

## **RIGHTS FOR INDIGENOUS PEOPLES**

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### Introduction.

Twenty years ago I travelled together with 8 other Sami delegates to Canada to a little town named Port Alberni. We had been invited by chief George Manual who at that time was the president of the National Indian Brotherhood. The result of our meeting was the founding of the World Council of Indigenous Peoples. This organization has been one of the most important actors on the international scene for the spreading of the message about indigenous peoples. One of the interventions I remember from that meeting is an old man from Ecuador who said that he would not have complained if he had been treated like the white man treats his dogs. "But our life is ten times worse than the life of the white man's dogs", he said. Twenty years ago the term "indigenous peoples" didn't mean much to most people, although the International Labour Organization (ILO), as one of the surviving bodies of the League of Nations, had developed a convention on indigenous peoples as early as 1957. In these twenty years since Port Alberni the term has become a natural part of nearly everyone's vocabulary. And as you probably are well aware of, we have now from 10 December 1994 entered the "International Decade of the World's Indigenous People". Without the wisdom and efforts of such people as George Manual, I doubt we would have come this far. Even common people in Northern-Norway are discovering that there is an indigenous people living amidst them and many of them, probably the majority, have reconsidered the way they used to think about and handle the "lapps" or "finns". Even our own name sami is wholly accepted in Norway and Scandinavia and is even becoming more and more known in the English speaking world.

### Some basics about indigenous peoples.

According to the "State of the world" report for 1993 from Worldwatch Institute there are some 4000-5000 indigenous cultures in the world with 190-625 million individuals belonging to these cultures. The UN General Secretary in his inauguration of 1993 as the International Year for the World's Indigenous People stated that indigenous peoples comprise over three hundred million individuals across the globe. The figures depend on the definition of the concept indigenous people. The most widely accepted definition is the one used by the International Labour Organization in its convention 169 concerning indigenous and tribal peoples in independent countries from 1989, which Norway and Denmark, as the only two of the Nordic countries, has ratified.

In short the core of the definition is that indigenous peoples are those who lived in an area before it was colonised or before the present state was established and who retain at least some of their own social, economic, cultural and political institutions. The main reasons why these peoples deserve special attention is the situation they find themselves in as a result of colonisations by other peoples, mainly Europeans.

The history is in principle the same everywhere: The people from outside began with trading, plundering and missionary expeditions and they drew up the borders without asking our peoples. As a consequence of this the indigenous peoples have little control over their land and the exploitations of resources. As a conclusion to the historical development, one has to say that the establishing of most states has been a failure with regard to ensuring the interests of the indigenous peoples opportunities to preserve their culture and ways of life, and also with regard to preserving the environment in many parts of the world. It is a remarkable fact that the Nordic countries, the one who like to call themselves the most developed and democratic in the world, are the last of all the arctic states to formally acknowledge the existence of indigenous populations within their borders. In Norway it happened in 1987 and in Sweden in 1992, while the Home Rule on Greenland was established in 1979.

A common trait of the land rights problem is that the states have not recognised collective rights. And in most cases the governments have not even wanted to know how the original inhabitants of the areas had used the land before the colonists entered the stage. In Norway the selling of indigenous land began in the end of the 18th century. And in the first part of this century Samis could not own land according to Norwegian legislation unless they gave up their mother tongue. And still today none of the Nordic states have found solutions to the problems relating to the legal rights to land and waters.

For all indigenous peoples the relationship to the land is fundamental. The earth is our mother, we often hear our sisters and brothers say. And this has both a physical and a spiritual dimension. The physical dimension is obvious because indigenous people drink the water in the rivers, we eat the animals and the herbs. Local and global pollution is gradually turning the situation into a night-mare for many groups. Probably most of the arctic areas are already affected. The spiritual dimension lies in the respect for life itself as plants and animals and the respect for our ancestors resting in this soil.

The result of the so-called development is rapidly making life impossible in many indigenous areas. The most difficult environmental situation in the north is found in the Soviet north. Large areas are rapidly becoming unfit for human life. The Novaja Zemlja is one of those sad examples where the testing of nuclear bombs led to the evacuation of the indigenous people. Radioactive waste seems to be widespread both in waters and in the earth there. Other wellknown examples are the effects of the Exxon Valdez oilspill to the indigenous Alutiiq of Prince William Sound and Kodiak Island. The rain forrest is being destroyed in South America, which is the home for many indigenous peoples - but at the same time the lung of the planet. All this sure is elementary knowledge for you all. But we should see to it that it becomes elementary knowledge for every pupil at school age.

The surprisingly similiar histories and similiar development policies pursued by the governments have led to a number of similiar social and cultural problems or maladjustments for the members of our peoples. In his conclusions prof. Jens Dahl at the University of Copenhagen has stated the following about the indigenous peoples of the north:

*In short, the most outstanding problems are:*

*-A high rate of alcohol abuse.*

*-A high incidence of suicide.*

*-A high rate of accidents and violent deaths.*

*-Many people have lost their mother tongue and the children can no longer speak their own language.*

*- A defeatist attitude towards the future amd passivity towards finding solutions to problems by their own efforts .<sup>1</sup>*

In short, many of these peoples and individuals within the groups are loosing their will and courage to live and to survive. The same is try for almost all of the indigenous peoples of other parts of the world.

Nevertheless, these peoples have remained loyal to their respective states and their ambitions are limited to rules and procedures on national and interantiona level as means for the preservation of their cultures and the material basis for the cultures - the land.

#### The indigenous peoples in the north.

I will not ry to give you a complete list of all the indigenous peoples in the world. But we could take a look on the situation in the artic where we are now. When talking about the indigenous peoples of the arctic there are not many difficulties with definitions. 50 indigenous

<sup>1</sup>Jens Dahl:Indigenous Peoples in the Arctic. København 1993.

languages are spoken in the Arctic and the Worldwatch Institute's estimate of the number of individuals is 2 million.

Almost all the countries bordering the Arctic - US(Alaska), Canada, Denmark(Greenland), Norway, Sweden, Finland and Russia - have indigenous peoples living within the arctic region.

The indigenous groups in Alaska are the Inupiat and Yupiit, the Aleut, the Alutiiq-Aleut, the Athabascan Indians and the Pacific Indians. The total native population was 85 698 in 1990. (This and all the following figures are from Jens Dahl's report.)

In Canada the indigenous peoples are Indians in Yukon, the Indians, Metis, Inuvialuit and Inuit in the Northwest Territories and the Inuit and Cree-Indians of Quebec and the Indians and Inuit on the Labrador coast. The indigenous population of the Northwest Territories is approximately 30 000.

In Greenland the number of ethnic Greenlanders was 47 187 in 1992.

The number of the Sami people in Scandinavia is somewhere between 70 000 and 100 000.

The total number of individuals belonging to the officially recognised "Small peoples of the North and Far East" in Russia was around 170 000 in 1989.

In addition to these there were 382 000 Yakuts, 344 500 Komi, 18 000 Kamchadals and a small number of Veps and Izhors in Russia

#### The situation for the Sami people.

The relationship between the Norwegian State, the Swedish State, the Finnish State and the Soviet State on the one hand and the Sami people on the other hand is colonial in its origins. The Sami Land, Sápmi, was once organized in siida-units with cooperation within the siida-area and with a certain cooperation between the siidas. For the state to claim sovereignty over the area it was first necessary that the siidas were recognized as the owners of the land in their respective areas. In 1775, however, after the borders had been drawn in up 1751, the Norwegian state began to sell land. But when the Department of Finance in 1825 asked local administrators about the land ownership conditions, one of the lensmen (sheriffs) in Finnmark answered: "...I hereby will report that as far as I know, the Crown owns no common

land here"<sup>2</sup>. In 1848 the arguments were for the first time launched against sami land use as basis for land ownership. And so in 1963, 1902 and 1965 the state defined itself by law to be the rightful owner of all land in Finnmark.

This was the time when the young Norwegian state was establishing itself and the true Norwegian nationalist spirit could not bear "forreigners" like the Samis and the Kvens (the immigrants from Finland). All means were taken into use for the purpose of "Norwegianization". Teachers were paid a bonus for good results in this national task with the clearly defined aim to assimilate the Sami population on the course of one generation. This would not be a to big sacrifice in for this important case, said the politicians and administrators. The lands sales act from 1902 for Finnmark stated that no one should be allowed to buy land if he did not give up the Sami language and began to use Norwegian in his home.

There are five well known theories used by European powers to justify the assertion of sovereignty over indigenous land:

1. the Pope has given them the land
2. they have been the first to discover the land
3. sustained possession
4. voluntary acceptance of colonial sovereignty by the indigenous populations
5. armed conquest<sup>3</sup>

None of these suit the Sami case. We have never been conquered in war and we have never signed agreements with any state. Most of our lands have been and still are in our use and "possession". We have often pointed to these facts and the only answer is that things are as they are because it is best this way or because things are as they are. The logic is not brilliantly convincing. The Sami scholar Alf Isak Keskitalo summarized up in 1980 the leagal situation in this way:

*"According to Sami opinion and also according to common sense, it should be clear that an interethnic relation that has begun with plundering and blackmail from one of the parties, and which has ended up in a theory that the same party - the state- owns all land in the area 700 years later, without any kind of agreements or treaties between the parties in the meantime, can not be juridically sound. And less so*

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<sup>2</sup>Steinar Pedersen: State or Saami ownership of land in Finnmark? *Readings in Saami History, Culture and Language II*, Umeå 1991

<sup>3</sup>Slattery: *The Land Rights of Indigenous Canadian Peoples* (unpublished doctoral thesis) University of Oxford 1979

*because there is a continuous law tradition in the same state that the land shall be built with law" <sup>4</sup>*

Norway has a dark past as oppressor of the Sami people. For 100 years all means, unless physical violence, was taken into use to wipe out our culture. Not until the time after World War II the oppression stopped. But still we were not recognised as a people. With the conflict about the Alta hydro-electric dam construction the government was forced by a broad alliance of Samis, environment activists, academics, politicians and ordinary people to review its policies. Two commissions were established to make recommendations. The present presiding judge of the supreme court Carsten Smith was the first chairman of the Sami Rights Commission and under his chairmanship the recommendations were given to establish a Sami parliament and amend the constitution to include a guarantee for the preservation and development of our culture.

The question of the land rights is still unsolved. And here we have a serious problem. We expected the government not to alter the situation while the question of the land rights is being reviewed. But the government has transferred the land of Finnmark to a state owned company which runs the management of it on profit basis. Farther south (in Troms and Norland) a special court is settling the borders between state owned land and private land. Sami interests are treated in a most unsatisfactory way in this process.

Today, we have not got much to say about land management and resource exploitation. Norway has ratified the ILO convention on indigenous peoples and tribal populations. Article 14 and 15 in this convention are supposed to guarantee indigenous possession and ownership of their traditional land.

The land-and-water question is unsolved also in Sweden and Finland.

International mining companies, like Ashton Mining Limited (Australian) are coming into our lands to exploit minerals. We can not do much about this because we lack the legal instruments we hoped to get as a result of the Sami Rights Commission's work. We are still waiting for justice.

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<sup>4</sup> Keskitalo, Alf: *Samiske rettsopfatninger til samisk land*. T. Thuen(ed.): Samene-urbefolkning og minoritet. Tromsø 1980.

The education system is under revision in Norway. It seems that the minister responsible for education now wants to use the ILO convention against us rather than than using it for the development of our self-determination. There are no signs of "self-dertmination in education" for us. The Norwegian majority value system seems still to be the only acceptable one. I am therefore very concerned about the future of the Sami culture in this country.

In Sweden the government and the parliamant has taken away a substantial part of the Sami's hunting rights.

In Russia, the rivers have been hired and sold to marked prize to forreigners who can pay in dollars and Deutchmark and local indigenous people are not allowed to fish anymore in their own rivers. And when a Sami company tried to start up a tourist camp, it was burned down supposedly by army personell.

In fairness one should add that despite these failures to meet our expectations in the land-and-water question, there has been some major improvemants on the cultural field. There is a language act both in Finland and Norway from 1992 that guarantees certain linguistic rights for the Sami in courts and in public administration and public service. In 1988 the Norwegian constitution was ammended with a new paragraph reading:

*"It is incumbent on the govermental authorities to take necessary steps to enable the Sami population to safeguard and develop their language, their culture and their social life".*

We expect Finland to make a similiar amenment in their constitution in the nearest future.

### **Self-government strategies.**

The struggle to strengthen the political position of the each of the peoples has given som results. Jens Dahl mentions three main models of selv-government strategies found in the the north:

The first type of indigenous autonomy is regional self-government. The most far-reaching regional self government model is no doubt found on Greenland, the Home Rule, from 1979. All rights for each individual are in this system defined in terms of the person being an inhabitant of Greenland and the rights are not based on ethnicity. A similiar system is being developed in Canada under the name Nunavut Territory, but as it seems, with far less political power and authority than the Greenlandic Home Rule system.

In Canada and Alaska a new type of autonomy has been introduced in the 1970s by land claim agreements. The parties of these agreements are groups of indigenous peoples and governments. The core of the agreements are economic ownership rights to selected territories. The most extreme of these is the Alaska Native Claims Settlement Act from 1971 limited strictly to only ownership rights to certain areas. In this way 11% of the land of Alaska is owned by native people. In return, all other rights to other areas or in other sectors than economic ownership, have been extinguished.

A third kind of self-government is what prof. Dahl has called ethno-political self-government. This means that specific rights are assigned to specific groups of people on the basis that they are the original inhabitants of the territory. In Alaska the tribal council system belongs to this type. In Scandinavia the Sami Parliament system is also of this type combined with rights to reindeer herding that we find in Norway and Sweden. But so far the Sami Parliaments have only advisory powers and they can not be very efficient in preserving and promoting the culture.

In summing up it is no doubt that the Greenlandic Home Rule model is the most advanced system for self-government for indigenous peoples so far developed in the Arctic.

The central international documents on the rights of the indigenous peoples are:

After these twenty years the international community has through very difficult processes produced at least some principles for the protection of indigenous peoples. The most central conventions and guidelines are these:

1. ILO-convention no 169 concerning indigenous and tribal peoples in independent countries ( here referred to as ILO 169).

This convention revises the ILO Indigenous and Tribal Population Convention from 1957.

The limitations of this convention are that very few countries have so far ratified the convention.

2. United Nations Conference on Environment & Development(UNCED) : Agenda 21, Chapter 26: Recognising and strengthening the Role of Indigenous People and their Communities, Rio de Janeiro, 1992 (referred to as Agenda 21, 26 with section number) This document is the one which has been most widely accepted and it is therefore more useful for the majority indigenous peoples.

3. Draft universal declaration on indigenous rights, being prepared by the United Nations working group on indigenous populations under the Human Rights Commission .

This is, as the name suggests, only a draft that has come out of many years work within the Human Rights Commission. The hope is that it leads up to a UN convention on indigenous peoples and the establishment of a permanent forum within the UN for the continuation of the work after the Working Group has fulfilled its task.

4. Proclamation of The International Year for the World's Indigenous People (1993) by UN General Assembly resolution 45/164 of 18 December 1990 and the corresponding resolution proclaiming the Decade for the world's indigenous peoples from 10 December 1994 and the "Programme of activities of the International Decade of the World's Indigenous People" from 2 December 1994.

These Proclamations are of course merely symbolic acts. A decade in itself is not likely to bring about substantive results, but the decade may keep the spotlight burning. People who know what it means to be forgotten and neglected appreciate every attention they can get.

#### The rights of indigenous peoples.

Which are the basic needs and basic rights of indigenous peoples? The answer could be very short: Their needs and rights are in principle the same as for other peoples in this world. In the same way as individuals have basically the same needs all over the world which are recognised in the universal declaration from 1948, the peoples have the same needs as well which need to be guaranteed and protected. But while individuals in principle have been recognized as of equal dignity, the same is far from the case for peoples.

The most basic right is to be recognized as a peoples.

So when we speak about indigenous peoples we speak about peoples with an S which means that we are distinct peoples each of our own. It is disappointing that the UN only speaks about "World's Indigenous People" in singular.

And even in the UN Working Group on Indigenous Populations which is preparing the "Draft United Nations Declaration on the Rights of Indigenous Peoples" there has been discussions about this. Major efforts has been made to remove the "s" from the term "people". The term would sound like "people in the street" or "people in the bush". The intended legal and political implications are of course removal of group rights.

The principle of self-determination is based on the principle of peoplehood. That means that every people has a certain right to take decisions about their own affair of today and about their future.

But this does not mean that indigenous peoples want to create their own states. In fact this is one of the agreements that was made between national states and the indigenous representatives in the preparation of ILO 169 and it is reflected in article 1 in this way:

*The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.*

The most important concrete right is the right to the land. Next after shooting us to take away the land is the most effective way to destroy our peoples. All over the world we hear this over and over again. All means have been used by governments to take over our land. One way to come over indigenous land has been to declare it a wilderness and a *terra nullius* - no-mans-land.

Professor Jens Dahl at the University of Copenhagen prepared a background report on indigenous peoples in the arctic to the Nordic Council's Arctic Conference in Reykjavik in August 1993 and he stated: *The use of notions like 'The Arctic Wilderness' or the 'Arctic Frontier' violates fundamental territorial and cultural rights and aspirations of indigenous peoples.*<sup>5</sup>

By describing our land as wilderness and no-mans-land the colonising peoples and states maintain legitimacy for themselves to do what they want to the land and consequently also to the peoples living there. But each square meter of this area belongs to and is an integral part of one of the Arctic cultures. It is not 'wilderness' for us. This term is simply ethnocentric and people who want to take the appeal from the UN General Secretary for 'A New Partnership' for indigenous peoples seriously, should consequently avoid these terms all together. There is much power in language. The white man has a powerful language that he knows how to use.

The importance of the land-question derives from the obvious fact that these peoples depend more than other groups and peoples on renewable resources and ecosystems to maintain both their physical and cultural (spiritual) well-being. Therefore it is being more and more accepted that we can not speak about protection and development of indigenous cultures without establishing guarantees for the cultures concerned against the possibility of the basis for the culture being taken

<sup>5</sup>Jens Dahl: Indigenous Peoples in the Arctic. København 1993. p. 2

away from them. Here in Norway, it has been the presiding judge of the Norwegian Supreme Court, Carsten Smith, who has formulated and developed this principle as the first chairman of the Sami Rights Commission and it has been accepted, at least in theory, by the government and the parliament of Norway.

A third major principle is the right to cultural and intellectual property. Indigenous traditional and artistic intellectual achievements are not protected by copyright. Most of such intellectual property that is used for profit is not paid for. This is in fact the other side of the same problem of protection of property.

Out of the principle of indigenous peoples as peoples we can derive a series of principles on fields like education, health care and so on. Much of this is included in the ILO convention 169 and in the draft declaration from Geneva. Simply everything that has to do with maintenance and reproduction of culture, be it material or immaterial, is important in this respect.

#### **Why the survival of indigenous cultures is important.**

The right of the indigenous peoples can be looked upon from two perspectives. The first perspective has to do with justice and fairness. It is undeniable that much most of the history about the life and death of indigenous peoples is about how the Europeans with violence and cheating have taken over the basis for existence for many indigenous groups. Everyone who believes in the right for every human being to have a decent life and for every people to have the right to exist, will immediately agree that there is much wrong to be corrected. We really appreciate the support of many women and men, grassroot organizations and international agencies.

But this is not the only reason why everyone should care. In these times there is much talk about the resources that biological and cultural development has produced. Sustainable development means that we should make use of these resources without destroying their potential for the generations to come.

There is an intrinsic relationship between cultural diversity and biological diversity, as was very well described by Alan Thein Durning in the State of the World report for 1993<sup>6</sup> His message was very simple and clear: Biological diversity is closely linked to cultural diversity.

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<sup>6</sup>Lester R. Brown; State of the World. Washington 1993.

The indigenous peoples are the guardians of most of the biological diversity.

Of the 6000 cultures 4000-5000 are indigenous. In 9 countries we find 60 percent of all the languages in the world. Of these 9 centres for cultural diversity 6 also are on the list with "mega-diversity" in biological terms - those with extraordinary richness of plant- and animal species. And 2/3 of the countries with biological "mega-diversity" also have cultural diversity with 100 languages in each. The "lungs" of the earth -the rainforrests - are the home of many indian cultures. Where there are forrests, there are indigenous peoples, and where are indigenous peoples there are forrests. The difference between a colonist and an indian in the Columbian forrest is this: The colonist in the forrest wants to leave much money to his children, while the indians in he forrest want to leave the forrest to their children. Durnings's conclusion is therefore that the old view that the oldfashioned indigenous cultures had to be sacrificed for sake of development can not be defended in any way. True development means that we have to take care of both biological and cultural diversity at the same time.

In addition, the languages and cultures in the world represent knowledge on th same level as can be found in scientific libraries - in fact they are an essential part of our common scientific library.

So not only for reasons of justice, but simply for more egoistic reasons the protection of indigenous cultures is essential to everyone on this planet.

But you are not always very ecological yourselves, I guess many of you would like to object. And it is true. Many indigenous economies have broken down and individuals from indigenous communities can be forced into situations where their alliance with nature is forgotten. Here in Norway there has been much discussion about the number of reindeer compared to the land available in Finnmark. There are tree very important aspects that should not be forgotten in this discussion:

1. The reindeer herding has had the role of a "sanctuary" for Samis when the state tried to norwegianize all Samis.
2. Much land has been taken away from the Sami - in fact the best land.
3. We have never had the opportunity to manage this land. Therefore we can not be blamed for the mismanagment of it.

#### Future perspectives.

There has been a certain positive development to the benefit of indigenous peoples during the last decades, both within nation states

and in the international community. In a few countries the rights of the indigenous peoples are being defined and protected by law. But there are also "new development" initiatives that threaten to overrun these peoples and their interests. International trade agreements do not take into account the interests of indigenous peoples' needs. Both national states and powerful international organizations interfere deeply with indigenous ways of hunting and harvesting. Together with the environmental degradation all these encroachments from the outside have cumulative effects which threaten to disintegrate the last indigenous communities.

A positive development presupposes a mutual understanding and a respect between the peoples, indigenous and non-indigenous. And there is an urgent need for strong guarantees for these peoples both in national legislation and international law.

Our peoples should also be given the opportunity to take active part in the fora where the future development is on the agenda and where important decisions are being made that affect us. And finally there should be a permanent arrangement for representation for indigenous peoples in international organizations, with the UN as the most important. All human beings have the same right to life, even if some of us have had the bad luck to be born into an indigenous people. I want to conclude with a statement from Mr. Justice Carsten Smith at the Supreme Court of Norway:

*One must decide to what extent the democratic principle that majority opinions shall be decisive also for the minority, shall precede the principle of the peoples' right to self-determination. When determining these priorities, we must stick to a fundamental view, which is recognized in post-war international human rights growth, and which the community of legal scholars always must stand for. A peoples' right to exercise their culture is one of the fundamental human rights.<sup>7</sup>*

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<sup>7</sup>Smith, Carsten: *Saami Parliament and Saami Rights - a Minority's History Changing Today's Constitution*. In Rettsenkning i samtiden. Oslo 1992