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## Sweden's Secret Human Rights Violations: The Sámi Fight for the Right to Traditional Lands

### I. INTRODUCTION

All people should have a right to the land that is traditional theirs. This statement includes indigenous peoples like the Sámi<sup>1</sup> of Northern Europe. However, many indigenous individuals do not have ownership rights to their lands. Even if the government hears their voice, its merely in a cultural or linguistic sense. For instance, in the context of the Sámi of Sweden; the Swedish government often does not consult the Sámi when the government wants to use their traditional lands.

As it stands, the Swedish state is violating human rights norms. It's current domestic policies, and international actions concerning the Sámi's right to their traditional land do not comply with Art. 26 of the United Nations Declaration on the Rights of Indigenous Peoples. Further, this consists of a breach of the customary international law norm of indigenous self-determination. Which is awarded by Art. 3 of the UNDRIP awards to indigenous people. Although not a binding legal document, the UNDRIP is a codification of customary international law. Sweden is also in violation of its obligations as a signatory to the Nordic Saami Convention.

However, Sweden can remedy this breach. Firstly, Sweden must create domestic policies to remedy this breach. There are three actions Sweden should take domestically;

- (1) Provide the Sámi Parliaments with greater independence with greater financial independence
- (2) Create provisions within the Mineral Act to create an obligatory status for the duty to consult; and  
Either establish in its domestic Courts or implement legislation to lower the standard of proof for establishing traditional ownership of land

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<sup>1</sup> Sámi and Saami are both correct spellings and are used interchangeably throughout the piece.

Secondly, Sweden must take two actions internationally to remedy its breach. The first action is to sign and ascend to the International Labour Organisation Indigenous and Tribal Peoples Convention (ILO C169). The second action is to expedite the ratification process of the Nordic Sami Convention.

### 1. The Sámi in Sweden

The Sámi are a group of indigenous people who live in Northern Fennoscandia and the Kola Peninsula, in an area known as Sápmi. This area covers four countries; Norway, Sweden, Finland, and Russia. Current population estimates put the Sámi at 65,000-100,000<sup>2</sup> individuals, throughout these four countries. However, this paper focuses explicitly on Sweden and the relationship the Sámi share with the Swedish state. About 20,000 Sámi currently reside in Sweden<sup>3</sup>.

The relationship that the Sámi share with Sweden is complicated. Their current status is one of cultural and linguistic autonomy, without territorial or land ownership rights. Nor are the Sami are not recognized explicitly within the Swedish constitution<sup>4</sup>. Instead, the Sami people are "treated as an ethnic minority or as indigenous peoples"<sup>5</sup> The "Samtingslag"<sup>6</sup> grants the Sámi a representative body in the form of a Parliament. The meaning of the law suggest that the Sami Parliament should have the power over all work concerning a "living Sami culture taking initiatives for activities proposing measures for promoting [their] culture"<sup>7</sup>. This power should

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<sup>2</sup> The population numbers vary depending on each researcher.

<sup>3</sup> SAMI IN SWEDEN, <https://sweden.se/society/sami-in-sweden/> (last updated Feb. 7, 2020)

<sup>4</sup> Timo Koivurova, *The Draft for a Nordic Saami Convention*, 6 EURO. YEARBOOK OF MINORITY ISSUES, 103, 103 (2008)

<sup>5</sup> *Id.* at 104

<sup>6</sup> Translated from the Swedish, it reads "Sámi Parliament Act."

<sup>7</sup> Sametingslag [The Sami Parliament Act] Ch. 2 §1¶1 (SFSR 1992:1433) (the Swedish law establish the Swedish Sámi parliament), (Original text is in Swedish – Unofficial translation by Sametinget.se)

include "participating in community development and ensuring the Sami's needs are considered, including the interests . . . in the use of land and water"<sup>8</sup>.

However, in actual practice, the Sámi Parliament's power is only over cultural matters. The Swedish Sámi Parliament's power is best described as similar to the power of a governmental agency<sup>9</sup>. It is hugely dependent on measures by the Swedish government. It lacks control of "all to the majority of all governmental spending on Sami specific issues"<sup>10</sup>. Often the Sámi Parliament falls to "victim to power-play between the Sámediggi<sup>11</sup> and the government"<sup>12</sup>. As a result, the Sámi Parliament cannot independently "design [its] own priorities, long-term plans, and projects"<sup>13</sup>

## 2. Existing Scholarly Work

This piece comes as an update to the scholarly work done by others. The realm of indigenous rights to development is a new and developing one. However, it is a robust realm. The current consensus is that "there has been a great deal of progress at the international level in this area."<sup>14</sup> Examples include reassurances about the importance of the implementation of the UNDRIP by petroleum companies<sup>15</sup>. There also have been negotiations to create something akin to the Nordic Sami Convention<sup>16</sup>. There is also a growing number of successful litigations for

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<sup>8</sup> Sametingslag, at ¶4. (Original text is in Swedish – Unofficial translation by Sametinget.se)

<sup>9</sup> Adam Stepień, Anna Petrétei, and Timo Koivurova, *Sámi Parliaments in Finland, Norway, and Sweden in MANGANG DIVERSITY THROUGH NON-TERRITORIAL AUTONOMY: ASSESSING ADVANTAGES, DEFICIENCIES, AND RISKS*. (Tove H. Malloy, Alexander Osipov, and Balázs ed.) 128 -130 (2105)

<sup>10</sup> *Id.*

<sup>11</sup> The Swedish Name for the Sámi Parliament

<sup>12</sup> Stepień, Petrétei and Koivurova, *supra* 128-130

<sup>13</sup> *Id.*

<sup>14</sup> Lee Swepston, *Indigenous Peoples in International Law and Organizations*, in *INTERNATIONAL LAW AND INDIGENOUS PEOPLES* 53 -65, (Joshua Castelino and Niemh Walsh ed., 2004)

<sup>15</sup> Kristy Kirkup, *Canadian Association of Petroleum Producers reaffirms pledge to Indigenous rights amid concerns*, *THE GLOBE AND MAIL*, April 28, 2020

<sup>16</sup> Ashely Wadhvani, *Wet'suwet'en agree to sign memorandum on rights to title with B.C.*, *Ottawa, THE CHILLWACK PROGRESS*, April 28, 2020

indigenous peoples; both in land use<sup>17</sup> and fishery rights<sup>18</sup>. However, on the domestic level, "indigenous peoples continue to suffer from the pressure of encroaching dominant cultures"<sup>19</sup>. This piece attempt to enter this realm of indigenous development rights by presenting an update on the work of individuals like Timo Koivurova, Rasmus Kløcker Larsen, and many more.

Instead of taking a multi-country approach like other scholars, this piece chooses to focus specifically on , the Sámi in Sweden. The most recent article concerning the Sámi's relationship with the Swedish State comes from January 2019 and focuses on the Swedish "State's Duty to Consult"<sup>20</sup>. However, this piece focuses almost exclusively domestic sphere. Specifically, the article focuses on creating an " empirical assessment of the views of indigenous communities and state officials . . . on the prospect of enacting the state duty to consult indigenous communities [and] ensure effective participation in decision making"<sup>21</sup>

Furthermore, much of the policy work done with the Sámi's situation references Special Rapporteur on the rights of indigenous peoples Anaya's report from 2011<sup>22</sup>. Primarily this work focuses on domestic policy changes or regional changes. Secondly there is an update report from 2015 from the current Special Rapporteur Victoria Tauli Corpuz. Very little scholarly work exists around this report, most of it focus on Anaya's 2011 report.

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<sup>17</sup> *Accord Prosper Petroleum Ltd. v. Alberta*, (2020) A.J. No. 250 (Can. Alb. C.A.) and Bob Weber, *Alberta's top court overturns oilsands project approval over Aboriginal concerns*, THE CANADIAN PRESS, April 24, 2020

<sup>18</sup> See *Commonwealth v. Yarmirr*; *Yarmirr v. Northern Territory BC990788* [1999] FCA 1668 (Dec 3, 1995) (Austl.)

<sup>19</sup> *Id.*

<sup>20</sup> Rasmus Kløcker Larsen and Kaisa Ratio, *Implementing the State Duty to Consult in Land and Resource Decisions: Perspectives from Sami Communities and Swedish State Officials*, 10 ARCTIC R. ON L. AND POL., 4 (2019)

<sup>21</sup> *Id.* at 16

<sup>22</sup> Marget Carstens, *Sami land rights: the Anaya Report and the Nordic Sami Convention*, 15. J. ON ETHNO. AND MINORITY ISSUS IN EURO. 75 (2016)

Also much of the international scholarly work focuses upon the Nordic Sami Convention. There has been an exploration of the effect of this convention on self-determination<sup>23</sup>. Other works explore the effects of this convention on Sami identity and indigenous status. Even more works explore the relationship between the convention and the 2011 report by the Special Rapporteur play<sup>24</sup>. There is also some work done with the convention's effects on the land right. This paper wants to take existing scholarly work and connect it all together and expand it to include the 2015 report.. From this place of connection, it wants to argue a grant of self-determination to the Sámi grants certain land rights, citing to the work of Rasmus Larsen, and Marget Carstens and others. It then intends make a case to strength accountable measures for Sweden.

### **3. The Argument**

This paper separates its argument into three sections; the first a brief summary of the international law in question, the second a exploration of Sweden's violative actions and the reasons why the actions are violative, the final section remedies Sweden can take to fix its violative actions and why such remedies are necessary.

In its section on international law, this paper contends the Sámi are owed a right of self-determination and through that certain land rights. Firstly, it argues that self-determination is a *jus cogens norm*. It then argues that self-determination includes certain rights, include that of certain land ownership rights. It then applies this in the context of indigenous individuals rights; referencing Canadian and Norwegian practice self-determination indicate customary law. Finally, it applies this argument to the Sámi in Sweden; arguing that certain treaties Sweden

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<sup>23</sup> Adrain Liviu Ivan and Ruzandra Emanuela Nut, *Sami People and the Right to Self-Determination*, 9 SOC'Y AND POL. 30 (2015)

<sup>24</sup> Carstens *supra* 75

signed on to and General Assembly resolutions require that Sweden supports Sweden guarantee these rights.

The second section of this piece specifically addresses Sweden's violative actions. It argues that Sweden is violating international law, by impugning on Sami's right to their traditional lands grant by the economic development prong the Sámi's right to self-determination. It separates into two subsections; international actions and domestic actions. On an international stage, this paper argues that Sweden is violating certain provision of the UNDRIP. It also argues that Sweden is violating its obligations as a signatory to the Nordic Sami Convention. It then addresses Sweden's domestic actions. It argues that the Sámi Parliament doesn't have enough independence to be able to exercise its self-determination rights. It also argues, that the Mineral Act doesn't afford enough protection to Sámi economic development rights. Finally, it argues that the traditional land status is to of a high burden, preventing exercise of Sámi rights.

The third section discusses remedy. It presents three sets of remedies that Sweden needs to take. The first set of remedies are domestic. It argues that Sweden needs to strength the independence of the Sámi Parliament in order to allow the Sámi a proper representative body to exercise their rights of self-determination. It also suggest that Sweden amend it's existing Mineral Act to include an explicit provision about mining companies duty to consult, if they seek to mine in Sámi traditional lands. It also argues for explicit changes in the traditional land status burden on the Sámi.

Secondly, it argues for Sweden to become a party to the ILO C169. If Sweden becomes a party to the convention, that it will have binding obligations concerning its treatment of its indigenous population, i.e. the Sámi. Currently, Sweden only has obligations as a signatory to

the Nordic Sami Convention. The only obligation Sweden has as a signatory is not to defeat the obligation and purpose of this convention. However, Sweden has very broad discretion as to what defeats the obligation and the purpose of this treaty. As a result, this paper argues having a second set of obligations under the ILO C169, would specify the obligations that Sweden has. It would help to define what actions Sweden more explicitly can and cannot take when deal with its Sámi population.

Finally, the paper makes the argument that Sweden must ratify the Nordic Sami Convention. This convention signed in 2017, more explicitly defines the rights the Sámi have throughout the Nordic countries they live in. However, it's ratification process has stalled. As a signatory Sweden's obligations under this treaty are not specific enough. Although, the Sámi Convention has similar provisions as the ILO 169, it is more specific to the Sámi and their situation. As a result, Sweden needs to become a ratified party to the convention *and* an ascended party to the ILO 169. One protects the Sámi explicitly while the other aims to protect all indigenous and tribal peoples. However, this paper argues that both are incredibly important pieces of international law that Sweden needs to be a party too. If Sweden were a party to both, then as this paper argues, it would be much clearer for Sámi individuals to know explicitly their rights and have explicit accountability measures.

## II. THE INTERNATIONAL LAW OF THE SAMI'S RIGHT TO SELF DETERMINATION

International human rights support the Sámi's right to have authority over their traditional lands. Firstly, international human rights law guarantees self-determination as *jus cogens* norms. Self-determination has the status as a preemptive norm of customary international law and this is codified in multiple treaties. Secondly, this notion of self-

determination extends to indigenous populations. Customary international law and the codification in General Assembly Resolutions. Such a notion is also supported in documents like the ILO C169 and the Nordic Saami Convention. Further, this right extends to the Sámi to Sweden.

This section explicitly focus on the international law of the Sámi's right to internal self-determination, including economic development and by extension land rights . Firstly, it addresses the status of self-determination in international law. It argues that self-determination is a jus cogens norms, of which no “derogation is permitted”<sup>25</sup>. It provides evidence from in cases and human rights treaties. It then extends this argument to argue that there is a customary international norm that indigenous peoples have self-determination rights too. To support this contention, the paper cites to practices from Canada and Norway. It also mentions treaties and General Assembly Resolution to suggest a codification and acceptance of this notion. Finally, it addresses this notion of indigenous self-determination in the context of the Sámi in Sweden. Citing to the Nordic Sami Convention, and the UNDRIP it argues that Sweden has an obligation to award the Sámi self-determination rights include land rights which are extension of the Sámi's right to economic development, a prong of the Sámi's internal self-determination rights. It then refutes the notion that the Sámi have effective representation and have no need for self-determinaton rights.

### **1. Self Determination Is A *Jus Cogens* Norms**

International law derives its binding power from four major sources:

- (1) internal conventions
- (2) international custom or customary international law
- (3) general principles of law
- (4) judicial decisions and teachings of international law scholars<sup>26</sup>.

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<sup>25</sup> Vienna Convention on the Law of Treaties, art 56, May 23, 1969, 1115 U.N.T.S. 331 [hereinafter VCLT]

<sup>26</sup> Statue of the International Court of Justice, art. 38, June 26, 1945, 59 Sat. 1055, 993 U.N.T.S.

This paper focus primarily on customary international law. A norm becomes a tenant of customary international law when it is the general practice of the majority of states, and it has *opinio juris* or acceptance as law<sup>27</sup>.

A certain number of these norms have become so accepted and are so preemptory that they have become known as *jus cogens*. The Vienna Convention on the Law Treaties defines a *jus cogens* as:

a peremptory norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only be a subsequent norm of general international law have the same character<sup>28</sup>.

These are norms that can void treaties and other norms of customary international law<sup>29</sup>. It is unclear exactly which norms are considered *jus cogens*. However, the international law community universally agrees that eight norms are *jus cogens*:

- (a) the prohibition of aggressive use of force;
- (b) the right to self-defense;
- (c) the prohibition of genocide;
- (d) the prohibition of torture;
- (e) crimes against humanity;
- (f) the prohibition of slavery and the slave trade;
- (g) the prohibition of piracy;
- (h) the prohibition of racial discrimination; and
- (i) the prohibition of hostilities directed at civilian population<sup>30</sup>.

However, there is a potential ninth *jus cogens* norm which is the right to self-determination. Though controversial, there is enough existing international legal jurisprudence to establish that self-determination is a norm that has risen to the level of *jus cogens* norms. Firstly,

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<sup>27</sup> The Case of the S.S. "Lotus" (Fr. V. Turk.), Judgement, 1927 P.C.I.J. (ser A) No. 10 (Sept. 7).

<sup>28</sup> VCLT, art. 56

<sup>29</sup> *Id.* at art. 53

<sup>30</sup> Rep. of the Study Group of Int'l Law Comm'n on Fragmentation of International Law; Difficulties Arising from the Diversification and Expansion of International Law, U.N. Doc. A/C/N.4/L.682 at ¶374 (2006)

there is customary international law almost no derivations that sets self-determination as a norm. Secondly, multiple treaties codify this custom.

Self-determination of peoples is historic and codified in customary international law. Scholars define it differently. However, a accepted definition is that self-determination is “a fundamental right of all people to decide their own political status and to freely pursue their own, economic and social development”<sup>31</sup>. Treaties like the International Covenant on Economic and Social, Cultural, Rights also provide definitions. Furthermore, self-determination is an expanding right<sup>32</sup>. It has been present in some form throughout history. Initially, it only belonged to decolonized persons<sup>33</sup>. Now, the definition of the self-determination right includes "groups that are not necessarily representative of the majority in a territory or lives [in] the territory of several states"<sup>34</sup>.

There are two dimensions to a people’s self-determination: internal and external<sup>35</sup>. Internal self-determination gives peoples decision-making rights in decisions that directly affect the said people's populations<sup>36</sup>. External gives peoples the rights to establish “international connections”<sup>37</sup> Both are important to people's self-determination right. Courts have explored both dimensions in cases involving East Timor, Palestine, and Quebec, among others. The dimension at issue here is the internal dimension of the Sámi’s right over land where they live.

Overall, courts indicate a belief that “the principle of self-determination of peoples” is enshrined among international conventions and customary law<sup>38</sup>. The courts indicate a further

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<sup>31</sup> Ivan and Nut, *supra* 30

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 31

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Legal Consequences of the Construction of A Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 ¶ 88 (July 9)

belief that the "sacred trust" of the Covenant of League of Nations "was . . . self-determination"<sup>39</sup>. Often court practice can indicate customary practice of international law. In other words, most states customarily accept respect for people's self-determination. Further, they suggest that self-determination has achieved the necessary *opino juris*. It is a practice that, as mentioned above, is enshrined in legally binding documents, which means states act in this manner because they believe it has binding legal authority. Such legal binding documents include the U.N. Charter.

Along with the U.N. Charter, many human rights treaties explicitly state the right to self-determination. The U.N. Charter reads in Art. 1, obligates a "respect for the principles of equal rights and self-determination of peoples"<sup>40</sup>. The International Covenant on Economic on Social, Cultural Rights also reads, "all peoples have the right of self-determination"<sup>41</sup>. As a result, it is a norm that readily codified in treaties. Often treaties can be evidence of codification of customary international law norms.

## **2. Indigenous Individuals Have A Right to Self-Determination**

The right to self-determination extends to indigenous individuals, like the Sámi as well. Firstly, customary international law establishes this as a norm. There are several historical instances of indigenous peoples having both internal and external self-determination. Such examples include historical recognition of First Nation treaties in Canada and Sámi land ownership recognition in Norway.

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<sup>39</sup> Legal Consequences for the States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Resolution 276 (1970) Advisory Opinion, I.C.J. Reports 1971 p. 31 paras 52 -53.) quoted in *Id.*

<sup>40</sup> UN Charter, art. 1, ¶ 2

<sup>41</sup> International Covenant on Economic, Social, Cultural Rights, art. 1¶1, Dec 16, 1969, 993 U.N.T.S. 3 [hereinafter ICESCR]; see also International Covenant on Cultural, Civil, and Political Rights art. 1. ¶ 1("all peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.)

Evidence of external self-determination for indigenous can be found during colonization period of Canada where indigenous individuals conducted treaties among themselves and colonial powers; an example being the Wabanaki Confederacy<sup>42</sup>. This confederacy was composed of four distinct indigenous nations<sup>43</sup>. External self-determination is found in the ability to conduct such treaties<sup>44</sup>. Therefore, there is evidence of these nations have self-determination and recognition of such<sup>45</sup>. Furthermore, there was some recognition of this external self-determination by European powers<sup>46</sup>. Examples of such recognition include a set of “Peace and Friendship Treaties” between the British and these indigenous populations<sup>47</sup>. These said treaties were respected with legal authority suggest *opinio juris* status for this ability.

Internal self-determination can be found in Nordic regional practice, one only has to look at Norway and its recognition of the internal self-determination of their Sámi population. Norway currently has a population of about 40,000 Sámi individuals<sup>48</sup>. Akin to the Sámi in Sweden, the Sámi also have parliament in Norway. However, this parliament is a much stronger body than its Swedish equivalent<sup>49</sup>. It is a “significant channel for Sámi postulates”<sup>50</sup>. The Sámediggi in Norway has the “autonomous power[s of] protection of cultural heritage, drawing . . . Sámi teaching plans, and . . .right[s] to object to the Planning and Building Act”<sup>51</sup> The powers granted to Sámediggi indicate that the Sámi have the power over “decision-making ...

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<sup>42</sup> Robert Hamilton, *Indigenous Legal Traditions and Histories of International and Transnational Law in the Pre-Confederation Maritime Provinces*, in REFLECTIONS ON CANADA’S PAST, PRESENT AND FUTURE IN INTERNATIONAL LAW/RÉFLEXIONS SUR LE PASSÉ, LE PRÉSENT ET L’AVENIR DU CANADA EN DROIT INTERNATIONAL. 145-145 (Oonagh E. Fitzgerald, Valerie Hughes, and Mark Jewett (eds) 2018)

<sup>43</sup> *Id.*

<sup>44</sup> Ivan and Nut, *supra* at 30

<sup>45</sup> Hamilton, *supra* at 146

<sup>46</sup> *Id.* at 154

<sup>47</sup> *Id.*

<sup>48</sup> THE SAMI – INDIGENOUS PEOPLE OF NORTH, <https://nordnorge.com/en/tema/the-sami-are-the-indigenous-people-of-the-north/> (accessed April 30, 2020)

<sup>49</sup> Stępień, Petrétei and Koivurova, *supra* at 136

<sup>50</sup> *Id.* at 141

<sup>51</sup> *Id.* at 142

concerning [their] populations”<sup>52</sup>. Furthermore, Norway is a ratified party to the ILO 169. These actions and practices indicate the respect that Norway has for its Sámi populations and their rights to internal self-determination and the belief that Norway has of its legal obligations to respect the Sámi internal self-determination.

These rights are also present in resolutions and treaties. Though not binding, the UNDRIP reads, “indigenous peoples have the right to self-determination”<sup>53</sup>. Therefore, “by virtue of that right they [can] freely pursue their economic, social and cultural development”<sup>54</sup>. It doesn't explicitly define what these development rights. However, it does "require that indigenous peoples participative effectively in the exercise and implementation of the right to development"<sup>55</sup> Scholars indicate that this includes "the right to land."

Furthermore, the ILO 169 codifies these ideas in a binding document. However, the problem with ILO 169 is the fact that it is only binding on a few countries, Sweden not included. It is an essential treaty in the context of aboriginal rights work. It doesn't explicitly discuss self-determination rights. Instead, it explains and defines what are considered developmental and land rights for indigenous peoples. However, these are rights are not without limits. Many aboriginal rights including the right to development are “young” rights<sup>56</sup>. They are not in the principal “human rights instruments” or often explored in older cases<sup>57</sup>. Therefore, it is harder to establish their status as customary. Further compounded this issue is that there is ”no general

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<sup>52</sup> Ivan and Nut, *supra* 60

<sup>53</sup> G.A. Res. 61/295, "United Nations Declaration on the Rights of Indigenous Peoples," art. 3 (Sept. 13, 2007) [hereinafter UNDRIP]

<sup>54</sup> *Id.*

<sup>55</sup> George Pring and Susan Y. Noé, *The Emerging international Law of Public Participation*, in HUMAN RIGHTS IN NATURAL RESOURCES DEVELOPMENT: PUBLIC PARTICIPATION IN THE SUSTAINABLE DEVELOPMENT OF MINING AND ENERGY RESOURCES. 11– 60-61 ( Donald N. Zillman, Alastair R. Lucas and Georg (Rock) Pring (eds) 2002) quoted in Kristian Myntti, *The Rights of Indigenous Peoples to Participate in Development Projects*, HUM. RTS. DEV. Y.B. 230 (2002)

<sup>56</sup> *Id.* at 227

<sup>57</sup> *Id.*

agreement on the substance of the right to development” or a universal endorsement<sup>58</sup>. As a result, there is not widespread practice surrounding this rights making it harder to prove customary international status.

### **3. The Swedish Sámi’s Right to Self-Determination.**

As a member of the U.N. General Assembly, who subscribes to the UNDRIP, Sweden's Sami should have the rights provided for in the UNDRIP. As an indigenous population, the Sami are within the purview of the UNDRIP. These rights include self-determination and by extension land rights<sup>59</sup>. Furthermore ,these are customary international law norms. Often General Assembly resolutions are representative of customary international law.

Furthermore, the Nordic Sami Convention, which Sweden is a signatory, provides for self-determination rights, including rights to their traditional land. Under international law, a state has an "obligation not to defeat the direction and purpose of a treaty prior to its entry into force"<sup>60</sup> In other words, Sweden must "refrain from acts which would defeat the object and purpose" of the convention even though the Nordic Sami Convention is yet to be ratified<sup>61</sup>. Therefore, if this treaty says that Sámi should have rights to self-determination and the ability to have land rights, then Sweden cannot take actions that would deny them these rights.

However, there is an argument that the Sámi do not have self-determination rights because they have effective representative in the Swedish government. International law jurisprudence does indicate self-determination rights are limited<sup>62</sup>. The Canadian Supreme Court finds such in *Reference Re Secession of Quebec*<sup>63</sup>. The Court suggest that there is a “right of

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<sup>58</sup> Id. at 228

<sup>59</sup> UNDRIP at Art. 3

<sup>60</sup> VCLT at art. 18

<sup>61</sup> Id. at art. 18 ¶1

<sup>62</sup> *Accord Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217, ¶126 (Can.)

<sup>63</sup> Id.

colonial peoples to exercise the right to self-determination”<sup>64</sup>. However, it places restrictions upon these self-determination rights<sup>65</sup>. Instead, the Court finds self-determination contingent upon a “denial [of] access to government”<sup>66</sup>. In other words, a people are only entitled a right to “*external* self-determination because they have been denied the ability to exert *internally* their right to self-determination”<sup>67</sup>

Yet this is not the case for the Sámi. Firstly, most of the Sámi are not seeking external self-determination. Instead, they want to live within Swedish borders, while still have their traditional lands respected. In others words the Sámi are seeking increased internal self-determination. The Quebecers specifically wanted external self-determination not internal<sup>68</sup>. Secondly, the Sámi do not have the same amount of access to the Swedish government that the Quebecers had to the Canadian government<sup>69</sup>. The Quebecers are “equitably represented [in] legislative, executive and judicial institutions<sup>70</sup>” This is not the case for the Sámi<sup>71</sup>. As mentioned above, the Sámi Parliament is a weak non-independent body that doesn’t allow for “equitable representation”<sup>72</sup>. Furthermore, the Canadian Supreme Court indicates that in the context of aboriginal interests that is a possibility for such external self-determination, even though is not wanted by the Sámi. <sup>73</sup>.

#### **4. Conclusion**

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<sup>64</sup> *Id.* at ¶132

<sup>65</sup> *Id.* at ¶136

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at ¶138 (*emphasis added*)

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at ¶136

<sup>70</sup> *Id.*

<sup>71</sup> Stepień, Petrérei and Koivurova *supra* at 128-130.

<sup>72</sup> *Id.* at ¶136

<sup>73</sup> *Id.*

There is clear support in international law for the Sámi right to traditional land ownership. It is an extension of the economic development aspect of internal self-determination. The right to said self-determination is a *jus cogens* norm, which when granted to indigenous individuals reduces to a customary international law. As a result, there are obligations that Sweden are not fulfill.

### III. SWEDEN'S VIOLATIVE ACTIONS

Sweden's relationship with Sami is fraught with complications. However, that does not excuse the fact that Sweden's actions are violative of international human rights law. Nor does it excuse the fact that Sweden is violating its obligations under the Nordic Saami Convention. The Nordic Saami Convention is the very regional treaty that protect the is intended Sámi rights, include their right to land.

This section begins by arguing that Sweden is violating human right norms and treaty obligations; both internationally and domestically. It goes on to show that in the international context, Sweden is both violating customary international law and its obligations as a signatory to the Nordic Saami Convention. By interfering with the Sámi right to their lands, Sweden is not allowing the Sámi their self-determination rights. Sweden is also violating its obligations as a signatory to the Nordic Saami Convention, by taking actions that defeat the object and the purpose of the said Convention. Domestically, Sweden is preventing the Sámi Parliament from become strong enough to protect the Sámi. It also argues that the Mineral Act doesn't adequately protect the Sámi interest and that current legal burden on the Sámi is high enough to prevent the Sámi from accessing the courts.

#### **1. International Actions**

Current actions taken by Sweden are violative of international law in the form of the UNDRIP. The activities are also violative of the Nordic Sami Convention, indicating treaty obligation breaches. The UNDRIP reflects the growing notion that indigenous individuals have specific rights granted to them. Sweden claims to be a subscriber to the thoughts in it. Yet many of Sweden's actions are violative of many of the provisions in this particular resolution. As of January 2017, Sweden is also a signatory to the Nordic Sami Convention, and has resulting obligations. Sweden is not living up to these obligations. Instead, their actions defeat the purpose and object of the Nordic Sami Convention<sup>74</sup>.

The article of the UNDRIP that Sweden is violating is Article 26. Article 26 states:

- (i) indigenous people have the right to the lands territories and resources which they have traditionally owned, occupied, or otherwise used or acquired.
- (ii) indigenous people have the right to own use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those, which they have otherwise acquired.
- (iii) States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned<sup>75</sup>.

Art. 26 deals explicitly with indigenous rights to land. As a result, Sweden's violative actions concern their treatment of Sámi lands. Many of Sweden's activities fail to give legal recognition to the land rights of the Sámi. Or, if Sweden recognizes the Sámi rights, they block legal access to them.

These actions also violate the obligations that Sweden has under the Nordic Saami Convention. By signing on to this convention, Sweden has responsibilities to the language of the treaty. However, these obligations are vastly different from what their duties are as a ratified party. As a signatory, Sweden only has to conduct actions that do not defeat the object and

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<sup>74</sup> VCCT at art. 18

<sup>75</sup> UNDRIP at art. 26

purpose of the treaty<sup>76</sup>. By denying the legal rights to the land, Sweden is defeating the purpose of specific provisions of the Convention. The particular provisions are Art. 34 and 35 which, as discussed below, award specific rights to the Sámi concerning the use of their traditional lands.

## 2. Domestic Actions

Many of Swedish domestic projects including mining, fail "to include . . . meaningful participation of indigenous peoples"<sup>77</sup>. Firstly, the Sámi Parliament is a weak body that has an influence that "does not resemble legal and constitutional provisions"<sup>78</sup>. Furthermore, their status as an "elected representative body" is undermined due to their position as a "simultaneous administrative arm of a government"<sup>79</sup>. This position undermines Sámi self-determination and participation.

Secondly, the Mineral Act provides little to no requirements for mining companies to consult with the Sámi populations when the companies seek to mine in traditional Sámi lands. This lack of conditions is in clear violation of multiple articles of the UNDRIP. The most relevant of which is Article 27 which states that

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open, and transparent process, giving due recognition to indigenous peoples' laws, traditions, and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

The Mineral Act of 1991 is one of the two pieces of legislation that governs Sweden's mining system<sup>80</sup>. The other is the Mineral Ordinance passed in 1992<sup>81</sup>. Both describe the process and restrictions on mining in Sweden. However, the ordinance focuses more on the

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<sup>76</sup> VCCT at art. 18

<sup>77</sup> Myntti, *supra* at 249.

<sup>78</sup> Stępień, Petrétei, Koivurova *supra* at 130

<sup>79</sup> *Id.*

<sup>80</sup> Minerallag [Mineral Act] SFSR 1991:45, *translated by* Geological Survey of Sweden

<sup>81</sup> Mineralfördning [Mineral Ordinance] SFSR 1992: 285, *translated by* Geological Survey of Sweden

procedure of applying for an exploration permit, a requirement for many mining operations in Sweden<sup>82</sup>. The relevance of mining to the Sámi is paramount. Most of the mining operation in Sweden takes place in Northern Sweden in what would be considered Sápmi.

However, neither piece of legislation explicitly mentions the Sámi or procedures allowing Sámi access block to mining contracts. The closest provision that may allow for Sámi access to the process is Section 4: "The right to undertake exploration and exploitation" of the Mineral Act<sup>83</sup>. Paragraph 2 provides in part that "exploration may, however, be undertaken without a permit by (1) the property owner or, with his consent, another person"<sup>84</sup> But this paragraph is circumvented by paragraph 1 of the same provision, which indicates that "exploration may only be undertaken by the holder of an exploration permit"<sup>85</sup>

On the papers, a company could receive an exploration permit if it consulted the owners of the said property and got their consent. However, in many cases of involving the Sámi, this process does not take place. Instead, the Sámi's receive notice of the prospective project, long after the company receives the exploration permit and when objections would have effect.

The Sámi have tried to fight this, but the burden of proof for traditional ownership is high. Also, very little money is provided to the Sámi to prove their claims<sup>86</sup>. Many Sámi have tried "unsuccessfully to get financing for their campaign"<sup>87</sup>. Often as part of their claims, they have to "pay large amounts of money for environmental impact assessments' create barriers to court access<sup>88</sup>.

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<sup>82</sup> *Id.*

<sup>83</sup> Minerallag at §4

<sup>84</sup> *Id.* at ¶2

<sup>85</sup> *Id.* at ¶1

<sup>86</sup> Timo Koivurova, Vladimir Maslobev, Kamrul Hossain, Vigids Nygaard, Anna Pertrétei, Svetlana Vinogradova, *Legal Protection of Sami Traditional Livelihoods from the Adverse Impacts of Mining: A Comparison of the Level of Protection Enjoyed by Sami in Their Four Home States*, 6 ARCTIC R. ON L. AND POLT. 31 (2015)

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

### 3. Conclusion

Overall, Sweden's actions indicate a breach of international law. Sweden is breaching its obligations under customary international law. It is also breaching its treaty obligations under the Nordic Saami Convention. These actions taken are both international and domestic.

Internationally, Sweden is taking the necessary steps to create codified binding obligations of the customary international law principles it claims to subscribe to. Domestically, Sweden is preventing Sámi exercise of rights in clear violation.

### IV. THE REMEDY

In 2015, the Special Rapporteur on the Right of the Indigenous Peoples published a report concerning the human rights situation of the Sami people in the Sápmi region of Norway, Sweden, and Finland. As part of her report on the situation, she recommended that Sweden reform its Sami Parliament. She suggested the new Parliament have "greater independence from State institutions and authorities"<sup>89</sup> She also recommended that Sweden enact legislation to "revisit the high burden of proof to establish traditional Sami rights to land" and revise the current Mineral Acts to ensure compliance with international human rights"<sup>90</sup>.

This paper recommends some things similar in terms of domestic measures. However, it goes a step further by suggesting international actions for Sweden to take. It should sign and accede to the ILO C169. Sweden should also expedite the process of ratifying the Nordic Sami Convention. As a result, Sweden would have obligations codified in a binding document that currently exists in a non-binding resolution and in treaty signatory obligations.

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<sup>89</sup> Special Rapporteur on the rights of indigenous peoples, *Rep on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland.*, U.N. Doc. A/HRC/33/42/Add.3 (Aug 9, 2016)

<sup>90</sup> *Id.*

This section begins by arguing for three domestic measures and two international measure. Domestically, this section argues that Sweden needs to strength the independence of the Sámi Parliament. It also argues for a provision in the Mineral Act, that would codify and create legal obligations for mining companies to consult with the Sámi. The final domestic measure argued for a change to the traditional land status legal burden.

On the international stage, this section argues that Sweden should become a party to the ILO Convention 169 and expedite the process for ratification of the Nordic Sami Convention. It argues for international action because it creates accountability for Sweden beyond domestic courts. It argues this is a necessity because domestic courts may have implicit bias that international courts may not have. The section further shows that it is important for Sweden to become a party to both conventions because one covers indigenous rights as a whole and the other specifically covers Sámi rights. Both create binding obligations on Sweden concerning their treatment of the Sámi's economic development prong of self-determination, and its resulting extension to land rights.

### **1. Domestic Measures**

As described by the Special Rapporteur, Sweden must do three things domestically to comply with international human rights law:

- (1) Strengthening Sami Parliamentary independence by removing its dependence on a government grant of a budget.
- (2) Add provisions to the Mineral Act to provide legal obligations for the duty to consult
- (3) Pass a new piece of legislation or through legal jurisprudence, reduce the burden of proof for Sámi's attempt to prove claims to traditional lands.

If Sweden were to take these steps, it would begin a process domestically of increasing recognition for the Sámi rights. It is also possible that a beginning on a domestic sphere would pressure Sweden to take action on an international stage.

The first measure Sweden should take is to strengthen the Sámi Parliament's Independence. Although the Sámi have an independent Parliament; it is a weak body. It is more like a governmental agency, than an actually representative body<sup>91</sup>. Part of the reason for this is the lack of independence the Sami Parliament has over its budget and ability to contribute to budget discussions about things effecting the Sámi population. A first step towards giving this independence to the Sámi Parliament and the Sámi by extension is to grant them their own independent budget. This grant would also include the ability to make decisions concerning financial matters affecting the Sámi populations.

By granting the Sámi Parliament financial independence, it would remove them from the interference of the Swedish government. It would also prevent them from being undermined by the politics of the Swedish government. The Swedish government does not always have the best interest of the Sámi, at its heart.

The second measure Sweden should take is to revise the Mineral Acts to add a provision explicitly protecting Sámi rights. This provision would contain language explicitly reading that mining companies would need to consult with and obtain the consent of the Sámi population when on Sámi lands, before receiving an exploration permit. It would also provide measures for the Sámi to access the legal system including financial resources if violations occur.

By having an explicit provision like this, mining companies could no longer get away with only providing notice to the Sámi. Instead, there would be explicit legal obligations to consult and obtain consent and legal consequences if violations occur. Also, the "duty to consent" doctrine would exist in Swedish domestic law. In other words, Swedish domestic law would have language codifying legal requirements on mining companies concerning Sámi rights.

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<sup>91</sup> Stępień, Petrétei, Koivurova *supra* at 130

A final measure for Sweden to take is to pass new legislation or establish new legal jurisprudence around a different traditional land status standard. It should also increase financial resources provided for these claims. Perhaps Sweden could implement a rule where to prove traditional ownership, they wouldn't have to look as far back or look at population numbers. In other words, Sweden needs to establish a standard that is feasible for the Sámi to prove their claims. Sweden also needs to create access for the Sámi to financial resources that would allow them actually to bring claims to court. Often the Sámi do not bring these types of claims because they lack the financial resources to be able to bring such claims.

The creation of a new standard can be accomplished either through changed legal jurisprudence or passing new legislation expressly addressing this issue. It would be better to codify this standard in a piece of legislation explicitly. However, judicial decisions reflecting the change would also be okay. By creating a new standard, Sweden indicates its willingness to accept the notion of a Sámi claim to the land. It allows for Sámi to gain actual access to the courts. It also indicates a shift in the way Sweden would view Sámi's right to development.

## **2. Signing and Ascend to the International Labour Organization's Indigenous and Tribal People's Convention (ILO C169)**

However, domestic measures are not enough. If Sweden were only to take domestic measures, it would mean that the Sámi would not have international means of protecting their rights. In other words, if Sweden were to derogate from these domestic measures, there would be very few measures to hold Sweden accountable. The Sámi would have to use domestic courts, which could be problematic due to the possible implicit bias against the Sámi in Swedish courts. Instead, Sweden needs to take steps to make itself accountable on the international stage and to become compliant with international human rights law. Currently, Sweden subscribes to the

UNDRIP, an non-binding resolution. That is why Sweden needs to sign and ascend to the ILO C169.

The ILO C169 is a convention adopted in June of 1989. It protects indigenous peoples and their rights. Currently, it only has 23 signatures, of which only one is a Sámi home country (Norway). The convention's purpose among is to “recognis[e] the aspirations of [indigenous] people to exercise control over their institutions, way of life and economic development”<sup>92</sup>.

It consists of 10 Parts;

Part I. General Policy: Art. 1 - Art. 12

Part II. Land: Art.13 - Art. 19

Part III. Recruitment and Conditions of Employment: Art. 20

Part IV. Vocational Training, Handicrafts, and Rural Industries: Art. 21 – 23

Part V. Social Security and Health: Art. 24-25

Part VI. Education and Means of Communication: Art. 26 – Art. 31

Part VII. Contacts and Co-operation: Art. 32

Part VIII. Administration: Art. 33

Part IX. General Provisions: Art. 34 – 35

Part X. Final Provisions – Art. 36 – 44<sup>93</sup>

The relevant part is Part II. Specifically, the related articles are Art. 12, 14, and 15. Art. 12 requires legal safeguards for indigenous peoples "against the abuse of their rights' and allows them the "right take legal proceedings . . . for the effective protection of these rights"<sup>94</sup>.

Art. 14 protects “the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy”<sup>95</sup>. It includes recognition rights and obligations for the government to take “steps as necessary to identify the lands which the peoples concerned traditionally occupy and to guarantee effective protection” of these rights<sup>96</sup>. These obligations

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<sup>92</sup>Indigenous and Tribal Peoples Convention 169, ¶6, June 26, 1989 1650 U.N.T.S.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at art. 12

<sup>95</sup> *Id.* at art. 14 ¶1

<sup>96</sup> *Id.* at art. 14 ¶2

include establishing “adequate procedures . . . within the national legal system to resolve land claims by the peoples concerned”<sup>97</sup>.

Art. 15 reads similar to Art. 14.. However, it explicitly references "the rights of people concerned to the natural pertaining to their lands"<sup>98</sup>. Like Art. 14, it requires special safeguards for these rights<sup>99</sup>. These safeguards are even more critical in countries where the “State retains the ownership of mineral or sub-surface resources rights”<sup>100</sup>. In such cases, “governments shall establish or maintain procedures through which they shall consult these peoples”<sup>101</sup>.

The ILO C169 is a vital convention that has very little support behind it. Therefore, if Sweden were to accede to it, it would strengthen its legitimatization. More importantly, it would place Sweden under binding obligation that under the principle of "pacta sunt servanda” they would have to perform it in good faith<sup>102</sup>. This obligation means that Sweden would have to change its current policy since, current policy violates provisions of the ILO C169 and internal law is not an excuse to violate international law obligations<sup>103</sup>.

It means that the Sámi would have a binding legal document protecting their rights. Currently, the Sámi do not have such a document. Instead, they rely upon the UNDRIP, which is non-binding or upon weak treaty signature obligations. Or they rely on Swedish legislation, which is not favorable towards the Sámi or their claims. A document like the ILO C169, would also strengthens Sámi's claim to self-determination and their right to development.

### **3. Expediting The Nordic Sami Convention**

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<sup>97</sup> *Id.* at art. 14 ¶3

<sup>98</sup> *Id.* at art. 15 ¶1

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at art. 15 ¶2

<sup>101</sup> *Id.*

<sup>102</sup> VCCT at art. 26

<sup>103</sup> VCCT at. art 27

Even if Sweden does ascend to ILO C169, it must expedite the process to ratify the Nordic Sami Convention. Throughout history “the Saami have not been treated as a people of equal value and have thus been subjected to injustice”<sup>104</sup>. As a remedy, the Nordic Sami Convention seeks to grant the Sami the equal status denied to them. This status includes expanding cultural rights, civil rights, linguistic rights, and, most importantly, for this paper, land and developmental rights.

The Nordic Sami Convention was the “work of an Expert Committee . . . [where] the Saami representation was intensive ”<sup>105</sup>. The process began with the idea of a Saami Convention in 1995<sup>106</sup>. This idea led to the creation of a working group established in 1996<sup>107</sup>. This group contained representatives from three Nordic states and each of the three Sámi parliaments<sup>108</sup>. It completed its work in 1998<sup>109</sup>. This group led to an Expert Committee formed in 2000<sup>110</sup>. It was signed on January 13 of 2017 by all three countries<sup>111</sup>. However, since the creation of the draft convention, the process of ratification has only begun.

Organizational wise, the Nordic Sami Convention is organized in the following manner;

- a) Preface
- b) Chapter 1: The general rights of the Saami people: Art. 1 – Art.13
- c) Chapter II: Saami governance: Art. 14 – Art. 22
- d) Chapter III: Sami language and culture: Art. 23 – Art. 33
- e) Chapter IV: Saami's right to land and water: Art. 34 – Art. 40
- f) Chapter V: Saami livelihoods: Art. 41 – Art. 43
- g) Chapter VI: Implementation and development of the Convention: Art. 44 – Art. 47
- h) Chapter VII: Final provisions: Art. 48 – Art. 51

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<sup>104</sup> Koivurova, *supra* at 135

<sup>105</sup> *Id.* at 106 – 107 (describing the Nordic Saami Convention drafting process)

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Atle Staalesan, *Historic Sámi agreement starts long way towards ratification*, THE BARENTS OBSERVER (Jan. 16, 2017) <https://thebarentsobserver.com/en/2017/01/historic-sami-agreement-starts-long-way-towards-ratification>.

The two chapters this paper focuses on are Chapter I and Chapter II. Specifically, this paper focuses on Art. 3, 34, and 35. Art. 3 states that

as a people, the Saami has the right of self-determination in accordance with the rules and provisions of international law and of this Convention. In so far as it follows from these rules and regulations, the Saami people have the right to determine its own economic, social and cultural development and to dispose of, to their own benefit, over its own natural resources<sup>112</sup>.

Art. 34 describes the traditional use of land and water for the Saami. It reads

[p]roacted traditional use of land of the land areas constitutes for the basis for individual or collective ownership rights to these areas for the Saami in accordance with national or international norms concerning protected usage.

If the Saami, without being deemed to be the owners, occupy, and have traditionally used certain land or waters areas for reindeer husbandry, hunting, fishing or in other ways, they shall have the right to continue and occupy and use these areas to the same extent as before. . .

The provisions of this article shall not be construed as to imply any limitation in the right to restitution of property that the Saami might have under national or international law<sup>113</sup>.

Finally, Art. 35 describes the protections awarded to the Saami traditional lands and water. It reads

The states shall take adequate measures for effective protection of Saami rights pursuant to article 34. To that end, the states shall particularly identify the land and water areas that the Saami traditionally use.

Appropriate procedures for examination of questions concerning Saami rights to land and water shall be available under national law. In particular, the Saami shall have access to such financial support that is necessary for them to be able to have their rights land and water tried through legal proceedings<sup>114</sup>.

All three of these articles expand the reach of protections for the Saami beyond what the ILO C169 grants. They would allow the Saami protection from the policies impairing their traditional access to their natural resources. It is more explicit than ILO C169 when it speaks of the protections that Saami should receive concerning their traditional land. The convention also

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<sup>112</sup> Nordic Saami Draft Convention (text in English), art. 3

<sup>113</sup> *Id.* at art. 34

<sup>114</sup> *Id.* at art. 35

gives more specific protective procedures than the ILO C169. Most importantly, it provides explicitly that the Saami should have a voice concerning Saami's rights to land. It also defines the type of traditional land standards that courts should use.

By signing on to this convention Sweden has obligations to fulfill the purpose of the treaty. However, the duties Sweden has as signatory are different from what their ratification obligations are. As a signatory, Sweden only has obligations not to conduct actions that do not defeat the object and purpose of the treaty<sup>115</sup>. However what the object and purpose of a treaty is up for the signatory to decide and what breaches it. However, as a party, Sweden would not be able to wiggle out of its obligations as easily. Practically, it means that Sweden would have to expedite the domestic measures described above. This expedition is important because internal law cannot contradict international law and can be an excuse not to comply with international law<sup>116</sup>.

#### 4. Conclusion

All these measures would provide a means for the Sámi to have access to their internal self-determination land rights. Not only that but through the same means the Sámi can hold Sweden accountable. Therefore, it is important for Sweden to implement all these measures. It provides a signal both to the Sámi and the rest of the world. It signals to the Sámi a new era of protection and to the world a new era for indigenous rights.

### V. CONCLUSION

#### 1. **Effect on Sweden**

Currently, Sweden's actions are violative of many developing human rights norms, primarily the right to land and the right to development. Part of the reason Sweden continues to

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<sup>115</sup> VCCT at art. 18

<sup>116</sup> VCCT at art. 27

act like this is the lack of accountability. As it stands, Sweden has very few binding obligations to respect the Sámi claims upon their traditional lands. Sweden only has to recognize the notion in customary international law that indigenous peoples have rights to self-determination and the obligations placed upon as a signatory to the Nordic Sami Convention.

These obligations mean that Sweden had discretion in its implementation of the right to land. They can give the pretext that they are fluffing their current commitments. They claim that they respect the "duty to consult" and allow the Sámi access to courts. However, the "duty to consult" is not enforceable upon companies and is easy to circumvent. Also, the courts place high burdens on the Sámi and often fail to provide the Sámi with the financial resources necessary to be able to defend their claims, create barriers to court access.

However, if Sweden were to take the actions recommended in this paper, then the Sámi would have more protections. Firstly, the domestic measures recommended would allow the Sámi more protection over their land rights, especially in the context of mining. Secondly, by creating or changing current legislation concerning the standard of proofs and financial resources, it gives Sámi's real access to the courts,. But it is not enough for Sweden to take domestic actions. Instead, the country must be accountable on an international stage as well to prevent derogation from human rights norm.

This need for accountability is the reason Sweden must sign and ascend to the ILO C169 and expedite the process of ratification for the Nordic Sami Convention. Accessing to the ILO C169 is a good step first for Sweden. It provides basic protections for indigenous populations. However, it doesn't cover everything or creates strong enough protections. It is therefore essential for Sweden to expedite the process of ratification for the Nordic Saami Convention. The Nordic Saami Convention is a more robust treaty and provides for more explicit protection

for the Saami. However, it is crucial for both agreements to be binding upon Sweden, since Sweden's presence as a party on each would legitimize both.

## **2. Effect on the World**

What the situation of the Sami in Sweden indicates about the world that indigenous peoples can gain developmental rights. If Sweden follows these recommendations, it will grant a precedent that other countries could follow. This precedent is especially true of other Nordic countries. It often happens when one Nordic country does something, another usually follows. Norway has already ratified the ILO 169, and Finland is in the process of signing on and joining the ILO 169. Both also are signatories to the Nordic Sami Convention, but none of the three countries have ratified. Sweden's actions would prompt change.

In a global context, Sweden's actions could set a precedent for other countries with indigenous populations. However, the Sámi case could be distinguishable due to their status as a population that live beyond territorial borders. Either way, the importance of what happens to the Sámi is telling for what might happen to other indigenous communities. Hopefully, the world will see the strides the Sámi are making in gaining their rights to the development and recognition of their traditional lands and grant them to others.