

Permanent Forum on Indigenous Issues  
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**Agenda item 3: Special theme: territories, lands and natural resources**

**Arctic Caucus Statement**

Thank you Mdm Chairperson,

For allowing the Arctic Indigenous Regional Caucus to address the agenda item lands, territories and natural resources.

First, we would like to register our support for the conclusions made by Arctic Regional Workshop on lands, territories and natural resources, as presented by the President of the Saami Parliament in Norway earlier this morning.

Mdm Chairperson,

It is well established – in fact uncontested – that continued access to and control over their traditional lands and natural resources, constitute a pre-requisite for indigenous peoples' physical, spiritual and cultural well being, as well as for their continued existence as distinct ethnic entities. It is further a fact that indigenous peoples had inhabited and utilized their traditional territories for generations prior to the arrival of the colonizing people. Indeed, it is essentially these criteria that qualify indigenous groups as indigenous peoples.

Consequently, it is well established under international law that indigenous peoples' rights to their lands, territories and natural resources are protected as a part of their right to culture. Moreover, through use since time immemorial, indigenous peoples have established property rights over territories they have traditionally used. International law simply no longer allows domestic legislation that has resulted in private property rights to land being acknowledged in non-indigenous areas, whereas the indigenous people's traditional territories are regarded as the property of the state. The reason is obvious. Such legislation is clearly discriminatory.

This increased recognition of indigenous land rights is evidenced in a number of recent jurisprudence from national and international areas. From our own area – the Arctic Region – we can mention e.g. that the Inuit in Greenland are in a process towards more independency through arrangement reached by negotiations with Denmark on an equal footing.

From the Saami area, we can mention that the Norwegian Supreme Court in the so called Svartskog Case, awarded a Saami community ownership right to its traditional territories. In the so called *Nordmaling Case*, Swedish courts upheld three Saami reindeer herding communities grazing rights to the areas they traditionally used. In the parallel *Renbetesmålet*, Swedish Courts failed to do so, but here, the European Court on Human Rights has recently initiated proceedings against Sweden, for failing to protect these reindeer herding communities' traditional grazing areas. Similarly, the Human Rights Committee has called on Finland to halt logging activities in the *Nellim* area, that destroy grazing areas important to Saami reindeer herding communities in Finland. In Sweden, the Saami people is in the process of initiating a legal procedure where the Saami claim property rights to all fishing and hunting in the Saami areas. Similar advancements of their rights through the court system have been made by indigenous peoples in Botswana, Brazil, Canada, Nicaragua, New Zealand the United States, among others.

Indeed, international surveys indicate that indigenous peoples that have utilized the court system have generally been more successful than indigenous peoples that have not, in advancing respect for their rights to land, territories and natural resources. But court proceedings are often a time-consuming, costly, tiring, unconstructive and inefficient way to address indigenous land claims.

A much better way to secure indigenous peoples' rights to land, territories and natural resources – more beneficial to states and indigenous peoples alike – is through constructive arrangements between states and indigenous peoples. From our own Arctic region, as examples of such can be mentioned the creation of the Greenland Home Rule system in 1979. Greenland is now in a process towards more independency within its relation to Denmark. The process has started through a positive dialogue establishing a Joint Commission on Self-Government with equal membership by Danish and Greenlandic parliamentarians. The Commission will soon present a comprehensive report outlining how the self-government in Greenland could be practiced. One of the most important sections of the report are the issues on the land and its natural resources. It includes the ownership of the land and how to distribute profit when exploitation of the resources is taking place. It means that the issue of collective ownership of the land in Greenland is intact and accepted by both parties. It is expected that there will be a referendum for or against self-government in Greenland in the near future.

Further mentioned can be the Alaska Native Claims Settlement Act from 1971, the Nunavik Inuit Land Claims Settlement through the so-called James Bay Agreement in 1975, the Mackenzie Delta Inuvialuit Land Claims Agreement in 1977, the Nunavut Land Claims Agreement from 1996 and finally the Labrador Nunatsiavut in 2006. These agreements include transfer of collective rights into private ownership to land; hunting and fishing rights and surface rights including rights to ice-covered areas; and, in the latter two, arrangements of self-government.

From the Saami areas can be mentioned the Nordic Saami Convention, a human rights convention on the rights of the Saami people agreed on at an expert level by the Saami parliaments and the governments of Finland, Norway and Sweden. Naturally, the land rights chapter constitutes a central part of the Saami Convention.

On a global level, another such constructive arrangement between indigenous peoples of states is of course the UN Declaration on the Rights of Indigenous Peoples, agreed on through a process where indigenous and state representatives participated on an equal footing, and adopted by the Human Rights Council in June 2006. The Arctic Caucus reiterates that the Declaration does not so much introduce new rights. Rather, it essentially reaffirms and solidifies already existing rights. Where the Declaration is innovative is where it elaborates on how indigenous peoples and states in partnership can secure the possibility for indigenous peoples to continuously have access to their traditional lands, territories and natural resources in a manner that allows them to continue to peacefully exist as distinct ethnic, self-determining entities. We, the indigenous peoples of the Arctic underline that the Declaration can only be understood in this positive manner, and call on the member states of the UN to adopt the Declaration on the Rights of Indigenous Peoples during its 61<sup>st</sup> session, to serve as a basis for future constructive arrangements between states and indigenous peoples, to the benefit of all peoples of the earth.

Thank you, Mdm. Chairperson.



The Arctic Regional Workshop on Indigenous Peoples' Territories, Lands and Natural Resources was held in Copenhagen on March 2-3. The Workshop was organized by the regional indigenous parliaments and organizations, in cooperation with the Nordic States.

The Workshop – which chiefly copied the format of a UN Expert Meeting - was attended by representatives of national governments, indigenous parliaments, indigenous peoples' organizations, members of the Permanent Forum, and individual experts, including the UN Special Rapporteur on the Human Rights of Indigenous Peoples, Rodolfo Stavehagen, UN Special Rapporteur on Human Rights and Terrorism, Martin Scheinin, and Professor James Anaya.

The Workshop provided an opportunity to identify current and future challenges concerning recognition, legal protection and implementation of indigenous peoples' rights to territories, lands and resources, as well as an opportunity to share experiences and good practices in the respective countries.

The Workshop elaborated a number of conclusions and recommendations concerning indigenous peoples' rights to territories, lands and resources, divided into the following five subsections:

- Generally on international law on indigenous peoples' rights to lands, waters and natural resources
- Indigenous peoples' rights to lands, waters and natural resources – specifically on ownership rights to lands
- Indigenous peoples' rights to lands, waters and natural resources – specifically as to what rights indigenous peoples have to non-traditional natural resources, such as sub-surface resources.
- Indigenous peoples' rights to lands, waters and natural resources - specifically as a prerequisite for preserving and developing indigenous peoples' cultures.
- Indigenous peoples' right to the management and co-management of territories, lands and resources

Among the conclusions and recommendations I would like to highlight the following, elaborated in the spirit of pursuing partnership and dialogue between States and indigenous peoples, and bearing in mind the UN Declaration on the Rights of Indigenous Peoples now before the 61 session of the General Assembly, and other relevant international instruments such as the ILO Convention No. 169 and the draft Nordic Saami Convention.

- In order to survive as distinct peoples, indigenous peoples, including indigenous peoples in the Arctic, need to be able to own, use, conserve and manage their lands and resources.

- Arctic indigenous peoples' economies, in particular economies which are largely based on subsistence activities, such as hunting, fishing, reindeer herding, farming and gathering, suffer disproportionately from the negative ecological

consequences of industrial infrastructure projects in their areas. These and other traditional or typical means of livelihood constitute “culture”. Interference in such activities or the natural resources that form their basis are allowed only when both the effective participation of the indigenous group and the economic, social and cultural sustainability of the indigenous culture are secured.

- Although, there has been progress in some of the Arctic countries, as far as recognition of indigenous land rights are concerned, there are still many unsolved matters which require urgent attention. There has also been some progress in this regard at the regional level. For instance, the governments of Finland, Norway and Sweden, together with the Sami Parliaments in these three countries, appointed an expert group to formulate a draft Nordic Saami convention. In November 2005, the group of experts submitted its proposal to the governments concerned and the three Sami parliaments. Among other provisions, the draft convention contains a number of provisions on Saami land and resource rights. References were also made to the ongoing negotiation between Greenland and Denmark within a Joint Commission on Self-governance aimed at expanding Greenland’s self-government.

The Inuit and the Saami peoples are entitled to the rights acknowledged under international law on indigenous peoples, including rights pertaining to territories, lands and natural resources.

The Inuit and the Saami peoples have the right to self-determination under international law, including the resource aspects of this right.

The Inuit and the Saami peoples’ right to self-determination pertaining to their territories, lands and resources will sometimes have to be exercised through co-management arrangements with the States concerned. States shall establish procedures, in cooperation with the Inuit and the Saami peoples respectively, through which they can effectively exercise their co-management, including environmental management.

Indigenous peoples’ rights to territories, lands and resources, and their right to own the land they occupy and use in accordance with their own traditions, laws, and customs are protected under international law, including the International Covenant on Civil and Political Rights, the ILO Convention No. 169 concerning Indigenous and Tribal Peoples, the Convention on the Elimination of all forms of Racial Discrimination, and the United Nations Declaration on the Rights of Indigenous Peoples.

The protection of indigenous land and resource usage rights must never be conditioned by consenting to extinguishment of claims to land title.

States have the obligation, in cooperation with indigenous peoples, to identify the lands indigenous peoples traditionally use and occupy, and to provide specific legal protection for the rights of ownership over those lands in accordance with indigenous customs and laws.

Many disturbances to the Inuit and Saami traditional livelihoods are today caused by industrial activities such as mining and forestry. The industry is not always sensitive to the Inuit’s and Saami’s culture based activities. States are obliged to

take legislative and administrative measures to ensure that third parties - including the private sector - respect indigenous peoples' rights to territories, lands and natural resources.

In relation to the natural resources within their territories which they have not traditionally used, such as subsurface resources in many cases, the rights of indigenous peoples include, at a minimum: 1) the right to be effectively consulted through their representative institutions, 2) the right to a share in profits, and 3) the right to mitigation for harm caused to their lands or environments. States have a positive obligation to realize these rights.

States shall establish transparent procedures, in cooperation with indigenous peoples, through which the State and the indigenous peoples can negotiate fair and equitable benefit sharing arrangements with regard to the utilization of nontraditional natural resources located in indigenous territories, including subsurface resources.

The degradation of the environment in Inuit and Saami traditional territories caused by e.g. pollution, non-sustainable natural resource extraction and climate change constitute a great threat to their traditional lifestyles and culture. Climate change impacts on the environment in Inuit and Saami territories, e.g. changing the fundamentals for their traditional livelihoods in a paramount way.

The Workshop also acknowledged the importance of the findings of the United Nations Inter-Governmental Panel on Climate Change, and the decision to hold the United Nations Conference on Climate Change in Copenhagen, Denmark in 2009. The Workshop strongly urges the United Nations Permanent Forum on Indigenous Issues to follow closely the preparations for this important event.

Dialogue, partnership and negotiations between States and indigenous peoples concerning land and resource rights are of vital importance for the resolution of problems related to the implementation of such rights. The United Nations Declaration on the Rights of Indigenous Peoples provides important guidance for how such dialogue and partnership could be developed and maintained. The workshop calls on the speediest possible adoption of the United Nations Declaration on the Rights of Indigenous Peoples and the draft Nordic Saami Convention.

