**The Saami Council’s statement on the Draft General Comment No. 26 (2021) by the Committee on Economic, Social and Cultural Rights on land and economic, social and cultural rights (CESCR)**

1. The Draft General Comment should be based, at least with regard to the rights of indigenous peoples, on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It should also pay attention to the studies and reports that the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has made on the implementation of the UNDRIP. For example the section 18. of the draft mentions the position of indigenous peoples and include also the free, prior and informed consent (FPIC), but it should also be clearly emphasized that it is based on the UNDRIP.
2. The Draft General Comment does not mention anything related to Article 1 on the right to self-determination regarding the indigenous peoples’ rights. The Committee has made several recommendations in its Concluding Observations regarding the rights of indigenous peoples based on the Article 1 of the International Covenant on Economic, Social and Cultural Rights (for example E/C.12/FIN/CO/6, section 15).
3. In the section 15. of the Draft General Comment it reads *“States therefore have an obligation to guarantee security of tenure for all legitimate land users, particularly those who depend on collective or communal land use schemes.”*

It also reads in the section 24 of the Draft General Comment that

*”Ensuring access to natural resources, as concerns the Covenant, cannot be*

*limited to specific protections granted to the lands and territories of indigenous peoples. Among those groups are those that depend on commons.”*

1. This aforementioned aspect that is brought up in sections 15. and 24. of the Draft General Comment is worrying from an indigenous point of view. For example the Sámi are an indigenous people, but also a minority in their homeland. The official colonization of Sápmi started already in the 17th and 18th century by the Swedish crown. The official settlement politics by the States gradually displaced the Sámi as a majority in their Sámi homeland.
2. The majority population (Finns) that resides in the Sámi homeland[[1]](#footnote-1) often has different views compared to Sámi on how to use the land. For example, support for large scale industrial projects (such as wind power, mining and railways) and tourism is common among the majority population (Finns). The traditional livelihoods of the Sámi are reindeer-herding, fishing, hunting, gathering and duodji (handicrafts). Nevertheless, in Finnish legislation reindeer-herding is not an exclusive right of the Sámi, unlike in Sweden and Norway. Finns have also started taking over Sámi reindeer pastures in the Sámi homeland (for example in the Näkkälä reindeer-herding cooperative). If the laws that regulate traditional livelihoods of the Sámi people do not recognize the legal protection for the Sámi people to practice their traditional livelihoods, this can lead to a situation where the majority population conquers the traditional livelihoods in question.
3. In the latest Concluding Observations to Finland in 2021 the Committee urged Finland to act upon instances of infringements on the rights of the Sámi to maintain their culture, way of life and traditional livelihoods. In this regard, the Committee also recommends that Finland assesses the impact of existing laws on these rights and brings the necessary amendments, including in the context of the amendment of the Reindeer Husbandry Act. The Saami Council welcomes the recommendations by the Committee and points out how important they are also for the reasons mentioned in section 5 above.
4. In section 25. of the Draft General Comment it reads *laws and policies should protect indigenous peoples from the risk of State encroachment on their land, for instance for the development of industrial projects or for large-scale investments in agricultural production. Regional human rights courts have contributed to strengthening the rights of indigenous peoples to their lands and territories*. The Saami Council would also like to highlight here two recent decisions that are important for the indigenous Sámi land rights and regarding the FPIC principle:
5. In 2009 Girjás Saami reindeer herding community in Gällivare, Norrbotten brought an action against the state of Sweden with claims relating to the right to small game hunting and fishing, because the legislator, The Parliament of Sweden, deprived the small game hunting and fishing rights of the Samebys to the County Administrative Board in year 1993. The Supreme Court of Sweden ruled in January 2020 that the Girjás Saami reindeer herding community has an exclusive right in relation to the state to provide (manage) hunting and fishing in the area of Girjás above the cultivation border. The exclusive right is based on usage from time immemorial. According to the Supreme Court the historical evidence shows that by the middle of the 18th century individual Sámis had established exclusive rights over small game hunting and fishing in their lands. The hunting and fishing rights that the Sámi have had in the area before the 1886 Reindeer Herding Act by legislation considered to have passed to the members of Girjás Saami reindeer herding community. The decision of the Supreme Court was thorough and is largely based on legal historical research and international law, including the indigenous peoples’ rights.
6. The Sami Council assisted in 2013 the members of the Vapsten Sámi reindeer herding community (Vapsten sameby) on an individual communication to The Committee on the Elimination of Racial Discrimination (CERD) about the Rönnbäcken mining project in the Västernbotten county in Vapsten sameby’s pastures.
7. CERD published its decision on the communication in November 2020. In this historical decision, the CERD demands Sweden to stop the much publicized and controversial mining project in Rönnbäcken in Västerbotten. The committee justifies its decision by stating that the mining project would cause Vapsten Sámi Reindeer Herding Community damage to such an extent that the Sámi reindeer herding community's consent had been required to proceed with the project. In addition, the committee states that it further violates the UN Convention on the Elimination of Racial Discrimination that Swedish law did not provide the Sámi reindeer herding community with any real opportunity to have the legality of the mining project tried before Swedish courts. Specifically, the committee finds that the mining establishment violates Vapsten Sámi Reindeer Herding Community's right to property (UN Convention on the Elimination of Racial Discrimination, art. 5 (d) (v)) and that the Swedish mineral and environmental legislation violates the Sámi village's right to redress through a fair trial (*effective remedy*) (the convention, art. 6).
8. As a result of these violations of the UN Convention on the Elimination of Racial Discrimination, the CERD demands that Sweden’s hall provide effective remedy to Vapsten Sámi Reindeer Herding Community by revising effectively the mining concessions after an adequate process of free, prior and informed consent. Sweden must also amend its legislation, in order to reflect the status of the Sami as an indigenous people in national legislation regarding land and resource rights and to enshrine the international standard of free, prior and informed consent. The decision of CERD means that industrial establishments of size in the Sámi traditional territory are prohibited without the consent of Sámi rights holders.[[2]](#footnote-2)
9. The section 37 of the Draft General Comment concentrates on states obligations regarding the conservation, biodiversity and the sustainable use of land and other natural resources. However indigenous peoples are not separately mentioned in this section. It should be in line with the Article 8 j. of the Convention of Biological Diversity (CBD) and emphasize indigenous communities.
10. The effects of climate change are explained in the section 54 of the Draft General Comment. Saami Council stresses that climate change is a serious threat to the indigenous peoples such as the Saami people. The Saami people face a double burden in this matter: the Saami people suffer the most on climate change and the Saami people suffer also from the actions trying to mitigate the effects of climate change, which are for example building of wind power plants and establishing mines in order to get minerals for the batteries of electric cars and other vehicles.
11. In conclusion, the Saami Council points out that the Draft General Comment should have specific section that concentrates on self-determination right and land rights of the indigenous peoples. Saami Council supports the United Nations Permanent Forums (UNPFII) proposals, regarding the General Comment of the CESCR, that are expressed in the section 26. of UNPFII’s Report on the twentieth session (19–30 April 2021, E/2021/43 E/C.19/2021/10).
1. Act on the Sámi Parliament (974/1995) Section 4 ” The Sámi homeland means the areas of the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the reindeer owners’ association of Lapland in Sodankylä.” [↑](#footnote-ref-1)
2. https://www.saamicouncil.net/news-archive/un-stops-mining-project-in-ronnbacken [↑](#footnote-ref-2)