INTERLEGALITY, A PROCESS FOR STRENGTHENING INDIGENOUS PEOPLES' AUTONOMY: THE CASE OF THE SÁMI IN NORWAY

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Introduction

With varying success indigenous people are currently engaged in a struggle to reinforce and clarify what broadly can be conceived of as their cultural-political autonomy. As power and rights are closely interrelated, not the least regarding land-based indigenous peoples, the legal aspect of this process of transformation appears most crucial. Based on customary land use patterns, rights to land and water are key elements contributing to legitimization of claims underscoring the need for cultural sustenance. Focusing on land rights has furthermore brought about a strategic action in which the politics of difference is placed on the agenda. The primary reason for this is that without unequivocal recognition of cultural distinctiveness, including diversity of normative orders, i.e. legal pluralism to a varying degree, comprehensive claims aiming at cultural-political autonomy would be hard to pursue.

Considering legal diversity as part of multiculturalism a conceptual distinction between *legal pluralism* and *interlegality* is, moreover, called for. The first term assumes plural normative arrangements, i.e. legal systems operating in parallel. The second term, on the other hand, points to continuous interaction in the main

between different legal perceptions, thereby influencing and shaping new normative orders adapted to considering cultural diversity. By means of such conceptual clarification analytical precision may be attained.[1]

In the following I will argue for interlegality as the dynamic perspective of legal pluralistic orders, referring to the current Sámi situation as a case in point. In doing this, emphasis will be laid on a most comprehensive Sámi rights process beginning in 1980 and still going on. In my view interlegality implies that established legal systems of the nation-state are continuously changed by means of the transfer and adoption of legal perceptions of an indigenous people, at the same time as customary activities of the latter are reshaped according to instituted regulations concerning, for instance, their traditional land use patterns, and other customs. Such interchange of different legal views rearranging legal orders is usually a very slow process, and consequently a historical perspective is required. The flow of diverging legal perceptions is not a new phenomenon. What is new is the capture and conceptualization of certain processes of mutually influencing sets of norms and regulations under the term interlegality (Hoekema 2003). Referring to various forms of data the diachronic account has a time span going from 1620 to 2005, thus elucidating in time depth the ethno-political position of the Sámi.

Historical background

Before discussing the contemporary situation, let us find out if there is any historical evidence of interlegality reflecting the incorporation of the Sámi as a constituent people of the Norwegian state. An examination of the Court Records for the county of Finnmark 1620–1770 clearly indicates, for example, the legal practice in court where Sámi clients appear (NOU 2001; for a short, preliminary version in English, see Kristensen 1999). At this early stage we are able to identify cases of conflict resolution in which culture-specific matters are taken into account in Norwegian law. These cases relate to reindeer herding (the most frequent), fishing, especially salmon fishing, whaling and finally hunting. Rights connected to these customary subsistence activities are as a rule founded on custom and immemorial use (*festnet bruk*) as expressed and acknowledged in state-law terms.

[1] This approach may be seen as a modification of that of Santos, who uses the term to indicate the intersecting of different legal orders (Santos 1995, quoted Hoekema 2003: 212).

Several cases dealt with conflict of interests between reindeer pastoralist Sámi, whose way of life was characterized by nomadism, and the coastal population, primarily Sámi, whose life and means of production were based on permanent settlement. The disputes usually started with the coastal people filing complaints of intrusions into their local resource development caused by grazing reindeer as a result of seasonal migration. Because reindeer pastoralism had formed a means of livelihood for many Sámi over a long time without state regulation, it was the obligation of the courts to solve disputes, also within the Sámi society, by giving attention to Sámi traditions. The decisions reached are to a great extent based on Sámi customary rights, and by these verdicts Sámi customary rights are affirmed officially by means of state legal procedure.

Fishing rights are not exclusive to peoples of particular areas if residence or ethnic origin, but are an open right to all, even if the coastal Sámi have claimed to be primary possessors of such rights. There is one exception to the notion of open rights and that has to do with rights to river fishing, in particular customary salmon fishing, a critical factor representing a most important Sámi means of subsistence. These rights are specific and inherent , transferred from generation to generation, and as a rule they refer to the collectivity, i.e. rights which are *sii´da* based[2]. Whaling and seal hunting, as well as common inland hunting and trapping activities, are also *sii´da* based rights and handled by the courts accordingly. And in most instances of conflict, Sámi customary rights are considered by the court.

Sámi rights played a role both for the local administration and the courts in dealing with disputes. This means that custom regarding exclusive Sámi use was reinforced by means of court decisions, verdicts which often related to rights based on immemorial prescription.

As shown from the Court Records *custom* is frequently applied as a legal norm according to which many conflicts are resolved. In this fashion one may ascertain that Sámi customary law through court practice is gradually being developed and recognized in Norwegian law. Consequently I maintain that the Court Records appear as early proof of interlegality brought up and analyzed in connection with a

[2] The Sámi term *sii´da* constitutes a group of families often related by kin bilaterally, who cooperate in herding activities but who own their reindeer individually.

recent research project focusing on Sámi customary law as part of the Sámi Rights Process (NOU 2001).

Another historical example refers to the Sámi Codicil (*Lappekodicillen*) 1751, which is a supplement to the Frontier Treaty between Denmark-Norway and Sweden. This legal document, being part of a treaty, relates to international law and affirms formally for the first time Sámi reindeer pasture rights across newly established nation-state borders. Sámi customary rights and practice were hereby acknowledged as a foundation on which reindeer pasture rights were sustained in spite of state borders.[3] Sámi traditional rights and ecological preconditions were factors which through the Codicil were built into political law, and which still shape the agreements concerning Sámi pasture rights between the two states, Norway and Sweden. Sámi customs/legal perceptions regarding rights to reindeer pasture and affiliated rights, mutually enjoyed rights regardless of state belongingness, continuously form revised versions of the Swedish-Norwegian Reindeer Grazing Conventions, representing a set of rules regulating Sámi reindeer pasturing.

Interesting to note is that this historically anchored model of interlegality survived the break-up of the Swedish-Norwegian Union in 1905. This means that Sámi customs and legal perceptions emerging from immemorial land use outlasted even a second test (the first occurring in 1751), at the time of the rupture of the Union between Sweden and Norway (1815–1905). Apparently the effect of interlegality was already established and could not readily be contested on such a basic issue.

For the Sámi this 1751 legal document has a decisive value and in contemporary political discourse it is frequently referred to as the 'Magna Carta of the Sámi'. The Sámi Codicil is extremely important both in real and symbolic terms, and thinking in terms of interlegality it remains a political law document, a treaty right, which is greatly influenced by Sámi custom and traditional land use patterns.

Given the great undeniable impact of the Sámi Codicil, let us look closely at some paragraphs exemplifying an early phase of interlegality (Svensson 1997: Appendix I). Art. 10 expresses in principle the spirit and intention of the Codicil:

[3] Before 1751 the state borders were not settled in *Sápmi*, the Sámi land, i.e. the northern part of Fennoscandia.

> As the Lapps might need the land of both states, they shall, according to old practice, each autumn and spring be allowed to move with their flocks of reindeer across the frontier into the other state.

The Codicil confirms, moreover, that

> the Sámi as hitherto are entitled to use land and shore for the subsistence of their animals and themselves, even in times of war,

i.e. recognizing also rights to fishing and other rights, not only rights to pasture. This qualification is significant as it affirms customary land use patterns in its entirety, rights constrained to reindeer grazing would have had less meaning considering Sámi ecological adaptation. The Codicil, therefore, is a legal document which recognizes firmly the peculiarity of the Sámi culture, including its basic need for cultural sustenance. Once again, interlegality seems to have played a role in the shaping of political law considering a culture different to any of the negotiating state parties, i.e. indigenous rights in the making long before recent developments of international law.

The status of the Codicil was stated in Art. 30:

> [T]he Codicil or Supplement to the Frontier Treaty is of the same force as the Frontier Treaty itself. The Codicil is an acceptance and reciprocal compliance which cannot easily be evaded if the Lapps on either side shall be culturally maintained.

In sum we may conclude that the Codicil of 1751 is not only a written document describing rights the Sámi were believed to have along nation-state borders. It is, furthermore, a *codification* of inherent rights legally recognizing old practice, having the same formal status as the Frontier Treaty. Without such endorsement of old customary use based on immemorial prescription a Codicil to the Treaty concerning the Sámi would have been superfluous. This Codicil has then constituted a building block in reaching later agreements as to cross-frontier pasturing rights between the states of Norway and Sweden, the latest under negotiation at present.

The operative status of the Codicil was, moreover, confirmed by its incorporation into Swedish law in 1752 by the *Svea Hovrätt* (the Svea Court of Appeal), which was the highest court in Sweden at the time, i.e. the equal of the Swedish Supreme Court established a few years later. This fact was brought up by the Sámi party in the recent *Taxed Mountains Case*, 1966-1981, a fact that reinforces even further the Codicil as an instrument codifying fundamental Sámi rights (Svensson 1997: 77). In other words, the Codicil appears as the first official verification and recognition of inherent Sámi rights as expressed by the dominant nation-state, forming part of state law.

The Reindeer Pastoralist Law

Reindeer herding is considered a key factor in the Sámi culture, even for very many Sámi not directly involved. It is a way of life governed by extensive land use. With the noticeable increase of Norwegian settlements in the far North during the 19th century, the authorities felt a need to regulate reindeer herding so as to better manage and protect Sámi interests in cases of territorial conflicts. Consequently, since the 1880s Sámi reindeer pastoralism has been regulated by special reindeer pasture laws. In Norway the law of 1933 impressed Sámi reindeer pastoralism for a long time and was not revised until a statute of 1978, the *Reindriftsloven* (RNL), a revision which mainly implied adaptation to modernity, i.e. motorized herding practices, including advanced fencing methods and the use of modern means of communication. However, acknowledgement of Sámi customs and legal perceptions connected to the reindeer pastoralist way of life was not considered in the new law to the extent the Sámi had wished. One issue often discussed was the introduced concept *driftsenhet*, referring to a family based flock of reindeer and all persons belonging to the family. The Sámi objected to the new rule which stated that only one person was entitled to represent the family unit in *sii´da* or district affairs, even if the unit following Sámi customs consisted of several private owners of flocks of reindeer. This rule was perceived as discriminatory, especially against women who traditionally brought their own flock of reindeer into the family stock on marriage. In other words, this rule confirmed in legal form male domination, which in many ways was viewed as contrary to Sámi traditions with its clear division of labour between sexes and separate ownership of flocks manifested with their respective reindeer ear marks.

The exclusivity and strength of the reindeer herding right has been tested many times. In the main it is a firm use right, which in many instances corresponds to

the common private ownership right. The crucial question remains, on what legal ground does this kind of use right rest? The political authorities in both Norway and Sweden have up to quite recently maintained that Sámi reindeer herding rights rested on legislative measures going back to the enactment of the first Reindeer Pasture Law and subsequent revisions of the same law. In their view, reference to reindeer herding interests in cases of contesting rights in court, should fall back on such premise and no more. This rigid position of the authorities, reducing the rights stipulated in the Reindeer Pastoralist Law to a minimum, has offered the Sámi an inefficient legal instrument when it comes to protecting their own vital concerns. Sámi disapproval of the limited value of this body of rules has put the question of legal foundation concerning their reindeer herding rights on the ethnopolitical agenda. Both in the legal arena and in the one where political actions take place, for instance in processes leading to legislation, the Sámi political elite has been very active in its endeavour aiming at a change in the official affirmation of reindeer herding rights.

In 1993, for example, the Swedish Reindeer Pastoralist Law (1971) was revised clearly stating that reindeer herding rights applied exclusively to the Sámi people and were founded on immemorial prescription *urminneshävd*, i.e. rights not derived from legislation but inherent rights. This clarification, highly praised in Sámi circles, derives from the Supreme Court Decision in the *Taxed Mountains Case*, 1981, which is the most comprehensive case on rights in principle ever to be tried by the Sámi. (More information is given in Svensson, 1997)

Under pressure from the Sámi Parliament, instituted in 1989 as part of the outcome of the Sámi rights process in Norway (NOU 1984), the authorities revised the Norwegian Reindeer Pastoralist Law in 1996. This amendment went a long way to meet Sámi claims, pointing in particular to a more Sámi-related legal foundation for rights. Sámi customary rights to reindeer herding were thus recognized, as was also the traditional *sii´da* organization on which the herding traditionally was built. The latter means less Norwegian bureaucratic thinking in organizing herding activities and more regard for customary practices. In official legal terms, the right to reindeer herding is a use right according to civil law based on custom. Its independent basis relates to immemorial prescription and custom, which was the view of the Committee preparing the revision of the law. However, as late as in 1996 the Minister of Justice found it unnecessary to include in the law such a statement of principle, as it was considered more or less self-evident. This shows how the government acts in opposition to the Sámi Rights Commission (Svensson 1997), which laid emphasis on Sámi customary rights to reindeer

herding, a perspective which corresponded to the spirit and content of the Sámi Codicil 1751. For the Sámi Rights Commission the reindeer herding industry is founded on ancient customary prerequisites.[4]

A change of opinion stating protection of customary resource use came about through the Supreme Court decision in the *Altevatn Case* in 1968. The firm implication of this verdict was that the right to reindeer herding was a right independent of RNL, and it was a civil law right. The Supreme Court decision also specified that the reindeer herding right exercised on private land was not based on RNL but established through immemorial prescription, *alders tids bruk*. This decision broke new legal grounds in terms of rights to compensation and has had a great impact ever since. As it concerned Swedish Sámi seasonally pasturing in Norway, the *Altevatn* decision reaffirmed the force in principle of the Sámi Codicil in modern times.

The presumption of the *Altevatn Case* was furthermore tested in *the Mauken Case* 1985. Founded on the Sámi Codicil, in a practice legally confirmed by the Swedish-Norwegian Reindeer Grazing Convention of 1919, Swedish Sámi had traditionally used the area in question until 1923, when the Mauken district was closed. As late as 1957 a group of Norwegian Sámi were relocated and reassumed reindeer herding in Mauken, which was then opened for reindeer pasturing again. The point worth noting about this particular case is that the Supreme Court recognized rights to compensation based on ancient Sámi practice, even though the district had not been used for a considerable time and the claim emanated from a different group of Sámi from that originally making use thereof and its descendants. It was the recognition of the Sámi as a people who had obtained rights over long time, a historical right, not a special group of individual Sámi,

[4] The RNL is founded on the following principles:

> establish directions for rights and obligations concerning reindeer pastoralism;
>
> regulate relations to other economies and areas of interest;
>
> regulate internal relations between reindeer herders;
>
> devise a basis for a functioning organization and administration (Solbakk: 2004).

who through this verdict were entitled to compensation caused by encroachment, i.e. a right founded on immemorial Sámi land use.

Former views maintained by the authorities underlined that the reindeer herding right was a tolerated, or permitted, right and nothing more. By contesting this notion in court the Sámi have accomplished certain reformulations of the Reindeer Pasturing Law. Its collective aspect has lately been stressed in laws and regulations referring to traditional patterns of use rights to reindeer herding, although herds always comprise part of private property. Without exaggeration it may be said that the Reindeer Pasturing Law exemplifies ongoing interlegality in the sense that Norwegian law incorporates Sámi customs and legal perceptions into its framework for legal regulations and administrative procedures. At the same time reindeer herding cannot be managed adequately, meeting modern preconditions, unless Sámi customs and normative orders guiding herding activities to some extent are framed according to Norwegian law standards, even with the use of formal bureaucratic language.

Finally, reindeer herding rights based on immemorial prescription and custom can expand beyond reindeer herding proper by incorporating rights to fishing, thereby equalizing Sámi use rights to reindeer pasture and fishing (Supreme Court decision, *Kappfjell Case*, 1975, cited Bull 1997: 137).

The Office of Legal Aid of Inner Finnmark

To facilitate entering the legal arena of the larger society, and in particular to strengthen a feeling of confidence and comfort for the Sámi clients facing a formalistic and culturally foreign setting, an office of legal aid of Inner Finnmark was instituted in 1987. The aspect of confidence is crucial here in providing for felt justice. Its main office is located in Karasjok, the same place as the Sámi Parliament, and its judicial district includes in addition the communities Kautokeino, Tana and Nesseby, all core areas of Sámi habitation.

As many as 80% of all clients turning to this office for legal assistance are Sámi (Johnsen 1997), a fact reflected in the personnel having adequate competence in Sámi culture and language besides basic training in law. With such language proficiency and with cultural barriers overcome, Sámi clients are able to address issues in manners familiar to them. This means that Sámi customs and legal perceptions can be referred and articulated to a legally trained voice ready and

willing to listen. According to ILO Convention 169 Sámi customs and legal perceptions ought to be guaranteed and secured (Johnsen 1997). The agency of legal advice is instrumental when it comes to incorporating notions of Sámi customary law into Norwegian state law. The work of this office contributes gradually and on a small scale to the development of a legal culture capable of meeting cross-cultural requirements of justice.

It should be kept in mind, however, that the functions of this office are limited as it has no authority, as a court, to make legal decisions. The activity of this office for legal aid is constrained to offering consultation and advice orally as to further strategic moves, in addition to written preparations concerning facts for trials in court. Strictly speaking the officers act as case reviewers and advisors, and their objective is to serve the interests and needs of their clients aiming either at informal solutions or to address matters to public institutions such as the courts. The first alternative implies *negotiation*, not infrequently reaching a consensus between contesting parties. This procedure comes close to traditional means of conflict resolution, now with formal support, or in other words interlegality in the form of mediation.

Identification of cases handled by the agency in the period 1987-1997 substantiates its actual function and usefulness (NOU 2001; Johnsen 1997). Issues taken up by the agency can be categorized under five headings, all highly relevant in terms of culture difference. Problems related to reindeer pastoralism and associated rights are predominant, followed by rights to salmon fishing. Other cases have to do with inheritance rights, family law and contract law. All cases call for legal support, requiring consultation in regard to solving Sámi internal as well as external instances of conflict.

Considering the regulations stipulated in RNL 1978, it is far from unexpected that the position of women in reindeer herding management represents a recurring problem treated by the agency. The view of Norwegian state law is difficult to accept as it appears quite contrary to Sámi customs and legal perceptions. For example, internal rules of reindeer herding are customarily based on consensual decision making, not majority rulings, and furthermore oral agreements are predominant over formal resolutions based on majority votes. Right to reindeer marks is another critical issue where Sámi customs clash with Norwegian ideology as to what is legally appropriate. To have one's own reindeer marks is most crucial in the Sámi culture, as it confirms significant rights and values at the same time as it conveys ethnic identity. To be denied such right is a great loss and hard to

accept. On several occasions the Sámi have protested against the strict constraints in allocating reindeer marks introduced by RNL.

Moreover, there are different opinons as to who should be considered close relatives, in which matter the Sámi traditionally operates with a much greater span of relatives than the Norwegian majority society. This factor has an impact even on inheritance rights, where the Sámi, based on custom, practise a very flexible system of transfer of property rights, which proves to be far from acceptable to Norwegian law. Such a difference in legal thinking often generates conflict and calls for the activation of a brokerage role of the office of legal aid which is here required to function as translator. How do two different legal perceptions meet and to what extent is it possible to overcome deep-rooted diversity? Interlegality as a mutually accepted and acknowledged process is one answer to such momentous questions. But to have an effect it requires reciprocal respect and the full recognition that there is a difference.

A special difference of views concerning inheritance rights is worth noticing. According to Sámi legal perceptions the youngest child, *váhkar*, literally the last and favourite child, is the right heir to family property, whereas Norwegian law presumes that the oldest child has such a right. Through the tenacious efforts of the office of legal aid many cases of inheritance rights have been solved corresponding to Sámi customs. This has meant that Sámi complaints have been recognized and decisions have been reversed. In this legal field the agency proved its efficiency, leading Norwegian law to give in to Sámi customs.

In summing up this section we can conclude that the office for legal aid in a fairly short time has established itself as an institution canalizing processes of interlegality initiated by Sámi grass root clients. The fact that a process aiming at legal transformation emanates from everyday life situations among the Sámi is significant, as it offers the process legitimacy. A primary objective of this specific expression of interlegality is to make indigenous customary law a source of law which, in all respects, is recognized according to the Norwegian doctrine of sources of law. Without doubt it is through the process of interlegality that Norwegian law can be transformed to handle Sámi cases in court better and more appropriately. The office of legal aid represents one official institution which has the capacity to contribute to such a process. In this way Norwegian law becomes more pluralistic and qualified to cope with cultural diversity, a precondition Norwegian courts have to adjust to following international law principles.

Case material from recent court decisions

The way in which law is practised in courts is another most important aspect of conceivable interlegality. In the Sámi case we can record from recent Supreme Court records noticeable changes, with decisions which undoubtedly are influenced by Sámi customary law perspectives. Pioneering cases in this process of development law are *The Taxed Mountains Case* (*Skattefjällsmålet*) in Sweden in 1981,[5] and *The Alta Case* in Norway in 1982.[6] In both cases the Sámi lost over the specific matters contested, i.e. ownership rights to the taxed mountains and the attempt to prevent hydro-power development in the Alta River. On the other hand, the cases broke new legal grounds on matters of principle. For the first time in Sámi legal history, Sámi rights to land and water were acknowledged as rights founded on immemorial prescription, *urminneshävd*, thereby eliminating the former misconception that Sámi land rights were exclusively based on legislation (the Reindeer Pastoralist Law). Even the *Alta Case* showed innovative components. It was, for example, clearly stated in the verdict that principles concerning indigenous peoples embedded in international law were relevant in Norwegian law, whenever a case of encroachment on lands customarily used by the Sámi was big enough to cause considerable damage. Both these statements establishing new legal views in the larger society were considered by the Sámi party as important half-way victories, and have frequently been referred to in later confrontations in the legal as well as the political arena.

In 2000 the Norwegian Supreme Court handed down a decision which caused great attention, *The Seiland Case* (HR Nr. 40/2000). The Seiland District consists of 3

[5] In *The Taxed Mountains Case* the South Sámi in Sweden wanted to test their fundamental rights to land and water, claiming stronger rights than the Swedish Crown to the areas contested. The name *Taxed Mountain* relates to land the Sámi have paid taxes for to the Crown since 1520, in a similar way as farmers' taxed land. (For further information about this case, see: the verdict HD Nr DT 2 1981 *Skattefjällsmålet*; Svensson 1997, for an anthropological analysis.)

[6] Decision *Høyesterett L*. nr 39/1982 *Alta*. *The Alta Case* concerned a hydro-power development on the Alta River, Finnmark. It should be remarked that this case in addition to protest demonstrations both in Oslo and in Alta drew great attention and was the initial incentive for the Sámi rights process in the form of a Parliamentary Inquiry leading to new legislation, still in progress.

siidat, reindeer herding groups, and a dam regulation for the development of electricity by the Alta Power caused loss of pasture for only one of the *siidat*. The important principle in this case was the unequivocal recognition of the standing of the production group, *sii´da*, to file a suit in court and claim compensation for losses incurred. The Supreme Court accepted for the first time that a *sii´da* could have its own rights. This was a legal break-through as it recognizes that a *sii´da* can turn to the court on its own as an appropriate party in a legal conflict. Thus a new legal practice has been created, i.e. interlegality in the sense that the court acknowledged the traditional allocation of land between *siidat* in a district.

In cases of encroachment, it is less difficult to obtain acceptance of claims in court if emphasis is laid on the local effect, considering the traditional organization of reindeer pastoralism as *sii´da* based. The effect of an infringement will then be appropriately evaluated, in contrast to making the same assessment of damages for the district as a whole. In other words, Norwegian law is heavily influenced by Sámi customary practice of land use, correctly perceived as a form of interlegality.

Another case, *The Svartskog Case*, 2001 (HR 2001/00005b), drew attention to the relevance of international law conventions and the principle of immemorial prescription to confirm customary use rights. The local population, mainly Sámi, in Manndalen opposed state ownership of outlying land (*utmark*) in the region through *Statsskog*, the authority managing state-owned forest lands which had acquired the property from a private estate in 1885. In this case it was demonstrated that international conventions regarding indigenous people were applicable in Norwegian legal practice, in particular art. 27 (1966) and ILO 169 (1989), in addition to the historically anchored principles of ancient usage and immemorial prescription.

By the Supreme Court decision the local population, predominantly of Sámi extraction, were granted collective ownership rights, i.e. a kind of common ownership for the local community (*bygdesameie*) in contrast to state ownership. The rights to the Svartskog area were based primarily on ancient usage and immemorial prescription. The decision was in harmony with international conventions ratified by Norway as well as Sámi customary law, the latter being a weighty factor in the trial. It should be remarked though that it was the confirmation of firm use rights to the outlying land to the advantage of the state, which was at stake, not formal ownership rights, a conception which is foreign to Sámi legal perceptions, as Sámi development of natural resources is based on collective use. This was also clearly spelled out in the decision.

The two cases discussed so far concerned the northernmost part of *Sápmi* (Sámi land). In the South Sámi area, more than elsewhere, the conflict of interests between the Sámi and private land owners has been rather consistent, not infrequently involving open hostility. As late as in 1997 the Supreme Court handed down a most negative verdict vis-à-vis the Sámi in the district of Riast/Hyllingen north of Røros in *The Aursunden Case* (HR Nr 61/1997). In this case the Sámi lost on all the issues contested. They felt extremely discouraged and depressed by such a negative outcome, totally ignoring the Sámi as people and as a legitimate party. The verdict was based on a Supreme Court decision given a hundred years earlier in 1897. This was especially negative towards the Sámi, and the local Sámi had never adapted to as it was contrary to their legal perceptions and completely impracticable to comply with. Now land owners, mainly farmers, wanted to make an example and once and for all place the Sámi in a weaker position concerning their usufructuary rights.

Due to its most detrimental implication this decision has drawn appreciable attention, not only locally but also in wider circles. As expected, the decision was highly criticized by the Sámi Parliament, which firmly rejected the untimely conclusion reached by the Supreme Court, on the ground that it ignored in every respect the development of the law regarding Sámi inherent rights. Neither was there any recognition of the specific characteristics of reindeer herding and Sámi customs and legal perceptions. The Reindeer Herding Board (*Reindriftsstyret*), which is the highest authority concerning reindeer herding affairs, also voiced explicit protests against the new Supreme Court decision, declaring it to be an obsolete decision following the spirit and legal thinking of time long past. The early verdict of 1897 has had an influence on later decisions and appears as an established legal conclusion, a view energetically contested and questioned by the Sámi. They claim *customary use* as a basis constituting customary rights to certain lands, and they focus firmly on *immemorial prescription* as a primary source of law when it comes to deciding Sámi rights in the area in question. In other words, according to Sámi opinion generally, the decisions of 1897 was based on false premises and should in no way serve as a guiding principle one hundred years later.

However, the time was overdue for a change and in 2001 a new Supreme Court decision was given concerning the same group of Sámi. Inspired by the *Aursunden Case*, as many as 229 private land owners contested the Sámi right to graze their reindeer flocks on land belonging to these land owners, and required a court ruling

on the matter, in *The Selbu Case* (HR 2001-00004b). Somewhat unexpectedly the Selbu decision turned out to be a complete victory for the Sámi. It created new legal views in practice and reversed conclusions reached by earlier cases, such as the *Aursunden Case*. The decision established Sámi usufructuary rights as offering much greater security and hope for the future than hitherto, a significant improvement. The decision in favour of the Sámi was based on Sámi customary rights to reindeer pasture and immemorial prescription, *alders tids bruk*. Important elements actualized and affirmed in the case were: (1) immemorial prescription as a sufficient source of law in establishing firm use rights against private ownership; (2) use over long time and in good faith as a basis for usufructuary rights; and (3) recognition of oral evidence of Sámi rights presented in court. Emphasizing a nomadic way of life as explaining convincingly extensive land use, the court said:

> The extension of pasturing rights must be decided based on holistic evaluation, where the foundation of South Sámi culture must be considered, as that has been jeopardized by several court decisions against the Sámi party.

The statement quoted shows that cultural considerations are on their way to become legitimate factors in legal decision making, an important point indicating legal pluralism, or interlegality. Following upon repeated Sámi argument, the Supreme Court also vindicates the claim that the Sámi right to reindeer herding is a *right* based on immemorial prescription, not merely a tolerated use.

This landmark decision was pronounced by the Supreme Court in full assembly, and although it remains a split decision (9–6), the very fact that the entire court was involved gives it extra potency on which future Sámi strategies can build, in particular as a new and significant source of law.

The District Court of Inner Finnmark

For long there has been a desire among the Sámi to increase their confidence in the Norwegian court system, i.e. in the possibility of attaining actual equality before the law. Because of cultural difference, including its undeniable legal aspect, the Sámi wanted to have a court instituted in the Sámi core area, not necessarily a court of their own but a court which had the capacity to meet Sámi needs, in a similar manner considering cultural distinctiveness. The problem was first expressed as early as in 1875 (*Den finnmarkske Fieldfinkommision* of that year), a

proposal restated several times, but with no result. It was not until 1999 that an authoritative proposition to set up a new special court in Inner Finnmark was introduced, emerging from a Parliamentary Inquiry focusing in particular on the Norwegian court system (NOU 1999). Such recommended advancement on the institutional level can be seen as part of the Sámi rights process and has been adopted by the Sámi as an essential element in strengthening their autonomy. Situated in Tana this District Court began to function in 2004.[7] Consequently it does not yet have an extensive record to refer to. In the following I will concentrate on the legal position and scope of jurisdiction of this new court, and also its range of required competence.

First of all it must be emphasized that this special court is part of the Norwegian legal system. It is a Norwegian lower court located in a Sámi region, the clients of which will mostly be Sámi. Any decision being appealed has to be sent to the Hålogaland Court of Appeal and eventually to the Norwegian Supreme Court (*Høyesterett*). That which is unique with this District Court is the Sámi dimension incorporated in the Norwegian court system, which specifically implies (a) taking into account Sámi customs/legal perceptions, (b) use of the Sámi language (not only relying on interpreters), (c) development of a Sámi legal terminology, and (d) considering cultural diversity. Complete equity in legal matters, it is believed, can only be acquired by a court which is expected and obligated to be considerate of such a Sámi dimension (St.meld. nr. 23, 2000-2001). The establishment of such a court inside the regular system of courts, but at the same time on the sideline, can prove instrumental in a positive sense concerning interlegality as process. The Norwegian court system in general will obtain an increased understanding of legal matters peculiar to the Sámi outside the central area for Sámi specific concerns, which will broaden common competence especially among the acting judges. Similarly, the District Court in Tana will function as an acknowledged Norwegian court having special competence, when it comes to dealing with Sámi legal affairs, The latter circumstance will eventually extend Sámi confidence in the court system, making a trial in court and the court setting more relevant, even familiar, to Sámi clients, culturally speaking. In other words, a court like this contributes to assuring equal treatment before the law, real equality, between the two peoples of

[7] It started in January 2004, but was not inaugurated until June. This event was held to be extremely important, a great leap forward regarding Sámi self-determination. The court was, moreover, officially opened in the presence of King Harald V, a symbolic gesture underlining reconciliation.

Norway concerning legal matters, and not the least it is believed to strengthen Sámi legal security. In this fashion, requirements expressed in international law as well as the Sámi Act and the Constitutional Amendment § 110a (Ot.prp. 33, 1987) are met. In clear language § 110a states that "the Norwegian state has the responsibility in all respects to facilitate the strengthening and evolution of Sámi language, culture and society, including its judicial system".[8] The bi-lingual name of the court, *Indre Finnmark tingrett/ Finnmàrku diggegoddi* respectively, has a symbolic as well as a real value in emphasizing its peculiarity, being the only actual bi-lingual court.

This new court is expected to have a most positive effect on formally establishing the legal status of Sámi customs as a source of law. According to Norwegian State Law custom is recognized as a source of law. The District Court of Inner Finnmark will possess sufficient cross-cultural competence to attain similar acknowledgement regarding Sámi customs. One vital problem remains, however. In cases of appeal the higher courts, i.e. the Court of Appeal and the Supreme Court, in reaching their decisions cannot rely on such dual cultural competence. Great attention, therefore, must be paid to this expected discrepancy of cultural competence. Optimal use and careful selection of jurors may resolve this predicament to some extent, thus retaining a Sámi dimension.

The court is assigned to cover the rural districts Karasjok, Kautokeino, Nesseby, Tana and Porsanger, being the exception of Porsanger the same as for the Office of Legal Aid. The members of the court, its chief judge and secretary are all required to prove competence and sufficient background in Sámi culture and language besides being qualified in jurisprudence. As the interest for studying law

[8] § 110a of the Norwegian Constitution corresponds closely to art. 27 of the UN Convention on Civil and Political rights (1966). As such it represents a superior rule of law establishing principles on which official Norwegain policy vis-à-vis the Sámi should be based irrespective of governments.

In connection to the language question it can be added that a new provision for courts § 136a of the law of courts, *domstolsloven* has been introduced recently, in which Sámi is accepted as a legal language proper. In November 2004 a seminar on Sámi legal terminology was also held in Tana, indicating that the question of language is being taken seriously from the very start.

has increased lately among young Sámi chosing various professional careers, Sámi recruitment to this court turned out to be unproblematic.[9]

In order to make this court operative in terms of interlegality, particular emphasis is laid on the aspect of Sámi customs and legal perceptions. Giving this feature such weight must be seen as a response to Sámi demands, initially expressed in the mandate for the Sámi Rights Commission (1980) and repeated several times, not the least after the latter Commission failed to meet these requirements for carrying out the inquiry (NOU 1993). The independent research project, focusing exclusively on Sámi customary law, was the immediate follow-up in mapping and analyzing Sámi customs/legal perceptions in Finnmark, a generated body of knowledge to be incorporated as basic material in the preparation of the Finnmark law, the end result of the Sámi rights process regarding the County of Finnmark. (I will come back to this particular law in the next section) In the proposal for a new court the Norwegian Parliament makes the following statement:

> According to the Sámi it has been maintained that Sámi customs/legal perceptions have been respected far too little by Norwegian courts – and by Norwegian authorities generally. To establish a court in Inner Finnmark will remedy this deficiency and increase the insight of Sámi customs/legal perceptions. For even if it is Norwegian law which will be applied, Sámi customs/legal perceptions is a relevant source of law.

The latter assertion is qualified further by the clarification that much knowledge of Sámi customs is oral and therefore difficult to document as evidence in court. To overcome this predicament, however, the government points out that the Sámi culture, its land use pattern and means of production are all based on oral tradition, and consequently only rarely documented in written form. This notwithstanding, Sámi customs/legal perceptions must be adequately considered by the new court, accepting oral evidence at its full value. It is up to this court to develop methods by means of legal practice to cope with the aspect of Sámi customary rights, especially in reference to its oral nature (St.meld. nr. 23, 2000-2001). Here we can notice the ambition shared by the Sámi and the Norwegian authorities that traditional wisdom regarding normative orders is expected to be

[9] The first doctoral degree in law gained by a Sámi was awarded to Ande Somby at University of Tromsø in 1999.

applied in court procedures as well as reaching decisions, in Hoekema´s terms to make customary law (Hoekema 2003: 202).

It will necessarily take some time to consolidate a court like this, but its potential strength has clearly been demonstrated by a trial last summer in a minor criminal law case. The suit arose from an inter-Sámi controversy ending in a fight, where one of the combatants was prosecuted for severe assault. A reason for the combat was the open insult the accused had been exposed to, i.e. being accused of not being a real Sámi, only partly so because of mixed parenthood. The punishment for this kind of offence varies between 60 and 90 days in prison according to penal law provisions. Because the defendant had been provoked, by a severe questioning of his ethnic identity, the punishment was reduced to 30 days due to extenuating circumstances. Inasmuch as this was one of the very first verdicts reached by the District Court of Inner Finnmark it was acclaimed in wide circles of Sámi, with a unanimous conclusion that this new court apparently had chosen to act somewhat differently from ordinary courts and was from the start building its decisions on the Sámi dimension.[10]

The aspiration of the Sámi at present is that this court will take on cases involving more significant principles, such as conflicts about local and regional land rights, where the Sámi party expects to have a strong voice. In this respect one current case is worth mentioning, *The Stjernøy Case* in Alta, i.e. outside the jurisdiction of the court of Inner Finnmark but still within Finnmark county. The dispute dealing with ownership rights between the Sámi and Statsskog was tried in the Alta *tingrett* in June 2005. Stjernøy is a reindeer herding district consisting of 6 family units, and can prove customary use of the island for at least the last 200 years, i.e. far longer than any other interested party, for pasturing reindeer herds during spring, summer and autumn. Certain parallels with the *Seiland Case* can be discerned, not the least because of its principal issue.

In a sense this trial can be seen as a test case of the newly enacted Finnmark Law. Specifically, the dispute concerns the question who of the two contesting parties, the Sámi of Stjernøy District or the State through Statsskog, is entitled to

[10] Dom Indre Finnmark Tingrett nr. 04-014580 MED-INF1, also comment in the Jrl. *Ságat* 2004: 78. Compare *the Gladue Case* (1998), referred to by Craig Proulx (below), as an example of sentencing approaches concerning offenders with Aboriginal heritage.

compensation from the company North Cape Minerals for nepheline quarrying in the area. In other words, falling back on international law developments, in particular ILO 169 art. 14, 1 and art. 15, the Sámi claim that historically speaking they have stronger rights than the state. Their legal argumentation is, moreover, supported by reference to Sámi customary rights and immemorial use. The Sámi can prove traditional land use for a very long time, more than sufficient to constitute ownership rights, referring extensively in their law suit (*Prosesskrift til Alta Tingrett 7/7 2004*) to the *Taxed Mountains Case* 1981, in which Supreme Court Decision it is confirmed that reindeer herding, including supplementary means of livelihood (fishing and hunting), can lead to ownership rights, because the traditional land use pattern is sufficiently intensive (HD Dom nr. DT 2, 1981).

In contrast to the Sámi, Statsskog, through its legal representative the Attorney General (*Regeringadvokaten*), builds its argument on the rather vague conception of assumed and unquestioned state ownership. To avoid litigation the Sámi made an attempt to reach an agreement through negotiation, e.g. on sharing of the compensation, a suggestion turned down by Statsskog.

Perceived as a test case of the Finnmark Law and its general principle, the Sámi have even tried to have the trial moved to the District Court of Inner Finnmark, an attempt resolutely opposed by the Attorney General. Now it is up to the District Court in Alta to decide in the first instance, and, as demonstrated, it is a case with important implications for fundamental Sámi rights, rights expanding beyond original land use, as it deals with the question of rights to royalties. Consequently, it can be seen as a tentative mirroring of interlegality as process, important as any from a strategic point of view.

The fact that the Sámi claim to have the trial moved was met by refusal, can point to eventual weaknesses in the court system, although only time will tell. This area of doubt as to the appropriate location of trials underscores the significance of the Finnmark Law, which is expected to define Sámi rights, and will be instrumental for future actions both legally and politically. The final section will focus more specifically on this law.

The Finnmark Act

The Sámi rights process started in 1980 reached its first conclusive stage by the introduction of a bill for legislation in 2003. Beginning in 1980 the Sámi claimed

formal approval of legal diversity from which they believed they could capitalize politically. They demanded complete and indisputable recognition of cultural difference also in legal terms, i.e. functional legal pluralism, land rights being the key factor. From the perspective of interlegality, it should be observed that for the first time the Sámi were able to negotiate with the Norwegian government to have certain critical propositions, in a fairly unconventional manner, included in the mandate for the Parliamentary Inquiry preceding legislation. These were propositions, for example as to (1) Sámi *historical rights*, (2) Sámi *customary rights,* and (3) the relevance of *international law* (NOU 1984).

Emanating from a set of proposals (Svensson 1997) a general, representative assembly of the Sámi, the Sámi Parliament (*Sáme Diggi)* was instituted and officially inaugurated in Karasjok in 1989. As a political body this institution is restricted primarily to advisory functions unless a clearly defined power base can be acquired for it. Such a power base will relate to a large extent to law, so that Sámi rights must be both *identified* in precise terms and *recognized* to make the Sámi Parliament politically operative, which remains the ultimate goal for the Sámi. The profound work conducted by the Sámi Rights Commission in the examination of all relevant aspects concerning Sámi rights is reflected in a set of comprehensive reports (NOU 1984, 1993, 1994, 1997a, 1997b, 2001).

The bill introduced in 2003 is called *Finnmarksloven*, a law regulating the management of natural resources in the northernmost county of Norway, Finnmark.[11] In its preamble the government asserts that the proposed law is a direct implementation in particular of the conclusive report of the Sámi Rights Commission (NOU 1997a), dealing exclusively with questions related to the natural or material foundations of Sámi culture. Questionable is the fact that the designation Sámi is not retained in the proposal for legislation, although the name has been used through the entire Sámi rights process. Instead, and quite astonishingly, the Sámi whose indigenousness is formally acknowledged, making them entitled to claim an undeniable historical right to vast territories in the county of Finnmark, are reduced to one of several kinds of people regionally attached to Finnmark. This absence of a culture-specific label is reinforced by § 1 setting the tone for the entire law. The Sámi are offered no distinctive rights but are placed on an equal footing with other regional inhabitants. This means that Sámi

[11] Ot.prp. 53. *Om lov om rettsforhold og forvaltning av grunn og naturresurser in Finnmark fylke* (Finnmarksloven), Det Kongelige Justis- og Politi departementet.

empowerment in vital areas concerning Sámi cultural sustenance is far from being reinforced, in marked contrast to what the Sámi had expected from the Sámi rights process.

The greater part of the law deals with specifications as to territorial management. More emphasis is definitely given to the question of management than to that concerning rights; administrative procedures predominate over matters regarding law. It is a *property rights law*, *tingrettslig lov*, i.e. a law concerning regional resource management, a perspective which to a great extent diverges from the original mandate and objective of the Sámi Rights Commission. The proposed law introduces a new concept *Finnmarkseiendomen*, the Finnmark Estate, which is supposed to be perceived as its own legal subject, governed by a Board consisting of 3 members appointed by the Sámi Parliament, 3 by the Finnmark County and 1 representing the Norwegian government, but without voting power. The authority and tasks defined pertaining to this Board point to limited Sámi influence, mainly in Sámi relevant affairs, but is far from satisfactory in relation to Sámi expectations.

In this proposal co-management is the focus. The Sámi are given right to a voice in important decision-making, but not even in areas where they predominate population-wise are they yielded any exclusive right. After the final enactment, in the years to come the decisive issue to be observed will be to what degree this new notion of co-management will operate. Sámi empowerment must be more than simply nominal to measure up to contemporary demands. It will, moreover, be a question concerning recognition of cultural difference in practicing co-management, that is, there will be a question as to how far the recognition of cultural difference will be permitted to influence joint decision-making as regards the Finnmark Estate. This still remains an open question and has caused great worries among the Sámi. One should, however, not overlook the potential for reconciliation regionally.

At this initial stage the law proposed provides no *clarification* of specific Sámi rights; as a consequence, with few exceptions, there is no *recognition* of specific Sámi rights. Neither does the law contain an opening for any substantial change; therefore, *reconciliation* between different legal perceptions, normative orders, is still far from realization, which means the issue of possible *codification* is readily put aside. At the present stage there are no Sámi aboriginal rights to be codified. In a similar way the *customary law* is completely invisible in the law, a decisive aspect of the question of meeting Sámi aspirations and demands.

As expected the Sámi reacted with consternation to the bill, and the Sámi Parliament requested it to be sent back to the Ministry of Justice for further preliminary work, changing in pivotal areas its intent and purpose. At the same time the Sámi Parliament urged the government to include as the bases of Sámi legal rights, *custom, immemorial prescription, usage* and *aboriginal rights*, key conceptions not sufficiently reflected in the law. They also made an additional claim, i.e. to be properly consulted through a functioning dialogue prior to the presentation of a revised bill. The latter demand was complied with and the Parliamentary Committee on Legal Affairs has already held several meetings with representatives of the Sámi Parliament.

As we see then there were two critical points omitted in the proposed law, i.e. international law perspectives and Sámi customary law. Only if these aspects were incorporated in this resource management law, i.e. if Sámi indigeneity was imported into the law, would it be possible to conclude that a new legal framework for action, in particular designed for the Sámi and strengthening their legal position generally, had been accomplished. With such revision, which turned out to be the revised goal of the Parliamentary Committee, to a large part endorsed by the Ministry of Justice, the Finnmark Law will connect more closely to the spirit of the Sámi Act of 1987. The multi-party Parliamentary Committee moreover made it very clear that (1) there must be no question whether or not the law, once introduced, will meet international law standards, and (2) no bill will be presented for legislation unless the Sámi Parliament has approved it. These are strong statements in a most complex process, and appear rather promising, not the least in reference to interlegality as process (For a more complete analysis of the 'Finnmark Act' see Svensson 2004; concerning the theme customary law see also Svensson 2003).

On 24 May 2005 the Finnmark Act was finally passed by the Norwegian Parliament by a large majority. Prior to enactment four substantial consultations were held between the Parliamentary Committee and the parties involved, i.e. the Sámi Parliament and the Finnmark County Administration. The Sámi proved very active in this process handing in no fewer than seven so called working papers in preparation for stages in the continuing dialogue. In this fashion the Sámi were able to exert real influence towards the end result, in particular in reference to the leading aspects of international law principles and Sámi customary law. At the same time, by means of such consultative process the Norwegian Parliament created a new model in the preparation of legislation, the enactment of new laws,

as was repeatedly stated in the Parliamentary debate preceding voting on the issue. Thereby the enactment of the Finnmark Act is correctly regarded as unique in the history of the Norwegian Parliament, and, thanks to Sámi pressure, a new era in policy making vis-à-vis the Sámi has been initiated gradually opening up for interlegality as a factor. In other words, Sámi legal perceptions are included in the Finnmark Act, and meanwhile, because of this new Act, Norwegian state law has to be revised accordingly.

When it comes to revising and improving the original proposal for a law the Sámi demands have been met to a great extent. The settlement, which to a certain degree shows willingness to compromise, as the law must deal with issues concerning all original inhabitants of the county, not only the Sámi, nevertheless provides the Sámi with a legal framework for action, a decisive development, and an efficient instrument for protecting their aboriginal rights. Such an outcome is in harmony with the intention of the new court for Inner Finnmark, and it will affirm a reasonable power base for the Sámi Parliament. The process leading to such discernible change, characterized by a continuous give-and-take, where not only the Sámi but also ethnic Norwegians have to readapt, bears witness to interlegality.

Summing up the case

Following Hoekema (2003) we can summarize that *incorporation* and *recognition* are key features in the process of interlegality. As I have tried to demonstrate throughout this paper, it is the continual flow of legal perceptions, the dynamic force of pluralistic arrangement, that reshape state law to better accommodate the cultural distinctiveness of indigenous peoples, such as the Sámi in Norway, without necessarily having to establish a legal system for the Sámi in its own right (cf. Griffiths 2002). It is the respect for Sámi legal perceptions, in particular as reflected in their customary law, which has meaning, not alternative systems of justice per se (Cf. recent studies among the Coast Salish in Miller 2001: 119).

Considering legal diversity in an interactive perspective, interlegality, we are able to record how indigenous normative orders and legal perceptions, emerging from non-state law, are incorporated into state law, thereby expanding the functional meaning of law. Focusing on process rather than structure captures a whole range of plurality in law, not readily observed otherwise. To be successful in the attempt to move the frontier, i.e. to improve the legal situation of the Sámi, recognition by the state authorities both of cultural difference and of their customs and legal

perceptions is required. Such contingent recognition can only be attained from the dominant society as an outcome of political action, i.e. a profound engagement in a politics focusing on difference. In the ongoing relationship between the Sámi and the state authorities, where the Sámi persistently struggle towards change to better their minority situation, the Sámi as a rule appear as the active party. The entire Sámi rights process at present came about as a response to Sámi pressure; *the Sámi Act, the Constitutional Amendment* and *the Sámi Parliament* represent definite improvements emanating from this process, in which the Sámi had the opportunity to influence as well as to participate. The enactment of *the Finnmark Law* is another example where Sámi influence certainly is appreciable.

The establishment of *the Office of Legal Aid* and the newly instituted *District Court of Inner Finnmark* are new institutions in the legal arena opening up opportunities for legal diversity as a factor even in Norwegian state law, in which the Sámi are adapting to, as well as affecting, its operative strength. Initiating trials in court on issues of principle, ultimately leading to Supreme Court decisions, is another means by which the Sámi bring pressure to bear upon reshaping state law through precedents. Finally, Sámi action brought about the revision and modernization of the *Reindeer Pastoralist Law*, where we found that customary organizational features were affirmed as legitimate legal factors. The acknowledgement of the concept *sii´da*, converting the *sii´da* to an appropriate legal subject is a case in point. The formal recognition of *duodji* (traditional Sámi handicraft and artwork) as an academic discipline, in which two doctoral degrees have already been awarded, is another example of significant conceptual incorporation. This represents a new trend, a new beginning, pointing to cultural-political reinforcement, in which conceptual reconstruction the Sámi as indigenous people are playing an active role. The establishment of Sámi Law as an obligatory course for all students being trained in law at the University of Tromsø is an additional factor in improving the legal security of the Sámi. Future legal practitioners are thereby assured of the necessary intercultural legal competence in judicial districts with large portions of Sámi population.

The predominant objective for the Sámi in this process of interlegality is the issue of *land rights*. Almost every organizational change boils down to that question. The reason for this is its effect on cultural maintenance, the Sámi being a land-based indigenous minority. At the same time the progress made has a legal as well as political component broadly speaking (Cf. Niezen 2003: 9, stating: “Subsistence on the land, for indigenous peoples, is the most important source of autonomy and power”). The process of transformation with the purpose of improving the Sámi

situation generally is distinguished by the initiation power demonstrated by the Sámi. Nothing, or very little, is expected to happen without the Sámi usually making the first move.

To conclude, the current Sámi case is fairly complex and can conveniently be subsumed within the following three broadly encompassing conceptions: (1) *law*, viewed as a legal framework for action, (2) *institutions,* which are instrumental for interlegal deliberations, for instance the District Court for Inner Finnmark making customary law by applying traditional wisdom to influence decision-making (Hoekema 2003), and (3) *practice* mainly through court procedures and decisions. Increased cultural-political autonomy depends heavily on the above three elements, which in their turn depend on the dynamic force of interlegality continuously manifesting itself. In fact, interlegality can function as an efficient means of resisting fragmentation and the powerlessness severely experienced by indigenous peoples (Miller 2001).

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