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Organised hypocrisy? The implementation of the international indigenous rights regime in Sweden

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ABSTRACT

The recognition of indigenous peoples’ rights has gradually grown stronger the last three decades but the actual effect of this emerging international indigenous rights regime on state behaviour seems dubious. In this paper the author analyses how international norms are translated, interpreted and reshaped in a domestic context through the conceptual framework of organised hypocrisy. The starting-point is that hypocrisy is the normal state of affairs in domestic politics. It is a response by political organisations, like national parliaments or governments, facing conflicting values, demands and interests: talk, decisions and action are decoupled or counter-coupled. The empirical focus of the article is the indigenous rights regime in Sweden, a country well known for its record of ratifying human rights conventions. The author shows how all political reforms in Swedish Sámi politics are justified (in political talk and decisions) by reference to international law, while the actual effects of this endorsement (the actions) are minimal. Moreover, an analysis of four recent legal cases shows that the Swedish legal tradition with weak judicial review is a hinder for the judiciary to challenge this organised hypocrisy by forcing the rhetorical endorsement of the international indigenous rights regime into action through court decisions.

Introduction

The international recognition of indigenous peoples’ rights has gradually grown stronger the last three decades as part of a more general international trend, often characterised as the ‘globalisation of law’, including new international conventions and declarations, judgments by international courts, new jurisprudence, transnational organisations and legal facts established and accepted by the international community.1 Of particular importance for indigenous peoples are two instruments in support of their rights claims: the 1989 ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007. Only 23 countries have ratified the binding ILO convention (C169) during its first thirty years of existence, while in contrast, 144 countries voted for an adoption of the UNDRIP. Despite few ratifying states, C169 has had significant impact on national legislation also in non-ratifying states and shaped guidelines for
other international bodies. The UNDRIP – although not legally binding – reflects in many ways customary international law on indigenous peoples’ rights and serves as a point of reference in the interpretation of other human rights instruments. As such, states endorsing the UNDRIP make ‘a powerful public statement’ and ‘declarations hold states morally and politically accountable’. The actual effect of this ‘globalisation of law’ on state behaviour seems, however, dubious to say the least, since human rights treaties ‘supply weak institutional mechanisms to monitor and enforce regime norms’ thereby ‘offering governments strong incentives to ratify human rights treaties as a matter of window dressing rather than a serious commitment to implement respect for human rights in practice’. This is true also when it comes to the rights of indigenous peoples, where endorsement of indigenous peoples’ rights on a global level rarely are followed by an implementation of these rights in practice on a national level. The gap between rhetoric and practise comes as no surprise, since the rights of indigenous peoples challenge the traditional nation-state centred understanding of political rights and democracy. Of specific importance in this context is the paramount third article of the UNDRIP stating that ‘[i]ndigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’. In addition, the meaning of indigenous self-determination is still contested both in theory and practice, and international law gives no or little guidance as to how this right ought to be implemented in practice. Together with the fact that the emerging indigenous rights regime is non-binding (except for the few number of states that have ratified C169), ‘states could be expected to respond to it in a diversity of ways and at a variety of levels’, if they respond at all.

The aim of this article is to analyse the gap between democratic states’ recognition of the rights of indigenous peoples on a global level and the lack of change in domestic political practice. How do democratic states, committed to human rights in general and to the rights of indigenous peoples, interpret what indigenous rights mean for domestic policy, for instance, in terms of legal and institutional changes? And how do states justify their implementation (or not) of indigenous rights in relation to international law on the domestic political arena? The starting-point of the analysis is that national politics on indigenous rights are characterised by organised hypocrisy, i.e. by a decoupling of values (as expressed in the indigenous rights regime) and action (as required by states endorsing indigenous rights). Organised hypocrisy is not a pejorative term in this context; rather, it is a behaviour characterising all political organisations – the paradigmatic case being national parliaments – trying to cope with conflicting values, interests and demands simultaneously, for instance, between the value to protect the rights of indigenous peoples and demands to create good conditions for the industrial life (like extractive industries). Organised hypocrisy signifies ‘a difference between words and deeds’, where the ‘organization meets some demands by the way of talk, others by decisions, and yet others by action’. In disentangling talk, decisions and action, the theory on organised hypocrisy facilitates the analysis of how international norms of an emerging human rights regime are transposed into local contexts and translated ‘into domestic discursive frames’ linking ‘new norms to existing world-views’. More specifically, I will examine the influence of international norms in the development of the indigenous rights regime in Sweden, a stable democracy internationally well-known for its record of ratifying human rights conventions, as well as for its
sensitivity to sustain its ‘global reputation’ as upholder of international law and conventions’. In Sweden, the indigenous Sámi people are today recognised as a people with a right to self-determination, and Sweden voted for the UNDRIP in 2007 but has not ratified C169. In an international perspective, Sweden – together with Norway and Finland – has often been praised for its indigenous politics. In a UN report, for instance, the establishment of Sámi parliaments in all three Nordic countries was described as a model for indigenous self-governance and participation in decision-making that could inspire the development of similar institutions elsewhere in the world. Together with the fact that Sweden has the capacity for enforcing legal and institutional changes in accordance with the UNDRIP, it would seem as a most likely country to implement (action) a human rights regime it has endorsed (through talk and decisions).

In the following section two I introduce the conceptual framework of organised hypocrisy, and particularly the distinction between talk, decisions and action. In section three I analyse the impact of international norms on the indigenous rights regime in Sweden, and I argue that all reforms, or lack of reforms in Swedish Sámi policy are justified (i.e. in political talk and decisions) by reference to international law, but that the actual effects of this endorsement (in terms of action) are minimal. In section four I analyse if the courts may challenge the organised hypocrisy of Swedish Sámi politics through an analysis of how international law has been used in the framing of four legal cases, and if international norms have affected the decisions of the courts. In the concluding section five, I argue that organised hypocrisy as theoretical starting-point enhances our understanding of why democratic states endorsing indigenous rights ends up with a domestic indigenous politics of status quo. However, by state’s endorsement of the international indigenous rights regime (in talk and decisions) a platform is created from which indigenous peoples and other domestic actors may challenge prevailing politics (force into action), not least by constantly calling attention to this hypocrisy.

Organised hypocrisy as conceptual framework

The gap between the endorsement of human rights in the international arena, and the lack of change in political practice on a nation-state level is often discussed in terms of decoupling. It is neither full adoption of the values in international norms, since they are not implemented in practice, nor is it a rejection of these values, since they are endorsed rhetorically; rather, decoupling is something in-between. In the literature, there are basically two explanations as to why this decoupling occurs: states do not have the capacity to implement human rights norms due to, for instance, absence of the rule of law or a lack of socio-economic resources, or states do not have the will or interest to actually enforce the human rights regime they have endorsed. According to theories on organised hypocrisy, this decoupling of values and action is the normal state of affairs. In the international system, Stephen Krasner argues, outcomes are determined by rulers whose violations of, or adherence to, international principles or rules is based on calculations of material and ideational interests following an instrumental logic of consequences, rather than a logic of appropriateness where, for instance, the endorsement and implementation of human rights is the appropriate behaviour of modern states.

When the analysis of state commitments is extended to human rights instruments other than treaties, like the UNDRIP, the distinction between commitment and non-
commitment to international norms becomes more complex. While having voted for the UNDRIP in 2007, several states made subsequent statements in the General Assembly qualifying indigenous rights, often in relation to the existing national legislation. In the words of Sheryl Lightfoot in her analysis of the CANZUS states’ (Australia, Canada, New Zealand and the US) endorsement of the UNDRIP after initially having voted against the declaration, these states practiced a ‘selective endorsement’. In this selective endorsement, a state ‘underscores the normative importance of the rights contained within the accord while at the same time qualifying them’, and ‘writes down the recognised rights, so that they conveniently align with existing policies and practices’ making further efforts for implementation of these rights unnecessary: ‘compliance occurs automatically’. In terms of organised hypocrisy, selective endorsement of the emerging indigenous rights regime seems thus to be a way to simultaneously follow a logic of appropriateness in endorsing the indigenous rights regime, and to follow an instrumental and strategic logic writing down these same rights. Through this practice, a state keeps its standing in the international community as supportive of the indigenous rights regime and abides to domestic pressure for endorsement, while justifying a legal and institutional status quo safeguarding the scope of action and interests of the state.

Selective endorsement may in an apparent way explain why there is a gap between democratic states’ endorsement of the emerging international indigenous rights regime and the lack of change in domestic political practice: the values expressed in the international indigenous rights regime are by some states written down so further implementation (action) is made superfluous. However, the international indigenous rights regime has raised the expectations as well as the behaviour of domestic actors, shaping ‘meanings, identities, interests, and discourses’ as well as strengthening ‘the bargaining position of rights claimants’. In order to understand how this gap between endorsement and implementation is reproduced over time – often in face of domestic actors explicitly challenging the legitimacy of prevailing state politics – we thus need to turn to the domestic political arena and ‘concentrate squarely on whether or not states implement and comply with Indigenous rights norms’ and analyse how a domestic indigenous politics of status quo is justified in relation to international law. How are the values expressed in the international indigenous rights regime decoupled from the implementation of these rights (action) in national politics?

According to theories of organised hypocrisy focusing on domestic politics, the decoupling of values and actions is the normal response by political organisations in a world ‘in which values, ideas or people are in conflict with one another’ and where hypocrisy becomes ‘a way of handling several conflicting values simultaneously […]’. As argued by organisational theorist Nils Brunsson, political organisations are pervaded by different values, interests and demands, and their legitimacy in the surrounding world is based on how well they can reflect this diversity in its own organisation. The democratic state should, for instance, ‘help families, senior citizens, domestic farmers and the economies of developing countries; they should keep taxes low and provide expensive welfare programs […]’. A political organisation handles this diversity by incorporating it in the organisational structure, for instance, by organisational differentiation and by developing many different and plural ideologies, something Brunsson calls ‘the organization of hypocrisy’.
From this perspective hypocrisy is not a pejorative term; rather it is used to describe inconsistencies in organisations when they try to satisfy different values, interests and demands at the same time. This does not necessarily mean that hypocrisy is a conscious strategy by actors or organisations (although it might be), if so they would in the end be exposed as hypocrites manipulating and conspiring in their own interests. Instead, it could be the result of wishful thinking in which a set objective is not feasible in practice, for instance, if it meets strong resistance and critique from external actors, is a consequence of compromises between different values or interests represented within the organisation, or is a result of the fact that there are different groups or actors within the organisation participating in decisions at different times and in different political arenas.

Hypocrisy stemming from the internal structure of an organisation, its processes and ideologies may be distinguished from hypocrisy in a narrower sense, ‘organized hypocrisy’, which refers to inconsistencies between three different outputs of political organisations: talk, decisions and action. One of the most fundamental outputs of political organisations is the generation of ideology directed towards the external environment. The ideology is first and foremost expressed in and through talk: political organisations declare their values through what they say, either in writing or orally. Decisions are a specific form of talk made to show the surrounding world that the organisation’s ideology is serious. Talk is a means to win support and legitimacy for a political organisation, and decisions declare the organisation’s intentions even if they are never implemented (i.e. turned into action). Hypocrisy occurs when there are inconsistencies between talk, decisions and action, and it ‘is a fundamental type of behaviour in the political organization […] to talk in a way that satisfies one demand, to decide in a way that satisfies another, and to supply products [action] in a way that satisfies a third.’ In this way, talk, decisions, and action are decoupled.

There are three main ways political organisations decouple talk and decisions from action. First, they could be separated in time, for instance, by arguing for action in the future. Second, talk and decisions are decoupled from action through separation by topics. Some ‘issues are used for conducting politics [talk and decisions], others in an attempt to produce action’. When a state endorses the emerging indigenous rights regime, cultural rights and language rights may, for instance, be topics for action while land rights and the right to self-determination may be topics characterised by talk and decisions. Third, decoupling occurs by separation of organisational units, for instance, by separating politicians that are oriented towards talk and decisions from the action-oriented administration, or by having one ministry in charge of indigenous issues and another responsible for the development of extractive industries.

In organised hypocrisy, talk and decisions usually compensate for inconsistent action in the direction of the values endorsed. Talk and decisions in one direction may, however, also compensate for action in the opposite direction, something described as a ‘radical decoupling’ or ‘counter-coupling’ between talk, decisions and action.

Counter-coupling provides an organization with a vehicle that allows management to pacify some stake-holders through less costly activities (i.e. talking about stakeholder expectations or announcing decisions about future possible actions relevant to those stakeholders) while focusing more significant resources on current actions that address the expectations of more powerful stakeholders [...].
An example of counter-coupling would be if a state recognises indigenous peoples’ right to land in talk and decisions, while simultaneously allowing and expanding action in the opposite direction, for instance, through the establishment of further extractive industries within the indigenous people’s traditional settlement area.

With its focus on talk, decisions and action, the conceptual framework of organised hypocrisy provides concrete analytical tools for studying the diffusion of international norms on a nation-state level. It is through talk and decisions, as well as action, that we may understand how these norms have been translated into the domestic political arena, and how they are interpreted and reshaped locally.

**The indigenous rights regime in Sweden: talk, decisions and action**

When transposed to a local Swedish context the emerging international indigenous rights regime meets an already existing legal and institutional system of Sámi rights. The origin of this system of rights is to be found in the *travaux préparatoire* to the first Reindeer Grazing Act of 1886, which was based on two fundamental pillars. First, the Sámi were recognised as the original inhabitants in northern Sweden but the land they used for reindeer herding, hunting, fishing *et cetera* was considered owned by the state. The dominant idea was that the Sámi, with a nomadic way of life, had used the land for reindeer herding but not cultivated it in such a way as to develop true ownership. Second, the system of Sámi rights was constructed around reindeer herding; other rights, for instance, political rights in capacity of being a people were effectively excluded within the debate. Moreover, the rights of the non-reindeer herding Sámi (using the land for fishing, hunting and traditional handicraft) were with this focus ignored in legislation creating two categories of Sámi with different legal standing.

This limited and excluding system of Sámi rights was in essence kept intact for a century in spite of critique, resistance and challenges from the Sámi, intensified after WWII on a national, regional and international level. In 1966, the Swedish Sámi initiated a legal process challenging the prevailing Swedish indigenous rights regime in a prejudice case on Sámi rights to land, *Skattefjällsmålet* (the Taxed Mountains Case). In the legal dispute, some Sámi reindeer herding communities (*samebyar*) claimed full ownership rights to a specific area, *Skattefjällen*, while the state maintained that it was the owner of the properties in dispute and stated that Sámi land rights were exhaustively regulated in the prevailing reindeer herding legislation. The Sámi related their claims to the fact that they had been subjected to colonisation and forced to leave their land, comparing their historical dispossession of land to other colonised peoples in the world. The ‘colonialistic and discriminating arguments behind the idea that the State should be the owner of the mountains’, could no longer be accepted they argued, ‘particularly after the United Nations Declaration of Human Rights and the 1950 European convention on protection of human rights and basic freedoms’.

When the case was finally decided by the Supreme Court in 1981, the court did not find the arguments of the Sámi party on the discriminatory foundation of the legislation and its colonial legacy to affect the status of the state as the rightful owner of the area in dispute. The Supreme Court thus confirmed the prevailing order, which was a severe set-back for the Sámi struggle for land rights. At the same time, however, the court’s ruling strengthened the legal position of reindeer herding, since it refuted the established view that the
right to use the land was a privilege granted the Sámi by the state. Instead, this right was based on civil law; on use and prescription from time immemorial. It was therefore constitutionally protected in the same way as ownership rights and could not be withdrawn without compensation. Moreover, the court declared that it could be possible to acquire ownership by using land for reindeer grazing, hunting and fishing, thus rejecting the idea that ‘nomads cannot acquire ownership rights’. The ruling was also the main reason for the appointment of the first ever Sámi Rights Commission in 1982.

During Skattefjällsmålet, Sweden had in 1977 recognised the Sámi as an indigenous population and a minority in their own country for the first time. The recognition was not justified by reference to international norms but only a few years later international law became the obvious starting-point for the Sámi Rights Commission. How, then, was international law on indigenous rights translated into the Swedish context?

**Talk: the status of the Sámi in relation to international law**

When international law was introduced in Swedish politics during the work of the Sámi Rights Commission, the status of the Sámi under international law became topical: were the Sámi an indigenous people in an international law sense? With an affirmative answer to that question, another question was raised: were the Sámi protected by the 1966 UN Covenant on Civil and Political Rights (ICCPR) and its first article, stating that ‘all peoples have the right to self-determination’? The rights commission answered this question in the negative justifying its stance by reference to the prevailing distinction in international law between colonisation overseas and inner colonisation; peoples within the geographical borders of an already existing state were not protected by the convention.

The Sámi were, however, considered to fulfil all the requirements to be recognised as an ethnic and linguistic minority group protected by article 27 in the ICCPR, stating that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The status as a minority group protected by the ICCPR was in the Swedish context interpreted as a justification of collective rights: the Sámi people had a right to cultural autonomy. Moreover, since the article gives a very strong protection for the social and cultural life of minority groups it also justified a strengthened legal standing of reindeer herding as being a prerequisite for the preservation of Sámi culture.

The Sámi were thus recognised as an indigenous people but with rights primarily stemming from their status as an ethnic and linguistic minority. Their minority status was in the 1990s confirmed and reinforced in the Swedish debate on the ratification of the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (ECMRL), in which the Sámi were perceived of as the obvious candidate to be included in the new policy on national minorities and minority languages.

With the development in international law, the Sámi were in a Government Bill in 2006 (on an increase in Sámi influence) for the first time recognised as a people having rights ‘in
the international law sense […] including the right to self-determination’. The material content of this right was not defined further but was considered to be ‘a question’ between two parties, the Sámi and the state. However, no proposal on how this ‘question’ ought to be negotiated or discussed between the two parties was presented, except for a general declaration on state consultations with the Sámi. The year after, in 2007, the recognition of the Sámi as an indigenous people – and as a people with a right to self-determination – was in a periodic report to the Human Rights Committee explicitly related to the common first articles of the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The status of the Swedish Sámi as a people with a right to self-determination was also confirmed in the work on an international treaty between Sweden, Finland and Norway, the Nordic Sámi Convention. It has been described as ‘a modern treaty between the Finnish, Norwegian and Swedish state-forming people, on the one hand, and the Saami people, indigenous to the three countries, on the other’. Stemming from a Sámi proposal already in the late 1980s, an expert group appointed by the three Nordic states presented a first draft in 2005 and a revised version was presented in 2016. In the draft conventions, the Sámi are recognised as an indigenous people with interests differing from the three states, and the Sámi right to self-determination within the borders of respective state is recognised in parallel with the three states’ right to self-determination.

In talk, then, Sweden has since the mid-1980s endorsed the emerging international indigenous rights regime as well as general human rights law protecting national minorities. In parallel to the development in international law, the status of the Sámi has gradually changed. The Sámi are today recognised both as an indigenous people with a right to self-determination equal to other peoples, and as a national minority with linguistic and cultural rights. In the next part, I will analyse the major decisions in Swedish Sámi politics following this development.

**Decisions: domestic reforms and international commitments**

The Sámi Rights Commission resulted in several proposals to change Swedish Sámi politics in accordance with international law; on a constitutional, legal as well as on an institutional level. One important legislative change concerned the legal standing of reindeer herding. Both the ruling of the Supreme Court in *Skattefjällsmålet* and the ICCPR (article 27) justified a strengthened legal standing of reindeer herding. In an amendment to the Reindeer Husbandry Act of 1971, a new first paragraph was introduced in 1993 stating that the right to herd reindeer was a usufructuary right based on immemorial prescription, and a provision was introduced to protect reindeer herding from activities that could be of ‘considerable detriment’. A similar form of protection had already been introduced in the new Natural Resources Act from 1987 in a paragraph protecting land and water areas of importance to reindeer herding, and the protection was further emphasised when reindeer herding in the same paragraph was defined as a national interest. The protection of reindeer herding (and its standing as a national interest) has since been introduced in other legislation as well, for instance, in the Forestry Act.

An important institutional reform, following the rights commission’s conclusion that the Sámi people under international law had a right to cultural autonomy, was the establishment of a popularly elected Swedish Sámi Parliament. A parliament elected among and
by the Sámi was perceived of as an institutional prerequisite for the Sámi to independently develop their culture on their own terms, and it was considered important that this body was representative for the entire minority and, hence, elected by it. The parliament was constructed as a government agency – considered sufficient to grant the Sámi cultural autonomy – and it was made clear in the travaux préparatoire that the parliament was not to function as a body of self-government replacing or competing with municipal councils or the national parliament, the Riksdag. The general mission of the parliament was, as defined in The Sámi Parliament Act from 1992, to monitor issues related to the Sámi culture in Sweden. With the institutional design of the parliament, it was given dual roles: as an administrative authority it should represent the interests of the Swedish state, and as a representative body of the Sámi people it ought to safeguard the interests of the Sámi electorate.

There were two other important reforms put forward by the rights commission not adopted, however. The first was to constitutionally recognise the Sámi. The proposal was rejected with the argument that the Sámi already were protected by the constitution, since an article in the Instrument of Government granted protection for ethnic minorities in general. With the recognition of the Sámi as a people with a right to self-determination – and the Swedish vote for the UNDRIP (see below) – the special status of the Sámi was recognised constitutionally in 2010, by an amendment to the Instrument of Government stating that the ‘opportunities of the Sámi people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted’. Although the Sámi people’s status as an indigenous people was not explicitly recognised, the amendment was justified by this special status in the travaux préparatoire.

The second proposal from the Sámi rights commission not adopted was on a Sámi Language Act to support and protect the Sámi languages. It was rejected by the Swedish government arguing that the preservation of a language could not be the responsibility of the state; rather, it ought to be one of the most urgent issues on the agenda of the newly established Sámi Parliament. A language act was, however, considered necessary after Sweden ratified the European conventions protecting national minorities and minority languages. Accordingly, the first Sámi Language Act was introduced in 2000 (replaced in 2010 by a new act on national minorities and minority languages including Sámi).

Sweden’s endorsement of the emerging indigenous rights regime and the recognition of the Sámi as an indigenous people obviously necessitated decisions on the two instruments of specific importance on the rights of indigenous peoples: C169 and the UNDRIP. C169 had been on the political agenda since the 1980’s, when Sweden had participated in the shaping of the convention and declared ratification desirable. In the end, however, the articles in the convention on the right to ownership of land traditionally occupied by indigenous peoples was considered incompatible with the Swedish legal tradition (especially article 14) and ratification was postponed into the future. In 1999, ratification was still defined as a long-term objective by a public commission exclusively focusing on C169, but the main argument justifying non-ratification had changed; it was now the Swedish legislation that could not fulfil the requirements for ratification. Still, though, it was article 14 on the right to ownership and possession that was problematic, and ratification required, it was argued, several comprehensive investigations on Sámi land rights and the extent of Sámi fishing and hunting rights. Two different parliamentary
commissions were appointed to deal with these matters but the results presented did not change the position of the Swedish government.\textsuperscript{57} Subsequent governments have thereafter declared ratification a major objective, although not possible here and now (but in the near future), and there have been recurrent proposals on ratification in the Riksdag.\textsuperscript{58} The initial position of non-ratification is thus still dominant and Sámi land rights still constitute the main obstacle. This position is justified, for instance, by arguments referring to ‘the wide-ranging legal consequences of ratification’ and ‘to fears that ratification might lead to conflicts between the Sami and the non-Sami population’.\textsuperscript{59}

In contrast to the binding C169, Sweden voted for the UNDRIP in 2007, and in the statement of the government’s representative in the General Assembly following the vote it was stated that the implementation of the UNDRIP should be discussed with Sámi representatives. At the same time, however, the statement also served as a clarification of the Swedish government’s understanding of indigenous peoples’ rights in general and of Sámi rights in particular: individual human rights supersedes collective rights; self-determination could be ensured through consultations with a representative indigenous body and through general participation in the democratic system; endorsement of the UNDRIP did not grant the Sámi veto rights; all references to land rights and use of land was considered exhaustively regulated in the prevailing reindeer herding legislation; and the government has a duty to uphold the balance between competing land use interests in the north of Sweden.\textsuperscript{60} The government’s representative thus qualified the rights of the Sámi in a way similar to how Lightfoot has characterised the CANZUS states’ position, i.e. as a ‘selective endorsement’.\textsuperscript{61}

As shown above, the talk has on many issues been followed by decisions on domestic constitutional, legal and institutional reforms and internationally by a vote in favour of the UNDRIP. It shows to the surrounding world – domestically and internationally – that Sweden’s endorsement of indigenous rights is to be taken seriously. The continued reluctance to ratify the binding C169 (although an objective for the future), and the interpretation of what the UNDRIP means in a Swedish context leaves, however, some serious doubts on Sweden’s international commitments. In the following, I will analyse how the international indigenous rights regime has been transformed into political action.

**Action: the implementation of indigenous rights in political practice**

If we turn to the implementation of the domestic reforms it is evident that the legislative changes strengthening the legal standing of the reindeer herders have not hindered a drastic increase in the number of projects exploiting the natural resources within Sápmi (the traditional Sámi settlement area used for reindeer herding, hunting and fishing) since the mid-1990s; especially forestry, hydropower, mining, wind-power and tourism.\textsuperscript{62} In 2012, the mining industry alone were granted 183 new exploration permissions and six exploitation concessions, most of them within the reindeer herding area, and of the 16 active metal mines in Sweden 12 were established in Sápmi and represented 98.5 percent of the mining industry’s value.\textsuperscript{63} Of course, all these different kinds of projects might not violate Sámi rights under international law, especially if each project is considered separately, but there are international human rights standards for extractive projects on indigenous peoples’ traditional territories. First, there is a general rule of consent: extractive projects ought not to occur absent indigenous peoples free, prior
and informed consent, which calls for processes of consultations. However, exceptions to
the rule might exist if the extractive activities ‘will not substantially effect indigenous
peoples in the exercise of their rights in relation to lands and resources within their territo-
ries’. Second, if states proceed without consent and delimit the right of indigenous
peoples to exercise their human rights (like the right to property or culture), they must
prove both a legitimate aim, i.e. a substantial public need, and that the infringements
are proportionate, i.e. that there is a balance between the general societal interests and
the protection of the indigenous peoples’ rights. Extractive activities that results in
‘destroying or risking the sustainability of the indigenous peoples’ way of life’ are
clearly violating indigenous peoples’ human rights.

In relation to international law, the continued exploitation of natural resources within
Sápmi has recurrently received critique on an international level. The Committee on the
Elimination of Racial Discrimination (CERD) has, for instance, at several occasions raised
concerns over the insufficient legislation on Sámi land rights. Several scholars have argued
that one major problem is that the ruling in Skattefjällsmalet – that the right to herd rein-
der is a usufruct right based on immemorial prescription and as such protected in the
same way as ownership rights – has not further affected the legislation. Instead of treating
the reindeer herding right as a civil right to private property, its legal protection is depen-
dent on its status as a national interest (to which due consideration should be taken).
Reindeer herding as a national interest to be protected from activities of considerable det-
riment seems to grant no or only weak legal protection when the use of land for reindeer
herding is in conflict with other users of land defined as national interests, like the extract-
ive industries (illustrated in the Rönnbäcken Case below). Stronger forms of protection of
Sámi land rights recognised in talk and decisions, for instance, in the form of a Nordic
Sámi Convention or a ratification of C169, are still not institutionalised. Moreover, con-
temporary legislation on extractive industries ‘lacks an explicit duty for the state to
consult the Sámi as an indigenous people’ and ‘the state expects developers to consult
Sámi communities in what is often merely information exchange with little possibility
for real influence’. The conclusion from a previous study of the strengthened legal pro-
tection of reindeer herding thus still seems valid: ‘Without doubt, this strong protection
has failed’.68

In terms of organised hypocrisy, these inconsistencies between talk, decisions and
action when it comes to the legal protection of reindeer herding is an obvious example
of counter-coupling. There are talk and decisions in one direction (supporting the Sámi
as stakeholders), but action in the opposite direction (supporting the extractive industries).
This counter-coupling is facilitated by the Swedish governments ‘double-talk’ on Sámi
land rights through a decoupling by separation of organisational units.69 Illustrative of
this double-talk are two interviews with the Minister for Enterprise and Innovation and
the Minister for Culture and Democracy (responsible for Sámi affairs) published in a
Swedish daily during the summer 2018. In the first, the Minister for Enterprise and Inno-
vation declared that the Sámi have no veto rights on the use of land and that the govern-
ment’s objective is to increase the number of active mines in Sweden. Just a few days later,
the Minister for Culture and Democracy stated that Sámi rights to land must be strength-
ened in accordance with the rights of the Sámi as an indigenous people, and that reindeer
herding as a national interest must be prioritised in competition with extractive
industries.
The establishment of a Sámi Parliament was a second important reform and its establishment in 1993 fulfilled the expectations generated by the Swedish state’s talk and decisions: it was an institution meant to guarantee the Sámi people cultural autonomy. From the very beginning, however, the formal position as a government agency was criticised for subordinating the Sámi Parliament under the Riksdag and government, and for severely delimiting the decision-making power of the parliament. With the recognition of the Sámi as a people with a right to self-determination in 2006, however, the gap between talk, decisions and action was accentuated. Despite recognising the Sámi right to self-determination as a question concerning two parties (the Sámi and the state), there has still not been any actual negotiations on the content of this right or on its potential impact on the formal position of the parliament. Its main mandate is still limited to cultural issues including responsibility for the Sámi languages and administrative duties concerning reindeer herding (within the budgetary frames set by the Swedish government). Talk and decisions has become decoupled from action by separation of topics: cultural and language rights are separated from political, social and economic rights.

Sweden’s unwillingness to discuss what the recognition of Sámi self-determination may imply for the formal position of the Sámi Parliament as a representative body of the Sámi people can also be understood as a form of counter-coupling. The 2006 recognition of the Sámi as a people in accordance with international law led to a proposal, ‘for the time being’, that Sámi self-determination ought to be increased by transferring more administrative tasks concerning internal Sámi affairs to the parliament. Extending the administrative role of the parliament has since been made equal to an implementation of Sámi self-determination. The formal position of the parliament as a government agency has thus remained undisputed in Swedish Sámi policy, and also recurrently confirmed, for instance, in a Government Bill in 2018 on changes in the organisation of the Sámi Parliament. While referring to the right to self-determination and international law, it was explicitly stated that the main features of the parliament’s organisation still ought to be decided by the Riksdag.

The decoupling by separation of topics mentioned above, i.e. to separate cultural and language rights (the mandate of the Sámi Parliament) from other rights in capacity of being an indigenous people, is further advanced in Swedish politics by defining the Sámi as both an indigenous people (with a right to self-determination) and a national minority (with cultural and language rights). The latter most often takes precedence, and the Sámi are ‘in practice treated as a “minority deluxe”’, for instance, by having their own representative body. An official government report presented in 2017 is illustrative here. The commission appointed had the mission to strengthen the rights of the national minorities in accordance with Sweden’s human rights commitments. The Sámi people were included among the national minorities without further consideration of their status as an indigenous people. One effect of this starting-point was that the Sámi Parliament declared that they would not participate in the work of the commission: the Sámi are an indigenous people, not a national minority.

There is, however, yet another way in which talk, decisions and action are decoupled, and that is by separation in time. This has been made explicit in the subsequent decisions on a Swedish (non-)ratification of C169. The future – where ratification will take place – serves as a justifying argument for status quo: ratification is a long-term objective. Also the Nordic Sámi Convention seems so far to be handled as a question for the future. After
the first draft convention was presented by the expert-group in 2005, serving as starting-point for negotiations between representatives of the three governments in cooperation with the three Sámi parliaments, the actual negotiating process did not start until 2011 and a revised Nordic Sámi Convention was presented in 2016. From endorsing the draft convention in 2006 – the Plenary of the Swedish Sámi Parliament voted for an adoption of the convention (accepting the wordings of all articles) – the revised proposal has met severe critique from the Sámi for being a weaker version not fulfilling international norms. A ratification of the treaty thus still seems far away.

When the analysis is extended to the actual outcome of talk and decisions, Swedish Sámi politics seems to be characterised by organised hypocrisy: talk, decisions and action are decoupled or, even worse, counter-coupled. On one level, this hypocrisy may be understood as a conscious strategy by politicians and political parties, since no government, regardless of party colour, has been willing to risk losing votes by improving the position of the Sámi, for instance, by ratifying C169. Intentional or not (which is a discussion besides the aim of this article), it is evident that in balancing between different values, demands and interests, the interests of the Sámi – a small group within the entire Swedish electorate – have not been prioritised in Swedish politics. It is also obvious that the organised hypocrisy is partly an effect of massive mobilisations to block any further advancements of action after a government in talk or decisions has declared Sámi rights a priority. Previous research has, for instance, shown that almost all proposals on legislative changes to strengthen the legal position of reindeer herding the last twenty-five years have met strong resistance from both private property owners, interest organisations and municipalities. Moreover, the gap between talk, decisions and action is an effect of the vagueness of what the decision to recognise the Sámi as a people with a right to self-determination actually implies in terms of domestic constitutional, legal and institutional reforms.

In the next section I will analyse if the courts may challenge the organised hypocrisy of Swedish Sámi politics.

**International norms and the role of the judiciary**

In the enforcement of international law on a national level, an independent domestic judiciary is often deemed crucial. Ideally, the courts guarantee individual rights, enable citizens to challenge government (in)action legally and have the authority to review whether government (in)action is consistent with international law. Independent courts issue rulings based on legal principles (rather than popularity, government preference, citizen wishes or indifference, etc.).

When analysing the judiciary’s role in challenging the organised hypocrisy of Swedish Sámi politics through enforcement of the international indigenous rights regime, there are two factors of importance worth noticing. First, and as mentioned previously, Sweden has not ratified C169 but has ratified many other conventions obviously relating to the situation and status of indigenous peoples (for instance, the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), The European Convention on Human Rights (ECHR), the FCNM, and the ICCPR), and voted for the UNDRIP. Second, the role of the judiciary in Swedish law has been very limited in a historical
perspective, and judicial review in Sweden is most often described as weak. The reluctance to accept judicial review is commonly explained by ‘the heavy emphasis on popular sovereignty in Swedish political and constitutional thinking’. The parliament is perceived of as the best guardian of basic human rights in Swedish democratic culture; it is ‘elevated above the other branches of government’ and should ‘not be constraint or subject to review by courts’.

The travaux préparatoires (including, for instance, government official reports, the government remit to an appointed commission, government bills, and parliamentary debates) are in Sweden more important as a legal source than in many other countries, something that emphasises the importance of the parliament in the interpretation and understanding of legislation in Swedish courts. The accession to the European Union in 1995, with the supremacy of EU law over national legislation and the incorporation of the ECHR into Swedish law has, however, gradually changed the balance of power between the legislator and the judiciary and enlarged the ‘scope of judicial review in the Swedish legal order’.

Although judicial review is weak in Sweden, Skattefjällsmålet was a prejudice case in the interpretation of Sámi land rights, and the judicial review by the Supreme Court was something the legislator had asked for explicitly in the travaux préparatoires to the new Reindeer Husbandry Act of 1971. International law was, as discussed above, dismissed by the court as irrelevant to the case in question, and with the legal standing of indigenous peoples in international law at the time it was to be expected. Since the Supreme Court’s decision in 1981, however, the international indigenous rights regime has developed radically, and Sweden has endorsed this development (at least in talk and decisions), something that could affect more recent legal processes on Sámi rights. In the following, I will briefly analyse two Supreme Court decisions (from the Supreme Court and the Supreme Administrative Court), as well as two on-going legal cases, asking how international law was used in the framing of these legal cases and if international norms have affected the decisions of the courts.

**Nordmalingmålet (the Nordmaling Case)**

The first case, Nordmalingmålet in 2011, was only the second case on Sámi land rights to reach the Supreme Court, and it was the first legal victory of the Sámi. In the case more than 100 landowners filed a lawsuit against three reindeer herding communities questioning if they fulfilled the requirements of use over time stipulated in legislation and, thus, if they had a right to herd reindeer on the privately-owned land in question. The legislation was considered incomplete on Sámi land rights on winter-pasture areas, and the Supreme Court thus needed to clarify these rights (making Nordmalingmålet the second prejudice case on Sámi land rights). Of importance in the ruling was that Sámi land rights on winter-pasture areas should be tried on the basis of customary rights, since immemorial prescription ‘in different respects do not fit well for judging the reindeer herding rights of nomadic Sámi’. Thereby, the court was sensitive to how reindeer herding actually is conducted, and the ruling also implied that the specific Sámi way of using the land is to be taken into account in this kind of disputes.

The Sámi invoked their status as an indigenous people and international norms on some occasions in Nordmalingmålet. On the question of the burden of proof, for instance, the Sámi claimed that as a people without written sources and a history based
on oral tradition, it was especially complicated to prove their case, and the existing documentation had been written by the dominant Swedish society. The Supreme Court rejected these claims and affirmed the burden of proof of the Sámi; the private landowners may have had the same problem finding proof. Furthermore, the Sámi referred to international law and claimed that the Swedish exploitation of the natural resources in northern Sweden had contracted the possibility to conduct reindeer herding within the traditional reindeer herding area, something that ought to be taken into consideration. The court, however, dismissed that claim as well: the eventual historical shortcomings of the state could not deprive the private landowners their rights under civil law.

**The Rönnbäcken Case**

The second case, a concession for mining in Rönnbäcken, concerned the right for a mining company to start processing within the traditional Sámi reindeer grazing area. The right was granted a mining company by the Mining Inspectorate of Sweden in 2010, and the decision was appealed to the government by Vapsten’s reindeer herding community and others. The government dismissed the appeal, a decision the Sámi then appealed to the Supreme Administrative Court for judicial review. Since there was a conflict between two national interests that could not be pursued in the same area at the same time – reindeer herding and mining – the court ruled that the government had to prioritise between the interests according to the prevailing Swedish Environmental Code. The case was remitted to the government, and in its new decision in 2013 it once again overruled the appeal from the Sámi, this time after they had prioritised between the national interests in conflict. It was considered ‘undisputable’ that the national economic revenues from the mining industry would be larger than what reindeer herding could generate, just as ‘the possibilities for an increase in social welfare’. The government argued further that although ‘reindeer herding would no longer be possible to pursue within the areas in question, this would not necessarily jettison the possibilities of the reindeer herding community to pursue reindeer herding in general; if so that would be in conflict with Sámi ‘reindeer herding rights and Sweden’s obligations under international law’. The Sámi appealed this government decision once again to the Supreme Administrative Court, and in its judicial review the court rejected the claims from the Sámi to annul the government decision: the government had not ‘misjudged the facts’ or breached ‘its sphere of action’ in the case, and their decision was not in conflict with any of the provisions the Sámi had specified.

The ruling of the Supreme Administrative Court in 2014 did not mark the end of the story, however, since the Sámi party submitted the case to CERD already in 2013. The main claims from the Sámi was that the government decision was a violation of their right to property, and that depriving indigenous communities of their traditional land was discriminatory. In the communication with CERD, the Swedish state has repeatedly contested the claims from the Sámi party. CERD did, however, request the state to suspend all activities within Vapsten’s traditional territory already in 2013, and did in 2017 find that the Sámi petitioners had victim status and thus decided that the petition was admissible: the claims on the violation of the right to property and ethnic discrimination had been ‘sufficiently substantiated and they should be examined on their merits’, and the committee also commented on the fact that the original exploitation concession was
granted without prior consultation and without the free and informed consent of the concerned Sámi reindeer herding community. In writing (early April 2019), CERD have not reached a final decision.

In this case the framing of the conflict clearly revolved around the status of the Sámi as an indigenous people and the claims of the Sámi party were explicitly based on international law. The Sámi had never given their consent to the project, there was no legitimate aim and they were disproportionately affected by the mining activities, thus the concession permit was in conflict with national and international law protecting both Sámi culture and reindeer herding. The government decision was discriminatory because the Sámi, in contrast to other Swedish holders of property rights, cannot be compensated ‘in monetary terms’ since there is no alternate pasture to be found; continued access to pasture areas is thus ‘a prerequisite for continuously pursuing Sámi reindeer herding, the very basis of their cultural identity’. The government argued, as seen above, that the mining concession did not violate any of Sweden’s obligations under any law, national or international, something repeated also in the communication with CERD.

The on-going cases of Girjas and Talma

In the Girjas Case, the Girjas reindeer herding community sued the Swedish state claiming exclusive rights to hunt and fish within their herding district, thus challenging the prevailing legislation (since 1993) allowing the state as alleged property owners the right to grant permissions to hunt and fish to others within Girjas territory. The Sámi based their claim at first hand on the Reindeer Herding Act from 1886 as a codification of this exclusive right, second on their use of the land for reindeer herding as an indigenous people, and at third hand on the claim that their use of the property had led to such an exclusive right. Girjas also claimed that the prevailing legislation was incompatible with both the Swedish constitution and the ECHR on the protection of property, and on the prohibition against discrimination. The state rejected these claims. The District Court in Gällivare ruled in 2016 in favour of Girjas: the reindeer herding community has an exclusive right to hunt and fish within their herding district, including the right to grant permission to others. It also concluded that the prevailing legislation was incompatible with the constitutional protection of property.

The decision was appealed by the state party, but the ruling of the Court of Appeal for Northern Norrland affirmed in 2018 that Girjas has a better right than the state to hunt and fish within its territory, and that the state has no right to grant permission to others to hunt and fish. However, it also stated that the reindeer herding community has no right to grant hunting and fishing permissions to others without consent from the state, leaving both the Sámi and the state party unsatisfied with the ruling. Moreover, the Court of Appeal argued that the prevailing legislation was not violating the constitutional protection of the reindeer herding community’s property and was thus not discriminatory. It also added that there were no international norms binding for Sweden which could override the reindeer herding legislation. Both parties appealed the decision to the Supreme Court for further clarification, and the legal process will continue after a leave for appeal (making Girjas a third prejudice case on Sámi land rights).

In the framing of the case, international law was prominent since the Sámi clearly based their rights claims on their status as an indigenous people under international law. First,
it was claimed, the prevailing legislation allows the state to control concessions to hunt and fish within the reindeer herding district, something that contradicts C169. Second, the regulation of the rights of the reindeer herding community violates the right to property as defined in the Swedish Instrument of Government, and in the ECHR. Thirdly, since the rights of the Sámi differ from other rights-holders – the Sámi have more limited rights than other proprietors of hunting and fishing rights – the question of discrimination became topical in the case. Finally, the Sámi claimed that the existing documentation had been established and decided by the dominant Swedish society. The state, in turn, rejected all references to international law: the fact that the Sámi are an indigenous people was considered irrelevant in the case, a statement justified by reference to the repeated dismissal of C169 by the legislator (the Riksdag), and Sweden has ‘no international obligations to recognise special Sámi rights’. Moreover, the state party claimed that the Swedish state throughout history had respected Sámi rights and had protected the Sámi against settlers. In its ruling, the district court did not refer to international law but in its’ grounds for decision the court referred to the constitutional recognition of the Sámi in 2010, arguing that if this recognition was something more than just empty words reindeer herding must be promoted as a vital part of Sámi culture. The Court of Appeal, however, explicitly rejected any claims to international law.

In the last case, the on-going Talma Case, Talma reindeer herding community sued the Swedish state for violating their members property rights by adopting a legislation forbidding the reindeer herding members of Talma to use some of the grazing areas they had the customary right to use on behalf of Norwegian reindeer herders. Just like in the Girjas Case, the legislation was conceived of as a violation of both the Swedish constitution and the ECHR on the protection of property, and on the prohibition against discrimination. The Sámi explicitly framed the case in terms of being discriminated in capacity of their status as a minority and indigenous people in Sweden. The state party, once again, rejected these claims, especially arguing against the idea that the Sámi had been discriminated. The District Court in Stockholm ruled, however, in favour of Talma in 2018: the court stated that the legislation had violated the Sámi party’s right to property in a discriminatory way. Moreover, in the assessment of the case, the court argued, the Swedish state’s history of discrimination and abuse of the Sámi had to be taken into consideration. The state has appealed the ruling to the Court of Appeal.

In the four legal cases above, international law and the status of the Sámi as an indigenous people have been parts of how the Sámi have framed the cases. The state party has, in contrast, claimed either that the status of the Sámi as an indigenous people is irrelevant in the legal case at hand, and thus that international law does not apply (as in the Girjas and Talma cases), or that the decision made by the government is in accordance with international law (as in the Rönnbäcken Case). The two supreme courts have dismissed Sámi claims in capacity of being an indigenous people as irrelevant to the actual disputes at hand, something that have made international law irrelevant at the same time (although the specific Sámi way of using the land was of great importance in the Supreme Court’s decision in Nordmalingmålet). It thus seems as if the judiciary has not challenged the organised hypocrisy in Swedish Sámi politics by forcing the rhetorical endorsement of the international indigenous rights regime into action through court decisions. However, in the prejudice case of Nordmaling, the Supreme Court handled a most
controversial issue on the rights for the Sámi to pursue reindeer herding on private property, an issue the legislator had avoided for several years afraid of the reactions of the constituency living within Sápmi. The court’s decision and the fact that the court consciously acted as law-maker could be an indication of a changing role of the judiciary, along with the changing attitude towards judicial review in general. Of importance in this context are also the decisions in the district courts, where both courts did use international law and the status of the Sámi as an indigenous people to directly or indirectly motivate their rulings.

As seen above, the marginal role of the judiciary to enforce indigenous rights is mainly due to the Swedish legal system. The emphasis on the travaux préparatoire in the interpretation and understanding of legislation in Swedish courts, i.e. the political motives, puts the Riksdag in the forefront. Swedish Sámi politics thus warrants a radical political change before the judiciary may have a principal role in enforcing the international indigenous rights regime. In addition, there are severe obstacles for the Sámi to turn litigations into a major strategy to enhance their rights. First, we have seen that the burden of proof is on the Sámi in legal processes; second, the costs for litigations may in the long run be unbearable, since the side losing a legal process must bear all the costs of the lawsuit including the costs of the winning side (especially burdensome in processes passing all through the Swedish legal system). To facilitate for the Sámi to make litigations a way to claim their rights, a political decision on these matters is urgent: to shift the burden of proof (and let the state or private owners of land prove that the Sámi have not used the land) and to guarantee the Sámi financial support for legal processes.112

Concluding remarks

The conceptual framework of organised hypocrisy – especially the distinction between talk, decisions and action – provides analytical tools for studying how international norms are translated into the domestic political arena, and thus how they are interpreted and reshaped locally. I have specifically analysed the indigenous rights regime in Sweden, but I believe that organised hypocrisy is characteristic for indigenous politics in many democratic nation-states in which indigenous peoples live: talk, decisions and action are clearly decoupled (or counter-coupled). With the emerging international indigenous rights regime endorsed by Sweden and other democracies, this gap between talk, decisions and action has been magnified. This is, for instance, obvious in contemporary Swedish politics: while the question of what Sámi self-determination ought to mean in political practice has been ignored by different Swedish governments so far, the basis for almost all rights-claims made by the Sámi Parliament is the fact that the Sámi are a people with a right to self-determination recognised both on a national and international level.113

The development of the international indigenous rights regime has thus created a platform for indigenous peoples to seriously challenge the organised hypocrisy of national politics, for instance, by calling attention to the inconsistencies in the contemporary indigenous rights regime and by showing how different matters, or policy fields, are coupled. International norms, like the C169, have been of political importance even in a non-ratifying state like Sweden, since it serves as a norm indigenous peoples may invoke to further their rights claims (like in the framing of the Girjas Case). In a similar vein, the selective
endorsement of the indigenous rights regime practiced by Sweden and other states in their interpretation of the UNDRIP may be seriously challenged on a national level. This could be illustrated by the Swedish government’s proposal on an institutionalised form of consultation between the Sámi, the Swedish state and local authorities presented in 2017. Sweden’s obligations under international law was the explicit starting-point but all the legislative changes presented were based on the already existing legislation and forms for consultation, and not on the fact that there are today two recognised peoples with the right to self-determination within the same jurisdictional territory. Accordingly, the proposal was criticised by the Sámi for giving an incomplete picture of the prevailing international indigenous rights regime and its impact on national legislation – political status quo was no longer possible – and no Government Bill has yet been presented. Not least important is, however, the development of structures of governance above the nation-state monitoring if and how international norms are observed, like CERD, hindering states like Sweden from implementing policies likely to be ‘questioned by international monitoring bodies on human rights’, and to which indigenous peoples may turn when in conflict with the state (like the Sámi in the Rönnbäcken Case).

State endorsement of the international indigenous rights regime in talk and decisions could thus be used by domestic actors to challenge the legitimacy of prevailing state politics both on a national and international level, and to pressure states to improve their practices, i.e. to force their talk and decisions into action.

Notes


5. See, e.g. Lightfoot, Global Indigenous Politics, 118–40; Irène Bellier and Martin Préaud, ‘Emerging Issues in Indigenous Rights: Transformative Effects of the Recognition of


11. The Sámi is the only people living within European borders that are recognised as an indigenous people, and they have through the course of history been divided between four nation-states: Finland, Norway, Sweden and Russia. The estimates of the number of Sámi differ depending on the sources used but the figures most often seen varies between 80–100,000, of which 20–40,000 resides in Sweden (Sápmi, *Antalet samer i Sápmi*, http://www.samer.se/1536 (accessed July 23, 2018).


14. See, e.g. Zimmermann, ‘Same Same or Different?’, 102.


22. Ibid., 31–2.

23. Ibid., xii.

24. Ibid., xiii.


29. Ibid., 28–38.
30. Ibid., 36.
36. The reindeer herding communities are administrative units created by the Swedish state as a part of the regulation of reindeer herding through the first Reindeer Grazing Act in 1886.
52. SFS 2010:1408, *Lag om ändring i regeringsformen*, Ch. 1, Art. 2 [SFS is an abbreviation of *Svensk författningssamling*, The Swedish Code of Statutes].


55. Ibid., 219–21; Semb, 'Why (not) Commit?', 122–47.


58. See, e.g. Interpellation 2014/15:333, *Ratificering av ILO-konvention 169. Interpellation* is a question put to a minister by a Member of Parliament in the Swedish *Riksdag*.

59. Semb, 'Why Not Commit?', 139.


62. See, e.g. *Sametinget* [Sámi Parliament], *Rapport*, http://www.sametinget.se/40201 (accessed December 5, 2012), 36. Of course, we do not know if a counterfactual analysis would show that the legislative changes have hindered an even larger number of projects exploiting the natural resources within Sápmi.


68. Allard, *Two Sides of the Coin*, 408.


73. Prop. 2005/06:86.


86. See, e.g. Allard, Two Sides of the Coin, 68.


89. Nordmalingdomen, 147.

90. Allard, ‘Case Review’.


92. Högsta Förvaltningsdomstolens Dom. Mål nr 443–11. [Högsta Förvaltningsdomstolen is the Supreme Administrative Court].


95. Ibid., 10.


97. CERD/C/92/D54/2013. Decision adopted by the Committee under article 14 of the Convention, concerning communication No. 54/2013.

98. Ibid., 13.

99. Ibid.

106. Gällivare Tingsrätt. Föreläggande, 127. The state party also reintroduced the term 'Lapp’ in its framing of the Gírjas Case, a term the Sámi perceive as derogatory and which had not been used officially since the late 1960s.
109. Ibid., 18.
110. Ibid., 23–33.
114. Ds 2017:43, *Konsultation i frågor som berör det samiska folket* [Ds is an abbreviation of Departementsserien, Minesterial Reports].

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