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**The Sami people and International
Indigenous Rights: between recognition
and implementation**

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Summary in Italian

La presente tesi analizza l'evoluzione dei diritti delle popolazioni indigene nel diritto internazionale e il loro concreto riconoscimento, con particolare riferimento al caso del popolo Sami in Scandinavia. I popoli indigeni rappresentano una componente fondamentale della diversità culturale mondiale, tuttavia, nel corso della storia sono stati oggetto di processi di colonizzazione e assimilazione forzata che ne hanno compromesso libertà e pieno riconoscimento della propria identità. Le pratiche discriminatorie del passato hanno comportato la negazione di numerosi diritti umani e contribuito alla scomparsa di un enorme numero di individui appartenenti ai popoli indigeni. Sebbene gli antenati degli attuali popoli indigeni abitassero originariamente vaste aree del mondo, l'espansione coloniale li ha progressivamente trasformati in una minoranza. I popoli indigeni rappresentano qualcosa di più di semplici minoranze etniche o culturali, ma generalmente vengono considerati come "inferiori". Tale condizione evidenzia l'importanza del principio del diritto di autodeterminazione dei popoli indigeni. Riconoscere alle comunità indigene il diritto all'autodeterminazione consente loro la possibilità di esercitare un maggior controllo sul proprio sviluppo sociale, economico e culturale, e di affrontare le conseguenze persistenti della subordinazione storica subita.

Nel corso degli anni, i diritti dei popoli indigeni hanno rappresentato una questione particolarmente controversa e gli stati nei quali vivono tali popoli hanno raramente concesso loro forme specifiche di tutela giuridica. Sebbene le ingiustizie storiche subite dai popoli indigeni siano state ampiamente documentate, permangono interrogativi riguardo al loro attuale status giuridico e politico. Tuttavia, la progressiva espansione del sistema internazionale dei diritti umani ha contribuito in modo significativo all'avanzamento delle rivendicazioni indegne, comprese le richieste di riconoscimento, protezione e riparazione per i torti subiti in passato. È proprio a livello internazionale che i diritti dei popoli indigeni hanno ottenuto il maggior riconoscimento, svolgendo un ruolo fondamentale nel promuovere tali sviluppi e contribuendo a considerare tali diritti come parte integrante

del sistema globale di tutela dei diritti umani. Nonostante ciò, gli approcci adottati dagli stati a livello nazionale continuano a essere prudenti e lenti nel riconoscere e garantire diritti specifici alle minoranze indigene. Questa divergenza tra l'atteggiamento della comunità internazionale e quello degli ordinamenti nazionali evidenzia un significativo divario tra gli standard internazionali e la loro concreta attuazione a livello interno. Tale tensione emerge in modo particolarmente evidente nel caso del popolo Sami, dove il riconoscimento internazionale dei diritti indigeni si confronta con le politiche e gli approcci adottati dagli stati scandinavi. Sebbene l'espansione della tutela internazionale dei diritti umani abbia avuto inizio nella seconda metà del XX secolo, gli sviluppi più concreti in materia di diritti dei Sami in Scandinavia possono essere osservati soprattutto a partire dal primo decennio del XXI secolo. In questo processo evolutivo, le organizzazioni sovranazionali, quali le Nazioni Unite e l'Unione Europea, hanno svolto un ruolo determinante, affermandosi come importanti promotrici dei diritti umani e contribuendo in modo significativo al riconoscimento e alla tutela dei diritti dei popoli indigeni e della minoranza Sami. Resta dunque aperta la questione dell'effettiva tutela di tali diritti e di come i popoli indigeni siano trattati oggi, specialmente dal punto di vista giuridico.

L'obiettivo della ricerca è valutare se i diritti formalmente riconosciuti alle popolazioni indigene trovino un'effettiva applicazione nella pratica, prendendo come caso studio il popolo Sami. I Sami costituiscono l'unica popolazione indigena ufficialmente riconosciuta in Europa e abitano le regioni settentrionali di Norvegia, Svezia, Finlandia e Penisola di Kola in Russia, un territorio tradizionalmente denominato Sápmi. I Sami hanno abitato questi luoghi per secoli e nonostante siano divisi da confini nazionali di ben quattro stati continuano a esistere come un unico popolo, unito da una lingua e cultura comune e da una identità condivisa. Per questa comunità, il legame con la terra rappresenta un elemento essenziale della propria identità culturale e delle tradizionali attività di sussistenza. Di conseguenza assumono particolare rilevanza le questioni relative ai diritti sulla terra e l'accesso alle risorse naturali. In tale contesto, i Sami rivendicano sempre più frequentemente il riconoscimento della tutela

dei diritti territoriali, delle loro tradizionali attività di sussistenza, lo sviluppo sostenibile delle aree terrestri e marine, e l'adozione di procedure decisionali che garantiscano un'effettiva partecipazione dei Sami nelle questioni che li riguardano. Analogamente ad altri popoli indigeni, i Sami si interrogano sulla possibilità di essere titolari di diritti sulle terre e risorse naturali in quanto popolo indigeno, sulla base dell'uso tradizionale di tali territori. Discutono in quale misura questi diritti indigeni siano effettivamente tutelati, alla luce del parziale rifiuto da parte degli stati di riconoscere e rispettare i diritti tradizionali sanciti dal diritto internazionale.

La tesi esamina inizialmente il concetto di popolo indigeno, analizzandone le caratteristiche principali e l'evoluzione. Successivamente approfondisce il caso dei Sami, con particolare attenzione alla loro identità e alle peculiarità che giustificano il riconoscimento di specifiche forme di tutela. Vengono inoltre analizzate le principali fonti giuridiche internazionali in materia, tra cui la Dichiarazione delle Nazioni Unite sui Diritti dei Popoli Indigeni, il Patto Internazionale sui Diritti Civili e Politici e la Convenzione No. 169 sui diritti dei popoli indigeni e tribali. Prosegue analizzando il ruolo svolto dai movimenti indigeni nel promuovere una maggior consapevolezza internazionale sul tema e nel favorire il riconoscimento dei diritti delle popolazioni indigene. Il lavoro segue con l'analisi di alcune importanti decisioni delle Corti Supreme dei Paesi scandinavi, in particolare per quanto riguarda l'utilizzo delle terre tradizionalmente occupate dai Sami e la protezione delle attività culturali e tradizioni che caratterizzano questa popolazione. Nonostante i progressi registrati negli ultimi decenni, persistono tuttavia numerose controversie legate allo sfruttamento delle risorse naturali nei territori Sami, che evidenziano la continua tensione tra interessi economici degli stati e i diritti delle popolazioni indigene.

Attraverso l'analisi del caso Sami, la ricerca intende contribuire al dibattito sul rapporto tra riconoscimento formale e tutela effettiva dei diritti dei popoli indigeni. Lo studio evidenzia come il crescente sviluppo del diritto internazionale in tema dei diritti umani abbia favorito una maggiore protezione delle comunità indigene, ma dimostra al contempo che rimane ancora una significativa distanza tra gli

standard internazionali e la loro concreta applicazione a livello nazionale. Il caso Sami rappresenta quindi un esempio particolarmente significativo per comprendere le opportunità e i limiti dell'attuale sistema di tutela dei diritti dei popoli indigeni.

Introduction

The world is characterized by a wide diversity of cultures, traditions, legal systems and ways of life. Within this diversity, the native peoples, first peoples, aboriginal peoples and all the other groups defined as indigenous peoples have suffered a past of colonisation and discrimination. Historically, the ancestors of contemporary indigenous peoples inhabited large parts of the world. However, today as a consequence of colonial expansion they became a minority. The past discriminatory actions concern the denial of several human rights and lead to the disappearance of a huge number of indigenous individuals. Indigenous peoples are more than minorities but generally considered to be less than “peoples”. These experiences highlight the importance of the principle of the right to self-determination for indigenous peoples. Granting indigenous communities the right to self-determination means giving them the possibility to exercise greater control and address the enduring consequences of historical subordination. Yet the question is, how are indigenous groups treated today, especially from a legal point of view. This thesis tries to analyse the evolution of indigenous rights and the recent international achievements on the expansion of human rights, especially focusing on the legal status of Sami people in Scandinavia.

Over the years, indigenous rights have been a quite controversial issue and the states in which indigenous groups live, have hardly granted them special legal measures. Indeed, while the historical injustices faced by indigenous peoples are well documented, questions remain regarding their contemporary legal and political status. Nevertheless, the growing expansion of the international human rights regime has contributed significantly to the advancement of indigenous claims, including demands for recognition, protection and reparations for the past wrongs. It is precisely on the international level that indigenous rights are mostly recognised, playing a crucial role in advancing these developments and promoting indigenous rights as an integral component of the global human rights framework. Notwithstanding, the national approaches continue to be still cautious and slow when conceding rights to indigenous minorities. This duality between

international and national attitudes remains, marking a significant gap between international standards and their implementation at the national level. This tension is particularly evident in the case of Sami people where international recognition of indigenous rights contracts with the approaches adopted by the Scandinavian states.

Despite the fact that the expansion of human rights started internationally in the second half of the twentieth century, the developments of Sami rights in Scandinavia can be concretely detected in the first decade of the twenty-first century. The supra-national organisations like the United Nations and the European Union, significant promoters of human rights, are fundamental for these evolving processes regarding indigenous peoples and the Sami minority.

My interest in indigenous peoples' rights particularly on Sami, developed during my six-month stay in Norway where I had the opportunity to learn about the transnational Sami people, the indigenous minority living in Norway, Sweden, Finland and the Kola Peninsula of Russia. The unique Sami lifestyle, together with the Sami's belonging to some of the most democratic countries in the world, drew my attention on investigating which rights, both in theory and in practice, are officially recognised to this indigenous group. This research is therefore motivated by a desire to better understand the legal protections of the Sami and the challenges involved in translating international indigenous rights into effective national policies.

Within this broader context the Sami represent the only indigenous population officially recognized within Europe. This thesis examines the particular relations developed of Sami rights and identity, with particular attention to the relationship between Sami and the Scandinavian countries. After providing a brief overview of Sami history, culture and identity, the study explores the evolving legal and political framework that shaped Sami and state relations. Special attention is devoted to the changing attitudes towards the Sami and their rights, tracing developments from early state policies of control and assimilation of the legal reforms and indigenous rights movements that emerged during the 20th century.

In order to better understand the context of Sami rights, the thesis shall first give a brief overview of indigenous peoples, examining both the concept and its historical development. It then introduces the Sami's cultural and historic background. This section will help understand what makes indigenous peoples so special that they deserve specific legal protection. The second chapter clarifies the concepts of "peoples" and "minorities", as well as examining the indigenous claims to land, property and territorial rights. It also introduces the concept of self-determination, its elements and social development. Subsequently, the main legal sources will briefly be presented, namely, on an international level, here the International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Indigenous Peoples and ILO Conventions will be discussed. Chapter three examines the relevant key Supreme Court decisions concerning Sami rights, these enforce the legal protection of Sami rights and recognize the importance of safeguarding their traditional ways of living and peculiarities. Due to the limited frame of a master's thesis, this study focuses specifically on selected aspects of Sami rights and their development within the international legal framework. It must be also acknowledged that I entered this field with limited previous knowledge on the topic and recognize that the complexity of the subject leaves considerable room for further research.

The Sami have inhabited the territories of present-day Norway, Sweden, Finland, and Kola Peninsula in Russia, developing a special relationship with their territories. Today, being of Sami decent is seen by most people as a positive thing. Most of the Sami still live as nomads with their reindeers while others work in farming and fishing, two traditional ways of Sami life. For indigenous peoples, land represents more than a physical space or economic resource. Land has been the source of living for centuries and the relationship to it often has spiritual aspects as it provides the fundamental framework for the existence of indigenous peoples. Sápmi, the Sami homeland, is perceived as a symbol of identity for the Sami people, representing Sami unity in the modern world. Consequently, an analysis of this relationship is essential for a comprehensive understanding of contemporary Sami rights claims. However, despite this long-standing close relationship, the Sami

have been denied land and territorial rights for centuries due to state policies of forced assimilation aimed at integrating indigenous populations into dominant national cultures. Nowadays, representatives from Sápmi actively participate in official conferences of aboriginal peoples all over the world. During past decades, national discourse on the land rights of the Sami as indigenous peoples has been at times intense. Some progress has been made towards the appropriate recognition of the Sami land rights and their right to participate in the projects that may affect their cultural legacy and vitality. Indeed, in recent years, the Supreme Courts in Norway and Sweden have increasingly recognised the rights of the Sami population, including territorial rights on areas they have traditionally settled on. This development in jurisprudence comes along with growing recognition of Sami rights in international and national legislation. Despite those positive changes, the Sami are still struggling to get their rights acknowledged. The conflict nowadays consists in indigenous peoples' interest in their lands versus the states' interest of exploiting natural resources within indigenous lands. Particularly interesting is the evolving relationship between indigenous and land rights, which are usually seen as interconnected, fighting together against the exploitation of natural resources and climate change. However, tensions between these two objectives have become increasingly apparent, particularly in cases evolving the construction of wind farms on traditional Sami land, where environmental objectives are invoked to justify restrictions on Sami rights.

Indigenous peoples constitute one of the largest vulnerable segments of society. Although they differ significantly in terms of culture, identity, economic systems, and social institutions, many indigenous communities share specific disadvantages in terms of social indicators and economic status. Despite their cultural differences, indigenous peoples around the world share common problems related to the recognition and protection of their fundamental rights, particularly those related to land, natural resources and culture. For centuries they have been seeking recognition of their identities, their traditional ways of life, territories and natural resources, however their claims have often been disregarded by colonialists. However, growing international

attention, supported by governments and the United Nations, has contributed to greater recognition of indigenous concerns. Yet they remain among the most disadvantaged and vulnerable groups across the world. With varying sizes across the world, indigenous peoples represent approximately 5 percent of the population of the world and they constitute about 15 percent of the world's poor, living in more than seventy countries.

A central objective of this research project is to contribute to enhance public awareness of Sami culture and history, especially the contemporary struggles for recognition. Sami society has undergone profound transformation, and the strengthening of Sami identity can be understood as a result of the cultural and political awakening of the Sami people gained in the early 1970s, in response to a long process of assimilation where the growing determination of a new generation was focused on reclaiming and protecting their cultural heritage. Indeed, their efforts aimed at building a bridge between tradition and modern times, between old lifestyles and the influences of modern society. This period witnessed the emergence of Sami political organizations, media and art. One of the most important turning points in this process was the Alta Conflict in the early 1980s, which arose in opposition to the construction of a hydroelectric dam on the Alta River in Norway. The conflict became a landmark event for Sami political mobilization, generating widespread public awareness and legal reforms. Its impact extended beyond Norway, inspiring a whole generation of Sami.

This increasing attention to indigenous rights led to the growing participation of indigenous people in international forums. The emergence of the global indigenous movement together with initiatives undertaken by the United Nations, brought indigenous issues to the forefront of international attention. At the time the ILO Convention No. 107 was the only international instrument specifically addressing indigenous and tribal people generating criticism by activists and indigenous representatives who contributed to the development and adoption of a new convention and new international instruments.

The thesis further seeks to identify the general content of international law's treatment of indigenous peoples. Indigenous is generally

understood as groups that are descended from the original or longtime inhabitants of lands now dominated by others. International law has developed to support the resilience efforts of indigenous groups worldwide to survive and flourish as distinct peoples on their ancestral or traditional lands. The contemporary international regime concerning indigenous peoples is identified here as arising within international law's human rights program, which was instituted with the United Nations Charter. The term indigenous peoples is generally understood to refer to culturally distinct groups that experience inequities within the states in which they live, often as a result of historical patterns of empire, conquest or domination. Even though indigenous peoples of today no longer live under formal colonial structures, they typically share with colonized populations the same history of colonialism and marginalization and continue to face impediments or threats to their ability to live and develop freely as distinct groups in their original homelands.

1 Sami as Indigenous people

Indigenous peoples are considered to be the preservers of the diversity of the world, since they have been holding the world's linguistic and cultural diversity for centuries. This means that their traditional culture and knowledge have been a significant resource for humanity. Yet they remain one of the most disadvantaged groups in the world. To varying degrees across the world, they are subject to discrimination and marginalization, and there is evidence that this happens not only in developing countries but also in developed countries.

As a matter of fact, there is a gap between indigenous and non-indigenous populations that remains particularly persistent. In many developed countries indigenous peoples are disproportionately affected by social exclusion and poverty. They tend to live shorter and less healthy lives, are more likely to be unemployed, and earn lower incomes than the general population. Moreover, levels of poverty, substance abuse, suicide and incarceration are significantly higher than for non-indigenous people. Indigenous peoples constitute approximately 5 percent of the world's population; however, they make up 15 percent of the world's poor.¹

The presence of indigenous peoples across the globe raises fundamental questions regarding the recognition of their claims and the extent of their rights. In addition to maintaining ways of life that differ significantly from those of the dominant societies, indigenous people possess a specific culture that is not easily comparable with the one of the states in which they reside.

Furthermore, indigenous peoples are estimated to be around 370 million around the world, thus they differ considerably one from another. They are located in various places around the world, as for example South America, Canada, South-East Asia, Europe and Africa, and they hold their own unique cultural names for their distinct cultural identities such

¹ Department of Economic and Social Affairs of the United Nations Secretariat (2009) *Rethinking Poverty: Report on the World Social Situation 2010*, UN ST/ESA/324, New York: United Nations, pp.68-127

as the San, the Inuit, the Ainu, the Wiradjuri, the Sami/Saami, the Maori, the Mayan, the Navajo and the Zapara.²

While the lives of indigenous peoples have been deeply affected by multiple factors, including the spread of disease, environmental disruption, forced displacement from ancestral territories, armed conflict, and the necessity to adapt to radically different social norms and ways of life; globalization has also played a role in empowering indigenous communities by offering access to influential allies, greater international visibility, and enhanced political leverage within their own states.

Despite the significant variations that exist at national state level and the complexity of their historical and contemporary conditions, indigenous rights should be considered universally on an international level. In order to do so it is essential to clarify how the concept of ‘indigenous people’ has been defined and understood at the international level.

1.1 Defying “indigenous”

The existence of groups of people identified as ‘Indigenous’ is a result of earlier centuries of globalization. Therefore, the concept of indigenous peoples emerged from the colonial experience, whereby the aboriginal peoples of a given land were marginalized after being invaded by colonial powers and where these colonial legacies have had a long-term impact on their life.

There are widespread misunderstandings surrounding the definitions of Indigenous populations. In broad terms, Indigenous refers to people forming a group or culture regarded as originating from a particular place; by this interpretation, this means that almost any person or group is Indigenous to some location. As a contemporary cultural concept, however, Indigenous has a much narrower meaning, describing people

² Ullah, A. (2017) *Globalization and the Health of Indigenous Peoples: From Colonization to Self-Rule*, New York: Routledge, pp. 1-7

whose everyday lives and livelihood are governed largely by their own tradition and custom.³

The contested status of indigenous peoples is therefore difficult to explain, as the debate over the definition and the classification is still going on. Notably, even the United Nations refrains from providing a fixed definition in one of its most emblematic documents on indigenous rights, the Declaration on the Rights of Indigenous Peoples (UNDRIP)⁴ adopted by the General Assembly in 2007. Although there is no general agreement on a definition, there are several definitions which are widely accepted as guiding principles for the identification of indigenous peoples. Art. 2 of the above-mentioned Declaration states that “Indigenous peoples and individuals are free and equal to all other peoples and individuals”. While this provision does not define who qualifies as indigenous, it recognises indigenous peoples as holders of collective rights and affirms their entitlement to equality and freedom from discrimination. Furthermore, Art. 3 and 4 affirm the right to self-determination, including the right to freely determine their political status, pursue their economic, social and cultural development and exercise autonomy or self-government in matters concerning their internal and local affairs. Another important instrument aimed at protecting indigenous’ individual and collective rights that tries to provide a definition for their identification, is the Convention No. 169⁵ adopted by The International Labor Organization (ILO) in 1989.⁶ Although its definition is limited in scope to the purposes of the Convention, Art.1 identifies indigenous peoples as:

“peoples in independent countries who are regarded as indigenous on account of their descent from populations which inhabited the country, or a geographical region to which the country belongs, at

³ Ullah, A. (2017) *Globalization and the Health of Indigenous Peoples: From Colonization to Self-Rule*, New York: Routledge, pp. 14

⁴ UN General Assembly (2007) *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295

⁵ International Labor Organization (1989) *Convention concerning Indigenous and Tribal Peoples in Independent Countries C169*, Geneva

⁶ The Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 will be examined in greater detail in the following chapter

the time of conquest or colonization or the establishment of present states boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

A widely accepted working definition of ‘indigenous communities, peoples and nations’ was formulated by José R. Martínez Cobo (1983), Special Rapporteur of the UN Sub-Commission on the Promotion and Protection of Human Rights:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.⁷

In addition to explaining indigenous peoples as a collective and outlining their defining elements of identification, the author provides a detailed analysis of how recognition operates between the individual and the group:

An indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members. This preserves for these communities the

⁷ Martínez Cobo, J. (1983) *Conclusions, Proposals and Recommendations*, UN Doc. E/CN.4/Sub.2/1983/21/Add.8, New York: United Nations, p. 50, para. 379

sovereign right and power to decide who belongs to them, without external interference.⁸

The concept of Indigenous peoples still remains contentious and the attitudes of governments to the application within their states of the concept of Indigenous peoples differ considerably. For example, some governments of Asian states consider the concept of “Indigenous peoples” as an outcome of the experience of European colonial settlement; therefore, it may not be applicable to those parts of Asia that did not experience European settlement. Therefore, these indigenous populations face more discrimination and marginalization than those in the West and they are estimated to be the majority (about 70 percent). The most common challenges faced were forced assimilation and intrusion of dominant groups into their own territories.⁹

Notwithstanding, the lack of formal definition of “indigenous peoples” or “minorities” has not been crucial to the successes or failures in those domains nor to the promotion, protection or monitoring of the rights accorded to these groups. In conclusion, in the case of the concept of “indigenous peoples”, the prevailing view today is that no formal universal definition of the term is necessary, given that a single definition will inevitably be either over or underinclusive, making sense in some societies but not in others. For practical purposes, the most widely accepted understanding of the term derives from the definition provided in the Martínez Cobo study mentioned above.¹⁰

A defining characteristic of indigenous communities is their historical continuity, particularly through their long-standing connection to ancestral lands, shared descent from the original inhabitants of those territories, and distinctive cultural features such as lifestyle, dress, religion, language, and other traits specific to each community. Unlike other ethnic minorities whose identities have been shaped primarily by

⁸ Martínez Cobo, J. (1983) *Conclusions, Proposals and Recommendations*, UN Doc. E/CN.4/Sub.2/1983/21/Add.8, New York: United Nations, p. 51, para. 381-382

⁹ Ullah, A. (2007) *Globalization and the Health of Indigenous Peoples: From Colonization to Self-Rule*, New York: Routledge, pp. 3-4

¹⁰ Department of Economic and Social Affairs of the United Nations Secretariat (2009) *State of the World's Indigenous Peoples*, UN ST/ESA/328, New York: United Nations, p.6

past or ongoing migration, indigenous peoples are closely linked to, and often defined by, a history of colonisation, as previously mentioned. Many indigenous groups experienced subjugation under colonial rule, and some argue that colonialism has not truly ended, given the persistent forms of marginalisation and unequal treatment they continue to face.

Moreover, land plays a decisive role in defining who is considered indigenous. Indigenous peoples are commonly identified as those who inhabited a territory prior to the arrival of settlers and who continue to maintain a strong connection to the lands of their ancestors. However, in regions characterised by extensive historical migrations or the coexistence of multiple long-established groups, determining precedence of settlement is highly complex. Consequently, the criterion of “pre-colonial existence” alone is insufficient to fully explain the concept of an indigenous group. Notwithstanding the most commonly used approaches to defining Indigenousness are the languages spoken, self-perception and geographic concentration.

The representation of indigenous peoples is often intertwined with related terms that may lead to confusion. While the term indigenous primarily refers to a pre-colonial presence, terms as ‘aboriginal’, ‘autochthonous’ and ‘native’ generally denote populations descended from the original inhabitants of a specific territory and are frequently employed in disciplines such as anthropology.¹¹

A specific term is therefore needed to distinguish between cultural groups of different ancestries within one territory, while also recognizing issues of identities and power. Such a term must recognize that all across the globe, peoples from regions colonized by new arrivals experience many similar difficulties in preserving their language, way of life and even their physical existence.

Questions of indigenous identities are complex and must be approached through a negotiation of different perspectives. In these negotiations, no

¹¹ Keal, P. (2003) *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society*, Cambridge: Cambridge University Press, p.10

single actor can claim absolute power in determining identity, and where groups and individuals must, to a certain extent, be allowed to determine their own identity.

1.2 Early perspectives on Indigenous peoples

As discussed previously in relation to their definition, indigenous people can be found in most of the regions in the world. The relation between indigenous peoples and the dominant state authorities has often been characterized by controversy and contestations. The process of nation-state consolidation and expansion, as well as the development of an increasingly globalised international order, frequently resulted in the extinction of indigenous communities, or, at least, in the disappearance of their cultures.¹²

During the early phases of colonisation, the relation between colonisers and natives was complex and contradictory. As a consequence of having been colonised, indigenous populations lost their sovereignty and became subordinated to political systems in which they exercised no power. In most cases, colonisers were disrespectful of natives, causing destruction, disposessions and decimation. One of the earliest debates concerning the treatment of indigenous people emerged with the so-called discovery of America, which culminated into a cultural debate about conduct of the Spanish towards the natives.

Different perspectives were given by various critics on how indigenous communities should have been approached, among whom emerged the opinion of Juan Ginés Sepúlveda and the priest Bartolomé de las Casas. These two authors gave nearly opposite points of view, not only regarding the nature, status and representation of indigenous peoples' personality, but also on the methods of subjugation used by Spaniards

¹² De Faccio, I. (2018) *Indigenous Rights: Legal Status of Sami in Scandinavia*, MA Thesis, University of Padua, p.12

in the conquest of America. The dispute between them took place in the Valladolid Controversy in 1550 and 1551.¹³

At the time of discovery, the indigenous people of the Americans were considered as different and therefore inferior beings, a perception that was used to justify their exploitation and enslavement. On the other hand, although they were considered different, they still possessed the same natural rights as the Europeans but were not respected for their peculiarities. Instead, they were to be assimilated into European and Christian culture, frequently through constraint or violence. In both cases, their original civilization had been wiped out, only very few traces persist nowadays. These perspectives reveal a profound misunderstanding on the part of European colonisers, who presumed the superiority of their own cultural and religious traditions.¹⁴

Although Las Casas and Sepúlveda share similar backgrounds, being both theologians and men of faith, they should have theoretically similar views, however their positions on natural rights, war, slavery and international laws were extremely distant.

On one hand, Ginés Sepúlveda developed his argument around four main ideas that comprised the idolatry and the sins performed by indigenous peoples against divine Christian law; the aborigines' barbaric and submissive nature; the mandatory subjugation of natives, even with force if necessary; the exigency to stop indigenous cannibalism, seen as a violation of natural law. His judgements were all in favour of the legitimacy of the Spanish conquest of the Americas. For him, the Spanish conquest was both legitimate and necessary due to the cultural and evangelical superiority of Spaniards, which in his view entitled them to dominate societies he regarded as inferior cultures. On the other hand, the priest Bartolomé de las Casas focused his attention to defending indigenous peoples and advocating for their rights, in fact, he was appointed as the "protector of the Indians". He affirmed not only the humanity of indigenous people, but also the necessity of being accepted by the aboriginal community and having their consent in order

¹³ Lyons, M. (2023) The Valladolid Debate on the Rights of Indigenous People, *History Today*

¹⁴ Danver, S. (2022) Analysis: In Defense of the Indians, *EBSCO*

to peacefully conduct the missionary and civilising efforts. Moreover, he strongly condemned the perpetuation of the enslavement of aborigines and denounced the aggressive violence and exploitation carried out by Spaniards in American colonies.¹⁵

However, the Spanish legitimacy of conquering American territories was encouraged by Pope Alexander VI, who gave his permission to rule over territories that did not have a Christian jurisdiction. This evangelical perspective framed Europeans expansion as a moral obligation to rule over and convert the indigenous peoples.

In essence, the debate between Sepúlveda and Las Casas revolved around two central dilemmas: whether aboriginal peoples should be recognized as human beings with natural rights, and if the methods used to subjugate them were correct or excessive. This discussion therefore focused on how indigenous people were represented and perceived and which type of treatment they were entitled to.¹⁶

1.3 The Sami identity

The Sami are the Indigenous people of Fennoscandia, constituting a minority population within the modern nation-states of Norway, Sweden, Finland, and Russia. Fennoscandia is a term that usually refers to the geographical region encompassing the Scandinavian Peninsula, comprising Norway, Sweden, as well as Finland, Karelia and the Kola Peninsula in Russia. This broad northern European territory forms the historical and cultural homeland of the Sami people.

The Sami are the only ethnic group in the European Union to be recognized as an indigenous people.¹⁷ They primarily inhabit the northern parts of Scandinavia and the Kola Peninsula, a transnational area traditionally known as Sápmi. Rather than corresponding to

¹⁵ Castilla Urbano, F (2020) The Debate of Valladolid (1550–1551): Background, Discussions, and Results of the Debate between Juan Ginés de Sepúlveda and Bartolomé de las Casas, in Tellkamp, J., *A Companion to Early Modern Spanish Imperial Political and Social Thought*, Brill, pp. 222-251

¹⁶ Russo, F (2016) Bartolomé de Las Casas, defender of human rights and universal brotherhood. The dispute of Valladolid versus Juan Ginés de Sepúlveda, *EuroStudium3w: Rivista di storia europea e internazionale*, No. 39, pp. 73- 81

¹⁷ Pasikowska-Schnass, M. (2020) International Year of Indigenous Languages – Sami people and languages in the EU, *European Parliamentary Research Service*

contemporary political borders, Sápmi constitutes a cultural and historical region that extends across four nation-states, as illustrated in the picture below where Sápmi is represented by the grey-shaded area.

Sápmi, the Sami homeland (Samiland), has endured as a geographic, historic, and symbolic space that transcends state boundaries while maintaining cultural coherence. Sápmi encompasses thousands of square miles from Røros in southern Norway and Idre in Sweden to the northern provinces of Norway, Sweden, and Finland and further east along the coast of the Kola Peninsula in Russia. While covering vast Arctic and sub-Arctic territories, Sápmi remains central to Sámi identity, cultural practices, and political claims.¹⁸



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The name Sami is an ethnic designation signifying that Sami view themselves as members of a culture set apart from the dominant cultures. The terms Sámi and Sápmi are the English versions deriving from the North Sámi words of Sámit and Sápmelaš, both meaning Sámi

¹⁸ Sjöholm, B. (2023) *From Lapland to Sápmi: Collecting and Returning Sámi Craft and Culture*, Minneapolis: University of Minnesota Press, p. ix

¹⁹ Sjöholm, B. (2023) *From Lapland to Sápmi: Collecting and Returning Sámi Craft and Culture*, Minneapolis: University of Minnesota Press, p. vii

people. In English usage, Sámi, also spelled “Sami” and “Saami”, functions as both noun and adjective, and as both singular and plural. It supplants the term “Lapp” which was given by outsiders. In the beginning “Lapp” meant people who lived on the periphery and were not farmers and therefore were uncivilized. It came to be a derogatory term and should no longer be used. It should also not be confused with “Laplander” as Laplanders are people who live in the province of Lapland in Finland, regardless of whether they are Sami or Finns. Outsiders also used other names when writing about the Sami. In the very earliest written sources the words “Fenni”, “Finn”, usually meant a Sami person. The term “Lapp” in documents and literature was used from about the 12th century to designate a person who practised “Lappish” economic activities such as fishing and hunting and later reindeer herding.

The word Sami used by majorities is of fairly recent occurrence, coming into use only in the early 1900s in literature written in the majority languages. The term Sápmelaš only began appearing in writings when the Sami themselves became literate and started writing.

Therefore, the term Sápmi has increasingly substituted “Lapland” to denote the Sámi homeland. Importantly, Sápmi signifies more than a geographical territory; it also encompasses cultural, social, and symbolic dimensions, including references to the Sámi people themselves and their material culture.²⁰ For the purposes of this thesis, the spelling “Sami” will be used consistently, except where specific orthographic forms are required for linguistic or citation accuracy.

Today, the Sami constitute a minority population across Sápmi, with the exception of certain regions of Finnmark in Norway, where they form a more substantial proportion of the population. Although there is no precise census of Sami people, estimates suggest that the total Sami population ranges from eighty thousand to one hundred thousand. The largest population of Sami, 40 - 50,000, live in Norway, half of these in the province of Finnmark. In Sweden there are 15 - 25,000 Sami, in Finland at least 7000 and in Russia about 2000.

²⁰ Hermanstrand, H. et al. (2019) *The Indigenous Identity of the South Saami. Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, p.8

In Finland, Norway and Sweden a Sami is defined as a person of Sami origin who feels oneself to be Sami and who either has Sami as their first language or has at least one parent or grandparent who had Sami as their first language. In Russia a Sami is defined by self-ascription. What is important is ancestry, relationship to the Sami language and through that to Sami culture and a feeling of being Sami. More than half of the Sami population speaks Sami. However, Sami is not a single, unified language but a group of distinct languages, many of which are not mutually intelligible. As a result, speakers from different linguistic communities may not necessarily understand one another. However, many Sami people are usually bilingual and more than Sami, they also speak the language of the country in which they live.²¹

The Sami are commonly categorized into ten linguistic groups, which largely correspond to specific geographic regions within Sápmi. North Sami, the most widely spoken variety, is approximately spoken by twenty- two thousand people in northern Norway, Sweden, and Finland; Lule Sami is spoken by around twenty- three hundred people in central Norway and Sweden; and South Sami, by six hundred speakers in south central Norway and Sweden. In the Inari region of Finland, between three hundred and four hundred speak Inari Sami, and a similar number speak Skolt Sámi in Russia. The remaining Sami languages have significantly fewer speakers and are critically endangered.

²¹ Lehtola, V.P. (2004) *The Sámi People: Traditions in Transition*, Fairbanks: University of Alaska Press, pp.9-11



Sápmi

Samidialects

Both Finland and Norway have enacted legislation, known as the Sámi Language Act, to guarantee the right of Sami speakers to use their language in interactions with public authorities, thereby supporting the preservation and institutional recognition of Sami linguistic heritage.²²

Sami languages belong to the Finno–Ugric language family, therefore Sami’s grammar is similar to other Baltic-Finnic languages, especially to Finnish. The vocabulary is constituted by a balance between vowels and consonants, and it contains many loanwords from Scandinavian and Russian languages. Since Sami culture is mostly oral, especially in the past, the Sami language has different orthographic systems.²³

All available figures remain estimates as there seem to be no extensive, current and reliable official statistics regarding the number of speakers of the Sami languages. This lack of systematic data collection reflects broader structural challenges in documenting minority and Indigenous languages across national contexts.

The South Sami is the southernmost Sami group and is frequently described as a minority within the minority. In contrast to North Sami, whose speakers inhabit the northernmost regions of Fennoscandia and are often regarded in dominant narratives as the cultural heartland of

²² Sámediggi, *The Sámi Language Act*, available at: <https://samediggi.fi/en/areas-of-expertise/sami-languages/the-sami-language-act/>

²³ Sjöholm, B. (2023) *From Lapland to Sápmi. Collecting and Returning Sámi Craft and Culture*, Minneapolis: University of Minnesota Press, p. x

Sami society, South Sami culture has not been as visible in the majority discourses as that of the North Sami, the people of the northernmost region of Fennoscandia popularly looked upon as the heart land of Sami culture.

The description of the South Sami as a ‘minority within a minority’, although frequently used by members of the South Sami community, can be the subject of discussion. Originally, the phrase was coined to highlight the South Sami position in relation to the numerically and institutionally stronger North Sami community. However, as with many popular phrases, it might easily turn into a cliché, thus obscuring the original power of the phrase. Nevertheless, the continued use of the term serves to emphasize the specific position of the South Sami as a minority not only within the nation-states of Sweden and Norway but also within the broader Sami collective. The historical processes and socio-political conditions under which South Sami identity has developed constitute an under-researched dimension of Sami history that has been given less attention than that given the North Saami culture. The way and the conditions under which South Saami identity has been formed is one of several parts of the Sami history. Compared to the scholarly and public attention devoted to North Sami culture, the experiences and cultural expressions of the South Sami have received considerably less academic focus. Therefore, addressing this imbalance forms an important component of contemporary Sami studies.²⁴

1.3.1 The early Sami

The earliest presence of human settlements in the Sami homeland date back to around 9000 BC and they were characterized by a shared ethnic identity and common language closely related to Finnish. The ancestors of the Sami were already integrated into extensive trade networks

²⁴ Hermanstrand, H. et al. (2019) *The Indigenous Identity of the South Saami. Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, p.5

across northern and eastern Europe, particularly through the exchange of iron and furs.²⁵

From the Middle Ages, the first newcomers arrived to settle in the Sami homeland, becoming a contested zone by neighbouring states and settlers. The Sami gradually came under the influence of Scandinavian kingdoms and the Republic of Novgorod which imposed taxation systems and competing territorial claims. The arrival of settlers, particularly the *birkarlar* and later Swedish and Norwegian colonists, altered the demographic balance and subjected the Sami to growing political and economic pressures since the Sami were frequently caught between these powers, at times subjected to double taxation and drawn into conflicts.

Between the seventeenth and nineteenth century, state-sponsored colonization and assimilation policies accelerated the incorporation of Sami territories into the expanding nation states. Many Sami adopted sedentary lifestyles, intermarried with settlers and absorbed into Norwegian and Finnish society. Despite the pressures, the Sami retained important cultural, legal and economic traditions. The Lapp Council of 1751 confirmed a number of traditional Sami rights such as their right to move back and forth across their respective nationalities, cross-border fishing rights and political neutrality in times of war. In addition, Sami courts were established and given precedence over national ones in many circumstances where the two came into conflict. This legal framework proved relatively resilient, remaining in force until 1852, when the border between Finland and Norway was effectively closed to traditional Sami mobility.²⁶

1.3.2 Myths about Sami

From the beginning, descriptions of the Sami were shaped by a mixture of myths, reality and observation. By the end of the first century, writers relied largely on collections to characterize people perceived as wild or

²⁵ Kent, N. (2018) *The Sámi People of The North: A Social and Cultural History*, London: C. Hurst & Co., p.27

²⁶ Kent, N. (2018) *The Sámi People of The North: A Social and Cultural History*, London: C. Hurst & Co., pp. 29-36

primitive. Some portrayals contained novel elements while others reinforced enduring ethnographic stereotypes like that the Sami lived in regions where the sun never set, they were skilled skiers, or they were powerful sorcerers. The repetition of certain myths, repeated in one book after another, reinforced the mythologized picture of Sami. Empirical observations were often misinterpreted and gradually solidifying existing myths generated new myths.

A notable shift occurred in the mid-1500s with the publication by Olaus Magnus of *Historia de gentibus septentrionalis* (*A History of Northern Peoples*). It brought a new, even revolutionary, flood of information on Lapland, reporting his own experiences from his travels in the far north. He described phenomena such as the midnight sun, cold winters, the friendliness and hospitality of “Laplanders”. He also documented aspects of their livelihood, trade, and salmon fishing, topics that became of interest to Europeans to understand Lapland.

From the 1600s onward, Lapland attracted an increasing number of researchers, administrators and travellers that based their writings on their experiences and observations. During the Enlightenment, and especially Romanticism, many foreign travellers visited Lapland to see Europe’s remote periphery and its exotic “people of nature”. This phase produced many books written entirely from an outsider’s point of view, often by individuals sent by the Swedish Crown and trained in the art of crafting words for sermons. Their writings are systematically structured, yet both of these types carried on the tradition of earlier portrayals of Lapland. They were a combination of personal experiences, common beliefs, and influences from literature, since before their departure and after their trip, travellers absorbed what had already been said about the region. For this reason, even portrayals based on personal experiences were inevitably shaped by previous literature.

As settlement expanded vigorously northward in the 1700s, the perception of Lapland changed in ways that continued to shape representation of the region until the 1900s. Agriculture began to be emphasized and presented as a defining feature of Sami culture, and experts debated on the economic potential of Lapland. Travellers

increasingly highlighted the importance that agriculture could have in sustaining livelihood in Lapland. Gradually agriculture became the salvation for the northern areas that were previously regarded as wilderness, although it often proved to be a poor alternative.

Even though in the 1800s most portrayals from professional writings became more scientific, most of the old myths persisted, such as the idea of the naive aboriginal and poor but happy primitive folk.²⁷

1.3.3 Traditional livelihood of Sami people

Traditionally, the Sami pursued predominantly a nomadic lifestyle, and their livelihood was based on hunting, fishing and gathering. Over time, these subsistence strategies gradually evolved, and reindeer herding assumed increasing economic and cultural significance. By the fifteenth century, large-scale reindeer pastoralism had become firmly established in several regions of Sápmi. In contemporary discourse, the practice of reindeer herding is portrayed as the defining feature of Sami culture. However, such representation risks oversimplifying the historical complexity and regional diversity that has always characterized the Sami community. For a long time the ‘original’ Sami culture has been seen as being rooted in traditional livelihoods, lifestyles and cultural models. In the eyes of outsiders ‘true’ and ‘authentic’ Sami have been only those who live in close proximity to nature, detached from modernity and uncivilized. Such portraits were reflected in historic literature where a range of classificatory terms such as Forest Lapp, Reindeer Sami, River Lapp, Eastern Sami, were employed for descriptive purposes and to refer to the Sami community. In the context of profound social, political and economic transformations, many of these older concepts are now being re-examined.²⁸

²⁷ Lehtola, V.P. (2004) *The Sámi People: Traditions in Transition*, Fairbanks: University of Alaska Press, pp. 16-18

²⁸ Lehtola, V.P. (2004) *The Sámi People: Traditions in Transition*, Fairbanks: University of Alaska Press, p.10

A widespread assumption is that all Sami have historically been, and continue to be, reindeer herders or often called 'mountain Sami'. Reindeer herding has thus become a cultural emblem representing Sami identity even though that economic sector developed relatively late, primarily in the 1500s.

At the same the relationship between Sami and reindeer cannot be reduced to a simplistic image of nomadic groups merely following migrating animals. Rather, it has traditionally involved a reciprocal relationship. Indeed, they keep some domesticated reindeers as a complementary livelihood, using them not only for herding but also as a means of transport and supplementation. Moreover, another Sami business connected to reindeer is meat production, considered as a traditional activity that holds both economic and cultural significance and is important for Sami identity. Nevertheless, while reindeer-related practices remain important, they do not exhaust the meaning of Sami identity. Thus, the Sami identity, as any other, is never fixed nor final, but rather constantly in flux.

For this reason, Sami life has never been homogeneous, it has varied widely throughout history, place, and occupation. Coastal Sami communities of northern Norway whose livelihoods were centred on fishing and hunting had different experiences from those Sami who herded reindeer in the Swedish– Norwegian mountains. They were different still from the Sami who lived in the forests of Sweden and Finland, that were fishing and trapping, or from the Sami who later found employment in mines or on railways. They were different, too, from urban Sami who became teachers, artisans, and museum curators in the twentieth century, where increasing urbanization further diversified Sami experiences. Recognizing this diversity is essential for moving beyond reductive narratives and for understanding Sami culture.

These varied trajectories complicate any singular narrative of Sami identity and challenge reductive associations of Sami culture exclusively with reindeer husbandry and counter enduring stereotypes of the Sami as isolated or culturally static. Archaeological and historical evidence indicates that Sami communities have long been engaged in extensive social, economic and cultural interactions with neighbouring

populations. This challenges the stereotype of Sami as people in isolation by demonstrating social interactions at least as early as 2,000 B.C.²⁹

As already mentioned above, Sápmi, the traditional Sami homeland, covers the northern and central part of Norway, Sweden and Finland, and the Kola Peninsula in the Russian Federation. During late medieval times, the Swedish and Danish kings and the Russian tsars started to impose territorial borders across this region inhabited by Sami. These processes were accompanied by warfare, taxation systems, missionary activities, and administrative integration. These borders that eventually crystallized in the eighteenth and nineteenth centuries acquired their present political status. In absence of a historically unified Sami state, as there has never been one, the delimitation of Sápmi has never corresponded to a singular, clearly defined territorial entity. Moreover, there is no consensus among historians and archaeologists as to the historic extent of the Sami settlements, underscoring the interpretative and political dimensions inherent in cartographic representation.

Drawing maps is an act of highly political and hegemonic significance, particularly in the period of European colonialism, whether in other parts of the world or within Europe. The monarchies of Denmark–Norway, Sweden–Finland and Russia each sought to consolidate authority over Sápmi from the late medieval period up to modern times, to integrate these regions into national administrative frameworks.

In the 1880s and 1890s, the Swedish and Norwegian states introduced administrative regulatory measures aimed at controlling and restricting the Sami reindeer husbandry in favour of agricultural interests. One significant outcome of these interventions was the formal organization of reindeer herders into Reindeer Herding Districts, whose borders were drawn by the Swedish and Norwegian governments. These districts constitute the only existing and officially recognized political borders specifically associated with Sami land use and they are then frequently employed to show the contemporary South Sami area. However, the problem is that their historical origins warrant critical scrutiny. These

²⁹ Diamond, B. (2003), *Review of The Sami People: Traditions in Transition*, *Ethnologies*: Université Laval, Vol. 25, No. 2, pp.242-246

borders or district boundaries were originally imposed on the Sami reindeer herders by the state administrations of Sweden and Norway. They were not the result of the Sami people's own organization of their land, the traditional known as *siidas* (a Sami community or village) which structured land use, resource management, and collective decision-making according to customary principles. Consequently, reliance on these state-defined borders risks reproducing the very frameworks of governance and control that historically sought to delimit and regulate Sámi lifeways.³⁰

In recent decades Sami culture has undergone a profound transformation. Since the 1970s, Sami identity has developed in a new direction in response to new influences and viewpoints by emerging perspectives on self-determination and minority rights. In the last decade, Sápmi assumed a symbol of identity for the Sami people as it represents Sami unity in the modern world.

At the same time, the Sami population have been heavily pressured to assimilation policies designed to incorporate them into the dominant national societies. These policies have contributed not only to a loss of ethnic identity, culture and religion, but also produced disadvantages in socio-economic status, discrimination and prejudice. Research on indigenous communities consistently emphasizes the close relationship between a positive identity as a member of an indigenous population and knowledge of the indigenous culture. Consequently, efforts to revitalize indigenous cultures and languages plays a crucial role in enhancing the well-being and is a driving force in the maintenance of a strong and vital indigenous culture. The interconnections between language, culture, history and identity are thus not merely symbolic but constitutive of the fundamental elements through which Sami identity is articulated and sustained.³¹

A crucial part of the Sami identity is the shared historical experience of colonization and systematic discrimination by the nation states that

³⁰ Lehtola, V.P. (2004) *The Sámi People: Traditions in Transition*, Fairbanks: University of Alaska Press, p.11

³¹ Corson, D. (1995) Norway's "Sámi Language Act": Emancipatory Implications for the World's Aboriginal Peoples, *Language in Society*, Vol. 24, pp. 497-502

have gradually imposed their borders across the Sami homeland since medieval times. These processes of territorial incorporation, administrative control, and cultural marginalization have left enduring marks on social structures, cultural transmission, and collective memory.

In the academic sphere, the Sami and other minorities were subjected to deeply problematic and often unethical research practices. In its earliest forms, this meant excluding Sami-related topics from academic disciplines rather than being integrated into broader scholarly disciplines and putting any Sami-related topic into their own separate field known as Lappology. This subjugation of Sami knowledge not only marginalized Sami perspectives but also framed them as objects of study rather than active producers of knowledge. This lack of memory history poses a particular threat to the Sami culture. Strengthening awareness, documentation and knowledge is therefore vital. Such efforts contribute not only to cultural revitalization within the Sami community itself, but also to broader public recognition. In this respect language, identity, history and culture are connected to how the Sami community has been represented and perceived in the majority society.

This historical marginalization is reflected in the attitudes that long characterised the relationship between the Sami and the majority society. Indeed, the position of the Sami population today has changed compared to earlier periods, where they were widely regarded by the Norwegian majority population as a lesser and inferior people. The transformation of these perceptions represented an important step in the broader process of recognising Sami rights, culture and identity.

At the same time, understanding Sami society requires recognising the close relationship between the Sami people and their natural environment. This strict connection shaped their social, economic, cultural and political structures particularly after the colonisation period. Traditionally Sami communities have been organized in *siidas*, territorial and social units functioning as village assemblies that consist of a couple of households. Each household typically consisted of a husband, wife, children, and some close relatives, forming a complete workforce capable of sustaining subsistence activities. Although the

siida does not represent the main social structure in every part of Sápmi, it remains one of the most common types of association. Similarly, Sami customary law is not universal and identical in all Sápmi and could vary among different regions.

Within the social framework, customary law has developed over centuries through practice and collective experience to regulate Sami relationship with nature. It regards, among other aspects, the just mentioned division of lands among *siidas*, with particular attention to reindeer pasture areas.

The grazing areas can be transferred between *siidas* through marriage, and they can be equally inherited by both men and women. Grazing areas are closely linked to the seasonal migration of reindeer, and the aim of the reindeer herder is to keep the reindeer free to move and his herd together.

Therefore, the *siida* also functions as the main authority which decides matters concerning the use and management of land. It is the entity responsible for resolving issues internal to *siida*'s territories and it acts like a unity in case of land issues with other *siidas*. In coastal areas, the Sami customary law determines which *siida* is entitled to fish and which community has the right over resources such as stranded whales or sea bird's eggs. Similarly, in rivers and lakes there are exclusive rights of fishing for the local *siida*, which is free to establish a fishing agreement with other communities.

Sami customary law recognizes that individuals may hold usufruct rights, but rests on the perception that land, waters, and natural resources belong to the collective community. This is reflected on the borders between different *siidas* that are generally fluid rather than strictly defined and the value of land consists in its generational turnover. Moreover, as Sami culture is intrinsically oral, and Sami customary law is not written, it is transmitted through the knowledge of wise men.

Within this framework, disputes in which no negotiations between *siidas* seem possible, the resolution can be addressed through a *norraz*, the collegial council of the *siida* which has the authority to make binding decisions. Usually led by the *siida*'s wisest man, the *norraz* represents the bearer of past experiences and collective knowledge. In

this way, the wise men of the *siidas* involved in the conflict meet and try to solve the question applying the relevant customary law. The *norraz* does not exist in all Sami territories. Instead of it, in the Finnish part, for example, similar functions are carried out by the *sobbar* and *kärreg*, collegial bodies with political and legal functions which are composed by family elders. This Sami legal order was well-established when non-Sami people moved into Sápmi with their own legal systems. The process of colonisation resulted in a gradual dismantlement of Sami customary law and its particular use of land.³²

At the same time, understanding Sami society requires moving beyond simplified portrayals of the Sami as a single, uniform group. People often speak of Sami culture, Sami attire and Sami language as if they belonged to one unchanging and homogeneous people. Yet this view overlooks the rich diversity that characterizes Sápmi. Over the course of their history Sami moved across vast regions, settling in different environment where they developed different cultural traits.

One of the most visible symbols of this diversity is the traditional Sami garment called *Sami Kofte*. When Sami from distant places gather together, the most reliable way to recognize a person's home is by observing their clothing. The design, colours and decoration of the clothing differ from place to place. From the general distinguishing features of the garment a Sami can identify another's region of origin, and from subtle differences, even their home village or family background.

Finland is a great example, as among the 7000 Finnish Sami living there, five principal garment designs can be distinguished. The most well-known is the Mountain Sami garment, the "Eanodat style", which has been a favourite for postcards and tourist pictures because of the colourful men's tunic. It is richly adorned with many embroidered ribbons sewn onto the shoulders and hem and complemented by a distinctive high hat decorated in similar style. Over time the garment

³² Ahrán, M. (2004) Indigenous Peoples' Culture, Customs, and Traditions and Customary Law: The Saami People's Perspective, *Arizona Journal of International and Comparative Law* 21, Vol. 21, N. 1, pp. 65-71

became a measure of wealth and social standing: its material, colours, ornamentation and the number of brooches indicate social status.³³

The clothing tells many things, even aspects of a person's character can be discerned from the way it is worn. Attention is paid to details such as whether the hat is worn correctly, or if the reindeer fur shoes are properly bound, if the brooch is straight and the tunic worn right. These details have always been considered important. In earlier days, especially at church gatherings or at the market days, people carefully observed one another, and the clothing was quietly subject to social judgment. The most severe criticism that could be directed at a poorly dressed woman was to call her a *rivgu*, implying that she was not truly Sami.

The garment is thus not merely a piece of clothing but rather a symbol of a Sami person's identity. It has many subtleties that are difficult to describe, and that contain Sami cultural vocabulary and codes, just like shades of meaning in the language. The way it is worn can reveal an inexperienced wearer or someone from outside the community. For this reason, many Sami resent or even become angry at outsiders who wear Sami clothing without understanding its symbolic language or the cultural knowledge it expresses.

On a similar note, language itself constitutes a central component of Sami identity, as it is rooted deeply in lived experiences and everyday practices. For decades the Sami language has been submersed under the majority language of each country: Finnish, Norwegian, Swedish, Russian. Those are the languages used in schools, public offices and the media, however this situation is gradually changing. Appreciation for Sami has grown and Sami is taught both as mother tongue and as a second language. As a result, knowledge and use of Sami language is spreading, reflecting a broader process of cultural revitalization.

Language is not merely a tool of communication, it also embodies key cultural elements of people. This has been underlined by several linguists at Nordic universities that have emphasized that language

³³ Lehtola, V.P. (2004) *The Sámi People: Traditions in Transition*, Fairbanks: University of Alaska Press, p. 14

functions as a map of Sami reality, offering insight into how the world is perceived and valued by them.

Since human language reflects lived experiences, it may also offer to outsiders a path to a deeper understanding of Sami culture. Vocabulary develops as it is needed in response to practical needs especially in areas that are important. Each language has its own fields with especially rich terminology. In Sami these fields have to do especially with nature and reindeer. The Sami language is also particularly precise for describing the qualities of natural phenomena and places: there were documented hundreds of words in Sami relating to snow and ice, denoting the different characteristics of it or its usage. There were counted also words to describe landscape, revealing an intricate sensitivity to terrain and place. These are all examples of the richness of the language and it is irreplaceable. Kerttu Vuolab, a Sami writer, has emphasized the significance of a small language as a medium for conveying lived experiences and a particular relationship with the environment. For this reason, all languages are equally valuable. Just as each culture represents a unique adaptation to its surrounding, small languages are just as significant as languages spoken by billions. They preserve not only words but entire ways of understanding, inhabiting and sustaining the world.³⁴

Yet the vitality of a language cannot be measured by richness alone. The decisive question is whether it continues to live in everyday practice, passed naturally from one generation to the next one. The extent to which the older generation transmits its language to the younger generation is widely regarded as the primary indicator of how threatened a minority language truly is. In other words, what matters most is whether children experience a natural, intergenerational socialization into the language, and whether they grow up hearing it at home, speaking it in daily life, and absorbing its meanings as part of their earliest world. This factor is often identified as the essential foundation of minority language vitality. Based on such criteria, together with the size of the speaker population, minority languages are

³⁴ Lehtola, V.P. (2004) *The Sámi People: Traditions in Transition*, Fairbanks: University of Alaska Press, pp. 14-15

commonly described as “moribund” or dying, “endangered,” or “safe.” Therefore, maintaining this minority language is something that has mainly been managed internally in certain families. In practice, this means that in some families the transmission of Sami has been strong, and in these settings, both the parent generation and the children can have a relatively high level of proficiency in the minority language, even today in the twenty-first century. In other families, however, the generational transmission of the language has broken down, in some cases relatively recently and in others two to three generations ago.³⁵

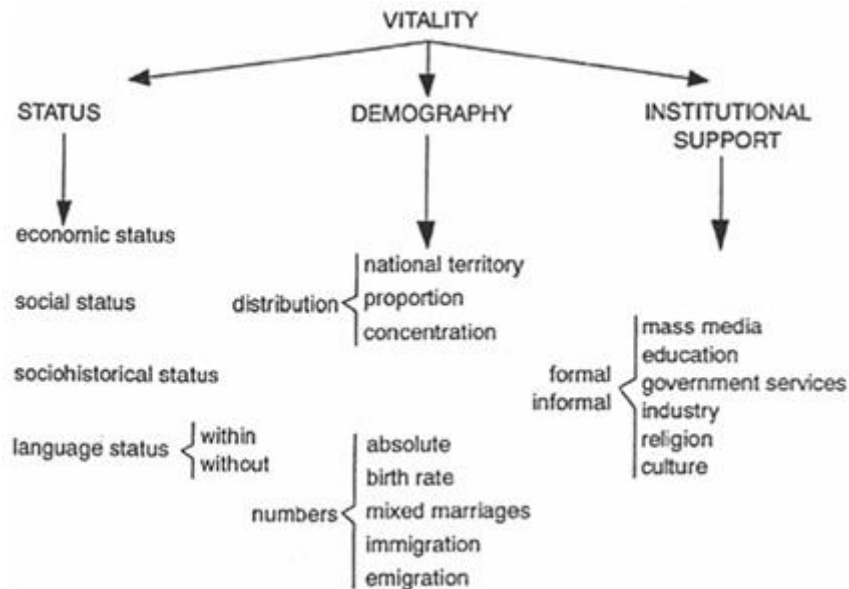
Within linguistics several models have been developed to attempt to organize and interpret the many factors that influence whether the minority languages are strengthening or weakening, therefore it aims to “predict” the preservation of minority languages. One influential concept is ‘ethnolinguistic vitality’ which expresses the mental power, the collective strength and will within a minority group, to keep the minority together as a group. It describes a form of social consciousness and energy that helps sustain the group’s cohesion and supports the continued use of its language. When vitality is high, or strong, it is likely that the minority language can be maintained, whereas low or weak vitality results in a linguistic shift towards the majority language.

A key aspect of this model is analysing the connection between language, ethnicity and interethnic relations. At the same time neither this model, nor any other model can predict the outcome of any language contact situations. This model does not offer a precise forecast, but it is simply a way to systematize potentially relevant factors without weighting them in any way.

The model presented below follows the three principal categories: Status, Demography and Institutional Support.³⁶

³⁵ Hermanstrand, H. et al. (2019) *The Indigenous Identity of the South Saami. Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, p. 19

³⁶ *Ibid*, pp. 20-21



1.3.4 Sami Status

Sami culture has long been assigned an inferior and, in many ways, marginal position within Norwegian society. For a significant period, identifying as Sami in Norway carried a strong social stigma and the policies implemented throughout the 1800s played a decisive role in reinforcing the processes of marginalization and discrimination. Later in the century, prevailing attitudes, especially among state authorities, gradually framed the Sami as representing a lower or less developed state of social and cultural development compared to the majority of the Norwegian population. Within this ideology, the Sami population was depicted through racial and social hierarchies. They were frequently portrayed as weak, degenerate, infantile and even a dying race, supposedly incapable of surviving within the modern state. From this perspective a race that could only be rescued by becoming ‘Norwegianized’, in other words, assimilated or integrated into Norwegian language, culture, and social structures. The aim of these policies was to replace Sami cultural identity with the one of the dominant countries. Assimilation policies were therefore promoted as a

form of social improvement, intended to elevate the Sami population to what was perceived as a higher cultural level.

As previously noted, the prolonged and systematic stigmatization of Sami people and their culture played a significant role in shaping the attitudes and stereotypes that developed within Norwegian society. Within this discourse, the Sami language became to be regarded as one of the most visible expressions of belonging to what was perceived as an inferior and outdated culture. For this reason, the use of Norwegian as a means of communication was associated with modernity and social advancement. In this way, speaking Norwegian functioned as a symbolic gateway to participate in the broader economic and social life, while the prolonged use of Sami language was interpreted as evidence of a person's inability to adapt to progress. As a result, Sami language and culture were increasingly confined to the private sphere and hidden from the public context. Over time this pressure led many parents to doubt the value of transmitting the Sami to their children.

The assimilation policies aimed to integrate the Sami population into the dominant Norwegian majority, producing long term consequences for identity and self-perception within Sami communities. In practice these policies contributed to a gradual form of ethnic cleansing that resulted in many Sami people to deny or renounce their ethnic origin as many considered being Sami within the Norwegian national state to be a burden too great to bear.³⁷

At the same time, reindeer husbandry has traditionally served as a sustainable economic foundation for a significant part of the Sami population. Since the 1880s, reindeer herding has been exclusively an ethnic industry, reserved for Sami population within the regulated reindeer husbandry areas. Although economic status among Sami is more differentiated today, the reindeer industry is still an important and vital identity factor for the community.

Beyond its economic importance, reindeer husbandry also has a strong symbolic meaning in the Norwegian majority community. The

³⁷ Hermanstrand, H. et al. (2019) *The Indigenous Identity of the South Saami. Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, pp. 21-23

association of Sami livelihoods with traditional forms of nature-based subsistence has often contributed to stereotypes that portray Sami culture as old-fashioned and uncivilized. The Sami have consistently been referred to as nature people who, in the eyes of some individuals, are seen as an anachronism in a late modern world. The paradox here is that the very thing that has historically contributed to marginalizing and stigmatizing Sami culture served as a source of cultural identity that has strengthened ethnolinguistic vitality within Sami communities. Economic specialization has proven to be an important focus of identity for many minority groups. In such contexts, the activity not only provides an important source of income but also carries a kind of representative function for the minority in question, that serves as a social and cultural symbol. From this perspective, reindeer husbandry can be understood as a distinctive Sami occupational specialization that can function as a cultural shield.

More broadly, Sami communities in both Sweden and Norway have been heavily pressured to assimilate with the Swedish and Norwegian majority populations. This has not only contributed to a loss of ethnic identity, language competency, culture and religion, but also to socio-economic disadvantages, discrimination and prejudice. At the same time, a positive sense of identity among the members of an indigenous population is linked to knowledge and transmission of the indigenous culture. Efforts in the revitalization of indigenous cultures and languages are therefore closely connected to the quality of life and is a driving force in the maintenance of a strong and vital indigenous culture.

A crucial element of the Sami identity is the shared experience of colonization and discrimination by the nation states that have set up their borders across Sápmi since medieval times. Language, identity, history and culture are in this respect intertwined with the ways in which the Sami community has been represented in the majority society.

In the aftermath of World War II, the conditions were set for fundamental changes in the management, negotiation and development of Sami identity. During the war large part of Sami land in Norway had

been destroyed and the country entered a period of reconstruction characterized by a strong ideology of unification. At the same time, the Sami ethnopolitical movements grew stronger as the assimilation policy was gradually abandoned.

In the North Sami areas of Norway, identity negotiations evolved through several phases. During the 1950s, the central question was the choice between being Sami or Norwegian. The following decades the debate shifted into how to shape and reshape Sami culture in a changing social context. As the Sami ethnopolitical movements grew and began to claim rights, the relations between state power and collective identity in a Sami Norwegian government context gradually changed. This transformation introduced new forms of Sami self-determination, including the ability of Sami communities to define and negotiate their own cultural and political identity.

In the southern Sami region however, the situation was different with a more powerful pressure of Norwegianization, and the processes of linguistic and cultural assimilation that began earlier. The Sami coastal culture based on fishing and farming, has already been absorbed by the majority population by the second half of the nineteenth century. As a result, reindeer herding livelihood became an even more important factor in defining the Sami culture and identity. In many contexts it has influenced the perception of who is an authentic Sami or not.

While assimilation policies in Norway shaped the development and negotiation of Sami identity in particular ways, the situation evolved differently in Sweden. Swedish policies toward the Sami were characterized by a distinct approach that divided the Saami population in two categories. Settled Sami were expected to be assimilated into the majority, whereas nomadic reindeer herders were to be conserved and protected from the Swedish majority society and influences of modernity. This policy had long term consequences since the territorial rights of today depend on whether an individuals' Sami ancestors were reindeer herders or not. This framework has contributed to more pronounced differences between Sami who were affiliated with reindeer-herding communities and those who are not. Consequently,

internal divisions within Sámi society are more severe in Sweden than in Norway.³⁸

The different assimilation strategies implemented in Norway and Sweden had profound consequences not only for legal rights and collective identity, but also for the everyday experiences of Sami individuals and families across generations. These policies shaped language use, education, and the transmission of cultural knowledge within Sami communities.

Older generations of Sami have experienced the assimilation policies directly and grew up with a stigma attached to their Sami identity. Most of them went to assimilation boarding schools where speaking Sami was prohibited, and some of them did not know Norwegian or Swedish when they started school, making the educational experience particularly difficult. While adults often continued to speak Sami among themselves, children were frequently excluded from these conversations. Looking back, many of them strongly regret their choice of not passing the language onto their children, and question whether they actually made a choice. The pressure from the assimilation policies were immense that left traumas.

Despite these pressures, Sami political and cultural activism began to emerge, and a significant milestone was achieved with the Sami congress held in Trondheim, Norway in 1917. This meeting is regarded as one of the most important events in the history of the Sami ethno-political movement. For the first time, Sami people from Norway and Sweden gathered to discuss common issues and to claim rights as a united people. One of the topics of discussion was to establish a separate Sami school where Sami children could receive instruction both in Sami and about Sami culture.

Although the ethno-political movement lost momentum in the years that followed, the ideas articulated at the Congress did not disappear entirely. A language and culture shift took place, some people resisted to dominant assimilation policies and kept on speaking Sami, including

³⁸ Hermanstrand, H. et al. (2019) *The Indigenous Identity of the South Saami. Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, pp. 33- 34

with their children. Notwithstanding, the majority of younger Sami did not learn the language, and this caused a big cultural and linguistic loss for younger generations. For many of them the inability to speak Sami represents a struggle due to fear of making mistakes or being judged for speaking incorrectly. Rather than risking embarrassment, many young Sami end up speaking a third variety that consist of a local Norwegian or Swedish dialect with certain Sami words embedded in it.

Questions of identity are further complicated for individuals with mixed Sami and non-Sami family backgrounds. Some of these people have experienced a double stigma: in majority Norwegian and Swedish society they may be perceived as too much Sami, and in Sami contexts they may be regarded as not enough Sami. Within some communities, identity is evaluated in the blood percentage system, which reinforced feelings of exclusion among those with partial Sami heritage. The young half-Sami have a strong barrier against speaking Sami as saying something incorrectly can reveal an incomplete Sami identity. However, perceptions of identity appear to be evolving and many individuals who were described as having a ‘double-half-identity’ or a ‘neither-nor-identity’ started to embrace having a ‘both-and-identity’.³⁹

These differences in the experience of language loss and identity negotiation have contributed to the emergence of internal distinction within the Sami community. Some individuals are called core Sami, typically they grew up in a reindeer herding family, they learned Sami as a mother tongue and both their parents are Sami. This group is perceived as at the top of the Sami hierarchy and possesses greater authority in defining Sami traditions and identity. Between them there is a strong commitment to raise children using Sami. This aspiration is to become reverse shifter or new fluent speakers to revitalize their language. Echoing the experience of their ancestors, they seek for this generation to not face the same struggles and avoid loss of language and difficult identity negotiations. Their goal is to empower the next generation with bilingualism and a strong complete Sami identity. This

³⁹ Hermanstrand, H. et al. (2019) *The Indigenous Identity of the South Saami. Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, pp. 35- 38

perspective reflects a strong sense of cultural continuity as they view the efforts to transmit the language as a contribution to the survival of Sami culture. They aspire to pass the language onto their children in a stronger position than when they inherited it.

Notwithstanding, not all individuals relate to language in the same way. Some members of the Sami community acknowledge the cultural importance of the language but do not consider it as central to their own identity and therefore, they do not attempt to speak Sami. Although they maintain a strong Sami identity, they choose to express themselves through other markers.

The different experiences of assimilation and language shift, resilience and revitalization created a community characterized by widely varying ethnic and linguistic resources. Social actors behave and justify their actions, choices and ideologies as responses to the environment and historic circumstances in which they developed. For many, the engagement with Sami language and culture is motivated by a desire to readdress historical injustices and to restore what earlier generations were often prevented from maintaining. For this reason, the standardization and institutionalization of the language by founding the schools created a new form of linguistic authority. The institutionalization of the language and culture has created new employment opportunities in fields where formal knowledge of the language is required. This development has also created opportunities for younger generations of new speakers, since in many cases, there are not enough fully qualified speakers to fill all available positions, allowing individuals who are still developing their language proficiency to work in Sámi-language environments. Through such experiences, they gradually acquire greater confidence and authority within the linguistic sphere. The efforts to speak Sami fluently are linked to gain authenticity and legitimacy as a Sami. For many individuals mastering the language can be described as strengthening their identity and gaining recognition as legitimate speakers within the community.⁴⁰

⁴⁰ Hermanstrand, H. et al. (2019) *The Indigenous Identity of the South Saami. Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, pp. 39-45

These dynamics illustrate how language revitalization is not only a linguistic process, but also a social negotiation in which questions of identity, legitimacy, and cultural continuity are constantly redefined.

2 The International Legal Regime on Indigenous People's Rights

2.1 Right to Land

The indigenous peoples' special relationship to their lands and environment described above has been internationally recognized for decades now. The UN Special Rapporteur José Martínez Cobo is often referred to as the first one to bring it into the international stage. He emphasized that the relationship forms the base for the existence of the indigenous peoples and that for them, land is not merely a commodity as it is often seen by the non-indigenous peoples.

Nearly two decades later, another UN Special Rapporteur Erica-Irene A. Daes reinforced this perspective, highlighting that land is of vital importance for the indigenous peoples and their survival in the present and future:

“Indigenous peoples have emphasized the fundamental nature of their relationship to their homelands. They have done so in the context of the urgent need for understanding by non-indigenous societies of the spiritual, social, cultural, economic and political significance to indigenous societies of their lands, territories and resources for their continued survival and vitality. In order to understand the profound relationship that indigenous peoples have with their lands, territories and resources, there is a need for recognition of the cultural differences that exist between them and non-indigenous people, particularly in the countries in which they live. Indigenous peoples have urged the world community to attach positive value to this distinct relationship.”¹

¹ A. Daes, E.I. (2001) *Indigenous peoples and their relationship to land*, E/CN.4/Sub.2/2001/21, United Nations: UN Sub-Commission on the Promotion and Protection of Human Rights, Economic and Social Council, p.7

She further noted that it is difficult to separate indigenous peoples' relationship with their lands, territories and resources from their cultural differences and values. The relationship with the land and all living things is at the core of indigenous societies.

Together, these perspectives justify the holistic view of land where it is not simply a physical resource, but an interconnected system encompassing cultural, spiritual, environmental, and economic dimensions. This aligns closely with the Sami worldview, in which land is understood as an all-encompassing entity where human life, nature, and language are inseparably linked.

This understanding has also been reflected in international discussions on indigenous rights. In the context of debates on territorial rights within the Working Group on Indigenous Populations, it was stated that "indigenous peoples have emphasized that the spiritual and material foundations of their cultural identities are sustained by their unique relationships to their traditional territories".²

Scholars have further elaborated this distinctive relationship. Professor James Sakej Henderson illustrates this conceptual framework by explaining that the indigenous vision of property is not a mere economic or ideological construct, but rather an ecological space that creates human consciousness. In his view different realms are understood as intertwined into a sacred space that is fundamental to their identity, personality and humanity. The notion of self extends beyond the physical body and continues through one's relationship with the land. Such relationship is reflected in the elements of indigenous peoples' cultures, such as language.³

For this reason, the importance of land rights for the Sami, as for all indigenous peoples, becomes particularly evident. The central role of land is especially clear in the Sami context, where it constitutes the foundations of their culture and it is responsible for its long-standing

² Williams, R. A. (1990) Encounters on the frontiers of international human rights law: redefining the terms of indigenous peoples' survival in the world, *Duke Law Journal*, p. 981

³ Henderson, J. S. (1995) Mikmaq tenure in Atlantic Canada, *Dalhousie Law Journal*, Vol. 18, No. 2, p. 196

survival. These rights are commonly referred to as territorial rights and are therefore essentials for maintaining Sami identity, cultural continuity and traditional ways of life.⁴ This strong connection is further reflected in the fact that the Sami have occupied their territories since pre-colonial times, continue to do so today, and will continue to occupy them in the future by transmitting them to future generations. Consequently, it is not surprising that territorial rights have been at the centre of the Sami's struggle for greater recognition in both legislation and jurisprudence.

2.1.1 Sami's Struggle for Recognition of Territorial Rights

The Sami's struggle for the recognition of their territorial rights is closely connected to a specific dominant Western concept of property. In particular, the theory developed by John Locke has had a lasting influence on how land ownership has been conceptualized in legal and political thought. According to Locke's labor theory, the resources of the earth originally belong to humankind in common. However, private property arises when an individual mixes their labour with nature, thereby removing resources from the common state and establishing exclusive rights over them. This framework was extended to land, under the assumption that land must be used for agriculture in order to generate ownership rights. However, Locke's theory has been used to declare that those principles could not be applied to nomadic peoples "only a sedentary way of life of agriculturalists associated with a civilized society was supposed to give rise to full ownership rights." In this sense, indigenous lands have been declared to be *terra nullius*⁵, which the government was able to appropriate as "ownerless lands".⁶

⁴ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, p. 35

⁵ Terra nullius means 'nobody's land' or 'land belonging to nobody' therefore a land that had not yet been occupied by Christians. Such vacant lands could be defined as "discovered" and as a result sovereignty, title and jurisdiction could be claimed. In doing so the Doctrine of Discover invalidated the sovereignty of Indigenous nations and gave Christians the right to subjugate and confiscate the lands of Indigenous Peoples.

⁶ Locke, J. (2012) *The Second Treatise of Government, Über die Regierung*, Ditzingen: Reclam, p. 48

The limitations of Locke's conception of property become particularly clear in the context of indigenous peoples. Along with many other indigenous populations, the Sami have long struggled to have their territorial rights recognized, and above all, their ownership rights.

Throughout most of the 1900s, the Nordic States operated under the assumption that the Sami semi-nomadic and wide-ranging use of land did not satisfy the criteria required to establish rights to land and natural resources. Instead, Sami territorial rights were largely recognized only as usufruct rights. Rooted in a property paradigm that privileged sedentary and agricultural land use, this approach effectively excluded Sami forms of land use from legal recognition.

Over time, the Nordic States gradually developed some protections for Sami lands rights recognizing Sami usufruct rights to land, most notably in relations to reindeer herding. In practice however, these rights often yield to competing interests. Although the law recognizes in principle that Sami land use can result in ownership rights to lands, it has been difficult for the Sami people to realize such rights in practice.⁷

It was only in the period following the Second World War that cases concerning Sami rights began to emerge more systematically. Within this context the articulation and recognition of Sami rights to land and natural resources came to rely on older legal doctrines that recognize rights based on long-standing use rather than cultivation, namely immemorial usage in Norway and immemorial prescription in Sweden and Finland. These doctrines are generally considered as equivalent, although some significant differences remain.⁸

Both immemorial usage and immemorial prescription are governed by a set of conditions. Apart from long-term use of a certain area, as a general condition the land use must have been sufficiently intensive, continuous and exclusive in order to succeed into a right. These requirements are similar for both doctrines. At the same time, a

⁷ Anaya, J. (2011) *The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, A/HRC/18/XX/Add.Y, UN Human Rights Council, p. 13

⁸ Allard, C. (2011) The Nordic countries' law on Sámi territorial rights, *Arctic Review on Law and Politics*, Vol. 2, No. 2, p. 166

common and essential thread is that the two doctrines were developed for more stationary land uses, reflecting the needs of a farming society.

Immemorial usage is an old proprietary doctrine that allows for the establishment of ownership or lesser rights based on prolonged use over time. While it shares certain similarities with immemorial prescription, it remains distinct and is often contrasted against prescription that is especially relevant in Sweden and Finland. Unlike Sweden and Finland where its role has diminished, immemorial usage has maintained a strong position in Norwegian law and because of the doctrine's flexibility and relative content, it has proved itself as a vigorous and practical part of Norwegian property law.

Rights established by immemorial usage arise from a pattern of use over a long period of time that has occurred in good faith. The immemorial usage doctrine has been used as a subsidiary claim especially when the stricter rules on prescription failed, typically when the land use had not been sufficiently comprehensive and continuous. Notably, a fixed timeframe for immemorial usage has not been set authoritatively, however the required period must exceed the 20 years benchmark associated with prescription. As the term itself indicates, the use must be immemorial, meaning that is of considerable antiquity. Literature and case law suggest that the time span varies from some 50 years to 150 years.

A further distinction concerns the land use. Unlike prescription, immemorial usage does not impose a strict requirement of visibly manifested land use, such as through cultivation or the construction of permanent structures as proof of a particular on-going land usage. Nevertheless, the land use must be of such nature that it would alert the rightful owner to the need to intervene. The intensity requirement is more lenient reflecting the longer temporal horizon of the doctrine. At the same time the use must also have been sufficiently continuous, which functions as a supplementary condition to the intensity criterion. In this regard the difference in timeframe between prescription and immemorial usage becomes relevant. Under the rule of prescription, interruptions exceeding two years mean that the prescription is broken. By contrast, in immemorial usage the time period for allowed interruptions in land use is flexible. Discontinuity in the use of land due

to natural causes, such as seasonal fluctuation, weather conditions, logging in an area, etc., is generally accepted. Personal causes may also be accepted where relevant, for instance illness temporarily prevents continued use. However, as a general rule, where land use has been less intensive, only minor interruptions can be tolerated.

Lastly, we have the requirement condition of good faith. This condition is mainly understood as reflecting the public's sense of justice: a particular use of land should not continue when it is known to be unlawful. Although this condition applies equally for both immemorial usage and prescription, it was not historically part of the rules. In practice the good faith criterion may prove somewhat illusory, particularly in cases where information about the actual use and what past users knew or ought to have known is scarce or absent. It has been argued that in such cases more emphasis should be put on evidence demonstrating the actual and continuous land use from the earliest time.

In the case of collective land use, the threshold for establishing good faith is lower than for prescription. The absence of good faith on the part of individual users does not necessarily undermine the claim as a whole. Accordingly, the requirements for establishing rights based on immemorial usage are in several aspects more lenient than those for prescription, notwithstanding the similarities between the two doctrines. However, there are a few aspects that are distinct to immemorial usage. The court has therefore a large margin of appreciation. For instance, less intense land usage may be compensated by a longer period of use, and vice versa. This cannot be seen in relation to the Norwegian rules on prescription. In addition, a court may consider other factors, such as the degree of inconvenience for the property owner or the necessity of the use is for the ones claiming the immemorial usage doctrine. Furthermore, because immemorial usage is an unwritten doctrine, it is easier to adapt to given circumstances. It is flexible and the structure allows for adjustments to be made in light of the specific circumstances of each.⁹

⁹ Allard, C. (2011) The Nordic countries' law on Sámi territorial rights, *Arctic Review on Law and Politics*, Vol. 2, N.2, p. 159–183

This distinction is particularly significant in the Sami context. Traditional Sami livelihoods, such as reindeer herding, are characterized by seasonal movement and extensive use of large areas, rather than intensive or permanent forms of cultivation. Under a strictly Lockean framework, such patterns of land use would not easily give rise to ownership rights. By contrast, the Norwegian doctrine of immemorial usage, with its flexible and holistic assessment of long-term use, provides a legal framework for recognizing these practices as capable of establishing rights.

2.2 Developments within the Modern Era of Human Rights

The development of international law has had long implications for the status and rights of indigenous people in territories affected by colonization. Shaped by western perspectives and political power, international law developed a complicity with the often brutal forces that dispossessed lands from indigenous peoples, suppressed their cultures and institutions, and contributed to their marginalization. However, significant structural and normative shifts have taken place over time, creating space for a gradual reorientation of international law toward greater recognition of indigenous rights.

This evolution is closely tied to broader changes in the global distribution of political power. While international law remains substantially state-centred and continues to emphasise sovereignty, on the other hand, the community of states has extended far beyond the Eurocentric foundations, acquiring a more universal character. In addition to achieving greater inclusiveness and an enhanced universalist posture in terms of states, international law increasingly incorporated the influence of nonstate actors, including individuals, international organizations, transnational corporations, labor unions, and other nongovernmental organizations. In turn, these actors now play a role in shaping legal norms and have been made subjects of international norms. This development reflects a partial revival of natural law, in which law was determined not only by existing state practice but also by normative ideals concerning justice and human dignity. As a result, international law has expanded over spheres previously reserved to the asserted sovereign prerogatives of states.¹⁰

The concern for peoples or populations identified as indigenous within the international legal system has arisen as part of a broader response to the injustices of colonization and its enduring legacies. By the mid-twentieth century, the political theory that supported colonialism by European powers had long been discredited and had faded. Despite the divergence, the international community viewed colonialism negatively

¹⁰ Anaya, S. J. (2004) *Indigenous Peoples in International Law*, Oxford: Oxford University Press, pp. 49-52

for depriving people of self-government in favour of an administration that was ultimately controlled by the peoples of the colonizing states for their own benefit.

While this framework reaffirmed core principles of state sovereignty, it simultaneously promotes equal rights and self-determination of peoples, respect for human rights and for fundamental freedoms for all without distinction.

In the aftermath of the Second World War, the United Nations and other international organizations emerged reflecting the changing character of international law. The United Nations Charter which incorporated human rights principles among its foundational elements symbolized the quest for international peace, human rights, equality, freedom, security, and economic and social progress.¹¹ Decolonization became a central objective, with international law promoting the transition from colonial rule to self-government. However, the implementation of the Charter-based decolonization regime did not involve a restoration of pre-colonial political or social structures. It instead led to the creation of a new institutional order, viewed as appropriate to the exercise of modern statehood. This approach was reinforced by UN resolutions which prioritised the norm of independent statehood for colonial territories, that became known as the "blue water thesis" which precluded indigenous populations from decolonization procedures within the external boundaries of independent states.

While colonial territories gained independence, indigenous peoples within those states remained largely outside the focus of international concern. Some attempts were put in place to address the situation but were limited in scope and dependent on state consent. A measure of international concern did eventually take hold, within the human rights frame and parallel to the decolonization movement, toward members of groups identified as indigenous and living within independent states. The major embodiment of the mid-twentieth-century deployment of the international human rights program in the specific context of

¹¹ United Nations, (1945) *Charter of the United Nations*, art. 1

indigenous populations is International Labour Organization (ILO) Convention No. 107 of 1957.

Nevertheless, the international approach that promoted the emancipation of colonial territories simultaneously advanced the assimilation of members of indigenous groups into the dominant political and social orders that incorporated them. Within this framework, indigenous people were primarily seen as individuals in the need of protection and integration into the dominant society, rather than as distinct groups entitled to preserve their cultural, social, and political identities. To the extent that cultural diversity was valued by the international community, it was largely the diversity existing among the different states and colonial territories, then the diversity within them. Although the ILO Convention No. 107 recognizes indigenous customary laws and the right of collective land ownership, such recognition is framed as transitional, hence it is subordinated to the preference for national programs of integration and noncoercive assimilation.¹²

As indigenous peoples increasingly became part of the international legal framework, they also emerged as active participants in multilateral processes rather than remaining mere objects of legal discourse. Through the formation of indigenous movements, they began to articulate demands centred on their survival as distinct communities, with their own culture, political institutions, and right to land. In doing so they advanced a self-defined vision that departed significantly from the one previously imposed by dominant actors, thereby shaping the contemporary international approach to indigenous issues.

During the 1970s indigenous peoples extended their efforts internationally through a series of international conferences and direct engagement with intergovernmental institutions. These efforts turned into a campaign aimed at increasing the scholarly and juridical support that helped legitimise indigenous peoples' claims within influential intellectual and elite circles. A key milestone in this process was the

¹² Anaya, S. J. (2004) *Indigenous Peoples in International Law*, Oxford: Oxford University Press, pp. 53-55

1977 Geneva conference on Discrimination against Indigenous Populations, which fostered transnational coordination and contributed to the emergence of a shared Indigenous identity across regions.

In the years that followed, indigenous peoples' representatives engaged with increasing frequency in the work of UN human rights bodies framing their demands in terms of universally recognized human rights principles. This growing participation was facilitated by improved access to international forums, including consultative status within UN structures. The growing international concern over indigenous peoples generated in the designation of 1993 as The International Year of the World's Indigenous People, followed by the proclaiming of an International Decade on the same theme.

One of the most important developments arising from this period was the establishment of a Permanent Forum on Indigenous Issues within the UN Economic and Social Council, which met for the first time in May 2002. This increased visibility for indigenous peoples contributed to a rearticulation of general human rights principles and their implications in this context, laying the foundation for an emerging body of international law specifically concerned with indigenous rights.¹³

2.3 The ILO in a changing world

The contemporary discussion about the rights of indigenous peoples in international law is based on the ILO's work on this issue. The ILO has adopted the only two international conventions dealing with indigenous and tribal peoples: Convention No. 107 (1957) and Convention No. 169 (1989). These norms reflect two conflicting paradigms in the approach to indigenous policies during the last century: the first is based on the principle of assimilation, while Convention No. 169 presents a human rights-based approach to indigenous policies from the standpoint of multiculturalism. These instruments have provided guidance on what needs to be done to allow groups who are either outside or at the margins of national societies and economies to survive when faced with

¹³ Anaya, S. J. (2004) *Indigenous Peoples in International Law*, Oxford: Oxford University Press, pp.56-58

other economic and social models. In addition, both conventions deal with the fact that when these groups do enter the workforce, they are almost always at the bottom of the scale, and uniquely vulnerable to abuses that are tied closely to their social situation.¹⁴

The ILO Conventions accelerated the discussions of indigenous peoples' rights. Although the organization has primarily worked on labour-related issues, it has gradually become a staple within the international field of indigenous peoples. The ILO, founded in 1919 in the aftermath of World War I, emerged from the recognition that "universal and lasting peace can be established only if it is based on social justice".¹⁵ Its foundation represented the culmination of centuries of global developments on work conditions, socio-economic rights, and the establishment of labour standards.

Even though the ILO is fundamentally an organisation aimed to regulate, monitor, and provide information on labour, work, and social justice, it is currently the only international institution that has adopted a legally binding instrument specifically addressing the rights of indigenous peoples. This instrument goes beyond the narrow focus on labour matters, engaging with broader humanitarian themes. Initially the peculiarity of ILO was once taken for granted, but during the past couple of decades the complex history behind the ILO's current involvement has been explored more.¹⁶ By understanding the history, we can deepen our knowledge on the significance of the Convention No. 107 and the Convention No. 169 today.

¹⁴ Rodgers, G. et al. (2009) *The International Labour Organization and the Quest for Social Justice, 1919-2009*. Geneva: International Labour Office, pp.85-86

¹⁵ Maul, D. R. (2007) The International Labour Organization and the Struggle against Forced Labour from 1919 to the Present, *Labor History*, Vol. 48, N.4, pp.477-500

¹⁶ Rodríguez-Piñero, L. (2005) *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime, 1919-1989*, Oxford: Oxford University Press, pp. 4-10

2.3.1 ILO Convention No. 107

As mentioned above, the first Constitution of the International Labour Organization was drafted in 1919 and formed part of the Treaty of Versailles. This was the first attempt to establish a universal organization to address the social and economic challenges of the early twentieth century.¹⁷

While European states demonstrated a clear commitment to developing international labour standards and monitoring working conditions within industrialized contexts, these efforts did not extend equally to colonial territories. The so-called ‘colonial clause’ allowed states to exempt their colonies from the application of the international labour standards, with the result that ILO’s instruments only managed to improve the conditions of the Western industrial workers, while neglecting those of colonial workers.¹⁸

After World War II, the ILO entered a new phase as it became affiliated with the UN. This period is often described as the organization’s “second founding” as there were introduced new principles such as equal rights, self-determination, and general respect for human rights into international discourse.¹⁹ In line with this shift, the ILO expanded its agenda particularly through the involvement in the Americas with the Indigenous Labour Programme. During the 1950s, one of the main accomplishments of the programme was the internationalization of the topic of indigenous peoples. At the time it was commonly agreed that the “indigenous problem” was caused by underdevelopment. Within this framework the Convention No. 107 of 1957 was created as a guiding instrument through which states could implement development policies aimed at fostering development and integrating indigenous population into the dominant society.²⁰ At the time this approach was

¹⁷ Rodgers, G. et al. (2009) *The International Labour Organization and the Quest for Social Justice, 1919-2009*. Geneva: International Labour Office, p. 6

¹⁸ Maul, D. R. (2007) The International Labour Organization and the Struggle against Forced Labour from 1919 to the Present, *Labor History*, Vol. 48, N.4, pp. 73-84

¹⁹ Rodríguez-Piñero, L. (2005) *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime, 1919-1989*, Oxford: Oxford University Press, p. 36

²⁰ *Ibid*, pp.87-126

seen as progressive and even as the most effective means to combat the problems encountered by the indigenous peoples. Thus, alongside protection, integration was set as an objective for both Convention No. 107 and its recommendation, shaping their provisions in a profound way. As a result, the integrative approach often translated into acculturational policies that ended up promoting assimilation. Even the protection dimension was in the end a subordinate of integration, less concerned on protecting the rights of the indigenous peoples and more on facilitating their incorporation. Notwithstanding, certain aspects of the Convention No. 107 have been credited as progressive.²¹

After an initial period of enthusiasm, both ILO and its member states gradually lost interest in indigenous issues, until the 1970s when indigenous peoples began to mobilize and organize themselves at the international level, bringing new attention to the existing legal frameworks. In this context the Convention No.107 regained visibility although it was accompanied by growing amounts of criticism.²² The Convention was regarded as outdated and inadequate to deal with the rights of indigenous peoples, and a revision process seemed to be the most appropriate solution.

2.3.2 ILO Convention No. 169 of 1989

Building on an existing convention, allowed ILO to rely on an established foundation, preserving the natural competence and legitimacy, while avoiding the long and complicated process of drafting a completely new instrument. The revision process ultimately led to the adoption of the ILO Convention No. 169 in 1989. Various notable indigenous organizations began to express their support for the Convention and its ratification despite their initial reactions towards it. While the Convention No. 169 follows a similar structure to its predecessor, it introduces significant changes such as the elimination of the integrationist approach. Moreover, the Convention No. 107's dual

²¹ Rodgers, G. et al. (2009) *The International Labour Organization and the Quest for Social Justice, 1919-2009*. Geneva: International Labour Office, p. 45

²² *Ibid*, pp.87-88

objective “protect and integrate” evolved into respect for the indigenous peoples.

The adoption of ILO Convention No. 169 of 1989 marked the foundation of a new generation of international law. The Convention No. 169, as mentioned above, is a revision of the preceding ILO Convention No. 107 of 1957, and it distances itself from the outdated philosophy of integration and assimilation policies. With indigenous peoples increasingly taking charge of the international human rights agenda as it concerned them, Convention No. 107 of 1957 came to be regarded as anachronistic.

The international society realises that the previous policies were destructive for non-dominant groups, as it is said in the Preamble of the ILO Convention No. 169:

“[...] considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.”²³

The basic theme of Convention No. 169 is indicated, as previously noted, by the convention's preamble, which recognizes "the aspirations of [indigenous] peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop

²³ Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, (1989) International Labour Conference (entered into force September 5, 1991)

their identities, languages and religions, within the framework of the States in which they live." Upon this premise, the convention includes provisions advancing indigenous cultural integrity, land and resource rights, and non-discrimination in social welfare spheres, and it generally enjoins states to respect indigenous peoples' aspirations in all decisions affecting them. Upon adoption of Convention No. 169 by the International Labour Conference in 1989, several advocates of indigenous peoples' rights expressed dissatisfaction with language in Convention No. 169, viewing it as not sufficiently constraining government conduct in relation to indigenous peoples' concerns.²⁴

Within the modern discourse, the Convention No. 169 itself is usually presented in a positive light. It reflects the modern interest of safeguarding the future of the indigenous peoples and validates the value of indigenous cultures and communities. At the very least, it establishes a base standard on the minimum level of protection, and it has had both a direct and an indirect effect on the development of indigenous rights and international discourse. Notably it represents the first international instrument to abandon the previous norm of integrating the indigenous peoples into the dominant population which had been widely perceived as inevitable at the time of the drafting of Convention No. 107. Although the Convention continues to face criticism, such critiques are directed less at its concrete provisions and more towards the implementation, its limited ratifications, and the restricted participatory rights of the indigenous peoples within the ILO framework.²⁵

Convention No. 169 has played a central role in advancing the international discourse on the land rights of the indigenous peoples. The entire Part II of the Convention No. 169, containing Articles 13 to 19, is entirely dedicated to this issue and recognizes the special relationship that the indigenous peoples have with their lands.²⁶ The provisions

²⁴ Anaya, S. J. (2004) *Indigenous Peoples in International Law*, Oxford: Oxford University Press, pp.58-59

²⁵ Anaya, S. J. (1991) Indigenous Rights Norms in Contemporary International Law, *Arizona Journal of International and Comparative Law* Vol. 8, No. 2, pp. 8-38

²⁶ Daes, E.I.A. (2001) *Indigenous Peoples and Their Relationship to Land*, E/CN.4/Sub.2/2001/21, p.8

include both individual and collective aspects and are widely considered to be some of the most central provisions of the Convention. However, land rights were also one of the most contentious issues during the drafting due to their complex and vital nature. As land rights are a subject that often intersect with the economic interest of governments and private actors, making them the most legally and politically sensitive areas of national legislation.²⁷

Due to their sensitive nature, they are currently among the main reasons behind for example Finland and Sweden not yet ratifying the Convention No. 169.²⁸

Despite the challenges and concerns that overly ambitious land right provisions could be detrimental for future ratifications, the ILO and its constituents strived to exceed the land right provisions beyond that of the Convention No. 107. During the revision process, controversy emerged especially around the usage of the term “territories” instead of “lands”. The indigenous representatives supported by the workers advocated for the use of the term “territories” as they felt that the term “lands” was too restrictive for the holistic relationship the indigenous peoples have with their environment. As a compromise, the term “territories” was included into the Convention with a definition that it “covers the total environment of the areas which the peoples concerned occupy or otherwise use”. Its inclusion opened a significant new framework, as the term had been used in the Convention No. 107 only in the context of relocating the indigenous peoples.²⁹

Within this framework, there is one provision that stands out from the others as it calls for indigenous peoples to be treated equally to non-

²⁷ Sweptson, L. (1990) A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989, *Oklahoma City University Law Review*, Vol. 15, No. 3, pp. 677–714

²⁸ Semb, A. J. (2012) Why (Not) Commit, *Nordic Journal of Human Rights*, Vol. 30, No. 2, pp- 122–47

²⁹ Rodríguez-Piñero, L. (2005) *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime, 1919-1989*, p. 325

indigenous peoples, whereas the other provisions call for a special treatment.³⁰

In practice the effective implementation of Convention No. 169's land provisions rely heavily on the concept of consultation. This mechanism is essential as it enables indigenous peoples to participate in the decisions that concern them and their lands.³¹ Even though the Convention does not require indigenous consent, the governments need to make sure that the consultation is meaningful and allows the indigenous peoples to make a real contribution.

The effective protection of the indigenous peoples' land rights depends not only on the existence of a legal framework, which can be adopted through a ratification of the Convention in question, but even more importantly on the practical application, therefore, to put that legislation in practice. In this regard, the ILO's supervisory cases on the implementation of the Convention No. 169 reveal an abundance of insufficient consultation measures. These gaps highlight the importance of the international human rights community's involvement which play a fundamental role in supervising states to make them accountable and ensuring compliance with the protectional measures they have committed to.³²

Additionally, indigenous land rights have increased their presence in academic literature. While the issue received relatively limited attention at the time Convention No. 169 was drafted, interest grew significantly during the 1990s and has continued to expand well into the 21st century. Today it represents one of the most dynamic and extensively examined areas within the field.³³

³⁰ Swepston, L. (1990) A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989, *Oklahoma City University Law Review*, Vol. 15, No. 3, p. 710

³¹ Drange, L. D. (2021) Indigenous Peoples and Rights to Land and Water in 2019: How Do Countries That Have Ratified the ILO-Convention 169 Comply?, *Journal of Human Development and Capabilities* Vol. 22, No. 4, p.583

³² *Ibid*, p.578

³³ Ojong, N. (2020) Indigenous Land Rights: Where Are We Today and Where Should the Research Go in the Future?, *Settler Colonial Studies*, Vol. 10, No. 2, pp. 202-204

2.3.3 Limitations of Convention No. 169

The importance of Convention No. 169 and its international influence are widely acknowledged, notwithstanding the Convention has still been subject to significant criticism, particularly regarding its limitations. One of the most notable concerns regards the scarce participation of indigenous peoples within the ILO framework. This weakness is rooted in the organization's historical work, which was often characterized by an integrationist mindset towards indigenous communities and their rights. This issue persisted even during the drafting of Convention No. 169, leading to be described as the Convention's original sin.³⁴

Consultation and participation constitute the core principles of Convention No. 169 however, the restricted participation of indigenous peoples in its drafting process raises questions about the legitimacy of the instrument. Moreover, this participatory deficit is not confined to the drafting process but continues to affect the present-day functioning of the ILO. As a tripartite organization, the ILO does not provide indigenous peoples with direct access to its decision-making processes, placing it at a disadvantage compared to other international bodies that allow more inclusive forms of engagement.³⁵

A further set of criticisms concerns the terminological ambiguities incorporated in its provisions. Although the Convention adopts the term peoples rather than populations, marking a departure from Convention No. 107, it simultaneously introduces limitations to the term and separates it from the specific right to self-determination as recognized in broader international law.³⁶ Additionally, while the Convention incorporates the principle of consultation, it requires explicit consent only in cases of relocation, and the broader notion of territories is applied inconsistently across its provisions. These negotiations combined with dissatisfaction coming from the limited participation of

³⁴ Rodríguez-Piñero, L. (2005) *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime, 1919-1989*, pp.300-311

³⁵ *Ibid*, p. 314

³⁶ Malezer, L. (2020) Perspective on the Convention 169: Its Significance to Aboriginal Peoples, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, p. 297

indigenous representatives during its drafting, initially provoked strong opposition. Indigenous organizations responded by issuing a resolution rejecting the Convention and calling on states not to ratify it.³⁷

Another limitation of Convention No. 169 is its relatively low rate of ratification, indeed by March 2023, only 24 states had ratified the Convention.³⁸ This asymmetrical adoption raises questions about the Convention's universality and restricts drastically its global reach. As a result of the scarce ratifications, the majority of indigenous peoples are left outside its influence. Indeed, the ILO in 2019 estimated that only around 15% of the world's indigenous population lives in countries where the Convention is in force, thereby constraining its overall impact.³⁹

The lack of ratifications was already an issue with Convention No. 107. The limited number of ratifications was interpreted as a reflection of its outdated and assimilationist approach encouraging the development of Convention No. 169. In drafting the latter, efforts were made to introduce a degree of flexibility that would allow governments to adapt its provisions to their national contexts and thereby encourage broader ratification. However, indigenous representatives criticized this flexibility as deliberately weakening the provisions.⁴⁰ Three decades later, the number of ratifications remains lower than Convention No. 107, suggesting that the attempt to make the instrument more acceptable to states did not fully succeed. The flexibility intended as a positive attribute has been reinterpreted to limit the obligations imposed on states.⁴¹

³⁷ Venne, S. (1989) The New Language of Assimilation: A Brief Analysis of ILO Convention 169, *Without Prejudice: The EAFORD International Review of Racial Discrimination*, Vol. 2, No. 2, pp. 65-67

³⁸ ILO (2023) Ratifications of Convention No. 169, *NORMLEX Information System on International Labour Standards*

³⁹ Barelli, M. (2010) The Interplay Between Global and Regional Human Rights Systems in the Construction of the Indigenous Rights Regime, *Human Rights Quarterly*, Vol. 32, No. 4, p.955

⁴⁰ International Labour Conference (1990) *Record of Proceedings*, Geneva: International Labour Office

⁴¹ Joona, T. (2020) ILO Convention No. 169 and the Governance of Indigenous Identity in Finland: Recent Developments, *The International Journal of Human Rights*, Vol. 24, Nos.3-4, p. 311

Beyond ratification, a major challenge lies in the effective implementation of the Convention. This issue is particularly evident in Latin America, where ratifications are the most numerous, but where significant gaps persist between legal commitments and practical outcomes. Similar flaws can also be observed in countries such as Norway, often regarded as a leader in the protection of indigenous rights. In many contexts, implementation is obstructed by insufficient funding, limited institutional capacity, lack of expertise, and inadequate international support.⁴² Even where indigenous rights are formally recognized in domestic legislation, their practical realization often remains incomplete, revealing persistent structural barriers and limited political will.⁴³

Among the most debated aspects of implementation is the right to consultation, which has generated considerable uncertainty and discussion. A significant proportion of cases brought before the ILO supervisory bodies concern this issue, reflecting the ongoing disagreements over its scope and application. Indigenous communities have pointed to ambiguities in interpretation claiming the need for stronger and more effective consultation mechanisms.⁴⁴

To respond to these challenges, the ILO in cooperation with the UN system and supported by regional and national institutions, continues to promote a better implementation and dialogue among all stakeholders. For this matter a few initiatives have been implemented such as the commemoration of the Convention's 30th anniversary in 2019, with the aim to raise awareness on the existence of the Convention and its provisions. Nevertheless, not all indigenous communities are fully aware of the Convention's value which diminishes its influence and

⁴² Gilbert, J. (2020) The ILO Convention 169 and the Central African Republic: From Catalyst to Benchmark, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, p. 221

⁴³ Doyle, C. (2020) The Philippines Indigenous Peoples Rights Act and ILO Convention 169 on Tribal and Indigenous Peoples: Exploring Synergies for Rights Realisation, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, pp. 184–185

⁴⁴ Gilbert, J. (2020) The ILO Convention 169 and the Central African Republic: From Catalyst to Benchmark, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, p. 86

relevance. Indigenous peoples need to see the practical relevance of the Convention to their struggles. Therefore, only through strengthened international oversight can the Convention No. 169 be enabled to realize its full potential.⁴⁵

2.3.4 The Importance of the ILO Convention No. 169 for the Sami

The value and significance of the ILO Convention No. 169 is based on its status since it is the only legally binding international instrument specifically dedicated to the rights of indigenous peoples. This Convention states the concepts of equality and participation, as well as providing the elements for the protection of the indigenous peoples. Despite its more than thirty-year-history, the Convention No. 169 is still widely considered to be relevant and the instrument to strive for when it comes to indigenous rights.

Even though some parts of the Convention have inevitably become outdated, it is the older human rights instrument based on the ideology of human rights as individual rights and later it has incorporated the collective nature of human rights directly into its provisions which has had a huge impact on the international recognition of collective rights.⁴⁶

Another commonly acknowledged merit of Convention No. 169 was the supervision provided by the ILO. The access to the supervisory board and mechanisms was viewed as an absolute additional value enhancing accountability and oversight. Even though the ILO's tripartite structure posed limitations regarding the direct participation of the Sami within the supervision process, the mechanism provided vital tools for monitoring and improving Sami rights, therefore this instrument is highly relevant for the Sami. After all, the Convention No. 169 is a global convention that provides the general framework that needs to be adopted and implemented at the national level to meet the

⁴⁵ Whare, T. (2020) Reflective Piece on Māori and the ILO, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, p.305

⁴⁶ Rodríguez-Piñero, L. (2005) *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime, 1919-1989*, p. 321

needs and situation of the indigenous peoples in each individual state. Indeed, one of the objectives of the revision process leading up to the drafting of Convention No. 169, was to provide sufficient flexibility in the provisions to guarantee that the states could implement them around the world.⁴⁷

The land right provisions of Convention No. 169 are also significant as they address the matter from multiple perspectives in light of the diverse threats affecting the territories of the Sami Homeland. Among these are competing land use such as the wind power plants, mining, mass tourism, and railway projects. In addition, climate change and its devastating impact on the Arctic constitute one of the biggest threats for the Sami that needs to be taken into account. Due to the special relationship that the Sami have with their territories, land rights are the very core of the matter. In the context of a rapidly evolving global world, securing Sami rights is an urgent priority for the survival and preservation of the culture.

Besides these practical concerns, the ratification of Convention No. 169 is seen as carrying a symbolic value considered as immense for the Sami as the full realization of Sami rights cannot be reached without the ratification of the Convention No. 169.

At the same time, Sami rights have improved through alternative paths and are likely to continue to do so in the possible situation where the ratification will be delayed even further. However, despite the existence of national legislation, the current interpretation does not meet their expectations and fails to provide the level of protection that Sami aspire for. This gap has increasingly prompted Finnish Sami actors to follow the lead of their Swedish and Norwegian counterparts to start seeking solutions from the legal system by taking issues into court.

Despite the recognized importance and urgent need of the ratification, the process appears to remain protracted. It is remarkable that even Norway, a fellow Nordic state, that ratified Convention No. 169 in 1990, is still working on its implementation suggesting that perhaps a

⁴⁷ Swebston, L. (1987) Indigenous and Tribal Populations: A Return to Centre Stage, *International Labour Review*, Vol. 126, No. 4, p.105

comprehensive or perfect solution for the Sami rights is yet to be achieved. The fact that the ratification process has been extended over more than three decades has inevitably had consequences. Even though the consensus that Sami rights will continue to progress, the absence of ratification of the Convention No. 169 means that the Sami remain without the strong commitments and legal framework that the international standard would bring.⁴⁸

2.3.5 Convention No. 169 as Part of a Wider International Network of Instruments

Although the ILO was the first international organization to shape the discourse on indigenous peoples and to promote their rights, it operates now in a broad and interconnected network of actors that both support and complement its work. The Convention No. 169 has served as a reference framework for many subsequent instruments and institutions. As stated in the ILO Constitution and reaffirmed in Article 35 of Convention No. 169, the convention sets only the minimum base for the protection of indigenous rights. Thus, Convention No. 169 should be read as a part of a wider network of international and regional legal instruments.⁴⁹ Besides the ILO, there are also various other institutions and mechanisms that actively participate in international discourse on indigenous rights.

In the aftermath of the two World Wars, several international organizations have emerged, reshaping the global political order. Among them the United Nations, founded in San Francisco in 1945, occupies a special role. The UN Charter symbolised the quest for international peace, human rights, equality, freedom, security, and economic and social progress. At the same time the organization respects the principles of state sovereignty, territorial integrity of

⁴⁸ Ravna, Ø. (2014) The Fulfilment of Norway's International Legal Obligations to the Sámi – Assessed by the Protection of Rights to Lands, Waters and Natural Resources, *International Journal on Minority and Group Rights* Vol. 21, No. 3, pp. 297–329

⁴⁹ International Labour Organization (ILO) Convention No. 169 (1989) *Indigenous and Tribal Peoples Convention*

member states and the politics of non-intervention into states' domestic affairs.⁵⁰ Within this framework human rights become a fundamental matter of customary international law, in particular, the UN international human rights system articulated the Universal Declaration of Human Rights of 1948, that has had a great impact on the legal status of minorities and indigenous peoples. From the end of the twentieth and the beginning of the twenty-first century, the UN expanded considerably its engagement with indigenous rights establishing key bodies such as the Working Group on Indigenous Populations in 1982, the United Nation Permanent Forum on Indigenous Issues in 2000, the Inter-Agency Support Group on Indigenous Issues in 2002, and the Declaration on the Rights of Indigenous Peoples in 2007.

The origins of this development can be found in an UN study on indigenous peoples in 1981, which led to the establishment of the Working Group on Indigenous Populations. It is an organ of the Sub-commission on Prevention of Discrimination and Protection of Minorities of the commission on Human Rights, it consists in the protection of human rights of indigenous peoples and the monitoring of international standards. It is composed of five experts, who represent each region of the world, and permits the participation of indigenous groups' representatives and their organisations.

For the first time in history, indigenous individuals are allowed to have a direct voice in a UN organ, becoming active subjects instead of passive objects. The Working Group's efforts to produce UN standards on indigenous peoples finally yielded the Declaration on the Rights of Indigenous Peoples in 2007.

The United Nation Permanent Forum on Indigenous Issues (UNPFII) is an advisory body of the Economic and Social Council (ECOSOC) and it deals with six mandates areas: economic and social development, culture, the environment, education, health and human rights. Its yearly sessions focus on a specific issue each time.

The Declaration on the Rights of Indigenous Peoples (UNDRIP), whose first Draft was initially formulated by the Working Group on Indigenous Populations in 1985, was finally adopted in 2007, after being analysed

⁵⁰ United Nations, Charter of the United Nations (1945), art. 1

respectively by the UN Commission for Human Rights, the ECOSOC and the General Assembly. With its 46 articles, the UNDRIP elaborates the minimum universal standards for the survival and dignity of indigenous peoples. The thematic taken into consideration and the enshrined rights are within those relating indigenous life, non-discrimination, self-determination, self-identification and self-governance; collective rights concerning institutional issues, land rights, cultural heritage and indigenous property rights.⁵¹

The worldwide influence of the UDRIP is very important, even if declarations are in general not binding on states and, consequently, not considered as a primary source of international law. The UN human rights system provides indigenous peoples with an international position, conferring to them more rights and their greater application in international contexts. At the same time, international law directly deals with individual and even group rights. International law is still extending its competencies and promoting the realisation of human rights, world order and stability. In doing so, it challenges and repudiates the political theory of colonialism, discrediting and denouncing the colonial experiences of subjugation and discrimination.

The prioritization of human rights in the post-war period stimulated progress particularly in the field of fundamental rights at work within the ILO, leading to the adoption of a series of conventions. In this respect the 1945 UN Charter followed the lead of the ILO's 1944 Declaration of Philadelphia which had already advanced a rights-based approach to social and economic development. The Universal Declaration of Human Rights, adopted in 1948, remains today the broadest and most fundamental international expression of human rights.⁵²

The Declaration of Philadelphia was significant in establishing that freedom from discrimination and forced labour are essential preconditions of genuine development. This was emphasized by the

⁵¹ Xanthaki, A. (2009) Indigenous Rights in International Law over the Last 10 Years and Future Developments, *Melbourne Journal of International Law* 27, Vol. 10, No. 1,

⁵² Rodgers, G. et al. (2009) *The International Labour Organization and the Quest for Social Justice, 1919-2009*, Geneva: International Labour Office, p.43

principle of freedom of association, highlighting the fact that development measures would succeed only if the individuals concerned had the opportunity to participate fully in shaping them and create local structures which would represent their interests. Its incorporation into the ILO Constitution in 1946 marked the beginning of a new phase in international standard-setting, the influence of which remains evident in the contemporary instruments.⁵³

At that time, there was some concern whether the instruments developed by the UN and ILO on indigenous peoples would be conflicting but it was reassured that the close cooperation between the two instruments would prevent conflicts and produce complementary instruments.⁵⁴ In contemporary context it could be said that the UN sets the moral and legal ambitions while the ILO focuses on a more technical level in its legally binding standard. Besides the principle of Free, Prior and Informed Consent (FPIC), the UNDRIP includes provisions that strengthen the collective rights and self-determination of indigenous peoples beyond the level established by Convention No. 169.⁵⁵ One of the UNDRIP's most notable merits compared to Convention No. 169 is the drafting process. Whereas the ILO struggled to find an effective way for the indigenous peoples to participate in the drafting of Convention No. 169, the UN Working Group on Indigenous Populations provided a framework that truly engaged the indigenous peoples into the process.⁵⁶ Even though the Convention No. 169 and the UNDRIP are dynamically linked and it is emphasized that they should be read together, there are some discrepancies: only the Convention No. 169 is legally binding upon ratification while the UNDRIP needs to be implemented into national law to have a similar legal status. Thus, even though the Convention No. 169 should be interpreted as the minimum

⁵³ Rodgers, G. et al. (2009) *The International Labour Organization and the Quest for Social Justice, 1919-2009*, Geneva: International Labour Office, pp. 44-45

⁵⁴ Swebston, L. (1990) A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989, *Oklahoma City University Law Review*, Vol. 15, No.3, pp.678-680

⁵⁵ Gómez Isa, F. (2019) The UNDRIP: An Increasingly Robust Legal Parameter, *The International Journal of Human Rights*, Vol. 23, Nos. 1-2, pp.10-11

⁵⁶ Larsen, P. B and Gilbert, J. (2020) Indigenous Rights and ILO Convention 169: Learning from the Past and Challenging the Future, *The International Journal of Human Rights*, Vol. 24, Nos. 2-3, p.87

level of standards on indigenous rights, it does not mean that any stronger provisions of the UNDRIP would be binding without national implementation.⁵⁷

Within this broader framework, the ILO has played a particularly important role in addressing the specific vulnerabilities of indigenous and tribal peoples in the labour sphere. It is no coincidence that these groups continue to experience disproportionately high levels of workplace abuse compared to other identifiable ethnic groups. In response, various actors including the EU, have supported ILO initiatives aimed at promoting the implementation of Convention No. 169. At the same time, the ILO has demonstrated that continuous engagement with national situations can enable the organization to provide effective technical assistance. Its fundamental instruments are increasingly used as benchmarks in a variety of international context, including bilateral trade agreements, and as reference standards for conditionality in loans and assistance provided by international financial institutions. In this way, ILO norms extend their influence well beyond formal ratification, shaping global labour governance and reinforcing the protection of indigenous rights.

2.3.6 The Collective Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples generated a lot of debate among different actors. Central to these discussions there was the expectation that the Declaration would encompass a broad range of collective rights. Indigenous representatives argued that the individualistic view of rights is incompatible with indigenous ideas of the world, their traditions, their past and their present. An exclusive emphasis on individual rights cannot give effective guarantees for indigenous peoples, who require the simultaneous protection as collectivities in order to survive and flourish as distinct peoples and cultures.

⁵⁷ International Labour Organization (2023) Ratifications of Convention No. 169, *NORMLEX Information System on International Labour Standards*

Collective rights emphasise the value of protecting indigenous cultures and existence and reject assimilation and integration as valid modes of relating to indigenous peoples. Indigenous peoples have stated:

'The concept of indigenous peoples' collective rights is of paramount importance. It is the establishment of rights of peoples as groups, and not merely the recognition of individual rights, which is one of the most important purposes of this Declaration. Without this, the Declaration cannot adequately protect our most basic interests. This must not be compromised.'⁵⁸

This position stands in contrast to the traditional framework of liberal rights theory which recognizes only two categories of rights holders: the individual and society. Historically, human rights have been conceptualized primarily as rights of individuals against the state power. Opposition to the recognition of collective rights is often grounded in cosmopolitan thought, which emphasizes the autonomy of individuals as independent from their cultural traditions and capable of making fully self-determined choices. This perspective stands in contrast to communitarian theory, which views the individuals as attached to the cultural context in which they are raised. From a liberal standpoint, the recognition of collective rights will reflect a totalitarian vision of the society and will raise tribalist or nationalistic attitudes.⁵⁹

Closely related to this critique is the rejection of collective rights based on the notion of “monotheism of the state” which assumes the supremacy and unlimited sovereignty of the state, positioning the state as the sole legitimate source of authority within a political system. However, such a model appears to be inconsistent with both contemporary international legal norms and political realities. In the post-national state individuals rarely identify exclusively within the state’s national identity, rather they maintain multiple and overlapping

⁵⁸ UN Sub-Commission (1989) *Indigenous Peoples Preparatory Meeting: Comments on the First Revised Text of the Draft Declaration on Rights of Indigenous Peoples*

⁵⁹ Xanthaki, A. (2000) Collective rights: the case of indigenous peoples, *Journal of the Institute of Advanced Legal Studies*, No. 25, p.7

loyalties. These may be directed toward smaller units, such as families, local communities, ethnic, religious and cultural groups, as well as toward larger entities, including regional organizations or the broader international community. These groups reflect the plurality of multiple loyalties that the individual has and these cultural influences shape the individual identity. For instance, a Sami individual living in Finland may simultaneously be influenced by familial traditions, local community practices (including distinct linguistic variations), Sami cultural heritage, Finnish national culture, and broader European frameworks.

International law reflects this complex reality by recognizing the importance of various subnational groups that shape individual identity and well-being. Instruments such as the 1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore explicitly protects the culture of sub-national groups. Similarly, the Convention on the Rights of the Child affirms that education should foster respect not only for the child's own cultural identity, language, and values, but also for the national values of the country in which the child lives. Although the human rights system formally places the individual at its center, it simultaneously acknowledges the individual as a member of groups, including family, ethnic, national, religious and linguistic groups. Even though most of these provisions establish individual rights, their spirit recognises the importance of groups for the individual and prescribes that these groups should be protected.⁶⁰

By protecting the various groups that surround the individual, international law conceptualized them as a series of concentric circles surrounding the individual. At the core stands the individual as an independent agent, but their identity and experiences are shaped by progressively broader circles, such as family, local community, ethnic and cultural group, nation, state, regional structures, and ultimately the global community. The closer these circles are to the individual, the more influence it has. Consequently, the effective protection of the

⁶⁰ Xanthaki, A. (2000) Collective rights: the case of indigenous peoples, *Journal of the Institute of Advanced Legal Studies*, No. 25, p. 8

individual requires safeguarding the various groups. In this sense, international law operates on multiple levels, protecting both individuals through individual rights, and the groups that encircle the individuals by establishing collective rights.⁶¹

This approach has been reinforced by the theory of personalism which considers the individualistic tradition and the communitarian approach to be complementary rather than contrasting. Personalists distinguish the 'person' as an essential part of the community, from the 'individual' who is regarded as an isolated entity. In this sense the term 'person' or 'personality' implies relationships with others in the community and a corresponding link with the community. Personalists believe that a person is inseparable from the context of the world and of others: the person lives in community with others and not as an isolated individual, thus, personalists support the establishment of community rights. Therefore, the model of personalism appears to be a feasible model for indigenous peoples and the recognition of their rights. Their lives and choices reflect a mixture of characteristics of these cultures and they want to preserve and protect these characteristics. Collective rights will protect them from the states and the other groups while their individual rights will protect them against all authorities, including those arising within their communities.⁶²

This approach aligns with broader developments in international discourse on cultural diversity and pluralism. Multiculturalism can exist only in a pluralistic society, where a variety of choices and opportunities would maintain a marketplace of goods, ideas, cultural and political options. In this context, individuals that are not dependent on specific cultural attachments will be able to make their own choices. This framework can be found in a pluralistic society advocated by cosmopolitans.

States view pluralism as a challenge to the state's sovereignty as the two concepts, pluralism and state sovereignty, are perceived as opposing

⁶¹ Garet, R. R. (1993) *Communitarianism and Existence: The Rights of Groups*, p. 56

⁶² Xanthaki, A. (2000) Collective rights: the case of indigenous peoples, *Journal of the Institute of Advanced Legal Studies*, No. 25, p. 9

and challenging. However, such a view appears inconsistent with contemporary reality as if the state denies its multicultural character, its citizens will inevitably feel dissatisfied and oppressed. In contrast, if pluralism and sovereignty are viewed as complementary principles, collective rights will be recognised in the cultural groups of the state, pluralism, and the state can maintain its role as a decision maker, sovereignty.⁶³

The concept of collective rights refers to rights that are enjoyed by particular groups of people in association with each other. To this respect, the collective rights of indigenous peoples are those rights enjoyed by them as groups and not just individually.

Indeed, Indigenous people's group consciousness is reflected in their claims for collective rights. As already mentioned, the international legal framework focused primarily on the individual and on the state. In the contemporary context, even if human rights and the UNDRIP embody individualistic rights and rightsholders, the demand for indigenous peoples' collective rights has increased prominently. This is because indigenous peoples' identity is linked to the group identity they belong to, therefore special measures are necessary. The debate on collective-individual rights is ambiguous, even though these rights are mutually interactive. As groups, indigenous peoples ask for protection of their collective rights.

The consolidation of these rights is emphasised in the UNESCO Declaration on Race and Racial Prejudice which affirms that "all individuals and groups have the right to be different"⁶⁴, and reached its highest point in the 2007 UNDRIP. Despite these normative progress indigenous peoples continue to experience socio-economic disadvantages, including high levels of illiteracy and unemployment. This highlights the need for concrete and effective implementation of collective rights as they are, as mentioned above, complementary to individual rights and fundamental to establish an effective instrument of indigenous peoples' protection.

⁶³ Xanthaki, A. (2000) Collective rights: the case of indigenous peoples, *Journal of the Institute of Advanced Legal Studies*, No. 25, p.11

⁶⁴ UNESCO (1978) Declaration on Race and Racial Prejudice, Paris: UNESCO

2.4 The Right to Self-determination

Self-determination is one of the most complex and debated claims when discussing indigenous rights, yet it constitutes a foundational element of the contemporary normative regime concerning indigenous peoples. The right of self-determination is a fundamental human right and a prerequisite to the full enjoyment of all fundamental human rights.⁶⁵ The principle of self-determination started to emerge after World War I and the general idea was that nations should have the possibility to exercise their own sovereign wills without oppression by other states. Self-determination then made an impact on the creation of the League of Nations, but it was not formally acknowledged as an international norm until the formation of the United Nations. Such recognition appears in Articles 1 and 55 of the Charter of the United Nations.⁶⁶

Over the twentieth century the principle of self-determination was regarded as the most problematic in indigenous rights' discourse as it was challenging the legitimacy of settler regimes. The right to self-determination has been further developed and the General Assembly of the UN elaborated two covenants on human rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and decided to adopt as Article 1 to both covenants that 'all peoples have the right to self-determination'.⁶⁷ In addition, the article follows explaining more in detail the content of self-determination by saying that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".⁶⁸ Thus, self-determination became a human right for all intents and

⁶⁵ United Nations (1950) *General Assembly Fifth Regular Session*, ST/LIB/SER.B/A.1, New York: United Nations

⁶⁶ Dalton, J. E. (2005) *International Law and the Right of Indigenous Self-Determination: Should International Norms be Replicated in the Canadian Context*, *Working Paper Queen's University*, Vol. 1, p.5

⁶⁷ Daes, E. I. A. (2008) *An overview of the history of indigenous peoples: self-determination and the United Nations*, *Cambridge Review of International Affairs*, Vol. 21, No. 1, p.1

⁶⁸ International Covenant on Civil and Political Rights (1966), General Assembly resolution 2200A (XXI)

purposes, enshrining universality, inalienability and indivisibility in its scope.⁶⁹

For the right to self-determination to be operative under international law, a clear definition of the subject of the right, so, of peoples, was to be provided and this is where much of the controversy lies. Although the category of rightsholders that includes “all peoples” seems broad, it has often been interpreted in a narrow way. Some practices of the Human Rights Committee adhering to the ICCPR differentiate that the right is addressed to “peoples” but not to “minorities”.⁷⁰ The use of the term, therefore, was specified in order to resolve a deeper concern: state have been reluctant to use the expression “peoples” due to its association to self-determination, which related to the idea of independent statehood.

The UN Human Rights Committee, which is charged with monitoring compliance with the ICCPR, has interpreted article 1 as applicable to indigenous peoples in line with the evolving understanding reflected in the UN Draft Declaration on the Rights of Indigenous Peoples, which was developed by the UN Working Group on Indigenous Populations. In particular, Article 3 of the Draft Declaration states that “Indigenous 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”.⁷¹ Thus, the Human Rights Committee has tended to address indigenous issues within the framework of the right of self-determination of article 1.⁷²

Uncertainty over the meaning of “peoples” often finds its roots in debates over the form that self-determination might take. Such form is often placed on external versus internal conceptions of self-determination. External self-determination involves independent

⁶⁹ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, p. 99

⁷⁰ Kingsbury, B. (1992) Claims by Non-State Groups in International Law, *Cornell International Law Journal*, Vol. 25, p.500

⁷¹ United Nations (1994) *Draft Declaration on the Rights of Indigenous Peoples*, Doc. E/CN-4/Sub. 2/1994/2/Add.1, Art. 3, p. 3

⁷² Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, p. 113

statehood, including recognition as a nation under international law, provided that the nation in question has a permanent population, a defined territory, a government, and the capability of entering into relations with other states. Conversely, internal self-determination refers to those rights which support and preserve indigenous cultural differences within an existing nation-state. Essentially, these conceptions are limited to self-determination powers within states and thus do not require attempts at secession or absolute political independence. Nevertheless, the fear of potential secession or jurisdictional conflict have made states reluctant to define certain groups as “peoples.” Many hesitate to accord indigenous peoples the title of “peoples” given the association of the term with a right to independent statehood. This interpretation included the possibility of state fragmentation, and the idea is reinforced by the historical process of decolonisation, which transformed colonial territories into independent states based on self-determination. However, decolonisation does not embody the principle of self-determination. Nowadays, the remedies are in accordance with the aspirations of the groups concerned and do not entail secessionist demands. Furthermore, it is feared that defining “peoples” as including indigenous peoples might encourage other groups to seek recognition as “peoples” and potentially leading to instability and political unrest. As a result, states prefer to categorize indigenous peoples as “minorities.” There is significant and contentious debate over whether indigenous peoples constitute minorities rather than peoples or nations and it involves cultural, historical, and territorial issues which are beyond the scope of this research. Ultimately, most states have no reason to fear the threat of secession by indigenous peoples as most groups do not seek to pursue independence or other forms of self-determination but simply to have recognized the same rights.⁷³

Based on these abovementioned provisions indigenous peoples, keeping in mind their own history, traditions, values, cultures and their continued suffering and oppression, made the UN recognition of their

⁷³ Dalton, J. E. (2005) International Law and the Right of Indigenous Self-Determination: Should International Norms be Replicated in the Canadian Context, *Working Paper Queen's University*, Vol. 1, pp. 6-8

right to self-determination their goal and deepest aspiration. This emerging interpretative practice aligns with broader governmental and institutional understandings expressed within the United Nations system. Statements made before UN bodies affirm that self-determination implies the right to indigenous groups and their members to be equal participants in the creation of governing institutions under which they live and to live within an order that allow them to maintain control of their own destinies.⁷⁴

In this regard, Professor Erica-Irene Daes, long-time chair of the UN Working Group on Indigenous Populations, describes self-determination as a form of "belated state-building" to be achieved through negotiation or other appropriate peaceful procedures involving meaningful participation by indigenous groups. According to Professor Daes, self-determination entails a process:

“through which indigenous peoples are able to join with all the other peoples that make up the State on mutually-agreed upon and just terms, after many years of isolation and exclusion. This process does not require the assimilation of individuals, as citizens like all others, but the recognition and incorporation of distinct peoples in the fabric of the State, on agreed terms.”⁷⁵

Several representatives of indigenous peoples affirmed that the right to self-determination was an inherent and inalienable right belonging to all nations and peoples independently of recognition from governments or international organizations. They further clarified that the meaning they attributed to the right to self-determination corresponds to international laws. In this sense, the right entails the ability to determine their own destiny and political, economic, cultural and social structures, and to use and control their own lands and natural resources, to impose taxes, to engage in cross-border trade, to impose their own criminal and

⁷⁴ Daes, E. I. A. (1993) *Report of the Working Group on Indigenous Populations on Its Eleventh Session*, U.N. Doc. E/CN.4/Sub.2/1993/29

⁷⁵ Daes, E. I. A. (1993) *Some Considerations on the Right of Indigenous Peoples to Self-Determination*, 3 Transn'l L. & Contemp. Probs. 1,9

civil jurisdiction with respect to indigenous people as well as nonindigenous living on their territory.⁷⁶

The principle, therefore, means that “indigenous groups and their members are entitled to be full and equal participants in the creation of the institutions of governments under which they live and, further, to live within a governing institutional order in which they are perpetually in control of their own destiny”.⁷⁷ The UN recognises the “inherent dignity” of indigenous peoples, the importance of respecting their rights “for ensuring national stability and development”,⁷⁸ and the promotion and protection of self-determination and political participation.⁷⁹ It is expected that these international values will increasingly be more present in national constitutions, to develop an effective recognition of indigenous groups’ identities.

Lastly, the right of self-determination accommodates the concept of multiculturalism within a state. It differs from indigenous sovereignty, and it is the basis for other cultural, economic and social norms that concern indigenous peoples. This is clearly stated in Article 3 of UNDRIP where self-determination is defined as fundamental for indigenous peoples to “freely determine their political status and freely pursue their economic, social and cultural development”⁸⁰, that means, it is fundamental for their survival. For this reason, norms and laws like non-discrimination, cultural integrity, lands and resources, social welfare, development, and self-governing, are all elaborated based on substantive self-determination’s requirements.

These norms arise within the modern human rights framework of international law, and hence they derive largely from more broadly

⁷⁶ Daes, E. I. A. (2008) An overview of the history of indigenous peoples: self-determination and the United Nations, *Cambridge Review of International Affairs*, Vol. 21, No. 1, p.17

⁷⁷ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, pp. 103-106

⁷⁸ UN Sub-Commission on the Promotion and Protection of Human Rights (1993) *Report of the Working Group on Indigenous Populations on its 11th session*, UN Doc. E/CN.4/Sub.2/1993/29, para. 22

⁷⁹ *Ibid*, paras. 79-89

⁸⁰ United Nations (2007) *Declaration on the Rights of Indigenous Peoples*, Art. 3, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

applicable human rights standards that are well established in international law. Any meaningful discussion of indigenous peoples' rights under international law necessarily engages with the principle of self-determination, which occupies a central role in the contemporary international system. Indigenous peoples have constantly articulated their demands in terms of self-determination, and, in turn, self-determination precepts have fuelled the international movement in favour of those demands. Affirmed in the United Nations Charter and other major international legal instruments, self-determination is acknowledged to be a principle of customary international law.

The concept of self-determination reflects a set of widely shared values. These values can be seen as a stabilizing force in the international system and as foundational to international law's contemporary treatment of indigenous peoples. Self-determination is identified as a universe of human rights precepts concerned broadly with peoples, including indigenous peoples, and grounded in the idea that all are equally entitled to control their own destinies. This principle generates a framework aimed at addressing the legacies of empire, systematic discrimination, suppression of democratic participation, and cultural suffocation. In this sense, self-determination operates both as a legal standard and a tool for redressing historical and ongoing injustices, therefore is significant for indigenous peoples. Ideally, self-determination and sovereignty principles operate together to promote a peaceful, stable, and humane international order. However, where there is a violation of self-determination and human rights, the presumptions in favour of territorial integrity or political unity of existing states may be limited to the extent required to provide an appropriate remedy.⁸¹

The right to self-determination has to be considered as an interrelation of other human rights and principle. As a matter of fact, self-determination's core values are freedom and equality. Consequently, this right shall be promoted through the implementation of the rights to non-discrimination, justice, cultural integrity, lands and resources, development, and self-government. The right to self-determination has

⁸¹ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, p.109

no standard modalities through which it can be applied, protected and promoted. Nevertheless, it is this interrelation of rights and principles, associated with the diversity of application modalities, that constitutes the richness of the right itself.

The general contours of these norms are identified and discussed in the following synthesis of relevant conventional and customary law, including new and emergent law.

2.4.1 The character of the Right to Self-determination

The complexity of the right to self-determination arises from the fact that there is no clear definition, although some attempts have been made to classify it. In this context there is the traditional distinction between internal and external self-determination, or newer approaches differ between substantive and remedial aspects, with the first being further divided into so-called constitutive and ongoing aspects. Another way of describing the scope of self-determination is the minimalist versus maximalist approach.

The distinction between internal and external aspects was discussed above but external refers to independent statehood, while internal refers to rights that are given to a people within a sovereign country, such the right to political participation, to elect and keep the government of its choice, to protect and support the peoples' distinct culture and to freely choose its economic and social development.⁸²

The substantive aspect of self-determination is found within the idea of minimum conditions that are necessary for the constitution and functioning of a legitimate government. It can be divided into two groups: the first is the consecutive aspects that require a government that is created by processes based on the will of the people subject to the government; the second is the ongoing aspects refers to a government under which the governed people have the possibility to live and develop freely. Consecutive self-determination demands

⁸² Berg B. (1992) Introduction to Aboriginal Self-Government in International Law: An Overview, *Saskatchewan Law Review*, Vol. 26, p. 2

participation and consent every time institutions of government are created or altered or when the scope of their authority is extended and thus realizes the concept of the International Covenants on human rights that refer to the free determination of political status. The ongoing aspects as ongoing self-determination is related to the pursuit of economic, social and cultural development that requires the making of meaningful choices in the different areas of life and a political order where it is made possible for a people to keep its distinct culture. Taken together these two dimensions highlight that self-determination requires governmental institutions and the creation of decision-making procedures that reflect the will of the peoples governed and a governmental order, which permits the existence of peoples' status and their freedom. This relates to the possibility for groups to make meaningful choices in all spheres of their lives and to develop freely on a continual basis. Both aspects of substantive self-determination are comprised in the definition contained in the ICCPR provision mentioned before. The legal importance of self-determination for indigenous communities lies in their past and present difficulties and inequalities linked to marginalization which obstructed their ability to live and develop freely as distinctive peoples.⁸³

Remedial self-determination emerged in the context of decolonization as colonialism violated both the consecutive and the ongoing aspects of self-determination. It is used to question the doctrine of effectiveness and to avoid the rise of colonial rule. Moreover, remedial self-determination stresses to find remedies if the right to self-determination has been violated and tries to find these remedies in accordance with the aspirations of the concerned groups. In this context, the right to secession is not automatically granted, but it can be an appropriate remedy. Whether indigenous peoples will be able to claim remedial secession will be decided on an ad hoc basis, according to the circumstances of the situation and the nature of the people claiming that right.⁸⁴

⁸³ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, pp. 103-104

⁸⁴ *Ibid*, pp.106-109

Lastly, there is the classification of minimalist and maximalist approach. The minimalist approach equates self-determination with independence, reflecting its origin in the decolonization contexts. This approach has mainly been chosen by earlier international legal instruments such as the International Covenants. In contrast, the maximalist approach sees self-determination as a broader right encompassing economic, political and cultural aspects. From this perspective it can entail a wide range of claims such as democracy and political rights, for distinct judicial systems, for religious and educational freedom. Each approach has its strengths and limitations. The minimalist approach can be praised for its certainty and clarity but remains closely tied to colonisation, in which self-determination was first developed. On the other hand, the maximalist approach allows flexibility and reflects the evolving nature and for its space for evolution and adjustment. At the same time, it is dangerous to link self-determination with other rights as claims based on loose links often are not very successful. Insisting on colonisation for the purposes of indigenous self-determination is counter-productive because decolonisation is largely complete. At the same time the maximalist approach has been criticized as a poor legislative method that runs the risk of distorting its meaning and scope.⁸⁵

2.4.2 Elements of Self-determination

No matter which approach of self-determination is chosen, it is certain that self-determination cannot be defined in one word, quite the contrary, self-determination is realized by different rights such as the right to cultural identity, to natural resources, the right to self-government or autonomy and non-discrimination.

Among these, culture often is the defining feature that distinguishes one community from another and therefore it is fundamental to the realization of self-determination. For some communities it is essential to exercise full cultural authority while for others it is essential that

⁸⁵ Xanthaki, A. (2007) *Indigenous Rights and United Nations Standards: Self-determination, Culture and Land*, Cambridge: Cambridge University Press, pp.146-152

distinctiveness is realized by the state. In any case, cultural rights form an important part of the norms bringing self-determination to life. Nevertheless, this does not mean that rights to cultural identity are absolute.⁸⁶

In general, there is a strong bond between indigenous peoples and their lands which means that the control of natural resources is considered to be a crucial element of self-determination. Problems arise mainly when the natural resources on indigenous territories are of a high economic value and states thus allow their exploitation and this often results in the damage of the living environment of indigenous peoples.

The idea of self-government or autonomy is a government functioning in accordance with the will of the people who are governed. This can be realized through autonomy on the one hand and participation rights on the other. Autonomy mainly means that indigenous peoples can have their own institutions of governance that respect their history, traditions and legal systems. Consequently, these institutions should neither be diminished nor modified without the indigenous peoples' consent. The right to fully participate at all levels of decisions making is protected by several instruments, among them the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169. In the context of indigenous peoples that they should be consulted whenever the state makes decisions that may affect them.

Another condition for the exercise of self-determination is non-discrimination, which means that, at least, the absence of policies that could discriminate against indigenous peoples should be guaranteed. In this context, it also has to be ensured that there are no norms that accord certain "inferiority" to indigenous peoples or their culture.⁸⁷

⁸⁶ Van Walt Van Praag, M. C., Seroo, O. (1999) *The implementation of the right to self-determination as a contribution to conflict prevention: report of the international conference of experts held in Barcelona from 21 to 27 November 1998*, UNESCO Division of Human Rights Democracy and Peace and the UNESCO Centre of Catalonia, Centre UNESCO de Catalunya, p.14

⁸⁷ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, p.129

2.4.3 Principle of Non-discrimination

As indicated in the foregoing discussion, the principle of self-determination and related human rights precepts provide the foundation for more specific norms concerning indigenous peoples. This body of international norms serve as a benchmark for ensuring the realization of indigenous peoples' self-determination. The international norms concerning indigenous peoples that develop in the context of self-determination, generally fall within the following categories: non-discrimination, cultural integrity, lands and resources, social welfare and development, and self-government.

A fundamental condition for the exercise of self-determination is the absence of discriminatory laws, policies or practices against individuals or groups. The United Nations Charter admonishes "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".⁸⁸ This norm of non-discrimination is emphasized and elaborated in numerous existing international and regional human rights instruments, including the Convention on the Elimination of All Forms of Racial Discrimination, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, the Declaration on the Elimination of All Forms of Discrimination Based on Religion or Belief, the American Declaration of the Rights and Duties of Man, and the Universal Declaration of Human Rights. In addition, customary international law does not promote racial discrimination. The non-discrimination norm is particularly significant for indigenous groups which have been treated adversely based on their cultural differences. As a matter of fact, a seminar of experts reunited by the United Nations to examine the effects of racial discrimination between indigenous and state concluded that indigenous peoples have been, and still are, victims of racism and racial discrimination.⁸⁹ The report on the seminar elaborates:

⁸⁸ United Nations (1945) *Charter of the United Nations*, San Francisco: United Nations, Art.1, para.3

⁸⁹ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, pp. 129-130

Racial discrimination against indigenous peoples is the outcome of a long historical process of conquest, penetration and marginalization, accompanied by attitudes of superiority and by a projection of what is indigenous as "primitive" and "inferior." The discrimination is of a dual nature: on the one hand, gradual destruction of the material and spiritual conditions [needed] for the maintenance of their [way of life], on the other hand, attitudes and behaviour signifying exclusion or negative discrimination when indigenous peoples seek to participate in the dominant society.⁹⁰

It is now accepted that states must refrain from maintaining institutions or practices that perpetuate the marginalization or inferior status of indigenous peoples. In line with this, the UN Committee on the Elimination of Racial Discrimination (CERD) has devoted particular attention to indigenous issues to ensure compliance with the UN Convention on the Elimination of All Forms of Racial Discrimination, a widely ratified instrument that reinforces the prohibition of racial discrimination.⁹¹

The non-discrimination norm, viewed alongside broader self-determination values, goes beyond ensuring for indigenous individuals the same civil and political freedoms accorded to others within an existing state structure or the same access to the state's social welfare programs. It also affirms the right of indigenous groups to develop their cultural identities in coexistence with other communities. In doing so, CERD extends to indigenous peoples the same general notion of respect for cultural integrity that has developed within international law.⁹²

⁹⁰ United Nations (1989) *The Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States*, *Centre for Human Rights Geneva*, UN Doc. E/CN.4/1989/22, HR/PUB/89/5, p.5

⁹¹ United Nations (1965) *International Convention on the Elimination of All Forms of Racial Discrimination*, New York

⁹² CERD (1997) General Recommendation No. 23: Indigenous Peoples, *Office of the High Commissioner for Human Rights*

The affirmation of cultural diversity was the central concern of the United Nations. The 1966 UNESCO Declaration of the Principles of International Cultural Cooperation and most recently the Universal Declaration on Cultural Diversity were established from the human rights principles of the UN Charter. The affirmation of cultural integrity within the framework of human rights strengthens its status in international law while establishing that its limits such that certain cultural practices may not be protected if they infringe upon human rights guaranteed by international law, nor to limit their scope as affirmed by the UNESCO declaration.⁹³

While rights of cultural integrity outside the context of indigenous peoples have been associated with minority rights, indigenous rights advocates have frequently rejected calling indigenous groups minorities to seek recognition under a distinct regime with greater legal entitlements. A similarly extensive view of the cultural integrity norm as applied to indigenous peoples has been taken by the UN Human Rights Committee which has reinforced the need to recognize particularities of indigenous cultures in the application of articles of the International Covenant on Civil and Political Rights (ICCPR) other than article 27 that embodies the cultural integrity norm and states that minorities have the right, “in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.⁹⁴

Cultural integrity is also at the core of the UN Draft Declaration on the Rights of Indigenous Peoples and previous drafts that were produced by the UN Working Group on Indigenous Populations. States have joined indigenous rights advocates in expressing widespread agreement for the consolidation and strengthening of indigenous societies and their cultures and traditions through development based on their own needs and values and full participation in decision-making process affecting them. Although the cultural integrity norm can apply to all segments of humanity, the norm has developed remedial aspects particular to

⁹³ UNESCO (2001) *Universal Declaration on Cultural Diversity*, Paris: UNESCO, art.4

⁹⁴ United Nations (1966) *International Covenant on Civil and Political Rights*, art.27

indigenous peoples due to their historical and continuing vulnerability. In many regions shaped by colonization indigenous cultures were suppressed through assimilation policies. Even if such policies have been abandoned their effects persist and indigenous cultures remain threatened because of those historical policies and because they typically hold a nondominant position in the societies in which they live.⁹⁵

As the international community has come to consider indigenous cultures equal in value to all others, the cultural integrity norm has developed to entitle indigenous groups to affirmative measures to remedy the past undermining of their cultural survival and to guard against continuing threats in this regard, as manifested by the resolution of the UN Committee on the Elimination of Racial Discrimination cited earlier. States are expected to refrain from forced assimilation and to repair the harm and protect the survival of indigenous cultures. For instance, the ILO Convention No. 169 calls on governments to work in participation of indigenous peoples to implement coordinated action to protect the rights of these peoples and to guarantee respect for their cultural integrity.⁹⁶ Similarly, the UN draft declaration emphasized the need for effective measures to secure indigenous culture in all their forms.⁹⁷

State practice and international discussion indicate broad acceptance of such affirmative action to secure indigenous cultural survival and in favour of greater efforts to promote the revitalization of indigenous languages and accommodate their use. Indigenous peoples' representatives have advocated that their peoples be permitted to use their mother tongues in legal proceedings, and that position has found support among some states and states feel an obligation to provide some affirmative support for the use of indigenous languages and to ensure

⁹⁵ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, p.138

⁹⁶ International Labour Organization (ILO) (1986) *Convention No. 169 Indigenous and Tribal Peoples Convention*, art.2

⁹⁷ United Nations (2007) Declaration on the Rights of Indigenous Peoples, arts. 12-15

that indigenous people do not suffer discrimination for failure to speak the dominant language of the state in which they live.⁹⁸

Related issues of indigenous cultural integrity requiring special attention have to do with indigenous peoples' works of art, scientific knowledge (especially with regard to the natural world), songs, stories, human remains, funerary objects, and other such tangible and intangible aspects of indigenous cultural heritage.

2.4.4 Lands and Natural Resources

The principle of self-determination is closely tied to indigenous land claims, particularly linked to the concept of property. Property reflects the idea that individuals have rights to land property as it has been affirmed as an international human right. The Universal Declaration of Human Rights states for example that everyone has the right to own property individually and in association with others, and that no one should be deprived of his property.⁹⁹ Moreover, related to self-determination and culture, the already-cited article 27 of the ICCPR with its right for indigenous peoples “to enjoy their own culture” extends its power to land and resources.¹⁰⁰

Since property is recognized as a human right, the principle of non-discrimination requires recognition of all the forms of property that arise from the traditional or customary land tenure of indigenous peoples, in addition to the property regimes created by the dominant society.

In contemporary international law, cultural integrity, non-discrimination, and self-determination join property principle to support the recognition of sui generis indigenous land and resource rights.

The norm of non-discrimination implies that indigenous peoples must not be denied subsurface and mineral rights where such rights are

⁹⁸ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, p.139

⁹⁹ United Nations (1948) *Universal Declaration of Human Rights*

¹⁰⁰ United Nations (1966) *International Covenant on Civil and Political Rights*, art.27

otherwise accorded to landowners. In any case, the ILO Convention No. 169 mandates that indigenous peoples are to be involved in decisions concerning the resource exploration or extraction on their lands and to benefit from those activities.¹⁰¹ It is also emphasized that prior consultation with indigenous peoples is a minimum requirement when natural resource activities are developed. This obligation applies whenever resource extraction may affect indigenous peoples. The convention adds that indigenous peoples "shall not be removed from the lands which they occupy" unless under prescribed conditions and where necessary as an "exceptional measure"¹⁰² reinforcing the central role of land in the realization of self-determination.

2.4.5 Social Welfare and Development

In line with the core principles of self-determination and non-discrimination, the UN Charter promotes: "higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation".¹⁰³ Within this framework indigenous peoples' interests in a secure land base are both cultural and economic. These interests are related to entitlements of social welfare and development, entitlements also grounded in the United Nations Charter and adjoined to the principle of self-determination.

By building these principles international law has developed a special set of rights and corresponding obligations regarding indigenous peoples. These norms are aimed at remedying two distinct but related historical phenomena that place most indigenous communities in economically disadvantaged conditions. The first phenomenon is the long-term dispossession of indigenous peoples' lands and resources, which have impaired or devastated indigenous economies and

¹⁰¹ International Labour Organization (ILO) (1986) *Convention No. 169 Indigenous and Tribal Peoples Convention*, art.15

¹⁰² *Ibid*, art.16

¹⁰³ United Nations (1945) *Charter of the United Nations*, San Francisco: United Nations, art.55

subsistence life, and left indigenous people among the poorest of the poor. The second is the discrimination that has tended to exclude members of indigenous communities from enjoying the social welfare benefits generally available in the states within which they live.¹⁰⁴

In response to these historical phenomena, ILO Convention No. 169 identifies as a priority the "improvement of the conditions of life and work and levels of health and education of indigenous peoples," and calls for "special projects to promote such improvement." The convention, furthermore, specifies duties on the part of states to eliminate discriminatory practices in areas of employment, vocational training, social security and health, education, and means of communication. The convention emphasizes, in accordance with the principle of self-determination, that the special programs devised to ensure the social welfare and development of indigenous peoples should be developed in cooperation with the indigenous peoples concerned and in accordance with their own collectively defined priorities.¹⁰⁵

A similar perspective appears in the UN Declaration on the Rights of Indigenous Peoples which affirms that indigenous peoples are entitled "to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development".¹⁰⁶ Together with the Convention No. 169 these instruments reflect a broad consensus that states are in some measure obligated to promote indigenous social welfare and development, even if there is controversy about the scope of those obligations. In practice, states have reported domestic initiatives to the U.N. Working Group on Indigenous Populations and other international bodies to take steps and commit resources to advance the social welfare and development of indigenous individuals and communities. This commitment is reinforced by a strong emphasis of international cooperation in this regard, as

¹⁰⁴ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, pp.148-150

¹⁰⁵ International Labour Organization (1986) *Convention No. 169 Indigenous and Tribal Peoples Convention*, art.7-20-31

¹⁰⁶ United Nations (2007) *Declaration on the Rights of Indigenous Peoples*, art.38

evidenced by initiatives specifically for the benefit of indigenous peoples within the World Bank, the Inter-American Development Bank, and the U.N. Development Programme (UNDP) and by the creation of the Indigenous Peoples' Fund in the Americas.¹⁰⁷

¹⁰⁷ Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press, p.150

3 The Effective Implementation of Indigenous Rights: The Sami Case

The international recognition of indigenous rights has significantly expanded over the last decades through multiple legal instruments as discussed in the previous chapter. Notwithstanding the state's commitment to international covenants and human rights framework, there is still a significant discrepancy between legal recognition and practical implementation. This chapter examines the implementation of indigenous rights in the Nordic countries through the case of Sami people, analysing how disputes brought before national and international courts concerning land exploitation, natural resources and sovereignty have challenged and shaped the recognition of Sami rights at both national and international level.

3.1 Historical Development of Sami Political Representation

The development of Sami rights over the past 30 years demonstrates how political compromise and legal decisions have contributed to advancing indigenous self-determination. On the one hand, courts have played a crucial role in interpreting evidence on critical issues such as land rights, questioning previous policies and approaches. In this sense, Scandinavian's Supreme Court decisions have played a significant role in changing government policies on land claims. On the other hand, political solutions can also serve as a driving force for legal and political institutional transformation.

3.1.1 The beginning of Regional Cooperation

A major turning point in this process was the first Sami Congress held in Trondheim, Norway in February 1917. The city became the meeting place that brought together representatives from across Norway and Sweden to discuss land rights, language preservation, education, cultural autonomy and Sami political organisations. Something which had not happened before as this was the first time the Sami organised themselves into a larger community. The meeting occurred at a difficult

time because since the mid-19th-century the Norwegian state had pursued a harsh assimilation policy that threatened to eradicate the Sami culture. Although Finland and Russia did not participate in the 1917 congress, the congress created the basis for the Sami National Day, a unifying day to celebrate identity and culture, celebrated specifically on 6th of February to commemorate the first Sami congress. Sami National Day was officially recognized only in 1993 after decades of advocacy for Sami rights and cultural recognition that culminated with the resolution adopted by the 15th Sami Conference in Helsinki declaring February 6 as the Sami National Day. The day is not only celebratory but also reflective, as it symbolises centuries of resistance against forced assimilation policies, the suppression of language, and the loss of traditional livelihoods such as reindeer herding. By commemorating the first Sami congress, the Sami National Day serves as both a reminder of past struggles and a celebration of ongoing cultural resilience.¹ It should be also mentioned that the first celebration of the Sami National day coincided with the opening of the United Nations International Year of Indigenous People in 1993.²

The Sami Congress was arranged by a woman Elsa Laula Renberg, founder of the world's first Sami association of 1904 and advocate for Sami women's position in society. Reindeer grazing and the Lapp Act were raised as separate items, as well as the schooling question. The agenda item concerning reindeer grazing was a burning issue because the meeting coincided with court cases on reindeer grazing rights. The expanding farming activities needed more grazing land that led to increasing tension between reindeer herders and farmers by the end of the nineteenth century. The reindeer herding legislation that passed in the 1880s and 1890s, the so-called Lapp Act to control and restrict reindeer herding in favour of farmers' needs and the introduction of reindeer grazing districts in 1894 had a brutal impact on reindeer herding, both practically and economically. The Act introduced state-

¹ Museet, J. *Sami rights: From the first Sami congress to today, learn about the Sami people's rights*, available at: <https://justismuseet.no/en/samenes-rettigheter/>

² Saami Council (2023) *30 Years of Sami National Day Celebration*, available at: <https://www.saamicouncil.net/news-archive/30-years-of-smi-national-day-celebration-1>

controlled reindeer grazing districts and corporative responsibility for grazing damage. Sami reindeer herders faced major challenges and felt that they would make more of an impression by standing together. Nevertheless, the first nationwide organisation, the ‘Sami Reindeer Herders’ Association of Norway’ was not established until 1947.³ Schooling was another major topic of discussion. The State had so far taken no responsibility for arranging education for Sami children. Although the first Sami school was established in 1910, the language of tuition was Norwegian.⁴ Sami representatives claimed for schools specifically for Sami children with Sami teachers, arguing that even if Norwegian had to be the primary language of tuition, Sami language should still be maintained within the educational system. There was a strong desire for state schools that could ensure both accessibility to education and preservation and continuity of Sami language and culture.⁵

Following the success of the 1917 Sami Congress, additional Sami organizations and political initiatives were established in the following decades such as the Sami Conferences and Council. The Sami Council is a voluntary Sami organization, a non-governmental organization, and it is an important voice in the Sami civil society since it is a cooperation forum of Sami organizations in four different countries: Norway, Sweden, Finland and Russia. Since it was founded in 1956 the Sami Council has actively dealt with Sami policy tasks. For this reason, the Sami Council is one of the indigenous peoples’ organizations that have existed longest. The primary aim of the Sami Council is the promotion of Sami rights and interests in the four countries where the Sami are living. The main task of the Sami Council is to consolidate the feeling of affinity among the Sami people, to attain recognition for the Sami as a nation and to maintain the cultural, political, economic and social rights of the Sami in the legislation of the four states and in

³ Kolberg, A. (2019) *The Indigenous Identity of South Saami: Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, pp.129-130

⁴ Røros Museet, *The national congress in Trondheim in 1917*

⁵ Kolberg, A. (2019) *The Indigenous Identity of South Saami: Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, pp.132-133

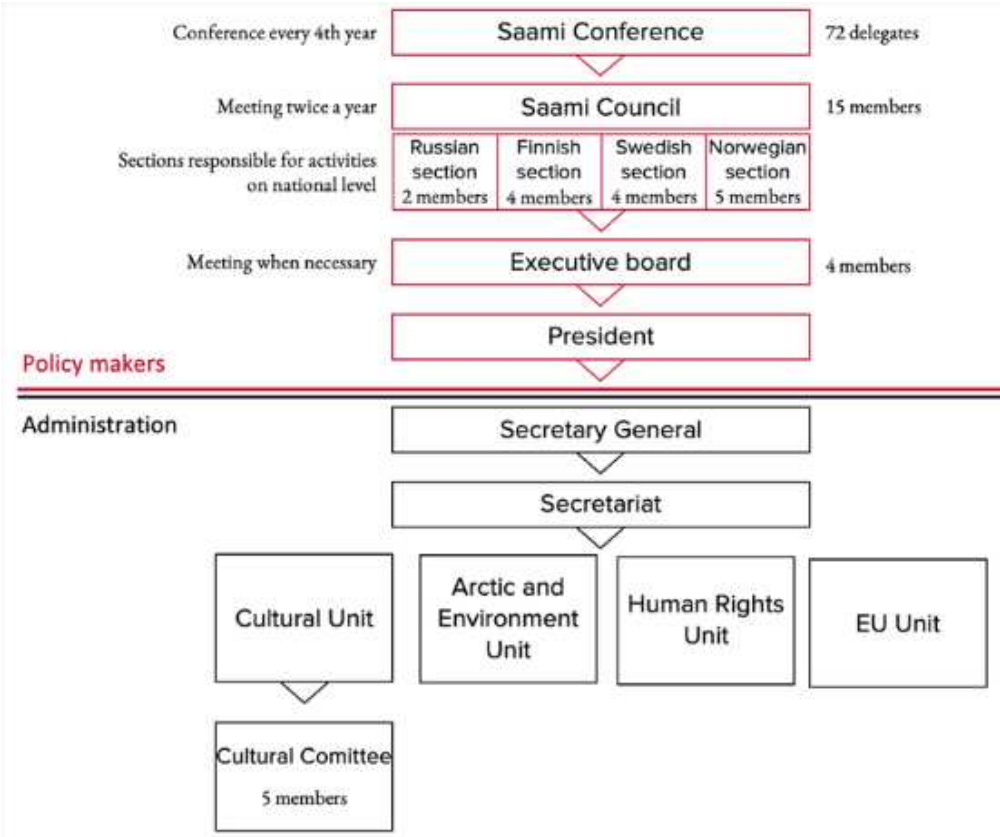
agreements between states and Sami representative organizations.⁶ Sami Council renders opinions and makes proposals on questions concerning Sami people's livelihoods, rights, language and culture and especially on issues concerning Sami in different countries. The Sami Council's work is based on the decisions, statements, declarations and political programmes of the Sami Conference. The Sami Council has nine member organizations: three in Norway, three in Sweden, two in the Russian Federation and one in Finland. These organizations nominate candidates for the Sami Council, and the Sami Conference appoints them. An organization can become a member organization by adopting the purpose of the Sami Council. The Sami Council gathers to plenary sessions approximately twice a year to discuss current issues regarding the rights and culture of the Sami and other indigenous peoples.⁷

The Sami Conference is the highest body of the Sami Council and therefore the most important forum of the Sami Council that reunites every two to four years. It is an arena for discussions and spreading of information where common Sami policy and culture milestones and strategies have been shaped. The first Sami Conference was held in Sweden in 1953 and during this conference it was appointed a working group to establish the Sami Council. It was then founded at the second Sami Conference in Norway in 1956. The work of the Sami Council and the Sami Conferences has been particularly important for the status and organization of the Sami people. The official delegations of the Sami Conference consist of the member organizations of the Sami Council, in all 72 delegates representing member organizations from Finland, Norway, the Russian Federation and Sweden, with 18 delegates from each country. The Sami Conference approves the Sami Council's annual and economic reports from the last four years, appoints the Sami Council's representatives and adopts the Sami Conference's declaration and resolutions to issues brought to the

⁶ Kuhn, G. (2020) *Liberating Sápmi: Indigenous Resistance in Europe's Far North*, Oakland: PM Press, pp.22-23

⁷ Saami Council (2023) *Saami Council*, available at: <https://www.saamicouncil.net/en/the-saami-council>

conference.⁸ The organisation of the institutions described above are best summarised in the graphic below.



9

3.2 The Alta Conflict and the Institutionalization of Sami Rights

Like many other indigenous peoples around the world, the Sami people experienced a long history of assimilation. The initial post-war period of sociopolitical development was marked by the need to recognize Sami as equal members of society, implying a uniform treatment of all without any recognition of cultural difference. This approach was reflected in the ratification by the Scandinavian countries of the International Covenant on Civil and Political Rights of 1966 in the early

⁸ Saami Council (2023) *Saami Conferences*, available at: <https://www.saamicouncil.net/en/saami-conferences>

⁹ Saami Council (2023) *Saami Council*, available at: <https://www.saamicouncil.net/en/the-saami-council>

1970s. Despite the ratification progress remained gradual and limited until the Alta struggle brought greater attention to Sami issues and concerns. The Alta conflict in the late 1970s is regarded as a turning point in terms of state policy towards the Sami, which changed dramatically in the second half of the 1980s. In 1978 it was published a plan to construct a hydroelectric power station on the Alta River (in Norway) that would create an artificial lake and flood Sami village and reindeer grazing areas. As it has been already mentioned, the basic premise of the Sami's way of life has always been the gentle use of nature with long intervals to allow its recovery. Besides the physical adaptation, the connection to nature has marked the creation of communities with a framework in which they could make, in the best ways possible, suitable use of the limited production capacity of the subarctic environment. It is needless to exaggerate the Sami's harmonious relationship to nature, but it arose because the cycle of the renewable resource economy and its basis were not endangered. Increased use of natural resources and direct exploitation due to states' requirements for reconstruction after World War II unavoidably imperilled the Sami way of life and generated a growing counterreaction as well. The major cause of damage to the natural environment was indeed the building of large dams, which began on some rivers as early as the 1930s. This sparked a major conflict as Sami relied on the Alta River for their traditional activities and the building of the dam would have compromised herding, fishing and their unique culture. Therefore, protests and resistance efforts led to a dramatically greater sense of self-awareness and feelings of identity among the Sami. The Sami demanded recognition as an aboriginal people and that their economic and social foundations be protected. At the same time, they called for the establishment of a democratically elected Sami political body.¹⁰

¹⁰ Lehtola, V. P. (2004) *The Sami People: Traditions in transitions*, Fairbanks: University of Alaska Press, p.72

3.2.1 From Protests to Institutional Recognition

The Alta-case came at a time of increased international indigenous rights movements and changed the way many Sami self-identified. It instigated a strong Sami civil rights movement and the Alta protest movement brought indigenous activists and their allies together with environmentalists, fishers, and concerned locals. In the autumn of 1979, the conflict came to the Norwegian Parliament when a group of Sami put up tents in front of the parliament building and began a hunger strike and civil disobedience. Two Sami women even travelled to Rome to petition the Pope. The protest led to significant international attention on Norway's treatment of the Sami as the violence used by officials against the indigenous population opened the eyes of many people and awakened the Sami identity of many. During this period of struggle, the Sami movement developed an important Sami symbol that strengthened a shared sense of identity: a Sami flag. The official design was adopted in 1986 and it is considered as one of the most recognizable symbols of Sami identity. It features red, green, yellow, and blue, colours traditionally associated with Sami clothing, art, and cultural symbols. At the centre is a circle divided into red and blue halves, representing the sun and the moon respectively. The four colours also represent the four countries in which the Sami population lives in, while the circle reflects the idea of one united population across national borders.¹¹

¹¹ Lehtola, V. P. (2004) *The Sami People: Traditions in transitions*, Fairbanks: University of Alaska Press, pp.72-73



The protests continued until December 1981 and then the Supreme Court of Norway upheld the government's decision to build a hydroelectric power station along the Alta-Guovdageaidnu River and it opened in 1987. Despite missing their goal, to halt the construction of the power station, the protests are generally regarded as a success, it became to be seen as a positive turning point due to its subsequent impact on Sami rights. The protests put Sápmi on the map and brought attention to the plight of the Sami and caused unprecedented media interest in their situation. A community that had largely been considered passive, or even non-existent, had emerged as a self-confident player on the political scene.¹³

During this period the World Council of Indigenous Peoples (WCIP) was established in 1975 as the first transnational pan-indigenous human rights organization with a global perspective and scope. After obtaining consultative NGO-Status within the United Nations Economic and Social Council (ECOSOC) in 1977, the World Council of Indigenous Peoples was officially recognized as representative voice for the world's aboriginal populations and qualified to advocate for the rights of indigenous peoples within United Nations institutions and conferences. At the 1976 Sami Conference, the delegates decided to join the WCIP, reflecting the Sami's efforts at cooperation with other

¹² Saami Council (2023) *National Symbols*, available at: <https://www.saamicouncil.net/en/national-symbols>

¹³ Kuhn, G. (2020) *Liberating Sápmi: Indigenous Resistance in Europe's Far North*, Oakland: PM Press, pp.24-27

people facing similar problems. The second meeting of the WCIP was actually hosted by Sami and held in Sweden in 1977. The primary activity of the World Council was participating in different international conferences and workshops, using its ECOSOC-Status to introduce statements, proposals and resolutions to various human rights and development bodies. At the same time, its lobbying efforts were not limited to supranational institutions but also targeted national governments, international agencies, NGOs and public opinion. The World Council also used its international standing by sending formal protest notes to the Governments and also used its international network to circulate information on the respective cases. In so doing, the WCIP played a vital role in coordinating the activities of indigenous delegations at these conferences and pressing for the inclusion of indigenous issues into the respective agendas and reports. Beyond its influence in the United Nations, the WCIP was actively involved in concrete international negotiation processes during the 1980s that drew considerable attention. An example was the revision of the ILO Convention No. 107 concerning the “Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries”. The WCIP was among the few indigenous organizations invited to participate as an observer in the expert meeting which discussed the necessary changes. Through its constant presence at the United Nations conferences, meetings and workshops, the WCIP became a crucial platform for advancing indigenous rights at the international level.¹⁴

The Sami’s involvement in the WCIP follows the same direction that has been the central issue in Sami politics since the 1960s. The Sami have long claimed rights to land, water and traditional livelihoods which the Nordic countries failed to recognise. They considered the conflict over the Alta River as an actual struggle for their rights to lands and waters. The Alta Conflict marked a turning point, leading to a new phase characterized by a positive recognition of indigenous rights through the state acknowledgement of Sami as a distinctive group of

¹⁴ Kemmer, J. (2011) Lobbying for Global Indigenous Rights: The World Council of Indigenous Peoples (1975-1997), *Forum for Interamerican Research*

indigenous peoples. Politically, the conflict was significant because it caused Norway to change its policy toward Sami. Following the controversy, growing public and international scrutiny made it necessary to take the needs of Sami into consideration in legislation. Therefore, the Norwegian Government in 1980 established a state committee on Sami affairs to consider cultural and legal issues, the Sami Rights Committee (SRC) with a mandate to propose solutions regarding Sami rights to land and water, among other issues, and the Sami Culture Commission. The SRC argued for a new reading of Article 27 of ICCPR, allowing for greater “positive” rights. The Norwegian Parliament followed this reading, implying that the nation-state had to actively contribute to developing Sami culture, as well as embracing the aspects of a minority culture. The authorities felt increasing pressure to be proactive on the subject. This is the stage when the Sami institutionalization process made some progress. Within one decade of the Alta Conflict, the Norwegian Parliament passed the Sami Act in 1987, which led to the establishment of the Sami Parliament in 1989, an elected representative body aimed at strengthening the Sami’s position and interests in Norway. In 1988, a constitutional amendment (110a) of the Norwegian Constitution was adopted, formally recognising the Sami as indigenous people and securing the Sami Language Act in 1990 creating an obligation to secure and develop Sami language, culture, and societal life.¹⁵ Followed Norway’s example, Sweden established the Sami Parliament in 1993 under the Sami Parliament Act of 1992¹⁶, and Finland followed with the establishment of its Sami Parliament in 1996. The Constitution of Sweden recognizes the Sami as a people, while the Constitution of Finland acknowledges their status as indigenous people.¹⁷ By securing and institutionalizing political rights through the Sami Parliament, the Sami became increasingly able to successfully advocate for their rights,

¹⁵ Lehtola, V. P. (2004) *The Sami People: Traditions in transitions*, Fairbanks: University of Alaska Press, p.73

¹⁶ Queen’s University (2020) *Multiculturalism Policies in Contemporary Democracies*, available at: <https://www.queensu.ca/mcp/indigenous-peoples/resultsbycountry-ip/sweden-ip>

¹⁷ Sámediggi, *The Sámi Parliament*, available at: <https://samediggi.fi/en/the-sami-parliament/>

particularly in relation to land rights. These accomplishments were made possible through the extensive research of this committee to settle Sami rights.¹⁸

Despite the defeat of the Sami in the Alta Conflict, the event marked a surprising turning point for Sami, legally as well as culturally as it changed the states' position on Sami.

Relations between the Norwegian monarchy and the Sami population shifted positively in 1997 when King Harald V of Norway publicly apologised in front of the Sami Parliament of Norway for the injustices and the discriminatory treatment they have been subjected to. In his speech he acknowledged: "The Norwegian state is founded on the territory of two people, Norwegians and Sami people. Sami history is closely intertwined with Norwegian history. Today we must apologise for the injustice the Norwegian state has previously inflicted on the Sami people through a harsh assimilation policy," marking an important moment of official recognition of Sami rights and reconciliation.¹⁹ Thereby, the Norwegian authorities had accepted the arguments that Sami activists promoted during the Alta Conflict 15–20 years earlier, at least at the symbolic level, although not always honoured in practice. The Sámediggi has worked, though, to convert this symbolic statement into concrete policy since day one.²⁰ In contrast, the Swedish state has not given the Sami community an official apology, instead the Church of Sweden apologized twice, in 2021 on Swedish territory and in 2022 in Sápmi. While the initial apology was not accepted by the Sami community, the second apology was accepted because it was supplemented by an action plan for how to further amend past wrongs done by the Church of Sweden to the Sami community.²¹ In Finland, the Sami Truth and Reconciliation Commission (TRC) submitted its

¹⁸ Broderstad, E. G. (2014) Implementing Indigenous Self-Determination: The Case of the Sami in Norway, *Restoring Indigenous Self-Determination*, p.83

¹⁹ Associated Press (1997) Norwegian King Apologizes to Sami, *The Washington Post*

²⁰ Josefsen, E., Saglie, J. (2024) The Sami Parliament in Norway: a "breaking in" perspective, *The Polar Journal*, Vol. 14, No. 1, p.110

²¹ Bladt, T. (2024) *Scandinavian Apologies and Compensation to Indigenous Peoples*, Nordic.info, available at: <https://nordics.info/show/artikel/scandinavian-apologies-and-compensation-to-indigenous-peoples>

final report this past December, concluding a four-year process of investigation. Following the publication, the Prime Minister Petteri Orpo said that Finland must issue an apology to the Sami people for the discrimination they have experienced.²²

Norway took further steps toward the legal and procedural recognition of indigenous rights through the ratification of the ILO Convention No. 169 in 1990. Norway's ratification represented a major step forward in the recognition of Sami rights. Sweden, Finland and Russia have not yet ratified the ILO convention, mainly because of the obligation to recognize the indigenous peoples' property rights.²³ The principles of the ILO Convention No. 169 were later incorporated into the Finnmark Act of 2005 and in the Consultation Agreement between the Norwegian Government and the Sami Parliament of the same year. The Finnmark Act, welcomed by the UN Committee on Human Rights and by the CERD, facilitates the management of land, transferring the area from the state ownership to a local new established body, the Finnmark Estate (Finnmarkseiendommen), which administers land and natural resources in Finnmark on behalf of all inhabitants of the county.²⁴ The Act did not actually hand over former crown land to the Sami but instead it was transferred back to the citizens of the county. Prior to the Act the Norwegian state considered itself the owner of 95% of the land in Finnmark. Thanks to this Act, the Sami, both as a collective and as individuals, acquired rights to land and natural resources through the prolonged use of land and water areas, in other words it recognized the historical connection of the Sami people to these territories. The Act was the result of a 25-year-long dispute over Sami land rights in Finnmark County, therefore it represented a major shift in the recognition of Sami interests and participation in land governance,

²² Yle (2025) *PM Orpo: Finland must apologise to Sámi people*, available at: <https://yle.fi/a/74-20197931>

²³ Lehtola, V. P. (2004) *The Sami People: Traditions in transitions*, Fairbanks: University of Alaska Press, pp. 84-85

²⁴ Broderstad, E. G. (204) *Implementing Indigenous Self-Determination: The Case of the Sami in Norway*, United Kingdom: E-International Relations, p.84

further distinguishing Norway as the most progressive Scandinavian state in the implementation of indigenous rights.²⁵

The Consultation Agreement regulates the relationship between the Norwegian Government and the Norwegian Sami Parliament, requiring the Norwegian Government to consult the Sami Parliament on matters affecting Sami interests. This agreement is based on the principles outlined in the ILO Convention No. 169 on Indigenous and Tribal Peoples, as it obliges states to consult indigenous peoples on matters affecting them. These developments demonstrate the growing interaction between national legislation and international law. In particular, the Finnmark Act partially incorporated the ILO Convention No. 169's procedural provisions concerning the rights of indigenous peoples to consultation, negotiation, and real participation in the decision-making processes. These processes led to new arrangements for securing indigenous governance, and co-determination in fields such as the management of land and resources. This represents a meaningful change from the past where the state ignored customary Sami rights by overlooking rules and procedures found in both domestic law and principles of international human rights. The evolving consultation practices aim to establish a partnership between the Sami Parliament and state authorities reinforcing Sami autonomy and closer relations between the Sami and the broader political community. The effectiveness of these arrangements depends on the existence of an autonomous and representative Sami Parliament. Gradually, the Sami Parliament gained authority and became a defining body in consultation processes with the Norwegian state. As a result, Sami have obtained acknowledgement and recognition, and the inclusion of their concerns into a broader legal framework, even if challenges and setbacks do sometimes occur. Norway's ratification of ILO Convention No. 169 proved to be crucial to the formalization of both the Finnmark Act and the Consultation Agreement, developments that likely wouldn't have been possible otherwise.²⁶

²⁵ Josefsen, E., Saglie, J. (2024) The Sami Parliament in Norway: a "breaking in" perspective, *The Polar Journal*, Vol. 14, No. 1, p.120

²⁶ Broderstad, E. G. (204) *Implementing Indigenous Self-Determination: The Case of the Sami in Norway*, United Kingdom: E-International Relations, p.84

Through consultation and negotiation procedures, indigenous institutions are empowered to deal with a wide range of policy matters that are critical for the implementation of indigenous self-determination. This development is characterized by enhanced institutionalization and consolidation of legal recognition. Institutionally anchored rights allow for extensive relations between autonomous indigenous institutions and state institutions. These relations require a complex framework outlining the responsibilities and jurisdictional powers of different authorities. Further, indigenous autonomy involves clearly defining relationships with state authorities, which implies constantly revising and politically justifying the framework. The increasing influence of the Sami Parliament on relevant policy matters can be seen in the growing number of consultations with state authorities: between 40 and 50 consultations on legislation and policies are conducted annually, many of which result in consensus. The topics of these consultations are diverse, they cover a wide variety of issues including education, health, language, national parks, cultural heritage, hunting and fishery regulations, reindeer husbandry, windmills, power stations, and mining. However, also the number of failed consultations is increasing. Still, the enhanced institutionalization and recognition of rights has created a stronger mechanism to reach consensus and to move more firmly towards consensus through intermediate agreements and dialogue that allow to continue negotiations even when immediate consensus is not reached. The institutionalized consultation process promotes the involvement of the Sami Parliament in state decision-making processes. It allows emerging concerns from Sami self-government to be represented and expressed more widely. This being said, the opportunities for establishing indigenous autonomy differ on the structure of the state itself. A unitary state like Norway primarily relies on transferring and delegating management tasks from central authorities to the Sami Parliament. But even so, there is gradual change in governance practices related to the Sami as an indigenous minority. This is being accomplished through institutionalizing a consultation process which remains an exceptional case in Norwegian politics. Based on international law and on premises of participation and influence conducted in good faith aiming at consensus or approval, the

achievements of the Sami Parliament are beyond those of just an advisory body. However, in practice this is not always so straightforward or fully effective.²⁷

Having outlined these developments for the recognition of indigenous rights, it is equally important to note that setbacks in the struggle of Sami rights recognition are apparent. Many of these conflicts concern the exploitation of national resources with tremendous economic interests and political prestige. As is the case in the rest of the Arctic, politicians and industry leaders play a large role in how economic opportunities are developed, often through projects involving mining, energy production and infrastructure expansion. However, such developments may intensify tensions between industry, governments, environmentalists, and indigenous peoples whose traditional livelihoods depend on that land and are therefore placed at risk. Governing systems are required to manage these conflicting interests, in this case, industrial activities versus traditional land use. They must consider those who are most severely affected by exploitation activities as it is the duty of the state to protect human rights, including the rights of indigenous peoples against violations by third parties. This duty applies to all state institutions and involves establishing standards for businesses to respect human rights, including government policy encouraging business to respect human rights. Without institutionally anchored rights and established procedures securing indigenous participation in state decision-making processes, the situation will only become more critical.²⁸

This discourse is particularly significant because it highlights an aspect that is often overlooked: while states frequently justify the appropriation of Sami land and natural resources on economic grounds, prioritizing industrial development and economic interest, it is the Sami people and communities who bear the social and cultural consequences of these decisions. The loss of grazing land reduces the availability of land necessary for their traditional livelihoods such as reindeer herding,

²⁷ Broderstad, E. G. (204) *Implementing Indigenous Self-Determination: The Case of the Sami in Norway*, United Kingdom: E-International Relations, p.85

²⁸ *Ibid*, pp.85-86

forcing families to leave herding communities. This demographic decline also affects Sami schools, many of which are forced to close due to decreasing numbers of children. As a result, the transmission of Sami language, traditions and culture is weakened contributing to a major loss of Sami culture and society. Ultimately, this situation raise a fundamental question: if economic interests continue to prevail, what land and resources will remain for the Sami and whose values are ultimately considered more important.

3.2.2 Sami Parliaments

As noted above, the political relations between the Nordic states and Sami people have changed especially during the last three decades. The lack of an exclusive Sami homeland raised the question of how Sami self-determination claims are defined. Nevertheless, the Sami have consistently claimed recognition of their rights, including land rights, in order to maintain and develop their culture, language, way of life and self-determination as an indigenous people. Central to these efforts have been the establishment of Sami Parliaments, Sámediggi, a publicly elected body in which a collective Sami voice can be represented within the state. The establishment of these institutions in Norway (1989), Sweden (1993) and Finland (1996) means a wider acceptance of the principle of group rights and an empowerment of the representative democracies. The Sami achieved a greater sphere of influence in the dominant society as they can, in fact, participate directly in policy with national elections to the parliaments, as well as indirectly with the work of the Sami parliament, whose members are elected every four years only by Sami individuals. The three Sámediggi are not alike as the legal and economic frameworks given by the states differentiate these institutions in terms of the premises for Sami self-determination. The general situation differ in terms of the recognition of Sami rights and how these are adopted into national laws.²⁹ As the Norwegian model provides a more developed framework

²⁹ Josefsen, E., Saglie, J. (2024) The Sami Parliament in Norway: a “breaking in” perspective, *The Polar Journal*, Vol. 14, No. 1, p.110

in terms of promotion and protection of Sami rights, it will be the primary focus of the following analysis.

As previously mentioned, in Norway, subsequent to the governmental inquiry set up after the Alta conflict, the Sami Parliament was created in 1989 to promote Sami culture, language and social conditions. The Parliament works to ensure equality and equal treatment of the Sami people and to secure the Sami language, culture and way of life. Although it does not have any legislative power, its creation represents a symbolic recognition of the Sami people within the Norwegian state. The parliament is a referral body and it is financed by the Norwegian state, which sets aside for it much more money than the other Scandinavian countries. In Sweden, the Sami Parliament is a governmental administrative body, whose members are elected among and by the Sami population. The reason for its establishment is the recognition of Sami's indigenous status, although the parliament's function only concerns the monitoring of Sami culture and Sami language. The Finnish Sami Parliament is initially intended to regulate Sami's rights and their economic, social and cultural conditions. At a later time, the parliament is restructured similar to the Norwegian and Swedish Sami institutions. Section 1 of the 1995 Finnish Act on the Sami Parliament affirms the cultural autonomy of Sami within their homeland: "The Saami as an indigenous people shall, as is further detailed in this act, be ensured cultural autonomy within their homeland in matters concerning their language and culture".³⁰ Differently from Norway and Sweden, in Finland the authorities have to negotiate with the Sami Parliament all decisions that can affect, directly or indirectly, Sami's status as an indigenous group.³¹ The Swedish legislation is silent on the idea of negotiations, while the Norwegian authorities are merely obliged to give the Parliament a chance to express its opinions.³²

The Sami parliaments are one example of the forms of autonomy granted to indigenous peoples in the broader framework of self-determination. Even if the territorial autonomy is not entailed as a

³⁰ The Finnish Act (1995) No. 974

³¹ *Ibid*, section 9

³² Josefsen, E., Saglie, J. (2024) The Sami Parliament in Norway: a "breaking in" perspective, *The Polar Journal*, Vol. 14, No. 1, p.110

function of the parliaments, the objective of cultural autonomy and cultural self-government is presented in all articles 1 of the three Scandinavian Sami parliaments. Since the parliaments have mostly advisory functions, the Sami people do not have such a prominent role in the dominant political structure, not even in Finland where the Sami parliament has a greater power due to the governmental obligation to negotiate. Therefore, Sami parliaments can be seen as a symbol for redressing past wrongs.³³ Their foundation is the symbol of the recognition of Sami people's indigenesness and self-determination in all three Scandinavian states, but at the same time, this acknowledgement is limited to a cultural form of autonomy.

The Sámediggi in Norway has developed as a central institution for Sami self-determination. Although it functions as an administrative body, it has no independent sources of income and relies financially on transfers from the Norwegian state. However, the Sámediggi is a politically autonomous body and is not part of the state's hierarchical steering system. Within the Norwegian central government, the Ministry of Local Government and Regional Development is responsible for Sami affairs, but the Sámediggi is not subordinate to the ministry and is therefore not subject to instruction from the government. According to the Sami Act, the scope of the Sámediggi is any matter that affects the Sami people. In practice however, its actual decision-making power is quite limited. It does not engage in public service provision to Sami citizens, but it manages different grant schemes and may exercise regulatory authority under legislation, as it has regarding curricula in Sami-specific subjects. Its influence lies mainly in its legal right to be consulted, its legal rights in specific acts and in its symbolic power. The effectiveness of its legal influence depends on the Norwegian authorities respecting and enforcing legislation and Supreme Court decisions that are in favour of Sami rights, whereas the symbolic power is not limited by and goes beyond the Norwegian

³³ Lenzerini, F. (2008) *Reparations for Indigenous Peoples. International & Comparative Perspectives*, New York: Oxford University Press

authorities. While the Sámediggi's scope of competencies is narrow, its independence is strong.³⁴

The legitimacy of the Sámediggi lies in the historical presence of the Sami people within their traditional living area. Their status as an indigenous people is based on this historical presence and hence their right to traditional land, as confirmed by the Norwegian state's ratification of ILO Convention 169.³⁵ The Alta conflict explain why the Sámediggi was established at that specific point in time and it can also contribute explaining why the Sámediggi's scope of business is not limited to non- territorial issues. The importance of land rights for indigenous peoples certainly applies to the Sami case, with its traditional land use and traditional industries, such as reindeer husbandry, agriculture, fjord fishing and outfield industry. Reindeer husbandry requires access to large land areas, and this industry plays an important role in maintaining Sami culture, even though most Sami today are not reindeer herders. Settlement patterns, on the other hand, can explain why the Sámediggi is not limited to a specific territory. Although Sami land claims build on a defined traditional settlement area, the Sami constitute a minority in most of this area. This context challenges an understanding of indigenous self-determination that includes territorial integrity and exclusive enjoyment of their own land and resources. It is nevertheless on this foundation that Sami Indigenous rights are built. Except for a minor region in the northernmost part of the country, the Sami are more or less outnumbered by non-Sami, making it impossible to claim exclusive rights in all traditional Sami settlement areas.³⁶

The Sami Parliament, a democratically elected institution is, however, no guarantee of autonomy along all dimensions. The legal basis, the economic latitude and the degree of formal and informal influence can both limit and widen the political leeway. On the one hand, the Sámediggi does not have any legislative or fiscal powers. Combined with a lack of territorial jurisdiction, its formal basis seems weak.

³⁴ Josefsen, E., Saglie, J. (2024) The Sami Parliament in Norway: a "breaking in" perspective, *The Polar Journal*, Vol. 14, No. 1, pp.110-111

³⁵ *Ibid*, p.114

³⁶ *Ibid*, p.118

Territorial institutions for indigenous autonomy often have strong formal positions. On the other hand, the legal basis for the Sámediggi in Norway does not limit or restrict its work. The Sámediggi is free to work for any matter that affects the Sami people. Accordingly, when the Sámediggi was established in 1989, it had considerable autonomy to decide its future development, although it is economically dependent on the state. The Sámediggi has strived to achieve the inclusion and recognition of Sami perspectives within Norwegian institutions, rather than governing such institutions and delivering public services themselves.³⁷

The Sámediggi demanded a significant position within the state by confronting state policy and insisting on dialogue and cooperation to secure and strengthen state–Sami relations. However, this development took time and during the Sámediggi’s early periods, the state saw it as an advisory body. The central government had to be constantly reminded of taking Sami considerations into account. In these early years, the Sámediggi prioritised to take over administrative tasks from the state, mostly funding and grants for different Sami purposes and the management of Sami cultural heritage. However, the political aspects of Sami rights were on the agenda from the beginning. This underlines that, although the Sámediggi took on administrative tasks delegated by the government in its initial phase, it has not sought extended authority unless it has been delegated by the Norwegian Parliament by law. This underlines that the Sámediggi is not part of the state hierarchical steering system. Parallel to this, the Sámediggi was building up its position in terms of competencies, knowledge and networking, also mirrored in a yearly increase in state funding. However, in practice, the government influences Sámediggi positions in consultations and cooperation, because the state oversees financing and general management. The significance of trust building and cooperation procedures to the Sámediggi–state relationship is indisputable. Broderstad discussed how the principle of Sami self-determination has been implemented through the revision of procedures relevant to the municipal, regional and national levels by studying how the Sámediggi

³⁷ Josefsen, E., Saglie, J. (2024) The Sami Parliament in Norway: a “breaking in” perspective, *The Polar Journal*, Vol. 14, No. 1, p.119

managed to influence and even become part of decision structures that were initially beyond Sami control.³⁸

The development of indigenous self-determination in Norway is a product of two factors. The first is ethnogeography in Norway, since the Sami population is geographically dispersed. The second factor is the critical juncture of the Alta conflict in the late 1970s and early 1980s, which resulted in a fundamental shift in the Norwegian Sami policy, concretised by the establishment of the Sami Culture Commission and the Sami Rights Commission. The latter proposed several institutional changes in the Norwegian political system, including the creation of the Sámediggi.³⁹

3.2.3 Nordic Saami Convention

Another significant step in the advancement of Sami self-determination was the development of the Nordic Sami Convention. It can be considered as the most important recent cross-border initiative of the Sami people which has been materialized in collaboration with the governments of Norway, Sweden and Finland. On the global level it is the first designative example of an attempt to create a regional treaty specifically concerning indigenous peoples. The concept of a Nordic Sami Convention was raised during a conference of the Sami Council in 1986, then ten years later the mentioned Nordic states started with the actual work. In 2002 the presidents of the Sami Parliaments established an expert group which prepared a Draft of the Sami Convention in 2005. The negotiating leaders initialled the negotiated text of the convention on 13 January 2017. The proposal is now being considered by the Sami Parliaments and the governments of the countries. The Sami parliaments have not yet given their approval to the proposal, therefore it has not yet been signed or ratified by the states. The condition that the Sami Convention cannot enter into force or be amended without consent of the Sami Parliaments reflects the nature of

³⁸ Josefsen, E., Saglie, J. (2024) The Sami Parliament in Norway: a “breaking in” perspective, *The Polar Journal*, Vol. 14, No. 1, pp.119-120

³⁹ *Ibid*, p.111

this Convention as a ‘social contract’ between the Sami people and the Norwegian, Swedish and Finnish governments.⁴⁰

The Convention aims to protect the rights of the Sami people in the Nordic countries to ensure that Sami people can enjoy their culture, both within and outside their traditional territory. As the Nordic adjective entails, the Convention does not include Russia. However, it is desirability for the Scandinavian countries to establish cooperative relations with Russian Sami and to extend the Convention’s rights as much as possible to Russian Sami. Since the beginning of its draft the aim was to grant concrete rights to Sami people, as well as to establish duties for the states. This kind of Convention with specific objectives is preferred instead of a framework convention, which is considered far too general for the situation like the ILO Convention No. 169.⁴¹

In its preamble, the Convention examines that the Sami in the three Nordic States constitute “one people residing across national borders” and “want that the Sami shall live as one people within the three states”, on the land they call themselves Sápmi.⁴² As a matter of fact, the Draft Sami Convention does not address the Sami people in the three States separately but as one people, glued together by similar aspirations and a common culture. It further acknowledges the Sami’s right to self-determination that the Sami as a people enjoy must be respected. The three Sami Parliaments claim that national borders should not break the togetherness of the Sami and stress the importance of the right to self-determination as one people. The preamble paragraphs also state that the Sami have rights to the land, water and natural resources in areas which constitute their historical homeland.⁴³

⁴⁰ Norwegian Government (2025) Nordic Sami Convention, *Ministry of Local Government and Regional Development*

⁴¹ Koivurova, T. (2008) The Draft for a Nordic Saami Convention, *European Yearbook of Minority Issues Online*, Vol. 6, No. 1, pp. 107-108

⁴² Unofficial translation in English of the Draft of the Nordic Saami Convention, available at:
https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_sam_ekonv_engelsk.pdf

⁴³ Fitzmaurice, M. (2009) The New Developments Regarding the Saami Peoples of the North, *International Journal on Minority and Group Rights*, Vol. 16, No. 1, pp. 67–156

Article 1 expresses the objective of the Nordic Sami Convention, that is “to affirm and strengthen such rights of the Saami people that are necessary to secure and develop its language, its culture, its livelihoods and society, with the smallest possible interference of the national borders”. The acknowledgement of past injustices suffered by the Sami people, certified by the three Nordic states in the preface, underlines the desire to repair past wrongs by providing some guarantee that such past negative experiences would not occur again.

After the recognition of the Sami as an indigenous people (art. 2), the Convention affirms the right to self-determination, in accordance with international law: “[...] the Sami people has the right to determine its own economic, social and cultural development and to dispose, to their own benefit, over its own natural resources” (art. 3). This right, indeed, is already affirmed in the preface, where both the three Nordic states and the three Sami parliaments allude to it. The article on self-determination of the Nordic Sami Convention is quite controversial, due to a lack of clear reference to autonomy or local self-government. Sami’s self-determination is even more problematic as Sami people use certain areas exclusively holding the majority in traditional areas, however they are more often a minority. Consequently, the Sami rights to self-determination are in competition with the self-determination rights of non-Sami. In these cases, according to the Draft Sami Convention, the solution is a diversified degree of influence on decision-making processes.⁴⁴

The Convention deals with traditional use of land, water and natural resources, which, is one of the most unresolved and contentious issues not only for the Sami people but for indigenous peoples in general. Since land and water rights are related to the issue of self-determination, the Convention not only expresses the protracted traditional use of land and water areas as the basis for individual and collective ownership but also affirms the usufruct rights of the Sami people. It is remarkable to see how much the Draft Convention had been drawn from the ILO

⁴⁴ Unofficial translation in English of the Draft of the Nordic Saami Convention, available at:
https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf

Convention No. 169 adjusting the provisions to the particular positions of Sami individuals.⁴⁵

Section V aims to protect Sami livelihoods, since they constitute a fundament for Sami culture's survival. The protection of Sami livelihoods covers the activities essential for the maintenance and development of Sami communities. Among these, reindeer husbandry is acknowledged as a traditional livelihood and fundamental cultural marker of the Sami people and it enjoys a special legal protection. In Norway and Sweden, reindeer husbandry is an exclusive Sami right, while in Finland non-Sami share the same right therefore, Finland is required to strengthen the position of Sami reindeer husbandry.⁴⁶

Given the close relationship between Sami culture, traditional land, water areas and natural resources, the indigenous peoples' right to self-determination concerning land and natural resources is of central importance. In this respect the Draft Sami Convention will provide the foundation for recognition of Sami land rights because it has not only tried to implement the controversial Articles 14 and 15 ILO Convention No. 169 on resource rights but is also predominantly in accordance with the contents of land and resources in the UN Indigenous Declaration on the Rights of Indigenous Peoples.

The Draft Convention can be seen as a "social contract" rather than a regular international treaty, between the three states and the Sami people sharing the same region, pertaining also very much to the way their constitutions are understood and developed. The Convention advances the status and rights of the Sami as a people within the complex institutional framework in which they are presently located.

The Draft Convention is an indicator for a positive attempt to establish the first legal instrument that tries to organise the relations between cross-border indigenous people and the states they live in. The initiative for its creation originated with the Sami, since as examined above, the

⁴⁵ Åhrén, M. (2007) The Nordic Sami Convention: International Human Rights, Self-Determination and other Central Provisions, *Journal of Indigenous Peoples Rights*, No. 3, p.30

⁴⁶ *Ibid*, p.31

Draft Convention was produced by an Expert Group which can be regarded as Sami-friendly. As a result, the Convention can be considered as successfully in advancing the status and rights of the Sami as a people within the complex institutional framework in which they are presently located. Moreover, this Convention would give the Sami people a substantial right to have a say in matters regarding their economic, social and cultural development and might constitute an enormous step onward in the implementation of rights determined in ILO Convention No. 169. The Convention also aims to harmonize the legislative framework governing Sami rights between the different States, with the cooperation of the Sami Parliaments.

3.3 Current Legal Situation of Sami Peoples

The principle of self-determination, as discussed in the previous chapter, was already recognized in the United Nations Charter of 1946 as a general principle to be considered when pursuing the goals of the organization. Two decades later this principle was expressed in its simplest form in the two International Covenants on Human Rights. However, it was not until more than sixty years after the creation of the UN that this right was finally granted to indigenous peoples as well. Within this broader international framework, the Sami constitute one of the most prominent indigenous peoples in Europe. Norway further strengthened this recognition through the ratification of ILO Convention No. 169. By contrast, in Finland, Sweden and Russia the Sami have generally obtained legal protection primarily as an ethnic minority rather than as indigenous people, since these states have not ratified ILO No. 169.⁴⁷ This divergence demonstrates a broader weakness of international indigenous rights protection, resulting in uneven levels of protection across jurisdiction.

The legal framework governing Sami rights consists of three interrelated normative structures: national law, international law and Sami customary law. The modern protection of Sami rights developed

⁴⁷ International Covenant on Civil and Political Rights and International Covenant of Economic, Social and Cultural Rights, both of 16 December 1966

in response to social and legal controversies, such as the Alta case in Norway, that marked a gradual transformation in the legal recognition of Sami rights. Nevertheless, the existence of multiple legal sources has not eliminated significant gaps in protection. As of now, nearly sixty years after its entry into force, the International Covenant on Civil and Political Rights has 175 parties.⁴⁸ Despite the broad acceptance, some difficulties concerning the implementation of art. 1 arise from the fact that the state parties, especially at the time of the creation of the ICCPR, were not yet ready to allow a wider interpretation of the concept of peoples. While there might be consensus that the Covenant applies not only to peoples under colonial rule, the absence of a clear and universal provision demanding the application to indigenous peoples, has enabled states to interpret it in their own restrictive ways. Critics of this reluctance can also be found in the suggestions of the Permanent Forum on Indigenous Issues, which has suggested that state parties should be requested to report on their compliance with their obligations concerning the right of self-determination of indigenous peoples. Normally, the right to self-determination is guaranteed by a further limitation arises from art. 1 of the Covenant since it would not allow for individual claims as it is incorporated as a collective right, which means it has to be invoked by a people as such. Therefore, the Optional Protocol I is particularly important as it opens the way for individuals to seek recognition of a violation of the ICCPR. The Optional Protocol to the International Covenant on Civil and Political Rights was adopted and opened for signature by the same act of the United Nations General Assembly that adopted the Covenant itself, and they both entered into force in 1976. Notwithstanding the ratification of the Covenant does not entail the acceptance of the Optional Protocol I. For a petition to be admissible has to fulfil two conditions: all available domestic remedies are exhausted and the communication is not anonymous. Yet, even when these requirements are met, the HRC's decisions on the right of self-determination are for several reasons very restrictive.⁴⁹

⁴⁸ United Nations (1945) *Office of the High Commissioner for Human Rights*, Status of Ratification of International Human Rights Treaties

⁴⁹ United Nations (1966) International Covenant on Civil and Political Rights, *Human Rights Office of the High Commissioner*

These shortcomings may help explain why it took the UN another forty years to adopt the UN Declaration of the Rights of Indigenous Peoples in 2007, following almost twenty-five years of negotiation and discussion. The delay was likely due to the impossibility at the international level to do so earlier and not the general intention to damage indigenous peoples' rights. Although the Declaration may be considered not deeply comprehensive of all indigenous issues at stake within the international debate, it satisfies with a minimum standard all fields of claims brought about by indigenous representatives to the Working Group. At the same time, UNDRIP suffers from an important structural limitation: it is not a legally binding instrument. Consequently, as an instrument of soft law, its effectiveness depends on state willingness to incorporate its principles through customary international law and state practice. States therefore are called to implement policies in favour of indigenous peoples, manifesting their commitment to UNDRIP. As a matter of fact, the Declaration alone cannot change the life of indigenous peoples without states engagement in implementing indigenous-friendly national legislation.

A comparison between the ICCPR and ILO Convention No. 169 further illustrates the tension between broad acceptance and strong protection. The International Covenants are the most important human rights documents, with more than 150 states parties. By contrast, ILO Convention No. 169 has been ratified by only 24 states⁵⁰ willing to guarantee special rights to indigenous peoples. This disparity suggests that if the ICCPR had granted a specific right of self-determination to indigenous peoples or it provided a general definition of "peoples" including indigenous peoples, the acceptance of the Covenant would have been far lower. Nevertheless, while this might help explain as to why the text does not pronounce itself more clearly on the right of self-determination of indigenous peoples for the groups in questions, it also reveals its fundamental weakness. As a result, the Covenant remains more of a theoretical instrument than a real help.

⁵⁰ ILO Convention No. 169 (1989) Ratification

3.4 The Regional systems' approach to Indigenous Peoples

3.4.1 The EU and indigenous peoples' issues

The focus on Sami in Scandinavia brings the attention not only on international law but also on the legislation of the European Union. This is particularly relevant since the Sami constitute the only indigenous group recognized within the EU⁵¹ and they live in Sweden and Finland, members of the EU, while Norway participates closely through its membership in the Schengen area. Consequently, while the previous chapters focused on the principal international instruments concerning the protection of indigenous peoples, it is equally important to examine the European legal framework. Although the EU does not possess a specific legal framework dedicated to indigenous people, EU policies affect areas that are of particular importance to the Sami. As a result, the EU has gradually assumed a more significant role in the promotion of indigenous rights, contributing to their recognition and protection.

Even if all European Union member states are also members of the United Nations and, consequently, they pay attention to the UN documents, they have their own inter-state norms as well. According to the Treaty on European Union, the EU is:

[...] founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.⁵²

Moreover, Article 3 holds the EU to promote these values, combat social exclusion and discrimination, respect its rich cultural and

⁵¹ Pasikowska-Schnass, M. (2020) International Year of Indigenous Languages – Sami people and languages in the EU, *European Parliamentary Research Service*, available at: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/646118/EPRS_ATA\(2020\)646118_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/646118/EPRS_ATA(2020)646118_EN.pdf)

⁵² Treaty on European Union (2007) Art. 2

linguistic diversity, safeguard and enhance Europe's cultural heritage and uphold and promote its values in its relations with the wider world. Human rights constitute a central aspect of the EU, especially in its external relations and have developed greatly after the WWII. Particularly, indigenous peoples' issues are addressed as part of the more general policy on human rights and are guided by the principles enshrined in the UNDRIP.

The relationship between the EU and the Sami dates back a while ago, when during the Sami Conference held in Helsinki in 1992 the Nordic states had to take into account Sami's position when considering possible EU membership. Sweden and Finland became EU members in 1995, while Norway voted no to membership in the referendum of 1994. The accession agreement of 1994 between Sweden and Finland and the EU includes the so-called Sami protocol that aims to protect Sami rights in the EU context, particularly regarding traditional livelihoods, such as reindeer herding granting exclusive reindeer husbandry rights to the Sami. The protocol ensures that Sami interests are considered in relevant EU laws and regulations, and that the member states, especially Sweden and Finland, must safeguard Sami's rights within the EU system. However, this additional protocol is not respected. While Sweden grants exclusive rights to reindeer herding, Finland does not provide the same level of protection since under Finnish law any citizen living in the reindeer husbandry zone is entitled to participate in the activity. Although Norway is not a member of the European Union it remains closely connected into the European legal and economic framework through its participation in the Schengen Area.⁵³

The accession of Sweden and Finland to the UE had a broader consequence for the Sami. The most notable one in Sweden is the recognition of the Sami as a minority by the Swedish State, with the signing and ratification of the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Furthermore, the EU pursues policies in the field of human rights protection with the

⁵³ Saami Council (2023) *EU-unit*, available at: <https://www.saamicouncil.net/en/euu>

objective of enabling indigenous peoples to own, use, develop and control their traditional lands, territories and resources, including fishing rights. Although most of these documents do not specifically mention the Sami, they are relevant and applicable to them. The rights of indigenous peoples have been mentioned in numerous documents issued by EU bodies. In particular the EU has supported the adoption and implementation of the ILO Convention No. 169 and UNDRIP calling on states that have not yet ratified the ILO Convention to do so and ensure compliance with UNDRIP.⁵⁴ The Commission showed in its Communications commitment to protect the Sami's right, their autonomy and the lands they depend on. However, a gap remains between these policy commitments and their practical implementation within the EU as indigenous peoples and the Sami people are rarely mentioned in in them.

An important source of EU law and a binding instrument that sets fundamental rights and principles regarding the protection of human rights is the EU Charter of Fundamental Rights of 2000. In this Charter, even though the Sami people, the minorities or the indigenous people are not mentioned, the rights of Sami people are protected under the scopes of many articles.⁵⁵

Several EU policies have implications for the Sami and their rights, for example the Northern Dimension policy is a common framework involving the EU, Iceland, Norway and Russia. The revision of the policy in 2006, adopted during the Finnish Presidency of the EU, contained objectives for indigenous peoples to which the EU and Norway adhere as a part of the Northern Dimension.⁵⁶

In recent years, cooperation between the EU and the Sami has intensified through initiatives aimed at strengthening the relationships. An example is the 'Filling the EU-Sápmi knowledge gaps' project

⁵⁴ European Parliament Resolution on the violation of the rights of Indigenous Peoples in the world (2018)

⁵⁵ Charter of Fundamental Rights of the European Union (2000) Official Journal of the European Communities

⁵⁶ European Parliament (2009) *Northern Dimension*, available at: https://www.europarl.europa.eu/meetdocs/2009_2014/documents/deea/dv/0209_/0209_05.pdf

which seeks to enhance Sami participation through education courses, traineeships and the creation of an EU-Sami think-tank (ESJ). The project aims to increase awareness, build capacity and foster long-term partnerships between the Sami and EU, ultimately contributing to the development of the first Sami-EU strategy. Despite these efforts, the Sami often remain outside of policies specifically addressing indigenous concerns as a gap persists between formal recognition and practical implementation. This created a paradox in which the Sami within the EU face the same concerns as their counterparts in Norway, highlighting the need for stronger mechanism to ensure the effective protection of indigenous rights within the European context.⁵⁷

Another important step in strengthening relations between the Sami and EU was the establishment of the EU-unit by the Sami Council in 2019. The Unit engages with the EU decision-makers on Sami rights, leads EU-financed projects, and advocates for the protection of Sami rights at European level. Through its work it ensures that EU policies take Sami interests into account, especially in areas related to their livelihoods. The EU-unit ensures Sami access to EU resources and support the implementation of the Sami-EU strategy to contribute to the promotion of Sami self-determination.

3.4.2 The European Court on Human Rights

Regional human rights systems play a significant role in the protection and promotion of human rights across the world. These systems include the African Commission on Human and Peoples' Rights, the Arab Human Rights Committee, the European Court of Human Rights and the Inter-American Commission on Human Rights. For the purposes of this research, the focus will be limited to the European Convention and Court of Human Rights.

The European system of human rights protection is founded upon the European Convention on Human Rights (ECHR), adopted by the Council of Europe in 1950. ECHR protects the fundamental rights and

⁵⁷ Laframboise, L. (2023) The Sámi Limbo: Outlining nearly Thirty Years of EU-Sápmi Relations, *The Arctic Institute*

freedoms of people within the 46 countries that belong to the Council of Europe. The Convention was established with the aim of guaranteeing a set of basic civil and political rights and it is grounded both on a universal and a regional inspiration. Its preamble refers to the Universal Declaration of Human Rights of 1948, reflecting the intention of establishing a collective enforcement of fundamental rights. At the same time, the Convention serves the aim of Council of Europe of achieving greater unity between the Member States through the realisation of human rights and fundamental freedoms. With the development of the ECHR, Europe has moved to ensure the international protection of fundamental rights, including those of individuals belonging to minorities. Central to this system is the European Court of Human Rights (ECtHR) which oversees the implementation of the Convention. The Court does not operate isolated from other actors in the field of human rights, rather it forms part of a broader international human rights framework.⁵⁸

The European Court of Human Rights enjoys a strong normative influence on its state parties, given that the Court's judgements are legally binding on those states. Although the Court has heard complaints concerning various indigenous peoples, it does not have the ability to combat major human rights problems on its own. The case law demonstrates an evident attention of the ECHR to indigenous peoples' claims, even if the Court is always very cautious in expressing itself. As international legal instruments continue to develop and the ever-growing relevance of international law on indigenous issues, the Court may progressively extend its approach to the protection of indigenous groups and improve the most problematic indigenous rights, such as land and property rights.

Through its binding judgments, the Court performs a standard setting role not just in the 46 Member States of the Council of Europe but also within the broader human rights community. Nevertheless, indigenous peoples have generally received less protection under the Court

⁵⁸ Koivurova, T. (2013) Jurisprudence of the European Court of Human Rights regarding Indigenous Peoples: Retrospect and Prospects, *Queen Mary Studies in International Law*, Vol. 12, pp. 2-3

compared to other courts that provide them with stronger protection. This limitation can be explained by the fact that neither the Convention nor its protocols protect minorities as such, unlike art. 27 of ICCPR which explicitly safeguards cultural rights of minorities. There was an attempt in 1993 to introduce a specific minority Protocol to the Convention but this proved too difficult in practice.⁵⁹

3.5 Overview of Court Cases

Despite the growing recognition of Sami rights in international and national legal framework, a significant gap remains between legal protection and their concrete implementation. This discrepancy is particularly evident in the governance of renewable energy projects throughout Scandinavia.

The production of renewable energy has increased in many parts of the world, motivated by public demand and governmental green energy certificate subsidies. In Scandinavia, the number and size of wind farms has been increasing since the 1990s and while wind energy is an important alternative for reducing carbon emissions, many projects are mostly located in remote areas of Scandinavia that may lead to fragmentation and disturbance of wildlife habitats, making it essential to assess the concerns for potential negative effects on local ecosystems and other user groups.⁶⁰

This expansion has generated crucial effects on wildlife, especially for reindeer, which require large areas for grazing and are vulnerable to disturbances, and indigenous livelihoods. The herders' reported negative effects of the wind farm on reindeer, resulting in less use of grazing areas surrounding the wind farm and increased workload for the herders. According to herders the avoidance of wind farm areas may lead to overgrazing in other parts of the range, as well as creating

⁵⁹ Koivurova, T. (2013) Jurisprudence of the European Court of Human Rights regarding Indigenous Peoples: Retrospect and Prospects, *Queen Mary Studies in International Law*, Vol. 12, pp. 31-32

⁶⁰ Eftestøl et al. (2023) Effects of Wind Power Development on Reindeer: Global Positioning System Monitoring and Herders' Experience, *Rangeland Ecology & Management*, Vol. 87, p.55

conflicts with neighbouring districts if reindeer move outside of their range. They also noted that herding activities became more time consuming if animals alter their movement. Thus, this discourse is particularly sensitive in Scandinavia where reindeer herding remains a central livelihood and cultural practice.⁶¹ Therefore, traditional herding activities have changed considerably in response to changes in reindeer habitat use and movement patterns relative to the wind farm. To counteract negative effects, the herders increased daily herding activities but an increase in this workload is not necessarily sustainable over time. While these adaptive practices may partially moderate the negative effects of wind farms, the opposite effect may occur if herders deliberately move the entire herd away from disturbed areas, resulting in even lower use of areas near infrastructure. Whatever the reason for reindeer habitat use, new infrastructure and land use conflicts affect Sami reindeer pastoralism with herding activities in response to human disturbances being part of the picture.

This was one of the many examples of the tensions arising from the formal recognition of Sami rights and their effective protection. Follows an overview of several landmark cases in which Sami's rights to use and manage their traditional lands and resources were infringed.

3.5.1 Taxed Mountains (Sweden, 1981)

The Swedish Taxed Mountains case from 1981 was the first case in which the Sami achieved partial success before a Supreme Court. The complex case involved Sami claims on both ownership and reindeer herding rights regarding an area known as the "Taxed Mountains", close to the Norwegian border. The Swedish Supreme Court recognized reindeer herding right as a strong usufruct right, namely a constitutionally protected right based on immemorial prescription that does not depend on statutory recognition. Since reindeer herding takes place across approximately 35-40 % of Sweden's land area, including both public and private property, the decision of the Swedish Supreme

⁶¹ Eftestol et al. (2022) Gradual improvement in knowledge on effects of wind power plants on reindeer, *Tidsskriftet Utmark*, Vol.1, pp.41-50

Court to qualify the reindeer herding right as a constitutionally protected usufruct right has been significant to Sami reindeer herders throughout the country.⁶²

Regarding ownership, however, the court ruled that the Sami land use in the area was not sufficiently intensive or exclusive to establish ownership based on immemorial prescription and, consequently, the ownership remained with the state due to a decree of 1683. However, for the first time ever the court accepted the principle that in general the Sami could acquire ownership rights through reindeer herding, hunting and fishing based on immemorial prescription, even if in the concrete case the land use was not seen as sufficiently intensive or exclusive.⁶³

3.5.2 Selbu (Norway, 2001)

For a long time, the Sami semi-nomadic way of life had been seen as insufficient for establishing land rights. In this regard the Selbu and Svartskogen cases from 2001 have been described as a major turning point and a paradigm shift in Norwegian Sami rights.⁶⁴ The Selbu case concerned the right to reindeer husbandry in two privately owned areas in the Municipal Authority Area of Selbu in central Norway. The Norwegian Supreme Court did not decide on the basis of already established international provisions but merely on the basis of national law, following the concept of immemorial usage. The Norwegian Supreme Court regarded the land use of the Sami as sufficient to establish a reindeer herding right on the basis of immemorial usage.⁶⁵

The Court identified the three conditions for the application of immemorial usage, namely a certain amount of use over a long period of time in good faith as to the legitimacy of the use. The court

⁶² Allard, C. (2011) The Nordic Countries' law on Sami territorial rights, *Artic Review on Law and Politics*, Vol. 2, No. 2, pp.17-18

⁶³ *Ibid*, p.18

⁶⁴ Bankes, N. & Koivurova, T. (2013) The proposed Nordic Saami Convention: national and international dimensions of indigenous property rights, *Artic Centre Administration*

⁶⁵ Allard, C. (2011) The Nordic Countries' law on Sami territorial rights, *Artic Review on Law and Politics*, Vol. 2, No. 2, pp.12-13

emphasised that these criteria must be interpreted in light of the distinctive nature of Sami traditional reindeer husbandry and their nomadic lifestyle, which require a different approach than the activities of non-Sami grazing animals.⁶⁶ The judgment acknowledges the fact that pasturage patterns may vary depending on the weather conditions, which is why a yearly pasturage in a specific area cannot be required, and, consequently, pauses in the land use need to be accepted in order to fulfil the criteria of immemorial usage. This reflects a more flexible character of the concept of immemorial usage compared to immemorial prescription, allowing for interruptions and a lower intensity of usage, while on the other hand requiring a much larger time span. The Court considered this requirement fulfilled on the basis of land use during at least the whole 20th century.⁶⁷

Another essential part of the judgement was the fact that Sami usage often does not leave visible traces in the landscape and the nomadic lifestyle of the Sami needs to be taken into account as well as their use of mostly organic material which, due to its decay and returns to nature, is unlikely to leave physical evidence of use of the land. Moreover, another important aspect of the Selbu case consists in the decision of the court to reject the assumption that the absence of permanent traces undermines Sami claims to land rights. This reversal of the burden of proof is based on the Norwegian Reindeer Husbandry Act in 1996 which established a presumption that pastoral rights exist in reindeer husbandry unless proven otherwise. Thereby, the Norwegian Supreme Court departed from three earlier cases in which reindeer herding use was considered as not sufficiently intensive and continuous to establish legal rights.⁶⁸

The influence of the Selbu case has extended far beyond the dispute itself. Both the Finnmark Act and the Nordic Sami Convention were

⁶⁶ Ravna, Ø. (2013) The Draft Nordic Saami Convention and the Assessment of Evidence of Saami Use of Land, Bankes, N. & Koivurova, T. *The proposed Nordic Saami Convention: national and international dimensions of indigenous property rights*, Oxford: Hart publishing, p.188

⁶⁷ Allard, C. (2011) The Nordic Countries' law on Sami territorial rights, *Artic Review on Law and Politics*, Vol. 2, No. 2, p.13

⁶⁸ *Ibid*, p.12

drawn on the Selbu case, with the latter stating that the “assessment of whether traditional use exists pursuant to this provision shall be made on the basis of what constitutes traditional Saami use of land and water and bear in mind that Saami land and water usage often does not leave permanent traces in the environment.”⁶⁹

Another reason why the Selbu case is so crucial lies in the fact that the judgement was “a plenary decision of the Norwegian Supreme Court and, as such, a substantial source of law.”⁷⁰

3.5.3 Svartskogen (Norway, 2001)

While the Selbu case marked the first time ever the Sami were granted reindeer herding rights by the Norwegian Supreme Court, the Svartskogen case from the same year constituted the first time the Sami were granted property rights. In the latter case, the court had to decide whether the state or the local Sami were the owners of a land area in northern Norway, including the region called “Svartskogen”. Contrary to the Selbu case, which dealt with rights exercised on privately owned territory, the opponent part in the Svartskogen case was the state.⁷¹

The area in question was used by a local community composed by a Sami majority for farming, hunting and fishing. Like the Selbu case, the Svartskogen case was decided based on the concept of immemorial usage. The court concluded that the community had exercised sufficiently intensive use over a period of more than 100 years and held that, because of the nature of a communal use, it was not necessary that all members of the community had used the area regularly and intensively. The court also saw the criterion of good faith fulfilled, even if there was evidence that the state had at times tried to regulate and appropriate the lands. However, those efforts had not been actively

⁶⁹ Nordic Sami Convention, Art. 3, para. 3

⁷⁰ Ravna, Ø. (2013) The Draft Nordic Saami Convention and the Assessment of Evidence of Saami Use of Land, Bankes, N. & Koivurova, T. *The proposed Nordic Saami Convention: national and international dimensions of indigenous property rights*, Oxford: Hart publishing, p.197

⁷¹ Allard, C. (2011) The Nordic Countries’ law on Sami territorial rights, *Artic Review on Law and Politics*, Vol. 2, No. 2, p.14

pursued. Furthermore, there had never been any disputes with neighbouring communities regarding the land use, strengthening the argument of the exclusivity of the usage.⁷²

3.5.4 Nordmaling (Sweden, 2011)

After the Taxed Mountains case of 1981, it took nearly 30 years before another case related to Sami rights was brought before the Swedish Supreme Court. While in the Taxed Mountains case the court had ruled that the Sami land use was not sufficiently intensive or exclusive to establish ownership, the Nordmaling case marked the first time the Swedish Sami were fully successful before the Supreme Court. The case was brought before the courts by one hundred private landowners in Nordmaling Municipality, in northern Sweden, who sued three Sami villages, claiming that no right to winter-pasture existed on their properties. The Swedish Supreme Court adopted a judgement similar to the Norwegian Supreme Court in the Selbu case.⁷³

Contrary to the Taxed Mountains case where the opposing party was the state, the adversary in the Nordmaling case was private landowners. While the Taxed Mountains case concerned reindeer herding rights on year-around areas, the Nordmaling case concerned reindeer herding rights on winter-pasture areas. This distinction was significant because, contrary to the Taxed Mountains case, the court based its decision on customary law rather than on immemorial prescription. At the time of the judgement, it was not clear whether that meant that the concept of customary law would be applied to all cases concerning reindeer herding rights or only to cases concerning winter-pasture areas, while cases concerning year-around areas required an application of immemorial prescription. Nevertheless, the judgement was described as an “elegant and convincing solution of the problems” and as a rare

⁷² Allard, C. (2011) The Nordic Countries' law on Sami territorial rights, *Arctic Review on Law and Politics*, Vol. 2, No. 2, pp. 14-15

⁷³ Allard, C. (2011) Case review: The Swedish Nordmaling Case, *Arctic Review on Law and Politics*, Vol. 2, No. 2, p.225

example within Swedish jurisprudence where the element of judge-made law is usually restrained.⁷⁴

3.5.5 Jovsset Ánte Sara (Norway, 2017)

In Jovsset Ánte Sara, a 25-year-old leader of a siida had to reduce his reindeer herd from 116 to 75 animals due to a decision of the Reindeer Husbandry Board based on section 60 subsection 3 of the Reindeer Husbandry Act.²³³ The central issue before the Norwegian Supreme Court was whether the decision constituted a violation of the Sami's right to enjoy their own culture under Art. 27 of the ICCPR and/or of the protection of property under the First Additional Protocol to the ECHR. In its reasoning the court referred to a Peruvian case before the HRC from 2009, *Angela Poma Poma v Peru*, where the Committee had held that Art. 27 ICCPR is violated when a state measure deprives a minority group of economic benefits which did not involve them. The Norwegian Supreme Court stated that, contrary to the Poma Poma case, the Norwegian order in question did not involve interference by the majority society against the minority group's interest but rather intended to protect the interests of the Sami reindeer herders themselves as a group.⁷⁵

Thus, the court regarded the HRC's case law as not significant for internal Sami issues, since, if Sara had been allowed to keep his number of animals, other practitioners would have had to reduce their reindeer disproportionately. Since overgrazing had been a problem for decades, a reduction of the number of reindeer was necessary to ensure the sustainability of reindeer husbandry. Moreover, the measure was deemed to be objective and reasonable because prior consultations had been taken between the authorities and the Sami Parliament before the decision was adopted. The Court also noted that Sara's reindeer herd was so small to provide a sufficient economic livelihood even before the reduction order, as the district had already suffered from excessive

⁷⁴ Allard, C. (2011) Case review: The Swedish Nordmaling Case, *Arctic Review on Law and Politics*, Vol. 2, No. 2, pp.225-227

⁷⁵ Lile, H.S. (2024) Three Pivotal Norwegian Cases on Sámi Rights, *Policy Brief Series*, No. 156, pp.1-2, <https://www.toaep.org/pbs-pdf/156-lile/>

numbers of reindeer. As a consequence, the order did not violate Art. 27 of ICCPR and the court did not find any violation of the ECHR either.⁷⁶

3.5.6 Nesseby (Norway, 2018)

In the Nesseby case, the Norwegian Supreme Court was called upon to resolve a dispute regarding who may regulate fishing, hunting and the use of natural resources in the Nesseby area of Finnmark. The Finnmark Act provides for the possibility to appeal a decision of the Uncultivated Land Tribunal for Finnmark to the Supreme Court. The question in the case was whether a local organisation led by Sami members possessed merely user rights based on immemorial usage or, additionally the right to manage and administer the resources which the user rights were tied to.⁷⁷

According to the Supreme Court, the local organisation only had non-exclusive user rights, while the right to regulate user rights, namely to determine who may hunt and fish, remained to the Finnmark Estate as the owner of the land. In reaching this conclusion the Supreme Court argued that the use of the disputed area by the local organisation had not been exclusive, since other groups had also made substantial use of the same area. Unlike the Svartskogen case, where the land in question was demarcated and closely tied to a specific community, the disputed area in the Nesseby case is not distinctively demarcated leaving it open for the exploitation of natural resources by inhabitants living outside the area.⁷⁸

As a consequence, those non-exclusive rights were not seen as sufficient to set aside the management authority of the Finnmark Estate as the landowner of the area. Thus, the case does not concern ownership but rather the use of lands not exclusively occupied by indigenous

⁷⁶ Ravna, Ø. (2021) Sami Rights and Law in Norway – with a Focus on Recent Developments, Koivurova, T. et al. *Routledge Handbook of Indigenous Peoples in the Arctic*, London and New York: Routledge, pp. 143-158

⁷⁷ The Verdict of Nesseby (2018) Laws and customs, <https://nessebymulter.no/lover/nessebydommen-en.html>

⁷⁸ Nesseby (2018) Supreme Court of Norway, HR-2018-456-P, Case No. 2017/860, § 150-125

peoples, which is why art 14 para 1 second sentence of the ILO Convention needs to be applied. While the local organisation claimed that the management system in the Finnmark Act did not meet the requirements of the ILO Convention, the Supreme Court did not see any violation of the Convention.⁷⁹

3.5.7 Saarivuoma (Norway, 2021)

The Saarivuoma case concerned the right of the Swedish Saarivuoma Sami village in northern Sweden to graze their reindeer on the Norwegian side of the border. For a long time, reindeer herding across the Swedish-Norwegian border has been a controversial issue between different Sami groups as well as between Sami and non-Sami populations. As the Norwegian Supreme Court acknowledged, reindeer herding in that area has its roots far back in time and took place already before the establishment of Norwegian-Swedish border in 1751. The conflict arose following the Reindeer Grazing Act of 1972, which Norway unilaterally continued after its expiration in 2005. As a consequence, the Swedish Sami were deprived of their cross-border grazing rights, thus, the Saarivuoma Sami claimed they still had the exclusive right to reindeer herding in the disputed area. The Supreme Court decided by a majority of 4-1 that grazing rights did exist due to immemorial usage regardless of any limitations in Norwegian statutory law.⁸⁰

The case reinforced that the doctrine of immemorial usage prevails over statutory law, making it illegal for a regulation to take away an already established right. Despite ruling that the grazing regulation was illegal, the court reached a different conclusion regarding compensation, deciding by a 3-2 majority that the Sami were not entitled to any compensation from the Norwegian state. This aspect of the judgment received heavy criticism from the Sami. The court explained the non-compensation by the fact that the provisions were based on a treaty

⁷⁹ Nesseby (2018) Supreme Court of Norway, HR-2018-456-P, Case No. 2017/860, § 174-175

⁸⁰ Saarivuoma (2021) Supreme Court of Norway, HR-2021-1429-A, Case No. 20-164328SIV – HRET, § 5-11

between Sweden and Norway, making it the responsibility of Sweden to ensure that the Swedish Sami's rights were respected.⁸¹

3.5.8 Girja (Sweden, 2020)

After Taxed Mountains in 1981 and Nordmaling in 2011, the Girjas decision of January 2020 marked only the third case in which the Swedish Supreme Court addressed the recognition of Sami rights. Similar to the two prior cases regarding reindeer herding rights, Girjas dealt with hunting and fishing rights which are closely connected to reindeer herding rights under section 25 of the Swedish Reindeer Herding Act. Unlike the previous cases, the Girjas case concerns the Sami's exclusive rights to exercise hunting and fishing as well as the right to confer such rights to others without the consent of the State. In this respect, the case resembles the afore-mentioned Norwegian Nesseby case of two years earlier.⁸²

The background of the dispute lay in a Swedish reform of 1993 that reduced Sami influence over hunting and fishing, allowing hunting and fishing rights to increasingly be granted not only to local people but to a larger share of the population, including European Union citizens. The Sami protested strongly against the reform since hunting and fishing by other people disturbed the reindeer and, consequently, caused the animals to leave the area. The case was brought before the Swedish Supreme Court by the Girjas Sameby, a Sami reindeer herding community consisting of about 120 members, who claimed exclusive small game hunting and fishing rights within a state-owned area in the northernmost part of Sweden. In addition, Girjas Sameby claimed to have the right to transfer those hunting and fishing rights to others without the consent of the state, while the state cannot do so, or, alternatively, that such decision should be made jointly by Girjas Sameby and the state. The state requested the Supreme Court to dismiss the Sami community's claim in its entirety. Eventually, the Swedish Supreme Court decided unanimously that Girjas Sameby possessed

⁸¹ Saarivuoma (2021) Supreme Court of Norway, HR-2021-1429-A, Case No. 20-164328SIV – HRET, § 156

⁸² Sveriges Domstolar, The "Girjas" case-press release, Case No.: T 853-18

both exclusive fishing and herding rights as well as the right to transfer them to others without the consent of the State, while the state does not have those rights.⁸³

The Sami community based its claim on three legal grounds, namely, on the Reindeer Herding Act, on immemorial prescription and on customary law. Regarding the first ground, the Supreme Court found by a majority that Girjas Sameby did not have exclusive reindeer herding rights based on the Reindeer Herding Act, as it grants those rights to the state and in addition it prohibits the Sami to grant leases to others. In that regard, Girjas Sameby additionally claimed that the leasing system violated both the Constitution of Sweden and the European Convention on Human Rights because it was discriminatory and constituted a violation of the right to property. However, as the decision was eventually based on other grounds, a possible violation of the Constitution or the ECHR did not have to be assessed by the court. The main question, therefore, was whether the dispute should be resolved through immemorial prescription or customary law. Contrary to the Nordmaling case, the court decided to base its decision again on immemorial prescription, which stems from the Real Property Code of 1734. The court emphasised that customary law has been primarily important as a complementary source of law and concluded that immemorial prescription must be applied first, with the option to turn to customary law only if the concept of immemorial prescription could not be applied reasonably in a specific case.⁸⁴

Nevertheless, the court decided to adapt the doctrine of immemorial prescription, considering the particularities of reindeer husbandry and allowing for more flexibility as it has been done in Nordmaling with regard to customary law. Crucially, the court based its assessment on all criteria together, allowing for example to compensate for a less intensive land use by an extensive time period. By applying some of the more relaxed standards of customary law to immemorial prescription, the scholar Allard described the decision as reflecting a “cross-

⁸³ Allard, C. Brännström, M. (2021) Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas Case, *Arctic Review on Law and Politics*, Vol. 12, pp.56-79

⁸⁴ *Ibid*, pp. 123-133

fertilisation between the rules for immemorial prescription and customary law” in both Nordmaling and Girjas. While the court pointed out that immemorial prescription requires 90 years of continuous use, it decided not to count backwards 90 years from the present day. Instead, the court undertook a thorough historical investigation into the origins of Sami land use in the region, concluding that Sami populations were continuously hunting and fishing in the area concerned at least from the 16th century onwards. Therefore, at the latest in the middle of the 18th century, Sami rights were definitely established. An important part of the court’s assessment consisted in the evaluation of documents on the historic land use of the area in question as well as the hearing of scholars of history, law and historical ecology. Since the historical evidence of the area concerned was very limited, the Court considered the neighbouring area while carefully taking into account the specificities of the area in question.⁸⁵

After the establishment of Sami rights in the 18th century was determined, the next question addressed was whether those rights might have been extinguished due to the state’s ongoing attempts to colonise the area. It emphasised that an already established right cannot cease to exist unless the right holders waive their right or that the right is extinguished by legislation or expropriation, both of which must be clear and definite. Even though, from the second half of the 17th century onwards, the crown encouraged the colonisation of Lapland, there is no evidence that the crown questioned or restricted the Sami’s hunting and fishing rights or the Sami’s right to confer those rights to others. While the state questioned Sami’s control over the area in the 18th and 19th century, none of these measures constituted a clear and sufficiently definitive contestation of the Sami’s hunting or fishing rights for those rights to be extinguished.⁸⁶

Another interesting aspect of the case concerns the burden of proof. While the court held that the burden of proof proving the existence of Sami right rests on the claimant, it placed the burden of proof regarding

⁸⁵ Allard, C. Brännström, M. (2021) Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas Case, *Arctic Review on Law and Politics*, Vol. 12, pp.140-189

⁸⁶ *Ibid*, pp. 189-206

the termination of such a once established right on the state. In assessing the evidence, the court took into account the fact that for a long time the Sami had no written sources and that, throughout history, the state has had significantly greater opportunities to document older conditions. Consequently, certain inconsistencies in the historical material may be accepted when the burden of proof is placed on the Sami.⁸⁷

A significant aspect of the case lies in the court's strong reference to international law. Even though Sweden has not ratified the ILO Convention No. 169, the court referred to Art. 8 para. 1 of the ILO Convention, which requires the states to indigenous customs or customary laws when applying national legislation. In the court's view, this provision reflects a general principle of international law and, therefore, is not dependent on Sweden ratifying the Convention. Moreover, the court referred to art 26 and 27 UNDRIP, art 27 ICCPR and art 14 ILO Convention. According to Allard, the court's emphasis on international law standards protecting indigenous peoples was "unexpected" as it is "novel for the Supreme Court in a Sami rights case to ground its decision in international human rights law, especially in the context of domestic property law".⁸⁸

The case concluded a legal dispute lasting more than a decade. The decision was met with enormous attention in Sweden and consequently has been described as a milestone in the development of Sami law in Sweden. A particularly significant aspect was the court's recognition of the exclusivity of the Sami's right that constitutes a crucial development that sets the case apart from Taxed Mountains and Nordmaling as well as from the Norwegian Selbu decision. The case also differs from Nesseby case where the court held the non-exclusivity of Sami rights that resulted as insufficient to displace the management authority of the Finnmark Estate as the landowner of the area.

The practical consequences of the ruling was that the County Administrative Board, which had been responsible for granting hunting

⁸⁷ Allard, C. Brännström, M. (2021) Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas Case, *Arctic Review on Law and Politics*, Vol. 12, pp.64-65

⁸⁸ *Ibid*, pp.63-64

and fishing licences, closed its administrative system for the area on the same day the court released its decision. Furthermore, the Swedish Government announced the establishment of an investigation regarding the need to amend the Reindeer Herding Act and pre-hearings occurred during the autumn of 2020 with Sami representatives and others regarding the scope of such an investigation. Additionally, the case carried legal significance also for Finland, whose legal system shares the provision on immemorial prescription in its Real Property Code.⁸⁹

Allard noted also that the decision exposed deep social and political tensions as racism and conflict increased between groups of Sami as well as between Sami and Swedish locals. These tensions were stemming from centuries old Sami politics and the early division between reindeer herding Sami and non-reindeer herding Sami who have no recognised territorial rights. This addresses a crucial issue as non-reindeer herding Sami constitute the vast majority of Sami, while court cases are mostly referring to reindeer herding rights. Thus, Hofmann doubts whether the judgment will lead to new legislative since the judgement has been heavily criticised not only by non-Sami local hunters and fishers, who fear that Girjas Sameby might issue fewer and/or more expensive hunting and fishing permits, but also by those Sami who are not members of a Sameby and, therefore remain in the same legal position as non-Sami persons seeking to hunt and fish. Following the judgement, several threats of violence were reported against members of Girjas Sameby reflecting the extent to which the case intensified existing social division.⁹⁰

3.5.9 Fosen (Norway, 2021)

Another significant recent development in Sami rights arose from the Norwegian Supreme Court's Fosen decision in October 2021. The case

⁸⁹ Allard, C. Brännström, M. (2021) Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas Case, *Arctic Review on Law and Politics*, Vol. 12, pp.57-71

⁹⁰ Hofman, R. (2020) Recognition of Sami Indigenous People's Exclusive Right to Confer Hunting and Fishing Rights in *Girjas Sameby* Area, *Girjas Sameby*, Case No T 853-18, *International Law Association - Committee on the Implementation of the Rights of Indigenous Peoples*

concerned two windfarms located in the Fosen peninsula in Trøndelag county, where two Sami siidas practise reindeer husbandry in their respective parts of the grazing areas. The two windfarms were built in 2010 when the Norwegian Water Resources and Energy Directorate issued licences to build four windfarms on the Fosen peninsula, including the two windfarms in question, with the Roan windfarm being located within the pasture of the northern group and the Storheia windfarm within the pasture of the southern group. The wind park with altogether six windfarms is stated to be the largest onshore wind power project in Europe.⁹¹

After the licence holder Fosen Vind had brought an appraisal action for compensation of damages, the Court of Appeal issued a reappraisal, granting damages to the siidas that exceeded by far those measured by the District Court. Consequently, Fosen Vind appealed against the Court of Appeal's measure of damages to the Supreme Court, while both siidas requested that the appraisal be ruled inadmissible by the Supreme Court because the construction of the windfarms violated the Sami reindeer herders' rights to culture under Art. 27 ICCPR as well as their right to own property under Art. 5 (d) (v) ICERD, making the licence decisions invalid.⁹²

According to the Ministry of Petroleum and Energy, the area around the Roan windfarm could still be used for reindeer husbandry after the construction of the windfarm, even if doing so would demand increased work on the part of the reindeer herders. With regard to the Storheia windfarm, the Ministry acknowledged that the windfarm would have negative consequences for reindeer husbandry but nevertheless concluded that the area would not be lost for winter pasture. While the Court of Appeal found that both Storheia and the eastern part of the Roan windfarm were in practice lost for late winter pastures, it still did not find a violation of any Sami rights because of the possibility to introduce winter feeding of the reindeer through compensation. The

⁹¹ Lingaas, C. (2021) Wind Farms in Indigenous Areas: The Fosen (Norway) and the Lake Turkana Wind Project, *Opinio Juris*

⁹² Fosen Windmill: Supreme Court of Norway, HR-2021-1975-S, Case No. 20-143891SIV-HRET, Case No. 20-143892SIV-HRET and Case No. 20-143893SIV-HRET

Supreme Court eventually ruled that both windfarm projects were invalid because they violated the Sami reindeer herders' rights provided for in Art. 27 ICCPR.⁹³

The key issue was to assess whether the licences in question violated either Art. 27 ICCPR and/or art 5 (d) (v) ICERD as the two Sami siidas were arguing. With regard to Art. 27 ICCPR, the Norwegian Supreme Court first declared that “it is clear that the Sami people is a minority within the meaning of Art. 27, and that reindeer husbandry is a form of protected cultural practice.” This view is in accordance with the interpretation of the HRC, which in its General Comment No. 23 explicitly stated that Indigenous culture includes “a particular way of life” and “may include such traditional activities as fishing or hunting”. The Supreme Court further stressed the collective nature of Art. 27, emphasising the fact that reindeer husbandry is practised in community making it difficult to draw a sharp distinction between the individuals and the group.⁹⁴

Furthermore, the court had to assess the question whether Art. 27 allows for a margin of appreciation or at least a balance of indigenous rights against other interests of society as the state argued. The court referring to the considerations of the HRC concluded that Art. 27 allows for neither a margin of appreciation nor a proportionality assessment. Indeed, Art. 27 does not allow states to balance the rights of indigenous peoples and other legitimate purposes, which gives the provision an absolute character. Nevertheless, Art. 27 is not absolute in the sense that an interference automatically amounts to a violation. Furthermore, the court argued that Art. 27 may possibly still allow for a balancing of interests in case of conflict between different human rights, which includes the right to a good and healthy environment. However, in the present case the Court found that the state failed to demonstrate any collision between basic rights, since, in the court’s words, “the green shift” could also have been achieved through alternative developments that would have less intrusive impact on the reindeer husbandry. In

⁹³ Fosen Windmill: Supreme Court of Norway, HR-2021-1975-S, Case No. 20-143891SIV-HRET, Case No. 20-143892SIV-HRET and Case No. 20-143893SIV-HRET, §§ 19-20

⁹⁴ *Ibid*, §§ 101-106

particular, the court pointed that the government had first considered several other wind park projects before deciding on Roan and Storheia, despite constant warnings of the negative consequences for reindeer husbandry. Consequently, the court did not treat the case as involving a direct conflict between different human rights, indigenous rights versus environmental rights, therefore did not have to further consider a potential balancing of interests.⁹⁵

Another crucial aspect of the case concerned the interpretation of the term “denied”, which raises the question of where the threshold for a violation lies. Referring to rulings from the HRC, the Supreme Court concluded that there will be a violation of the rights in Article 27 ICCPR if the interference has a substantive, negative impact on the possibility of cultural enjoyment. The HRC established a “combined test of ‘consultation and sustainability’” in order to assess whether there has been a violation of art 27. In other words, it requires the effective participation of the minority groups in decisions that affect them and, additionally, minorities must still be able to economically benefit from their traditional activities after the interference. Thus, an interference amounts to a violation only if the consultation and sustainability test is not met.⁹⁶

Concerning this matter, there has been a ground-breaking case before the HRC in 2009, *Angela Poma Poma v. Peru*, which concerned the Peruvian government’s decision to authorise the construction of several wells in an area where indigenous people had raised alpacas and llamas for thousands of years. As a consequence, the ecosystem got destroyed, the wetlands were drying out and many animals perished, depriving local indigenous families of their means of subsistence. In its decision, the HRC found that neither the consultation nor the sustainability requirement had been met, emphasizing that state measures must not “endanger the very survival of the community and its members”.

⁹⁵ Fosen Windmill: Supreme Court of Norway, HR-2021-1975-S, Case No. 20-143891SIV-HRET, Case No. 20-143892SIV-HRET and Case No. 20-143893SIV-HRET, §143

⁹⁶ *Ibid*, §§ 111-112

Hence, the construction of the wells constituted a violation of Art. 27 ICCPR.⁹⁷

As mentioned above, the Norwegian Supreme Court explicitly referred to Poma Poma in the Jovsset Ánte Sara case in 2017. In that case, however, the Supreme Court found that the test established by the HRC did not apply to internal Sami issues, since the implementation of the restrictive measures were intended to protect the collective interests of the Sami reindeer herders as a whole. In contrast, the Supreme Court did follow the HRC's sustainability test in Fosen case, even arguing that the negative effect on indigenous peoples did "not need to be as serious as in Angela Poma Poma v. Peru, where thousands of animals died, and the claimant was forced to leave the area."⁹⁸

The Court considered it sufficient that the construction of the windfarms in Fosen would "ultimately eradicate the grazing resources to such an extent that it cannot be fully compensated by the use of alternative pastures" which would "most likely" lead to a dramatic reduction of the numbers of reindeer. Such a reduction of reindeer would entail that the herders may no longer benefit from the trade, or at least that the profit will no longer be proportionate to the efforts required to carry out such activity. Regarding the matter of evidence, the Supreme Court relied on the evidentiary findings of the Court of Appeal, finding no sufficient reason to depart from its conclusion that the areas were effectively lost as winter pastures.⁹⁹ Thus, the sustainability requirement was clearly not met, leading to a violation of Art. 27 ICCPR.

Concerning winter feeding, which the Court of Appeal suggested as a solution, the Supreme Court found that "winter feeding according to the Court of Appeal's model deviates considerably from traditional,

⁹⁷ Yupsanis, A. (2013) Article 27 of the ICCPR Revisited – The Right to Culture as a Normative Source for Minority / Indigenous Participatory Claims in the Case Law of the Human Rights Committee, in: Lavranos, N, et al., *Hague Yearbook of International Law*, Leiden, Boston: Brill Nijhoff, Vol. 26, pp. 396-397

⁹⁸ Fosen Windmill: Supreme Court of Norway, HR-2021-1975-S, Case No. 20-143891SIV-HRET, Case No. 20-143892SIV-HRET and Case No. 20-143893SIV-HRET, §119

⁹⁹ *Ibid*, §§ 97-136

nomadic reindeer husbandry” and “has never been tried out in Norway”, nor “has information been provided on the effect of such a model [...] based on experience from other countries.” Therefore, the Supreme Court did not accept the suggested model of winter feeding as a solution. With the finding of a clear violation of art 27 ICCPR, the additional claim of a violation of art 5 (d) (v) ICERD was not assessed by the court.¹⁰⁰

Despite the clear decision of the Big Chamber of the Supreme Court, there has been no implementation of the Fosen judgement by the Norwegian government. In particular, the two major windmills in question are still on the ground in full operation. While the Sami have been urging the government to comply with the Supreme Court decision, the state has sought to find alternatives to the dismantling of the windfarms, such as adding sufficient mitigating measures to secure the economic basis for reindeer herding activities.¹⁰¹

The government proposed an investigation plan to explore potential adjustments that could allow the turbines to remain in operation, while the Sami reject this plan arguing that the issue has already been comprehensively investigated in the last 15 years. At their celebration of the one-year anniversary of the judgement, the Norwegian Sami Association stressed that “the battle isn’t won until the wind turbines have been taken down and the destruction has been cleaned up”.¹⁰² Indeed, it seems unclear what possible alternative solutions might consist of, especially given the fact that the Supreme Court already did not accept the suggested solution of winter feeding. Nevertheless, the judgment is likely to influence the Norwegian state to take Sami rights into account when deciding on future projects in order to avoid another expensive failure.

Despite Norway’s role is often regarded as a leading state in the protection of Sami rights, this situation reveals a clear discrepancy

¹⁰⁰ Fosen Windmill: Supreme Court of Norway, HR-2021-1975-S, Case No. 20-143891SIV-HRET, Case No. 20-143892SIV-HRET and Case No. 20-143893SIV-HRET, §§ 149-154

¹⁰¹ *Ibid*, § 97

¹⁰² Nelson, K. (2022) "We won the Fosen case – but the battle isn't won until the wind turbines are taken down", *Energy Watch*, translated by Østergaard, C.

between the Supreme Court's protection of Sami rights and the Norwegian government's refusal to implement them in practice. The failure to remove the turbines has prompted a Sami politician to criticise that Norway is "willing to put their relatively good reputation in the world at stake by not following up on their own higher Supreme Court decisions".¹⁰³

3.5.10 Deatnu (Finland, 2022)

Despite the lack of Sami rights cases before the Finnish Supreme Court, the Finnish Sami recently gained victories with two Supreme Court decisions, which did not concern collective but individual rights. The cases concern fishing in a 200-km watercourse on the border between Finland and Norway, called Deatnu in the Sami language or Tana in Norwegian, where the Sami have been fishing for thousands of years regardless of the respective national borders.¹⁰⁴

The first case originated in August 2017, when A, a local Sami, deliberately fished for salmon in the Utsjoki river, a tributary river to Deatnu, outside the permitted fishing period. According to the Finnish Fishing Act, a person fishing in an area where fishing is prohibited or restricted or during a time when fishing is prohibited, is committing a fishing offence punishable with a fine. When the prosecutor charged A for a fishing offence, A admitted to fishing as described in the charge but yet denied he had committed a fishing offence. In April 2022, the Supreme Court found that the restrictions on fishing were incompatible with the Constitution of Finland, which grants the Sami the right to develop their own culture.¹⁰⁵

¹⁰³ Salonen, S.M (2022) A year after Supreme Court verdict, Fosen wind farm still stands amid soaring energy crisis, *The Barents Observer*

¹⁰⁴ Pedersen, S. (2009) Salmon Sans Borders: Fishing for salmon along the Deatnu or Tana River has long been fundamental to the culture of the indigenous Sámi people along the Finland-Norway border, *Samudra Report*, No. 54, p.4

¹⁰⁵ Deatnu I (2022) Supreme Court of Finland, KKO:2022:25, Fishing restriction imposed on the Sámi indigenous people and its relationship to their fundamental rights (fishing offence)

In the second case, four local Sami were fishing in the Vetsijoki River, another tributary river to Deatnu, without the required fishing permit.¹⁰⁶ Similar to the first case, the Supreme Court found a violation of the Sami's right to enjoy their own culture because fishing permits were limited and sold out quickly, and the local Sami were not granted any priority access but instead were treated just like fishermen from outside, who do not enjoy a special constitutional protection.¹⁰⁷

Given the similarity of the two cases, they will be analysed as a whole. According to section 52 of the Finnish Fishing Act, the government can issue decrees restricting fishing in waters where the vitality or return of a certain fish species or stock has degraded or is at risk of degrading. Furthermore, the existing Treaty between Finland and Norway on Fishing in the Tenojoki River System obliges the respective states to adopt national regulations in order to protect fish stock and secure sustainable fishing.¹⁰⁸

The central issue before the Supreme Court was whether the restrictions on fishing were compatible with the Constitution of Finland, which guarantees the Sami the right to develop their own language and culture. In line with the interpretation previously adopted by the HRC, the court confirmed that the protected Sami culture included reindeer herding, fishing and hunting, explicitly referring to Art. 27 ICCPR and the HRC's understanding of the term "culture".¹⁰⁹

Another question concerned the requirement of environmental protection, as the objective of the restriction was to safeguard a healthy environment in accordance with the responsibility for the environment enshrined in section 20 of the Constitution of Finland. In the case, the Supreme Court held that in general restrictions were acceptable under the Fishing Act since the fish stocks and especially the migratory fish

¹⁰⁶ Deatnu II (2022) Supreme Court of Finland, KKO:2022:26, Fishing restriction imposed on the Sámi indigenous people and its relationship to their fundamental rights (game offence)

¹⁰⁷ Hofverberg, E. (2022) Finland: Supreme Court Rules on Sámi Indigenous Rights to Fish, *Library of Congress*

¹⁰⁸ Deatnu I (2022) Supreme Court of Finland, KKO:2022:25, Fishing restriction imposed on the Sámi indigenous people and its relationship to their fundamental rights (fishing offence), § 7

¹⁰⁹ *Ibid*, § 19-22

stocks had been in a weakened state. However, with regard to fishing restrictions aimed at the Sami, it must be considered that Salmon net fishing constitutes a traditional cultural Sami activity.¹¹⁰

Nevertheless, the right of the Sami to enjoy their own culture provided for in section 17 para 3 of the Constitution is not absolute and can, according to the court, be restricted in order to protect fish stocks, if the proportionality requirement is met. In particular, the court had to assess whether shortening the legal fishing season by about 1 ½ months was proportionate to the benefit of protecting the salmon stock. Moreover, the Supreme court notes that the protection of fish stock also serves the interest of the Sami themselves, since they can pursue their traditional fishing only if the fish stock is at a sustainable level. In that regard, the argument resembles the Norwegian Jovsset Ánte Sara case, where the Norwegian Supreme Court held that the restrictive measure to reduce the number of reindeer benefitted the Sami themselves as a group.¹¹¹

However, in this case only eight out of 15 salmon stocks have been considered deficient, as the state of the stocks varies by region. Consequently, the court found that the concrete restrictions in question could not be considered proportionate in order to protect the fish stocks, also in light of the fact that restrictions could be directed primarily at non-Sami fishing which do not enjoy special constitutional protection. Thus, the restrictions violated the constitution since the fishing could have been safeguarded by other less intrusive means.¹¹²

Similar to the Fosen case, the Deatnu cases present a scenario that could have led to a conflict between two fundamental rights, indigenous versus environmental rights. However, in both Fosen and Deatnu cases, the courts concluded that there was no environmental necessity for the restrictions, since other less intrusive measures would have been possible. Additionally, in the first Deatnu case there was no need for immediate action in the respective sections of the rivers at all, as the

¹¹⁰ Deatnu I (2022) Supreme Court of Finland, KKO:2022:25, Fishing restriction imposed on the Sámi indigenous people and its relationship to their fundamental rights (fishing offence), § § 23-36

¹¹¹ *Ibid*, § 37

¹¹² *Ibid*, § § 47-48

Salmon stocks were not in a critical condition to need immediate help. A crucial aspect of the judgement concerns the requirement to target restrictions primarily at non-Sami fishers who do not enjoy special constitutional protection. Similar to Girjas, this may create tensions between Sami and non-Sami fishers as the latter may be temporarily unable to pursue their profession. In that context, it should be noted that in Finland the right to reindeer herding does not belong exclusively to the Sami, contributing to a situation where a country is less used to granting preferential treatment to Sami due to their specific cultural rights. Compared to the lengthy Girjas and Fosen judgements, the Deatnu decisions evoked little international attention.

3.5.11 The Karasjok Case (Norway, 2023)

The Karasjok case concerns the ownership of the territory of Karasjok, one of the largest municipalities in Norway, a core area of Sápmi, in which the vast majority of inhabitants are and have always been Sami and 80 per cent of all inhabitants speak Sami. Nevertheless, 98.3 per cent of this area had been administered as if it belonged to the Norwegian state, before it was transferred to the state-controlled Finnmark Estate in 2006. In 2019 the Finnmark Commission, whose task is to investigate usage and ownership rights to land transferred to the Finnmark Estate, found that the disputed area was collectively owned by the local population of Karasjok, it had never belonged to the Norwegian state, and it should therefore not be managed by the Finnmark Estate. However, in its 2024 judgment, the Norwegian Supreme Court majority found that the Karasjok population does not own the area which belongs to the Finnmark Estate, meaning that it was state-owned land prior to being transferred to the Finnmark Estate in 2006.¹¹³

There were three normative grounds for ownership in the Karasjok case: Norwegian law, Sami customary law, and international law. The Supreme Court's Grand Chamber was split 6 to 5. The majority held that the Karasjok population has not acquired collective ownership of

¹¹³ Karasjok Case (2023) Supreme Court of Norway, HR-2024-982-S, § 6

the entire Karasjok area. There was evidence that the area had been massively used by the population, but the population was split up into groups that had used the area in various ways throughout different periods. Because the population as a whole could not prove that it had, as a collective unified group, used the area over a significant period of time in a way that could be assumed to be collective ownership, the area belonged to the state. The Chamber's minority held that the Karasjok population had acquired collective ownership to the Karasjok territory, based on a common united use of the land. A central legal question concerned the understanding of Article 14 of ILO Convention No. 169.¹¹⁴

¹¹⁴ Karasjok Case (2023) Supreme Court of Norway, HR-2024-982-S, § § 86-92

Conclusion

This thesis has demonstrated that the current legal framework does not provide adequate protection for indigenous peoples' rights. Several reasons support this conclusion. At the international level, there are relatively few legally binding instruments dedicated specifically to indigenous protection. Notably, the UNDRIP is probably the most important instrument for indigenous peoples today. Despite it not being legally binding, making state participation voluntary and the lack of a specific monitoring system that allows states to avoid accountability when they disregard it, the achievement should not be underestimated since it is like no other instrument before, it gave indigenous peoples a voice, which is now heard in more than 190 states. However, having a voice is of little use if one cannot invoke it before a court. ILO Convention No. 169 thus has the advantage of being legally binding, but only in 24 states. The ICCPR is even more universal than the UNDRIP, but discussions on its scope do not disappear as it does not contain specific provisions explicitly referring to indigenous people. In addition, both the UNDRIP and ILO Conventions promote a notion of participation that fails to consider the practical consequences in cases of disagreement among indigenous populations. Even if it appears that these documents are protecting indigenous rights, the formulation of the provisions allow for broad and restrictive state interpretations, which can undermine their effectiveness. Secondly, judicial recognition of indigenous rights does not necessarily guarantee their realization in practice, as governments often fail to implement the decisions issued by courts, rulings in favour of indigenous communities.

The Sami case demonstrates both the progress achieved and the challenges that remain in the protection of indigenous rights. Indigenous populations have made gradual progress in gaining recognition as "peoples." Even though there is no firmly-established international legal definition of "peoples," and no formal recognition of indigenous self-determination under international law, it is becoming increasingly acceptable under international law to recognise indigenous communities as "peoples" who are entitled to some degree of self-determination. Although international law recognizes indigenous peoples as distinct communities entitled to self-determination, formal

legal recognition does not always translate into effective protection in practice. This gap is particularly evident in the Nordic countries, where strong commitments to human rights coexist with persistent difficulties in the implementation of indigenous rights. Nordic states have frequently presented themselves as global advocates of human rights and indigenous protection, particularly regarding the rights of the Sami people. Indeed, Norway, Sweden and Finland consider issues of their indigenous population to a high degree and in these countries developments on indigenous rights exists on the international, national and regional level. In many aspects the Nordic states' initiatives are an important example of how to secure indigenous peoples' rights, particularly through cross-border initiatives such as the development of a Sami Convention. However, despite formal commitments to international covenants and the progressive rhetoric adopted at the international level, significant discrepancies persist between legal recognition and practical implementation. Even where indigenous rights are formally recognized in domestic legislation, their practical realization often remains incomplete, revealing persistent structural barriers and limited political will.

The Sami's situation is also further complicated by the fact that they live across four different states without unified political and territorial borders, resulting in fragmented governance and uneven protection. Although legislative reforms and increased political awareness have raised the recognition of Sami culture, at the national level the situation is still not without controversy.

The Nordic states must find a way to combine natural resource rights and environmental rights with Sami rights in a meaningful way. Achieving this balance represents a complex challenge that requires greater Sami participation in decision-making processes. Such participation is essential to realize the sustainable development of Sápmi and Sami self-determination. In this context, the proposed Sami Convention represents an important step forward as it has the potential to open a new chapter in the relationship between Sami and the Nordic states by strengthening the recognition and protection of Sami rights within the complex institutional framework. Heavily oriented to ILO Convention No. 169, the Convention aims at consolidation the existing

international and national standards related to Sami rights and to clarify the obligations of the respective states concerned. The success of this depends on the commitment of the Nordic states, for this reason, Finland is demanded to complete the process to ratify the instrument, while Sweden should also consider ratification. At the same time, future developments concerning land, resources and environmental rights should orientate on this future Convention and even more on the far reaching UN Indigenous Declaration, which has carried out numerous improvements to acknowledge land rights. Nevertheless, a future Sami Convention, based on ILO Convention No. 169, will be an already extensive 'modern contract' between the Nordic states and the Sami people, even if admittedly the Sami will not be classified as a formal party next to states.

The importance of strengthening the legal protection of Sami rights is particularly evident in relation to land. As already discussed, land is a vital element for Sami and even though there is some good legislation, the protection of the Sami land rights is insufficient to provide the Sami with the tools to protect their livelihoods, culture, and languages from the threats of climate change and competing land use. Even though Convention No. 169 is not seen as the only way towards the goal, its ratification is considered an important objective as it is the only international legally binding instrument specifically dedicated to the land rights of the indigenous peoples. Beyond its practical legal effects, the Convention No. 169 also carries considerable symbolic value reflecting the historical development of international indigenous rights and the recognition of indigenous peoples as distinct rights-holders. The prolonged delay in the ratification process will only reinforce political polarisation of the topic and undermining confidence in the commitment of states to indigenous rights. The most prominent reason for the long ratification process has been the land right issues, even if most of the provisions that the Convention No.169 would bring are already within the other obligations. Thus, the symbolic value of ratification should be emphasized even more.

By analysing the Sami case, this thesis seeks to contribute to the broader discussion on indigenous rights by providing a comprehensive overview of the legislation and institutions related to indigenous rights

protection at the international level. In doing so, it aims to shed light on the areas that still require attention, as well as the effectiveness of the existing legal and institutional framework. Moreover, the findings indicate the presence of deficiencies at both the normative and practical levels. On one hand, several legal instruments suffer from limited effectiveness due to their non-binding nature or their broadly formulated provisions. On the other hand, significant obstacles persist in the implementation and enforcement of existing standards, resulting in a gap between the formal recognition of indigenous rights and their effective realization in practice. However, there are some recommendations that states could follow to address some of these shortcomings. In the first place, the instruments existing at the international level on indigenous rights should be legally binding and accompanied by effective enforcement mechanisms, such as courts empowered to impose penalties on the states that do not respect them and these conventions and treaties should be designed specifically for indigenous people. In the second place, constitutions should contain specific provisions on demarcation and on the right to free, prior and informed consent and, in the case in which they are not enforced ensuring legal remedies. In third place, states should adopt effective affirmative action policies aimed at enhancing the political rights of indigenous people. In fourth place, laws and constitutions should promote indigenous languages to avoid their disappearance and guarantee that education, justice, information and all the services are available in indigenous languages. Considering these above-mentioned elements and these “recommendations”, this thesis is written with the hope that greater attention and protection both on the normative and practical side will be afforded to these populations in the near future.

From all that I have researched for this work, I would say that international law and the world community are on the right track. A lot has been accomplished and peoples are more and more aware of the special situation of indigenous peoples. Moreover, with the creation of the Permanent Forum on Indigenous Issues indigenous peoples have their own advisory within a UN system which makes sure that their needs will not be ignored in future. Still, a lot more has to be done. There should be a way to hold states liable if they continue to break

their obligations. Even if years have passed, the injustice done to indigenous peoples should be restored. Self-determination is more than a legal right as it manifests itself in so many elements, inseparable from culture, tradition and customs and is the foundation stone of humanity. Nevertheless, only a clear legal framework can guarantee the protection of all these elements. Without binding rules, indigenous peoples will continue living in a society that does not take into account their special interests and needs.

Bibliography

- Ahrén, M. (2004) Indigenous Peoples' Culture, Customs, and Traditions and Customary Law: The Saami People's Perspective, *Arizona Journal of International and Comparative Law*, Vol.21, N.1, <http://arizonajournal.org/wp-content/uploads/2015/11/Ahren.pdf>
- Åhrén, M. (2009) The Nordic Sami Convention: International Human Rights, Self-Determination and other Central Provisions, *Journal of Indigenous Peoples Rights*, No. 3, <https://arcticgovernance.custompublish.com/the-nordic-sami-convention-international-human-rights-self-determination-and-other-central-provisions.4644711-142902.html> (consulted: 25.05.2026)
- Allard, C. (2011) Case review: The Swedish Nordmaling Case, *Arctic Review on Law and Politics*, Vol. 2, No. 2
- Allard, C. (2011) The Nordic Countries' law on Sami territorial rights, *Arctic Review on Law and Politics*, Vol. 2, No. 2, <https://www.jstor.org/stable/48710157> (consulted: 10.05.2026)
- Allard, C. Brännström, M. (2021) Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas Case, *Arctic Review on Law and Politics*, Vol. 12, <https://www.jstor.org/stable/48710642>
- Anaya, S. J. (1991) Indigenous Rights Norms in Contemporary International Law, *Arizona Journal of International and Comparative Law* Vol. 8, No. 2, <https://scholar.law.colorado.edu/faculty-articles/880>
- Anaya, S. J. (2004) *Indigenous peoples in international law*, Oxford: Oxford University Press
- Associated Press (1997) Norwegian King Apologizes to Sami, *The Washington Post*, <https://www.washingtonpost.com/archive/national/1997/10/08/norwegian-king-apologizes-to-sami/f1ec35fd-f137-45e7-83ef-0385c0d53ad5/> (consulted: 23.04.2026)
- Bankes, N. & Koivurova, T. (2013) The proposed Nordic Saami Convention: national and international dimensions of indigenous property rights, *Arctic Centre Administration*

Barelli, M. (2010) The Interplay Between Global and Regional Human Rights Systems in the Construction of the Indigenous Rights Regime, *Human Rights Quarterly*, Vol. 32, No. 4, <https://doi.org/10.1353/hrq.2010.0018>.

Barelli, M. (2012) Free, prior and informed consent in the aftermath of the UN Declaration on the Rights of Indigenous Peoples: developments and challenges ahead, *The International Journal of Human Rights*, Vol. 16, No. 1, DOI: 10.1080/13642987.2011.597746

Bladt, T. (2024) *Scandinavian Apologies and Compensation to Indigenous Peoples*, Nordic.info, available at: <https://nordics.info/show/artikel/scandinavian-apologies-and-compensation-to-indigenous-peoples> (consulted: 20.05.2026)

Broderstad, E. G. (2014) Implementing Indigenous Self-Determination: The Case of the Sami in Norway, *Restoring Indigenous Self-Determination*

Castilla Urbano, F (2020) The Debate of Valladolid (1550–1551): Background, Discussions, and Results of the Debate between Juan Ginés de Sepúlveda and Bartolomé de las Casas, in Tellkamp, J., *A Companion to Early Modern Spanish Imperial Political and Social Thought*, Brill, pp. 222-251

CERD (1997) General Recommendation No. 23: Indigenous Peoples, *Office of the High Commissioner for Human Rights*, <https://www.converge.org.nz/pma/CERD-GR23.pdf>

Charter of Fundamental Rights of the European Union (2000) *Official Journal of the European Communities*

Corson, D. (1995) Norway's "Sámi Language Act": Emancipatory Implications for the World's Aboriginal Peoples, *Language in Society*, Vol. 24, pp. 497-502

Daes, E. I. A. (1993) *Report of the Working Group on Indigenous Populations on Its Eleventh Session*, U.N. Doc. E/CN.4/Sub.2/1993/29

Daes, E. I. A. (2008) An overview of the history of indigenous peoples: self-determination and the United Nations, *Cambridge*

Review of International Affairs, Vol. 21, No. 1,
doi:10.1080/09557570701828386

Daes, E.I. A. (2001) *Indigenous Peoples and Their Relationship to Land*, E/CN.4/Sub.2/2001/21, New York: United Nations, Sub-Commission on Prevention of Discrimination and Protection of Human Rights, <https://digitallibrary.un.org/record/445803>

Dalton, J. E. (2005) International Law and the Right of Indigenous Self-Determination: Should International Norms be Replicated in the Canadian Context, *Working Paper Queen's University*, Vol. 1, https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/2005-1JenniferDalton.pdf

Danver, S. (2022) Analysis: In Defense of the Indians, *EBSCO*, <https://www.ebsco.com/research-starters/history/analysis-defense-indians> (consulted: 27.02.2026)

De Faccio, I (2018) *Indigenous Rights: Legal Status of Sami in Scandinavia*, MA Thesis, University of Padua, https://thesis.unipd.it/retrieve/9f66973b-4afc-4d80-b951-078ada8463ea/Irene_De_Faccio_2018.pdf

Deatnu I (2022) Supreme Court of Finland, KKO:2022:25, Fishing restriction imposed on the Sami indigenous people and its relationship to their fundamental rights (fishing offence), https://korkeinoikeus.fi/en/index/ennakkopaatokset/shortsummariesofselectedprecedentsinenglish/2022_1/kko202225.html (consulted: 26.05.2026)

Deatnu II (2022) Supreme Court of Finland, KKO:2022:26, Fishing restriction imposed on the Sami indigenous people and its relationship to their fundamental rights (game offence), https://korkeinoikeus.fi/en/index/ennakkopaatokset/shortsummariesofselectedprecedentsinenglish/2022_1/kko202226.html (consulted: 26.05.2026)

Department of Economic and Social Affairs of the United Nations Secretariat (2009) *Rethinking Poverty: Report on the World Social Situation 2010*, UN ST/ESA/324, New York: United Nations, <https://www.un.org/esa/socdev/rwss/docs/2010/fullreport.pdf>

Department of Economic and Social Affairs of the United Nations Secretariat (2009) *State of the World's Indigenous Peoples: Indigenous peoples' access to health services*, UN ST/ESA/328, New York: United Nations, <https://social.desa.un.org/sites/default/files/migrated/19/2018/03/The-State-of-The-Worlds-Indigenous-Peoples-WEB.pdf>

Diamond, B. (2003), *Review of The Sami People: Traditions in Transition*, Ethnologies: Université Laval, Vol. 25, N.2, <https://doi.org/10.7202/008058ar>

Doyle, C. (2020) The Philippines Indigenous Peoples Rights Act and ILO Convention 169 on Tribal and Indigenous Peoples: Exploring Synergies for Rights Realisation, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, <https://doi.org/10.1080/13642987.2019.1679120>

Drange, L. D. (2021) Indigenous Peoples and Rights to Land and Water in 2019: How Do Countries That Have Ratified the ILO-Convention 169 Comply?, *Journal of Human Development and Capabilities* Vol. 22, No. 4, pp. 577-596, <https://doi.org/10.1080/19452829.2021.1953965>

Eftestøl et al. (2022) Gradual improvement in knowledge on effects of wind power plants on reindeer, *Tidsskriftet Utmark*, Vol.1, <https://agris.fao.org/search/en/providers/125332/records/6748e6317625988a3721d22c> (consulted: 5.05.2026)

Eftestøl et al. (2023) Effects of Wind Power Development on Reindeer: Global Positioning System Monitoring and Herders' Experience, *Rangeland Ecology & Management*, Vol. 87, <https://doi.org/10.1016/j.rama.2022.11.011>

European Parliament (2009) *Northern Dimension*, available at: https://www.europarl.europa.eu/meetdocs/2009_2014/documents/deca/dv/0209_/0209_05.pdf

Fitzmaurice, M. (2009) The New Developments Regarding the Saami Peoples of the North, *International Journal on Minority and Group Rights*, Vol. 16, No. 1

Fosen Windmill (2021) Supreme Court of Norway, HR-2021-1975-S, Case No. 20-143891SIV-HRET, Case No. 20 143892SIV-HRET and Case No. 20-143893SIV-HRET

Gilbert, J. (2020) The ILO Convention 169 and the Central African Republic: From Catalyst to Benchmark, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, <https://doi.org/10.1080/13642987.2019.1677610>

Gómez Isa, F. (2019) The UNDRIP: An Increasingly Robust Legal Parameter, *The International Journal of Human Rights*, Vol. 23, Nos. 1–2, <https://doi.org/10.1080/13642987.2019.1568994>

Hermanstrand, H. et al. (2019) *The Indigenous Identity of the South Saami. Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open, doi.org/10.1007/978-3-030-05029-0

Hofman, R. (2020) Recognition of Sami Indigenous People's Exclusive Right to Confer Hunting and Fishing Rights in *Girjas Sameby Area*, *Girjas Sameby*, Case No T 853-18, *International Law Association - Committee on the Implementation of the Rights of Indigenous Peoples*, <https://www.ila-hq.org/en/committees/implementation-of-the-rights-of-indigenous-peoples> (consulted: 23.05.2026)

Hofverberg, E. (2022) Finland: Supreme Court Rules on Sami Indigenous Rights to Fish, *Library of Congress*, <https://www.loc.gov/item/global-legal-monitor/2022-05-09/finland-supreme-court-rules-on-sami-indigenous-rights-to-fish/> (consulted: 26.05.2026)

ILO Convention No. 169 (1989) Ratification, <https://treaties.un.org/Pages/showDetails.aspx?objid=080000002800c0136&clang=en> (consulted: 15.05.2026)

International Fund for Agricultural Development (2007) *State of the World's Indigenous Peoples*. Rome: IFAD, <http://www.ruralpovertyportal.org/web/guest/topic/statistics/tags/Indigenous%20peoples>

International Labor Organization (1989) *Convention concerning Indigenous and Tribal Peoples in Independent Countries C169*, Geneva

International Labour Conference (1990) *Record of Proceedings*, Geneva: International Labour Office,
[https://www.ilo.org/public/libdoc/ilo/P/09616/09616\(1989-76\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09616/09616(1989-76).pdf)

International Labour Organization (1986) *Convention No. 169 Indigenous and Tribal Peoples Convention*,
<https://www.refworld.org/legal/agreements/ilo/1989/19728>

International Labour Organization (2023) Ratifications of Convention No. 169, *NORMLEX Information System on International Labour Standards*,
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO

Iorns, C. J. (1992) Indigenous Peoples and Self Determination: Challenging State Sovereignty, *Case Western Reserve Journal of International Law*, Vol. 24, N.2,
<https://scholarlycommons.law.case.edu/jil/vol24/iss2/3/>

Joona, T. (2020) ILO Convention No. 169 and the Governance of Indigenous Identity in Finland: Recent Developments, *The International Journal of Human Rights*, Vol. 24, Nos.3-4,
<https://doi.org/10.1080/13642987.2019.1677623>

Josefsen, E., Saglie, J. (2024) The Sami Parliament in Norway: a “breaking in” perspective, *The Polar Journal*, Vol. 14, N. 1, DOI: 10.1080/2154896X.2024.2342122

Justis Museet, *Sami rights: From the first Sami congress to today, learn about the Sami people's rights*,
<https://justismuseet.no/en/samenes-rettigheter/> (consulted: 22.04.2026)

Karasjok Case (2023) Supreme Court of Norway, HR-2024-982-S

Keal, P. (2003) *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society*, Cambridge: Cambridge University Press,
doi.org/10.1017/CBO9780511491467

Kemmer, J. (2011) Lobbying for Global Indigenous Rights: The World Council of Indigenous Peoples (1975-1997), *Forum for Interamerican Research*, <https://interamerica.de/current-issue/kemner/> (consulted: 25.04/2026)

Kent, N. (2018) *The Sámi People of The North: A Social and Cultural History*, London: C. Hurst & Co.

Kingsbury, B. (1992) Claims by Non-State Groups in International Law, *Cornell International Law Journal*, Vol. 25, <https://gretchen.law.nyu.edu/cgi/viewcontent.cgi?article=1704&context=fac-articles>

Koivurova, T. (2008) The Draft for a Nordic Saami Convention, *European Yearbook of Minority Issues Online*, Vol. 6, No. 1

Koivurova, T. (2013) Jurisprudence of the European Court of Human Rights regarding Indigenous Peoples: Retrospect and Prospects, *Queen Mary Studies in International Law*, Vol. 12

Kolberg, A. (2019) *The Indigenous Identity of South Saami: Historical and Political Perspectives on a Minority within a Minority*, Switzerland: Springer Open

Kuhn, G. (2020) *Liberating Sápmi: Indigenous Resistance in Europe's Far North*, Oakland: PM Press

Laframboise, L. (2023) The Sami Limbo: Outlining nearly Thirty Years of EU-Sápmi Relations, *The Artic Institute*, <https://www.thearticinstitute.org/sami-limbo-outlining-nearly-thirty-years-eu-sapmi-relations/> (consulted: 27.05.2026)

Larsen, P. B and Gilbert, J. (2020) Indigenous Rights and ILO Convention 169: Learning from the Past and Challenging the Future, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, <https://doi.org/10.1080/13642987.2019.1677615>

Lehtola, V. P. (2004) *The Sami People: Traditions in transitions*, Fairbanks: University of Alaska Press

Lenzerini, F. (2008) *Reparations for Indigenous Peoples. International & Comparative Perspectives*, New York: Oxford University Press

Lile, H.S. (2024) Three Pivotal Norwegian Cases on Sami Rights, *Policy Brief Series*, No. 156, <https://www.toaep.org/pbs-pdf/156-lile/> (consulted: 10.05.2026)

Lingaas, C. (2021) Wind Farms in Indigenous Areas: The Fosen (Norway) and the Lake Turkana Wind Project, *Opinio Juris*, <http://opiniojuris.org/2021/12/15/wind-farms-in-indigenous-areas-the-fosen-norway-and-the-lake-turkana-wind-project-kenya-cases/> (consulted: 24.05.2026)

Lyons, M. (2023) The Valladolid Debate on the Rights of Indigenous People, *History Today*, <https://www.historytoday.com/archive/months-past/valladolid-debate-rights-indigenous-people>

Malezer, L. (2020) Perspective on the Convention 169: Its Significance to Aboriginal Peoples, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, <https://doi.org/10.1080/13642987.2019.1677616>

Martínez Cobo, J.R. (1983) *Conclusions, Proposals and Recommendations: Study of the problem of discrimination against indigenous populations*, UN Doc. E/CN.4/Sub.2/1983/21/Add.8, New York: United Nations, https://digitallibrary.un.org/record/133666/files/E_CN.4_Sub.2_1986_7_Add.4-EN.pdf?ln=ar

Maul, D. R. (2007) The International Labour Organization and the Struggle against Forced Labour from 1919 to the Present, *Labor History*, Vol. 48, No.4, <https://doi.org/10.1080/00236560701580275>

Nelson, K. (2022) "We won the Fosen case – but the battle isn't won until the wind turbines are taken down", *Energy Watch*, translated by Østergaard, C., <https://energywatch.com/EnergyNews/Renewables/article14494764.ece> (consulted: 25.05.2026)

Nesseby (2018) Supreme Court of Norway, HR-2018-456-P, Case No. 2017/860

Norwegian Government (2025) Nordic Sami Convention, *Ministry of Local Government and Regional Development*, <https://www.regjeringen.no/en/topics/indigenous-peoples-and->

[minorities/Sami-people/nordisk-samisk-samarbeid/nordic-sami-convention/id86937/](#) (consulted 25.05.2026)

Ojong, N. (2020) Indigenous Land Rights: Where Are We Today and Where Should the Research Go in the Future?, *Settler Colonial Studies*, Vol. 10, No. 2, pp. 193–215, <https://doi.org/10.1080/2201473X.2020.1726149>

Pasikowska-Schnass, M. (2020) International Year of Indigenous Languages – Sami people and languages in the EU, *European Parliamentary Research Service*, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/646118/EPRS_ATA\(2020\)646118_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/646118/EPRS_ATA(2020)646118_EN.pdf) (consulted: 29.02.2026)

Pedersen, S. (2009) Salmon Sans Borders: Fishing for salmon along the Deatnu or Tana River has long been fundamental to the culture of the indigenous Sami people along the Finland-Norway border, Samudra Report, No. 54, p.4, <https://www.icsf.net/wp-content/uploads/2021/06/497-1.pdf> (consulted: 26.05.2026)

Queen's University (2020) *Multiculturalism Policies in Contemporary Democracies*, available at: <https://www.queensu.ca/mcp/indigenous-peoples/resultsbycountry-ip/sweden-ip> (consulted: 20.05.2026)

Ravna, Ø. (2013) The Draft Nordic Saami Convention and the Assessment of Evidence of Saami Use of Land, Bankes, N. & Koivurova, T. *The proposed Nordic Saami Convention: national and international dimensions of indigenous property rights*, Oxford: Hart publishing, p.188 <https://site.uit.no/ravna/wp-content/uploads/sites/173/2017/01/Nordic-Saami-Convention-and-the-assessment-of-evidence-of-Saami-use-of-land2013.pdf>

Ravna, Ø. (2014) The Fulfilment of Norway's International Legal Obligations to the Sámi – Assessed by the Protection of Rights to Lands, Waters and Natural Resources, *International Journal on Minority and Group Rights* Vol. 21, N. 3, <https://doi.org/10.1163/15718115-02103001>

Ravna, Ø. (2021) Sami Rights and Law in Norway – with a Focus on Recent Developments, Koivurova, T. et al. *Routledge Handbook of Indigenous Peoples in the Arctic*, London and New York: Routledge

Rodgers, G. et al. (2009) *The International Labour Organization and the Quest for Social Justice, 1919-2009*. Geneva: International Labour Office, https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_104643/lang--en/index.htm

Rodríguez-Piñero, L. (2005) *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime, 1919-1989*, Oxford: Oxford University Press

Røros Museet, *The national congress in Trondheim in 1917*, <https://rorosmuseet.no/en/the-national-congress-in-trondheim-in-1917> (consulted: 22.04.2026)

Russo, F (2016) Bartolomé de Las Casas, defender of human rights and universal brotherhood. The dispute of Valladolid versus Juan Ginés de Sepulveda, *EuroStadium3w: Rivista di storia europea e internazionale*, N. 39, <https://rosa.uniroma1.it/rosa01/eurostudium/article/view/2136/1935>

Saami Council (2023) *30 Years of Sami National Day Celebration*, <https://www.saamicouncil.net/news-archive/30-years-of-smi-national-day-celebration-1> (consulted: 22.04.2026)

Saami Council (2023) *EU-unit*, <https://www.saamicouncil.net/en/euu> (consulted: 27.05.2026)

Saami Council (2023) *National Symbols*, <https://www.saamicouncil.net/en/national-symbols> (consulted: 23.04.2026)

Saami Council (2023) *Saami Conferences*, <https://www.saamicouncil.net/en/saami-conferences> (consulted: 22.04.2026)

Saami Council (2023) *Saami Council*, <https://www.saamicouncil.net/en/the-saami-council> (consulted: 22.04.2026)

Saarivuoma (2021) Supreme Court of Norway, HR-2021-1429-A, Case No. 20-164328SIV – HRET

Salonen, S.M (2022) A year after Supreme Court verdict, Fosen wind farm still stands amid soaring energy crisis, *The Barents Observer*,

<https://www.thebarentsobserver.com/indigenous-peoples/a-year-after-supreme-court-verdict-fosen-wind-farm-still-stands-amid-soaring-energy-crisis/133166> (consulted: 26.05.2026)

Sámediggi, *The Sámi Language Act*, Available at: <https://samediggi.fi/en/areas-of-expertise/sami-languages/the-sami-language-act/> (consulted: 29.02.2026)

Sámediggi, *The Sámi Parliament*, available at: <https://samediggi.fi/en/the-sami-parliament/> (consulted: 20.05.2026)

Semb, A. J. (2012) Why (Not) Commit, *Nordic Journal of Human Rights*, Vol. 30, No. 2, <https://www.idunn.no/doi/10.18261/ISSN1891814X-2012-02-02>

Sjoholm, B. (2023) *From Lapland to Sápmi: Collecting and Returning Sámi Craft and Culture*, Minneapolis: University of Minnesota Press

Sveriges Domstolar, The “Girjas” case-press release, Case No.: T 853-18, <https://www.domstol.se/en/supreme-court/news-archive/the-girjas-case--press-release/> (consulted: 25.05.2026)

Swepston, L. (1987) Indigenous and Tribal Populations: A Return to Centre Stage, *International Labour Review*, Vol. 126, N. 4

Swepston, L. (1990) A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989, *Oklahoma City University Law Review*, Vol. 15, No. 3

Swepston, L. (1990) A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989, *Oklahoma City University Law Review*, Vol. 15, N.3

The European Convention on Human Rights (1950) Council of Europe, <https://www.echr.coe.int/75-years-of-the-convention> (consulted: 27.05.2026)

The Finnish Act (1995) No. 974

The Verdict of Nesseby (2018) *Laws and customs*, <https://nessebymulter.no/lover/nessebydommen-en.html> (consulted: 20.05.2026)

Treaty on European Union, Art. 2, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016M/TXT>

Ullah, A. (2007) *Globalization and the Health of Indigenous Peoples: From Colonization to Self-Rule*, New York: Routledge

UN General Assembly (2007) *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, <https://www.refworld.org/legal/resolution/unga/2007/49353>

UN Office of the High Commissioner for Human Rights (OHCHR), (2013) *The United Nations Declaration on the Rights of Indigenous Peoples: A manual for National Human Rights Institutions*, HR/PUB/13/2, <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/UNDRIPManualForNHRIs.pdf>

UN Sub-Commission on the Promotion and Protection of Human Rights (1993) *Report of the Working Group on Indigenous Populations on its 11th session*, UN Doc. E/CN.4/Sub.2/1993/29, <http://www.refworld.org/docid/3b00f49e4.html>

UNESCO (2001) *Universal Declaration on Cultural Diversity*, Paris: UNESCO, <https://unesdoc.unesco.org/ark:/48223/pf0000127162>

United Nations (1945) *Charter of the United Nations*, San Francisco: United Nations, <https://www.un.org/en/about-us/un-charter/full-text>

United Nations (1945) *Office of the High Commissioner for Human Rights*, Status of Ratification of International Human Rights Treaties, <https://indicators.ohchr.org/> (consulted: 22.04.2026)

United Nations (1948) *Universal Declaration of Human Rights*, https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

United Nations (1950) *General Assembly Fifth Regular Session*, ST/LIB/SER.B/A.1, New York: United Nations, https://www.un.org/sites/un2.un.org/files/2021/03/a5_0_0.pdf

United Nations (1965) *International Convention on the Elimination of All Forms of Racial Discrimination*, New York

United Nations (1966) *International Covenant on Civil and Political Rights*, New York

United Nations (1966) *International Covenant on Civil and Political Rights*, *Human Rights Office of the High Commissioner*,
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

United Nations (1989) *The Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States*, *Centre for Human Rights Geneva*, U.N. Doc. E/CN.4/1989/22, HR/PUB/89/5,
https://digitallibrary.un.org/record/83349/files/reportseminar_racismIP_states89_en1.pdf

United Nations (1994) *Draft Declaration on the Rights of Indigenous Peoples*, Doc. E/CN-4/Sub. 2/1994/2/Add.1

United Nations (2007) *Declaration on the Rights of Indigenous Peoples*, art. 3
https://www.un.org/development/desa/indigenouspeoples/wpcontent/uploads/sites/19/2018/11/UNDRIP_E

Unofficial translation in English of the Draft of the Nordic Saami Convention,
https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf (consulted: 20.05.2026)

Van Walt Van Praag, M. C., Sero, O. (1999) *The implementation of the right to self-determination as a contribution to conflict prevention: report of the international conference of experts held in Barcelona from 21 to 27 November 1998*, UNESCO Division of Human Rights Democracy and Peace and the UNESCO Centre of Catalonia, Centre UNESCO de Catalunya

Venne, S. (1989) *The New Language of Assimilation: A Brief Analysis of ILO Convention 169*, *Without Prejudice: The EAFORD International Review of Racial Discrimination*, Vol. 2, No. 2,
https://www.eaford.org/site/assets/files/1023/without_prejudice_vol_ii_no2.pdf

Whare, T. (2020) Reflective Piece on Māori and the ILO, *The International Journal of Human Rights*, Vol. 24, Nos. 2–3, <https://doi.org/10.1080/13642987.2019.1683330>

Xanthaki, A. (2000) Collective rights: the case of indigenous peoples, *Journal of the Institute of Advanced Legal Studies*, N. 25, <https://doi.org/10.14296/ac.v2000i25.1428>

Xanthaki, A. (2007) *Indigenous Rights and United Nations Standards: Self-determination, Culture and Land*, Cambridge: Cambridge University Press

Xanthaki, A. (2009) Indigenous Rights in International Law over the Last 10 Years and Future Developments, *Melbourne Journal of International Law* 27, Vol. 10, No. 1, <http://classic.austlii.edu.au/au/journals/MelbJIL/2009/3.html>

Yle (2025) *PM Orpo: Finland must apologise to Sámi people*, available at: <https://yle.fi/a/74-20197931> (consulted: 20.05.2026)

Yupsanis, A. (2013) Article 27 of the ICCPR Revisited – The Right to Culture as a Normative Source for Minority / Indigenous Participatory Claims in the Case Law of the Human Rights Committee, in: Lavranos, N, et al., *Hague Yearbook of International Law*, Leiden, Boston: Brill Nijhoff, Vol. 26