



Ministry for Foreign Affairs  
Director-General for Legal Affairs

The Special Rapporteurs to the  
Joint Communication AL SWE  
2/2022

Office of the High Commissioner  
for Human Rights  
Palace of Nations  
CH-1211 GENEVA 10  
Switzerland

## Communication from Special Procedures

Reference: AL SWE 2/2022

Mesdames and Sirs,

1. I have the honour of referring to your letter of 3 February 2022 in which the relevant Special Rapporteurs bring to the attention of the Swedish Government the alleged violations of the rights of the Sámi and of threats to the World Heritage Site Laponia due to the proposed Gállok/Kallak mining project by the British company Beowulf Mining and their fully-owned Swedish subsidiary Jokkmokk Iron Mines AB.
2. In response to the invitation from the Special Rapporteurs to submit observations on certain questions related to the abovementioned issues, I have the privilege, on behalf of the Swedish Government, to submit the following.
3. At the outset, the Government wishes to emphasise that the Sami people and their traditional reindeer husbandry rights are protected in Swedish legislation. Under the Reindeer Husbandry Act (*Rennäringslagen*, 1971:437), anyone of Sami origin, i.e. anyone who is Sami, may use land and water to maintain themselves and their reindeer. This reindeer husbandry right is an entitlement of the Sami people, based on immemorial usage. The reindeer husbandry right is a civil right to use real property. Ownership rights, reindeer husbandry rights and other special rights to real property are protected under Chapter 2, Article 15 of the Instrument of Government (*Regeringsformen*) against public institutions or a private subject forcing the right holder, through expropriation or other such disposition, to

surrender their rights to the land or to tolerate restriction of the use of the lands, other than where necessary to satisfy pressing public interests. The right to pursue reindeer husbandry is not a right of ownership of land, but a usufructuary right which in the Swedish Constitution is afforded the same degree of protection as the right of ownership. It is further protected as a right to property under the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is part of Swedish law. Furthermore, under Chapter 3, Section 5 of the Swedish Environmental Code, land and water areas that are important for reindeer husbandry shall, to the extent possible, be protected against measures that may significantly interfere with the operation of reindeer husbandry.

*The status of the approval of the proposed project including any license litigation process (Question 2).*

4. As the signatories of this Communication are already aware, the matter concerns an application for an exploitation concession at Gállok/Kallak which has been prepared at the Swedish Government Offices for a decision by the Government. The matter was referred to the Government by the Chief Mining Inspector at the Mining Inspectorate of Sweden on 29 June 2017. The Mining Inspectorate of Sweden is a special decision-making body responsible for issuing permits for exploration and exploitation of mineral deposits. It also oversees compliance with the Minerals Act.
5. The matter was handled by the Government Offices in accordance with the applicable legislation and contains a considerable amount of documentation reflecting the complex issues involved which affected the processing time.
6. On 22 March 2022, the Government decided to grant the exploitation concession sought for the area Kallak K no 1 in Jokkmokk Municipality, Norrbotten County. Reindeer husbandry is an economic activity and an important part of the Sami cultural heritage, and the State has an overall responsibility to ensure that reindeer husbandry can continue to be part of that culture. The Government's basic premise is that coexistence with other activities must be possible. That is why there are extensive conditions in the concession – significantly more far-reaching than have previously been set – that aim to compensate the relevant reindeer herding communities, ensure that operations use as little land as possible and make moving reindeer past the planned concession area as easy as possible. They also aim to ensure the least possible negative impact when migration routes and grazing areas adjacent to the concession are in use. The

conditions also set extensive requirements on consultations with the Sami reindeer herding communities and measures to prevent disruptions to reindeer husbandry. Such consultations must be conducted with a view of reaching agreement with the Sami reindeer herding communities and must be documented. In addition, the company must arrange for, and cover the costs of, restoring the area after any mining operations so that the land can again be used for reindeer husbandry. The company must also engage in dialogue with the Swedish National Heritage Board and the Swedish Environmental Protection Agency to ensure that necessary account is taken of Laponia's status as a World Heritage Site. If the company later on decides to apply for an environmental permit, such a permit must include an In-Depth Impact Assessment according to the principles in the IUCN World Heritage Advice Note on Environmental Assessment. Before the application is submitted to the court, the In-Depth Impact Assessment must be sent to the World Heritage Center at UNESCO.

7. As regards the relevant domestic law, the Government would like to submit the following. Under the applicable legislation, an exploitation concession should be granted if a deposit has been discovered which is probably capable of economic exploitation and if the location and nature of the deposit do not make it inappropriate to grant the applicant the concession applied for. In the concession matter, the regulations contained in Chapters 3 and 4 of the Swedish Environmental Code (*Miljöbalken*, 1998:808) – the 'management provisions' – should also be applied (Chapter 4, Section 2, third paragraph of the Minerals Act [*Minerallagen*, 1991:459]). It is only these provisions of the Environmental Code that are examined in the concession matter while other parts of the Environmental Code are examined during the next step in any future permit processes under the Swedish Environmental Code.

8. Furthermore, it should be noted that Chapter 3 of the Swedish Environmental Code includes fundamental provisions on the management of land and water areas. These provisions must be applied when considering permits and similar procedures under the Swedish Environmental Code and a number of other acts, including the Minerals Act. The main rule is that land and water areas must be used for the purpose, or for those purposes, for which the areas are more suited having regard to their nature and location together with existing needs. Preference should be given to such use as involves, from the public viewpoint, good management. Chapter 3 contains a list of land and water areas that are in specific need of protection, for example, because they are sensitive from an ecological point of view, contain valuable minerals, are especially suited for industrial installations or are important for reindeer husbandry. Such areas must as far as

possible be protected against measures that may harm these interests. If the areas are of national interest, the protective principle is absolute. The areas that are of national interest are identified through collaboration between various public authorities. Chapter 4 of the Swedish Environmental Code contains special provisions for management of land and water for certain areas of Sweden.

9. According to the legislative history of the Environmental Code, the provisions of Chapter 3 on the management of land and water areas are meant to be an instrument with which to make overall planning assessments for sustainable development whereby the use of land, water and the physical environment in general is such as to secure long-term good management in ecological, social, cultural and economic terms (Govt Bill 1997/98:45 part 1 p. 245).

10. In this regard, the Government would like to clarify that the reason for examining the application for the exploitation concession at Gállok/Kallak was – in accordance with applicable law – to consider the applicant’s prospects of extracting and making economic use of the deposit referred to in the application, and to evaluate it in relation to other public interests. In this case, the decision mainly involved the consideration of the national interest of mineral extraction in relation to the national interest of reindeer husbandry.

11. In 2013, the Geological Survey of Sweden designated the examined deposit as an area of national interest regarding deposits of valuable elements or materials that are of major importance to the country’s security of supply. The agency has specified the Kallak area as important both as regards materials supply and for the mining industry from a national perspective. In 2017, the Sami Parliament designated an area for reindeer herding in the Jåhkågasska Tjiellde reindeer herding community as a national interest for reindeer husbandry, which largely overlaps the previous national interest. According to the Sami Parliament, the area corresponds with the intentions of the Swedish Environmental Code regarding protection of the most important areas in each reindeer herding community. In 2005, the areas north and south of, as well as within, the concession area were also designated as being of national interest to reindeer husbandry in their capacity as migration routes, etc. Accordingly, the relevant area for the planned mining operations have been designated as being of national interest for both valuable elements or materials and for reindeer husbandry.

12. Reindeer husbandry is conducted in an area of about 22 000 000 hectares, almost half of Sweden’s surface area. Claims have been made regarding national

interest for reindeer husbandry in some 30 per cent of this area, corresponding to some 7 600 000 hectares. As regards the surface area of Norrbotten County, where the relevant deposits are located, just over half has been designated as being of national interest for reindeer husbandry. Accordingly, it is common for opposing national interests to overlap with areas of national interest for reindeer husbandry in the northern parts of Sweden.

13. Furthermore, it should be noted that a decision regarding an exploitation concession determines which land use, based on the application, is to be given priority from a public interest perspective. However, an exploitation concession does not equate to an approval of a proposed mining project. For the mining right to be exploited, the enterprise must also be granted the permits and exemptions required under the Swedish Environmental Code, as well as other legislation. Thus, the Court responsible for evaluating an application for a permit under the Swedish Environmental Code should examine – apart from the evaluation of land use in relation to public interests covered by a decision of an exploitation concession – all environmental matters, including an assessment of impacts on different public and private interests.

14. It should be emphasised that the Government's examination of this matter did not include – as it was not a part of this process – an examination of land use regarding any infrastructure measures or other activities associated with those applied for but which are outside the relevant area, such as transport. An examination of this kind regarding transport issues and other matters is instead conducted in association with any future permit processes under the Swedish Environmental Code.

15. The Swedish mineral legislation is structured so as to enable an applicant to go from prospecting through to the mining stage by gradually financing projects and learning more about the deposit. Prospecting activities all the way until the mining stage are a lengthy process that can last for several decades. This work requires considerable investment, and the economic outcome is always uncertain. In order to give the applicant the opportunity to seek financiers and gather knowledge about the deposit in question, society's basic position on the suitability of mining in a specific location is therefore always examined at a relatively early stage, the so-called exploitation concession stage. The subsequent environmental examination is often completed several years later. When an application for an exploitation concession permit is examined, the full scale of the mining operation is as yet unknown. The design of the mining plant is not final at this stage and it is

thus not possible to correctly assess the impact of the planned operations on the activities and the environment outside the area covered by the exploitation permit. This is considered in the environmental examination.

16. It should also be noted that an exploitation concession must be combined with such terms that are necessary in order to protect public interest as well as individual rights needed in order to explore and utilise natural resources in an appropriate way. Subsequently, the Court responsible for evaluating an application for a permit under the Swedish Environmental Code, has the authority to set additional and more detailed terms and conditions for a project.

17. Furthermore, it must be emphasised that the Government assesses every aspect of the matters before it and ensures that decisions are taken after adequate processing. In this regard, it may be noted that the present matter comprises a considerable amount of documentation reflecting the complex issues involved, not least in issues relating to reindeer herding and the Laponia World Heritage Site. In view of this, the Government Offices have given the reindeer herding communities concerned, the Sami Parliament, the National Union of the Swedish Sami People and the Norrbotten County Administrative Board, as well as the United Nations Educational, Scientific and Cultural Organisation (UNESCO) the opportunity to submit comments on the exploitation concession application.

18. As already noted, the matter of the exploitation concession application was approved by the Government on 22 March 2022. As a basic rule, the Government Offices processing complies with the principles set out in the Administrative Procedure Act (*förvaltningslagen*, 2017:900), which means, among other things, that a matter must be processed as simply, rapidly and economically as possible without jeopardising due process (cf. Section 9 of the Administrative Procedure Act). It also means that a matter must be examined to the extent that its nature requires (cf. Section 23 of the Administrative Procedure Act). The relevant case has been extensive and complicated with many complex issues. The company first applied for a exploitation concession in 2013. In addition to the usual procedural measures, the matter was also referred to UNESCO. In light of this, preparation of the matter also entailed a longer processing time than usual.

*Information on any consultation processes that will be undertaken with the Sami indigenous community prior to the approval of the construction of the Gallok project (Question 3).*

19. Since 1 January 2018, under the Minerals Act (Chapter 4, Section 2, fifth paragraph) a specific environmental assessment must be conducted, information provided and coordination carried out in matters concerning concessions. This means, among other things, that the operator must hold consultations on the location of its operations and the expected environmental impacts etc. with the individual parties that can be assumed to be particularly affected by these operations. This includes the reindeer herding communities concerned. It can therefore be noted that there is a formal legal requirement for consultations in these examinations.

20. Furthermore, permit examinations under the Swedish Environmental Code for a possible mine operation at Gállok/Kallak would subsequently be undertaken by the Land and Environment Court at Umeå District Court. Mining activities are also subject to the environmental impact assessment (EIA) requirements of the EIA Directive (2011/92/EU) and are subject to regulation regarding environmental permits according to the Swedish Environmental Code. Among other things, the application for a permit must include an EIA and a technical description of the planned activity or operation. Provisions regulating when an EIA is required and what information it must contain are set out in Chapter 6 of the Swedish Environmental Code and in a Government ordinance.

21. In addition, an EIA must be prepared before the application for a permit is made and should be submitted as a supplement to the application. When preparing the permit application and the EIA, the applicant concerning a mining activity is obliged to consult, among others, the central government agencies and private individuals and the public and organisations likely to be affected by the activity. Prior to this consultation, the applicant should provide information about the activity with regard to location, scope, design and possible environmental impacts.

22. Moreover, permit examination under the Swedish Planning and Building Act for the construction of facilities necessary for the mining operation at Gállok/Kallak would be undertaken by Jokkmokk municipality. In certain circumstances, the municipal building committee must inform known interested parties concerned and give them the opportunity to comment on an application.

*Information on measures taken to address the concerns raised by the Special Rapporteur on the rights of indigenous peoples since 2015 to ensure compliance of the Minerals Act and Environmental Code with international human rights standards (Question 4)*

23. In 2017, the Government proposed certain amendments to, *inter alia*, the Minerals Act, introducing a requirement of consultation in accordance with the Swedish Environmental Code prior to the granting of an exploitation concession (see Govt Bill 2016/17:200). One objective of the proposal was that a well-conducted consultation might reduce the risk of later demands for additions and of appeals. The bill was later adopted by the Swedish Parliament (*Riksdag*).

24. Consequently, as of 1 January 2018, a specific environmental assessment must be made, information provided and coordination take place in matters concerning the granting of a concession under the Minerals Act. This means, *inter alia*, that the mining company must consult on the location of the business and expected environmental effects, etc. with the individuals who can be assumed to be particularly affected by the activity, which includes affected Sami reindeer herding communities. It can thus be stated that in these cases there is now a formal legal requirement for consultation in accordance with the Swedish Environmental Code.

25. Furthermore, the Act on consultation in matters of special importance to the Sami people was issued on 1 March 2022. The purpose of consultations under the proposed act is to promote the influence of the Sami people over their affairs. The Government, other public authorities, and at a later stage (from 1 March 2024) regions and municipalities will be obliged to consult Sami representatives before decisions are made in matters that may have special significance for the Sami people. Sami representatives are the Sami Parliament but also, *inter alia*, the Sami reindeer herding communities for which the matter may have special significance. A Sami reindeer herding community would also have the right to initiate consultations in matters that it considers to be of special importance to them.

26. However, in this regard it should be clarified that the Sami Parliament, the Sami School Board, courts, court-like committees and bodies in administrative authorities that have court-like tasks, and the Government are not, when a case has been submitted by such a body, obliged to consult. Furthermore, certain types of cases are exempt from the obligation to consult.

27. It should be noted that where there is an obligation to consult, information about the matter and a request for consultation must be sent to the Sami representative at an early stage. The authority obliged to consult must, as far as possible and appropriately, satisfy the Sami representative's request with regard to the form of consultation, and the Sami representative must be given reasonable time to obtain the necessary information and to otherwise prepare the consultation and will be entitled to receive a written account of the issues at stake before an oral consultation takes place.

28. During the consultation, the authority obliged to consult the Sami representative and others involved will state their reasoned position on the matter and comment on the positions of others. The consultation must be conducted in good faith and continue until agreement or consent on the issue that is the reason for the consultation has been reached, or until the authority obliged to consult or the Sami representative declares that agreement or consent cannot be reached in the matter. An authority obliged to consult should, as a rule, give such a declaration only when it is clear that a continued consultation cannot lead to agreement or consent in the matter.

29. In this regard it should be clarified that in the Government's view, the principle of free, prior and informed consent does not constitute a right of veto, but rather represents an important method aimed at achieving real consultation and dialogue. Consequently, the act does not entail a right of veto for the Sami representatives. But the greater the negative impact that a specific decision can be deemed to have on the Sami culture and the property rights of the Sami reindeer herding communities, the greater the importance that should be attached to the Sami interests in relation to other opposing interests in the matter concerned.

30. The authority obliged to consult must document what has emerged during the consultation. This ensures that the Sami positions will also be taken into account by the next instance, in the event that the decision is appealed. The act will be evaluated a few years after its entry into force.

31. In addition, the Government wishes to clarify that the act would be applicable in new cases concerning applications for exploitation concessions. The decision-making authority would then be obliged to consult an affected Sami reindeer herding community, for example, before it decides to grant a concession. Also, as mentioned above, the act gives the Sami Parliament and the Sami reindeer herding

communities a right to initiate consultations in matters that they consider to be of special importance to them.

*Information on the steps being carried out to comply with the recommendations mentioned in the joint Technical Review Report (Question 5)*

32. In the Government's assessment of the matter, the joint Technical Review Report, as well as submissions from the County Administrative Board in Norrbotten County, the Swedish National Heritage Board and the Swedish Environmental Protection Agency, the Mining Inspectorate of Sweden, the Swedish Sami Parliament, Jokkmokk Municipality, Region Norrbotten, Svenska Samernas Riksförbund, the reindeer herding communities (Jåhkågasska Tjiellde, Sirges, Tuorpon and Unna Tjerusj) concerned, the property owners concerned, other interested parties, the Swedish Society for Nature Conservation and the applicant (including the submitted Environmental Impact Assessment and Heritage Impact Assessment) were included in the examination of the matter.

*Information on the steps taken to ensure how the Sami traditional practice of reindeer husbandry outside and within the Laponia property will be protected (Question 6)*

33. It should be emphasised that in its decision, the Government has taken note of the comments received from both the reindeer herding communities concerned and UNESCO. As was previously noted there are extensive conditions in the concession that aim to compensate the relevant reindeer herding communities, ensure that operations use as little land as possible and make moving reindeer past the planned concession area as easy as possible. They also aim to ensure the least possible negative impact when migration routes and grazing areas adjacent to the concession are in use. Should the concession be used, the company must engage in dialogue with the Swedish National Heritage Board and the Swedish Environmental Protection Agency to ensure that necessary account is taken of Laponia's status as a World Heritage Site. And should the company later intend to apply for a permit for mining activities under the Swedish Environmental Code, the application must include an in-depth impact assessment carried out in accordance with the principles of the IUCN World Heritage Advice Note on Environmental Assessment, such as that which was previously submitted to UNESCO. The company must arrange for, and cover the costs of, restoring the area after any mining operations so that the land can again be used for reindeer husbandry.

34. In addition and with regard to the existing protection of the natural environment, the following may be mentioned. In the Laponia World Heritage Site, there are various overlapping forms of protection. There are four national parks within Laponia. The 'national park' designation is a strong form of protection for an area and aims to preserve a large contiguous area of a certain type of landscape in its natural state or in substantially unchanged state (Chapter 7, Section 2 of the Swedish Environmental Code). There are also two areas within Laponia that are protected as nature reserves (Chapter 7, Section 4 of the Swedish Environmental Code). There are also large nature reserves beyond the Laponia borders, such as Kvikkjok-Kabla. In addition, almost all of Laponia is made up of sites protected as Natura 2000 sites (a special conservation area under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora). These Natura 2000 sites have conservation plans in accordance with Section 17 of the Ordinance (*Förordning om områdesskydd enligt miljöbalken m.m.*, 1998:1252) on site protection under the Swedish Environmental Code, etc. In Laponia, three sites are also protected by the provisions in Chapter 4, Section 5 of the Swedish Environmental Code, which state that buildings and facilities may only be constructed if necessary for the reindeer industry, the resident population, scientific research or mobile outdoor pursuits and that other measures may only be taken if this can be done without affecting the character of the areas.

*Information on any steps that the Government has taken, or is considering to take, to protect human rights abuses by business enterprises within its territory and/or jurisdiction (Question 7)*

35. In this regard, it must be emphasised that business and human rights is a prioritised issue for the Government and one in which Sweden has taken a number of measures during the past years. Adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) means that since 2011 there has been a global undertaking to promote respect for human rights within business. These guiding principles are fundamental to Swedish policy in this field and the Government's view is that business and human rights should be mutually reinforcing. In 2015, the Government prepared a new and more ambitious policy for corporate social responsibility (CSR) linked to trade and business policy and promotion through its export strategy. The Government has thus expressed a clear expectation on Swedish enterprises to respect human rights in their operations both in Sweden and abroad. Sweden was the sixth country in the world to adopt a national action plan for business and human rights in line with the UNGPs.

36. Furthermore, the Government is working for ambitious EU legislation on mandatory human rights and environmental due diligence and is currently participating actively in developing EU policy on sustainable business. For example, in February 2021, Sweden submitted its response to a consultation by the EU Commission and expressed support for the development of broad, horizontal legislation aligned with the UNGPs and the OECD Guidelines for Multinational Enterprises. The Government also expressed support for implementing a system for follow-up and enforcement, including access to an effective remedy.

37. In its replies to three other joint communications from Special Procedures in 2021, the Government has in more detail outlined the policies and general measures taken by Sweden in regard of business and human rights. Therefore, the Government wishes to refer the Special Rapporteurs to the communications AL SWE 2/2020, AL SWE 2/2021 and AL SWE 3/2021 for more details in this regard.

*Information on any steps taken by the Government to ensure that the Sami have access to effective, adequate and timely remedies for business related human rights abuses (Question 8).*

38. Human rights are protected in Swedish legislation primarily via the constitutional regulations in the Instrument of Government, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression (cf. the Government Action Plan on Business and Human Rights). An individual's fundamental rights and freedoms are also expressed in other acts. The European Convention for the Protection of Human Rights and Fundamental Freedoms has been incorporated into Swedish law in its entirety and thus applies as Swedish law. When applying EU law, Sweden is obliged to follow the EU Charter of Fundamental Rights. The provisions contained in Swedish law relating to the fundamental rights and freedoms of the individual are primarily aimed at public sector services within central government, municipalities and county councils. Through other legislation, such as civil law legislation on rights at work and on discrimination, as well as criminal law legislation, the State seeks to ensure that an individual's human rights are also respected by third parties, including business enterprises. It should also be noted that individuals who believe that their rights have been infringed can bring an action for damages in court. In addition, human rights are protected through a number of Swedish criminal law provisions that are applicable regardless of the context in which an offence is committed, including in the business context. Following an application, a decision by the Government

on an exploitation concession can be subject to judicial review by the Supreme Administrative Court. For the mining right to be exploited, the Land and Environment Court must also grant the enterprise the permits and exemptions required under the Swedish Environmental Code. A permit of this kind can also be appealed to the Land and Environment Court of Appeal.

39. It may also be noted that if a company is believed to have breached the OECD Guidelines for Multinational Enterprises (the OECD Guidelines), this may be reported to the National Contact Point (NCP) for the OECD Guidelines. Sweden's NCP is a three-party collaboration between the state, the industry organisations and the trade unions, chaired by the Ministry for Foreign Affairs. It should be clarified that the NCP cannot review court rulings but can issue recommendations and mediate between parties.

40. To conclude, the Sami people and their traditional reindeer husbandry rights are protected in Swedish legislation in a number of ways (see para. 3 above). The entire permit procedure, from exploration to actual mining, involves rigorous assessments by independent authorities and courts (see paras. 4-18 above). There are several procedural safeguards that ensure that all stakeholders, including reindeer herding communities, can participate as parties and submit objections and observations regarding concession applications. These procedures also guarantee the reindeer herding communities the right to participate in consultation procedures and to be provided with the environmental impact assessments attached to the application for the exploitation procedure.

41. After careful consideration and after having reviewed all the background material received, the Government has decided to grant Jokkmokk Iron Mines AB an exploitation concession for Kallak K no 1. With regard to this decision, the Government has set extensive conditions that the company must comply with. They are intended to counteract as far as possible any negative impact on reindeer husbandry. Among other conditions, the company must engage in dialogue with the Swedish National Heritage Board and the Swedish Environmental Protection Agency to ensure that necessary account is taken of Laponia's status as a World Heritage Site. Should the company at a later date intend to apply for a permit for mining activities under the Swedish Environmental Code, the application must include an in-depth impact assessment carried out in accordance with the principles of the IUCN World Heritage Advice Note on Environmental Assessment, such as that which was previously submitted to UNESCO.

Compliance with these conditions is a prerequisite for the exploration concession and for any future permits.

42. The Government remains at the disposal of the relevant Special Rapporteurs, should any further information be requested.

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Please accept, Mesdames and Sirs, the assurances of my highest consideration



Carl Magnus Nesser  
Ambassador, Director-General for Legal Affairs