

**SWEDEN'S COMPLIANCE
WITH THE FRAMEWORK
CONVENTION FOR THE
PROTECTION OF NATIONAL
MINORITIES (THE SÁMI
PEOPLE AND NON-CITIZEN
ROMA)**

SUBMISSION FOR THE COUNCIL OF EUROPE'S

5TH CYCLE REVIEW OF SWEDEN

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CIVIL RIGHTS DEFENDERS

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INTRODUCTION

1. The following report is submitted by Civil Rights Defenders, a Sweden-based international human rights organisation. In addition, three Sámi experts have contributed with their accounts on influence and overall rights protection in the context of mining, forestry and wind power. The purpose of the report is to provide the Advisory Committee in the Council of Europe (the Committee) with input in relation to Sweden's compliance with the Framework Convention for the Protection of National Minorities (the Framework Convention), for the Committee's fifth review of Sweden in 2023.
2. Our input focuses on the two issues requiring immediate action that the Council of Europe mentioned in its fourth review of Sweden; recommendation 1 on the strengthening of implementation of the Minority Act and recommendation 2 on Sámi influence. Thematically, our part on recommendation 1, namely on the strengthening of implementation of the Minority Act is limited to issues connecting to the Sámi People and accessing rights in the Minority Act (part 1) and the inclusion of Roma without Swedish citizenship in minority rights protection (part 2).
3. In September 2022, the far-right party with Neo-Nazi roots, the Sweden Democrats, became the second biggest party following the general elections in Sweden. In October, the Sweden Democrats entered an agreement with the new Government parties giving it equal influence over key policy areas of the Government without formally being part of the Government.¹ The so called Tidö agreement includes common political proposals that may result in legal amendments, which Civil Rights Defenders has analysed and reviewed in part.² The overall language and many proposals, especially within the policy field of crime and migration, target the rights, freedoms and dignity of minorities, notably citizens and non-citizens with a migration background. Migration is equated with crime and persons with a migration background are scapegoated for societal problems that exist in Sweden. Many proposals would, if implemented, have a severe impact on the rule of law and fundamental rights, in particular for people of colour and for non-citizens. The agreement demonstrates that the global trend of democratic dismantlement has come to Sweden.
4. In the Tidö agreement there is little mention of Sweden's national minority politics. However, there is one proposal that includes a review of the teaching of first language in Sweden, with the aim of eliminating obstacles to integration or learning of the Swedish language. It is added that in this context the special legal status of national minority languages will be considered.³ What this will mean in practice is uncertain. In addition, in November this year the far-right party submitted a party proposal (in Swedish: motion) to the Parliament proposing amendments to the Instrument of Government (part of the constitution).⁴ The proposed amendments would, if implemented, take away the referral to the indigenous Sámi as a People and the positive obligation for the state to promote the Sámi People and ethnic, language and

¹ The so called Tidö Agreement is available in Swedish at: <https://www.liberalerna.se/wp-content/uploads/tidoavtalet-overenskommelse-for-sverige-slutlig.pdf>.

² See <https://crd.org/2022/10/24/our-review-of-the-tido-agreement-tidoavtalet/>

³ Tidö Agreement, p. 54.

⁴ Available at: https://riksdagen.se/sv/dokument-lagar/dokument/motion/grundlag_HA021001

religious minorities to be able to maintain and develop their own culture and community life (Chapter 1 Section 2 Para. 6). It is not clear how the Government parties view the proposed amendments or if there is enough support in the Parliament to pass this proposal.⁵ Having regard to this proposal demonstrating a long term agenda of the far-right party, and the many repressive proposals in the Government's Tidö agreement that target people other than those who belong to the white Swedish majority population, there are reasons to be concerned about the political development with regard to Sweden's treatment of the indigenous Sámi People and national minorities.

⁵ The Parliament will review this proposal the upcoming spring 2023.

ISSUES FOR IMMEDIATE ACTION

RECOMMENDATION 1: STRENGTHENING THE IMPLEMENTATION

5. *In this section*, we would like to provide input in two parts. Part 1 covers issues connecting to the Sámi People and accessing rights in the Minority Act. Part 2 deals with the inclusion of Roma without Swedish citizenship in minority rights protection.

Part 1 – The Sámi People and accessing rights in the Minority Act

6. In its fourth report, the Council of Europe recommended Sweden strengthen the implementation of the Act on National Minorities and Minority Languages at local level; amend the legislation where it provides for too wide a margin of appreciation; and introduce an effective remedy in case of non-compliance with the Act.
7. Since 2017, Civil Rights Defenders has worked together with an expert group of Sámi activists and representatives of Sámi organizations to strengthen the protection of indigenous rights on the Swedish side of Sápmi/Sábme/Sábmie/Saepmie. In our legal work we have come across a wide range of individual decisions and judgments that either independently or cumulatively have a significant impact on Sámi traditional lands, hence on indigenous culture and livelihoods. We also support Sámi reindeer herding communities and other Sámi communities in administrative and legal processes.
8. Unfortunately, our general experience is that the rights set out in the Act (2009:724) on National Minorities and Minority Languages (the Minority Act), notably Sections 3-5 that constitute the core protection for Sámi indigenous culture, have a very limited effect for the Sámi enjoyment of their rights in practice.
9. Article 5.1 of the Framework Convention is reflected in Chapter 1 Section 2 Paragraph 6 of the Instrument of Government (one of Sweden's four constitutions) and Section 4 of the Minority Act. It prescribes that the states must promote the conditions necessary for the minorities to be able to maintain and develop their culture and preserve the essential components of their identity, namely religion, language, traditions and cultural heritage.
10. The latest report by the Sámi Parliament and the County Administrative Board in Stockholm on developments on minority policy (2021) confirms that the level of knowledge in municipalities and regions about the rights of the Sámi People and national minorities is low. In addition, the report highlights that there is a lack of awareness of discrimination against the Sámi People and national minorities, and, further, a lack of resources to carry out activities to raise knowledge.⁶

⁶ The Sami Parliament and the County Administrative Board in Stockholm, *Nationella minoriteter och minoritetsspråk: Minoritetspolitikens utveckling år 2021*, Report 2022:11, p. 13. Available in Swedish at: <https://www.minoritet.se/7390>.

11. To our knowledge, there has been little application of the Minority Act by authorities and courts to individual cases.⁷ Furthermore, there is no formal follow-up conducted by authorities on the application of the Minority Act in individual cases, which has a particularly severe impact on the protection for Sámi culture in relation to land use projects such as mining, forestry and wind power projects. A few years ago, a government inquiry (SOU 2020:27) was conducted with the purpose of making follow-up of minority politics more efficient. The inquiry didn't result in legislation. However, the inquiry itself had several flaws that we think demonstrate issues that are structural within Sweden's minority politics more widely.⁸
12. First of all, generally, there is little demonstration of which parts of the culture and identity of the indigenous Sámi People (or other national minorities) that the Sámi consider important to maintain and develop. Instead the Government is almost solely focusing on language. This makes it difficult for the authorities to understand how to fulfill their obligations to promote the opportunities of the indigenous Sámi People to maintain and develop their culture in accordance with Section 4 of the Minority Act. If Sámi control over their traditional lands is not protected the Sámi culture will have difficulties surviving despite efforts from the state to support learning in Sámi languages.
13. In addition, a fundamental flaw is that, generally, the concept of culture is treated equally for the indigenous Sámi People and all national minorities. Since Sámi culture is many times intimately connected with traditional lands and land use, it is necessary that the authorities that make decisions on exploitation of traditional Sámi lands apply Sections 3-5 of the Minority Act before making such decisions. Important authorities in this regard include the Mining Inspectorate, the Swedish Forest Agency, the county administrative boards in Norrbotten, Västerbotten and Jämtland, the Swedish Energy Agency and the Swedish Environmental Protection Agency, etc. The Sámi Parliament has expressed that it would like certain government authorities to report on how they follow the Minority Act's obligation to promote Sámi land use and give Sámi influence in the authorities' activities.⁹
14. The minority politics of the Government must reflect Sweden's commitment to the Sámi as an Indigenous People. The status as a national minority has no connection to Sámi self-identification, according to the Sámi Parliament.¹⁰ In its judgment in the *Girjas* case (NJA 2020 p. 3), the Swedish Supreme Court reiterated the obligation to interpret and apply Swedish law in accordance with international obligations (paras. 93-94). In connection with this, the Supreme Court has referred to articles in the UN Declaration on Indigenous Rights and the ILO Convention 169 which constitute for Sweden binding principles of international law. Therefore, as clarified by the Supreme

⁷ So far, Civil Rights Defenders has encountered two individual cases in which the Minority Act has been applied. Both concerned the Swedish Finns, see e.g. Kammarrätten i Göteborg (Gothenburg administrative court of appeals) case number 3936-21. The Government might provide the Council of Europe with a full picture. It is worth noting that even in *Girjasfallet* (the *Girjas* Case), NJA 2020 s. 3, the Swedish Supreme Court, while making extensive references to Sweden's international obligations on indigenous rights, did not refer to the Swedish Minority Act when discussing the Framework Convention's relation to Swedish law (see paras. 93-94).

⁸ See consultation response by Civil Rights Defenders and legal expert Marie B Hagsgård, available in Swedish at: <https://crd.org/sv/2020/10/01/yttrande-over-betankandet-hogre-vaxel-i-minoritetspolitiken-starkt-samordning-och-uppfoljning-sou-202027/>.

⁹ The Sami Parliament and the County Administrative Board in Stockholm, *Nationella minoriteter och minoritetsspråk: Minoritetspolitikens utveckling år 2021*, Report 2022:11, p. 50.

¹⁰ See <https://www.sametinget.se/urfolk>.

Court, the articles must be given importance in the interpretation of national legislation (see paras. 93, 130-132, 162-163).

15. There are no sanctions connected to a failure of authorities or courts to apply the Minority Act. In addition, there are no legal remedies that provide reparation for individuals that are prevented from accessing their rights due to issues with implementation.
16. Furthermore, more resources are needed for the Sámi Parliament to conduct a more thorough follow-up of the implementation of the Minority Act.

Recommendations:

- Prioritise resources for municipalities, regions, state authorities and courts to educate on indigenous rights of the Sámi People, minority rights and the Minority Act, and corresponding state obligations to fulfil these rights.
- Apply the core protection for Sámi culture, in Sections 3-5 of the Minority Act, in individual cases before authorities and courts, such as, the Mining Inspectorate, the Swedish Forest Agency, the county administrative boards in Norrbotten, Västerbotten and Jämtland, the Swedish Energy Agency and the Swedish Environmental Protection Agency.
- Ensure that Sámi can maintain and develop their culture according to Sweden's international obligations. Provide an inclusive approach to all Sámi's right to culture.
- Give the Sámi Parliament (or another representative that the Sámi People nominates) the responsibility to follow-up on the application of the Minority Act in individual cases that affect Sámi culture such as Sámi land use.
- Oblige selected government authorities to report on how they follow the Minority Act's obligation to promote Sámi land use and give Sámi influence in the authorities' activities.
- Ensure there are sufficient resources to conduct adequate follow-up of the implementation of the Minority Act, including in individual cases.

Part 2 – The inclusion of Roma without Swedish citizenship in minority rights protection

17. Roma constitutes one of the five national minorities in Sweden. The Swedish Government has a strategy for Roma inclusion (Comm. 2011/12:56) for the period 2012-2032, which has the goal that a Roma person born in 2012 will, by 2032, enjoy the same opportunities as a non-Roma person.¹¹ Work based on the strategy aims to ensure that the Roma have their rights respected. The strategy furthermore states that it seeks to guarantee a better adherence to the Framework Convention.¹²
18. In its fourth opinion on Sweden, the Advisory Committee takes note that the Swedish authorities do not include the approximately 4000 Roma from other European Union countries currently staying in Sweden in the protection offered by the Framework Convention.
19. The Advisory Committee then recalls that it has consistently encouraged an inclusive approach towards persons belonging to groups – especially vulnerable groups – on an article-by-article basis.¹³
20. The Minority Act defines national minorities in accordance with Sweden's undertakings under the Framework Convention.¹⁴ Accordingly, Roma from other European Union countries staying in Sweden should also be included in the protection offered by the Swedish legislation, in conjunction with the Framework Convention.
21. Despite this, the Swedish state's fifth report to the Council of Europe under the Framework Convention fails to mention Roma from other EU countries currently staying in Sweden.
22. Over the past decade, official Swedish documents have used the term "vulnerable EU citizens" to address the EU citizens who travel across EU countries for shorter periods of time, to make their living through begging.¹⁵ A majority of these belong to the Roma minority from Romania and Bulgaria, with about 4000 of them present in Sweden.¹⁶
23. A big concern for vulnerable Roma EU citizens who travel to Sweden from countries such as Bulgaria and Romania is how they can make their living. Many live in destitute in Sweden and support themselves through begging. Homelessness is widespread amongst individuals belonging to the group, and many have previously resided in temporary settlements on the outskirts of Swedish cities. Many municipalities have refused to provide these settlements with water and sanitation facilities, giving rise to unsanitary living conditions. The Swedish authorities have made efforts to evict Roma EU-citizens routinely and force them from their temporary

¹¹ Available in Swedish at: [Regeringens skrivelse 2011/12:56 En samordnad och långsiktig strategi för romsk inkludering.](#)

¹² *Ibid.*, p. 5.

¹³ ACFC, Thematic Commentary No. 4 on The Scope of Application of the Framework Convention for the Protection of National Minorities, May 2016, para. 46.

¹⁴ See the Act in its entirety at [6714 \(minoritet.se\)](#).

¹⁵ See e.g. SOU 2016:6 *Framtid sökes – Slutredovisning från den nationella samordnaren för utsatta EU-medborgare*, available in Swedish at: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2016/02/sou-20166/>.

¹⁶ *Ibid.*

settlements. No alternative housing is offered to those evicted. The evictions have been criticized by the former UN Special Rapporteur on minority issues.¹⁷

24. Furthermore, Article 6 of the Framework Convention states that the Parties are to undertake appropriate measure to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.
25. The Advisory Committee has called on the Swedish authorities to ensure that the measures foreseen concerning hate crime are effectively implemented to guarantee that hate crime against persons belonging to national minorities is more efficiently recorded and investigated by the police, and the alleged culprits duly prosecuted.
26. A serious concern is the increased likelihood for discrimination and hate crimes against vulnerable EU citizens belonging to the Roma. Their socially disadvantaged situation and the harassments they experience from responsible authorities make it more likely that such crimes remain unreported.
27. Although individuals belonging to the group have proven to be especially vulnerable to hate crimes, the authorities have made little to no efforts to protect them from such attacks.¹⁸
28. In 2019, Civil Rights Defenders, together with a grassroots organization, published a report, addressing hate crime against migrant EU citizens of Roma ethnicity who make a living through begging.¹⁹ The report includes interviews with migrant EU citizens of Roma ethnicity. The results confirm previous research and demonstrate that the broader group suffer an extensive and systematic exposure to hate crime, with self-identified Roma respondents being more likely to experience hate crime.
29. In the same report, Civil Rights Defenders recommended Swedish authorities to begin to work actively to ensure the basic human rights of this group. Furthermore, the hate crime legislation needs to be revised to also take into consideration the states of homelessness and poverty, in combination with ethnicity. This has not resulted in actions from the state.
30. Continuing, according to Article 12 of the Framework Convention, the Parties shall undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

¹⁷ Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth period report of Sweden*, 14 July 2016, E/C.12/SWE/CO/6, pp. 39-40.

¹⁸ Polismyndigheten (The Police Authority), *Nationell lägesbild – Brottslighet med koppling tilltiggeri och ut-satta EU-medborgare i Sverige*, 2015, available at: <https://www.svtstatic.se/image-cms/svtse/1475679820/svts/article10544306.svt/BINARY/Polisrapport%20om%20m%C3%A4nniskohandel%20inom%20tiggeri.pdf>; Kommissionen mot Antiziganism (The Commission Against Antiziganism), *Studie om hatbrott och andra allvarliga kränkningar riktade mot utsatta romska EU-medborgare*, October 2015, available at: [http://motantiziganism.se/wp-content/uploads/2016/01/Tiberiu-Lacatus-Studie-om-hatbrott-och-andra-allvarliga-kränkningar-riktade-mot-utsatta-romska-EU-medborgare.pdf](http://motantiziganism.se/wp-content/uploads/2016/01/Tiberiu-Lacatus-Studie-om-hatbrott-och-andra-allvarliga-krankningar-riktade-mot-utsatta-romska-EU-medborgare.pdf).

¹⁹ Civil Rights Defenders and Skåne Stadsmission, *Gypsy, go home! Hate crime against Roma EU-migrants who make a living on the streets of Malmö, Sweden. An intermediary report*, available at: <https://crd.org/wp-content/uploads/2019/06/Report-Gypsy-Go-home-ENGLISH-FINAL-to-be-published.pdf>

31. However, the right of vulnerable Roma EU citizens to access education in Sweden is interpreted as unclear. Providing education falls within the responsibility of municipalities but is regarded as obligatory and not mandatory.²⁰
32. Thus, citizens of other EU countries of Roma origin have limited access to education, subject to geographical discrepancies.
33. In most Swedish municipalities, based on national guidelines, authorities have determined that Roma EU citizens staying in Sweden have no right to social services such as housing, health care or education. Though there are some examples of more inclusive policies, there is no common understanding of what services this group is entitled to and what corresponding obligations fall on the state.

Recommendations:

- Pursue an inclusive approach based on dialogue and respect for the right to self-identification as guaranteed by Article 3 of the Framework Convention, thereby including Roma from other European Union member states present in Sweden in the protection offered by the Framework Convention.
- National strategies for Roma integration should thus include both Roma who are nationals and Roma who are citizens of other EU member states and are present in Sweden.
- Ensure equal access for all Roma communities, including vulnerable EU citizens, in Sweden to education as well as protection against hate crime, in accordance with what the Framework Convention stipulates.
- Ensure that the police and other officials secure the rights of vulnerable EU citizens of Roma origin as victims of crime by using early warning mechanisms and other effective tools for crime prevention.

²⁰ Sweden's Municipalities and Regions, *Några juridiska frågor gällande utsatta EU-medborgare*, February 2022, available at: https://skr.se/download/18_38ab605517e9606b1b68ffd1/1644218756464/N%C3%A5gra%20juridiska%20fr%C3%A5gor%20g%C3%A4llande%20utsatta%20EU-medborgare%20SLUTLIG%20ta.pdf.

RECOMMENDATION 2: SÁMI INFLUENCE

Introduction

34. In its fourth report, the Council of Europe has recommended Sweden to increase and formalise opportunities for the Sámi to participate in a meaningful and effective way in decision-making processes affecting them at municipal, county and national levels and ensure that the Sámi can maintain and develop their culture whenever decisions are taken that affect areas inhabited traditionally by them.
35. In its report to the Council of Europe, the Government of Sweden mainly refers to a law on formalised consultation procedures for the Sámi People, which, at the time of the Government's report (June 2021), had not yet passed the Swedish Parliament.
36. The latest report by the Sámi Parliament and the County Administrative Board in Stockholm on developments on minority policy (2021) states that municipalities and regions at different *policy* levels provide influence through structured dialogue for all national minorities and the Sámi People.²¹ However, the report does not explain *how* views by the Sámi were considered by politicians and other duty bearers at municipal or regional level, for instance by giving examples. Furthermore, at the national level, the Sámi Parliament (or other representatives that the Sámi People choose) have no right to concretely influence policy decisions, and it is not represented in the Swedish Parliament. As mentioned above, there has been a limited application by Section 5 Minority Act (Article 15 of the Framework Convention) in individual Sámi cases by authorities and courts.²²
37. *In this section*, we will comment and make recommendations regarding the law on a formalised consultation procedure that has now entered into effect. We will also share comments and recommendations about Sámi influence in relation to mining, forestry, wind power and other decisions that affect areas inhabited traditionally by the Sámi People. In connection with this, three accounts from Sámi experts will be shared.

Law on a formalised consultation procedure

38. Since the latest recommendations given to Sweden by the Committee in 2018, Sweden has passed a new law on consultation²³ with the aim to promote the Sámi people's influence over their affairs in matters that may have special significance for the Sámi. The law prescribes that the Government and state administrative authorities have an obligation to consult with Sámi representatives in these matters. There are no rules in the new law that specify which matters are considered of special significance. Instead, here are examples given in the law's bill. The examples in the

²¹ The Sami Parliament and the County Administrative Board in Stockholm, *Nationella minoriteter och minoritetsspråk: Minoritetspolitikens utveckling år 2021*, pp. 14–17.

²² See Larsen, R. K. and Raitio, K. *Implementing the State Duty to Consult in Land and Resource Decisions: Perspectives from Sami Communities and Swedish State Officials*. Arctic Review on Law and Politics, Vol. 10, 2019, pp. 4–23, available at: <https://dx.doi.org/10.23865/arctic.v10.1323>.

²³ Lag (2022:66) om konsultation i frågor som rör det samiska folket, available at: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-202266-om-konsultation-i-fragor-som-ror_sfs-2022-66. All references to paragraphs in this section refers to this law.

bill concern matters that may have a direct impact on the Sámi's languages, culture, industries, or status as an Indigenous People.

39. Civil Rights Defenders welcomes the Swedish Government's efforts to strengthen the protection for Sámi's participatory rights. The new law is a step in the right direction towards respecting Sámi rights that have been systematically violated for centuries, and to enhance the Sámi Peoples' influence on decisions that affect Sámi culture, something that has been lacking especially in regard to their traditional lands.
40. However, in light of the international standard on indigenous right to influence²⁴, Civil Rights Defenders have several concerns in relation to the law and its implementation. Our understanding is there is a significant risk that our identified weaknesses will lead to the law not reaching the necessary level of meaningfulness and effectiveness, which would also undermine its said aim.
41. Civil Rights Defenders regret that references to international agreements regarding participatory rights of Indigenous Peoples, and Sweden's obligations to follow these, are not properly reflected in the law or the law's bill. Civil Rights Defenders works based on the understanding that the principle of free, prior and informed consent (FPIC) should be followed and should be the basis for all laws, policies and practices regarding the Sámi People, especially when decisions that affect their traditional lands are taken.
42. One identified flaw in the law on consultation is that pursuing an agreement or consent is not the main goal of the consultation. Comparing to the preparatory works that expressly state that the intention of a consultation process is to reach consent²⁵ The final version of the law on consultation does not have this goal, and the consultation process can be ended without reaching an agreement (see section 11 of the law on consultation). International studies support the idea that mechanisms should be in place where free, prior and informed consent is either required or at least sought as the objective of consultations.²⁶ Having regard to the generally low knowledge levels within state authorities and municipalities about Sámi rights and interests, and earlier negative experiences with consultations, there is a risk that, without the necessary safeguards, the entity liable to consult with representatives of the Sámi People will only try to reach the minimum procedural requirements and then declare that an agreement cannot be reached.
43. The extent of the Sámi peoples' influence over decisions that are subject to consultation is not clear. According to the bill, the entity liable for consultation does not have to act in accordance with the will of the consulted Sámi representatives,

²⁴ Articles 5, 18, 36 and 37 of the Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms that Indigenous Peoples have the right to effectively influence external decision-making affecting them if they choose to participate in such processes.

²⁵ See Ds. (Ministry Publications Series) 2017:43, the proposal for 6 §.

²⁶ The Expert Mechanism on the Rights of Indigenous Peoples, in its study *Free, prior and informed consent: a human rights-based approach*, voices that States should establish an appropriate mechanism to regulate consultations in situations where free, prior and informed consent is required or is sought as the objective of the consultation and should be accompanied by the development of adequate implementing institutions, employing well-trained officials and ensuring adequate funding, see A/HRC/39/62, Annex: advice No. 11 on indigenous peoples and free, prior and informed consent, point 3. The Expert Mechanism on the Rights of Indigenous Peoples also states in its *Final report of the study on indigenous peoples and the right to participate in decision-making*: "Finally, the objective of consultations should be to achieve agreement or consensus", see A/HRC/18/42, Annex, para. 9.

even in situations where the Sámi expressly oppose the decision.²⁷ However, when decision makers balance different interests in order to reach a decision, greater importance should, according to the bill, be given to the needs and wills of the Sámi if a decision has a high risk of negative impact on Sámi rights.²⁸ Provisions on the balancing of interests can, according to the law's bill, be interpreted based on the protection the Sámi people have in Swedish constitution and in international law.²⁹ According to Sweden's Supreme Court, the Sámi's interest in being able to maintain their culture, including reindeer husbandry, should be given special importance in the balancing of interests.³⁰ Today, the Sámi people have little influence over any matter affecting their culture or their lands. When the law on consultation carries no safeguards on the level of influence that Sámi representatives should have over decisions that concern them it is hard to believe that the law will actually change this reality.³¹

44. The law states that the entity liable to consult is responsible for deciding which decisions should be subject to consultations. Sámi representatives have to some extent the right to initiate consultations (section 6). However, the responsible entity has the right to dismiss their claim (sections 4–5). Effectively, there is a severe risk that situations where consultation would be important for the Sámi will be overlooked since the Swedish Government and state administrative authorities, as the Swedish society, have very limited knowledge about Sámi culture and the needs of the Sámi people. We have so far not seen any initiatives from the Government to enhance knowledge about the Sámi in relation to the new law on consultation. Therefore, we believe the capacity to be able to identify matters where consultations should be implemented is low.
45. In addition, no consequences follow if authorities or the Government have misjudged their obligation to consult or in any other way not complied with the law on consultation. Overall, there are few options for Sámi representatives to take action in order to access their rights. For instance, there is no particular right to appeal a decision on the basis of a lack of consultation. International human rights mechanisms recommend that in order to reach adequate consultation processes and guarantee Indigenous Peoples' access to justice, grievance procedures and dispute regulation mechanism with equal capacity of both sides should be put in place.³² There are however insufficient mechanisms providing for accountability or redress, such as compensation, by the law itself or the legal system in general.

²⁷ Prop. (Government bill) 2020/21:64 page 110-112

²⁸ Prop. (Government bill) 2020/21:64 page 112.

²⁹ Prop. (Government bill) 2020/21:64 page 115. This is supported by the Supreme Court's statement in *Girjasdomen* (The Girjas Case), NJA 2020 p. 3, see pages 91–95 and 130–132.

³⁰ NJA 2020 p. 3, page 92.

³¹ The Expert Mechanism on the Rights of Indigenous People has in its advice No. 2 stated that allowing Indigenous Peoples to influence the outcome of decisions that affect them is an important indicator of a good practise regarding respecting Indigenous Peoples' participatory rights, see A/HRC/18/42, Section II, p. 13 (b), and, with reference to articles 5, 18, 36 and 37 of the Declaration on the Rights of Indigenous Peoples, that Indigenous Peoples have the right to effectively influence external decision-making affecting them if they choose to participate in such processes (p.19).

³² Study of the Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach*, A/HRC/39/62, point 22. States should ensure that any consent agreements are in writing and include, inter alia, provisions on impact mitigation, compensation, and an equitable distribution of the benefits from the project; joint management arrangements; grievance procedures; and a dispute regulation mechanism with equal capacity of both sides. Access to justice for claims by Indigenous Peoples should be guaranteed.

46. A serious issue is that many Sámi representatives in different forms: local Sámi associations, reindeer herding communities, museums, and more, lack the resources to engage in administrative or legal processes even today. The lack of resources for Sámi representatives in comparison to the Government and Swedish authorities gives the State large advantages and further cements the uneven power relationship between the Sámi People and the Swedish state that has been a reality since Sweden's colonisation of Sápmi/Sábme/Sábmie/Saepmie. Although the issue of the lack of resources of Sámi representatives is mentioned in the law's bill, no additional resources have been allocated. International human rights mechanisms advise that States should mitigate power imbalances by, for example, by establishing funding for the Indigenous People to access assistance in consultation processes.³³ When first being implemented, the new law on consultation will most likely lead to a higher number of consultations for Sámi representatives. The law also stipulates that consultations should be carried out in good faith (section 7). However, the fact that the state is not providing sufficient resources for Sámi representatives to adequately take part in these consultation processes, there is an imminent risk that many consultations will not meet the good faith criteria and that Sámi representatives will have a difficulty accessing other rights based on the principle of free prior and informed consent.
47. An evaluation of the law will be carried out in a couple of years. Amongst other issues, there will be an evaluation of the law's impact on Sámi representatives, the value of the law's purpose of promoting Sámi influence, as well as the consequences of consultation processes in the form of increased costs or increased workload for the state entities affected by the law.³⁴ However, Sámi representatives will need tools and resources in order to document the consequences of the law on Sámi society, for instance in the form of increased influence, workload and expenses. As the situation is today, the Sámi society has had to organise itself to create these tools.

Recommendations:

- Ensure that the law on consultation explicitly refers and is implemented with respect to the principle of free, prior and informed consent.
- Ensure that the law on consultation is interpreted and applied in accordance with binding conventions and principles of international law, including recommendations from international human rights mechanisms such as the Expert Mechanism on the Rights of Indigenous Peoples.
- Clarify how the rights, knowledge and will of the Sámi will be considered in decisions that affect them.
- Make sure to provide an inclusive approach to all Sámi affected by a decision, which includes both reindeer herding Sámi and non-reindeer herding Sámi.

³³ Report of the Expert Mechanism on the Rights of Indigenous Peoples, *Progress report on the study on indigenous peoples and the right to participate in decision-making*, A/HRC/EMRIP/2010/2: The principle of free, prior, and informed consent can redress the power imbalance between indigenous peoples and States; Expert Mechanism advice No. 11 on Indigenous Peoples and free, prior, and informed consent, point 10. "States should ensure equality throughout the process and that the issue of the imbalance of power between the State and indigenous peoples is addressed and mitigated, for example employing independent facilitators for consultations and establishing funding mechanisms that allow indigenous peoples to have access to independent technical assistance and advice."

³⁴ Prop. (Government bill) 2020/21:64, pp. 125-126.

- Carry out information efforts in authorities and other relevant state entities to increase knowledge about Sámi culture and livelihoods.
- Introduce legal mechanisms for accountability and redress in cases of noncompliance with the law as well as Sámi rights overall.
- Provide resources to Sámi representatives in order to ensure their meaningful and effective participation in consultation processes.

Influence in relation to mining, forestry, wind power and other decisions that affect traditional lands of the Sámi People

48. The human rights situation of the Sámi People has been widely acknowledged by the regional and international human rights bodies that review Sweden's compliance with human rights norms. It is the view of Civil Rights Defenders that similar to many other Indigenous Peoples globally, the Sámi People experience human rights violations daily that amount to serious discrimination. The discrimination is connected to aspects such as a lack of knowledge about Sámi culture amongst decision makers, fragmented national legislation not adequately safeguarding fundamental indigenous rights such as the right to traditional lands (e.g. article 26 of the UN Declaration on the Rights of Indigenous Peoples), and insufficient implementation of existing legislation (for example the Minority Act as mentioned earlier in the report). In addition, there is an increased pressure on Sámi traditional lands from natural resource projects, such as the building of mines and windmill parks. A common political and business sector narrative is to connect these projects to Sweden's renewable energy transition. However, many Sámi perceive this as a new form of colonialism, also called green colonialism.³⁵
49. Due to a lack of safeguards, Sámi culture and livelihoods such as reindeer herding, hunting and fishing on traditional lands are under immense pressure from the cumulative effect of natural resource activities, growing infrastructure, large-scale tourism and climate change.³⁶ In connection with this, Swedish legislation does not specify that a substantial assessment of Sámi indigenous rights affected by a project should take place before the decision. Neither is it specified that a weighing of interest should be conducted where indigenous rights are to be adequately taken into account and weighted against other societal interests in order to assess whether an infringement of rights is necessary and proportionate.
50. In addition, as mentioned above, there are few decision-making procedures in existence where the informed perspectives and traditional knowledge of affected Sámi are collected and effectively taken into account according to the principle of Free Prior and Informed Consent.

³⁵ See statement from several parties in the Sami Parliament from December 2021, available at: <https://www.sametinget.se/163798>.

³⁶ Please see statement on forestry by the Sami Parliament, 2020, available at: <https://www.sametinget.se/155898>; and statement by the Sami Parliament on exploitation activities in Sápmi/Sábme/Sábmie/Saepmie with focus on mining, 2013, available at: <https://www.sametinget.se/61172>. The Government bill on a Sami consultation system, which at the time of writing has been drawn back, does not comply with the binding international standard of Free Prior and Informed Consent according to Sami and non-Sami civil society; Government bill, Prop. 2021/22:19, is available in Swedish at: [En konsultationsordning i frågor som rör det samiska folket - Regeringen.se](https://www.regeringen.se/491099).

51. Below, three Sámi experts contribute with three separate accounts on influence and overall rights protection in the context of mining, forestry and wind power. In some instances, they make recommendations to the Swedish state. Further recommendations are added by Civil Rights Defenders at the end. Important to note is that all three Sámi representatives share their experience in the context and from the perspective of reindeer herding. The historic categorization and division, determined by the Swedish state, between different Sámi groups are still legally, socially and politically relevant in connection to Sámi rights protection and constitute a problem. One consequence followed by the state's policy is that only Sámi that are members of reindeer herding communities enjoy some (albeit extremely limited) land rights protection based on their Indigenous status. At the same time, the Sámi reindeer herding communities are under immense pressure defending Sámi rights in connection to competitive land use projects, predators and climate change, etc. The legal categorization leads to mental health consequences for all Sámi groups.

Three accounts from Sámi experts on experiences from mining, forestry and wind power projects³⁷

Mining – the case of Kallak/Gállok

52. *The following account is written by Jan Erik Länta, reindeer herder and former Chair of Jåhkågasska Sámi reindeer herding community in Norrbotten County. He writes:*

Jåhkågaska tjiellde (hereinafter referred to as the Sámi community) is a mountain community within the municipality of Jokkmokk. In 2013, the exploration company Jokkmokk Iron Mines (hereinafter referred to as the company), a subsidiary of the British company Beowulf Mining, applied for an iron ore mining concession in Kallak, located in an area of great importance for reindeer husbandry on the Sámi community's land. This was the beginning of a struggle between various stakeholders and the Sámi community which, with the support of other affected Sámi communities, environmentalists, and others, had tried to stop the mining project. This struggle has been marked by an uneven distribution of power, where the affected Sámi communities (mainly Jåhkågasska, Sirges and Tuorpon reindeer herding communities) have been at a great disadvantage.³⁸

Influence and impact for the Sámi community

Several meetings between the company and the affected Sámi communities were set up and then cancelled at short notice by the company. As a result, the company had not engaged in any dialogue with the Sámi community when submitting its application. Their application contained a sorely inadequate assessment of the impact on reindeer and reindeer husbandry in the area. Also in this instance, the assessment was not prepared in dialogue with the experts on reindeer husbandry, namely the

³⁷ Civil Rights Defenders have translated these texts to English. Misinterpretations of the original message falls on the organisation.

³⁸ the Committee on the Elimination of Racial Discrimination, in its statement about the process of opening a mine in Gállok, writes that they "profoundly regrets that this Act [the new law on consultation] would only be applicable in new cases concerning exploitation concessions("...)
https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/SWE/INT_CERD_ALE_SWE_9557_E.pdf
(CERD/EWUAP/106 th session/2022/MJ/CS/ks).

members of the Sámi community. The Sámi community therefore had to put in a lot of work, both in terms of time and cost, to carry out its own investigation with truthful information regarding the potential impact of the infringement.

Recommendation: A developer who wants to make an infringement should be obliged to gather information from the affected Sámi reindeer herding communities for their application and offer compensation for the work done.

Through this project, the Sámi community has been more or less forced to spend time and money on releasing statements requested by Swedish authorities, hiring expert help in areas such as law, and maintaining contact with authorities and the media. As the Sámi community didn't have a budget for the forced workload and the additional costs listed above, they had to use their own resources. This stands in contrast to the Sámi community's counterparts who, on the other hand, could conduct this work within their paid working hours. In addition to the costs in time and money, this has also brought on psychological stress (more on this further down) for all members of the Sámi community. The process lasted from 2013 until 2022 and the workload in connection to the processing concession has been both unreasonable and the costs too demanding, leading to psychological stress and financial difficulties. Reindeer husbandry, which is a traditional livelihood of the indigenous Sámi People, has suffered during these years, with the risk of far-reaching consequences.

Recommendation: A Sámi reindeer herding community should be compensated for all the work involved in an application for development in the communities' area, and expert assistance should be offered if necessary, where development would significantly impede reindeer husbandry.

Research on the conflict in Kallak

Research also supports the Sámi community's view that the balance of power between the company, authorities, and government on the one hand and the Sámi community on the other is unequal.³⁹

There has also been research on the health consequences for members of Sámi communities.⁴⁰ The study showed that the potential mine development has already had negative psychosocial effects such as anxiety, stress, and worry, among the members of the Sámi community. The main reasons for current and future psychological stress appeared to be the uncertainty that characterises the mining process, as well as the fear of losing their place and that of future generations in the traditional industry.

Recommendations: A social impact assessment, as well as an analysis of how the balance of power between different actors can be balanced, should be mandatory in applications for exploitation and that local people are offered support already in the initial phase of exploitation projects to prevent mental health issues.

³⁹ David Harnesk, Mine Islar, Sofia Stafström (Lund University) "What local people. En analys av gruvkonflikten i Gällöck och den samiska befolkningens rättigheter ur ett rättvis- och maktperspektiv", a chapter in the book "Svensk gruvpolitik i omvandling". Aktörer, kontroverser och möjliga världar, red. J., Anshelm, S. Haikola, B. Wallsten. 2018. Gidlunds förlag.

⁴⁰ Blåhed, Hanna, San Sebastian, Miguel, 2020, En hälsokonsekvensbedömning med anledning av den potentiella gruvetableringen i Gällöck/Kallak, svenska Sápmi, Umeå University, and Blåhed, Hanna & Miguel, San Sebastián (2021) "If the reindeer die, everything dies": The mental health of a Sámi community exposed to a mining project in Swedish Sápmi, International Journal of Circumpolar Health.

Influence of authorities in the Kallak mining issue (and mining issues in general)

The County Administrative Board of Norrbotten was opposed to the establishment of a mine in Kallak, and several international mechanisms expressed their concern regarding the project, both on the ground of lack of respect regarding Sámi rights in the process and on the potential damage a mine could do to the environment.⁴¹

However, the Mining Inspectorate of Sweden, whose purpose is, among other things, to promote more mines in Sweden, wanted to support the development. It was also the Mining Inspectorate that raised the issue with the Government, which in turn approved the processing concession in March 2022.

The fact that this issue was decided on by the Government is extremely unfortunate and not in compliance with the rule of law as they can make a political decision, and not one based on expert opinion. In the case of Kallak, the Government went against the opinions of experts as well as the County Administrative Board in several aspects, including reducing the danger to reindeer herding. The Government also made no mention of Sámi rights, Indigenous Peoples' rights, or the international conventions that Sweden has undertaken to comply with in the reasons for its decision and in its assessment, despite Sámi communities and other authorities stressing the importance of these rights and regulations in their statements. As a result, the Sámi feel that it is not possible to know how the Government reasoned in reaching its decision and that there is no one to contact with questions; the feeling is that the decision was worked out in secret.

There is also an unequal distribution of power when the need for economic growth dominates the political discourse. Mining investment is perceived as the solution to problems such as the loss of employment opportunities and depopulation. Reindeer husbandry, which is crucial to the culture and livelihood of the Sámi people, is not recognised as an important enough value in these political trade-offs (see research by Lund University).

Recommendations: the opinion of the Mining Inspectorate of Sweden should not be deciding, and they should not be able to send a mining complaint to the Government, as it is an authority with a partisan interest. The question of permits for mines and other large-scale impacts on an area should not be taken by the Government.

The Sámi have long fought for the state to recognise them as an Indigenous People with independent land rights. Stronger land rights are a prerequisite for the survival of reindeer husbandry, which needs largely intact land.

⁴¹ See Joint communication from Special Procedures, Special Rapporteur on the rights of indigenous peoples, and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 3 February 2022, AL SWE 2/2022, <https://crd.org/wp-content/uploads/2022/02/UN-Communication-SWE-03.02.2022-.pdf>; see also The Committee on the Elimination of Racial Discrimination, 29 April 2022, CERD/EWUAP/106th session/2022/MJ/CS/ks, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/SWE/INT_CERD_ALE_SWE_9557_E.pdf; and United Nations Educational, Scientific and Cultural Organization, 2 June 2021, CLT/WHC/EUR/21/13301, <https://www.sveinse.cdn.triggerfish.cloud/uploads/2021/07/unesco-technical-review-kallak-mine-laponian-area-se-210602-.pdf>.

Forestry – the case of Härjedalen municipality

53. *The following account is written by Anja Fjellgren Walkeapää, reindeer herder in Mittådalen Sámi reindeer herding community in Jämtland County. She writes:*

The possibility for the Sámi communities to influence forestry in Härjedalen.

The Swedish Forestry Act (skogsvårdslagen, SVL) regulates how forestry may be conducted in Sweden. Forestry management must consider a wide spectrum of different interests that are prevalent in the forest. This includes reindeer husbandry, not as an individual interest but as a general one. Swedish forestry has for a long time had a negative impact on reindeer grazing, and thus on reindeer husbandry.

SVL states that forestry must take reindeer husbandry into account so that the Sámi reindeer herding community concerned has annual access to continuous grazing areas and to vegetation needed in areas for the gathering, migration and resting of the reindeer (31 § SVL).

This provision is not complied with by Swedish forestry today, which has devastating consequences for the Sámi communities. Forestry has fragmented the landscape making reindeer husbandry difficult to conduct today, and simple measures, such as preparing land in a gentler way to protect ground lichen, are rare in today's forestry. This in turn leads to the loss of necessary vegetation, i.e. grazing, for the reindeer.

The Swedish Forest Agency (Skogsstyrelsen), which is the supervisory authority responsible for ensuring compliance with SVL, has little knowledge of reindeer husbandry. This has led to the agency failing to develop adequate guidelines regarding the impact of forestry on reindeer husbandry. For example, few decisions have been taken concerning the important provision in 31 § SVL.

In the 1980s, the Sámi communities in Härjedalen were sued by Swedish landowners who claimed that there the Sámi communities had no reindeer husbandry rights on their private properties. An agreement was subsequently reached between the Sámi communities and private landowners. The Swedish Forest Agency has since chosen not to make any decisions about the consideration of reindeer husbandry regarding logging on these properties. The requirements of paragraph 31 of the SVL are thus completely circumvented in this situation. The Swedish Forest Agency justifies its unwillingness to enter into this affair on the grounds that there is a civil law agreement regulating the relationship between reindeer husbandry and forestry. This has led to large areas in Härjedalen being logged in such a way that the reindeer have no continuous grazing areas and lack of pasture. In addition, there are no consequences for those who log in this reckless way, as the Forestry Commission does not correct the behaviour. As a result, the Swedish Forestry Commission is perceived by the Sámi communities as biased in matters regarding forestry, to the benefit of the forest owners and to the detriment of the Sámi reindeer herders in the Sámi communities.

Today, affected Sámi communities have no influence over forestry in the areas within their communities where they have reindeer herding rights. The Sámi communities also do not perceive any support from the Swedish Forest Agency on issues that affect them, or support on how the Sámi communities could influence the issue of forest harvesting in general or individual harvesting. Without influence over this, and if logging continues in this way, there is no future for traditional reindeer husbandry.

As a reindeer herder and a forester myself, who has also worked for the Swedish Forestry Agency in the past, I am unfortunately used to the poor respect shown to reindeer herding by the Swedish Forestry Agency. Nevertheless, the situation in Härjedalen still makes me very sad. The Swedish Forest Agency does nothing to raise the perspective of the Sámi communities, or to work to reduce racism, oppression, or bad attitudes towards reindeer herding.⁴² I have brought this problem to the attention of various people within the authority several times and I have criticised the fact that a supervisory authority acts in this way. Yet no one will listen or tackle the problem.⁴³

This affects my right to practise traditional reindeer husbandry, an industry and a way of life that I hope to pass on to future generations. I fear that there will be a gap in traditional knowledge when forestry is conducted in the ruthless way it is today. When the reindeer can no longer graze on their land at different times of the year, I lose the knowledge of how the reindeer behave there. Is the grazing good there when there is a lot of snow or little snow? Are the reindeer better off staying here early or late in the winter? Which migration routes are best to move along to get to the pasture? All these questions are fundamental to reindeer husbandry, knowing where to find food for the reindeer and move with them. But with forestry advancing in the way it is today, I see it as difficult to conduct reindeer husbandry in a landscape, and with traditional knowledge as the basis. For it is in the relationship between reindeer, nature and the weather that we can better understand how the land can provide reindeer with shelter and food. Forestry on traditional Sámi land within Sweden's borders is contributing to the loss of traditional knowledge and is therefore a threat to Sámi culture, and the Swedish Forestry Commission's inaction is allowing this irresponsible forestry, which is causing damage to reindeer husbandry, to continue.

Reindeer husbandry in today's forestry landscape is like trying to put together a jigsaw puzzle with a third of the pieces, and when climate change strikes, you are forced to attempt to put the puzzle together with worry and anxiety.

⁴² See <https://www.dn.se/nyheter/sverige/sa-har-den-nya-striden-om-fjallet-vackt-samehatet-till-liv/> (published 2020-04-12).

⁴³ The issue about racism against Sami is growing. In 2017, the Sami radio station and the Sami department on the Swedish public service television company gathered stories about racism using the hashtag #vardagsrasismotmigsomsame ("racism in everyday life against me as a Sami"). The many stories that were shared using the hashtag were composed and distributed through a publication and exhibitions. The ombudsperson against ethnic discrimination has made a report on discrimination against the Sami, "*Diskriminering av samer – samers rättigheter ur ett diskrimineringsperspektiv*", <https://www.do.se/download/18.277ff225178022473141e27/1618941270057/rapport-diskriminering-av-samer.pdf>, DO:s rapportserie 2008:1.

Wind power – the case of Jijnjevaerie Sámi reindeer herding community's cumulative struggles

54. *The following account is written by Marianne Gråik, reindeer herder and former Chair of Jijnjevaerie Sámi reindeer herding community in Jämtland County. She writes:*

During my ten years as a chairperson for the Jijnjevaerie Sámi reindeer herding community I was constantly struggling to defend our reindeer's grazing lands from exploitation of wind power. As my community are stakeholders in all processes regarding our lands, I represented my community in 28 wind power projects with over 20 companies. Due to a lack of economic resources, we were seldom able to get necessary, qualified help with the proceedings, and most times we had to go through the processes without a lawyer by our side. I am sad to say that we have lost the battle many times and therefore lost a lot of grazing areas for the reindeer. The consequence of lesser possibility for the reindeer to graze is that we have had to start feeding the reindeer with industrially produced cattle feed (in Swedish: foder). Our reindeer husbandry has changed a lot, moving away from the traditional ways with generations of traditional knowledge and great cultural significance that we are used to and that we would have liked to uphold.

During the worst years we had to manage 18 companies at the same time, with no financial means to get help with the work. During these years we had no time to fight other infringements such as the forestry, tourist projects, and we had a hard time seeing a future in our traditional way of living. My community was forced to reach agreements with some of the companies in order to gain funding for defending ourselves and our lands in other projects that had a higher risk to the traditional reindeer herding.

During court proceedings, we have put a lot of time and effort into giving the court clear information on how different wind power projects would affect the reindeers and our rights to our lands. We have made films, power-point presentations, used GPS collars to show how the reindeer move, and more. Reindeers are afraid of the windmills and avoid them, something that is also supported by research using data from the GPS-collars. The reindeers refuse to stay and graze, most of them change directions several kilometres before the wind power area, the reason could be both the movement of the wings and the sound. However, I really wonder if they consider our input at all, since we so rarely see decisions in our favour. So far, it doesn't seem to matter what type of arguments or evidence we present, we are always on the losing side, and I have yet to see a company pull their extractive plans back when we have informed them of the grave consequences their projects will bring to our traditional reindeer husbandry.

I think that the main problem for the Sámi people is the lack of influence, and it hits all over the system in Sweden. We can have a right to go through consultations, and might be asked to give information, but we have no formal influence over the decisions, especially when it comes to decisions regarding our traditional lands. We also lack resources to attend consultations: there are huge costs both in time and finances to attend in an effective way. The situation now is that we, the affected Sámi, need to prove that we are indeed affected. However, the burden of proof should lie on the companies looking to start extractive projects, they should have to prove that a project will not for example mean damage towards Sámi human rights.

Sweden's environmental act is giving a lot of the responsibility to respect the Sámi people's human rights regarding activities on their land to the land grabbing/extractive companies. However, companies cannot be held accountable for human rights violations in the same way that states can. It is the states' responsibility to make sure that companies acting within their borders follow the national and international obligations that the Swedish state has guaranteed the Sámi people (*Free, prior and informed consent: a human rights-based approach*, Study of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, page 15).

Due to the law, companies don't have to respect Sámi land rights. Companies looking to exploit Sámi lands know that the law is designed, or at least interpreted, so that the interests of extractive industries, especially those that would lead to so-called green energy, will be prioritised when balancing them against Sámi rights.

My community took a huge wind power industrial project through the whole legal system in Sweden all the way to the Supreme court.⁴⁴ The court recognized that the traditional reindeer herding, and therefore the Sámi reindeer herding community, would be highly negatively affected by the project, but still approved it with the arguments that mitigation measures decided by the court would reduce the harm. However, it is frustrating that the project was approved even though we told the court over and over that the Sámi community can't carry through with the reindeer husbandry in the traditional way alongside this project, and that these interests cannot co-exist - even with the extensive list of mitigation measures.

We sent in a complaint to the Organization for Economic Co-operation and Development (OECD) about the question of consultation in this particular project.⁴⁵ We realised that we had shared the same information with the wind energy company for seven years, pulled them through the court three times and been on several consultations, and they hadn't changed their plans in any way!

This is a short insight of the problems facing just one of the over fifty Sámi reindeer herding communities in Sweden. All of us struggle in one way or another, and the reason for the struggle is the lack of influence in processes where our lands are dramatically affected. The wind power industry is just one actor that we must take into account and are expected to cooperate with: at the same time, we struggle with the forestry, huge losses of reindeer to large carnivore predators, tourism developments, mining, gravel pits, and more.

And all of these projects are permitted under the current Swedish laws that will allow and protect extractive industries on Sámi traditional lands but doesn't effectively protect Sámi rights.

⁴⁴ Mark- och miljööverdomstolen (Land and Environment Court of Appeal) judgement 2011-11-23 in case nr. M 847-11.

⁴⁵ See [Jiinjevaerie Sambyn vs. Statkraft AS – Ansvarlig Næringsliv \(responsiblebusiness.no\)](#).

Recommendations:

- Ensure an obligation to obtain information and knowledge in good faith from the affected Sámi as early as possible in connection to planning and decision regarding any activities on Sámi traditional lands.
- Make mandatory, as early as possible, an overall social and cultural impact assessment in relation to private or state actors' applications for exploitation activities, taking into account cumulative effects of land use projects on Sámi reindeer herding and culture.
- Add resources for the affected Sámi to participate in consultation processes in an effective way, including compensation for their involvement and necessary assistance that they might need for informed decisions and perspectives.
- Ensure that both reindeer herding Sámi and non-reindeer herding Sámi can be recognized as affected by planned activities such as exploitation projects.
- Ensure resources to support the mental health of Sámi affected by exploitation projects.
- Ensure that decisions on individual exploitation projects on Sámi traditional lands are based on facts and research. Individual exploitation projects on Sámi traditional lands should not be decided by political leadership (such as the government).
- Implement legislation correctly, including with regard to international obligations so that legally binding conventions and principles of international law are given the greatest impact possible. Hence, a substantial assessment that effectively take Sámi rights into account should be made before decisions in individual cases of exploitation or other physical planning.
- Make efforts to increase knowledge about reindeer husbandry, especially among authorities responsible to supervise compliance of laws that affect reindeer husbandry.
- Clarify obligations for companies in legislation, for instance regarding their respect for Sámi indigenous rights, due diligence and liability in the event of future environmental or human rights violations as a result of their operations.
- Enforce sanctions for companies and individuals that violate the Sámi Peoples' rights.
- Put in place a significance threshold for exploitation projects in some areas.
- Add resources to combat racism against Sámi and biases against reindeer herding and Sámi culture.