

# On the ratification of the ILO Convention in Finland

Since the second world war, there have been many proposals in Finland regarding the establishment of the Saami's land and water rights. In particular during the 1990s, this issue became topical in connection with the ratification of the ILO (International Labour Organisation) Convention. Matters relating to the ILO Convention have been dealt with very broadly in the Nordic countries in recent years, for example, in administrator report SOU:25 in Sweden, and in reports NOU 1997:4 and 5 and Jebens (1999) in Norway. Aside from Vihervuori (1999), Myntti (1997) and the chief justice of the Court of Appeals in Vaasa have studied the affairs connected with the approval of the ILO Convention in Finland.

What, then, is the problem? The following extract from the ILO document partly answers this question:

Governments are obliged to recognise the special and collective relationship of indigenous and tribal peoples with their country (land also forms an important part of their identity for many indigenous and tribal peoples). Land is owned by indigenous and tribal peoples on a collective basis. Land rights provide these people with a solid foundation for the continuation of their particular mode of life. Governments have to recognise the ownership and administrative rights of indigenous and tribal peoples to the lands where they have traditionally obtained an income and preserved their traditions. Governments are expected to demarcate the lands of indigenous and tribal peoples and to safeguard their ownership and administrative rights in a Law, or Act, specifying an appropriate punishment for illegal encroachment on the area, and defining the procedures through which land right conflicts can be legally resolved. Additionally, governments are obliged to safeguard the rights of indigenous and tribal peoples to the natural resources of their area, and their rights to participate in the utilisation, administration and conservation of these resources. Full compensation must also be assured for damage caused.

Clause 14 of the Convention applies to land ownership rights. It states, e.g. that there are full and complete ownership rights and land use rights in those cases where land rights are the traditional and inalienable rights of indigenous and tribal peoples. The Convention also requires the validity of these rights to be proved from the time they have been acquired.

The Convention grants an opportunity to indigenous and tribal peoples to influence their lives and future as much as possible. Governments must arrange procedures and reserves for this purpose. The arrangement of health care and education should be planned and accomplished in accordance with the culture and way of life of indigenous and tribal peoples. A government must ensure that its country's indigenous and tribal peoples have fully understood the development procedures, planned in cooperation with it, that affect their mode of life, social and economic pattern, income, and employment opportunities.

The cornerstone of the Saami policy followed by the Finnish government in recent years has been the regulation incorporated in the constitution adopted in July 1995, according to which the Saami, as an indigenous people, "have the right to maintain and develop

their language and culture". Instead of devoting effort to improving the status of the Saami language and culture, the Saami Parliament has interpreted the radical change in land ownership and occupational conditions in the Saami region, as meant by Parliament, such that the primary right to use land and water in the pursuance of Saami livelihoods should be held by those Saami individuals whose names appear on the Saami Parliament's register of electors. There is also a connection here with the commission given to the administrator appointed by the Ministry of Justice in May.

In the autumn of 1999, a proposal was put forward by the Ministry's administrator for arriving at a high level solution to the Saami issue on the basis of which Finland would have the foundations necessary for approving the ILO Convention on the rights of indigenous and tribal peoples. This covers, among other things, the ownership and administrative rights of indigenous peoples to the lands and waters in the region they occupy. As a solution to the age-old problem the administrator proposed the establishment of a special land rights council. This council would consist of four members from the Saami Parliament and four from the municipalities in the Saami area. The chairman's council would choose from among its ranks "a person in the services of the Saami Parliament nominated by the Saami Parliament" as its representative.

In practice, the land rights council ought to decide what may be done and what may not be done on the so-called State lands (=the area of the time one-time Lapp villages) in the Saami region. This Convention, intended to support indigenous and tribal peoples living under primitive conditions and having an inferior status, is totally unsuitable for Finland's circumstances because, for a start, most of Finland's Saami make a living outside the sphere of the so-called traditional Saami livelihoods. In this situation, giving the Saami with linguistic ties going back three or four generations special status would violate the rights of the "Lapps" who have lived in the area for as long, if not longer, than they have and very many of whom have documents proving their rights. Thus, ratifying the ILO Convention on the basis of the administrator's proposals would only serve to increase inequality, and not reduce or eliminate it, as was the initial purpose.

The administrator did not attempt using documentary evidence to determine to whom the rights to land and waters in the Saami home region as a chain of events and a practice running unbroken through the different centuries should belong, rather this question has been avoided by concentrating on giving grounds for numerous proposals for changes in different laws, interpreting only the ILO Convention applying to indigenous and tribal peoples, as though the question were one of a people lacking a written history, documentary proof, and above all the concept of civilisation generally held by civilised nations.

In Finland, when talking of Saami livelihoods, for the sake of clarity it needs to be said that these are followed not only by the Saami themselves, but also by the Finnish descendants of the same families. Reindeer husbandry in Norway and Sweden differs from that in Finland. The reason for this lies in the settlement history of the northern part of Finland. The Saami, the so-called forest Lapps, and the Finnish peasants have together inhabited the wildernesses of the Saami region since at least the 1700s. Local means of earning an income continue to be shared by everyone in the district. It thus seems difficult to elevate one group of Lapps (the Saami speaking faction) merely on the basis of language to a superior status compared to another permanent group of Lapps (the Finnish speaking faction). Thus, it is not possible to confine the practising of various kinds of livelihoods and opportunities for improving these forms of livelihood only to people entered on the Saami register. This is not required by the ILO Convention.

To clarify the issue a little, it is necessary to mention that in addition to the Saami, the Finns living in the area, as well as the Finnish-speaking descendants of the “taxable Lapps”, have also traditionally gone in for reindeer herding and other Lappish activities. Such people do not appear on the Saami Parliament’s register of electors. Since the mid 19<sup>th</sup> century, so-called “reindeer Saami” have been trickling into the northern districts of the Finnish municipalities of Inari, Sodankylä and Enontekiö from Norway. These immigrants have, according to records kept by these municipalities, lived in these areas in company with the Saami who had already settled there and the Finns who had moved into the areas from further south. I consider it extremely questionable for land and water rights to be arranged solely on the basis of the ILO Convention, ignoring the existing documentary evidence by going back three generations, thereby depriving some people of their rights, while willingly granting these to others. The grounds for such a distinction would be language, rather than historical rights.

The administrator’s proposal has led to a situation in which the “Lapps” practising the same forms of livelihood as the Saami who have inhabited the region for longer are now bickering over their rights.

All in all, the juridical starting point for the ratification of the ILO Convention, and the contents of the latter, have an historical basis, and the applying of historical factors (= the Lappish village system) today to a variety of stakeholders in an advanced juridical system and society calls for meticulous preparation and a careful study of all the consequences of the proposal. Thus, the correct and sustainable basis is the recognition of historical continuity.

According to current Finnish law, conflicts regarding existing rights and ownership are resolved in a court of law. Even Parliament is not permitted to resolve an ongoing ownership controversy by means of an ordinary Act. Hence, if stakeholders wish to contest the State’s ownership of lands within the Saami region, this must be resolved in the courts.

Finally, I would, like to remind you that Finland and Sweden have a long common history and records going back to 1812. I sincerely hope that we can jointly carry out this investigation to ensure that nobody’s constitutional and human rights are violated, either in Finland or in Sweden (e.g. a verdict document as an appendix).

This kind of investigation neither violates nor weakens the rights of Saami speaking people and their opportunities to carry out the traditional Saami forms of livelihood.

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