



Apply Human Rights

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# Apply Human Rights Newsletter

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## ***Follow us on Twitter!***

Apply Human Rights goes under the acronym @apphr on Twitter and is tweeting about human rights issues around the world.

## ***Apply Human Rights invitation***

Apply Human Rights invites you to become a member of the Swedish Section of the International Commission of Jurists. Support their work for human rights by joining on [www.icj-sweden.org](http://www.icj-sweden.org).

## ***Human Rights Council must investigate Syria***

The International Commission of Jurists calls on the United Nations Human Rights Council to investigate gross human rights violations in Syria. Read the press release [here](#).

## ***Images reveal political prison camps in North Korea***

Amnesty International has released images and new testimony revealing the horrific conditions in North Korean political prison camps. Read the press release [here](#).

## ***New Material on the Website***

There is new material on the [English website](#) with references to the Supreme and Constitutional Courts in Latin and South America and also on the domestication of International Laws and Treaties. On the [Spanish website](#) there is new material with recommended literature on gender issues.

# ***Historic Victory for the Sami People in Sweden***

In our January newsletter we reviewed the findings and critiques presented by United Nations Special Rapporteur on Indigenous Peoples James Anaya, regarding the situation of the Sami people in the Nordic countries. In this May issue of our newsletter, we are happy to congratulate the Sami People in Sweden to a historically important court ruling by the Swedish Supreme Court that safeguards their right to land based on customary law. The Supreme Court was unanimous in its decision and delivered its ruling on the 27<sup>th</sup> of April, nearly 14 years after the first plaintiff brought the case before the district court of Umeå in 1998.

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The dispute is rooted in the right to land usage as pasture grounds for reindeer herding. The plaintiffs, who in the Supreme Court litigation added up 105 landowners, claimed that they suffer economic loss because of the physical damages the reindeers cause on plantation and vegetation. The landowners asked the court for a declaratory ruling declaring that the three Sami villages do not and should not enjoy the right to reindeer herding on the properties of the landowners without a legal agreement between the two parties. The landowners insisted upon that the Sami had no right to use the land on the grounds of customary law. To substantiate this claim they referred to legal statutes dating back to 1723, 1748 and 1757, which stated that the Sami people had no right to operate outside of Lapland. The absence of disputes between the Sami and previous landowners in those areas was presented as support for the legal effects of the statutes from the 1700s.

The Supreme Court identified that the question of legality for the right to reindeer herding (a right exclusively reserved for the indigenous people) is derived from the Swedish Reindeer Husbandry Act of 1971. § 1 of the Act concludes that reindeer herding rights are based on “immemorial customs”. The Supreme Court stated that the paragraph of interest for solving the legal dispute was § 3 of the Act, which concludes that the right for the Sami people to reindeer herding outside of the traditional territories of Lapland may only take place if it has been previously conducted “by age” during a certain time of the year (1<sup>st</sup> October – 30<sup>th</sup> April).

The central question concerns the timeframe, i.e. period of time, and type of practice that lies in the definitions “by age” and “immemorial customs”. The most reasonable answer, the Supreme Court stated, is simply that the meaning of the two terminologies ought to be based on “the locations where they [Sami] usually conduct reindeer herding”. Furthermore it has to be use of land that previously has been generally well established and accepted. Regarding the specific time frame for the right to customs to take place is not specified in legal statute. The Supreme Court stated that a timeframe of ninety years is a reasonable starting point regarding this issue since it is a reoccurring number when “customs” and “by age” is discussed in legal doctrine.

Despite the positive outcome for the Sami people, the Supreme Court could not deliver a positive assertion regarding the issue of burden of proof, which in Sweden lies on the indigenous people to prove that there is an established customs on their part. This was one of the main criticisms in the Anaya report. It was difficult for the Sami to fulfil that burden since they have, like most indigenous peoples, an oral tradition where customs are passed on by “storytelling”. The Supreme Court stated however, that under current legislation there is no room to ease the burden of proof for the Sami since it would infringe on the civil rights enjoyed by the property owners. That can only be interpreted as a clear message to the legislative body that the responsibility lies on them to alter the legislation on this matter.

Instead, the Supreme Court found support for the Sami position regarding their usual pasture grounds in the preparatory legislative work for the 1886 and 1998 Reindeer Husbandry Act, in combination with expert and local testimonies.

Although this was a crucially important ruling for Sweden’s only indigenous people, there obviously remains a lot to be done by the Swedish Parliament to meet the obligations declared in United Nations Declaration of Indigenous Peoples.

## ***Escalation of Arbitrary Arrests in Bahrain***

**Human Rights watch recently released a disturbing [report](#) exposing the escalation of arbitrary arrests in Bahrain.**

For the first time security police, dressed as civilians, arrested two former members of Parliament from Bahrain’s largest opposition group the al-Wefaq National Islamic Society. The reason for their arrest is still not known at this point. Please take the time to read the article by clicking on the link above.