Recognition of Indigenous Lands Through the Norwegian 2005 Finnmark Act: An Important Example for Other Countries with Indigenous People?

Øyvind Ravna

Abstract International law includes treaties and declarations that commit the national states to protect the culture and livelihood of indigenous peoples. Of particular interests is The International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Norway is one of 22 countries that is party to the ILO 169. In this chapter, the commitment to identify and recognize indigenous people's lands and natural resources in relation to the indigenous Sámi in the Nordic Countries will be examined. This commitment applies in particular to Norway, which is the only country with a Sámi population who has ratified the ILO Convention. The commitments imposed to Norway thus raises several key issues regarding identification of indigenous people's lands, including to what extent the Sámi laws and customs have significance as legal sources in such processes, and how to the state must involve the indigenous party in the process.

Keywords Finnmark Act • Sámi • ILO Convention No. 169 • Indigenous rights

1 Introduction

International law includes treaties and declarations that commit the national states to protect the culture and livelihood of indigenous peoples. Of particular interests is The International Labour Organization (ILO) Convention No. 169 *concerning*

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indigenous andtribalpeoples in independent countries[1] and the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP).[2]

In this article, the commitment to identify and recognize indigenous people's lands and natural resources in relation to the indigenous Sámi in the Nordic Countries will be examined.[3] This commitment, which are ensured under the ILO Convention no. 169, applies in particular to Norway, which is the only country with a Sámi population who has ratified the ILO Convention. The commitments imposed to Norway raises several key issues regarding identification of indigenous people's lands, including to what extent the Sámi customary law have significance as legal sources in such processes, and how to the state must involve the indigenous party in the process.

To follow up the commitments in the ILO Convention, the Norwegian Parliament in 2005 adopted an act aiming to contribute to the identification process. The act is limited to frame the County of Finnmark, which is the most central part of the Sámi traditional lands (Sápmi) in Norway; therefore the name *the Finnmark Act* (Fm Act).[4] The Act is emphasized as an example for the other Nordic Countries by the UN Special Rapporteur on the rights of indigenous people, *James Anaya.* In his report on the situation of the Sámi people in the Sápmi region of Norway, Sweden and Finland, he has pronounced that the Finnmark Act is "an important protection for the advancement of Sámi rights to self-determination and control over natural resources at the local level, setting an important example for the other Nordic countries".[5] However, the Act and the adopting process has been controversial;

[1] Adopted June 27, 1989 and coming into force September 5, 1991. Retrieved May 10, 2012, from http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169. The Convention is presently ratified by 22 states, among them Norway, see *ibid.*

[2] See http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf Retrieved May 12, 2012. The Declaration was adopted by the United Nations General Assembly, 107th plenary meeting, September 13, 2007, which voted on the adoption. The vote was 143 countries in favor, 4 against, and 11 abstaining. The four member states that voted against, Australia, Canada, New Zealand and the United States, have later endorse the declaration. Among the abstaining countries is The Russian Federation. Retrieved ay, 12, 2012 from http://social.un.org/index/IndigenousPeoples/DeclarationontheRightsofIndigenousPeoples.aspx

[3] The Sámi live in the northern and central parts of Norway, Sweden and Finland, and the Kola Peninsula in Russia, where they in the three first mentioned countries, is the only indigenous people. They consist of 50,000–80,000 peoples earning their livelihood from both marine and terrestrial industries such as reindeer husbandry, agriculture and coastal fishing, see Harald Gaski in Store Norske Leksikon, http://snl.no/samer. For more information about the Sámi, see the Sámi Parliament's web page. Retrieved May 4, 2012, from http://www.samediggi.no/artikkel.aspx?AId=3688&MId1=3487. The Article 14 of the ILO Convention no. 169 is of particular interests, which imposes the contracting States to identify and recognize indigenous peoples' traditional lands.

[4] Lov (Act) 17. juni 2005 nr 85 om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke (Finnmarksloven) [Act 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark]. English translation. Retrieved April 20, 2012, from http://www.ub.uio.no/ujur/ulovdata/lov-20050617-085-eng.pdf

[5] James Anaya, *The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland,* Report on the situation of human rights and fundamental freedoms of indigenous

conservative politicians have criticized it for giving the Sámi too big influence, while the Sámi Parliament and Sámi NGOs have taken the opposite standing.[6]

The aim of this article is not to query any of those opinions, but to analyze the legal development that forms the bases for the opinions, i.e. the legislature process of the Finnmark Act. In addition, the analysis also frames the outcome of the process, including how Norway fulfills the commitments in ILO Convention no. 169 Article 14 and other legislation imposed to identify and recognize the lands the Sámi are presumed to own and possess.

Sources for the analysis are mainly legislation, including preparatory works, supported by case law and legal literature. The theme is actualized since it proposes similar schemes for clarification in the Sámi areas south of Finnmark,[7] and since the Finnmark Commission recently has delivered its first report.[8]

The Finnmark Act is a land code consering legal relations and management of land and natural resources in the county of Finnmark. Section One of the *Act* outlines: that "The purpose of the *Act* is to facilitate the management of land and natural resources in the County of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Sámi culture, reindeer husbandry use of non-cultivated areas, commercial activity and social life".

The Finnmark Act is thus more than a land code, it is also a law aimed to protect indigenous lands and culture, born through controversies and consolations with the Sámi.

With its entry into force on 1 July 2006, the Act transferred all "unsold state lands", which represent approximately 95 % of the county's total area and almost all the outlying and mountainous areas, to an ownership body called the *Finnmark Estate,*[9] cf. Fm Act S. 6. This body is partly ruled by the Sámi Parliament and partly by the Finnmark County Counsel, which both has three members of totally six of the board, cf. Fm Act S. 7, Para. 2.

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people (2011), Para. 44 Retrieved May2,2012 from http://unsr.jamesanaya.org/docs/countries/2011_report_sami_advance_version_en.pdf

[6] The different opinions was clearly shown in several Northern Norwegian Newspaper during the process of adopting the act, see Øyvind, R. (2004). Forslaget til 'Finnmarkslov' og bygdefolks rettigheter. Kritisk juss, 1 (30), 35–57.

[7] See NOU 2007: 13 *Den nye sameretten,* pp. 31–68.

[8] See Finnmarkskommisjonen, *Rapport felt 1 Stjernøya / Seiland,* March 20, 2012. As the report was submitted at the time this paper was to be completed, the findings in the report is no topic here. For a brief analysis of the findings, see: Øyvind Ravna, "The First Investigation Report of the Norwegian Finnmark Commission", *International Journal on Minority and Group Rights,* 3 2013 (20), pp. 443–457. The Finnmark Commission has afterwards delivered three more reports; *Rapport felt 2 Nesseby,* February 13, 2013 and *Rapport felt 3 Sørøya,* October 16, 2013 and *Rapport felt 5 Varangerhalvøya Øst*, June 24, 2014.

[9] In the original law text the name is *Finnmarkseiendommen – Finnmárku opmodat* (the last in Sámi language). In Fm Act S. 6 the Finnmark Estate is defined as "a separate legal entity with its seat in Finnmark, which shall manage the land and natural resources… as the owner in accordance with the purpose and provisions of the Act in general".

Of specific interest for this presentation, The Finnmark Act initiates a process of legal identification and recognition of land rights for areas that previously were considered to be state-owned land,[10] aiming to identify and determine ownership and usage rights based in immemorial usage etc., both of individual and collective characters. The investigation is to be performed by a body called The Finnmark Commission, cf. Fm Act Section S. 29 Para. 1, which recently has completed its first investigation, while a special court, the Land Tribunal for Finnmark,[11] is to settle disputes arising from the investigation of the Commission, cf. Fm Act S. 36 Para 1.

2 The Preparatory Work of the *Finnmark Act*

2.1 A Backdrop

Unlike in most of North America, the Indigenous lands in the Nordic Countries have never been subject for treaties between the European colonists and Indigenous people. This can be explained by the fact that the Sámi and the Norse have lived side by side for almost 1000 years, and that the Sámi not have had a tradition to defend their land with arms. It might also be explained in the system of the old feudal Europe, where the king regarded his power to be supreme, ruling the country as his private property with a far-reaching right to subjugate serfdom and collect taxes. Instead of treaties, the Sámi base their rights on immemorial usage of lands (historically use) and more recently also in international human rights law.

As a result of the Sámi struggle for recognition, Norway step by step has undertaken obligations to protect the Sámi language, culture and way of life. The Constitutional amendment of 1988,[12] the ratification of ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries of 1989 (ratified by Norway in 1990), the 1999 Human Rights Act,[13] and the promotion of the UN indigenous declaration on indigenous peoples' rights (2007) are all parts of that picture.

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[10] An overview of the *Finnmark Act* and the procedural law requirements can be found in Øyvind Ravna, 'The Process of Identifying Land Rights in parts of Northern Norway: Does the Finnmark Act Prescribe an Adequate Procedure within the National Law?" *Yearbook of Polar Law,* Brills (3) 2011 pp. 423–453 on pp. 425–429.

[11] The term "Uncultivated Land Tribunal for Finnmark" is often used in English translation. It does not reflect the Sámi point of view, since livelihood and cultural activities historically have not depended on actual land cultivation. The outlying land and mountainous areas are consequently Sámi cultural land. Therefore the more neutral form, the Land Tribunal for Finnmark, is used.

[12] Kongeriget Norges Grundlov 17. mai 1814 [The Constitution of the Kingdom of Norway 17 May 1814], Article 110 a. English translation. Retrieved May 3, 2012, from http://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution

[13] Lov 21. mai 1999 nr. 30 om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven) [Act 21 May 199 No. 30 relating to the strengthening of the status of human rights in Norwegian law], In English translation. Retrieved May 3, 2012 from http://www.ub.uio.no/ujur/ulovdata/lov-19990521-030-eng.pdf

The Finnmark Act and the identification process come out of this development, too, and can as such be seen as a response to many years of struggle by the Sámi, and due in part to the infamous conflict surrounding the construction of *the Alta-Kautokeino hydro power plant* in the 1970s, which included a proposal to flood the Sámi village of Maze.[14] But the Sámi cultural and legal awareness was not only stimulated by the plans of building a power plant in the heart of *Sápmi* in the 1970s, but also out of international contacts through the *International Work Group for Indigenous Affairs (IWGIA)* and movement among more numerous indigenous peoples, as the American First Nations and the *American Indian Movement (AIM)*.[15] The Sámi got support in theoretical analysis questioning the State ownership of the Sámi lands, too.[16] Together, this culminated in the Alta case at the end of the decade, which prompted the government to establish the *Sámi Rights Committee* in 1980 to investigate the Sámi legal status.

2.2 The Draft of the Sámi Rights Committee and the Governmental Response

The investigatory work that took place under the umbrellas of the Sámi Rights Committee, which was a law committee, was the first formal step in forming the Finnmark Act.[17] The investigation led to acknowledgement that state ownership of

[14] Ot Prp [Proposition to the Parliament] Nr 53 (2002–2003) *Om lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke* (Government bill for the Finnmark Act). See also James Anaya, supra note 5, Para 18. For more reading about the Alta Case, see Galdu, *The damming of the Alta-Kautokeino Watercourse (The Alta Case).* Retrieved May 3, 2012, from http://www.galdu.org/govat/doc/eng_damning.pdf and Svein S. Andersen & Atle Midttun (1985). Conflict and Local Mobilization: The Alta Hydropower Project, Acta Sociologica, 28, 317– 335.

[15] See Henry Minde, "Challenge of indigenism: the struggle for sami rights and self-government in Norway in 1960–1990", Svein Jentoft, Henry Minde and Ragnar Nilsen (eds.), *Indigenous Peoples: Resource Management and Global Rights,* (Ebourn Academy Publishers, Delft 2003), pp. 75–104 at p. 81 and Henry Minde, *The International Movement of Indigenous Peoples: an Historical Perspective,* Center for Sámi Studies, University of Tromsø. Retrieved May 3, 2012 from http://www.sami.uit.no/girji/n02/en/003minde.html

[16] Sverre Tønnesen, (1972) *Retten til jorden i Finnmark. Rettsreglene om den såkalte "Statens umatrikulerte grunn" – en undersøkelse med særlig sikte på samenes rettigheter*, Universitetsforlaget, Bergen.

[17] The Sámi Rights Committee had a mandate of four points where the first was to examine "the question about the Sámi people's legal position in relation to land and water" including a consideration of the need for changes in current law, in where it could submit proposals for new regulations including new legislation. The next two points where to examine and suggest "how to secure the Sámi population opportunities to utilize natural resources in their areas of habitation, while also recognizing the non-Sámi population's interests" and to examine the need of a constitutional protection of Sámi culture and language. The last point was of administrative and economical character, see NOU [Norwegian Public Report] 1984: 18 *Om samenes rettsstilling*, pp. 43–44. The particular proposal for a Finnmark Act was worked out in NOU 1997: 4 N*aturgrunnlaget for samisk kultur.*

unsold land in Finnmark was based upon a legal opinion which the Norwegian State no longer fully could support. Although a subcommittee of legal experts under the Sámi Rights Committee, in 1993 concluded that the Norwegian state was the owner of the unsold land in Finnmark, both the coastal parts and in the interior (Sámi) parts of the County, it raised a fundamental question regarding the legitimacy of that ownership, stating that *it might be based on a misunderstanding that is difficult to excuse*.[18]

Even though the Sámi Rights Committee undertook a general discussion of the legal basis for natural resources in Finnmark, it did not assess actual ownership and rights of use acquired by the Sámi and others, but based their position on the finding of the subcommittee.

However, the Sámi Rights Committee found that the Sámi and other locals had certain rights of use and proposed an act for the management of the land in Finnmark, whereby the title should be transferred from the State Forest Company (Statskog SF) to an independent ownership body called the *Finnmark EstateManagement* (Finnmark grunnforvaltning). This body should be controlled by a board appointed in part by Finnmark County Council and in part by the Sámi Parliament.

The Sámi Rights Committee also proposed a governance model in which the locals would be given influence over management of renewable natural resources through locally-appointed "outfields boards". It further proposed that so called *community commons* (bygdebruksområder) should be identified and recognized, based on local traditional usage, which could be considered as a kind of "modern *siida* system."[19]

In addition, the Committee also made a proposal for a procedure to identify such commons. It did not propose a commission or tribunal as now prescribed in the Finnmark Act,[20] but suggested instead the community commons to be determined by a local committee appointed for each municipality. This was reasoned in that such identification demanded local knowledge.[21]

The question of Sámi rights to natural resources in Finnmark was controversial. Six years after the Sámi Rights Committee submitted its draft, the Bondevik government presented a bill for a Finnmark Act. Based on the findings of the subcommittee of the Sámi Rights Committee, the Government agreed upon that the State ownership could not be upheld in full.[22] It also accepted that the lands of

[18] NOU 1993: 34 *Rett til og forvaltning av land og vann i Finnmark*, p. 263 (My italics).

[19] NOU 1997: 4, p. 241. In former times *siida* was a Sámi community which managed a physically-determined territory; see Erik Solem, *Lappiske rettsstudier*, pp. 81–84. Today the concept is used for a family-related working unit in reindeer husbandry, c.f. Reindeer Husbandry Act, S. 51–56.

[20] This is worth noting, as the Uncultivated Land Commission for Nordland and Troms (1985–2004), which was a tribunal mandated to determine boundaries between State and Private lands in the Counties of Nordland and Troms, at that time (1990s) was at the peak of its productivity.

[21] The Sámi Rights Committee also proposed the land consolidation court would be the appeal body, since the procedure to determine boundaries under Section 88 and 89 of the 1979 Land Consolidation Act seemed the most natural process form when it came to delineation questions.

[22] Ot.prp. nr. 53 (2002–2003) *Om lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke* (The *Finnmark Act*), p. 43. An important reason for the governmental acknowledge-

Finnmark could be subject to “private or collective rights based on prescription or immemorial usage”.[23]

This implied that the government followed up the proposal to transfer the ownership to a body controlled by the Sámi Parliament and the Finnmark County Council. But the government did not accept the Sámi Rights Committee proposal for local community commons management of the outlying fields. This was justified in that the outfield resources should be managed uniformly, not to “harm a desired and appropriate allocation of resources in their entirety.”[24]

The proposal of the Sámi Rights Committee to identify community commons was an attempt to recognize the rights to “lands and waters” in the Sámi areas.[25] Although the government in section 5 of the draft act acknowledged that Sámi and others had acquired rights by prescription and immemorial usage on the former state land,[26] the proposal to identify lands and rights was omitted from the draft. No other suggestions were either made to identify such rights. The Government aimed instead “to make good arrangements for the rights and the management of lands and waters in Finnmark by law rather than by dispute resolution in the courts.”[27] Transferring the land to the *Finnmark Estate* was the way to reach that aim and to follow up Norway's commitment in the ILO Convention no. 169. Accordingly it did not put forward any proposals or procedures to conduct an identification and recognition process.

The draft act was met with considerable criticism from the Sámi Parliament, who argued that the bill was not in accordance with obligations under international law, especially the ILO Convention No. 169 to identify indigenous people’s traditional lands.[28] As a result the Norwegian Parliament by the Standing Committee of Justice asked for an independent assessment of the draft act, which the Professors Geir Ulfstein and Hans Petter Graver were engaged to undertake. They concluded that the government’s proposals on key points were insufficient to meet ILO Convention no. 169. In relation to Article 14, they found that if the *Finnmark Act* shall meet ILO Convention requirements for recognition of land rights, “the decision rules must be changed in such way that the Sámi are secured the control according to an ownership position. If this not relevant for the entire county, the particular Sámi areas need to be identified with a view to ensuring the Sámi the control and rights to these areas”.[29]

ment was the Norwegian ratification of the United Nations’ International Labor Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries in 1990.

[23] Cf. the Proposal for a Finnmark Act Section 5(1), see Ot.prp.nr 53 (2002–2003) p. 122. All translations of quotations, except for the one of Finnmark Act, are done by the author.

[24] Ot.prp. nr. 53 (2002–2003), pp. 98–99.

[25] See also Jon Gauslaa, “Lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke (finnmarksloven)” Gyldendal rettsdata, note 3.

[26] Ot.prp. nr. 53 (2002–2003), *Ibid.,* p. 8 and 122, cf. the draft S. 5.

[27] *Ibid.,* p. 97.

[28] Innst. O. nr. 80 (2004–2005), p. 14.

[29] Geir Ulfstein and Hans Petter Graver, *Folkerettslig vurdering av forslaget til ny finnmarkslov.* Retrieved April 28, 2012 from http://www.regjeringen.no/nb/dep/jd/dok/rapporter_planer/rapporter/2004/folkerettslig-vurdering-av-forslaget-til.html?id=278377

The criticism, in particular the requirement for the bill to comply with international indigenous people law, initiated a new era for constitutional practice in Norway.[30]

2.3 The Final Preparation of the Act; Consultations between the Parliamentary Standing Committee of Justice and the Sámi Parliament

On the initiative of the Parliamentary Standing Committee of Justice, four consultations with the Sámi Parliament and Finnmark County Council took place in 2004 and 2005. The majority of the Standing Committee of Justice pointed out that "Norway's international obligations to consult the Sámi are thus included in Parliament's work. This is a constitutional innovation."[31]

The consultations led to rather extensive changes in the draft, which included a new first paragraph of Section 5 stating "the Sámi have collectively and individually through prolonged use of land and water acquired rights to land in Finnmark." That statement is said to represent a principle and political recognition that such rights exist.[32]

Due to these consultations the majority of the Standing Committee, with the exception of the members from the Progress Party and the Socialist Left Party, acknowledged that identification of existing rights must be included as a key element in the *Finnmark Act*[33] proposing established "a surveying commission and a judging tribunal to identify existing rights to land and water in Finnmark."[34] The identification and recognition procedure is regulated in the Finnmark Act chapter 5 (SS. 29–43).

The commission is mandated to investigate and clarify the legal situation on the lands the Finnmark Estate has taken over from the State Forest Company. The report of the Commission will, according to the majority of the Standing Committee of Justice, provide a good basis for people in Finnmark to make up their mind whether conflicts over land rights actually exist.[35] The intention is that the ambiguities and

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[30] In 2005 there was also entered into a consulting agreement between the Norwegian Government and the Sámi Parliament to contribute to a practical implementation of the state's international legal obligation to consult the Sámi, see Prosedyrer for konsultasjoner mellom statlige myndigheter og Sametinget. Retrieved May 12, 2012, from http://www.regjeringen.no/nb/dep/fad/tema/samepolitikk/midtspalte/prosedyrer-for-konsultasjoner-mellom-sta.html?id=450743

[31] Innst. O. nr. 80 (2004–2005), p. 15.

[32] Innst. O. nr. 80 (2004–2005), p. 15 and p. 37.

[33] *Ibid.,* p. 15 and p. 27.

[34] *Ibid.,* p. 17. Cf. chapter 5 of the *Finnmark Act*, entitled "Surveying and recognition of existing rights".

[35] *Ibid.,* p. 17.

disagreements can be resolved through negotiations and consensus, which is reasoned in Sámi traditions.[36] Legal disputes arising from the process may be brought before the Land Tribunal.

Other significant changes in the draft Finnmark Act is that new Section 3, ensuring the commitments in international law, stating that the *Act* shall apply to the limitations imposed by the ILO Convention No. 169, and a section 10 that outline particular procedures including duties to hear the Sámi Parliament in cases of changes in the use of outlaying fields / uncultivated land and transfer of real estate property.

Further on, the Finnmark Estate is given a more independent possession than proposed in the Governmental bill, which prescribed that the Government should appoint a board member (without right to vote), is taken out of the act, and by the fact that the Finnmark Estate is given general expropriation protection.[37]

3 The Identification and Recognition Process of the *Finnmark Act* Chapter 5

3.1 The Mandate of Finnmark Commission

The mandate of the Finnmark Commission is given in the Fm Act S. 5, Para. 3, and is stated as to investigate rights to land and water in Finnmark "[i]n order to establish the scope and content of the rights held by Sámi and other people …on the basis of prescription or immemorial usage or on some other basis".

In Section 29, this is specified to cover "rights of use and ownership to the land to be taken over [from the State] by the Finnmark Estate". It is also stated that the investigation shall be worked out "on the basis of to current national legislation". It is noteworthy that examination of reindeer husbandry rights, which is significant to the Sámi, is to be performed only upon demand by a person with a legal interest. The rights to salmonfishing in the large rivers of Finnmark, namely Tana and Neiden, are not included in the mandate of the Commission.[38]

Recently we have also, somewhat surprising, learned that the Finnmark Commission itself assumes that its mandate does not include determination of the indistinct boundaries between the lands of the Finnmark Estate and private properties measured before the Finnmark Act came into force (July 1, 2006).[39]

[36] *Ibid.,* p. 21.

[37] *Ibid.,* p. 15.

[38] Forskrift (regulation) 16. mars 2007 nr. 277om Finnmarkskommisjonen og Utmarksdomstolen for Finnmark, s. 5 and 6. An amendment of September 21, 2012 (no. 66), implies that the Finnmark Commission also has mandate to investigate claims of rights to fishing grounds in the coastal areas of Finnmark if someone with legal interest requeres it.

[39] See Finnmarkskommisjonen, *Rapport felt 1 Stjernøya/Seiland,* March 20, 2012 p. 15, where it is stated that there is "nothing in the Finnmark Act or the preparatory works that indicate that the legislator's intention has been that the Commission's reports should contain an accurate statement of the boundaries between properties and already meted and the Finnmark Estate".

In any case, the mandate of the Commission is far wider than comparable commissions, not limited to settle boundaries and disputes between the State and private lands, but aiming to investigate the full picture of rights that night exists on the former state lands of Finnmark.

The Commission is not a court of law. It is has therefore no mandate to settle judgments or other binding decisions. Instead, it has to prononce its findings as reports with legal conclutions, cf. Fm Act S. 33.

Establishing the Commission follows up on obligations to which Norway is bound by ILO Convention no. 169, particularly to identify indigenous lands and settle land claims under an adequate procedure within the national legal system, cf. Article 14 (2) and (3). The provisions aims to facilitate the identification process in relation to the Sámi, who, for the most part are locals living in villages or reindeer herders with winter residence in Inner Finnmark and the summer residence (and pastures) in the coastal areas. This holds not only for the formal process but also for the application of substantive law, including the use of legal sources as Sámi customary law, which I soon will return to.

Of importance to note is that the majority of the Standing Committee of Justice expressed great skepticism to the ordinary courts of law, stating that according to ILO Convention No. 169 article 14 (3), the scheme selected in the *Finnmark Act* was much preferable to the ordinary courts, where "it is clearly not acceptable under international law to hand over to the ordinary courts the question of which and the extent of rights acquired in Finnmark."[40]

As an additional argument for the proposed arrangement, the majority mentioned that there had been similar arrangements, regardless of indigenous peoples' rights and obligations under international law, elsewhere in the country.[41] The reasoning of the Standing Committee of Justice for proposing the identification process was thus in part due to Norway's international legal obligations to the Sámi, and in part that the people of Finnmark, Sámi and non-Sámi, should not be put in a worse position than people elsewhere in the country when it came to legal clarification of the status of outlaying fields and mountainous areas.

The Finnmark Commission consists of five members with a majority of lawyers with qualifications as judges (cf. Fm. act S. 29 para 2). The act does not set any requirement for Sámi or other representation except the fact that "at least two members shall be resident in or otherwise have a strong affiliation to the County of Finnmark". On the other hand, it is assumed that the Sámi Parliament is permitted to comment on the composition before the member is appointed by the government.[42] The Finnmark Commission was established by a Royal Decree of 14 March 2008

[40] *Innst. O. nr. 80 (2004–2005),* p. 28. This was later opposed by the Sámi Rights Committee II, see NOU 2007: 13 *Den nye sameretten,* p. 453. The Sámi Rights Committee II was appointed in 2001 to investigate the legal situation for the Sámi south of Finnmark. Their findings were published in NOU 2007: 13.

[41] Innst. O. nr. 80 (2004–2005) p. 28 where the Committee majority mention the Mountain Commission (1953–1953) and the Uncultivated Land Commission for Nordland and Troms (1985–2004).

[42] Innst. O. nr. 80 (2004–2005) p. 19.

pursuant to the *Finnmark Act*, S. 29, Para. 1 and the actual composition can be said to reflect a political balancing act with great emphasis placed upon correct ethno-political distribution with a substantial Sámi representation.[43]

3.2 The Considerations to Sámi Customs, Legal Opinions and Customary Law

In relation to the application of law, we have seen that the majority of the Standing Committee of Justice emphasized that the identification and recognition of rights should be based upon current *national law.* From the preparatory works it is shown that the term "national" was chosen instead of "Norwegian" to "better point out that consideration must be given to Sámi customs and legal opinions".[44] It shows that Sámi customs and customary law must be considered as substantive sources of law within the framework of ILO Convention no. 169, Article 8, and National Norwegian legislation.

Although the objective of this paper not is to analyze the weight of Sámi customary law in contradiction to Norwegian statutory law,[45] it does merit comment. Where indigenous people's customary law stands in conflict to other sources of law, the Sámi Rights Committee II has found that the weight of such law must be determined by the quality of the customs. The Committee does not preclude such customary law be given greater weight than customary law among the majority population, but rather concludes that "[c]ustomary law will not take unconditional precedence when in conflict with internal laws, nor in questions of law that do not apply fundamental legal principles."[46]

From the Norwegian Supreme Court verdict published in Norsk Retstidende [NRt.] 2001 p. 1116, it is stated that Sámi customs had to be clear and have a certain quality.[47] Two prejudicing cases, the Selbu and the Svartskog, published in NRt. 2001 p. 759 and NRt. 2001 p. 1229, respectively, are important sources when Sámi land rights are to be clarified. The majority of the Standing Committee stated that:

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[43] See http://www.domstol.no/Enkelt-domstol/Finnmarkskommisjonen/Om-kommisjonen/Medlemmer-og-ansatte/. Retrieved May 15, 2011, where the composition of the Commission is shown. Two members are Sámi from the Sami areas of Inner Finnmark, one is from the coastal areas and one is representing the outdoor interests. The head, Jon Gauslaa was formerly the head of the Sámi Rights Committee II. He is from southern Norway and has a most "neutral" background.

[44] Innst. O. nr. 80 (2004–2005), p. 19.

[45] For further reading, see Øyvind Ravna, 'Sámi Legal Culture – and its Place in Norwegian Law in *Rendezvous of European legal cultures,* eds. Jørn Øyrehagen Sunde and Knut Einar Skodvin, Bergen 2010, pp. 149–165.

[46] NOU 2007: 13, p. 222.

[47] See also case law published in Nrt. 2008 p. 1789 on the evaluation Sámi customary law.

> Assessment of evidence in the recent case law has been satisfactory. Modern Norwegian case law, particularly the Selbu and Svartskog cases, has given instruction on how traditional Sámi use shall be considered as a basis for acquisition. These will be important sources of law for the Commission and Court.[48]

The Committee actually went so far as to discuss whether this "recent case law" should be codified in the *Finnmark Act*, but did not propose it since it would mean that statutory provisions and not case law would be the sources in the identification process. This shows, however, that these cases represent important sources of law in answering substantive questions about when rights are to be identified in Sámi areas.

Finally, the commitment has been strengthen through Norway's signing of the *UN Declaration on the Rights of Indigenous Peoples*, which in Article 40 states that the settlement of disputes relating to indigenous peoples shall take into account "the customs, traditions, rules and legal systems of the indigenous people's concerned and international human rights." This provision can be compared with the ILO Convention No 169 Article 8. The UNDRIP Article 26, which ensures the Indigenous Peoples' right to own, develop and control the lands, territories and resources that they possesses, is for sure also of significance.

3.3 Some Other Procedural Law Requirements of Importance

The process for the Finnmark Commission does not begin with a claim, a suit or other party subpoena, like the case is for ordinary courts of law or was for the Uncultivated Land Commission of Nordland and Troms. The Finnmark Commission is neither assigned investigation fields by central authorities, as was the Mountain Commission working in the southern mountainous areas (1908–1953), but shall *itself* determine which fields it will investigate and the sequence of the hearings, cf. Fm. act S. 30, Para. 1.

Section 30 also states that consideration shall be placed on "natural and appropriate delimitation of the field as regards extent and legal and historical context and the need to clarify the legal relations." Based on experience from the first three fields which have been taken for investigation,[49] it can be said that the Commission has placed greater emphasis on natural and appropriate delimitation rather than the need for clarification. By the selection of field 4, Karasjok / Kárášjohka (opened for investigation January 25, 2011, and not completed by October 2015), the Commission has chosen to investigate one of the most demanding Sámi areas where it is a great need for internal legal clarification of among others the reindeer husbandry rights and areas.

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[48] Innst. O. nr. 80 (2004–2005), p. 36. More about the cases, see Øyvind Ravna, 'The Process of Identifying Land Rights in parts of Northern Norway' pp. 429–432 and Gunnar Eriksen, *Alders tids bruk,* Bergen 2008 pp. 324–348.

[49] The three first fields of the Commission is Stierdna-Sievju/Stjernøya-Seiland (field 1), Unjarga/Nesseby (field 2), and Sállan /Sørøya (field 3), cf supra note 8. Fields 1 and 3 consist of islands in the Alta Fjord in West-Finnmark, while field 2 is a municipality in eastern Finnmark.

The Commission can omit investigation consideration of cases “that are clearly inappropriate for investigation by the Commission”, cf. Fm. act S. 30, Para 3. For such a decision, emphasis should be put on the character of the right and its legal basis. The majority of the Standing Committee of Justice has pointed out that such assessment must be based on the background and purpose of the identification process, where

> a right based on immemorial usage normally will fit better than a right based in a contract. Uncultivated areas will normally be better suited for investigation than a right to rent or lease ground.[50]

It is further stated that the Commission primarily shall investigate rights of use and ownership that are based on long-term and traditional use. But the mandate cannot be limited to this: “According to the majority’s opinion, it is therefore difficult in a precise way to specify in more detail the legal questions the Commission shall examine.”[51]

The Finnmark Commission has the responsibility for case illumination, cf. Fm. act S. 32 Para 1, which is natural since it is an investigatory body, and not a court of law. The act further states that

> the Commission may in the manner it finds appropriate obtain statements, documents and other material and conduct surveys and investigations, etc. concerning actual and legal circumstances that may be significant for the Commission’s conclusions.[52]

However, the Finnmark Act does not prevent the parties themselves from illuminate the facts or the evidence for the Commission. Representatives for interest groups may also be appointed to follow the working of the Commission. The cost shall be covered by the state, cf. Fm. act S. 32, Para 3. But opposite the previous judging commissions, the state doesn’t provide the parties cost for legal counsels.

As mentioned, the Finnmark Commission is not a Court of Law and is thus not going to file a judgment. The findings of the Commission shall be submitted in a report on the legal status of the investigation field. The report has to contain information about (a) who, in the view of the Commission, are owners of the land, (b) what rights of use exist, and (c) the circumstances on which the Commission bases its conclusions, cf. Fm. act S. 33. The Commission cannot refuse to consider an ownership dispute, for example, by concluding that it is other than the Finnmark Estate who is the owner of a particular piece of land. The majority of the Standing Committee of Justice here points out that the Commission in such cases

> must take a standing on what result has the best basis in law. It is not acceptable to only conclude that the Finnmark Estate is not the owner of the area in question without also indicating who is assumed to be the owner.[53]

To my point of view, this means that the Commission is committed to investigate and propose lines for unclear boundaries between the lands of The Finnmark Estate

[50] Innst. O. nr. 80 (2004–2005), p. 19.

[51] *Ibid.,* p. 20.

[52] The Finnmark Act S. 32 Para 1, 2nd sentence.

[53] *Ibid.,* p. 21.

and private parties, too. Elsewhere it has not completed the identifying of the rights on the lands of the Finnmark Estate.

The Commission's reports will in not have legal efficacy. Legal effect depends on agreements between the parties, unilateral declarations or that the case is brought further to the Land Tribunal.[54]

3.4 The Duties of the Finnmark Estate and the Private Parties

The Finnmark Estate is mandated to without undue delay assess the conclusions of the Finnmark Commission, cf. Fm. Act S. 34 Para 1. This is natural and necessary since the Finnmark Estate holds the title to the lands examined by the Commission and is thus landowner and party to the investigation. The Standing Committee of Justice has pronounced that the Finnmark Estate is more than an ordinary landowner and party, and has commitments in the identification process beyond what can be termed as ordinary party obligations.[55]

The Finnmark Estate has thus obligations to actively consider the Commission's report. To the extent the Finnmark Estate agrees that others have rights on the land presently owned by the Finnmark Estate, it is obliged to confirm and without undue delay attend the rights to be registered. Through agreement, negotiated consensus or unilateral declaration, the process will terminate at this stage, cf. Fm. act S. 34 Para. 2.

Private parties have not such obligation to act on the report of the Commission. The majority of the Standing Committee of Justice in practice assumed the opposite, when it stated "if the parties do not want to put the question to tip by bringing it to the Land Tribunal, they can allow the Finnmark Estate to continue to manage the grounds without cutting off the possibility of raising the issue at some future point in time."[56] That statement virtually proposes leaving the legal issues *unresolved* without legal efficiency, and nearly sustain parties in waiting to put forward a claim for strategic reasons. Such reasons can be assuming that prescription period is not yet reached; future change in the interpretations of the law gives better possibilities, or other circumstances that may later work to one's benefit. Likewise the reason not to respond might be kind of legal insecurity between a dispute and agreement.

According to the Fm. act S. 35, parties that do not agree with the Commission's conclusions or who need assistance to have the conclusions transferred to a binding agreement with the opposite party, can ask the Finnmark Commission for mediation after the report is filed.

It is also notable that disputes are assumed to be resolved according to Sámi tradition. The majority of the Standing Committee of Justice here refers to the Sámi Parliament, which has emphasized that "conflicts as far as possible and in line with

[54] For more reading (in Norwegian), see Øyvind Ravna, 'Rettsvirkningen av rettskartleggings og anerkjennelsesprosessen i Finnmark', *Lov og Rett,* (50) 4/2011, pp. 220–240.

[55] *Ibid.,* p. 21.

[56] *Ibid.,* p. 21.

Sámi traditions shall be resolved through negotiations and not through court proceedings."[57] The majority stated that it support such a procedural approach completely.

3.5 The Land Tribunal for Finnmark

The Land Tribunal for Finnmark has a mandate to hear "disputes concerning rights that arise after the Finnmark Commission has investigated a field", cf. Fm. Act S. 36, Para 1.[58] The Tribunal shall consist of five members, where the chair, the vice-chair and one other member shall fulfill the requirements for Supreme Court judges. There is no demand for any other requirements as locals or other special knowledge by the members, not even a connection to the County of Finnmark.

General civil procedural rules apply in the same way for the Land Tribunal for Finnmark as they did for previous comparable tribunals as the Uncultivated Land Commission for Nordland and Troms, so far as they are applicable, and nothing else is specified in the act, cf. S. 46, Para. 2. But like the former tribunals, there are a number of special procedural provisions. As we have already seen, there are particular rules on arbitration, where the Finnmark Commission is given a duty in mediation. However, the mediation is not compulsory,[59] which means that legal proceedings can take place once the Commission has submitted its report.[60] The Land Tribunal itself is not assumed to carry out court mediation or other forms of mediation.

A period of one year and six months is set to bring disputes that arise after the Finnmark Commission has investigated a field, before the Tribunal. The period runs from the time the Commission has submitted its report, cf. S. 38, Para. 1. The deadline is assumed to be long enough to allow the Finnmark Estate time to consider the report and to give the parties' time to negotiate. The extended period of time can also be explained in that "regards to some Sámi ways of utility also implies a need for a long period",[61] presumably supposing that what is left of the Sámi nomadic livelihood, needs a longer time to respond. The majority also argues that the long period of time can contribute in impelling the negotiations forward and put pressure on the parties to reach consensus.

But the extended deadline in bringing the dispute before the Land tribunal may be problematic in relation to the requirement for trial within a reasonable time in relation to the provision in the *European Convention on Human Rights* (ECHR)

[57] *Ibid.,* p. 21.

[58] The tribunal must also be seen as part of Norway's obligation under Article 14 of the ILO Convention No. 169. The Tribunal is not yet established (May 30, 2012).

[59] Innst. O. nr. 80 (2004–2005), p. 22.

[60] At the moment this is however problematic, since the first report was filed March 20, 2012, and the Tribunal is not yet established (May 30, 2012).

[61] Innst. O. nr. 80 (2004–2005), p. 23.

Article 6.[62] It is not discussed in the preparatory works, except for the statement of the Ministry of Justice saying that one of the aims of the Finnmark Act is that "the legal situation throughout Finnmark will be investigated within a reasonable time".[63]

The long deadline is neither not exhaustive. The Land Tribunal may deal with matters that come in at a later stage if not all cases in a field have been brought to conclusion and if it finds the case appropriate for such consideration, cf. S. 38, Para 2.

The Land Tribunal has exclusive jurisdiction, cf. S. 36, Para 3, which means that cases that fall under the Tribunal cannot be brought before the ordinary courts or the land consolidation courts except in specified circumstances. Such circumstances occur when the Tribunal has dismissed a case pursuant to Section 39 (see below) or if the deadline for bringing proceedings before the Tribunal has expired. The exclusive competence means that *lis pendens* in a certain investigation field occurs when the deadline for bringing the matter before the Tribunal starts to run, i.e. after the Commission has submitted its report.[64] In fact exclusive competence will block lawsuits by the ordinary courts until the last dispute in an investigation field is processed.

Questions that are "found inappropriate for consideration" by the Tribunal may be dismissed in whole or in part, cf. S. 39, Para. 1. Such rejection can be done *ex officio* and cannot be appealed, cf. S. 39, Para 2. The claimant, however, shall be allowed to respond before dismissal occurs. When it comes to matters or disputes that are not suitable for treatment, it is comparable to those the Finnmark Commission can refuse to investigate, pursuant to Fm. act S. 30, Para 3. The threshold for rejecting a claim is in any case somewhat lower, since it is not required "that the case is obviously not suitable for treatment".[65]

Although an appeal cannot be posed against rejection of such Court rulings, the Majority of the Standing Committee of Justice assumes that the interests of the plaintiff are met since he is allowed to respond before the Tribunal rejects the question. The majority also states that the Tribunal should

> be able to concentrate on the major and fundamental issues, so that minor matters, such as … adjusting the boundaries between two properties, or interpretation of contracts for the sale of property, could be left to the ordinary courts or land consolidation courts.

The substantive decisions; the judgments of the Land Tribunal, can only be appealed directly to the Norwegian Supreme Court of Justice, cf. Fm. act S. 42. The Majority of the Standing Committee of Justice points out that a "similar solution was selected for the Uncultivated Land Commission for Nordland and Troms."[66]

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[62] See Øyvind Ravna, 'The Finnmark Act 2005 Clarification Process and Trial 'Within a Reasonable Time'', *Nordic Journal of Human Rights* (29) 2/2011 pp. 184–205.

[63] Note to Section 2 of the Regulation on the Finnmark Commission (March 16, 2007 No. 277) of Royal Decree 16 March 2007 p. 3.

[64] Innst. O. nr. 80 (2004–2005), p. 23 where it is stated "[i]f the deadline is exceeded, a party may bring the matter before the ordinary courts".

[65] *Ibid.,* p. 23.

[66] *Ibid.,* p. 25.

But The Majority did not consider that these rules of appeal, which was originally adopted for the Mountain Commission in 1908, were severely limited because of an amended to Civil Procedure Act of 1915 by Act 22 May 1981 No. 24.[67]

The chosen appeal procedure means that presumably only a minority of the appeals will be heard, since the Supreme Court is not an ordinary court of appeal, but rather a Court for settling principle questions of broad significance outside the concerned parties. Another objection against this appeal scheme is that the Norwegian Supreme Court can neither make on-site inspections nor examine witnesses itself.

4 Final Remarks

In reviewing the identification and recognition process of the Finnmark Act, one can say that the Act is both innovative and unique, not only because of the influence of the indigenous people in the legislative process, but because it aims to take into account the commitments in the ILO Convention no. 169 regarding identification of Sámi ownership, the use of Sámi Customary law, other customs and traditions, including a the Sámi particular way of life. The construction with two independent bodies put together in a unified system, may also be considered as an innovation.

We may note that the Sámi Rights Committee II, primarily based on review of case law of the ILO monitoring bodies,[68] have concluded

> that the Finnmark Act system as a whole clearly must be considered to meet the requirements of ILO Convention No. 169 Article 14 (2) and 14 (3).[69]

It also points out that the solution chosen for Finnmark must be considered to be "in line with the Norwegian aims to loyal achieve the purpose of the ILO Convention" and thus as an adequate procedure within the national legal system to resolve land claims from the Sámi.

But the combination of an investigation body and a special land tribunal is also challenging, particularly in respect to more practical approaches. Such question do not seem to be reviewed to the same extend by the legislators or the Sámi Rights Committee II.

The analysis shows that it is relevant to quarry if procedural requirements in the Act, like the upheld of the party disposal, the opportunity to achieve decisions with

[67] The amended to the civil procedure Act 22 May 1981 No. 24 meant that the access of appeal was strictly limited in relation to previous Commissions, where the judgments could be appealed directly to the Supreme Court. The amendment had its origin in that the Supreme Court in 1979 proposed to limit the appeal right so that the Appeal Committee of the Supreme Court can refuse to promote the case under the Civil Procedure Act S. 373, para 3 (4), if it found "that neither the decision importance beyond this case or other circumstances give reason that the appeal will be tried by the Supreme Court".

[68] See NOU 2007: 13 pp. 431–455.

[69] *Ibid.,* p. 453.

legal efficacy, and access to efficient appeal remedies. The two-body identifying clerifying and dispute solving procedure process also involves a challenge to the rules of trial within a reasonable time in the European Convention on Human Rights. Effective remedy of appeal and trial within a reasonable time can be seen as conflicting interests, but both these requirements must be met according to ECHR Article 6.[70] That the Commission has chosen to define the determination of boundaries out of its mandate means that the practical significance and implication of the investigation work is reduced.

In relation to the substantive side of the law, the procedure may be challenging, too, not only because the Finnmark Commission and Land Tribunal have a far wider mandate than comparable former commissions, but also because they have less guidance from preparatory works and case law than the comparable commissions have had. That the process occurs in a part of the country, or in a culture, where property law traditions have lower standing than elsewhere, also adds to the difficulty.[71] And even if there are some land marking cases,[72] case law indicates that it will take time to establish norms for clarifying and ensuring the quality of Sámi customary law.[73]

Sámi customary law is however an important source of law, not only because of the ILO Convention no. 169 and the place such sources is given in the preparatory work of the Finnmark Act, but also due to the allowances to Sámi legal culture we must expect from Norwegian legal culture.

Since the Finnmark Act overall has some constraints, few sources and precedents to depend upon, one problem may be the predictability of a case outcome or an answer to a legal question. Consequently, it can be difficult for the claimant or parties to predict the result of a particular case. While the previous Uncultivated Land Commissions for Nordland and Troms only had to investigate whether the state owned the land, the boundaries between state and private land, and what rights of use existed on the land belonging to the state, the Finnmark Commission has to examine the whole bundle of rights and resources that might be found on what today is the Finnmark Estate. It might include community commons, joint-ownership and Sámi siidas.

Even if the current Finnmark Commission is situated with Sámi members, there is no requirement for local knowledge or knowledge of Sámi customs and customary laws, neither among the members of the Commission nor among the members of the Tribunal. It may be problematic. Local knowledge is generally important for reaching a correct and reasonable result *de facto* acceptable to all parties. It is also important for parties to know that their peers have contributed to the decision. Sámi customs, customary law and legal traditions are little-taught in law schools today, so *Sámi* local knowledge is therefore, of paramount importance.

[70] See also the ILO Convention No 169 Article 12 and 14 (3) and the UN Declaration on the Rights of Indigenous Peoples Article 40.

[71] Comparable arrangements in other countries could be discussed, but there is probably not much to be mentioned. For an overview, see NOU 2007: 13, pp. 247–271.

[72] See NRt 2001 p. 769 (Selbu) and NRt. 2001 p. 1229 (Svartskogen), which set up norms for how the rules on immemorial usage are to be applied to Sámi land claims.

[73] See NRt. 2001p. 1116 and NRt. 2008 p. 1789.

Space does not permit a *de lege ferenda* discussion (how the law ought to be). However, the review shows that people in Finnmark, both Sámi and non-Sámi, probably will gain from some amendments to the law. To ensure trial within a reasonable time, there could be sat a shorter period of time to bring cases before the Tribunal. Transferring the Commission to a *court of law* should be given considerations, too, as it would benefit both to a more predictable remedy of appeal, less proceeding time, and provide the opportunity to obtain enforceable decisions. With such amendments, cases should naturally start with a writ or a lawsuit, with the Finnmark Estate and those who appoint its board, the Sámi Parliament, and Finnmark County Council, playing an active role. Both the Finnmark Commission and Tribunal should then by law be ensured a larger proportion of qualified lay persons, especially with local knowledge and understanding of Sámi customary law.

Finally, and in spite of the infirmity pointed at above, I will like to express that the review shows that Norway as a state is *recognizing* Sámi rights to land and natural resources, giving the Sámi representatives a rather substantial influence in the legislative process of the Finnmark Act. The Act can thus be uphold as an example for the management and self-determination of the natural resources in a core Sámi area. As mention in the introduction, this was pointed out by the UN's Special Report on Indigenous Peoples' Rights, James Anaya in 2011,[74] who also uphold the Act as an important example for the other Nordic Countries.

At the same time the UN Rapporteur expresses certain reservations, stating that since "the process for identifying rights to land under the Finnmark Act is currently underway, the adequacy of the established procedure is not yet known."[75]

Such a reservation is relevant. But it can hardly be addressed to a lack of upholding the commitments of ILO Convention no. 169 or failures in the legislative process, but rather that the application of law by the Finnmark Commission wasn't known at that time. Therefore, it is also fair not to conclude on the process is an important example for other countries with indigenous people before more of the result of the Finnmark Commission is revealed.[76]

However, there are there might be failures explained from uncoordinated and inadequate preparatory work, too. This means that even if people in Finnmark; Sámi and non-Sámi, can subsist with the current Act, there is considerable room for improvement, where it is possible to establish a more adequate procedures within the national legal system to resolve land claims by the Sámi. This may not primarily

[74] James Anaya, *The situation of the Sámi people in the Sápmi region of Norway, Sweden and Finland.* Retrieved September 20, 2011, from http://unsr.jamesanaya.org/docs/countries/2011_report_Sámi_advance_version_en.pdf, paragraph 44.

[75] *Ibid.,* Para. 49.

[76] The reservation has been more relevant as the Finnmark Commission has delivered more investigations (see supra note 8); in the first three reports there are not found collective use rights beyond the extend of the Finnmark Act and no ownership rights of the Sámi or non-Sámi locals. See also the additional remarks of the author on the bottom of the main text. For more reading on the Finnmark Commission's findings, see Ravna, Ø. (2013). The First Investigation Report of the Norwegian Finnmark Commission, International Journal on Minority and Group Rights, 3(20), 443–457 and (in Norwegian) Ravna, Ø. (2013), Finnmarkskommisjonens bevisvurderinger og rettsanvendelse – drøftet ut fra dens to første rapporter, Lov og rett, 8 (52), 612–631.

be reasoned to better meet the requirements of the ILO Convention, but to fulfill the more practical demands like legal efficacy, party disposals and consume of time. Such improvement is a responsibility for the legislature, in cooperation with the Sámi representatives, which are to participate according to the principle of free, prior and informed consent, based on the international legal commitments, constitutional obligations and the moral obligations of a State that possess territory of an indigenous nation.

After this text was submitted in 2012, the Finnmark Commission has completed three more fields of investigation; totally four fields. The results of these investigations show that the reservation the UN Raporteur of Rights of Indigenous Peoples expressed were hightly relevant. In none of the four fields investigated, has the Finnmark Commission identified any land collectived owned by the Sámi. Neither has the Commission found any use rights of such nature that the Sámi have access to dispose their rights, regulate or control the use, or benefit from the usufructs of these. If the procedure Norway has chosen to comply with the ILO Convention no. 169 shall be considered as adequate within the national legal system, both in realtion to identify Sámi lands, protecting it or to solve claims, as precreibed in that convention, the result of the forthcoming investigations have to be quite different from the first four.