

**Research results on pre-conditions in the consultation procedure of well-established minority consultative bodies:
Some examples from the Sami Parliaments' experience¹**

Taking into account the Sami people, an indigenous people, also recognized as a national minority living in four different countries in northern Europe (Norway, Sweden, Finland and Russia),

Considering the competences and the consultative status of the Sami parliaments established in three of these countries (Finland, Norway and Sweden),

Notwithstanding the uniqueness of the experience of indigenous (and minority) parliaments,

There are still some pre-conditions which need to be ensured, and may be highlighted as follows:

- **'Soft' versus 'hard' forms of consultation:** The Sami Parliaments are 'consultative mechanisms', but serve mainly an advisory function, and no mandatory action follows the hearing of the Sami parliaments in Norway and Sweden.² Notwithstanding their increased political status, they have limited decision-making authority, and their influence on Sami economic, social and cultural issues is therefore limited.³ The case of Finland should be formally apart, since in principle the government authorities have an obligation to negotiate with the Sami Parliament any act that may affect directly or indirectly the (listed) Sami issues in Section 9 of the Finnish Sami Act. However, no formal forum or body has been structured to fulfil this obligation,⁴ and the negotiation procedure still needs to be further developed.⁵
- **'Genuine' representation:** In the three countries not all the Sami participate in the elections of the Sami parliaments.⁶ The figures confirm this aspect in Norway and Sweden.⁷ Moreover, the mandate and the consultation of the Sami parliaments resulted to be unclear on certain occasions.⁸
- **'Cultural' Autonomy:** Albeit forms of 'cultural' autonomy are exercised by the Sami parliaments in Finland and in Norway, whereas in Sweden 'cultural' autonomy has not been implemented yet despite repeated attempts by the Sami organizations and national committees.⁹

¹ References to "Background Document by the Independent Expert on Minority Issues, Gay McDougall, on minorities and effective political participation" (UN Doc. A/HRC/FMI/2009/3, 8 October 2009):

- section IV. Preconditions for and obstacles to effective political participation, paras.26, 27 and 28;

- and section V. Existing forms and mechanisms for effective political participation, para. 55).

² See Rainer Hofmann, "Political Participation of Minorities", in *EYMI* (2006/ 7), 5-17, 14.

³ John B. Henriksen (ed.), "Sami Self-Determination – Scope and Implementation" 2 *Gáldu Čála - Journal of Indigenous Peoples Rights* (2008), at 30. Moreover in Norway, despite the 2006 Agreement on Consultation Procedures, the mandate to the ministries in charge to consult the Sami Parliament is unclear, which often slows down and creates confusion in the consultation procedures. IWGIA - International Work Group for Indigenous Affairs, *The Indigenous World 2008* (International Work Group for Indigenous Affairs Publications, Copenhagen, 2008), 27.

⁴ Eva Josefson, "The Saami and the National Parliaments – Channels for Political Influence", 2 *Gáldu Čála - Journal of Indigenous Peoples Rights* (2007), 11.

⁵ Para.178 and at 32, Advisory Committee Second Opinion on Finland, adopted on 2 March 2006, published on 20 April 2006. According to the Finnish central authorities the negotiation policy is working, while the Sami parliament has claimed rather a form of 'soft' consultation, since many of their proposals did not influence the final documents as it should. See para.155, Advisory Committee Second Opinion on Finland, adopted on 2 March 2006, published on 20 April 2006.

⁶ Nils Oskal, "Political Inclusion of the Saami as Indigenous People in Norway", 8 *IJMGR* (2001), 235-261, 255.

⁷ Out of 40-50,000.00 Sami in Norway, only 12,475.00 were registered in the Sami Electoral Register in 2005. The same applies to Sweden, where 7,000.00 on 20,000.00 Sami were registered for the last elections in 2005. See Presentation on the Sámediggi - The Sami Parliament (Norway) (2007), at <http://www.samediggi.fi/images/stories/pdf_tiedostot/samiparliament_2007.pdf>, 14.

⁸ In Finland, during 2008 the Finnish Ministries of Justice and Agriculture have been negotiating new legislation in the field of land ownership, land use and reindeer herding in the Sami traditional territories, formally consulting the Sami Parliament. Nevertheless neither was clear the mandate of the Sami Parliament on these issues, nor the communication was transparent, especially vis-à-vis those Sami organizations and communities of reindeer herders directly affected. IWGIA, *op.cit.* note 3, 35-36.

⁹ In Sweden, in particular, the Sami Parliament is very limited, and rather concentrated on reindeer husbandry (Para. 24 *et seq.* Advisory Committee Second Opinion on Sweden, adopted on 8 November 2007, published on 30 January 2008. See also the debate in the Swedish parliament about the law on the Sami parliament as reported by Josefson, *op.cit.* note 4, 16. In particular, the Swedish *Lagting* (house of the Swedish Parliament) in Section 1 of the Sami Assembly Act (Act No. 41/1989), declared that the Sami Parliament should have been delegated the management of Sami culture issues (Josefson, *op.cit.* note 4, 20). In a recent case reported by the newspapers on reindeer herding, the governmental working group on Sami issues proposed a major involvement of the Sami Parliament when dealing with issues affecting their living conditions. (The Local, "More freedom proposed for Sami reindeer herders", The Local, 16 September 2009, at <<http://www.thelocal.se/22114/20090916>>). A report commissioned by the Swedish government to a Sami Parliamentary Commission has been submitted in 2002. It underlined the importance of a constitutional recognition of the Sami 'cultural' autonomy, and a certain level of self-government, but this has not been implemented yet. Baer, Lars-Anders Baer, "The Rights of Indigenous Peoples – A Brief Introduction in the Context of the Sámi", 8 *IJMGR* (2001), 245-267, 258-259.

Finally, issues of discrimination and cross-border cooperation, especially vis-à-vis the Sami resident in Russia and the adoption of the Nordic Sami Convention, should be taken into account.¹⁰ Moreover, Sami participation at state level still needs to be ensured in all the three Nordic countries.¹¹

The following measures and considerations may serve as suggestions, also in similar cases:

- **Empowering the three Sami parliaments with (effective) binding consultations on acts directly affecting Sami issues.** The spectrum of the 'veto powers' and the consequent block or paralysis of acts' enactment procedures could be (partially) avoided by, e.g., a reinforced procedure of enactment. For instance, a twofold approval on an act affecting Sami issues by a Parliamentary Commission and the Sami Parliament, and a Conciliatory committee in case of disagreement raised by the two-thirds of the Sami Parliament on the second turn, could be a fair compromise. Other means may be envisaged, especially according to the peculiar characteristics of the country and the community.
- **Pursuing a genuine representation in the Sami parliaments.** Information campaigns may help in involving the Sami living in the three countries, as well as means of participation of the Sami political parties.
- **Enhancing the participation of Sami in state and local public administrations,** via either (genuine) Sami representatives in the national parliaments or in the regional and local governments, or *ad hoc* cooperation between the local administrations and the Sami Parliaments, as, e.g., in the case of the Troms County Municipality in Norway.¹²

In Sweden and Finland, the standards of participation and consultation guaranteed by the ILO Convention No.169 would certainly help to enhance the political participation of the Sami people.¹³ Norway ratified the ILO Convention No.169 in 1990.

Finally, as renown, political participation does not only enhance minority identity,¹⁴ but also minority-majority peaceful relations, and, therefore, national stability.¹⁵

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¹⁰ See the work of the Ombudsmannen mot etnisk diskriminering (DO), *Discrimination of the Sami – the rights of the Sami from a discrimination perspective*, 1 *DO:s rapportserie* 2008 eng (Stockholm 2008), at <<http://www.do.se/Documents/Material/discrimination-of-the-Sami.pdf?epslanguage=sv>>. As to the Draft Nordic Sami Convention (Draft Convention), it has been endorsed by the three Sami Parliaments, and presented to the three Nordic governments in 2005. An Expert Committee composed by an equal number of representatives from the three Nordic states and the three Sami parliaments submitted to the respective governments and to the Sami parliaments a draft consisting of nine sections and four annexes, for a total of 340 pages. This Draft Convention deals also with general rights of the Sami people, as well as Sami governance, language, culture, land and water rights and livelihoods. Regrettably, it is far from being certain that the Draft Convention will go ahead, which causes further frustration and protests. Both the Sami Parliamentary Council and the 19th Sami Conference in October 2008 expressed their disappointment. IWGIA, IWGIA - International Work Group for Indigenous Affairs, *The Indigenous World 2009* (International Work Group for Indigenous Affairs Publications, Copenhagen, 2009), 39. For a in-depth analysis of the Draft Convention see Timo Koivurova, "The Draft for a Nordic Saami Convention", *EYMI* (2006/7), 103-136.

¹¹ As to participation at state level, the minorities (incl. the Sami) in Norway do not enjoy any form of representation in the parliament, and the Advisory Committee has recommended to include minority representatives in elected and appointed government bodies and to enhance the minority participation with regard to public affairs, as well as social and economic life. The same happen in Sweden, where the Sami are excluded by the central and local decision-making processes. Proposals to appoint a Sami representative in the Swedish parliament have been discussed since the '20s. Moreover, the Sami in Sweden have never trusted so far the national parties as a valid mean to support Sami issues, and started to organize their own parties only after the establishment of the Sami parliament. The Advisory Committee of the FCNM has underlined the importance of involving the Sami particularly in the spatial policies affecting reindeer herding, such as the relocation of the centre of the city of Kiruna. In Finland there are neither Sami parties, nor reserved seats for them, and no Finnish party has explicit agenda on Sami issues. The Sami do not have access to the central parliament, nor special measures are in place to allow it. At least, regular channels of communication between Sami representatives and the Finnish parliament committees should be established. See in particular Josefsen, *op.cit.* note 4, 14-17, and 23. See also Para. 167 Advisory Committee Second Opinion on Sweden, adopted on 8 November 2007, published on 30 January 2008; Para. 81, Finland Second State Report Pursuant to article 25, paragraph 1 of the FCNM, 10 December 2004, ACFC/SR/II(2004) 012 E; Paras. 159-160 Advisory Committee Second Opinion on Finland, adopted on 2 March 2006, published on 20 April 2006.

¹² Josefsen, *op.cit.* note 4, 7.

¹³ However in Sweden the debate whether to ratify it has been going on during several years without any result. The official argument is that the Swedish law on Sami land rights is not consistent with Art. 14 of the ILO Convention 169, and therefore domestic legislation should be modified first. IWGIA *op.cit.* note 3, 32; IWGIA, *op.cit.* note 10, 30.

¹⁴ Hofmann, *op.cit.* note 2, 7; Marc Weller, "Article 15", in Weller Marc (ed.), *The Rights of Minorities. A Commentary on the European Framework Convention for the protection of National Minorities* (Oxford University Press, New York, 2005) 429-461, 430.

¹⁵ Hofmann, *op.cit.* note 2, 7.