concept that Sami rights are exclusive ethnic rights only for Sami people. SLF is a member of the Sami Council.

Norwegian Sami People Union (Samenes folkeforbund, SÁL) was formed recently as a splinter organization from SLF.

2.4 Sami organizations in Sweden

In Sweden, local Sami organizations exist from Gothenburg and Stockholm, north to Karesuando. There are several main Sami organizations. The oldest are The National Union of Swedish Sami, (Svenska Samers Riksförbund, SSR); The National Association of Samiland, (Riksorganisationen Same Ätnam, RSÄ); The National Association of Swedish Sami, (Landsförbundet Svenska Samer, SLF); and The Sami Youth Association (Saminuorra). Of these, only the first is also regarded as a reindeer herding association. The listing of Sami organizations is not complete and this has not been the intention of the author. There are several other new main Sami organizations.

The National Association of Samiland (usually referred to as Same Ätnam) is the oldest main Sami organization that exists in the Swedish Sami area today. Founded in Jokkmokk on February 3, 1945, RSÄ was established to strengthen the position of the Sami in Sweden culturally, socially and economically. Membership in RSÄ is open to individuals and local Sami associations in Sweden. RSÄ has played an active role in Sweden supporting non-reindeer herders, especially regarding Sami handicraft, language, education and culture. It has played an active role in advocating improved living conditions for Sami fishers. RSÄ is a member of the Sami Council.

RSÄ played an active role in establishing the Sami Parliament in Sweden. Before the establishment of the Sami Parliament in Sweden, RSÄ formed a Sami Party which is now represented in the parliament.

SSR, founded in Jokkmokk in 1950, is a member of the Sami Council. SSR was

established to safeguard and promote the economic, social, political and cultural interests of the Sami in Sweden, with special emphasis on the continued existence and sound development of reindeer herding, as well as its secondary industries. Membership in SSR is open to local Sami associations in Sweden and Sami reindeer grazing districts (Sami villages)¹³. Forty-three of the Sami villages are members in SSR, one is not.¹⁴ SSR has played an active role supporting reindeer herders. SSR also has a political party represented in the Sami Parliament of Sweden.

Swedish Sami Union (LSS) was established as a main organization in 1980, from two local informal groups of Sami, *Storumangruppen* and *Vattjien Samien Sijte*, in the County of Västerbotten in Sweden. The smallest of the main organizations, LSS has no office or administration. Formed to promote rights of non-reindeer herders, LSS has been an active representative of their interests in Sweden. LSS is not a member of the Sami Council, but the LSS party is represented in Sweden's Sami Parliament.

The Sami Youth Association (Saminuorra), founded in 1963 in Jokkmokk, works to improve the situation of young Sami in Sweden. The Sami Youth Association has observer status on the Boards of booth RSÄ and SSR. Saminuorra is not a member of the Sami Council.

2.5 Sami organizations in Finland

There are a few local Sami organizations in Finland, such as the City Sami Association in Helsinki, Rovaniemi Ry Sami and the Utsjoki Sami Association. In Finland, there is no main Sami organization equivalent to the main Sami organizations in Sweden and Norway. The Reindeer Keepers Act has not acknowledged any special rights of the Finnish reindeer keepers, therefore, the Sami people in Finland have not been divided as they have in

¹³ Sami village or Sami grazing district (Sameby) is a juridical association in Swedish legislation since the Reindeer herding Act from 1971. The term "Sami village" in the Reindeer herding Act of 1971 is based on the term Lappby from the Reindeer Grazing Act (Renbeteslagen) of 1886, 1898 and 1928. The term "Lapp village" (Lappby) was based on the traditional Sami community structure (Siita-system). Membership in a Sami Village is required for all reindeer herders

Sami Village is required for all reindeer herders.

14 The reindeer herding area in Sweden is divided into 44 Sami villages. Some additional Sami Villages exist in northeast Sweden in the Torneå valley (Konsecionsområdet). This area is outside the reindeer herding area. But by license from the Administration of Norrbotten County, it is possible to keep reindeer in the Torneå valley, which is divided into several "Sami villages". Membership in the Sami Villages in fhe Torneå valley and the right to own reindeer in this area, however, is also open to non-Samis, although only Samis may actually engage in reindeer herding in the Torneå valley (after obtaining a license from the Administration Norrbotten County).

the other countries. Only the popularly elected Sami body in Finland, the Sami Parliament, is represented on the Sami Council. Apart from the Sami Parliament, there are Sami pressure groups such as Sami Cuvgehussearvi and Sami Lihttu.

2.6 Sami organizations in Russia

In Russia there are two main Sami organizations, the Sami Association of Kola, formed on September 3, 1989, and the Murmansk County Sami Association, formed in July 1998. Sami Association of Kola has since 1992 has been a member of the Sami Council. The Sami Association of Kola has its office in the City of Murmansk. Murmansk County Sami Association applied in October 1998 for membership in the Sami Council. Its office is in Lovozero.

Three other Sami organizations in Kola promote particular Sami interests: an organization for Sami handicraft workers, an organization for young Sami (Same Nuoras), and the Russian Sami Section of the Sami women's organization Sáráhkká. Lack of adequate funding restricts the activities of these organizations at present.

2.7 Sami Parliaments and political parties

Sami Parliaments were established in Finland in 1973, in Norway in 1989, and in Sweden in 1993.¹⁵ There is no Sami Parliament in Russia. Establishment of Sami parliaments in the Nordic countries has led to a new era for Sami influence in these nations. The Sami parliaments are representative assemblies elected by and for the Sami People. Created by acts of national legislation, they are quasi-governmental bodies. As such, the Sami Parliaments may exercise decision-making power and directly influence the governments and parliaments of their respective states. This is particularly important because the Sami in Norway, Finland, and Sweden do not have representation of their own in the national parliaments. The founding of the Sami Parliaments constitutes legal recognition by governments of the Sami as a people.

The official role of each of the Sami Parliaments is as an advisory body to the

¹⁵For a discussion of the Sami parliaments, their formation and functions, see Sillanpää 1994: 114-123.

national government on Sami rights and affairs. While their legal role is advisory, the increasing political visibility of the Sami Parliaments makes their advice difficult politically for governments to ignore.

Finland

Between 1971 and 1973, the Finnish Sami committee, appointed by the government of Finland, reviewed the situation of Sami people in Finland. One of the most important outcomes of the committee's efforts was the creation of the Sami Delegation or Parliament (Saamelaisvaltuuskunta), established by Presidential Decree No. 824 on November 9, 1973. At the same time, the northernmost part of Finland was designated as the Sami Home Region. The 1973 Decree was replaced by a new decree in 1990 (16.11.1990/988), that somewhat modified the definition of a Sami and replaced the Sami Delegation with a new body termed Sami Thing or Assembly (Saamelaiskäräjät). The Sami Delegation and now the Sami Thing in Finland is popularly called The Sami Parliament of Finland and is in principal the same body as earlier.

The duty of the Finnish authorities to hear the Sami Assembly has been widened. According to a provision added to the Finnish Constitution in 1991, committees were only required to hear the Sami in matters of special concern for them (Parliament Act, Section 52a¹⁶ and Procedure of Parliament, Section 16). In the New Sami Thing Act, all government authorities and ministries must hear and "negotiate" with the Sami Thing on a broader range of issues. Section 9 of the 1997 Decree creating the Sami Thing states:

Obligation to negotiate

The authorities shall negotiate with the Sami Thing in all far-reaching and important measures which may directly and in a specific way affect the status of the Sami as an indigenous people and which concern the following matters in the Sami Homeland:

- 1) community planning;
- 2) the management, use, leasing and assignment of state lands, conservation areas and wilderness areas;

¹⁶ FFS1991:1079.

3) applications for licenses to stake mineral mine claims or file mining patents; legislative or administrative changes to the occupations belonging to the Sami form of culture.

The Sami Thing in Finland consists of a twenty-member assembly, elected in a general election by the Sami population in Finland. Representatives hold office for four-year terms. There are no Sami political parties in Finland; in this respect, the election to the Sami Parliament is similar to the electoral system found in Switzerland. Only Sami can be elected to the Sami Parliament. In addition to its consultative status, the Sami Thing has the power to allocate funds designated for common use of the Sami. One of the most important achievements of the Sami Parliament in Finland has been the preparation of the Sami Language Act. The Sami language is currently considered an official language of Finland as a result of the parliament's efforts.

Another important consultative body in Finland is the Advisory Council on Sami Affairs (Saamelaisasiain neuvottelkunta). Originally established in 1960, this ten member body includes five appointed by government ministries and five by the Sami Parliament. The Governor of Lapland, a government appointee, acts as president. The Council has been a useful channel for the Sami Parliament to reach ministry decision makers and played a key role in preparing the Sami Act and addressing land rights of the Sami.¹⁷

Norway

In 1987, the Parliament of Norway passed the Sami Act, which authorized the establishment of a Sami Parliament (Sameting). The Sami Parliament officially met for the first time on October 9, 1989, and was officially inaugurated by King Olav V. 18 The Sami Parliament of Norway consists of 39, 3 elected from each of 13 districts. Representatives serve four year terms and are chosen by the Sami population in Norway on the same day as national elections. Each delegate represents a Sami political party.

Each of the Sami parliaments possess limited independent decision-making power,

¹⁷ See Sillanpää: 94, 95, and 115.
¹⁸ The importance of the King's opening of the Sameting as a symbol of wide acceptance of the Sami people is explained in Sillanpää: 117, 118.

although the Parliament of Norway has stated that the Sami Parliament should define its own independent decision-making power and can involve itself in any issue which particularly affects the Sami people. The Sami Parliament of Norway may, on its own initiative, raise matters and issue statements with regard to all matters concerning the Sami People. It may also present matters to public authorities, private institutions, and organizations.

There are several Sami political parties in Norway which run for election to the Sami Parliament. The largest is the Norwegian Sami Association (NSR), which holds a majority of the seats in the Sami Parliament of Norway. In addition to nominating candidates for election to the Sami Parliament, Sami parties, such as *Sami listu*, field candidates for election to community and regional councils.

Sweden

In 1992, the Parliament of Sweden passed the Sami Act, which included the establishment of a Sami Parliament. King Carl XVI officially opened the Sami Parliament of Sweden on August 26, 1993. The Sami Parliament is an elected assembly and has thirty-one members. Representatives hold four year terms and are chosen by the Sami population in Sweden through a general election. Each official represents a Sami political party.

The Sami Parliament in Sweden possesses limited independent decision-making power. The mandate for the Sami Parliament is so open that it may raise matters and issue statements with regard to all matters concerning the Sami People, present matters to public authorities, private institutions, and organizations.

There are several Sami political parties in Sweden that contend for seats in the Sami Parliament, and some Sami political parties that run for election to community councils.

2.8 International Sami Organizations

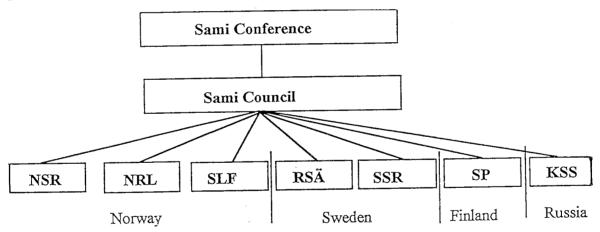
The Sami Council

The Sami Council is a political body coordinating action among the main Sami organizations in each of the four nation states. The initiative for the first Sami conference came from the national organizations Same Ätnam in Sweden, Sami Searvi in Norway, and

Sami ¢uvgehussearvi in Finland. These organizations initiated formation of the Sami Council at the first Sami conference, held at Jokkmokk, Sweden in 1953, by deciding to appoint a committee with three members, one each from Norway, Finland, and Sweden. The task of the committee was to prepare a proposal for a joint Sami body and to make sure that initial cooperation on a Nordic level continued until the next conference was arranged. The second Sami Conference, held at Karasjok, Norway, in 1956, resulted in the formation of the Nordic Sami Council.

The aims of the Sami Council are, according to its bylaws: "to safeguard the Sami's interests as private individuals and as a people, to strengthen solidarity among Sami and to work towards the Sami continuing to be recognized and treated as a people, whose economic, social, and cultural rights shall be ensured by the legislation of each country." In addition to the paragraph stating its aims, the Sami Council has several Aims and Action programs.

Fig. 6. Sami Council organization



NSR= Norwegian Sami Association (Norske Samers Riksforbund)

NRL= National Association of Norwegian Sami Reindeer

Herders

(Norske Reindriftsamers Landsforbund)

SLF= Norwegian Sami Union (Samenes Landsforbund)

RSÄ= National Association of Swedish Sami

(Riksorganisationen Same Ätnam)

SSR= Swedish Sami Association (Svenska Samernas Riksförbund)

SP= Sami Parliament of Finland (Sameparlamentet i Finland)

KSS= Kola Sami Association (Kolasamiska Föreningen)

The Sami Council is comprised of fifteen members: five from Norway, four from Sweden, four from Finland, and two from Russia. The Council members are appointed by the Sami Conference, which is the Sami Council's highest decision-making body. The Sami Conference is held every three years. The most recent Sami Conference was held in Murmansk, Russia, in August 1996.

Member organizations of the Nordic Sami Council are NRL, NSR, SLF (Norway); RSÄ, SSR (Sweden); the Sami Parliament (Finland), and the Kola Sami Association (Russia). The Sami Council represents the Sami as a member of the World Council of Indigenous People (WCIP), an international non-governmental organization.

Recent international agreements have accorded the Sami Council, along with the Inuit Circumpolar Conference (representing Inuit peoples of the Circumpolar North) and the Russian Association of Indigenous Peoples of the North (RIPON) special status representing the interests of indigenous northern peoples in international affairs. The international Declaration on the Establishment of the Arctic Council (the Ottawa Declaration), 19 September, 1996 designated the Sami Council as one of the "permanent participants" in the Arctic Council, an international body composed of the eight Arctic states. While the "permanent participants" do not have voting rights, this special status ensures Sami an opportunity to be present and represented at all meetings of the Arctic Council.

The Nordic Sami Institute

Indigenous peoples have increasingly seen the need to establish their own research institutes and to play a role in the formation of research agendas. The Nordic Sami Institute (Sami Institut'ta), founded at the end of 1973, conducts research based on Sami thinking, priorities and needs, enabling the Sami to develop their own expertise in various disciplines. The Nordic Sami Institute, although funded primarily by the member states of the Nordic Council (Denmark, Finland, Iceland, Norway, and Sweden), is operated and controlled by Sami.

Through research, reports, education, and other services, the Nordic Sami Institute

renders assistance to the Sami population in both theoretical and practical questions. The Institute also assists in ensuring that the majority of the general population and the authorities receive correct information about the Sami people and their situation.

The goal of the Nordic Sami Institute, as stated in the Statutes and approved by the Nordic Council of Ministers in 1973, is to serve the Sami population in the Nordic countries by working to improve their social, cultural, legal, and economic positions. For example, the Institute strives to:

- create an understanding of the Sami language [by Sami and non-Sami], thereby strengthening and cultivating the Sami language and culture, from a basis of Sami traditions and values;
- address occupational and livelihood issues including Sami handicrafts; economic, legal, and environmental issues; and
- address educational and historical matters, instruction and teaching materials, and information.

The Institute uses three or four languages on a daily basis: Sami, Norwegian, Finnish, and Swedish. Most documents are written in at least three languages. In its work, the Institute must take into account the administrative systems of three countries. Programs have to be planned for and implemented throughout the whole Sami settlement area in the Nordic countries.

The Nordic Sami Institute often collaborates with universities, Sami organizations, and other institutions. The Nordic Sami Institute's activities are organized in three departments: The Department of Language and Culture, The Department of Education and Information, and The Department of Industry, Environment, and Legal Rights.

In 1998, the Institute had twenty-eight employees, fourteen of whom were stationed at Guovdageaidnu. Five of the employees have permanent positions, whereas the remainder were employed annually on a contractual basis.

The Nordic Sami Institute is headed by an executive committee (a board), which works through the Director of the Institute. The Nordic Sami Council functions as an advisory organ to the executive committee of the Institute, which consists of twelve members who are appointed by the Nordic Council of Ministers. Five of these members are nominated

by the governments of Denmark, Iceland, Norway, Sweden, and Finland. The remaining seven are nominated by the Nordic Sami Conference.

The executive committee is responsible for the Institute's activities. In addition, the executive committee determines the principal guidelines for the Institute's work, submits the budget proposal to the Nordic Council of Ministers, designs programs, is responsible for financial management, and issues instructions to the Director of the Institute and other personnel. Daily activities are administered by the Director of the Institute in accordance with the guidelines and resolutions adopted by the executive committee. The Director ensures that the executive committee's resolutions are carried out, distributes assignments among personnel, and prepares matters to be presented to the executive committee.

The Nordic Council of Ministers finances an essential portion of the Institute's activities. The Institute also applies for funds from various ministries, research and other foundations, cultural council, employment funds, etc.

2.9 Sami and International Organizations

On the European level, there is a special organization for minorities called the Federal Union of European Nationalities (FUEN). FUEN was established on November 19 and 20, 1949, at the Hotel de Ville in Paris, following the initial meeting on April 9, 1949, at the Palais Chaillot, Paris. FUEN is the oldest cooperative body for minorities in Europe. The French movement La Fédération and its president André Voisin instigated the establishment of FUEN. Originally, the organization was entitled the Federal Union of European Minorities. However, its name was changed to the more appropriate Federal Union of European Nationalities.

The goals of FUEN are set down in its bylaws:

L'Union se fixe pour but de sauvegarder la personnalité, la laungue, la culture et les droits vitaux des communautés ethniques européennes, et de créer un droit de ces communautés qui soit reconnu au niveau international.

L'Union a pour mission, lorsqu'elle en reçoit le mandat, de représenter les intéréts de toute organisation membre, ou de tout personne faisant partie d'une communauté ethnique, devant les organismes internationaux ou supra nationaux tels, par exemple, la Commission européenne des Droits de l'Homme, la Cour européenne des Droits de l'Homme, et les organisations dépendant de l' traitant de la protection des minorités ou ethnies, ainsi que des membres de ces minorités et ethnies. (Article

3). L'Union soutient l'oeuvre des Nations Unies et du Conseil de l'Europe en faveur des Droits de l'Homme et des libertés fondamentales, sur la base d'une construction fédéraliste de la communauté européenne assurant aux communautés ethniques une administration autonome et leur originalité. (Article 4).

Ces droits et libertés impliquent la reconnaissance du principe selon lequel l'appartenance à une communauté ethnique ne peut être contestée ni fair l'objet d'une

vérification. (Article 5).

In short, the goals of FUEN are to work for the interest of European nationalities, specifically regarding legal, cultural, and linguistic issues.

Two Sami organizations are members of FUEN: Sami Cuvgehussearvi in Finland and Landsförbundet Svenska Samer in Sweden. Since Sweden and Finland have recently joined the European Union, FUEN is of greater importance for the Sami today.

The Sami Council is a member of the World Council of Indigenous Peoples (WCIP). WCIP was formed in Port Alberni, British Columbia, Canada, on October 31, 1975. WCIP assists indigenous peoples around the world in matters concerning cooperation among indigenous peoples, exchange of information, international law, and other matters.

The Sami have been able to place a representative in the UN Human Rights Centre in Geneva thanks to the financial help from the Nordic Governments. The current representative is a Norwegian Sami financed by the Norwegian Government until the spring of 1999. After that, the post should rotate to a representative from either the Finnish or Swedish Sami financed by the Swedish or Finnish government.

3 SAMI RIGHTS AND LEGAL PROTECTIONS

This section discusses the rights and laws pertaining to the Sami population in Fenno-Scandia. As use of the North Sea Route expands, it is likely to stimulate increased tourism, commerce, development of renewable and non-renewable resources, and demographic shifts in the Sami homelands. This section discusses the existing legal framework that applies in the region so that those planning for increased activities may comply with existing laws and avoid conflicts with Sami organizations and institutions. This section may also facilitate comparison of laws in each of the countries. The laws of Fenno-Scandinavian concerning Sami offer possible models for appropriate legal and institutional changes to protect the rights and interests of Russia's northern indigenous peoples.

The legal situation of the Sami in Norway during recent years may be divided into two periods: the legal situation before development of the Alta hydroelectric project and the legal situation after the Alta development. Before the Alta dam, Sami legislation was sparse. During the late 1970's, plans were made for a water power development at Alta in Finnmark County. The development led to extensive Sami demonstrations and much attention was drawn to the situation of the Sami population. As a direct result of the "Alta Case." the Norwegian government in 1980 commissioned the Sami Rights Report in order to review Sami issues and suggest necessary means to strengthen Sami culture. The committee published the first report in 1984 (NOU 1984:18). This report was followed by the Proposition to the Odelsting No. 33 Regarding the Sameting (Sami Parliament) and other Sami rights questions (The Sami Act) - which was passed by the Storting (Norwegian Parliament) on June 12, 1987. On April 21, 1988, the Storting passed Constitution Section 110a regarding the legal situation of the Sami population and several provisions. The committee is still working on the Sami Rights Report. During the 1980's and 1990's, the legal position of the Sami population in Norway was strengthened considerably. In Norway, one may therefore contrast the legal situation of the Sami population before and after the "Alta case." At present, Norway is a leader and pioneer in Sami legislation and Sami rights.

The development of legislation in Sweden regarding Sami rights has historically related primarily to reindeer herding. Therefore, Sweden has come furthest, among the countries with a Sami population, regarding rights for reindeer herding and the reindeer herding Sami. For the Sami who do not herd reindeer however, Sweden has made the least legislative progress among the Nordic countries. Only recently has legislation passed to include the entire Sami population through the establishment of the Sami Act and creation of a Sami Parliament.

Although Finland for years lagged behind in the development of Sami rights legislation, at present Finland, together with Norway, is in the forefront with recent passage

of a language act from 1991 and constitutional protection¹⁹ of Sami language and culture from 1996. In the 1970s, Finland established the first Sami parliament, the forerunner for *Sameting* in Norway and Sweden.

The discussion that follows will deal first with adherence to international conventions for protection of indigenous and minority rights. The discussion of legislative framework will then deal first with laws regarding reindeer herding, second with laws pertaining to other forms of economic activity including forestry, fishing, and Sami coastal rights, and finally with laws for the protection of Sami culture, language, and education.

3.1 Ratification of International Conventions Regarding Minorities and Indigenous Populations

Two international conventions are particularly important to the Sami population's legal, political, and cultural situation: The 1966 UN convention regarding civil and political rights, and ILO Convention No. 169 regarding indigenous populations and tribes in self-governed countries. The 1966 UN convention provides the Sami with legal protection of their culture (Article 27). This article includes protection of the material cultural basis. All four states with substantial Sami populations — Finland, Norway, Russia and Sweden — have ratified the 1966 convention. However, of the four, only Norway has ratified the more recent and far-reaching ILO Convention No. 169. Norway ratified the ILO convention on June 20, 1990.

Norway and Finland have ratified the European Charter for Regional or Minority Languages and have indicated to which extent they apply the commitments of the Charter to the Sami language. Sweden has not yet done so, but is considering the possibilities for ratification. The Swedish minority language Committee has recommended that Sweden ratify this European Charter and has also suggested adoption of a Sami language act. In relation to the European Bureau for Lesser Used Languages, the Nordic States have created national committees with Sami and other minorities represented (EBLUL committees).

Finland, Norway and Sweden have entered into bilateral reindeer pasture conventions

¹⁹ Paragraph 51a in the Finnish Constitution (Regeringsformen).

with each other, and Norway has signed an agreement with Russia. Sweden and Finland entered into an agreement at Helsinki in 1925 which regulates the Swedish and Finnish Sami population's right to recovery of illegally grazing reindeer from each country: this Agreement concerns reindeer-herders in general as on the Finnish side and on part of the Swedish side (Koncessionsrenskötsel) even non-Sami may herd reindeer. It covers many issues including compensation for damages caused by reindeer. This is a bilateral and reciprocal agreement only between Sweden and Finland. The earliest reindeer convention dates back to 1751 when Sweden and Denmark (of which Norway was then a part) signed a codicil to their border treaty. The most recent reindeer pasture convention between Norway and Sweden came into effect on May 1, 1972; it regulates Sami rights to reindeer pasture in the relevant countries, and is valid until the year 2002.

The Reindeer Pasture Convention between Sweden and Finland, dating from March 28, 1952, contains regulations regarding reindeer pasture boundaries between the countries and illegal reindeer grazing within the relevant countries. The reindeer pasture convention between Finland and Norway dates from 18 March 1952 and contains regulations regarding reindeer pasture barriers between the countries and illegal reindeer grazing within the countries. Finland and Russia agreed to a reindeer pasture convention on 4 June 1965 which regulates the recovery of Finish reindeer which have crossed the international boundary with Russia.²¹

According to Norway's agreement with Russia from 25 of July 1897 it is prohibited for reindeer herders to use reindeer grazing areas in the other country. This agreement is based up on the Russia's closing of the border between Russia and Norway 1826.²² Since 1826 it has not been possible for Norwegian reindeer herders to use grazing areas in Russia and for Russian reindeer herders to use grazing areas in Norway. A new agreement between

²⁰ The first reindeer convention from 1751 has also been called the Magna Charta of Sami because it confirmed several rights for the Sami based on time immemorial (Lasko, ed. 1989). Steinar Pedersen argues that the convention also secures rights for non-reindeer herding Samis (Pedersen, Diedut 1989:1). Norway was at that time a part of Denmark before entering a union with Sweden. The border between Sweden and Norway is the second oldest border in Europe.

second oldest border in Europe.

21 Although the convention is reciprocal, there is no Russian reindeer herding close to the Finnish border owing to a 100 km long Russian border zone where reindeer herding is not allowed. Additionally, during the Stalin period (1930-1935) all Samis were moved from the Russian/Finnish border area by force to the inland of Kola Peninsula.

²² Before the border closing, Russian Sami used Norwegian grazing land and Norwegian Sami used Russian grazing areas.

Russia and Norway was set up on 29 of December 1949. This agreement is not a reindeer herding agreement, but confirms the earlier agreement from 1897. In 1995, negotiations regarding rental of reindeer pasture areas on the Kola peninsula for Norwegian reindeer owners were in progress between a Norwegian reindeer herding organization, Norske Reindriftsamers Landsforbund NRL, and the Russian Ministry of Agricultural and the Murmansk Administration, but these negotiations have not resulted in any agreement.

3.2 Constitutional Protections for the Sami Population

Protection of the rights of Sami or other indigenous minorities in the constitutions of their respective nation states provides rights that are not changeable without amending the constitution of that state. As amendment of a constitution is usually far more cumbersome a process than are changes to domestic legislation, rights enshrined in a nation's constitution are considered fundamental rights - rights that "trump" any conflicting rights established merely by legislation. Such protection is found in the constitutions of Finland, Norway, and the Russian Federation.

In Sweden, there is no special constitutional provision regarding Sami rights. The Swedish Constitution²³ calls for ethnic minorities and their culture to be promoted (RF Chapter 1, paragraph 2(4)).24 In the preparation of the statement in the Government Bill introducing the new Constitution Act, it was made clear that the reindeer herding industry would be included in the statement. The statement is only an objective for the public authorities in Sweden and has never been implemented in any way or interpreted by any courts, but it has been used as a basis for the most recent Sami legislation.

In Finland, amendments to the Finnish Constitution adopted in 1991, 1995 and 1996 have strengthened the legal position of the Sami population in Finland. Section 14, subsection 3, of the Constitution of Finland includes linguistic and cultural protection for the Sami population.²⁵ Additionally, section 51a states that "the Sami population as an original

²³ The Regeringsformen (RF) is one of the laws that together form the legal compact called the "Swedish

The Regeringsformen (RF) is one of the laws that together form the logar compact cancer.

Constitution".

This section was put into the Constitution in 1976 by Law SFS 1976:871. As Sillanpää (p. 56) summarizes, this section of the Constitution Act of 1974 states "that the Swedish state must provide opportunities for ethnic, linguistic and religious minorities to preserve and develop their own social and cultural life."

Section 14(3) was added to the constitution (Regeringsförordningen) in 1995 (FFS 1995:969).

population shall, within the Sami native districts, be ensured cultural self-determination with regard to their own language and their own culture." ²⁶

From 1988, the Norwegian Constitution has provided general protection of Sami culture: "It is the duty of the State authorities to ensure that conditions exist within which the Sami People can secure and develop their own language, culture and community life" (section 110a)²⁷. The Sami Peoples status was thereby recognized for the first time in the history of the Norwegian State. The provision also forms part of the basis for the authority of the Norwegian Sami Parliament.

The Constitution of the Russian Federation "guarantees the rights of indigenous minorities (small-numbered indigenous peoples) in accordance with the generally accepted principles and standards of international law and international treaties of the Russian Federation." (Article 69). As one of the legally recognized indigenous minorities (peoples which are small in number), these guarantees apply to the Sami population. Additionally Article 68 of the Constitution guarantees all peoples the right to preserve, study, and develop their native languages. Other provisions of the Constitution delineate the distribution of authority between the federation as a whole and its subjects (republics, territories, regions, federal cities, autonomous regions and autonomous areas). These provisions of the Constitution will be discussed in chapter 3.7 below.

3.3 Special Sami Legislation

Legislation of special importance to Sami can be divided into two categories: (1) laws pertaining to economic activities such as fishing, forestry and especially reindeer herding, and (2) protection and promotion of Sami culture including laws regarding Sami language, education, culture and social life, and place names.

3.3.1 Legislation regarding the reindeer herding industry in Norway

The Sami reindeer herding industry represents 95% of the total reindeer herding

 ²⁶Section 51a was put into the constitution (Regeringsförordningen) in 1995 (FFS 1995:973).
 ²⁷ For a discussion of the meaning of this provision see Thuen: 226, 227.

industry in Norway (1986).²⁸ The reindeer herding Sami population totals approximately 2,800 persons.²⁹ This figure only includes those within the Sami reindeer herding area in Norway. Outside that area, both Sami and non-Sami carry out reindeer herding in "Domesticated Reindeer Teams."

The Reindeer Herding Act regulates the right to Sami reindeer herding in Norway. In addition, there are a number of acts regarding and affecting reindeer herding.³⁰ For instance, Norwegian and Swedish nomadic Sami populations are exempt from paying charges for the fishing rights granted by the Reindeer Herding Act pursuant to § 22 of "The Act Regarding Salmon Fishing and Inland Fishing". Necessary transportation of persons and goods within the reindeer herding industry is allowed on outlying fields pursuant to § 4.1C of the "Act Regarding Motorized Traffic on Outlying Fields and Watercourses". Representation by the reindeer herding industry in the "wildlife boards" in each county where reindeer herding is carried out and resident reindeer herders exist is regulated in § 5.1 of the Wildlife Act. With regard to reindeer herders, however, rights to hunting and fishing are only regulated by the Reindeer Herding Act to which § 31.1 of the Wildlife Act refers. A ban on the sale of stateowned land in Finnmark that is used as, or may be expected to be used as, a path during the nomadic Sami population's moves, is set forth in § 2 of the "Act Regarding State-Owned Land in Finnmark".

Reindeer herding in Norway is regulated by the "Act Regarding Reindeer Herding of June 9, 1978" (Reindriftsloven). The rights of use granted to the reindeer herding population in the legislation are based on perpetual use confirmed in legislation since the nineteenth century. These partial land use rights for the most part have remained unchanged since the first Reindeer Herding Act. The use rights are also in accordance with those of the reindeer

²⁸ NOU 1988:42 p. 30.

²⁹ In 1992 the reindeer herding population increased to 2,830 persons, Reindriftsnytt (Reindeer news) No. 3/4

In 1992 the reindeer herding population increased to 2,830 persons, Reindernishyt (Reindeer news) No. 374
1992, p. 44.
30 These include: "Act regarding reindeer herding in certain counties," "Act regarding reindeer pasture between
Norway and Sweden," "Act regarding entry into force of convention regarding reindeer fences," "Act regarding
reindeer fences between Norway and Finland," "Act regarding fund for reindeer owners," "Act regarding entry
into force of reindeer pasture convention," "Act regarding temporary import bans," "Act regarding liability for
injury to cattle caused by dog," "Act regarding promotion of sale of agricultural products," "The meat control
act," "The animal protection act," "The mountain act," "The planning and construction act," as well as § 259 in
the 24th chapter of the penal code regarding "embezzlement, theft and illegal use" of reindeer and certain
sections of the "Tax act" and "Amendment act to the tax act."
31 The Act Regarding Reindeer Herding of June 9, 1978 has been changed several times. The latest changes are
from 1996

from 1996.

herding Sami population in Sweden as a result of the common tradition of legal history. Reindeer herding legislation and the appurtenant rights are considerably different from corresponding legislation in Finland and Russia.

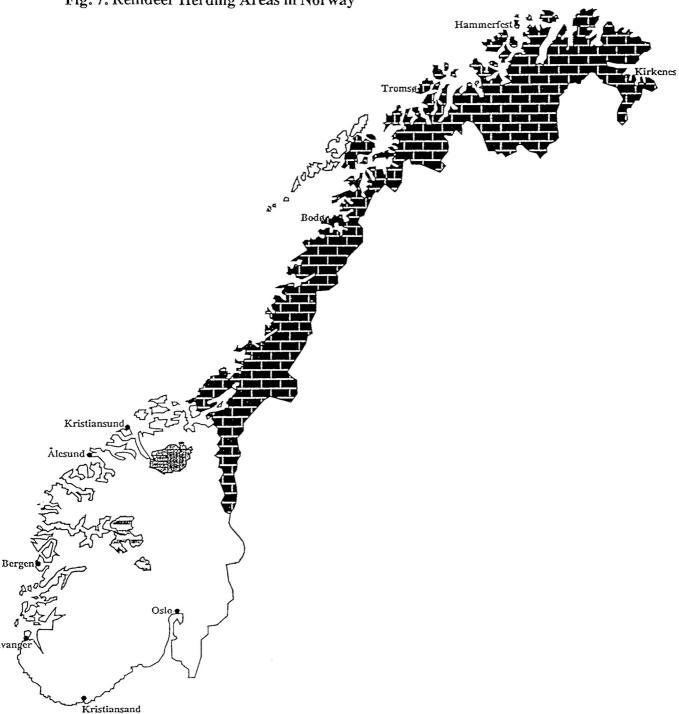
The reindeer herding industry, as defined in the Reindeer Herding Act, includes only the herding of domesticated reindeer. In Norway, there are still wild reindeer herds, the management of which is carried out in accordance with the Wildlife Act. The law differentiates between domesticated reindeer and wild reindeer. Domesticated reindeer can be owned, whereas no ownership rights can be assigned to wild reindeer. Pursuant to the Reindeer Herding Act all domesticated reindeer must be marked with an earmark which establishes the right to ownership. The Reindeer Herding Act distinguishes between areas in which Sami have special rights to herd reindeer, known as "the reindeer pasture area," and other areas. Sami reindeer herding is carried out in the counties of Finnmark, Troms, Nordland, North and South Trøndelag, as well as in the northernmost areas of Hedemark. The reindeer pasture area and other reindeer pasture districts in Norway are shown in Figure 7.

Norwegian citizens of Sami origin have the right to carry out reindeer herding within the reindeer pasture areas. The term "Sami origin" has not been defined in the Reindeer Herding Act, but based on perpetual traditional use the act includes a supplementary provision requiring that the individual, the parents, or the grandparents must have carried out reindeer herding. In other words, kinship with a reindeer herding family is required.

The right to carry out reindeer herding within the reindeer pasture areas is therefore reserved for Norwegian citizens of Sami origin (reindeer herding right). Exceptions from national regulations exist in conventions between Norway and Sweden and between Norway and Finland. Thus, the right to carry out reindeer herding within the reindeer pasture areas is exclusively linked to the Sami population.

To carry out reindeer herding outside the reindeer pasture areas, special permission is required pursuant to the Reindeer Herding Act. In principle, all Norwegian citizens may obtain the right to carry out reindeer herding outside the reindeer pasture area.

Fig. 7. Reindeer Herding Areas in Norway



Reindeer Herding-grazing Area in Norway



Trollheimen (Regulated by special act "Lov av 21 des. 1984 nr. 101 Om reindrift kommunene Meldal, Midtre-Gauldal, Oppdal, Rennebu, Rindal, Sunndal og Surnadal."



Non-Sami Reindeer Herding Area in Norway

The reindeer pasture area in Norway has been divided into six smaller reindeer pasture areas:

- South Trøndelag/Hedemark reindeer pasture area
- North Trøndelag reindeer pasture area
- Nordland reindeer pasture area
- Troms reindeer pasture area
- West Finnmark reindeer pasture area and
- East Finnmark

Each reindeer pasture area is divided into reindeer pasture districts. In total, there are eighty-seven different reindeer pasture districts in Norway.³² The most recently established reindeer pasture district was founded in 1992 (Reindeer pasture district no 41 - Beaskadis).33

The smallest formal unit at the local level within the reindeer herding in Norway, pursuant to the Reindeer Herding Act, is called the "operational unit." The operational units are financial units as opposed to reindeer pasture districts (which are geographical units wherein one or several operational units have exclusive rights to pasture their herds).³⁴ The term "operational unit" was introduced in connection with the latest revision of the reindeer herding legislation in 1978. An operational unit consists of a reindeer herd owned and managed by an accountable manager, and may include reindeer belonging to various relatives, pursuant to further definition in the Reindeer Herding Act. Usually an operational unit consists of the individual reindeer herder and his household. Several persons or families who carry out reindeer herding together may also obtain status as an operational unit. To obtain a new operational unit, the applicant must be a Norwegian citizen and a member of a reindeer herding family. Applications must be approved by the Area Board. An established operational unit may not be divided, but may be transferred (without approval from the Area Board) to children, brothers, sisters, or cousins (including children or cousins of the spouses) of a deceased herder. If such transfer is not carried out, notice that the operational unit is available will be published as free after use by the former owner has ceased. Free operational

The Ministry of Agriculture, Report to the Storting No 28 1991-1992, "A strong reindeer industry", p. 20.

33 On 4 December 1991 the reindeer herding board passed a regulation regarding the establishment of reindeer pasture district No 41 located south of Alta in North Norway. The board's decision applies from 1 April 1992 to 30 September 1999.

34 NOU 1988:42, p. 30.

units may be applied for by anyone fulfilling the requirements for the establishment of an operational unit within the reindeer herding industry. The person accountable for the operational unit is responsible for a number of financial and legal rights and obligations.

The use rights included in the Reindeer Herding Act in Norway are regulated by Chapter 3:e of the Reindeer Herding Act. These rights of use, pursuant to § 9:c of the Reindeer Herding Act, are the following:

- 1. The right to stay with reindeer and the right to transport and move camp;
- 2. The right to pasture for reindeer;
- 3. The right to mount equipment necessary for the reindeer herding;
- 4. The right to firewood and wood;
- 5. The right to hunt, trap and fish.

These use rights apply in the reindeer pasture area.

3.3.2 Special Sami legislation regarding reindeer herding in Sweden

Sweden's <u>Reindeer Herding Act</u> (SFS 1971:437) from 1971 (RNL) regulates reindeer herding within the reindeer herding area in Sweden and provides protections for the reindeer herding industry. Pursuant to § 26, the government may nullify the right to herd reindeer for a certain land area if the land area is needed for any of the purposes mentioned in Chapter 2 of the expropriation act, or for other purposes of considerable public importance. Otherwise, the right to reindeer herding cannot be declared invalid.

When the right to reindeer herding is declared invalid (pursuant to § 26) compensation must be paid to the herders and a special reindeer herding foundation (pursuant to § 28). Section 30 of the statute prevents a person who owns or uses "year round land"³⁵ on which reindeer herding is being carried out from changing the use of that land in a way which results in considerable inconvenience for reindeer herding except as provided pursuant to § 26.

In addition to the Reindeer Herding Act, there are reindeer industry regulations (such as SFS 1971:438). The statement regarding reindeer meat regulation (SFS 1986:255),

⁽Odlingsgränsen). Swedish reindeer herders can also use this land year round. Reindeer herding legislation since 1886 terms this "year round land" (Året runtmarker). The 'boundary of cultivation" was set up as the northernmost boundary for Swedish colonization or settlements to the north. The first northernmost boundary for Swedish colonization or settlements was the 'boundary of lappmark' (Lappmarksgränsen).

addresses additional charges on reindeer meat. The regulation concerning compensation for certain injuries carried out by predators (SFS 1976:430), confirms that the state is liable for each recovered reindeer which is proven to have been killed by predators. Compensation for inconvenience to reindeer herding must be paid to the owner and to the Sami village within whose pasture area the reindeer was found. The amount of compensation is determined by the National Environmental Protection Board. The predator compensation system is currently being reviewed.

Act regarding Husbandry of Natural Resources (NRL 1987:12) (reprinted 1987:247), which came into effect on July 1, 1987, states that the reindeer industry is one of several national interests (Chapter 2, Section 5). Other national interests include agriculture, forestry, professional fishing, environmental protection, energy production, and defense. These industries are to be protected against actions which may, to a considerable extent, obstruct business or industry. This provides special respect for various national interests and businesses, in addition to the general regulations regarding husbandry of land, water, and the physical environment. Provisions of the NRL are to be adjusted by resolution and cases in accordance with the Planning and Construction Act, the Water Act, the Environment Protection Act, the Peat Act, the Road Act, the Electricity Act, the Pipeline Act and the 1998 Minerals Act. Hence, the central provisions in the NRL form the basis for the use of land and water in Sweden, even if other acts regarding the use of land and water must be adjusted.

Accordingly, the NRL is a superior act with regard to the use of land and water. The NRL has a special protection provision in Chapter 3, Section 5 stating that, with regard to the undisturbed mountain areas, building and construction may only occur if it is necessary for the reindeer industry, the resident population, scientific research, or active outdoor life. Other measures may only be taken if they can be carried out without affecting the character of the areas in question.

Pursuant to the Environment Protection Act (1964:822, reprinted 1974:1025), state-owned land may be reserved for national parks in order to maintain large, undisturbed areas. Further regulations regarding the management of national parks are to be made by the National Environment Protection Board in cooperation with the county administration.

Pursuant to § 6 of the Environment Protection Act, however, such regulations must not reduce the Sami population's rights pursuant to the reindeer industry act. Consideration for the reindeer industry's interests within forestry has been expressed in regulations and in general advisories published in the Forestry Commission's Code (SKSFS 1986:6 and SKSFS 1982:2). Additionally, regulations in the Cross-Country Driving Act (1975:313) provide exceptions for the reindeer industry.

The reindeer industry is primarily regulated through the reindeer industry act of 1971 (RNL) (SFS 1971:893). The main objective of this act is to regulate reindeer herding and the rights of the reindeer herding Sami population. Regarding rights, these are much the same as in the Reindeer Industry Act of 1928 (RBL). RNL differs from RBL essentially as a result of different reindeer industry organization. The previous Lapp villages were reorganized into Sami villages, a new construction with regard to association law. The state reindeer industry administration was changed and the Lapp system was abolished. Changes in reindeer industry organization were a result of the effort to rationalize and increase the decision making rights of the reindeer-herding Sami population.³⁶

The right of the reindeer-herding Sami population, pursuant to the Reindeer Industry Act, is called the right to reindeer herding. The right to reindeer herding is not really one uniform right but a uniform term for the partial rights granted to the Sami population by the reindeer industry act. The partial rights in RNL include the rights to the use of land and water for the purpose of reindeer herding, the right to move reindeer, the right to hunt, the right to fish, the right to construction, and the right to wood.

The RNL, Section 1, defines the "right to reindeer herding" as "The right [of reindeer herders] to make use of land and water to sustain themselves and their reindeer "37 The right to reindeer herding is therefore a right to make use of property owned by others (RNL Section 1, Subsection 1). The land and water area included in the right of use appears from RNL section 3 and is illustrated in Figure 3.38 The reindeer herding area includes more or less all of Norrbotten, Västerbotten and Jämtland counties, as well as sections of Kopparberg and

³⁶ Prop. 1971:51, p. 111ff. ³⁷ RNL (SFS 1971:893) section 1. ³⁸ SOU 1983:67, p. 40.

Västernorrland counties. The total area is approximately 169,000 square kilometers or approximately one third of the surface of Sweden.³⁹ Pursuant to the 1972 reindeer pasture convention between Sweden and Norway certain areas in Troms, Nordland and North Trøndelag counties in Norway may to a limited extent be used for pasture by the Swedish Sami population. The extent of the reindeer herding area in Sweden is illustrated in Figure 8.

The concrete content of the right to reindeer herding is made clear in various sections of the RNL. The right to reindeer pasture includes the right to use the pasture areas of Sami villages for reindeer herding (section 19) and the right to move reindeer between separated areas of village pasture areas (section 23). Questions regarding moving of reindeer are further regulated in sections 24 and 69. Wood may be felled for construction purposes and carpentry pursuant to sections 17 and 18. Also "low growing trees" may be felled under certain conditions (section 20). The right to obtain firewood is covered in sections 17 and 19.40

The right to reindeer herding includes the right to construct various structures necessary to the reindeer herding industry; these include working enclosures, reindeer slaughterhouses, reindeer guard huts, store rooms and other small buildings (RNL section 16). The right to reindeer herding includes hunting and fishing rights pursuant to RNL section 29.⁴¹ Thus, the term "right to reindeer herding" is a summary term for a number of use rights of the Sami population pursuant to the reindeer industry act. RNL section 1 determines who may hold the right to herd reindeer:

"...[The right to reindeer herding] is held by a person of Sami origin, provided his father or mother or one of his grandparents have had reindeer herding as their permanent employment.".⁴²

Not all those who hold the right to reindeer herding, however, are allowed to use this right. Only members⁴³ of Sami villages have the right to use the right to reindeer herding.

³⁹ SOU 1966:12, p. 21; SOU 1983:67, p. 40.

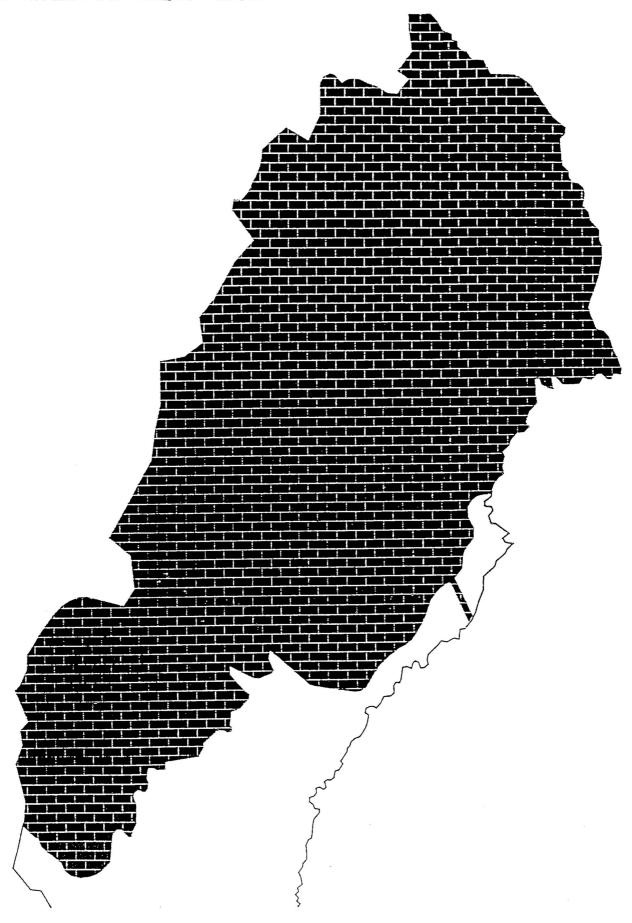
With regard to the right to wood for carpentry, see Lasko 1986:1, 1986:2, 1986:3.

⁴¹ See Act (SFS 1938:274) regarding the right to hunting section 38, amended through SFS 1975:175; Act (SFS 1905:596) regarding the right to fishing section 26, amended through SFS 1975:176.

⁴² Entitlement to reindeer herding is also required for a concession to carry out reindeer herding within the concession areas.

⁴³ Sami village (Sameby) is a juridical association with membership as defined in Swedish legislation.

Fig 8. Reindeer herding area in Sweden



3.3.3 Legislation regarding the reindeer herding industry in Finland

In Finland "The Reindeer Herding Act of 14 September 1990" (848/90) replaced the Act of 4 June 1948 regarding reindeer herding. It is implemented by the "Reindeer Herding Regulations of 21 September 1990" (883/90).

Reindeer herding in Finland may be carried out within the reindeer herding area⁴⁴. which includes all the county of Lappland (except Kemi, Torneå and the Keminmaa District) and sections of Uleåborg County (Hyrynsalmi, Kuivaniemi, Kuusamo, Pudasjärvi, Suomussalmi, Taivalkoski and Yli-li Districts as well as the areas of Puolanka, Utajärvi and Ylikiiminki Districts which are located north of the Kiminge river and along the road Puolanka-hyrynsalmi). The reindeer herding area in Finland is illustrated in Figure 9.

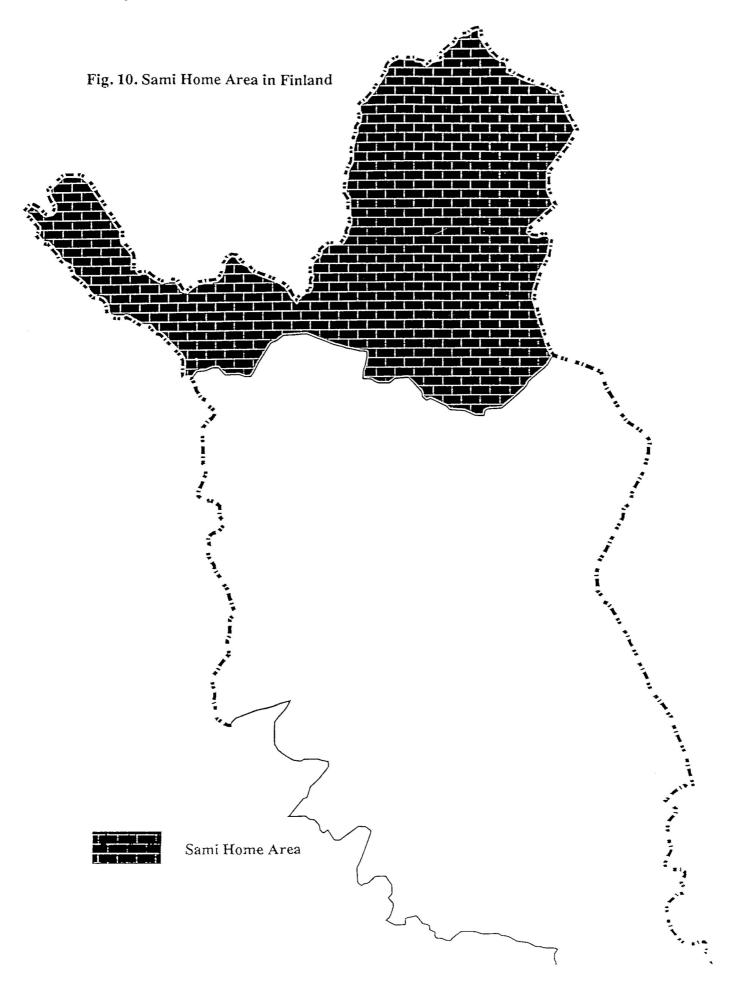
The Sami native district is described in § 1, subsection 3 of the decree regarding delegation for Sami matters (824/73) and includes Enontekiö (Hetta), the Utsjoki and Enare Districts, as well as the northern section of Sodankylä District. Within this area the prevention of damage or the obligation to guard the reindeer are not as extensive as for the rest of the reindeer herding area pursuant to §31, subsection 1 of the Reindeer Herding Act. Within the Sami native district, pursuant to the same regulation, there are limitations to liability for damages. Sami native districts in Finland are illustrated in Figure 10.

In Finland reindeer herding is not reserved for the Sami population. Every Finnish citizen living within the reindeer herding area and reindeer herding teams may own reindeer, and carry out reindeer herding (§4 of the Reindeer Herding Act). Exemptions allow Finnish citizens who move from the reindeer herding area to own reindeer for three years, calculated from the move or agreement entered into with the reindeer herding team for a specified period (§ 9 of the Reindeer Herding Act). Exemptions also apply for transport reindeer which may be owned by Finnish citizens irrespective of place of residence pursuant to § 4 of the Reindeer Herding Act. Originally only those Finnish citizens who permanently lived in the reindeer herding area, Sami and non-Sami alike, had the right to own reindeer. In 1992 the

⁴⁴ The reindeer herding area is described in section 2 of the Reindeer Herding Act of 14 September 1990.

Fig. 9 Reindeer herding area in Finland





provision was extended to cover any persons living in the reindeer herding area who is a citizen of an European Economic Association State. 45

There are approximately 6,800 reindeer owners in Finland. Only a small number of these are Sami (according to the reviewers of this paper roughly one-third are said to be Sami).

Section 27 of the Reindeer Herding Act requires the Ministry of Agriculture and Forestry to divide the reindeer herding area into districts. Regulations describe the selection of representatives for the herding districts who shall report on new reindeer herding districts or transfer of herding districts to the area. At a herding district meeting all reindeer herding teams are represented by the so-called reindeer warden or chair of the reindeer herding team (§17 of the Reindeer Herding Act). A chair and a vice chair are elected at the meeting for terms of three years.

All reindeer herders in Finland are divided into reindeer herding teams. The reindeer herding teams are assigned to a geographical area. The teams constitute the local organization for reindeer herders in Finland. 46 The delimitations of the herding districts (paliskuntien toimialuet - renbeteslagens verksamhetsområden) are confirmed by the County Administrative Boards (lääninhallitus - länsstyrelse) according to Chapter 2, Section 6 (3) of the Finnish Reindeer Herding Act. 47

Section 3 of Finland's Reindeer Herding Act states: "Reindeer herding may, with the limitations laid down in this act, be carried out within the reindeer herding area only by owners or tenants of the land." This includes the right to reindeer pasture and the right to move reindeer, which also appear from the regulations limiting liability for damages caused by reindeer (§ 34 of the Reindeer Herding Act, "Damage Caused by Reindeer to Agriculture and Forestry" or on areas referred to in § 31, subsection 1). Compensation is not to be paid (1) to the state, a county or a governmental body, or (2) for damages caused by lichen and

⁴⁵ Reviewers Horn et al. pointed this out and also noted, "Protocol No. 3 concerning the Sami to the Accession Treaty by i.a. Finland and Sweden to the EU establishes the right to guarantee exclusive reindeer herding rights to the Sami in areas traditionally inhabited by them. This Protocol may be invoked to amend the Finnish Reindeer Herding Act to meet the demands of the Finnish Sami."

⁴⁶"The reindeer herders who are living within the reindeer herding area and whose reindeer are herded within an area of a reindeer herding team (part owners) pursuant to § 9, subsection 1 and 2, constitute a reindeer herding team. "(8.6 of the Peindeer Herding Act)

team..." (§ 6 of the Reindeer Herding Act).

47 Poronhoitolaki 14.9.1990/848. For discussion of reindeer herding in Finland in contrast to Norway and

Sweden, see Sillanpää pp. 74-76, 182, 183.

grass in wooded areas being trampled down or eaten or to leaves and berries on bushes or trees, other than those growing in forest rejuvenation areas, or (3) for damages caused to land which has been transferred or leased out within the Sami area referred to in §2, subsection 2, on a reindeer herding property (590/69) or on a natural property laid down in the Subsistence Livelihood Act (Luontaiselinkeinolaki - Naturnäringslagen 24.8.1984/610) or similar property which has been created through allocation of additional area. Notwithstanding item 1, compensation must be paid when lichens which are collected for decorative purposes are trampled down or eaten outside the reindeer herding area in a county bordering on or partly belonging to the reindeer herding area. In addition to the above there are special regulations regarding the erection of reindeer fences (§ 39), and the collection of wood (§ 40).

3.4 Sami Coastal Rights

Coastal Sami groups compose a large portion of the Sami population in Norway. For thousands of years Sami have fished along what is now the Norwegian coast and at sea. ⁴⁸ Both lawyers and the main Sami organizations have asserted that certain coastal rights exist for the coastal Sami population. These rights, however, have not been confirmed in legislation. Increased international use of the Northern Sea Route could well result in increased development and conflicting uses of Arctic coastal waters. Thus, the rights of coastal Sami should be clarified and codified in order to avoid conflicts and prevent negative impacts on coastal Sami.

3.5 Laws relating to protection of Sami language and culture

Laws in Norway, Sweden, and Finland to varying degrees protect and encourage use of the Sami language, provide for education in the Sami language in schools, protect Sami cultural monuments and preserve Sami place names. The most important of these provisions are briefly described. They provide models that might be employed in the Kola peninsula to protect the Sami language and culture, and throughout the Russian North to secure added protection for other indigenous minority languages and cultures.

⁴⁸ In prehistoric times coastal Sami populations in Sweden and Finland fished along the former Swedish and Finnish coasts and at sea. Today Sweden and Finland no longer border the Arctic Ocean.

3.5.1 Norway

The Norwegian Sami Act of 1987, together with the previously mentioned constitutional provision, calls upon the Norwegian authorities to prepare conditions for the Sami population in Norway to protect and develop their language, culture, and social life. The Sami Act includes strong provisions regarding the Sami language. It requires laws and regulations which are of special interest to the Sami population to be translated into the Sami language. In the counties of Karasjok, Kautokeino, Nesseby, Porsanger, Tana, and Kåfjord, the Sami and Norwegian languages have equal status as public administrative languages. Therefore, a person who contacts a local administrative body using the Sami language has the right to receive a reply in the same language. With regard to the use of the Sami language in courts of law, Section 136a of the Act regarding Courts of Law provides the right to speak Sami in the courts.49

In 1990, rights to education in the Sami language were added to The Compulsory Education Act (§ 40a).50 Children in Sami districts have the right to receive Sami language education and education held in the Sami language. Sami language education may also be given to pupils with Sami background outside Sami districts. If there are at least three Sami speaking pupils at a school outside the Sami districts, they have the right to Sami language training. The implementation of this provision is difficult primarily because the term "Sami districts" has not been completely defined.

The Cultural Monuments Act provides extensive protection of fixed (section 4) and movable (section 12c) ancient Sami monuments that are more than one-hundred years old. A special export ban on Sami cultural monuments, regardless of age, is laid down in section 23c of the Cultural Monuments Act.

The Place Names Act requires that Sami place names being used by the people at a particular place shall also be used by public authorities on maps, signs, in registers, and other places (Place Names Act § 3 subsection 2). Furthermore, there shall be a state place name adviser pursuant to § 9 of the act. With regard to Sami spelling principles, refer to § 4 of The

Amended through "Act of 21 December 1990, No 78".

This section was introduced through "Act of 21 December 1990, No 78" amending the "Compulsory Education Act".

Place Names Act. The Sami Language Council is to be consulted in connection with questions of a fundamental character pursuant to § 8 of The Place Names Act. In addition, a large number of general laws have a direct or indirect effect on the Sami population, culture, and rights as citizens of Norway.

3.5.2 SWEDEN

In Sweden, the Sami language is most effectively maintained in schools and on the radio. Unlike Finland and Norway, the Sami language is not an official language in Sweden because there is no Sami language act in Sweden. On the other hand, there is no legal provision expressly stating that Swedish is the official language in Sweden. Nevertheless, the Swedish language shall be used by Swedish authorities as set forth in § 8 of the public administration act, Chapter 5, § 6 and Chapter 33 § 9 of the code of legal proceedings, and § 50 of the public administration process act.⁵¹

Pursuant to <u>Regulation (SFS 1988:266) Regarding State Contributions to the Teaching of Mother Tongues in Nursery Schools</u>, state contributions are paid to counties for mother tongue support for Sami children in nursery day homes, municipal family day homes or part time groups. The state contribution pays for each Sami child to receive mother tongue support for at least four hours per week.

Regulations regarding Sami schools and Sami school administration exist in the Education Act (SFS 1985:1100) and in the Sami School Regulation (SFS 1967:216).

The Agreement Between the State and the Program Companies in Swedish Radio states that the companies in their program activities shall "pay special attention to linguistic and ethnic minorities."

For the Sami population in general, there is a special <u>Sami Act</u> specifically regulating the Swedish *Sameting* (Sami parliament). This elected body for the Sami population in Sweden is discussed above in section 2.7. The Sameting decides on the distribution of state contributions and funds from the Sami fund for Sami culture and organizations, appoints the

⁵¹ Pursuant to a convention between Sweden, Norway, Finland, Iceland and Denmark (SÖ 1982;93) Nordic citizens have the right, when necessary, to use their own language – Swedish, Norwegian, Finish, Icelandic or Danish – when contacting authorities and other public bodies in another Nordic country.

Sami education board, leads Sami language work, participates in social planning, and must be well-informed regarding Sami conditions.

3.5.3 FINLAND

Finland also has special protections for the Sami language that include the following laws. An act regarding public Finish radio activities states that one of the tasks of the public radio is to produce programs in the Sami language. The Education Act contains regulations regarding the right of children to be taught the Sami language in the comprehensive and upper secondary schools. Pursuant to the Act Regarding the Day Care of Children, the counties must arrange day care with Sami language for Sami speaking children.

3.6 Russia - Laws Regarding Sami and Other Indigenous Minorities

Law in Russia differs considerably from the Scandinavian law regarding Sami and from the Scandinavian legal system. Each of the Scandinavian states is governed by a strong central government. Subdivisions of the state (counties) are relatively weak; thus, laws governing Sami rights and privileges emanate from the central governments of Finland, Norway, and Sweden. In contrast, Russia is a Federation of republics and other forms of regional government that have considerable power and authority as delineated in the Constitution of the Russian Federation⁵². The rights of minorities and original populations in the Russian Federation are based on legal documents and decrees at the federal (central) and regional levels of government, and on international law. Thus, our treatment of Russian law regarding minorities and original populations is organized differently from that of the Scandinavian states discussed above.

The Constitution of the Russian Federation has gone far toward accepting international law as the internal law of Russia and has accorded its treaty obligations supremacy over other laws adopted by the Russian Federation or its subjects. Pursuant to Article 15, section 4 of the Constitution the recognized principles and norms in international

⁵² Article 5 of the Russian Constitution states: "1. The Russian Federation shall consist of republics, territories, regions, federal cities, an autonomous region and autonomous areas, which shall be equal subjects of the Russian Federation." Reprinted in English in 16 Constitutions of the Countries of the World, Constitution of the Russian Federation as approved by National Referendum, Dec. 12, 1993. Quotations from the Constitution used here are from this source which was translated by Federal News Service in Washington, D.C.

legislation and the international treaties of the Russian Federation are a part of the legal system of the Russian Federation:

Universally-recognized norms of international law and international agreements of the Russian Federation are a component part of its legal system. If an international agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement are used.

If international treaty obligations of the Russian Federation are in conflict with other laws or legal acts of the Russian Federation, the treaty will prevail. Accordingly one has to take international law into account when describing the rights of original populations in Russia. As the reviewers of this paper noted, "Article 15, section 4 of the Russian Constitution is not to be read as meaning that customary international law has priority over domestic law – if not exceptionally stated for some spheres, such as the rights of smaller indigenous peoples (Section 69). Ratified treaties take precedence over domestic ordinary legislation, but the Constitution takes precedence over treaties."

3.6.1 Conventions regarding minorities and original populations

Russia has ratified several international conventions which are of importance to the Sami population's legal, political and cultural situation, i.e. the 1966 <u>UN Convention Regarding Civil and Political Rights</u>. Article 27 in the 1966 UN Convention provides the Sami population with legal protections for the Sami culture.

Russia has not ratified the <u>ILO convention no. 169 Regarding Original Populations</u> and <u>Tribes in Self-Governed Countries</u>. The ILO convention no. 169 goes considerably further than the above-mentioned UN convention. Other agreements that are in place include: <u>The Reindeer Pasture Convention with Finland</u> of 4 June 1965, which regulates recovery of reindeer which have crossed the international boundary, and a 1994 convention in the Russian Federation regarding protection of the rights of persons who belong to an ethnic minority⁵⁴.

⁵³ See "Comments to the Constitution of Russian Federation" by Ger P. Van den Berg, Part I, Leiden 1994 pp. 106-107

⁵⁴ Discussion of the above mentioned convention is outside the scope of this report and will not be commented on here.

3.6.2 Constitutional protection for the Sami population in Russia

With regard to the protection of the rights of original populations there are two relevant sets of provisions in the Constitution of the Russian Federation: 1) Concrete constitutionally protected rights, and 2) Provisions regarding the distribution of competence between the Federation as a whole (the central government) and its subjects with regard to protection of the rights of original or indigenous populations.

While the Constitution does not mention the Sami population as such, it does contain three sets of rights that together provide significant protection to Sami and other indigenous peoples: 1) human and civil rights, 2) cultural, linguistic and nationality rights, and 3) indigenous minority rights or rights accorded to "small numbered peoples" of the Russian Federation. Sami are included in the list of about 30 officially recognized distinct indigenous peoples of the North which are separately identified in censuses and accorded special rights as indigenous minorities. General human and civil rights stated in the Constitution have a special status and provide strong protections for individual rights. These protections are further strengthened by the priority that Constitutional provisions have over legislation adopted either at the federal or regional level.

First, the Constitution has a direct effect and priority over other legislation passed either at the federal level or by any of the regional governments that are subjects of the Russian Federation. Article 15, section 1 states:

The constitution of the Russian Federation shall have supreme legal force and effect, and shall be applicable throughout the whole territory of the Russian Federation. Laws and other legal acts adopted by the Russian Federation may not contravene the Constitution of the Russian Federation.

Second, laws that cancel or belittle human rights and the freedoms and rights of the citizens, may not be adopted. Article 55 states:

- 1. The listing of the basic rights and liberties in the Constitution of the Russian Federation shall not be interpreted as a denial or belittlement of other commonly recognized human and citizens' rights and liberties.
- 2. No laws denying or belittling human and civil rights and liberties may be issued in the Russian Federation.

Third, the freedoms and rights of the citizens cannot be changed (including the general

human and citizens' rights and liberties pronounced in Articles 2), in any other way than that set forth in the Constitution (in a very complicated way). Article 16, section 1 states:

The provisions of the present Chapter of the Constitution shall be the foundations of the constitutional system of the Russian Federation and may not be changed except as provided for in this Constitution

And Article 64 provides:

The provisions of these articles form the basis of personal rights in the Russian Federation and may not be changed other than by means set forth in this Constitution.

3.6.3 Human rights and citizens' rights

Article 2 establishes that humans and their rights and freedoms are of the highest or most important value. The recognition, observation and protection of human and citizens' freedoms and rights are the obligation of the state:

Man, his rights and freedoms shall be the supreme value. It shall be a duty of the state to recognize, respect and protect the rights and liberties of man and citizen.

Pursuant to Article 17, rights and freedoms are recognized and guaranteed in accordance with the principles and norms of international law and in accordance with the Constitution. Fundamental human rights and freedoms are not negotiable and belong to human beings from birth. Article 17 states in part:

- 1. The basic rights and liberties in conformity with the commonly recognized principles and norms of the international law shall be recognized and guaranteed in the Russian Federation and under this Constitution.
- 2. The basic rights and liberties of the human being shall be inalienable and shall belong to everyone from birth.

Human and civil rights apply immediately and prevail over both prior and subsequently adopted legislative acts that may conflict with such rights. Article 18 states:

The rights and liberties of man and citizen shall have direct effect. They shall determine the meaning, content and application of the laws, and the activities of the legislative and executive branches and local self-government, and shall be secured by the judiciary.

Thus, with regard to human and civil rights, the Constitution is self-executing; there is no need to wait for passage of implementing legislation to begin to enforce individual rights. Any breech of such rights could be brought before the judiciary which is charged with the duty to enforce or secure these rights and, where ambiguity might exist, to interpret laws in accord with such rights. Existing and future laws and activities of legislative and executive

branches of government at all levels including the local level must be consistent with the human and civil freedoms and rights guaranteed in the Constitution. In all these articles, the Constitution of the Russian Federation unambiguously establishes the concept of natural human rights. Humans and their rights are primary, and the state is secondary. The state is a product of human society and must ultimately serve the interests of the individual.

The material conditions necessary to continue human life and activity are protected by the provisions in Article 9 which, while not specific to indigenous populations, are especially critical to indigenous populations whose cultures and life depend on use of land and natural resources. Article 9 states:

The land and other natural resources shall be used and protected in the Russian Federation as the basis of the life and activity of the peoples living on their respective territories.

3.6.4 Protection of language, culture, and national identity

According to the constitution, the rights of original populations are protected irrespective of differences in their social standing, language, way of living and other factors. The state guarantees equality of rights and freedoms irrespective of race, ethnic background, linguistic background, origin, religious situation, philosophy, membership in voluntary organizations, etc. The Article establishing freedom of speech and thought explicitly prohibits "hate speech" directed against ethnic nationalities or propaganda based on racial, ethnic, religious or linguistic superiority:

Propaganda or campaigning inciting social, racial, national or religious hatred and strife is impermissible. Propaganda of social, racial, national, religious or language superiority is forbidden. (Article 29, section 2.)

Furthermore, the state must assist in the protection of, support and development of the originality, culture and traditions of the original populations. Everyone has the right to define and practice his or her ethnic affiliation. Everyone has the right to choose his or her own language for communication, upbringing, education and creativity:

- 1. Everyone shall have the right to determine and state his national identity. No one can be forced to determine and state his national identity.
- 2. Everyone shall have the right to use his native language, freely choose the language of communication, education, training and creative work (Article 26).

The Russian Federation guarantees all its population groups the right to protect their mother tongue:

The Russian Federation guarantees to all of its peoples the right to preserve their native language, to create conditions for its study and development (Article 68, section 3).

The state guarantees the right to protect individual rights and freedoms by access to the law courts particularly in the case of unlawful decisions or acts of government agencies, officials and public associations. Not only may anyone pursue their rights in the Russian law courts, but everyone also has the right, in conformity to international treaties to which the Russian Federation is party, to contact international bodies for protection of rights and freedoms when all existing national judicial authorities have been tried.

Article 45.

1. State protection for human rights and liberties in the Russian Federation. shall be guaranteed. 2. Everyone shall have the right to defend his or her rights and liberties by any means not prohibited by the law.

Article 46.

- 1. Everyone shall be guaranteed protection of his or her rights and liberties in a court of law.
- 2. The decisions and actions (or inaction) of state organs, organs of local self-government, public associations and officials may be appealed against in a court of law.
- 3. In conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted.

3.6.5 Special rights of indigenous populations

For the first time in Russia, the rights of original populations and indigenous minorities were established at the constitutional level in the new Constitution. Article 69 guarantees the rights of the indigenous minorities (those groups with "small in number" populations) in accordance with recognized principles and international norms, as well as with the Russian Federation's international agreements. Article 69 states:

The Russian Federation guarantees the rights of small indigenous peoples in accordance with the generally accepted principles and standards of international law and international treaties of the Russian Federation.

This provision, at a minimum, applies to the 30 indigenous peoples ranging in size from the Nenets (with a population of roughly 35,000) to those with populations at, or even under, 100. It includes the Sami, but it would appear not to cover the large populations of several other indigenous peoples (Sakha-Yakut, Komi, Buryat) although these too are minorities within the Russian Federation and even within their own republics, okrugs, and other regional subjects of the Federation.

The rights of indigenous populations pursuant to the Constitution are established in international standards and through the international obligations of the Russian Federation. Under the Constitution, international legal norms protecting the rights of indigenous peoples take precedence over national laws in cases where a conflict arises between international legal norms and a law adopted by the federation government or one of its regional governments (see Article 15 quoted above).

3.6.6 Distribution of authority between the Russian Federation and its subjects with regard to the rights of indigenous populations

The Constitution regards the regulation and protection of the rights of national minorities (a term which includes indigenous minorities such as the Sami) as a federal matter (Article 71c). But the federal government shares jurisdiction with its federal subjects over "protection of the rights of ethnic minorities" (Article 72b). Article 71 delineates those matters over which the Russian Federation has (presumably exclusive) jurisdiction, while Article 72 lists those matters which are within the joint jurisdiction of the Russian Federation and its federal subjects⁵⁵. This means that it is first and foremost the federation which controls and protects the rights of original populations:

- 1. The federation protects the rights pursuant to international law (under Article 69);
- 2. The federation approves federal legislation which, so long as it is within its jurisdiction, would be superior to conflicting laws adopted or action taken by regional governments;

⁵⁵ Article 73 then states that powers on all issues not within the jurisdiction of the Russian Federation or jointly by the federation and its subjects are entirely within the power of the subjects of the federation. This provision appears to serve the same function as the reserve clause in the U.S. Constitution which states that powers not expressly allocated in the Constitution to the federal government are "reserved" for the states.

3. The bodies of the federation (the president, government, courts of law, public prosecution authorities and others) guarantee and implement the protection of rights.

Consequently the federation has the authority to protect the rights of the original populations against any infringements by the executive bodies of the federal subjects or local selfgovernment. At the same time Article 72b assigns joint or shared jurisdiction to the federation and its subjects over "the protection of the rights of ethnic minorities", which includes indigenous minorities such as Sami⁵⁶. Consequently, federal subjects can adopt their own normative acts and protect the rights of indigenous minorities through regional and local bodies so long as their laws conform to the Constitution of the Russian Federation and are not in conflict with federal laws protecting such rights.

Among numerous other issues of concern to the Sami and other indigenous or traditional peoples, the following are subject to joint jurisdiction: questions regarding possession, use and management of land, mineral resources, water and other natural resources; use of federal nature areas, protection of areas for traditional habitation of the societies of ethnic minorities and their traditional trade and industry.⁵⁷

3.6.7 Federal legislation

During the period 1990-1992 legislative activity in the Russian Federation increased markedly. A number of legal acts and programs for the protection of the minorities in the North were passed⁵⁸. A draft Law on the Legal Status of the Numerically Small Peoples of the North was prepared dealing with the status of indigenous minorities and ethnic

peoples include:

⁵⁶Article 72 states:

^{1.} The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation shall include: ...b) protection of the rights and freedoms of man and citizen, protection of the rights of ethnic minorities; ensuring legality, law and order, and public safely; border zone regime.

57 Other issues listed under the joint jurisdiction that are of critical concern to Sami and other indigenous

c) issues of the possession, use and management of the land, mineral resources, water and other natural résources; ...

e) management of natural resources, protection of the environment and ecological safety; specially protected natural reserves; protection of historical and cultural monuments;
f) general questions of upbringing, education, science, culture, physical culture and sports; ...
j) ...land, water and forestry legislation; legislation on the sub-surface and environmental protection;...

and most specifically,

¹⁾ protection of the original environment and traditional way of life of small ethnic communities...."

⁵⁸ See Fondahl 1995 at pages 219, 220 for a brief discussion of these.

communities in the Russian Federation. Although this law has passed through many drafts and been debated in committee, as of February 1996, it had not yet passed.⁵⁹ The rights of minorities are scattered in different legal documents. In addition, the pace of legislation concerning minorities legislation has slowed during the last few years. Questions regarding normative regulation of the status of minorities, as well as the protection of their rights and interests, have therefore been placed in the background. Furthermore, the Russian Federation, like Sweden and Finland, has not yet ratified ILO Convention 169.

The statement regarding the Russian Federation's national sovereignty of 1990 established indisputably that each population group in Russia has the right to decide on its own form of ethnic state and ethnic culture. (*O svobodnom natsional'nom razvitii grazhdan SSSR...*, On the Free National Development of Citizens of the USSR, Living Beyond the Boundaries of the National State Formations or Not Possessing A Territory in the USSR (April 26,1990), allows indigenous minorities to establish "national regions (*rayony*) settlements, and villages." These can then serve as the "primary level for local self-government."

Pursuant to the Russian Federation's Act of privatizing of state or municipal companies in the Russian Federation from 1991, the local inhabitants are granted first refusal in connection with purchase of companies involved in trade, industry, and woodworking, which are traditional for the people in the north and form part of the trade and industry of the minorities (Article 20).

The Act of language of the peoples of the Russian Federation from 1991 establishes rights and guarantees for the protection, use, development, training and education of all languages of national groups in Russia.

The Russian Federation's Act of education from 1992 guarantees everybody the opportunity to obtain education in their own language irrespective of race, ethnic origin, social background, residence or ideology.

Pursuant to the Russian Federation's legislation of 1991 regarding income tax from physical persons, tax relief is granted to individuals from original populations. All income of

⁵⁹ Although a new draft law has been introduced, it had not been adopted by the end of 1998. ⁶⁰ Editors note: See Fondahl, 1995: 219.

the nomadic large-family societies in the north is deducted from the total taxable income.

This does not apply to earned cash income.

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The legislation regarding subsurface rights of 1992 presupposes that part of the funds allocated for the budgets of the federal subjects of the Russian Federation, shall be allocated to social economic development among original populations within the relevant areas (Article 42). However, the lack of specific amounts for these payments in the text of the legislation means that this legislation does not give sufficient legal protection to ensure that these payment will reach the local population.

The Russian Federation's forest legislation of 1993 presupposes that in areas where minority and ethnic groups live and carry out their trade and industry, areas of special management of forestry shall be established, and forestry funds shall support the living conditions of the original populations and their traditional trade and industry (articles 4 and 51).

Pursuant to the Superior Culture Act of 1992 the Russian Federation guarantees protection with regard to the preservation and re-establishment of the ethnic character of minority societies by the use of social measures, which is presupposed in federal state programs for social, economic, ethnic and cultural development.

Rights of minorities in the north are also set forth in legal acts and programs approved by the president and the government. For example, on 11 March 1991, the government of the Russian Federation issued a decision, (the Russian Federation's government decision of 11 March 1991, no. 145) regarding the state program for the development of the economy and culture among minorities in the north for the period 1991 to 1995. The program includes a number of advantages for minority groups in the north in areas such as education (the acceptance of representatives from original populations at educational institutions without competition for a place), providing residential and municipal services (advantages in connection with the calculation of payment of rent and municipal services), and social insurance for women from original populations with children who are living in areas with traditional trade and industry. The government of the Russian Federation, (the Russian Federation's government decision of 11.3.1991, no 84) has also announced further measures

to improve the social and economic living conditions of the original populations in the north for the period 1991 to 1995. Through decree no. 15 of 4 January 1992 by the government of the Russian Federation, a survival fund was established for the development of the economy and culture of minority groups in the north.

Although programs are announced and funds allocated specifically for the support of the indigenous minorities, such funds and programs seldom reach their intended target. As funds are channeled through regional and local governments in which indigenous minorities are underrepresented, funds do not reach the needlest peoples in small settlements of indigenous minorities. They are siphoned away either through corrupt bureaucrats or to other needs that serve the entire local population. (See Chance and Andreeva, at p. 227)

On 22 April 1992 the President of the Russian Federation issued a decree (*ukaz* no. 397)⁶¹ to immediately protect the traditional residential areas and traditional trade and industry of the indigenous minority groups in the north. The decree presupposes that for minority groups in the north, areas for traditional utilization of natural resources shall be established, and it shall be prohibited to sell these areas for industrial use without the consent of these groups. Furthermore, the decree declares that areas for pasturing reindeer, fishing, and similar activities of the less populated indigenous minorities be transferred at no cost and for life to the original populations.

On 23 April 1994 the government of the Russian Federation made decision No. 387 "Regarding the preparation and implementation of the original populations' international decade". On the basis of the government decision a program of measures for the original populations decade has been prepared.

As pointed out by reviewers Horn et al., no doctrine on the hierarchy of norms, which would help settle cases of norm conflict, has yet been established in the Russian Federation. In practice a decree by the President may take precedence over an act adopted by the Duma.

⁶¹ On Urgent Measures for the Protection of the Place of Residence and Economic Activity of the Small Peoples of the North ("O neotlozhnykh merakh po zaschite mest prozhivaniya i khozyaystvennoy deyatel'nosti malochislennykh narodov Severa"), *Ukaz Prezidenta Rossiyskoy Federatsii No. 397 (Edict of the President of the Russian Federation No. 397)*, April 22, 1992.

3.6.8 Regional legislation (legislation of the federal subjects)

Together with federal legislation, the legislation of the federal subjects also applies and is implemented, since, as mentioned previously, the protection of the rights of ethnic minorities is under the joint jurisdiction of the Russian Federation and the federal subjects.

Some Republics have exercised their authority to adopt their own constitutions which. together with exercising their joint jurisdiction to adopt legislation in some issue areas, have provided important, and in some cases, more far-reaching protection for original populations and minority groups. The Constitution of the Sakha Republic (Yakutia) (hereafter, "Sakha Constitution"), the largest of the 89 regions comprising the Russian Federation, came into force in April 1992. Under the authority of Article 38 in the Sakha Constitution to establish hard currency funds⁶², a fund has been created in the budget of the republic for the protection and development of minority groups. The Sakha Constitution even sets forth the obligation to protect the original environments and traditional ways of life of these peoples. Furthermore, Article 42 guarantees the right of ownership and ownership protection of these minority groups to traditional land areas and natural resources, protection against any form of interference with their ethnic character, and protection of sacred places and historical monuments. The constitution of the Sakha Republic allows the establishment of ethnic administrative and territorial units and declares the languages of the indigenous minorities to be official languages where there is a concentrated settlement of such groups⁶³. There are also provisions for the establishment of electoral districts for these "places of compact residence of less populous peoples of the North"64 with a smaller number of voters than is otherwise the rule in the republic.

Provisions regarding special protection of original populations also are included in the laws of autonomous regions in the Russian Federation, such as the Khanty-Mansi and Yamal-Nenets autonomous *okrugs*. The Normative Regional Acts apply to the different federal subjects, including: the Act of 1991 in Buryatia regarding the legal status of the

⁶² As stated in Article 134 of the Sakha Constitution, "The hard currency fund of the republic is formed by the sale of diamonds, gold and other production and by different types of payments to the budget including taxes for exploitation of natural resources."

⁶³ Article 46 of the Sakha Constitution states in part, "The languages of the peoples of the North shall be official in the places of their compact residence."
64 Article 112 of the Sakha Constitution.

"Evenki" districts' council of representatives; the Act of 1992 in the Sakha Republic regarding nomadic extended families' minority societies in the north; in the Khanty-Mansi Autonomous Okrug the Appendix of 1992, regarding the legal status of the extended families area; and the Act of 1994 regarding the regional state generation funds. The legal position of the original populations and minorities in the Russian Federation therefore vary according to the legislation of the federal subjects.

Regional legislation regarding the Sami population

The Russian Federation is a multinational state. On the Kola peninsula alone, there are 24 minority nationalities who do not represent a majority of the population (including native minorities such as Sami, Nenets, Komi, Khanty, Mansi and others). The Russian Federation has acknowledged the Sami population as an indigenous minority population. In total the Sami population in the Murmansk *Oblast* numbers roughly 1,800.65 Approximately 200 Sami live outside of the boundaries of the Murmansk province in the rest of the Russian Federation. In 1989, Sami composed only slightly more than one percent of the population of the Murmansk Oblast (Province), and only 4.9% of the population in the Lovozero raion (district) in which over half of the Sami population of the Murmansk *Oblast* is concentrated. (See Figures 60 and 61 of INSROP Working Paper No. 93-1997, Osherenko et al. App 6, pp. 85, 86).

In the Russian legal system, as can be seen from the above, there is considerable room for regional legislation. However, such legislation must be in accord with constitutional and federal law. Federal legislation sets a minimum standard for the protection of rights of minorities and original populations of the federation, which may be increased by the legislation of the federal subjects as demonstrated in the case of the Sakha Republic⁶⁶. On the

⁶⁵ According to the 1989 census, 1615 Sami resided in the Murmansk Oblast, and 176 Nenets. Thus, the total population of recognized indigenous minorities (small in number peoples) was 1791, a tiny fraction of the total population of recognized indigenous minorities (small in number peoples) was 1791, a tiny fraction of the total provincial population of 1,164,586. While the population of Sami has not changed dramatically from the pre-Soviet era (1,724 in 1897), the number of outsiders has risen more than 100 fold (from 7,502 in 1897 to 1,162,795 in 1989). Although the "newcomer" population has been declining in this decade as workers return to the southern regions from which they came, the Sami will certainly remain a tiny minority for the foreseeable future. Although the birth rate among Sami in Russia is high (16.6 per 1000 people from 1990-92), the mortality rate has also been high, holding population growth in check. (Figures from Pika and Bogoyavlenski, draft paper prepared for INSROP IV.4.1.)

66 INSROP Working Paper No. 49-1996, IV.4.1 (Boyakova et al.) discusses the Sakha Republic and may be referred to for further elaboration of this point.

other hand, the federal subjects may not reduce the minimum standards for minorities or original populations within their borders.

Federal law has specifically addressed the legal situation of the Russian Sami population in laws such as the "Survey of Residential Areas of the Minority Original Populations" which designates Lovozero, Kola and Jona in the Murmansk *Oblast* as Sami residential areas.⁶⁷ In practice it has not led to any practical protections.

Although the federation authorizes expansion of rights for the Sami population beyond the legal minimum, the Murmansk *Oblast* has not increased this minimum standard to any considerable extent. On the whole, the *Oblast* has not adopted legislation specifically dealing with the Sami population. Within the administration of the Murmansk *Oblast*, a "Committee for Matters Relating to the Northern Original Populations" has been established. This committee is charged with the responsibility to prepare strategies and tactics and to implement the national policies of the state in relation to the original populations in the *Oblast*. The committee cooperates with the original populations' own organizations and represents their interests with regard to state bodies. Although the committee has not yet succeeded in passing regional legislation for the Sami population, it has carried out extensive work for the Sami population.

3.7 Reindeer herding and fishing on the Kola Peninsula

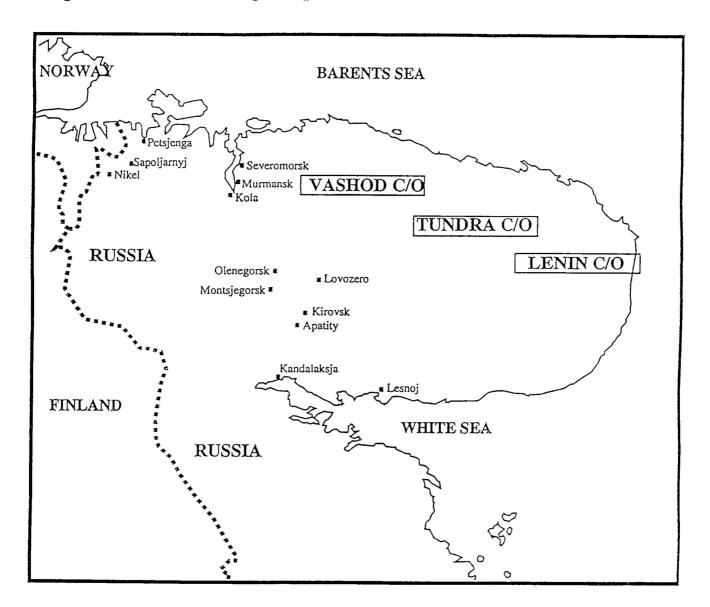
A large number of general laws directly or indirectly affect the population, culture and rights of Sami as citizens of the Russian Federation. A thorough examination of these is beyond the scope of this paper; however, a few areas merit at least brief discussion.

In Russia there is no special reindeer herding similar to that of Norway, Sweden, or Finland. Soviet laws were designed to develop reindeer herding as an industry to improve the economic productivity and social conditions of indigenous and non-indigenous people in remote northern regions. These efforts, however, also aimed to centralize control of herds and herding by the government and, thereby, removed control from indigenous, local populations. While this led to successes in reversing drastic losses of reindeer during and immediately

⁶⁷ Russian Federation's government decision No. 22 of 11 January 1993.

following World War II, it decreased control by Sami and other indigenous minorities over reindeer herding. Reindeer herding in Russia is managed as a commercial venture, or by individuals, and is regulated by the general commercial legislation in Russia.⁶⁸ On the Kola peninsula, three large reindeer herding companies operate (as illustrated in Figure 11).

Fig. 11. Reindeer herding Companies on the Kola Peninsula.



⁶⁸ For a discussion of reindeer herding and other activities on the Kola Peninsula in relation to increased use of the Northern Sea Route, see Konstantinov, forthcoming.

Part of the Russian Sami population is coastal; since time immemorial, Sami have fished along the Russian coast and at sea. Sami access to and use of fishing areas should be protected in accord with the Constitution and various laws of the Russian Federation, as should access to and use of pasture land for reindeer herding. These protections, contained in edict (*ukaz*) 397, the provision of the Constitution of the RF regarding rights to livelihood, found in land laws for areas in which indigenous minorities carry out their traditional trades and industry, and in Article 20 of the Russian Federation law on privatization of state or municipal property, should be implemented within the Murmansk Oblast. Anecdotal accounts and published articles in Sami newspapers and local Russian newspapers indicate that these laws are being violated by various regional governmental agencies that have issued fishing licenses to non-Sami enterprises that conduct tourist operations targeted at international travelers. Increased tourist traffic along the Northern Sea Route could exacerbate this situation and lead to more pressure to violate the rights of the Sami.

4 CONCLUSIONS

The overwhelming majority of Sami live in Norway. Expanded use of the NSR will directly effect only the Sami population in Norway and Russia, although Sami in neighboring regions of Finland and Sweden could be indirectly affected. The NSR and developed projects related to and dependent upon it will have effects on a population spread over a very large area. Thus, developments connected to the NSR could effect the Sami differently in different areas.

Expanded use of the NSR will certainly impact the sea-fishing Sami areas in Norway and Russia as well as the harbors of the northern Norwegian and Russian coastline, particularly Narvik in Norway and the harbors of Murmansk in Russia. Since the largest harbors at Narvik in Norway and Murmansk in Russia are connected to large cities with already developed infrastructure and industry, the impact of increased shipping through these harbors would not be likely to have a significant effect on the Sami people, culture or rights. However, plans to construct a large, year-round, deep water port in the Petsjenga fjord in connection with transport and supply of the offshore oil and gas fields of the eastern Barents Sea would undoubtedly have

⁶⁹ See Circumpolar Conservation Union, *The Ponoi River Report: Sport Fishing in the Kola Peninsula* (forthcoming).

an impact on local population of the region.

To this we have to add the effect of the new infrastructure of the Euro-Arctic Barents Region (the Barents Region). The Barents Region consists of the northern part of Europe located above the Arctic Circle. This Region includes the counties of Lappland (Finland), Nordland, Troms and Finnmark (Norway), Norrbotten (Sweden), Archangelsk and Murmansk (Russia) and the Republic of Karelia (Russia). For a thousand years, there has been extensive trade and other forms of contact among the inhabitant of this region. This contact was greatly reduced after the Russian Revolution in 1917 but, with the dissolution of the Soviet Union and the evolving reforms in Russia, contact between the people in the North is resuming. The Barents cooperation was formalized on January 11, 1993, by the signing of the Kirkenes Declaration. Because of the Barents Region the infrastructure of northern Europe has rapidly changed. In the last decade, trade between Russia and the Fenno-Scandinavian countries has grown several hundred percent. The export of fish from Russia to Norway in 1995 grew 25 percent to 1456.1 Billion NOK.⁷⁰ Of course Norway exports nearly all imported fish to the rest of Europe and the world.⁷¹ Also Russia imports numerous products from or through Fenno-Scandinavia. The export of industrial machines from Norway to Russia in 1995 grew with 168.8 % to 68.8 Billion NOK.72 The Barents Region needs new infrastructure including roads, railroads and harbors. Today several small harbors at Alta, Kirkenes, and others are used to full capacity by several companies of the Barents Region. The effect of expanded use of the NSR must therefore be coordinated with the radical expansion of Euro-Arctic Barents Region.

The general effects of international use of the NSR for the majority population in Russia and Norway also affect the minority populations within the region.⁷³ Sami along with other Russians and Norwegians, will benefit from the economic stimulus of increased shipping, tourism, and oil and gas development in the northern waters.

Within Sami culture, the Sami industries have a special status. The Sami industries, such as reindeer keeping, Sami handicraft, Sami fishing and hunting, carry on much of what we call

⁷⁰ Barens-Nytt mars 1996, s. 7.

The Economist reported, in November 1997 (A Tale..., 54), "The coastal economy [of Finnmark] is surprisingly dynamic and entrepreneurial. Fish plants buy much of their catch from Russian trawlers and export processed products, mostly to Italy, Spain and Japan."

Barens-Nytt mars 1996, s. 7.

See Konstantinov for a discussion of local populations of the Kola Peninsula.

Sami culture and Sami traditions while, at the same time, providing the Sami with the opportunity to work without migrating from their traditional homelands.

Of the entire Sami population, only a very small percentage earn their primary income from a Sami industry. Nevertheless, the Sami industries are of major significance for the entire Sami population. In addition, many Sami have links with a Sami industry, either by engaging in a Sami industry as a supplemental source of income or to provide for their domestic needs such as through fishing or making Sami handicrafts.

Sami fishing is the oldest branch of Sami industry with long traditions in Sami culture. Sami fishing can be divided into sea fishing and inland fishing. Sami sea fishing is carried on only in Norway and Russia where there is a distinct Sami fishing culture. Sami inland fishing is carried on throughout the entire Sami area. Expanded use of the NSR could have particularly significant impacts on Sami sea fishing in Norway and Russia. As the NSR provides infrastructure for transporting raw materials extracted from the north as well as supplies to the North, the NSR will affect the methods, timing, and scale of resource development in the Barents and Kara Sea. A large section of the Sami population in Norway and Russia are coastal Sami people who from time immemorial have been fishing along the Norwegian and Russian coast and at sea. Both lawyers and the main Sami organizations have asserted that certain coastal rights exist for the coastal Sami population in Norway. These rights, however, have not been confirmed in legislation. If special coastal rights exist for the indigenous coastal Sami and other long term coastal residents in Russia, these too have not been confirmed in legislation. Nevertheless, rights may exist and eventually be confirmed relying on international law, the Russian Constitution, and various edicts of the Russian Federation.

Reindeer keeping is one of the most specifically Sami industries and has had a major influence on Sami culture. Among the Sami industries, only the reindeer industry has been regulated by law, and only reindeer keepers have been accorded special legal status. The need for regulation of land use conflicts between the reindeer industry and other non-Sami industries such as farming and forestry led to the recognition of special legal status for Sami herders. In addition, the Swedish and Norwegian nation states have regarded reindeer keeping as one of the most

important cultural factors for the continuation of Sami culture. Thus, reindeer keeping gained official status in the legal systems of Norway and Sweden and remains officially the most important cultural factor for the Sami culture. The fact that reindeer keeping for a long time officially has been the most important cultural factor has also affected the nation states' policies toward the Sami and the legislation surrounding the Sami society.

Legislation differs considerably among the Fenno-Scandinavian countries. What the legislation on the reindeer industry in the various Fenno-Scandinavian countries has in common is that it is based on prescription from time immemorial, which means that the right to breed reindeer cannot be abolished simply by changing the law. The right to keep reindeer is a strong right. In Sweden and Norway, the right to keep reindeer covers also subsidiary rights such as fishing and hunting rights.

Reindeer keeping extends over large areas of land. Thus, the reindeer industry has to exist side by side with other industries and other forms of land use. It is unavoidable that conflicts occur between the interests of the reindeer herders and other interests. Building harbors and the infrastructure connected to harbors such as roads, buildings etc. will probably effect the Sami reindeer keeping. However, the right to keep reindeer is a strong right in Norway which may create lawsuits and legal obstacles to harbor development in Norway.

4.1 Sami, International Law and the NSR

The fact that the Sami live in four separate states means from a legal point of view that common questions for the whole Sami people are international questions and a part of international law. At the XIIth Sami conference at Åre, Sweden in 1986, the Sami decided to commission the then Nordic Sami Council to prepare a draft Sami convention. In 1990, the (renamed) Sami Council appointed a special legal committee with instructions to prepare and present a draft Sami convention to apply in all four states with Sami populations. The committee then prepared a proposition of principal problems which was discussed by the Sami Council in Helsinki, Finland on 19 May 1992. The Sami Council presented the proposition to the Sami conference in Helsinki which passed the proposition on 15 - 17 June

⁷⁴ The author, Lars-Nila Lasko, chaired this legal committee and prepared the first draft convention, presented in September 1991.

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1992.

A revised draft Sami convention was discussed by the *Sameting*, the Sami Parliament and the main Sami organizations at a seminar in Murmansk on 17 November 1993. The legal committee also arranged a "Workshop on the Sami Convention" in Karasjok on 27 March 1994. The workshop, financed by the Ministry of Local Government and Labour in Norway, brought together international experts on international law.

Based on the Sami conference's document regarding "Sami Convention and Principle Problems" and papers presented at the above mentioned seminars, the legal committee of the Sami Council prepared a draft Sami Convention which shall apply for Norway, Sweden, Finland and Russia. The draft Sami convention is at present being discussed by the Sami Council.

In addition, an official intergovernmental committee of the Nordic Council is at present working on a Nordic Sami Convention which shall apply for Norway, Finland and Sweden. The work started in 1995, and there is not yet any proposed convention text. This second convention is being worked on for the Sami area excluding Russia for several reasons. One reason is that it was initiated by the Nordic Council of Ministers in which Russia is not represented. The two conventions, however, will differ radically because Sweden, Norway and Finland already have adopted considerable legislation concerning the Sami while the Russian Federation has not. A statement supporting the Sami Convention was adopted in Murmansk in 1996. These two draft conventions may affect the realization of plans related to the NSR in the Sami area.

Effects of future use of the NSR on the Sami population will depend on specific development plans and the ways in which they might be realized. As more definite programs and plans become known, further studies should be undertaken to determine their impacts on the Sami population and culture and to determine the degree to which such plans are compatible with national and international laws protecting the rights of Sami and indigenous peoples more generally.

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INSROP - Discussion Paper: Laws Pertaining to Sami People Affected by Expanded Use of the Northern Sea Route

Lars-Nila Lasko Sami Institute Guoydageaidnu

The Discussion Paper by Lars-Nila Lasko is part of the INSROP initiative to "build up a knowledge base adequate to provide a foundation for long-term planning and decision-making by State agencies as well as private companies etc. for purposes of promoting rational decision-making concerning the use of the Northern Sea Route for transit and regional development."

The present paper is to meet the increasing need for information on Sami-related legislation by all those parties who intend to engage in economic activities in the regions along the Northern Sea Route. Our comments will keep this purpose in mind.

The Discussion Paper provides for basic information about the Sami people and existing legislation concerning Sami matters.

In the European part of the NSR we have besides the Sami also other indigenous peoples like the Nenets in the Petchoura Bay area. A closer study of the situation of the Nenets could have been beneficial. Naturally the part of Lasko's study which covers the legislation of the Russian Federation concerns also the Nenets. They belong to those groups that to a large extent have been affected by the exploitation of oil resources in the Petchoura Bay area.

In the following remarks will be made to the separate chapters. They are not intended to be exhaustive.

1. Introduction

1.1. Although the definitions of 'Sami' in the Nordic countries originally were all based on the language criterion, there are slight differences in these definitions. To be aware of these subtle variations in the various definitions is crucial, as they may have a decisive impact on deciding in the instant case who is a Sami, entitled to enjoy special Sami rights. A Sami is a person who himself or at least one his parents or one of his grandparents learnt Sami as his first language (Finland) or spoke Sami in the home (Norway, Sweden). The basic condition in all definitions is, as Lasko correctly points out, that the person must consider himself a Sami (the so-called subjective criterion).

The reference to a person who spoke Sami is too vague (page 2, line 17). The newly broadened Sami definition in the 1995 Finnish Sami Thing (Assembly) Act abandons the 3-generations bridge to a Sami-speaking grandparent as now also all those who descend from a person has been entered in the Sami electoral list or who descend from a person who has been entered or could have been entered in a land, taxation or population register as a Mountain, Forest or Fishing Lapp. The new definition will in all eternity embrace all descendants to anyone who belonged to these two new categories. Attempts are at hand to reintroduce the original, more restrictive definition. The old definition in the Finnish Sami Language Act continues to be applied with respect to that Act.

It must also be added that the Skolt Sami have their own definition in the Finnish legislation.

- 1.2. With respect to the figures asto the numbers of the Sami prudence must be shown. Many Sami live in the Nordic capitals, especially Oslo has a significant Sami population. The figures are all on the upper side. If the criteria in the Sami definitions are strictly applied, the numbers will become much more modest. The electoral lists for the latest elections to the Sami Things provide the following numbers: Finland about 4.700 (1995), Norway 7.236 (1993) and Sweden 5.390 (1993).
- **Fig. 3.** The areas where Sami live is too extensively drawn. In the case of Finland the city of Rovaniemi lies within the "bricketed" area. There are naturally a few Sami living or studying here. The area with a more important Sami population is about 200 km north of the drawn southern line.
- 1.4. As to the Sami language opinions are divided. Nowadays it is more common to speak of 10 to 13 Sami languages, the number has lately increased due to the discovery of small language groups in Kola. There is some terminological confusion on pages 6-7 as the reader gets the impression that we have three major dialects (p 6) which are divided into 9 languages (p. 7).
- 1.5.1. As to the Swedish Skattefjäll-case, which the Sami of Northern Jämtland lost, the Swedish Supreme Court, held that although the Sami reindeer herders in the Skattefjäll area could not prove any usufruct right since time immemorial it was in principle possible that such rights existed in northernmore areas. It may be added that there is a recent case lost by Sami reindeer herders in the Härjedalen area, where the Sami reindeer herders could not prove a usufruct right (from times immemorial, i.e. independent of any special agreement) to wintergrazing on private property outside the reindeer herding area of the Sami villages (Dom meddelad av Svegs tingsrätt den 21 februari 1996 i det så kallade Renbetesmålet). The case has been appealed. In Finland there have been a number of cases (e.g. Angeli, Mirhaminmaa) involving the rights of (Sami) reindeer herders that were endangered by other forms of land uses (forestry, road construction, mining) before Finnish Courts, the UN Human Rights Committee and the Strasbourg Court.

Considering the purposes of INSROP a more thorough and systematic analysis of the various cases had been desirable. It is of crucial interest to establish to which extent the reindeer herding rights of the Sami (and the local population in Finland) may restrict economic activities in Lapland.

- 1.5.2. It would appear that Sami handicraft is less protected in Finland than in Norway and Sweden. The Finnish Sami try, however, to keep Sami handicraft in the hands of the Sami. The Sami Training Centre in Inari (Saamelaisalueen koulutuskeskus) has as its goal to require from all participants in the Sami handicraft courses knowledge of the Sami language (Northern Sami?). The problem is that teachers have only been able to teach in Finnish. The same problem exists at the handicraft courses at the Jokkmokk People's College (Folkhögskola) where Swedish still seems to remain the language of instruction.
- 1.5.3. The special treatment of the local population in Northern Finnish Lapland, Sami and non-Sami alike, provided in the original 1951 (not 1952) Fishing Act and upheld in § 129(4) of the 1982 (not 1983) Fishing Act is only guaranteed in the municipalities of Utsjoki, Inari and Enontekiö and not the whole "Sami Home Area" or "Sami Homeland" which also comprises the "area of the reindeer owners' association of Lapland" in the the northern part of the municipality of Sodankylä. The sentence: "This means that the inhabitants of these municipalities may obtain fishing permits in order to fish for a livelihood on Government (i.e. State) land" may convey a false impression. The three municipalities were excluded from the application of the 1982 Act with its requirements concerning fishing permits, instead the old 1951 Act with its provisions on usufruct fishing rights for the local population were still to be applied here.

According to the 1995 Finnish Skolt Act Skolts may fish on State-owned land.

- 1.5.4. The last sentence in this chapter should be clarified: A special hunting regime has been applied in Northern Finland, from which both Sami and non-Sami have equally profited.
- 2. Sami Political Organizations and Sami Position in the Political System of Different States

2.2.1.

As to the sentence: "The Reindeer Herding Acts in Sweden and Norway have divided the Sami into two groups: reindeer keepers, who have legal rights, and non-reindeer keepers, who have no or few legal rights" a clarification is needed. The reindeer herding legislation builds on the fact that the Sami population is split into herders on non-herders (and uphold and deepen this split). The non-herders are certainly not lawless, but have no or few special rights with respect to herding (such as for example fishing and hunting).

2.3. The Agreement referred to in part 3 on page 18 is assumedly the Reindeer Herding Agreement of 1976 and not a Cultural Agreement.

The SLF most probably has among its members so-called Coastal or Fishing 'Sami', who would not meet the criteria of the Norwegian Sami definition. They are likely to advocate the idea that special ("Sami") rights should not be given exclusively to those persons, who meet the requirements of the Norwegian Sami definition.

- 2.4. Footnote 22: The Swedish Reindeer Herding Acts were from 1886, 1898 and 1928. The listing of Sami organisations is not complete and this has probably not been the intention of the author.
- 2.7. The expression "nation state organs" is ambiguous as the term "quasi-governmental" or "quasi-public" or "quasi-official" would seem sufficient.

Finland

The Finnish Sami Parliament (Saamelaisvaltuuskunta) has in 1996 been replaced by the Finnish Sami Thing or Assembly (Saamelaiskäräjät). A reference to this fact we find later on page 54 under the heading: "3.6. Laws Relating to the Protection of Sami Language and Culture". The 1973 Decree was replaced by a new decree in 1990 (16.11.1990/988), when i.a. the Sami definition was somewhat modified. There ought to be made a clear terminological distinction between the old body, the Sami Delegation or Parliament and the new body termed Sami Thing or Assembly in order to avoid confusion. It would also have been appropriate to mention another consultative body, the Advisory Board on Sami Affairs (Saamelaisasiain neuvottelukunta) where half of the 10 members are appointed by ministries and the other half by the Sami Parliament now Assembly and where the Governor of Lapland acts as president. The Board takes initiatives and gives opinions in matters which concern the Sami Council of Ministers Decision 26.3.1987/367).*** The reference to the Swiss electoral system remains unclear. Does it mean "Swedish" (and Norwegian) or is there in one of the Swiss cantons a system of ethnic or linguistic registration?

Norway

With respect to all Sami Things/Assemblies a clearer specification of the actual scope of their decision-making powers would have been desirable. The Sami Things have basically only the powers to decide how the funds designated for the common use of the Sami shall be allocated.

The view that "... the (Norwegian) Sami Parliament should define its own independent decision-making power, and can involve itself in virtually any issue" may perhaps be going too far. With respect to concrete decision-making powers, the Norwegian Sami Thing has basically the same limited powers as its equivalents in Finland and Sweden.

For the purposes of the INSROP-database it should be underlined that the duty of the Finnish authorities to hear the Sami Assembly has been widened. Originally (1991) there was only an obligation for parliamentary committees to hear the Sami in matters of special concern for them (Parliament Act, Section 52a and Procedure of Parliament, Section 16). Such an obligation to hear the Sami has in the New Sami Thing Act been strenthened to mean 'negotiate' and extended to all other authorities, ministries etc:

Section 9 Obligation to negotiate

The authorities shall negotiate with the Sami Thing in all far-reaching and important measures which may directly and in a specific way affect the status

of the Sami as an indigenous people and which concern the following matters in the Sami Homeland:

- 1) community planning;
- 2) the management, use, leasing and assignment of state lands, conservation areas and wilderness areas;
- 3) applications for licences to stake mineral mine claims or file mining patents;
- 4) legislative or administrative changes to the occupations belonging to the Sami form of culture;
- 2.8. The Sami Council is at present under reorganisation.
- 2.9. Norway and Finland have ratified the European Charter for Regional or Minority Languages and have indicated to which extent they apply the commitments of the Charter to the Sami language. Sweden has not yet done so, but is considering the possibilities for carrying out the ratification. In relation to the European Bureau for Lesser Used Languages the Nordic States are setting up national committees with Sami representation.

The Norwegian Sami have been able to place a representative of theirs in the UN Human Rights Centre in Geneva thanks to the financial help from the Norwegian Government.

3.0. Sami Rights and Legal Protections

- **3.1.** The Swedish-Finnish Agreement of 1925 concerns reindeer-herders in general (as on the Finnish side even non-Sami may herd reindeer. It covers many issues, i.a. compensation for damages caused by reindeer.
- **3.2.** The *Regeringsformen* is one of the laws that together form the legal compact called the 'Swedish Constitution'.

It is not clear what is meant by "statement" on page 33, lines 8 and 9. May this mean the Government Bill introducing the new Constitution Act (*Regeringsformen*)? This ought to be checked.

As to the new Finnish Sami Thing/Assembly the plans were originally to guarantee the right to put legal motions to and prepare reports for the Finnish Parliament, these rights were not maintained in the final version of the Sami Thing Act (page 33 lines 18-19). Section 52a of the Finnish Parliament Act does not recognize "the right to put cases before Parliament", instead the Sami "shall be heard in a matter of special concern for them" (page 34, lines 1 and 2). The Committee on the Constitution of the Finnish Parliament has not "several times established that the Finnish Sami population in the Sami areas has protection (read: protected) rights regarding land and water". The Committee has been more prudent, it has simply stated that the existence of such rights is still an open issue.

3.3.2. See page 45 line 4: "..the right to...use the right to reindeer herding" could be simply formulated as "the right to herd reindeer".

3.3.3. There are at present about 7 000 reindeer herders in Finland, out of which only 1/3 is said to be Sami. A recent important amendment to the Finnish Reindeer Herding Act has been left out (see page 48 line 10). Originally only those Finnish citizens who permanently lived in the reindeer herding area, Sami and non-Sami alike, had the right to own reindeer. In 1992 the provision was extended to cover any person living in the reindeer herding area who is a citizen of an EEA State against the protestations by the then Finnish Sami Parliament. Protocol No. 3 concerning the Sami to the Accession Treaty by i.a. Finland and Sweden to the EU establishes the right to guarantee exclusive reindeer herding rights to the Sami in areas traditionally inhabited by them. This Protocol may be invoked to amend the Finnish Reindeer Herding Act to meet the demands of the Finnish Sami (= Sami Thing/Assembly).

The delimitations of the herding districts (paliskuntien toimialueet-renbeteslagens verksamhetsområden) are confirmed by the County Administrative Boards (lääninhallitus-länsstyrelse) according to Chapter 2, Section 6(3) of the Finnish Reindeer Herding Act (14.9.1990/848).

The "Natural Resources Act" mentioned on page 50 line 16 is more correctly designated as the 'Subsistence Livelihood Act' (*Luontaiselinkeinolaki-Naturnäringslagen* 24.8.1984/610).

3.7. A closer scrutiny of the relationship between customary international law and treaties and Russian Federation legislation (see pp. 55-56, 61) would have been opportune (as also for such relationship with Finnish, Norwegian and Swedish legislation). Section 15(4) ("constituent part") of the Russian Constitution is **not** to be read as meaning that customary international law has priority over domestic law - if not exceptionally stated for some spheres, like the rights of small indigenous peoples (Section 69). Ratified treaties take precedence over domestic ordinary legislation, but the Constitution takes precedence over treaties (See "Comments to the Constitution of the Russian Federation" by Ger P. van den Berg, Part I, Leiden 1994 pp. 106-107).

When commenting on Russian legislation it must be kept in mind, that there is not yet established a doctrine of the hierarchy of norms, which would help settle cases of norm conflict. In practice a decree by the President may take precedence over an act adopted by the Duma.

- **3.7.8.** On page 71 some mishap has occurred with the text processor.
- 4.0. Sami Convention for the Entire Sami Area (pp. 71-73 and presented again on pp. 83-84)

The text of the Sami Convention, elaborated by the Sami Council is supposed to be adopted in October 1996 in Murmansk. The author should have clarified the ultimate goal of the Sami Convention elaborated by the Sami Council and the competing initiative within the Nordic Council.

5.0. Harbors of the NSR in the Sami Area.

A large part is dedicated to the history of the Petshenga/Petsamo area, which between 1920 and 1944 belonged to Finland. Nearly the entire Skolt Sami population was moved from the Petsamo area to the easternmost part of the Inari municipality. The 13 Samis living (1989) in this area my have moved from the inner parts of Kola. The new harbour in Liinahamari is thus planned in an area where there is no significant Sami population. It may, however, indirectly affect Samis in more distant areas through the possible construction of roads and railways.

FINAL GENERAL REMARKS

* * *

The Discussion Paper would have benefitted largely from a more thorough analysis of three intertwined issues of crucial importance:

- 1) The usufruct rights relating to reindeer herding,
- 2) the claims of independent historic title to the lands in Samiland

and

3) the correct interpretation of the sentence: "[T]he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised" under Article 14 of the 1969 ILO Convention. The Norwegian Government interprets this only to mean a strong usufruct right, whereas the Norwegian Sami Assembly has presented an opposite view with the following wording:

The ownership and possession are cumulative rights, and therefore only simultaneous implementation is acceptable. Permanent usufructuary to the lands do not satisfy the requirement of Article 14 (1). Ownership and possession are presented as cumulative rights, and must therefore be recognized by the Norwegian Government as a distinct legal regime".

Many Sami politicians advocate historic title to the lands in Upper Lapland completely independent from the rights and obligations under the ILO Convention.

* * *

The reader/user would find it easier to grasp and understand the presented information if it had been <u>more stringently and systematically structured</u>. Many issues are repetitively discussed in different parts of the paper as for example:

Reindeer herding issues: On pages 8-11, 17, 20, 30, 31-32, 35 -50.

¹ Minutes from the Parliamentary Council of the Sami Parliament, Meeting 17th October 1994, p. 9.

The Finnish Sami Parliament and Assembly: On pages 22, 30, 54.

The Sami Council: On pages 16, 24.

The Sami Convention: On pages 71, 72, 83-84.

* * *

The terminology ought to be more consistent - partly it is even wrongly used.

Examples:

- Distribution of Sami probably meant the regions with a more significant Sami population (pp. 5, 6).
- Sami commerce Sami industry Sami livelihoods (p. 8).
- "Reindeer moss", lichen is meant (p. 9).
- Reindeer keeping reindeer herding reindeer industry (e.g. pp. 8, 10, 20, 35.
- "Reindeer herding teams" (renbeteslag) is more correctly translated as reindeer herding associations, sometimes also referred to as reindeer herding cooperatives (p. 50).
- Sami Home Area (in Finland) Sami Home Region Sami areas(?) Sami native districts (pp. 13, 22, 48) is now officially translated as Sami Homeland.
- Joint enterprises are probably not meant modern forms of economic activities but traditional collective livelihoods (p. 14).
- The 1966 UN Convention is the UN International Covenant on Civil and Political Rights (p. 31).
- The ILO Convention concerned is the 1989 ILO-Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (pp. 31, 56).
- The "districts" of Kemi, Tornio/Torneå etc. are municipalities (p. 45).

The "counties" referred in connection with day care of children are municipalities (p. 55).

* * *

The Discussion Paper by Lars Nila Lasko, provides an impressive mass of data which is valuable for anyone who engage in economic activities in the NSR. Any user of the planned database will certainly benefit from the contribution. In order to facilitate the access and the use of this mass of information the following should be considered:

- 1) The body of information could be rearranged to give a clearer overview of the relevant legislation.
- 2) The terminology used ought to be uniform.
- 3) Correct terminology should be introduced.
- 4) A number of errors ought to be corrected.
- 5) Certain information needs updating
- 6) On the very last pages there is an effort to indicate to what extent the rights and interests of the Sami may be affected by the international use of the NSR (pp. 79-83). On page 79 the author states (in connection with the Petsamo area) that: [T]here has been no research on the potential impacts on the Sami of the region". This demanding study is still to be undertaken for all those Arctic areas which may be affected by the expanded use of the NSR. The author ought also have indicated on which points the planned uses of the NSR may conflict with the rights of the Sami (and other indigenous people) and how these conflicts may be overcome.

Rovaniemi, 30.8.1996

Med Juha Joona

Kristian Myntti

The Author's comments to the review

1. Introduction

1.1 Sami - A people of northern Europe

Comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper:

"I.1 Although the definitions of "Sami" in the Nordic countries originally were based on the language criterion, there are slight differences in these definitions. To be aware of these subtle variations in the various definition is crucial, as they may have a decisive impact on deciding in the instant case who is a Sami, entitled to enjoy special Sami rights. A Sami is a person who himself or at least one of his parents or one of his grandparents learnt Sami as his first language (Finland) or spoke Sami in the home (Norway, Sweden). The basic condition in all definitions is, as Lasko correctly points out, that the person must consider himself a Sami (the so-called subjective criterion).

The reference to a person who spoke Sami is too vague (page 2, line 17). The newly broadened Sami definition in the 1995 Finnish Sami Thing (Assembly) Act abandons the 3-generations bridge to a Sami-speaking grandparent as now also all those who descend from a person has been entered in the Sami electoral list or who descend from a person who has been entered or could have been entered in a land, taxation or population register as a Mountain, Forest or Fishing Lapp. The new definition will in all eternity embrace all descendants to anyone who belonged to these two new categories. Attempts are at hand to reintroduce the original, more restrictive definition. The old definition in the Finnish Sami Language Act continues to be applied with respect to that Act.

It must also be added that the Skolt Sami have their own definition in the Finnish legislation."

Lasko:

The text in the discussion paper has been too vague or general and needed to be more specific. Major changes has therefore been made in the text.

The text is also updated.

The definitions of "Sami" in the Nordic countries was not originally based on the language criterion. However the language criterion has more and more been accepted as the definition of a Sami. In 1995 there were a major change in finish legislation with addition of alternative

definitions. These alternative definitions has not been accepted by the Sami Parliament of Finland. Attempts are at hand to reintroduce the original, more restrictive definition. The old definition in the Finnish Sami Language Act continues to be applied with respect to that Act.

1.2 Sami census

Comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper:

"1.2 With respect to the figures as to the number of the Sami prudence must be shown. Many Sami live in the Nordic capitals, especially Oslo has a significant Sami population. The figures are all on the upper side. If the criteria in the Sami definitions are strictly applied, the numbers will become much more modest. The electoral lists for the latest elections to the Sami Thing provide the following numbers: Finland about 4.700 (1995), Norway 7.236 (1993) and Sweden 5.390 (1993)."

Lasko:

No changes has been done in the text because of the comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper.

The text is updated.

As mentioned in the paper there has never been a comprehensive census of the entire Sami population in the countries where Sami live. We don't know if there are many Sami living in the Nordic capitals or if Oslo has a significant Sami population. The electoral lists for the elections to the Sami Thing can not be used as a base of how many Samis' there are because of several factors like lack of many for information about registration, complicated registration procedures, no obligated registration etc. There are also Sami main organisation like SLF who works against registration of Sami at the Sami Parliaments. Compering latest registration figures for the Sami Parliament in Sweden with the last election for four years ago show an increasing of the population with 10 % under four year witch can not be normal if the lists are used as a base of how many Samis' there are. Also every studies of the Sami population has been under hard critic by researchers. My conclusion is, as mentioned in the paper, that we don't know how many Samis there are. We can only use different studies of the Sami population even if they has been under hard critic by several researchers.

Comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper:

"The areas where Sami live is too extensively drawn. In the case of Finland the city of Rovaniemi lies within the "bricked" area. There are naturally a few Sami living or studying here. The area with a more important Sami population is about 200 km north of the drawn southern line".

Lasko:

No changes has been done in the text because of the comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper.

The map is based up on several similar maps made by researchers of Sami population like Prof. Israel Ruong at University of Uppsala, Sweden or Prof. Henning Johansson, University of Umeå, Sweden.

About the City of Rovaniemi in Finland it has one of the biggest local Sami organisation in Finland. Also there are many Samis registrated from Rovaniemi according to the Sami Parliament of Finland. The Northern Institute for Environmental and Minority Law has not presented any study of my knowledge who show another result than the studies made by University of Uppsala or University of Umeå.

1.4 The language of the Sami

Comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper:

"As to the Sami language opinions are divided. Nowadays it is more common to speak of 10 to 13 Sami languages, the number has lately increased due to the discovery of small language groups in Kola. There is some terminological confusions on pages 6-7 as the reader gets the impression that we have three major dialects (p 6) which are divided into 9 languages (p.7).

Lasko:

Changes has been done in the text because of the comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper.

I fully agree that the opinions are divided about the Sami languages and dialects between Sami language researchers. Many of the disagreement are based on witch kind of definitions used for a language and for a dialect. The text is based up on latest research on the area.

About the discovery of new small language groups in Kola under the 1990ies I have no comments to. According to my discussion with nearly all Sami language researchers the latest Sami language on Kola was discovered by foreigners for several hundred years ago.

The terminological confusions on pages 6-7 has been changed and clarified.

1.5.1 Reindeer keeping

Comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper:

"1.5.1 As to the Swedish Skattefjäll-case, which the Sami of Northern Jämtland lost, the Swedish Supreme Court, held that although the Sami reindeer herders in the Skattefjäll area could not prove any usufruct right since time immemorial it was in principle possible that such rights existed in northernmost areas. It may be added that is a recent case lost by Sami reindeer herders in the Härjedalen area, where the Sami reindeer herders could not prove a usufruct right (from times immemorial, i e independent of any special agreement) to wintergrazing on private property outside the reindeer herding area of the Sami villages (Dom meddelad av Svegs tingsrätt den 21 februari 1996 i det så kallade Renbetesmålet). The case has been appealed. In Finland there have been a number of cases (e.g. Angeli, Mirhaminmaa) involving the rights of (Sami) reindeer herders that were endangered by other forms of land uses (forestry, road construction, mining) before Finnish Courts, the UN Human Rights Committee and the Strasbourg Court.

Considering the purposes of INSROP a more thorough and systematic analysis of the various cases had been desirable. It is of crucial interest to establish to which extent the reindeer herding rights of the Sami (and the local population in Finland) may restrict economic activities in Lapland.

1.5.2 It would appear that Sami handicraft is less protected in Finland than in Norway and Sweden. The Finnish Sami try, however, to keep Sami handicraft in the hands of the Sami. The Sami Training Centre in Inari (Saamelaisalueen koulutuskeskus) has as its goal to require from all participants in the Sami handicraft courses knowledge of the Sami language (Northern Sami ?). The problem is that teachers have only been able to teach in Finnish. The same problem exists at the handicraft courses at the Jokkmokk People's College (Folkhögskola) where Swedish still seems to remain the language of instruction.

1.5.3 The special treatment of the local population in Northern Finnish Lapland, Sami and non-Sami alike, provided in the original 1951 (not 1952) Fishing Act and upheld in § 129 (4) of the 1982 (not 1983) Fishing Act is only guaranteed in the municipalities of Utsjoki, Inari and Enontekiö and not the whole "Sami Home Area" or "Sami Homeland" which also comprises the "area of the reindeer owners" association of Lapland" in the northern part of the municipality of Sodankylä. The sentence: "This means that the inhabitants of these municipalities may obtain fishing permits in order to fish for a livelihood on Government (i.e. State) land" may convey a false impression. The three municipalities were excluded from the application of the 1982 Act with its requirements concerning fishing permits, instead the old 1951 Act with its provisions on usufruct fishing rights for the local population were still to be applied here.

According to the 1995 Finnish Skolt Act Skolts may fish on state-owned land.

1.5.4 The last sentence in this chapter should be clarified: A special hunting regime has been applied in Northern Finland, from which both Sami and non-Sami have equally profited."

Lasko:

The text in the discussion paper has been too vague or general and needed to be more specific. Major changes has therefore been made in the text.

Changes has also been done in the text because of the comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper.

The text is also updated.

Swedish Skattefjäll-case was not lost by the Sami of Northern Jämtland but by several Sami villages from Karesuando in northern Sweden to the parish of Idre in middle Sweden. The court case in Härjedalen is not similar to the Swedish Skattefjäll-case. However, The court case in Härjedalen should be mentioned like other cases. The Skattefjäll case made it clear that the reindeer herding rights of the Sami are based on immemorial prescription use from time immemorial, a ruling that has important bearing on the status and security of Sami reindeer herding livelihoods. However, it is in Sweden up to the reindeer herders to prove that they have this rights and not up to the landowners. This is increasing problem in Sweden in the outer boarder areas for reindeer herding like close to the Baltic sea and southernmost Sami reindeer herding areas. This is because there are no exact juridical boarder for the reindeer herding areas. It has also been very few court cases about this up until now. Which area are inside the traditional Sami reindeer herding areas based on right from times immemorial, i. e. independent of any special agreement, to wintergrazing on private property, and which area are outside the traditional Sami reindeer herding areas based on right from times immemorial,

i. e. independent of any special agreement? As mentioned, this is increasing problem in Sweden. Only i 1998 six court cases has started in Sweden where landowners claim that reindeer herders has no rights to their land. In Norway this is solved by the law, i.e. Reindeer herding Act, where it up to the landowners do prove that there are no Sami rights to their land. The landowners in Norway has as manner a fact the same problem, but opposite, as the reindeer herders in Sweden. How to prove that there never been any reindeers or reindeer herding on the land the last 20-30-40 or 50 years?

It is true that Sami handicraft is less protected in Finland than in Norway and Sweden. However, the Finnish Sami try, to keep Sami handicraft in the hands of the Sami. The Sami Training Centre in Inari (Saamelaisalueen koulutuskeskus) has as its goal to require from all participants in the Sami handicraft courses knowledge of the Sami language. In Sweden there are a 3-year Sami handicraft education at the Jokkmokk People's College (Samernas Folkhögskola) where Sami are one of the language of instruction. In Norway, Sweden and Finland there are also possibilities to learn Sami handicraft at ground school level and in colleges. In Sweden there are since 1946 three state consultants in Sami handicrafts at a Sami handicraft foundation "Sami Duodji".

2 Sami political organisations and Sami position in the political system of different states

Comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper:

"2.2.1 As to the sentence "The Reindeer Herding Acts in Sweden and Norway have divided the Sami into two groups: reindeer keepers, who have legal rights, and non-reindeer keepers, who have no or few legal rights" a clarification is needed. The reindeer herding legislation builds on the fact that the Sami population is split into herders on non-herders (and uphold and deepen this split). The non-herders are certainly not lawless, but have no or few special rights with respect to herding (such as for example fishing and hunting).

The Agreement referred to in part 3 on page 18 is assumedly the Reindeer Herding Agreement of 1996 and not a Cultural Agreement.

The SLF most probably has among its members so-called Coastal or Fishing Sami, who would not meet the criteria of the Norwegian Sami definition. They are likely to advocate the idea that special ("Sami") rights should not be given exclusive to those persons, who meet the requirements of the Norwegian Sami definition.

2.4 Footnote 22: The Swedish Reindeer Herding Acts were from 1886, 1898 and 1928. The listing of Sami organisations is not complete and this has probably not been the intention of the author.

2.7 The expression "nation state organs" is ambiguous as the term "quasi-governmental" or "quasi-public" or "quasi-official" would seem sufficient."

Lasko:

The text in the discussion paper has been too vague or general and needed to be more specific. Major changes has therefore been made in the text.

Changes has also been done in the text because of the comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper.

The text is also updated.

It is true that the Reindeer Herding Acts in Sweden and Norway have divided the Sami into two groups: reindeer keepers, who have legal rights, and non-reindeer keepers, who have no or few legal rights". A clarification is needed and has been implemented in the text. The reindeer herding legislation create a split of the Sami population into herders on non-herders (and uphold and deepen this split). The non-herders are certainly not lawless, but have no or few special Sami rights.

Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, mean that the Reindeer agreement mentioned in 2.3 is not a Cultural agreement. The Agreement referred to in part 3 on page 18 is not assumedly the Reindeer Herding Agreement of 1996. The Sami Cultural Agreement is an extended reindeer herding agreement. The agreements official name is The Sami Cultural Agreement.

Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, mention that "The SLF most probably has among its members so-called Coastal or Fishing Sami, who would not meet the criteria of the Norwegian Sami definition." Well, it is true that SLF has very many sea Samis as members. But, very many of them speaks Sami. There are sea Sami areas like Porsanger, including Börselv, and Tana, were Sami language also are accepted as one the official languages of the community. There are also sea Sami areas outside the Sami language area like Diftasvuona (Tysfjord) were there are mainly only Sami population with a high degree of Sami speaking population.

It is true that SLF advocate the idea that special ("Sami") rights should not be given exclusive Sami, but it is of political reasons. According to SLF it is a negative discrimination of the Sami People.

About footnote 22: The correct translation of the Sami Acts from 1886, 1898 and 1928 are the Reindeer Grazing Act (Ren<u>bete</u>slagar) of 1886, 1998 and 1928. The first Reindeer Herding Act are from 1971 (Rennäringslagen).

It is true that the listing of Sami organisations is not complete and this has not been the intention of the author.

Finland

Comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper:

"The Finnish Sami Parliament (Saamelaisvaltuuskunta) has in 1996 been replaced by the Finnish Sami Thing or Assembly (Saamelaiskäräjät). A reference to this fact we find later on page 54 under the heading: "3.6. Laws Relating to protection of Sami Language and Culture". The 1993 Decree was replaced by a new decree in 1990 (16.11.1990/988), when i.a. the Sami definition was somewhat modified. There ought to be made a clear terminological distinction between the old body, the Sami Delegation or Parliament and the new body termed Sami Thing or Assembly in order to avoid confusion. It would also have been appropriate to mention another consultative body, the Advisory Board on Sami Affairs (Saamelaisasian neuvottelkunta) where half of the 10 members are appointed by ministries and the other half by the Sami Parliament now Assembly and where the Governor of Lapland acts as president. The Board takes initiatives and gives opinions in matters which concern the Sami Council of Ministers Decision 26.3.1987/367). The reference to the Swiss electoral system remains unclear. Does it mean "Swedish" (and Norwegian) or is there in one of the Swiss cantons a system of ethnic or linguistic registration?

Norway

With respect to all Sami Thing/Assemblies a clearer specification of the actual scope of their decision-making powers would have been desirable. The Sami Thing have basically only the powers to decide how the funds designated for common use of the Sami shall be allocated

The view that "...the (Norwegian) Sami Parliament should define its own independent decision-making power, and can involve itself in any issue" may perhaps be going too far. With respect to concrete decision-making powers, the Norwegian Sami Thing has basically the same limited powers as its equivalents in Finland and Sweden.

For the purposes of the INSROP-database it should be underlined that the duty of the Finnish authorities to hear the Sami Assembly has been widened. Originally (1991) there was only an obligation for parliamentary committees to hear the Sami in matters of special concern for them (Parliament Act,

Section 52a and Procedure of Parliament, Section 16). Such an obligation to hear the Sami has in the New Sami Thing Act been strengthened to mean "negotiate" and extended to all other authorities, ministries etc:

Section 9

Obligation to negotiate

The authorities shall negotiate with the Sami Thing in all far-reaching and important measures which may directly and in a specific way affect the status of the Sami as an indigenous people and which concern the following matters in the Sami Homeland:

- 1) community planning;
- 2) the management, use, leasing and assignment of state lands, conservation areas and wilderness areas;
- 3) applications for licences to stake mineral mine claims or file mining patents;
- 4) legislative or administrative changes to the occupations belonging to the Sami form of culture;
 - 2.8 The Sami Council is at present under reorganisation.

2.9 Norway and Finland have ratified the European Charter for Regional or Minority Languages and have indicated to which extent they apply the commitments of the Charter to the Sami language. Sweden has not yet done so, but is considering the possibilities for carrying out the ratification. In relation to the European Bureau for Lesser Used Languages the Nordic States are setting up national committees with Sami representation.

The Norwegian Sami have been able to place a representative of theirs in the UN Human Rights Centre in Geneva thanks to the financial help from the Norwegian Government.

Lasko:

There maybe ought to be made a clear terminological distinction between the old body, the Sami Delegation and the new body termed Sami Thing or Assembly in order to avoid confusion. However, The Sami Delegation and now the Sami Thing in Finland is popular called "Sami Parliament of Finland" and is in principal the same body as earlier. The Advisory Board on Sami Affairs has been mentioned in the text. The text has also been updated with information about similar bodies in Sweden and Norway. The connection with the Swiss system has been clarified.

A clearer specification of the actual scope of their decision-making powers have been involved in the text. However, The Sami Thing does not only have powers to decide how the funds designated for common use of the Sami shall be allocated (Compare text).

The view that "...the (Norwegian) Sami Parliament should define its own independent decision-making power, and can involve itself in any issue" are as manner of fact a citation

from the decision made by the Norwegian Parliament (Compare also The Sami Right Committees report).

Norway and Finland have ratified the European Charter for Regional or Minority Languages and have indicated to which extent they apply the commitments of the Charter to the Sami language. Sweden has not yet done so, but is considering the possibilities for carrying out the ratification. The Swedish minority language Committee suggested in a proposal to the government this year to ratify ratified the European Charter for Regional or Minority Languages. The Swedish minority language Committee also suggested a Sami language Act.

In relation to the European Bureau for Lesser Used Languages the Nordic States has set up national committees with Sami and other minorities representation (EBLUL- committees).

The Sami have been able to place a representative of theirs in the UN Human Rights Centre in Geneva thanks to the financial help from the Nordic Governments. For the moment there are a Norwegian Sami at the UN Human Rights Centre in Geneva financed by the Norwegian Government until spring 1999. After spring 1999 it is planned a representatives from the Finnish or Swedish Sami financed by Swedish or Finnish governments.

3.0 Sami Rights and Legal Protections

Comment made by Frank Horn, Juha Joona and Kristian Myntti, The Northern Institute for Environmental and Minority Law, in review of discussion paper:

- "3.1 The Swedish-Finnish Agreement of 1925 concerns reindeer-herders in general as on the Finnish side even non-Sami may herd reindeer. It covers many issues. i.a. compensation for damages causes by reindeer.
- 3.2 The Regeringsformen is one of the laws that together form the legal compact called the "Swedish Constitution".

It is not clear what is meant by "statement" on page 33, line 8 and 9. May this mean the Government Bill introducing the new Constitution Act (Regeringsformen)? This ought to be checked.

As to the new Finnish Sami Thing/Assembly the plans were originally to guarantee the right to put legal motions to and prepare reports for the Finnish Parliament, these rights were not maintained in the final version of the Sami Thing Act (page 33 lines 18-19). Section 52a of the Finnish Parliament Act does not recognise "the right to put cases before Parliament", instead the Sami "shall be heard in a matter of special concern for them" (page 34, lines 1 and 2). The Committee on the Constitution of the Finnish Parliament has not "several times established that the Finnish Sami population in the Sami areas

has protection (read: protected) rights regarding land and water". The Committee has been more prudent, it has simply stated that the existence of such rights still an open issue.

- 3.3.2 See page 45 line 4: "...the right to ...use the right to reindeer herding" could be simply formulated as "the right to herd reindeer".
- 3.3.3 There are at present about 7000 reindeer herders in Finland, out of which only 1/3 is said to be Sami. A recent important amendment to the Finnish Reindeer Herding Act has been left out (see page 48 line 10). Originally only those Finnish citizens who permanently lived in the reindeer herding area, Sami and non-Sami alike, had the right to own reindeer. In 1992 the provision was extended to cover any persons living in the reindeer herding area who is a citizen of an EEA State against the protestations by the then Finnish Sami Parliament. Protocol No. 3 concerning the Sami to the Accession Treaty by i.a. Finland and Sweden to the EU establishes the right to guarantee exclusive reindeer herding rights to the Sami in areas traditionally inhabited by them. This Protocol may be invoked to amend the Finnish Reindeer Herding Act to meet the demands of the Finnish Sami (= Sami Thing/Assembly).

The delimitation's of the herding districts (paliskuntien toimialuet - renbeteslagens verksamhetsområden) are confirmed by the County Administrative Boards (lääninhallitus - länsstyrelse) according to Chapter 2, Section 6 (3) of the Finnish Reindeer Herding Act (14.9.1990/848).

The "Natural Resources Act" mentioned on page 50 line 16 is more correctly designated as the Subsistence Livelihood Act (Luontaiselinkeinolaki - Naturnäringslagn 24.8.1984/610).

3.7 A closer scrutiny of the relationship between customary international law and treaties and Russian Federation legislation (see pp. 55-56, 61) would have been opportune (as also for such relationship with Finnish, Norwegian and Swedish legislation). Section 15 (4) ("constituent part") of the Russian Constitution is not to be read as meaning that customary international law has priority over domestic law - if not exceptionally stated for some spheres, like the rights of smaller indigenous peoples (Section 69). Ratified treaties take precedence over domestic ordinary legislation, but the Constitution take precedence over treaties (See "Comments to the Constitution of Russian Federation" by Ger P. Van den Berg, Part I, Leiden 1994 pp. 106-107).

When commenting on Russian legislation it must be kept in mind, that there is not yet established a doctrine of the hierarchy of norms, which would help settle cases of norm conflict. In practice a decree by the President may take precedence over an act adopted by the Duma.

3.7.8 On page 71 some misshape has occurred with the text processor.

4.0 Sami Convention for Entire Sami Area (pp. 71-73 and presented again on pp. 83-84)

The text of the Sami Convention, elaborated by the Sami Council is supposed to be adopted in October 1996 in Murmansk. The author should have clarified the ultimate goal of the Sami Convention elaborated by the Sami Council and the competing initiative within the Nordic Council.

5.0 Harbours of the NSR in the Sami Area.

A large part is dedicated to the history of Petschenga/Petsamo area, which between 1920 and 1944 belonged to Finland. Nearly the entire Skolt Sami population was moved from the Petsamo area to the easternmost part of the Inari municipality. The 13 Samis living (1989) in this area my have moved from the inner parts of Kola. The new harbour in Liinahamari is thus planned in an area where there is no significant Sami population. It may, however, indirectly affect Samis in more distant areas through the possible construction of roads and railways.

Lasko:

It is true that the Swedish-Finnish Agreement of 1925 concerns reindeer-herders in general as on the Finnish side, but also part of the Swedish side (Koncessionsrenskötsel), even non-Sami may herd reindeer.

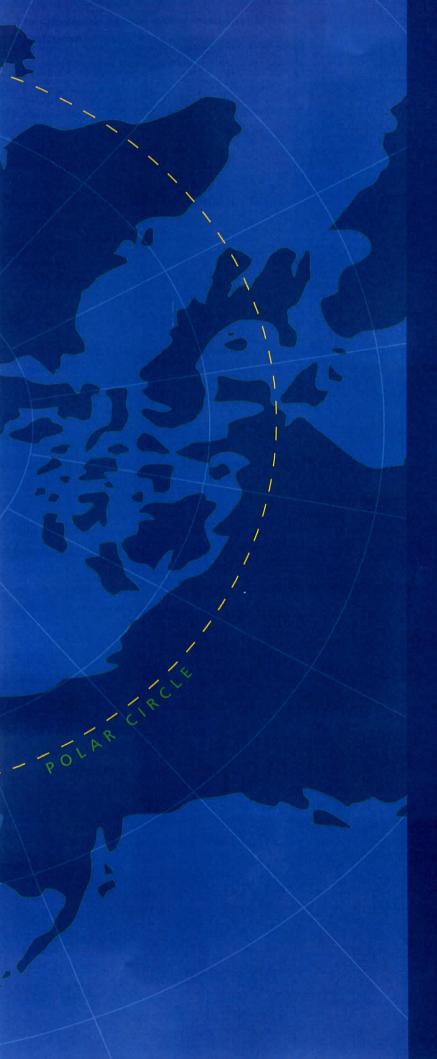
The "statement" on page 33, line 8 and 9 means the Government Bill introducing the new Constitution Act (Regeringsformen). The text has been clarified.

The text about Section 52a of the Finnish Parliament Act has been updated.

The comment about "3.3.2 See page 45 line 4: "...the right to...use the right to reindeer herding" could be simply formulated as "the right to herd reindeer" is not correct. According to the Reindeer herding Act § 1 every Sami have the right to herd reindeer. But, it is a right which not every Sami could use - only if they are members of a Sami village. As manner of fact it's a right which all Samis have but cant use! (I think only Swedish lawyers can understand this kind of rights?)

The text of the Sami Convention, elaborated by the Sami Council was not supposed to be adopted in October 1996 in Murmansk.

Some changes has been done about Russian law and harbours in Russia.



The three main cooperating institutions of INSROP



Ship & Ocean Foundation (SOF), Tokyo, Japan.

SOF was established in 1975 as a non-profit organization to advance modernization and rationalization of Japan's shipbuilding and related industries, and to give assistance to non-profit organizations associated with these industries. SOF is provided with operation funds by the Nippon Foundation, the world's largest foundation operated with revenue from motorboat racing. An integral part of SOF, the Tsukuba Institute, carries out experimental research into ocean environment protection and ocean development.



Central Marine Research & Design Institute (CNIIMF), St. Petersburg, Russia.

CNIIMF was founded in 1929. The institute's research focus is applied and technological with four main goals: the improvment of merchant fleet efficiency; shipping safety; technical development of the merchant fleet; and design support for future fleet development. CNIIMF was a Russian state institution up to 1993, when it was converted into a stockholding company.



The Fridtjof Nansen Institute (FNI), Lysaker, Norway.

FNI was founded in 1958 and is based at Polhøgda, the home of Fridtjof Nansen, famous Norwegian polar explorer, scientist, humanist and statesman. The institute spesializes in applied social science research, with special focus on international resource and environmental management. In addition to INSROP, the research is organized in six integrated programmes. Typical of FNI research is a multidisciplinary approach, entailing extensive cooperation with other research institutions both at home and abroad. The INSROP Secretariat is located at FNI.