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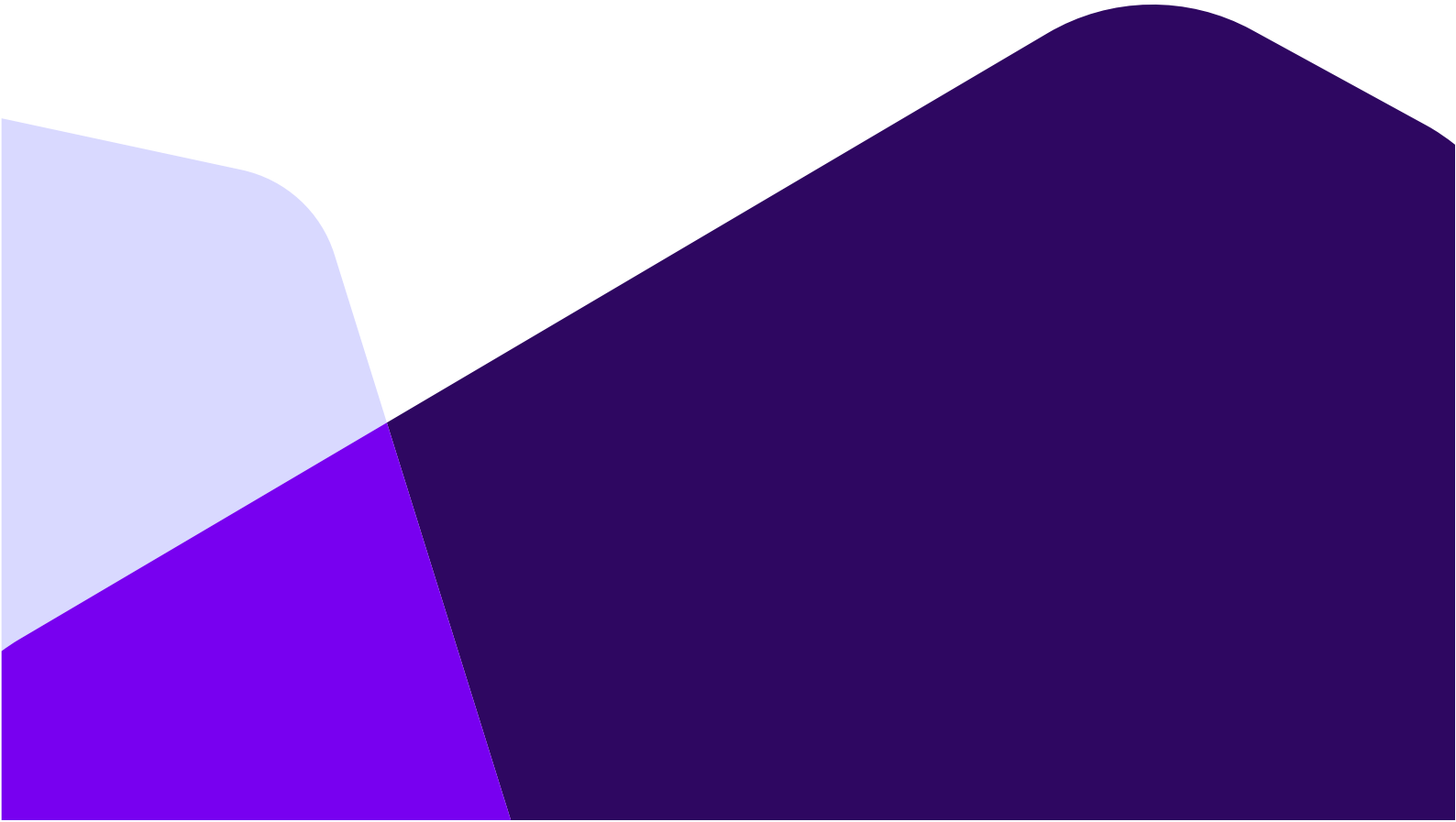
Rights Across Borders? The Nordic Saami Convention in Finland and Norway



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Abstract

The purpose of this study is to explore if the Nordic Saami Convention will improve the rights of the Sámi people across borders, especially in terms of self-determination, land rights and recognition of Sámi. Being the indigenous peoples of Norway, Sweden, Finland, and Russia, the Sámi face challenges in realising their rights across borders. One of the aims of the Convention is to strengthen the cross-border cooperation (Regjeringen.no, 2018, p. 2). Currently, Norway is the only Scandinavian country which has ratified ILO Convention No. 169, which is considered a prerequisite for the NSC. Having not been willing to ratify or implement this Convention, it is questionable how Finland and Sweden ought to commit to a more extensive convention such as NSC (Koivurova, 2008, p. 281). The process of implementation has been prolonged for eight years longer than what was previously estimated, illustrating areas of conflict between state parliaments and the Sámi parliaments. In this thesis, I will explore the underlying power structures of policy documents pertaining to indigenous peoples, and how the NSC deals with recognition of the Sámi, self-determination, and land rights. To achieve this, I will analyse the working group reports submitted by Norway and Finland, reviewing the NSC towards their national legislation and international obligations, submitted in 2007 and 2009.

Keywords: Indigeneity, Indigenous Peoples, Land Rights, Nordic Saami Convention, Sámi, Self-determination

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This master's thesis is dedicated to the Sámi people across borders, their continuous fight for their rights and lands have moved me beyond words. Every Sámi activist and individual have been an inspiration when developing this thesis.

Dedicated to

Ella Marie Hætta Isaksen,

your activism, authorship and music have awoken an entire nation and reminded them of the ongoing injustice towards the Sámi. You have inspired me to complete this thesis, and I am in awe of your resilience. You are a true inspiration for future generations of Sámi.

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List of abbreviations

AID	Arbeids- og inkluderingsdepartementet, Ministry of Labour and Social Inclusion in Norway
EC	Expert Committee, appointed 2002
HR	Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ILO	International Labour Organization
KDD	Kommunal- og distriktsdepartementet, The Ministry of Local Government and Regional Development in Norway
MMM	Maa- ja metsätalousministeriö, Ministry of Agriculture and Forestry in Finland
NSC	Nordic Saami Convention
OM	Oikeusministeriö, Ministry of Justice in Finland
TEM	Työ- ja elinkeinoministeriö, The Ministry of Economic Affairs and Employment in Finland
UDHR	Universal Declaration of Human Rights, 1948
UM	Ulkoministeriö, Ministry for Foreign Affairs in Finland
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples, 2007
WGDD	Working Group on the Draft Declaration
WGF	Working Group, Finnish national law and international obligations, 2009
WGN	Working Group, Norwegian national law and international obligations, 2007

1 Introduction

The Nordic Saami Convention (NSC) as a multilateral agreement between Norway, Sweden and Finland would be ground-breaking in terms of the rights of indigenous peoples, taking a firm position in asserting the Sámi people's right to self-determination and land rights. The Sámi being a cross-border people are not protected through one set of rules but through different legislation in the four countries they reside in. Their struggle as an indigenous people is thus amplified by state policies building on power structures which undermines the rights of indigenous peoples.

In this study I will do a comparative analysis of Norway and Finland as the most contrasting parties to the proposed Nordic Saami Convention. Norway has a unique motivation to reach agreement, given that the Sámi has existing rights following Norway's obligations under the ILO Convention No. 169, ICCPR and other national legislation, where Norway is the only party to the NSC that has ratified ILO 169 (ILO, n.d.).

The Sámi in Finland are not protected by international law pertaining to indigenous peoples. Finland has signed and ratified the ICCPR but opposed the implementation of ILO 169 (OHCHR, n.d.). There have only been a few proper attempts to unify the Sámi through bilateral agreements, where the NSC is one of them. The realisation of the NSC has been deterred by conflicts surrounding the right to self-determination and land rights. Additionally, there have been contentious discussions in the Nordic states relating to who is considered a Sámi (Forrest, 2006, p. 236), where the states' perspectives challenge the Sámi identity as an indigenous people.

Already since 1995, debates of a new Nordic Saami Convention have been present. The development of the NSC has been a lengthy and extensive process, which has been formally ongoing since 2002 when an Expert Committee was appointed to produce the Draft (Koivurova, 2008a, p. 282). Norway, Sweden, and Finland have been negotiating the NSC since 2011, with an estimate of reaching an agreement in 2016. However, due to contested areas of conflict and disagreements between the state parliaments and their Sámi parliaments, the implementation process has now reached eight years overdue (KDD, 2018).

As the Sámi have struggled for centuries to preserve their indigeneity and ensure that their culture is being carried on through younger generations, having a system that protects their rights across borders is crucial. This system is considered a product of both national law and within the framework of human rights. The realisation of the NSC, and the struggles that

prevent it from being realised is thereby significant for human rights discussions and the interdisciplinary Master Programme of Human Rights and Multiculturalism.

1.1 Significance of this study

The rights of indigenous and tribal peoples are one of the latest additions to human rights treaties and documents. With Article 6 of ILO 169 from 1989, indigenous peoples are granted a consultation right which is a new and significant feature of the Convention (International Labour Organization, 1989). The aim was for indigenous peoples to take part in decision-making processes, emphasising the principles of consultation and participation (Ravna, 2020a, p. 234). Indigenous peoples are arguably among the most vulnerable and disadvantaged groups of people in the world and have for many years sought recognition of their indigenous identities, ways of life, and their right to traditional land, water areas and resources (Baer, 2005, p. 247).

However, indigenous peoples and groups face difficulties in realising their rights throughout the world, where Norway and Finland serve as no exception. The international community has increasingly recognised that special measures are required to protect the rights of indigenous peoples globally (Baer, 2005, p. 247). The Nordic states are more conscious in acknowledging the injustice committed against the Sámi and recognising their rights as an indigenous people. The NSC is seen as an attempt to rectify the oppression created by decades of extensive assimilation policies and destruction of Sámi indigeneity and way of life.

1.2 Research questions

The purpose of my study is to explore how the NSC will be implemented in Norway and Finland, and the implications it may have for the Sámi people across borders. This is related to their livelihoods such as reindeer herding, fishing, and hunting, especially in terms of self-determination, land rights and the concept of indigeneity, and how it will affect the current legal framework in two different countries. As a cross-border indigenous people the Sámi face challenges in realising their rights across borders. One of the aims of the NSC is to strengthen the cross-border cooperation and aspire to harmonise legislation and other regulations of Sámi activities across national boundaries, which follows Article 10 of the NSC (Regjeringen.no, 2018, p. 5).

The process towards ratification has been prolonged for eight years longer than what was previously estimated, illustrating areas of conflict between state parliaments and the Sámi

parliaments. To be able to make visible the underlying power structures of current legislation, and get an understanding of how these issues can be solved in practice by the NSC, I will investigate: To what extent is indigeneity, self-determination and land rights addressed in the Nordic Saami Convention? Which will lead to: What role does the Nordic Saami Convention play in the recognition of indigenous rights in Norway and Finland?

To answer this, I will analyse the working group reports submitted by Norway (AID, 2007) and Finland (OM, 2009), focusing on the most prominent areas of conflict between the state parliaments and the respective Sámi parliaments. Indigenous identity, land rights and self-determination are highly contested issues, not only for the Sámi but for most indigenous peoples globally. Many raise the question whether it is possible to implement the NSC due to fundamental differences. This research will shed light on which obstacles must be resolved before ratification can be anticipated.

1.3 Chapter division

The next chapter will consist of a historical background on the Sámi people and the process of developing a Nordic Saami Convention. The third chapter will consist of a literature review and presentation of the theoretical framework of this study. In the fourth chapter the methodology of this research will be presented. Ultimately, I will present my findings and results in three chapters, where I will analyse the working group reports submitted by Norway and Finland in 2007 and 2009. Here, the focus will be on the three key concepts analysed in the theoretical framework, namely indigeneity, self-determination, and land rights. This will be followed by a separate discussion chapter and conclusion.

2 Historical background and contextual setting

2.1 The Sámi People

The Sámi[1] are the indigenous people of Sápmi, consisting of the Nordic countries of Norway, Sweden, Finland, and the Kola Peninsula in Russia. It is estimated that there are approximately 300-500 million indigenous peoples globally (Bankes & Koivurova, 2013, p. 115). In this respect, the Sámi is a relatively small indigenous population of around 100.000 people in total, divided between the four countries. It is estimated that around half of the Sámi population reside in Norway, followed by Sweden with just about 20.000, Finland with 8.000, and Russia with the smallest number of Sámi, with around 2.000 (Koivurova, 2008a, p. 280).

Residing in the Northern part of Europe, the Sámi people are accustomed to Arctic climate, and it is recognised that they have a strong connection to nature and to their traditional land and water areas, such as mountains, forests, fjords, and lakes which are used for fishing, hunting, reindeer husbandry most notably, in addition to other essential livelihoods for the Sámi (Baer, 2005, p. 248).

The Norwegian Sámi Parliament was established in 1989 and has, mainly but not exclusively, an advisory power (Semb, 2005, p. 534-535). Through the Norwegian Constitution §108, the Sámi are granted the right to protect and develop their language, culture, and social life (The Constitution, 1814). Finland recognised the Sámi as indigenous people in their Constitution in 1995, and their Sámi Parliament came into effect in 1996 (Samediggi.fi, n.d.).

2.2 The Nordic Saami Convention

The Lapp Codicil was an appendix to the 1751 Strömstad border treaty between Denmark/Norway and Sweden/Finland and is considered a prerequisite for the Nordic Saami Convention (Bankes & Koivurova, 2013, p. 150). The Lapp Codicil provided that national borders should not pose hindrances upon the rights of the Sámi, beyond what is necessary to maintain national sovereignty. This right of movement was mostly related to reindeer husbandry, which necessitates seasonal movements and crossing of borders. Further, the right to movement provided by the Codicil has an international law character as a treaty between

[1] Sámi can also be spelled Sami or Saami. As a Norwegian, given that the Sámi Parliament in Norway, as well as Sámi activists themselves write Sámi, that is the wording I choose for this project. However, the Nordic Saami Convention is an official document, which is why this document is spelled differently. Saami is often the spelling which is used in Finland as well.

sovereign states (Bankes & Koivurova, 2013, p. 150). State sovereignty presupposes that states may, in a given territory, choose to commit to or disregard its obligations under international law without it affecting their formal sovereignty. Given that states are the subjects of international law, they form international legislation through negotiations, treaties, and practice. Nevertheless, states are understood to be limited rational actors without complete overview of all information and alternatives (Bankes & Koivurova, 2013, p. 154).

The NSC establishes a connection with the Lapp Codicil in the preamble, where the NSC is stated to be "a renewal and development of Saami rights established through historical use of land that were codified in the Lapp Codicil of 1751" (Regjeringen.no, 2018, p. 1). However, as Koivurova (2008) emphasises, the NSC goes much further than the Codicil, as it comprehensively deals with all areas of life relevant for the Sámi (Koivurova, 2008a, p. 281). Additionally, relating to external self-determination, the NSC allows for the Sámi to participate in international treaties equal to the other Nordic states, through the Sámi parliaments (Koivurova, 2008b, p. 281).

The NSC is a Nordic cooperation between Norway, Sweden, and Finland. While the NSC was established with the aim to strengthen the rights of the Sámi across borders, it is somewhat contradictory as Russia, and therefore Sámi on the Russian side of the border, are excluded from the agreement. Hence, Russian Sámi exist within a different political framework despite belonging to the same indigenous group. Despite Russia not being party to the NSC, the Expert Committee's (EC) approach must be commended. Following the argument made by the EC, a Sámi who is a Russian national and resides in one of the three Nordic states is covered by the NSC (Koivurova, 2008a, p. 284).

2.3 Considering Coloniality

Coloniality and decoloniality will not be applied extensively in this thesis. However, when studying indigenous peoples, it is important to consider the concepts, and address its importance and relevance in history and for the later development of rights of indigenous peoples. The power relations created by colonialism have influenced state policies and societal views globally in their stance towards indigenous peoples. Coloniality, coined by Anibal Quijano (2007), relates to the systematic oppression where the "Western" European and North America are the predominant beneficiaries. The dominated and exploited of Latin America and Africa are the main victims (Quijano, 2007, p. 168). Eurocentric colonialism relates to cultural and

societal discrimination and has produced the image of knowledge solely from a Western/European perspective. This form of domination has been particularly harmful to indigenous cultures, affecting their cultures and way of life, differing in time and place (Quijano, 2007, p. 169). Policies created after the elimination of political colonialism are based on colonial thinking and maintain existing power structure which is particularly harmful to "Non-Western" cultures (Quijano, 2007, p. 169).

Norway and Finland are often not considered to have a colonial past. However, for centuries the Sámi people were not recognised as an indigenous population throughout the Nordic countries. Prior to the 1930's, the Sámi people were referred to as "Lapps", which refers to "Lapland" in Finland, where the word "Lapp" means coming from traditional Sámi sources of livelihood, such as hunting, fishing, and reindeer husbandry (Andresen, Evjen & Ryymin, 2021, p. 70). It is believed to not have the same discriminatory nuance in Finland as it has in Norway. However, one could argue that the term itself is an archaic concept, used to misrecognise the Sámi throughout many years of extensive assimilation policies. The process, which in Norway is referred to as the "Norwegianisation process" (*fornorsking*), were targeted state measures attempting to stamp out the Sámi languages and culture and replace them with Norwegian equivalents. The consequences from these policies have been severely damaging for the Sámi people over generations. As a result, the process culminated in permanent linguistic and cultural destruction among the Sámi (Andresen et al., 2021, p. 157-158).

Even after the official "end" of this period in the 1960's (Andresen, et al., 2021, p. 157), many politicians and the society in general have used the term "Lapp" to not recognise the Sámi people the way they define themselves, as Sámi, which in turn represses their indigenous identity, culture, and subsequently their rights. Many Norwegians believe that the Sámi people migrated to Norway from Finland. The fact remains that the Sámi inhabited the Nordic countries long before the construction of national borders (Andresen et al., 2021, p. 70). It has been expressed by the Norwegian government that the purpose of today's national policy towards the Sámi is not to grant them special rights, but to correct the negative effects of the former Norwegianisation policies, achieve equal treatment and counteract discrimination (Regjeringen.no, 2006, p. 121). For the Sámi to achieve self-determination and land rights which are aspects of decolonization, it is important for the Nordic states to comply with their rights to create a shift in the power structures of national legislation.

3 International law as theoretical framework

This chapter will include a literature review and the theoretical framework of this research. A review of the literature on this topic reveals the key role of the work of Nigel Bankes and Timo Koivurova. Additionally, I acknowledge the work of Anne Julie Semb, Ulf Mörkenstam, Øyvind Ravna and others. Having written extensively on the ongoing process of the Nordic Saami Convention, Bankes and Koivurova are the editors of a volume of essays principally concerned with the recognition of the property interests of indigenous peoples within the settler state (Bankes & Koivurova, 2013, p. 1). Their analysis relates to recognition of indigenous property rights, contextualising the NSC within international law, and examining Sámi land rights within each of the Nordic countries, carried out from a legal perspective. Furthermore, the fourth part deals with a series of comparative essays examining the treatment of indigenous property rights within different settler states (Bankes & Koivurova, 2013, p. 5). This study focuses more on power-structures from the perspective of political science, seeking to analyse in which way indigeneity, self-determination, and land rights are addressed in the NSC. The work completed by Bankes, Koivurova and the contributors to the book, has been an important prerequisite for this study.

3.1 Concept of indigeneity

The extension of human rights to indigenous rights is a relatively new branch in international law, as the first legal document pertaining exclusively to indigenous peoples was ILO 169, on the Rights of Indigenous and Tribal Peoples. Globally, between 300-500 million people belonging to 5.000 peoples are considered indigenous, ranging from the Arctic regions, the Amazons, to the Aborigines in Australia. There is no widely accepted universal definition of indigenousness that can accurately capture the diversity within indigenous cultures, history, and current circumstances (Bankes & Koivurova, 2013, p. 258). The Sámi are among the more protected indigenous groups in terms of basic human rights, as many of them live in urban areas, and their way of life is similar to that of the dominant society. However, many indigenous peoples are subjected to internal displacement, violence, poverty, and loss of their ancestral lands (Bankes & Koivurova, 2013, p. 258).

For several decades there have been debates regarding the definition and status of indigenous peoples in international law. There is no assertive definition of who constitutes a "people" in international law. Article 1 of the Human Rights Covenants which affirms that "all

peoples have the right to self-determination" (OHCHR, 1966a, p. 2), was arguably the most controversial provision (Bankes & Koivurova, 2013, p. 109). The article suggests that the right to self-determination applies to all peoples, not just colonial peoples. Koivurova (2013) marks that it is difficult to understand why self-determination should not apply to a different type of domination than that of colonialism (Bankes & Koivurova, 2013, p. 109). In this way, if a people cannot participate in the political life of the state and determine their common destiny, that would constitute a form of domination which needs liberation (Bankes & Koivurova, 2013, p. 110).

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, are the two Human Rights Covenants, which bring a legal force to the Universal Declaration on Human Rights (UDHR), adopted in 1948. Together these documents constitute the International Bill of Human Rights, which is an internationally recognised collective set of human rights standards (Donnelly & Whelan, 2018, p. 7). The Covenants are divided into categories of economic, social, and cultural rights, and civil and political, based on interrelated rights. They contain similar provisions and an identical preamble which includes the right to self-determination (Donnelly & Whelan, 2018, p. 59).

One distinction between the Covenants relates to their monitoring. The ICCPR established the Human Rights Committee (HRC), which is a monitoring body of experts. Donnelly and Whelan (2018) describe how the HRC's mandate is to consider disputes between states about compliance, review reports of state-parties, and if authorised by the relevant state, to investigate petitions by individuals or groups claiming violations (Donnelly & Whelan, 2018, p. 59). When applying the ICCPR, national courts will make an independent interpretation of the treaty, where they will consider international law and practice of the HRC, which monitors the implementation of the ICCPR by its state's parties (Skogvang, 2023, p. 182). A minority has protection under Article 27 as an ethnic, linguistic, or religious minority, where these categories are independent of each other. The Sámi people fall under two of the categories to gain legal protection under Article 27, as they are both an ethnic and a linguistic minority (Skogvang, 2023, p. 183). Throughout Sápmi, there are ten remaining languages, one can question whether this constitutes several linguistic minorities within the ethnic minority. In Norway, North Sámi, South Sámi and Lule Sámi are used today, but they have an historical connection to several other Sámi languages. Furthermore, North Sámi, Inari Sámi and Skolt Sámi are spoken in Finland (Skogvang, 2023, p. 184; Regjeringen.no, 2022; Sámediggi.fi, n.d.).

Related to the question of who is given protection under the ICCPR, is whether the article grants individual or collective rights to ethnic, religious, and linguistic minorities. It is relevant to ask if an individual Sámi can invoke minority protection, if it is only applicable to a group of Sámi, or if it must be invoked by the entire Sámi population as such. The wording from Article 27, "persons belonging to such minorities" (OHCHR, 1966a, p. 14), indicates that we are dealing with individual rights (Skogvang, 2023, p. 185). Additionally, Article 27 grants rights that unquestionably are individual, such as the right to enjoy their own culture and use their own language (OHCHR, 1966a, p. 14).

Article 4 of the ICCPR states that only in time of emergency which threatens the life of the nation, states can take measures derogating from their obligations under the Covenant, granted that the measures are in line with their obligations under international law and does not discriminate based on race, language, sex, colour, social origin, or religion (OHCHR, 1966a, p. 3). ICCPR does not open for the rights granted in Article 27 to be limited based on other legitimate purposes. States are therefore not allowed to, based on their own margin of appreciation, limit the rights in the Covenant because other legitimate purposes take precedence (Skogvang, 2023, p. 196). However, practice of the HRC implies that a certain threshold needs to be reached to involve breach of Article 27. In Länsman v. Finland (CCPR-1992-511), the case concerns whether the quarrying of stone and transportation through Sámi reindeer breeders' territory would violate their rights under Article 27 (OHCHR, 1994, p. 3). The HRC stated that "measures with a limited impact on the way of life of persons belonging to a minority, will not necessarily amount to a denial of the right under Article 27" (OHCHR, 1994, p. 10). Against this backdrop, they found that current activities did not deny the Sámi their rights to enjoy their culture (OHCHR, 1994, p. 19), implying the needed threshold to conclude with a human rights violation.

3.1.1 Defining indigeneity

Acknowledging the difficulty in adopting a universal definition of indigenous which can be applicable to all nation-states, some characteristics are recognised. UN legal experts José Martínez Cobo and Dr. Erica Irene Daes emphasised the importance of being the first on land, cultural distinctiveness, oppression, and self-identification (Henderson, 2008, p. 43). Cobo's analysis stated that:

> 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 in those territories. 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 systems (Cobo, 1987, p. 29).

Here, Cobo recognises the aspirations of indigenous peoples to continue their cultural integrity, combined with elements of cultural distinctiveness, marginalisation, and experience of colonialism (Cobo, 1987, p. 29; Henderson, 2008, p. 44). Conscious that no universal definition will accurately capture the diversity of indigenous culture, history, heritage or current situations, Daes with the assistance of indigenous and other legal experts, have established four factors on defining "indigenous peoples" (Daes, 1996, p. 22). The first factor relates to priority in time, with emphasis on occupation and use of a specific territory.

The second factor involves the continuation of cultural distinctiveness, including aspects of language, religion, spiritual values, laws, institutions, social organisations, and modes of production. Self-identification and recognition by other groups or state authority as a distinct collectivity, is the third factor mentioned by Daes, and is of significance (Daes, 1996, p. 22). The fourth factor is an experience of subjugation, marginalisation, dispossession, discrimination, or exclusion, whether the conditions above hold or not. The factors will not be present in an equal matter, contingent on different national and local contexts. Even though there is no universal definition of indigeneity which will capture the diverseness, all efforts to define indigenous peoples recognise the connection between land, culture, and people (Daes, 1996, p. 22).

3.1.2 Sámi identity and indigeneity

It is necessary to explore how indigeneity is recognised in Norway and Finland, and how the definition of being indigenous is relevant for the NSC. It is difficult to provide an accurate number of Sámi, as the only way to measure is through the national electoral roster. This method ignores the number of Sámi that have been forced away from their culture, or who do not identify with their Sámi parliament. This means that the numbers provided by the electoral roster can be problematic (Bankes & Koivurova, 2013, p. 276). In 2023, 23.488 people were registered in the Sámi electoral roster in Norway (Sámediggi, 2023).

However, it is believed that as many as 50-65.000 people qualify for registering in the Sámi electoral roster in Norway but choose not to. This is considered a consequence of the extensive assimilation policies carried out through state policies for over seventy years, which has forced the Sámi away from their indigeneity (Koivurova, 2008a, p. 280; Semb, 2005, p. 534). Additionally, other non-indigenous people have applied for membership in the roster to be able to vote against Sámi issues, which gives an inaccurate representation of the numbers (Hesla, 2022). The Sámi have achieved legal recognition by their respective constitutions in Norway, Finland, and Sweden, while the Sámi residing in Russia are still struggling for recognition by the Russian federation (Koivurova, 2008a, p. 280).

3.1.3 Sámi in Finland

In Finland, the Sámi are recognised as indigenous people through §17 of the Finnish Constitution, which states that "the Sámi as an indigenous people, have the right to maintain and develop their own language and culture" (Constitution of Finland, 1999), which was written into the Constitution in 1995. The Act on the Sámi Parliament provides the foundation for defining Sámi in Finland and is put forward in Section 3 of the Act. Finland expanded their definition of what constitutes as Sámi in 1995, which created a lot of tension among the Sámi communities in Finland (Forrest, 2005, p. 235). The old definition recognised Sámi as "based on a person, their parent or grandparent having Sámi as their first language" (Forrest, 2005, p. 235), which disfavours indigenous peoples who lost their language as a consequence of the state and church policies (Bankes & Koivurova, 2013, p. 249). The new definition reads that:

> A Sámi is a person who defines himself/herself as a Sámi, provided:
>
> 1) That he himself or at least one of his/her parents or grandparents has learnt Saami as their first language;
> 2) That he/she is a descendant of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or
> 3) That at least one of his/her parents has or could have been registered as an elector for an election to the Saami delegation or the Saami Parliament (Ministry of Justice (OM), 1995, p. 1).

The second criteria extended the definition to anyone with ancestors in the so-called "Lapp registers", this caused a significant issue related to Sámi identity, by including those lacking

linguistic and cultural ties to the Sámi communities illustrating the importance of a proper definition of indigenous and Sámi (Forrest, 2005, p. 235).

In 2015, former President of the Sámi Parliament, Tiina Sanila-Aikio submitted a communication to the HRC monitoring the implementation of the ICCPR, on behalf of herself and the Sámi people in Finland. Her complaints related to how the Supreme Administrative Court of Finland departed from Section 3 of the Act of the Sámi Parliament defining who is eligible to be included in the electoral roll for elections to the Sámi Parliament (OHCHR, 2019, p. 2).

In 2015, the Court accepted applications of 93 persons, which were found ineligible to vote by the Sámi Parliament. According to Sanila-Aikio, "this has weakened the voice of the Sámi Parliament in representing the Sámi people in important decisions that may affect their lands, culture and interests" (OHCHR, 2019, p. 2). Further, she claims that this violates their rights to political representation provided by the ICCPR Article 25 and their free, prior, and informed consent, granted by Article 27. In 2012 the Committee on the Elimination of Racial Discrimination (CERD) recommended that the state party, in defining who was entitled to vote in the Sámi electoral roll, should accord due weight to the Sámi people's right to self-determination and to determine their own membership, in line with the UNDRIP (OHCHR, 2019, p. 3).

In 2014, a bill was submitted to the national Parliament, by a working group of the Ministry of Justice, containing provisions for revising the definition of a Sámi in the Act. Even though the proposed definition was supported by the Sámi Parliament, the national Parliament of Finland would not approve the definition as proposed. Therefore, the government withdrew the bill in 2015 (OHCHR, 2019, p. 2).

As a result of the communications with the state party and Sanila-Aikio, the HRC concluded that there was a violation of the Sámi people's rights under Article 25 of the ICCPR, read alone and in light of Article 1 and 27 of the Covenant (OHCHR, 2019, p. 12). Furthermore, making the state party obliged to review the Act on the Sámi Parliament, in a manner that respects the right of the Sámi people to exercise internal self-determination (OHCHR, 2019, p. 12).

However, in 2023 Sanna Marin's government became the third consecutive government to neglect the rights of the Sámi people, in terms of revising the Act on the Sámi Parliament. The debate revolves around Section 3, relating to the "Lapp registers", which dates back to the 18th century to which people paid taxes on the basis of who practised so-called "Lapp

livelihoods", such as reindeer husbandry, fishing, and hunting. Thereby including both ethnic Finns and ethnic Sámi, where Section 3 was never accepted by Sámi representatives (Saami Council 2022).

The current definition in the Act needs revision, as it was created without the support of Sámi representatives and is outdated with reference to the archaic "Lapp taxation registers", serving as a criterion to be entitled voting rights. The eligibility is thus established in favour of non-Sámi, undermining the most important objective of the Sámi Parliament, which is to represent, and negotiate in favour of the Sámi people in Finland and their rights (Saami Council, 2022). Providing a new definition would also bring Finland closer to fulfilling their obligations under international law, and more in line with the proposed Nordic Saami Convention.

3.1.4 Sámi in Norway

In Norway, The Sámi are recognised in §108 of the Norwegian Constitution as the indigenous people of Norway, and hence "the state authorities shall create conditions which enables the Sámi people to preserve and develop their language, culture and way of life" (The Constitution, 1814). Furthermore, having ratified ILO 169, Norway acknowledges the criterion of self-identification which follows José Martínez Cobo's definition, emphasised in Article 1(2) of the Convention (ILO, 1989, p. 2).

As stated in the Norwegian Sámi Act from 1989, to be registered in the electoral roster one has to meet the requirements set by §2-6 which states that anyone who defines themself as a Sámi and that either:

a. have Sámi as their home language, or
b. has or has had a parent, grandparent, or great-grandparent with Sámi as their home language,
c. or is the child of a person who is or has been on the Sámi Parliament's electoral roll, can claim to be entered on the Sámi Parliament's electoral roster (Sameloven, 1989, §2-6).

Norwegian legislation emphasises the importance of self-identification as a Sámi, which is not possible to oversee when receiving applications to enter the electoral roster. On this ground, several non-Sámi Norwegians have gained voting rights in Sápmi. Additionally, the second requirement of having a grandparent or great-grandparent who spoke a Sámi language can be problematic (Hesla, 2022).

Many Norwegians see their ancestry from the North as enough basis to apply and given that their family connection will not be questioned, the far-right party in Norway has taken advantage of this criteria by encouraging non-Sámi members to enter the electoral roster, with the intention to remove the Sámi Parliament and vote against Sámi interests (Hesla, 2022).

Similar to the struggle faced by Finnish Sámi, allowing non-Sámi people membership in the electoral roll would be harmful to the legitimacy of the Sámi Parliament, in addition to weakening an already vulnerable group. Further, the definition provided by the Sámi Act is not adequate when considering the history of the Sámi people in Norway. Having been subjected to extensive assimilation policies, which on a large scale attempted to eliminate the Sámi culture and languages, many have been forced away from their language from an early age (Andresen et al., 2021, p. 157).

3.2 Self-determination

The right to self-determination is a fundamental principle within the human rights system, as it is the right of all peoples under international law. The concept is included in Article 1 of the HR Covenants, where the right to self-determination is defined as the right of all peoples to "freely determine their political status, and pursue their economic, social and cultural development" (OHCHR, 1966a, p. 2). Self-determination is thus considered an important basis for the rights of the Sámi people. Most issues concerning rights for indigenous peoples contain elements of the discussion regarding indigenous people's right to self-determination (Skogvang, 2022, p. 113).

There is a consensus that self-determination contains internal and external dimensions, where internal self-determination is the right of a people to choose their own system of government and develop their own policies. External self-determination relates to the right of a people to determine their international status, for instance to become an independent state or integrate with an existing state (Allen & Xanthaki, 2011, p. 269). Self-determination is considered fundamental in decolonisation struggles, and recognises indigenous peoples as "free, equal, and self-governing peoples under international law, with shared jurisdiction over lands and resources on the basis of mutual consent" (Tully, 2000, p. 56), which acknowledges the distinct justification for recognition of indigenous property interests, given that access to land and resources is crucial to social, cultural, and economic development of indigenous peoples. This emphasises the point made by Henriksen (2007) that it is meaningless to discuss

the right of self-determination for indigenous peoples, that excludes a right to land and natural resources (Bankes & Koivurova, 2013, p. 31).

States have tended to include a territorial concept of a people, thus defining people as the whole of the population within a territory, disregarding cultural, ethnic, linguistic differences (Allen & Xanthaki, 2011, p. 261). Helen Quane, who is specialised on self-determination, points out that once an entity is recognised as a people, their position in international law stipulates that they enjoy the extensive options of both internal and external self-determination (Allen & Xanthaki, 2011, p. 260). This is why the definition of what constitutes "a people" is highly debated, especially concerning indigenous peoples (Allen & Xanthaki, 2011, p. 260). Indigenous self-determination challenges the state sovereignty and can legitimise secession from the state, causing considerable disdain of the concept from state representatives (Forrest, 2005, p. 233).

3.2.1 The concept of self-determination in international law

Self-determination under international law, can be understood by the definition included in the UNDRIP, Article 3, which states that "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development. They may freely dispose of their natural wealth and resources without discrimination" (OHCHR, 2008, p. 15; Allen & Xanthaki, 2011, p. 260), mirroring the definitions of Article 1 in the HR Covenants, having only replaced all peoples with indigenous peoples. Even though the UNDRIP is not legally binding for states, it reflects a set of common values and norms for those who ratify and implement it (Henriksen, 2008, p. 20).

Åhrén concluded that the UNDRIP determines that the general right to self-determination applies outside a colonial framework, making it an important international legal development in the understanding of the right to self-determination for indigenous peoples (Henriksen, 2008, p. 21). Despite dealing explicitly with the right to self-determination, states can interpret the UNDRIP in a manner that does not compromise national law and state interests, serving as a major implication of not imposing legal obligations on states (Gilbert, 2007, p. 219).

It must be noted that, in the process of developing the UNDRIP, the Nordic states accepted the definition provided by Article 3, granted that it would include a provision which

necessitates that the right to self-determination would not be exercised if it compromises the respect for state sovereignty (Regjeringen.no, 2006, p. 182). Denmark and Norway however, on their own initiative, supported the original wording of Article 3, without reference to respect for state sovereignty. This was based on the assumption that due regard for state sovereignty and territorial integrity is an integrated part of the right to self-determination, which needs no further reference in the UNDRIP (Regjeringen.no, 2006, p. 183). State representatives have expressed discontent with the concept (Gilbert, 2007, p. 219), and given that the Declaration is not legally binding, the states themselves are free to decide how willing they are to accommodate claims made by indigenous groups.

Semb (2012) explains how a government's compliance to a convention may be generated by a belief that "the benefits of complying with the requirements of the convention will exceed the costs involved" (Semb, 2012, p. 124). In other words, a state is willing to ratify a specific human rights convention when the government finds ratification to involve benefits which do not compromise state interests (Semb, 2012, p. 124). States asserting their position as a human rights protector will benefit from complying with human rights conventions but will often refrain from doing so if it compromises their sovereignty (Gilbert, 2007, p. 219).

Being arguably the most contested issue within indigenous decolonisation struggle, the need for self-determination to be addressed within a legally binding framework is a necessity for indigenous groups worldwide (Allen & Xanthaki, 2011, p. 260). ILO 169 is legally binding for the states that ratify the Convention, in contrast with the UNDRIP. Article 1(3) of ILO 169 states that "The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law" (ILO, 1989, p. 1). This section might be added to ILO 169 to avoid references to the right to self-determination of peoples. Nevertheless, ILO 169 does not explicitly refer to self-determination, as states would be more reluctant to accept it.

3.2.2 Self-determination within the context of the NSC

The Nordic Saami Convention is based on the idea that the Sámi have the right to self-determination, going further than UNDRIP in envisaging a gradually increasing Sámi unity in exercising self-determination. The idea is that the Sámi have self-determination as a transnational people, which must be accommodated by the three states where they live (Bankes & Koivurova, 2013, p. 107). This poses a problem for Sámi residing on the Kola Peninsula in

Russia, thus denying Russian Sámi the ability to exercise their self-determination as a transnational people (Bankes & Koivurova, 2013, p. 120).

Article 3 of the NSC explicitly deals with self-determination and is in line with the definition used in the Covenants:

> As a people, the Saami has the right of self-determination in accordance with the rules and provisions of international law and of this Convention. In so far as it follows from these rules and provisions, the Saami 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 (Regjeringen.no, 2018, p. 3).

The ambitious formulation used in the NSC can be understood as consisting of two parts. The first one being that "the Saami has the right to self-determination in accordance with the rules and provisions of international law", which means that the right to self-determination does not grant the Saami rights to secede from the state (Koivurova, 2008b, p. 15; Bankes & Koivurova, 2013, p. 121).

While not being the primary objective of the Sámi, the argument of secession is still used by the Nordic states, and other states with an indigenous population, to not grant them self-determination. Forrest (2005) points out that due to the lack of agreement on what self-determination will involve in practice, states continue to assume that self-determination includes territorial independence, thus consider indigenous aspirations as a threat towards the stability of national interests and principles of the international system (Forrest, 2005, p. 233).

However, indigenous representatives pointed out in the meetings of the Working Group on the Draft Declaration (WGDD), when UNDRIP was being developed, that self-determination for indigenous peoples is not only about statehood and secession, but free control, choice, and way of life (Gilbert, 2007, p. 220), suggesting the right of a people within a states' territory, to determine its collective political destiny in a democratic manner (Gilbert, 2007, p. 220).

3.3 Land rights as a fundamental indigenous claim

Traditionally, lands and territories are of particular importance to indigenous peoples and is one of the key characteristics of indigenous claims. It is important to acknowledge that their claims relate to the use of traditional land and free control, to collectively decide their way of life, and not associated with secession (Gilbert, 2007, p. 220). Recognised in ILO 169, indigenous

peoples have ties to the land prior to the establishment of present state boundaries, and their connection to the land is therefore what constitutes the difference in being "indigenous" from being regarded as a "minority" (ILO, 1989, p. 2).

Indigenous cultures have emphasised how the relationship differs from the Western concept, entailing a distinctive cultural, spiritual, social, political, and economic relationship (Gilbert, 2007, p. 225). Indigenous peoples' right to land are reflected in the UNDRIP, adopted by the UN General Assembly in 2007. Article 8(2b) affirms that "states shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing them of their lands, territories or resources" (OHCHR, 2008, p. 20).

Furthermore, in Article 26, UNDRIP asserts that states shall give legal recognition and protection of the lands, territories, and resources they possess by traditional ownership, occupation, or use (OHCHR, 2008, p. 38). Additionally, article 26 acknowledges the right of indigenous peoples to control the lands they have traditionally owned and used, taking into account that they have suffered colonisation and dispossession of their lands which has prevented them from exercising their culture (OHCHR, 2008, p. 5, 38). Even though the UNDRIP is not legally binding, it reflects the commitment of states to follow certain provisions. The intention of the Declaration was to reflect the importance of indigenous peoples' rights to land and the right to self-determination, which are closely related (Xanthaki, 2007, p. 239).

The stronger legal instrument for indigenous rights is provided by ILO 169, which becomes legally binding for states upon ratification. Norway was the first country to ratify the Convention, whereas Sweden, Finland and Russia have refrained from signing and ratifying ILO 169 (ILO, n.d.). Dealing explicitly with land rights in Part II, ILO 169 has set the precedent for the UNDRIP being developed eighteen years later. Article 6 of the Convention holds an important stipulation where governments must consult their indigenous population through their representative institution on legislative or administrative measures which may affect them directly (ILO, 1989, p. 3).

Article 13 recognises that the use of "land" in ILO 169, refers to "the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use" (ILO, 1989, p. 5), like that of the UNDRIP. Further, ILO 169 notes in Article 15(2) that "in cases in which the state retains ownership of mineral or subsurface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples" (ILO, 1989, p. 6), aiming at identifying to what extent the indigenous peoples would be affected, before permitting exploration or exploitation

of the resources pertaining to their lands (ILO, 1989, p. 6). Equivalent to that of the UNDRIP, ILO 169 recognises indigenous peoples as belonging to a country, area, or territory prior to modern state boundaries, and acknowledges their suffering from colonisation. Irrespective of their legal status, they retain some or all their own social, cultural, political, and economic institutions (ILO, 1989, p. 2).

3.3.1 The Sámi Reindeer Husbandry

Reindeer herding is a part of the Norwegian, Swedish, Finnish, and Russian societies, at the same time as it is an essential part of the Sámi culture, business, and community. The industry is rooted in strong traditions and cultural values, which has contributed to establish reindeer husbandry as a way of life solid and robust, to resist external influence such as the Norwegianization and other assimilation policies, compared to other Sámi industries and cultural traditions (Ravna, 2019, p. 30).

Due to their ability to cope with environmental and human-induced stress and maintain a viable livelihood over a long period of time, reindeer herding serves as an example of indigenous ability to adapt, and how environmental disturbance affects their vulnerability (Brännlund & Axelsson, 2011, p. 1095-1096). As well as having an important cultural function in the Sámi communities, they also have an important economic function (Brännlund & Axelsson, 2011, p. 1095).

The reindeer industry is organised into smaller units, called *siidas* or *sijtes*. Siidas consists of different families in the same area working together on traditional pasturelands and grouped together into administrative pasture districts (Brännlund & Axelsson, 2011, p. 1095). In 2019 reindeer herding was taking place in 140 Norwegian municipalities, constituting an area of 140.000 square kilometres, or 40 percent of Norway's mainland. However, 70 percent of the reindeer herding is taking place in Finnmark (Ravna, 2019, p. 30). The Finnish reindeer herding is practised in the North of the country, with an estimate of 123.000 square kilometres, which amount to 33 percent of the country's surface (Nordregio, 2015).

Reindeer herding in Norway is regulated through the Reindeer Act and is the only legal right granted exclusively to the Sámi people. The Act is meant to ensure reindeer herding as an important basis for Sámi culture and was amended in 2007 to replace the Act of 1978 (Reindriftsloven, 2007, §1). The Reindeer Act is meant to secure the reindeer herding areas, and the responsibility rests with the authorities and the holders of the right to reindeer

husbandry. Additionally, the Act stipulates that the law must facilitate an economic, ecological, and culturally sustainable reindeer herding with basis in Sámi culture, tradition, and custom for the benefit of the reindeer herders and society at large (Reindriftsloven, 2007, §1). Furthermore, the Act recognises the system of siida/sijte in the legislation, which is acknowledged as "a group of reindeer owners who practise reindeer husbandry in cooperation on specific areas" (Reindriftsloven, 2007, §51). The law separates between summersiida, which practises jointly in the summer- and autumn grazing areas, and a winteersiida where the reindeer husbandry is practised in the winter- and spring pastures (Reindriftsloven, 2007, §51).

The Finnish Reindeer Act was implemented in 1990 and applies to all reindeer herders in Finland. An important distinction between the Norwegian Act and the Finnish Act, is that the Finnish Reindeer Husbandry Act does not protect reindeer husbandry as a Sámi industry, which allows reindeer herding to be practised in the "reindeer herding area, irrespective of land ownership or possession rights" (Ministry of Agriculture and Forestry (MMM), 1990, p. 1). The Act refers to the term "reindeer cooperatives" as the collaboration between reindeer herders residing in the same territory and have the right to have their reindeers looked after by the co-operative (MMM, 1990, p. 1). Even though reindeer husbandry is practised by the majority population as well as the Sámi, by not including the relevance of reindeer husbandry to the Sámi in the Act, Finland is ignoring important indigenous claims to practise their culture. Consequently, majority interests will take precedence over Sámi issues, not facilitating their needs in the legislation nor in practice.

3.3.2 Challenges in realisation of land rights: a question of interference

In recent years, many Sámi have appeared in courts to fight for their rights to land but find that the courts do not understand how interventions such as mining and wind power development affect their culture and lives, and how their rights are violated severely enough for the court to rule in their favour (Sámediggi, 2021). There are numerous court cases where state interests take precedence over Sámi rights, which forces them further away from their culture and livelihoods. Examples of cases that are or have been relevant to the Norwegian courts include the Nussir and Repparfjord case, which concerns constructing a copper mine amid crucial land for reindeer herders, dumping toxic waste into the fjord, and establishing three different landfills (Nussir, n.d.; Protect Sápmi, 2020, p. 44). Further, the Norwegian-Finnish agreement on salmon fishing in Tana, duck hunting, cross-border reindeer herding in Troms, the right to

mark reindeer, the Langesund case in Troms, the mapping of rights in Finnmark, wind power industry on Øyfjellet and Fosen, and other reopened cases in the Southern Sámi areas are examples of court cases relevant for various parts of the Sámi population (Sámediggi, 2021).

There are similar projects ongoing throughout Sápmi, where pasture and indigenous lands disappear in favour of wind- and hydropower development, powerlines, and cabin development. In the North of Finland, extensive areas were dammed down as late as in the 1950's, when Kemijoki was constructed, and industrial development took place in multiple areas from the beginning of the 1900's in Sweden, with the construction of hydro power plants in the Lule river. Consequently, the projects led to extensive expropriation, forced removal, and had long term effects of lost areas (Andresen et al., 2021, p. 372). Here, we will look into the most prominent cases which violated the rights of indigenous peoples, and which have contributed to put the rights of indigenous peoples on the political agenda.

3.3.3 The Sámi people's struggle for land rights in practice; history and development

The Alta Conflict

The Alta conflict is considered the most important political issue concerning the Sámi during the 20th century. The conflict did not consist only of one case, but several issues during a period of 15 years, evolving from a nature conservation case to an issue regarding the rights of indigenous peoples. It laid the foundation for recognition and acknowledgement of the Sámi as indigenous peoples, and ultimately led to the development of the Sámi people's right to resources, closely connected to their land rights, and with the establishment of the Sámi Parliament in 1989 (Andresen et al., 2021, p. 370).

The project of developing the Alta-Kautokeino watercourse was put forward in 1968. The plans consisted of damming down all villages and small towns close to the watercourse, from Čávžu, to Kautokeino which is 80 kilometres apart (Andresen et al., 2021, p. 370). The village of Masi would be submerged if the project was realised. December 1970 it was concluded that the project would be carried out. After having executed two large hunger strikes, and occupying the prime minister's office, the protests finally resulted in the Norwegian Parliament preserving Masi in their parliamentary resolution regarding the Alta watercourse in 1973 (Andresen et al., 2021, p. 372).

Masi served as a symbol of a unified Sámi resistance to development projects affecting their traditional land (Andresen et al., 2021, p. 372). The Alta-case was brought to the Supreme Court of Norway in 1982, where it acknowledged that even though the Sámi were protected under Article 27 of the ICCPR, the interference in the reindeer husbandry was not considered substantially harmful in a sense that it threatened the entire Sámi culture (Ravna, 2022, p. 10). Although the case was characterised by defeat for the Sámi activists, it paradoxically contributed to put Sámi issues on the national political agenda. In addition, it problematised the state's politics towards the Sámi in a way that altered Norwegian politics and power relations between the state and their indigenous population (Andresen et al., 2021, p. 370).

Land Back: Fosen Case

There is currently a lot of tension surrounding the rights of the Sámi people in Norway and the other Nordic countries. In 2021 the Supreme Court of Norway ruled that Norway had violated its obligations under Article 27 of the ICCPR, which is the first time it has concluded violation of the Article in Norwegian law (Ravna, 2022, p. 2). The Article, which affirms the right of the Sámi to practise their indigenous culture, states that:

> In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (OHCHR, 1966a, p. 14).

The violation concerns the Norwegian Water Resources and Energy Directorate having granted licences to build four wind farms on Fosen peninsula in Trøndelag county June 7th, 2010. The permit includes Roan and Storheia, where consent was granted to expropriate land and rights of the Sámi people (Supreme Court of Norway, 2021, p. 3). In addition to the wind power plant development, the Directorate issued a licence to construct two power lines, one stretching 120 km from Namsos, through Roan to Storheia (Supreme Court of Norway, 2021, p. 3). Upon their completion in 2019 and 2020 respectively, Roan wind farm had 71 turbines, while Storheia consisted of 80 turbines, making it the largest wind farm in Norway (Supreme Court of Norway, 2021, p. 3). The wind farms were constructed amid the Fosen grazing district, where the Sámi people practise their reindeer husbandry. The parties in the case involve *North-Fosen siida* and *South-Fosen sijte* versus the energy company Fosen Vind, which is mainly owned by Statkraft (Ravna, 2022, p. 2).

The Supreme Court unanimously concluded that the construction of the wind power plants violated the reindeer herders' rights under Article 27 (Ravna, 2022, p. 4). The Supreme Court emphasises that Article 27 must be viewed with relevance to Article 108 of the Norwegian Constitution which imposes a duty on the state "to create conditions enabling the Sami people to preserve and develop its language, culture and way of life" (Supreme Court of Norway, 2021, p. 17; The Constitution, 1814; Ravna, 2022, p. 8). Furthermore, ICCPR is legally binding and a part of Norwegian law. Provisions in the Covenant take precedence over other legislative stipulations, which means that a violation of the Covenant entails breach of Norwegian law (Supreme Court of Norway, 2021, p. 18; Ravna, 2022, p. 8).

In its ruling, the Supreme Court recognises that the Sámi is a minority in line with the definition provided in the ICCPR. Additionally, they acknowledge that reindeer husbandry is a protected form of cultural practice (Supreme Court of Norway, 2021, p. 18). The state argued that Article 27 grants individual rights, and therefore the *siidas* cannot invoke protection under this article. Nevertheless, in their interpretation the Supreme Court concluded that the "the minorities' culture is practised in community, which gives the protection a collective nature" (Supreme Court of Norway, 2021, p. 18).

Further, the court notes that "when it comes to reindeer husbandry, this is expressed by the fact that the Sámi pasture rights are collective and conferred on each individual *siida*" (Supreme Court of Norway, 2021, p. 18). The threshold for ruling in favour of Sámi interests is often so high that, to be reached it must threaten the whole Sámi culture. As noted above, in the Alta-case from 1982, where the Supreme Court recognised that the Sámi were protected by Article 27, but at the same time reluctant to give the provision legal weight (Ravna, 2022, p. 9-10).

In February 2024 both parties reached agreement after a lengthy negotiation process. Here, each *siida* was promised a winter grazing area outside Fosen reindeer district, which is set to be granted by the season of 2026/27. An issue with this agreement is the lack of grazing areas in Norway, and it is still a question whether they will be provided with these areas. It must be noted that despite reaching an agreement, the human rights violation is irreparable as the Sámi have lost the lands to which they have the right to practise their culture and traditional livelihoods (Opsal et al., 2024). The windmills are still standing today, over 900 days after the ruling (Ravna, 2022, p. 2).

Norwegian and Finnish cooperation on Tana River

In 2016 Norway and Finland signed a new treaty concerning the common border along the Tana River, which is one of the world's largest rivers containing Atlantic salmon. Tana is one of the largest salmon waterways that is still little affected by human activity other than fishing and is of the last of this kind. Salmon fishing is of particular importance to the Sámi on both sides of the border (Regjeringen.no, 2016), and constitutes an essential part of their cultural practice and traditional way of life.

However, the Sámi people on the Finnish side have been excluded from the negotiation process, and consequently having their rights neglected as pointed out by Tiina Sanila-Aikio in her communication with the HRC (OHCHR, 2019, p. 4). While it is claimed that the intention of the agreement is to rebuild the salmon stocks in a sustainable manner, it would constitute expropriation of the traditional fishing rights of the Sámi people and exclude Sámi communities practising their traditional forms of fishing (OHCHR, 2019, p. 4).

The HRC observed that culture can manifest itself in many forms, which can be associated with the use of land and its resources, especially in the case of indigenous peoples. This involves traditional activities such as fishing or hunting. Furthermore, the Committee notes that to enjoy those rights "…may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them" (OHCHR, 2019, p. 10). Additionally, the Committee interpreted Article 27 in light of UNDRIP and Article 1 of the Covenant, as entailing "an inalienable right of indigenous peoples to freely determine their political status and freely pursue their economic, social and cultural development" OHCHR, 2019, p. 10).

Mining in Finland; How the Mining Act undermines indigenous rights

Akkerman Finland Oy, which is a Dutch-owned mineral exploration company, has been granted a permit which allows mining in traditional Sámi homelands. The exploration will have consequences for the Ergon Sámi siida in the North-Western Enontekiö area, and other Sámi communities. The Sámi communities did not receive information regarding the reservation permit on their pastures, and it was only discovered through the news (Saami Council, 2020).

The President of the Saami Council, Christina Henriksen, expressed how this practice does not comply with international legal framework on the rights of indigenous peoples (Saami Council, 2020). Even though Finland does not have obligations under ILO 169, it violates the provisions in the Mining Act, which affirms that the Act intends to "secure the rights of the

Sámi as an indigenous people to maintain and develop their language, culture and traditional livelihoods" (TEM, 2011, p. 1). While the Act does not explicitly entail a consultation right, granting the permission to conduct mining in essential Sámi land without informing the indigenous peoples or taking their culture and livelihoods in consideration is a violation of the Mining Act (TEM, 2011, p. 1).

Section 1 deals with the objectives of the Act, where it refers to respect of the Sámi homelands. The purpose of the Act is "to prevent, decrease and avert any inconvenience and damage incurred by the activities" (TEM), 2011, p. 1) and "to ensure the opportunities of individuals to influence decision-making involving them and their living environment" (TEM, 2011, p. 1). The reservation permit given to Akkerman does not allow the Sámi to live out their indigeneity and practise their culture on this land. Within the Finnish side of Sápmi, Enontekiö is an area where traditional reindeer herding through the siida system is preserved and practised throughout the year. Even though the siida system is not acknowledged in Finnish legislation, it is an important part of Sámi culture (Saami Council, 2020).

Granting permits to mining companies to expropriate Sámi land and rights exemplifies how the Mining Act is not adequate in safeguarding the rights of the Sámi people. Amendments should be made to the Act to ensure the rights of indigenous peoples. Further, Finland, having voted for the UNDRIP in 2007, should take further steps to include the principle of free, prior, and informed consent to their legislation (Saami Council, 2020).

Evidence of state practice

This chapter has illustrated how state practice takes advantage of the legislation to undermine the rights of the Sámi people. The Alta Case, taking place before the implementation of crucial international human rights documents such as ILO 169 and UNDRIP, led to a considerable reform in Norwegian Sámi policy. Paradoxically, despite dividing communities and depriving them of their rights, it put the recognition of the Sámi as an indigenous people on the political agenda (Andresen et al., 2021, p. 370).

Having implemented these documents, the Fosen case exemplifies how state governments are still able to commit human rights violations without it having severe consequences. Furthermore, the Norwegian-Finnish cooperation on the Tana River and the Mining Act in Finland proves that legislation pertaining to indigenous peoples is developed without the contribution of the people it regards, neglecting indigenous perspectives. State

interests in land areas takes precedence over indigenous claims, maintaining colonial power structures within the legislation, which the NSC is attempting to counteract.

4 Methodology

4.1 Research design

To identify how the Nordic Saami Convention will improve indigenous rights in terms of Sámi identification, land rights and self-determination in Norway and Finland, a qualitative research strategy will be applied. Qualitative strategies are useful when dealing with human rights research, and to generate knowledge of indigenous peoples. A qualitative method, as explained by Bryman in his book "*Social Research Methods*" is concerned with the use of non-numerical data and is used for more comprehensive in-depth analysis, which focuses on gaining a deeper understanding of social phenomena (Bryman, 2016, p. 375).

This is a case study approach of a comparative design between Norway and Finland, which involves data from both countries. With a case study, the case is an object of interest which aims to provide an in-depth examination (Bryman, 2016, p. 61). Seeing that this study is concerned with the distinctive features of a specific case, not generalisable to other indigenous populations, this is considered an idiographic approach (Bryman, 2016, p. 61). However, this is not a single case study, but rather a multiple-case study of a comparative design, as social phenomena can be better understood when they are compared in relation to two or more cases (Bryman, 2016, p. 64-65).

There is an increasing understanding that case studies, single or multiple, may play an essential role in relation to understanding causality. In this sense, case studies enhance the researcher's sensitivity to the factors that lie behind the operation of observed patterns within a specific context (Bryman, 2016, p. 68). With a multiple-case study, the researcher will be capable of examining this in contrasting or similar contexts, which is an opportunity for the researcher to gain a deeper understanding of the social world (Bryman, 2016, p. 68).

Landman (2006) describes few-country comparisons with a tendency to limit their generalisations and lower the level of abstraction in analysing issues of human rights in selecting few countries as subjects of the analysis (Landman, 2006, p. 67). By comparing countries that share similar history, language, politics, and culture, it allows for isolation of the remaining factors that may vary across the cases and have an impact on the outcome. These features are the focus of the research, as they differ from the controlled features shared by the subjects (Landman, 2006, p. 69).

The primary documents that will be used for analysis are the working group reports made by the Ministry of Labour and Social Inclusion (Arbeids- og inkluderingsdepartementet)

in Norway, to evaluate the draft of the NSC related to Norwegian national legislation and international obligations. Additionally, the corresponding report by the Ministry of Justice (Oikeusministeriö) in Finland will be used as a point of comparison. These reports were made with the intention to identify and consider problems related to national and international law. The reports work as a foundation for further negotiation, with the intention to reach full agreement. As stated by the Finnish expert group, Finland did not ratify ILO 169 because Finnish legislation did not correspond with provisions in the Convention related to the Sámi people's right to land (OM, 2009, p. 6). Due to these documents serving as a point of negotiation, they will provide the basis of my analysis. However, more recent statements and consultation rounds will also be considered.

4.2 Content analysis

This study has adopted an approach of content analysis, which refers to the analysis of documents and texts, printed or online, quantifying content following predetermined categories (Bryman, 2016, p. 283). Content analysis is a non-reactive method which does not include the involvement of research participants. As a result, the researcher will not undergo the same ethical scrutiny that is necessary when participants are involved (Bryman, 2016, p. 303). However, there are other ethical considerations that are relevant for this study, which is presented below.

The content which forms the basis of the analysis of this research is documents deriving from the state. The Norwegian and Finnish governmental websites are the sources of textual material of interest. The document analysis was used to focus on the state premise of negotiation with the Sámi parliaments. With foundation in international law, Sámi representatives have made claims for extended land rights, the right to self-determination and for the respective state authorities to acknowledge their indigeneity, and recognise the definition of Sámi, founded on assertions made by the Sámi people themselves (Regjeringen.no, 2018).

The documents have been selected to gain an accurate understanding of state perspectives and premises on developing indigenous rights. Further, the texts are comprehensive in their content, and contains a frame of reference on each variable used in the analysis, namely indigeneity, self-determination, and land rights. Moreover, efforts have been made to ensure the perspectives of the Sámi people, both within the reindeer herding industry, and members of other Sámi communities, despite not obtaining these as a primary source.

Therefore, the contribution of the Sámi representatives of the working groups is valuable as it includes Sámi perspectives within the same contextual setting. Many documents could have been used as a point of analysis, but due to the scope of this research, time restrictions and length of the key documents, the selection is not extensive. The selection was based on its relevance of the topic, the significance to the process, and that the material is comparable to each case.

The selection is as follows:

Regjeringen.no (2018). Nordic Saami Convention

The text of the Convention in an English translation submitted by a Nordic expert committee appointed to draft the Convention, composed of Norwegian, Swedish, and Finnish government representatives, in addition to Sámi representatives from the three Sámi parliaments. The Convention is available in Norwegian, Swedish, Finnish, English, North-Sámi, South-Sámi, Lule Sámi and Russian.

Regjeringen.no. (2006). Nordic Saami Convention: Draft from the Finnish-Norwegian-Swedish-Sámi Expert Group

Expert committee's Draft of the Nordic Saami Convention with further notes and assessments on each provision and its significance. This commentary is only available in Norwegian, and the translations used in this study are my own, which may entail not exact wording as intended by the expert committee themselves.

Arbeids- og inkluderingsdepartementet (AID) (Ministry of Labour and Social Inclusion). (2007). A review of the Draft Nordic Saami Convention

Report released by the appointed working group in Norway (WGN), assessing the NSC in relation to Norwegian law and international obligations. The working group consisted of three members of the Sámi Parliament and seven government representatives.

Oikeusministeriö (OM) (Ministry of Justice). (2009). Working Group Report: Draft for a Nordic Sámi Agreement

The report was released by the appointed Finnish working group (WGF), assessing the NSC with relevance to Finnish legislation, the Constitution, and their international obligations. The Finnish working group (WGF) consisted of nine members, with one representative of the Sámi Parliament. Due to being published in Finnish, translation and interpretation was conducted thoroughly and done with attention to detail.

4.3 Challenges and limitations of this study

4.3.1 Limitations of this study

This study is of a comparative nature but will not include all measures available for comparison. As the NSC is an agreement between Norway, Sweden, and Finland, which are three out of four states with a Sámi population, analysing all parts of the collaboration in depth will not be possible for this study, due to the scope and length of the project. Initially, it was challenging to conclude two cases.

However, a primary consideration was to find cases that illustrate the complexity and the challenges that emerged when drafting the NSC. Concluding that the case of Norway is a natural choice, given that Norway is the only country with a Sámi population which have explicit rights under international law, through ILO 169, the HR Covenants and in supporting UNDRIP.

Furthermore, Finland is an interesting case to investigate in comparison, as their Sámi population are still struggling to gain legal recognition as Sámi, and face difficulties in protecting their culture and livelihoods within Finnish law. Along with Sweden, Norway and Finland share a common border in the North, which the Sámi people cross frequently to practise reindeer husbandry and other cultural practices. Earlier, this was regulated through the "Lapp Codicil", which encompassed Norway and Sweden, and Finland which was under Swedish rule until 1809 (Bankes & Koivurova, 2013, p. 150). Today, reindeer herders in Finland can only practise reindeer husbandry within the state borders, posing challenges for the Sámi as a trans-national people (MMM, 1990, p. 1).

The Sámi living in Russia face difficulties different from the Nordic countries, but due to Russia not being a part of the cooperation, I have concluded that they are not a relevant part of my analysis. Initially, I wanted to include all three parties to the NSC in my research but discovered that Finland and Norway are the most contrasting parties. While Norway is more inclined to ratify human rights documents, Finland is on the other side of the pendulum where they are disinclined to even provide a proper definition of who is considered a Sámi. Selecting these two cases will enable me to discover the most contrasting features, and how these will impact the signing and ratification of the Nordic Saami Convention in Norway and Finland. As a limitation of this research, Sweden will not be a part of the analysis, thereby excluding the circumstances surrounding the Sámi people living on the Swedish and Russian side of Sápmi.

4.3.2 Sampling method

The aim is to provide an in-depth analysis of the three factors included, and at the same time acknowledge that several factors than the ones included for my research, are relevant in the case of the NSC. This research has focused primarily on indigeneity, self-determination, and land rights, as they are conflicting areas which may serve as hindrances in realising the NSC.

Purposive sampling has been used as a strategy for choosing primary material. In this way, the documents were strategically selected based on relevance to the research question, and purpose of the study (Bryman, 2016, p. 408). The material used in this study consists largely of official documents, thereby making it critical that I reflect on which perspectives I am studying and that are included in the documents. The texts chosen for this research reflect state interests and illustrate how they take precedence over indigenous claims. It is important to note that while the NSC was written with the contribution of Sámi representatives, both working group reports are primarily made by government representatives from respective ministries. Hence, the voices of members of the Sámi communities are not included adequately when comparing the legal scope of the provisions of the NSC to applicable international and national law (Ministry of Labour and Social Inclusion (AID), 2007).

Sámi perspectives in the reports contribute to bringing nuance to the assessments of developing rights of the Sámi people adapted to national legislation. To compensate for lacking Sámi inclusion in the primary documents, I have been concerned with gathering sources written by Sámi representatives and researchers, and written works which include their voices. The dissent by Irja Seurujärvi-Kari, the only Sámi representative in the WGF, is included as a separate part of the Finnish assessment. Additionally, it is vital that one is able as a researcher to be critical of how you present the material as an outsider, which proves to be a challenge when dealing with document analysis instead of conducting interviews or ethnography.

4.3.3 Challenges and advantages

When completing research, researchers might be faced with a variety of challenges, during data collection, use of method, and in the stage of interpreting data. With a multiple case-study of states, a bilingual character of the research was expected. As I am not a speaker of the Finnish language, and due to the lack of translation, accessing relevant data on Finnish legislation constituted a challenge. However, in addition to having found relevant books and articles on

the subject, I was also able to translate keywords leading me to the right documents on official government websites.

Many of the key documents regarding indigenous peoples in Finland are published in Finnish or in some cases Swedish, which meant translation was necessary. Even though the Swedish language was easier to work with, the language used in legal documents can be difficult to interpret. Therefore, it was imperative that time was spent on gaining an accurate translation and interpretation of the data. As a native speaker of Norwegian, it was much easier to access data on the Norwegian case, given that many official statements and documents related to the Sámi are written in Norwegian but also translated to English. Norway's obligations to human rights are often published with several translations, making it accessible for research.

When researching human rights, comparative methods and multiple case study designs are frequently used, which serves as useful tools when conducting research in the field (Landman, 2006, p. 67). With a comparative design, I was concerned with identifying both differences and similarities between the two cases of the research. A smaller selection of cases allowed me to reflect on the contrasting findings, and the factors responsible for the distinctions (Bryman, 2016, p. 68). It needs to be addressed that the nature of the research presupposes similarities in terms of the countries having a Sámi population and being a part of the cooperation on the NSC, as a point of reference. Utilising a few-country comparison will enable me to analyse a smaller selection more intensively, and focus on the case more in-depth, rather than a broad analysis (Landman, 2006, p. 68).

As explained by Landman (2006), when applying a multiple case study, a typical approach is to conduct regional or area studies, which compare countries that share similar history, politics, culture, religion, and language, to isolate remaining varying factors (Landman, 2006, p. 69). In this case, Norway and Finland share parts of a common history and politics, pertaining to their assimilation of the Sámi people and extensive assimilation policies with the intention to destroy the Sámi culture and way of life. With this type of analysis, it is easier to control the common features, to focus on the variating factors, for instance their relation to self-determination, land rights and indigeneity (Landman, 2006, p. 69). Acknowledging the complexity of this research, the similarities and the differences will impact the outcome of the study, which is why it is vital to examine both.

Based on my methodological framework of a content analysis, there are certain aspects that need to be addressed. When completing research on indigenous peoples, ethnography and

interviews are often a preferred method to ensure that the perspectives of the subjects are presented in a proper way. The intention of using interviews as a method is to better understand the nature and meaning of the social world, constructed by the population being investigated, and produce other ways of knowing (Landman, 2006, p. 61).

Additionally, researchers argue that while studies of this kind are not universally applicable, which is not the intention either, they have inherent value and significant practical and policy implications (Landman, 2006, p. 62). Interviews and ethnography would allow me as a researcher to gather meaningful data that cannot be accessed through other documents but is very costly over a short period of time (Bryman, 2016, p. 466). However, the primary focus of my analysis is the study on the underlying power structures of legislation, and how this is a hindrance in realising indigenous land rights and the right to self-determination.

Dorpenyo (2019) emphasise how research methodology should be "critical, reflective, situated, and rhetorical" (Dorpenyo, 2019, p. 53), this is of pertinence when researching international contexts with complex cultural situations (Dorpenyo, 2019, p. 53). In this way, the researcher is responsible when completing their research with respect to indigenous peoples and their culture. Comparative research is concerned with the same principles, and it is important to stress the complexity in analysing international, cross-cultural, or intercultural contexts (Dorpenyo, 2019, p. 54). Acknowledging that the focus on state policies and government perspectives as the units of analysis, limits the focus on cultural variables and opens the possibility for oversimplifying the cultural dimensions (Dorpenyo, 2019, p. 54). Throughout the research, this is a notion I have remained conscious of when presenting the data. Consciously, I have worked to include the human rights violations faced by indigenous peoples, their stories and lived experiences, while at the same time acknowledging the limits of this through document analysis (Dorpenyo, 2019).

4.3.4 Reliability, replication, and validity in HR research

There are different quality criteria to assess the quality of social research, which every researcher must consider when completing a study. Reliability, replication, and validity are the criteria in which research is examined. While the measurement of quality differs from the criteria observed when using quantitative methods dealing with numerical data, validity and reliability have been altered to correspond with qualitative research (Bryman, 2016, p. 383).

Reliability, while most relevant to quantitative data, refers to whether a study is repeatable, following the measures being stable or not (Bryman, 2016, p. 41). Further, external reliability refers to whether a study can be replicated, which is a challenging criterion to meet given that qualitative research is not dealing with numbers, but social reality (Bryman, 2016, p. 383). Replication is therefore similar to the latter, as it entails a study's ability to be subject of replication. Researchers are sometimes inclined to replicate the findings of others, which makes it key that the original study is well documented (Bryman, 2016, p. 41).

A challenge for social researchers is completing research free from bias, especially when simultaneously advocating for human rights (Bryman, 2016, p. 402). However, it is a main objective throughout research to limit influence of the scientist's biases. The results should be free from the researcher's own expectations, which may potentially harm the credibility and replicability of the study (Bryman, 2016, p. 164). It is important to note that every researcher has entered the process of research with a set of values and biases, but to provide an accurate representation of the data, this should be limited. Accordingly, researchers are accurate in documenting their methods and procedures so their project can be replicated (Bryman, 2016, p. 164).

Lastly, validity deals with the integrity of the study. Even though validity has several concerns, it is significant to consider internal validity, relating to whether there is a correspondence between what the researcher has observed, and the theoretical ideas they develop (Bryman, 2016, p. 41). This criterion has been identified as a strength within qualitative research, as in-depth analysis and observation allows a researcher to develop conformity between observation and theory (Bryman, 2016, p. 384). Furthermore, external validity can constitute a challenge within qualitative research. This criterion relates to whether the findings can be generalised to across social contexts. Accordingly, when dealing with case studies with small samples such as this study, external validity constitutes a difficult task which may be near impossible (Bryman, 2016, p. 384).

Indigenous peoples live under widely different circumstances and within intricate social settings, making them distinctive from each other. However, there are struggles which indigenous groups throughout the world face simultaneously, the fight to achieve legal recognition, the right to self-determination and the right to land, which are analysed in this study (Henderson, 2008, p. 46).

Although not generalisable, this study might reveal challenges faced by several indigenous peoples apart from the Sámi. In every part of the process, I have practised within

the norms of responsible research, striving to produce my research through "the ethos of science" (NESH, 2022, p. 5), to foster integrity and reliable knowledge through my findings (NESH, 2022). Exploring these concerns have allowed me to reflect and develop within the field of research and be conscious of truth and accountability when completing research on indigenous groups.

4.4 Positionality

My positionality within this study is essential, as I have no ties to the Sámi people. As a non-Sámi member of the Norwegian society, I am aware of the privileges I enjoy, and my stance as an outsider to the Sámi people's struggle for recognition and in achieving basic human rights throughout the Nordic countries. Until recently, the scope of human rights did not include the rights of indigenous peoples. The reluctancy in ensuring indigenous rights is challenging the universality and inalienability which is considered the foundation of the human rights system.

Related to my background in political science, my positionality has influenced the focus of my study to concentrate on the underlying power structures within Norwegian and Finnish legislation, which have been founded on the image of coloniality. The legal framework which upholds the power structures of today's society function as a hindrance for the Sámi to live out their indigeneity, culture, and Sámi identity.

The working group reports used in my analysis provides a deeper understanding of the assessments being made in terms of prioritising indigenous claims or where state interests take precedence. Despite Norway positioning itself as one of the strongest defenders of human rights, we seem ignorant of our own violations of the rights of the Sámi people. As an ethnic Norwegian, grown up in the south-east of Norway and studying human rights, I have observed how the state is unable to acknowledge the extensive Norwegianization and assimilation policies Norway has subjected the Sámi to, and how their efforts to provide reparations have been inadequate.

With deeply rooted injustice, I wonder if it is possible to challenge state policies being established within a colonial framework. Understanding the complexity of the issue, my position as a political scientist influences my analysis and interpretation of the data (Bryman, 2016, p. 34), which is based on Western/European knowledge. As such, it is important throughout my research to reflect on the underlying power structures of my positionality when conducting research on indigenous struggles for recognition and in achieving human rights.

4.5 Ethical considerations

Ethical issues may arise at different stages of research, and individual researchers are always responsible for behaving in accordance with norms and principles in research ethics (National Committee for Research Ethics in the Social Sciences, and the Humanities, 2022, p. 6). Bryman (2016) draws attention to four main areas of ethical principles, which includes whether there is potential harm to participants, lack of informed consent, invasion of privacy and whether deception is involved in the research (Bryman, 2016, p. 125).

Although this research does not involve research participants, all these principles will be considered throughout the study. The documents selected for this research are public documents, which have an open access, or provided through my organisation. In this sense, I will pay special attention to the norms related to *falsification* and *distortion*, accentuated in the guidelines published by the National Committee for Research Ethics in Social Sciences, and the Humanities (NESH), which was published in 2022 (NESH, 2022, p. 16). Falsification is not compatible with ethical scientific practice and refers to the practice of misleading manipulation of the data, and examples of falsification may be to make changes to sources, data, or descriptions without academic justification (NESH, 2022, p. 16). Distortion relates to misleading use of scientific methods, biased interpretation of sources and selection of data that favours the wanted result of the study (NESH, 2022, p. 16).

As this research focuses on the Sámi, the indigenous peoples of Norway, Sweden, Finland and Russia, principles of research ethics created by the indigenous communities themselves are important to protect indigenous knowledge systems and the ways of knowing of the colonised "Other", which makes the responsibility of the researcher even more important (Chilisa, 2012, p. 18). As Bagele Chilisa (2012) states "Indigenous knowledge-driven research methodologies can enable research to be carried out in respectful, ethical ways, which are useful and beneficial to the people" (Chilisa, 2012, p. 100). This is a way of illustrating power relations in the research process, and as Dorpenyo (2019) explains, indigenous peoples may have reservations of research as it has been used as an imperialist tool to claim ownership of indigenous knowledge, production, and modes of creation (Dorpenyo, 2019, p. 55). NESH accentuates the importance of gaining knowledge of the local context and social relations, and treats all cultural heritage responsibly (NESH, 2022, p. 29-30).

5 Norway and the Nordic Saami Convention

The following chapters will consist of the findings and results drawn from the thematic analysis on indigeneity, self-determination, and land rights of the Nordic Saami Convention and working group reports published by Norway and Finland. The findings are divided into three chapters, where the first chapter will investigate Norway's prerequisites for signing and ratifying the NSC. The second chapter will focus on Finland's assessments of Sámi identification, self-determination, and land rights. The final chapter of the findings will consist of an overall assessment of the challenges in implementing the NSC in Norway and Finland, based on the contextual settings.

To understand the assessments made by the working group in the respective states, it is necessary to be acquainted with the evaluations made by the Expert Committee (EC) when preparing the draft for the NSC. The Saami Council was founded in 1956 and is a voluntary Sámi organisation with member organisations in Norway, Sweden, Finland, and Russia (Saami Council, n.d.). The Saami Council put forward the idea of an international convention to address the legal status and rights of the Sámi. The issue of achieving rights for the Sámi people, and protection of reindeer herding was studied for a few years. Eventually, the process leading up to the establishment of the NSC was initiated in 1995 when it reached the Nordic Council (Koivurova, 2008a, p. 282), which is an official body for inter-parliamentary co-operation, established in 1952 (Nordic co-operation, n.d.).

Ultimately, the EC was appointed in 2002 by the Nordic Council in collaboration with the responsible ministers for Sámi affairs from the three Nordic states and the presidents of the Sámi parliaments (Koivurova, 2008a, p. 283). The composition of the EC was altogether equal as each of the Nordic states and the three Sámi parliaments appointed one member. Accordingly, the EC comprising of six members produced a Draft text for the NSC (Koivurova, 2008a, p. 283). As pointed out by Koivurova (2008), the completed Draft was influenced by the EC acknowledging the lack of rights for the Sámi and strived to "advance the status and rights of the Sámi as a people within the complex institutional framework they are located" (Koivurova, 2008a, p. 291). Each of the seven chapters and 51 Articles of the NSC has been debated by the EC, and where disagreements occurred the committee settled on a compromise of the formulation (Regjeringen.no, 2006, p. 2).

The Norwegian working group (WGN) was appointed in 2007 with the mandate to carry out a systematic review of the NSC, with the aim of identifying and discussing any obstacles in

relation to national and international law. The assessment was completed in close contact with the other ministries concerned, and the working group's report formed the basis to achieve a Norwegian negotiating position with the other Nordic countries. The Sámi Parliament had three members out of the ten that were appointed, the following seven members were representatives from the Norwegian ministries.

Their assignment requires a comparison of the legal scope of the provisions of the NSC and applicable national and international law. The comparison implies that they must take into account the complete legal picture, to shed light on other legal sources applicable to international law, such as judicial practice and interpretation of law. However, the WGN is not intended to make recommendations to amend current wording of the NSC (AID, 2007, p. 5). Nevertheless, the WGN should make note of possible linguistic clarifications of the text without altering the intention of the provisions. Examples of these kinds of modifications relate to alternative translations into Norwegian from English, Swedish, Finnish or Sámi terms. For cases in which the wording of a provision and the intention appeared from the expert group's recommendations are not coherent, the question arises to whether the WGN should propose revision to clarify the objective. Even though the WGN initially wanted to be cautious of putting forward such propositions, they have concluded that their mandate indicates the proposal to changes of this kind (AID, 2007, p. 6).

5.1 The concept of indigeneity and Sámi identity

Over the years, international developments have led to the recognition of the rights of indigenous peoples, culminating in the establishment of ILO 169 in 1989, and UNDRIP in 2007. Acknowledging that there is no universal definition that accurately captures the diversity of indigenous groups globally, states have throughout the years exploited the lack of legal recognition to assimilate and forcibly remove indigenous culture and communities (Bankes & Koivurova, 2013, p. 258). As the reconciliation processes have begun relatively late, balancing state sovereignty and indigenous recognition and protection is a troubling affair globally which subsequently became a crucial human rights concern.

Norway, being the only Nordic country with an indigenous population to ratify ILO 169, has acknowledged their obligations to respect and secure the rights of indigenous peoples. Accordingly, Norway has respected the term *indigenous* provided by Article 1 of ILO 169,

recognising their historical connection to the lands prior to the construction of present state boundaries (ILO, 1989, p. 2).

5.1.1 Article 4: Persons to whom the Convention applies

The rights-holder of the NSC are presented in Article 4 of the Convention:

> The Convention applies to persons residing in Finland, Norway or Sweden that identify themselves as Saami and who:
>
> 1. have Saami as their domestic language or have at least one parent or grandparent who has or has had Saami as his or her domestic language, or
> 2. have a right to pursue Saami reindeer husbandry in Norway or Sweden, or
> 3. fulfil the requirements to be eligible to vote in elections to the Saami parliament in Finland, Norway or Sweden, or
> 4. are children of a person referred to in 1, 2 or 3 (Regjeringen.no, 2018).

The WGN concluded that the article must be seen in light of the definition provided by the Norwegian Sámi Act of 1989 §2-6, on being granted entry in the electoral roster (AID, 2007, p. 28; Sameloven, 1989, §2-6). The wording of the NSC is like that of the Sámi Act, where the Convention applies to those who identify themselves as a Sámi, and that they reside in Finland, Norway, or Sweden. Further, the provision regarding language requirement is more restricted than the provision put forward in the Sámi Act. §2-6b allows persons who do not have Sámi as their domestic language to be registered in the electoral roll, provided that at least one great-grandparent spoke Sámi as their domestic language (Sameloven, 1989, §2-6b).

Article 4 however, requires that the individual's grandparent must have one of the Sámi languages as their domestic language (AID, 2007, p. 28). Accordingly, the Norwegian definition goes further than what is proposed in the NSC. While this is cause for disagreement between Norwegian legislation and the NSC, the WGN concludes that Article 4(4), which allows children of persons referred to in 1,2 and 3 to have rights under the Convention, counterbalances the deviation (AID, 2007, p. 28).

Furthermore, the WGN sees the inclusion of 4(2), which allows people who have the right to practise reindeer husbandry in Norway or Sweden to have rights under the NSC as unproblematic. This is due to the fact that reindeer husbandry is an exclusive right of the Sámi people in Norway and Sweden. As noted by the EC, this provision was included in the NSC given that many reindeer herders through many years of extensive assimilation, have lost the

Sámi language as their domestic language, thereby losing their eligibility to enter the electoral roster. In the Norwegian context, such provision might be excessive given the inclusion of great-grandparent in the language criterion (Regjeringen.no, 2006, p. 199).

The WGN notes that there is a possibility that this provision will have implications for the existing Sámi Act, thereby having an independent importance in Norwegian legislation (AID, 2007, p. 28). For persons to have rights under the NSC is contingent upon their eligibility to be entered into the Sámi electoral roster. Given that the Sámi Act goes further than the NSC in allowing individuals entry to electoral roll, the provisions of Article 4 are in line with the national regulations on eligibility to vote in Sámi parliamentary elections in Norway (AID, 2007, p. 29).

However, the WGN marks that the provision determining that subjects of the NSC include "persons residing in Finland, Norway, or Sweden" necessitates further discussion, as the rights of the NSC can be invoked by Sámi people living in either Norway, Sweden, or Finland (AID, 2007, p. 29). The EC states that in cases where it is unclear in which of the three states a Sámi is a resident, it is without importance. Further, the EC explicitly mentions that citizenship is without significance, and it is only the place of residence which is noteworthy. Nevertheless, questions may arise if a Sámi has a place of residence outside of the three states in which the NSC encompasses. Yet, the EC concludes that it is natural to assume that to be able to retain the Sámi culture and live out their indigeneity in traditional ways, one would have to reside a significant part of the year in one of the Nordic states (AID, 2007, p. 29; Regjeringen.no, 2006, p. 198).

Here, the WGN is critical to the fact that Sámi people without a Norwegian citizenship will be able to invoke rights under Norwegian legislation. They point out that the Norwegian legislation that seeks to enforce Norway's obligations under international law towards the Sámi is limited to the Sámi people living in Norway. Additionally, the WGN refers to the Lapp Codicil, and other relevant agreements that are areas where Norway cooperates with the other Nordic countries (AID, 2007, p. 29).

5.2 The right to self-determination

5.2.1 Article 3: The right to self-determination

Article 3 of the NSC is the most debated provision in the Convention and is one of the most prominent indigenous claims globally. While not included in ILO 169, UNDRIP deals

explicitly with the right to self-determination. Even though this is an important stipulation of UNDRIP and sets standards for the global community, it does not carry legal weight (OHCHR, 2008, p. 15). In this way, the NSC is ground-breaking in establishing indigenous rights to self-determination. The Article states that:

> As a people, the Saami has the right of self-determination in accordance with the rules and provisions of international law and of this Convention. In so far as it follows from these rules and provisions, the Saami 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 (Regjeringen.no, 2018, p. 2).

The EC, when drafting the NSC, concluded that the content of Article 3 must be seen in light of international law. Here, the EC points specifically to the HR Covenants (ICCPR and ICESCR), UNDRIP and ILO 169. Furthermore, the EC emphasises how all parties to the proposed NSC have ratified the HR Covenants. Both Norway and Finland have incorporated the contents of the Covenants in national legislation (Regjeringen.no, 2006, p. 195-196; AID, 2007, p. 8).

5.2.2 "Peoples" under international law

The WGN mentions how Norwegian authorities over the years have expressed that the Sámi people have the right to self-determination and referred to them as a "people" on numerous occasions. However, the WGN questions whether the Sámi are entitled to self-determination, given that there are different perceptions of which groups which can be understood as "peoples", related to the HR Covenants (AID, 2007, p. 10).

The WGN comments on the different approaches made by the EC when addressing the understanding of "peoples" in international law. While the term is originally related to decolonisation processes after the second world war, the EC focuses on the concept's development following this period. The first approach discussed by both the EC and the WGN, Alternative A, defines "peoples" as the population of a distinct territorial or geographical entity (AID, 2007, p. 11). The WGN finds that this conservative approach entails that indigenous peoples will not fall under the scope of ICCPR or ICESCR unless they constitute the population of a limited area, such as Greenland. Here, they understand the right to self-determination as limited to decolonisation processes and secession (AID, 2007, p. 12).

Alternative B entails a legal development of the concept of indigenous self-determination. The Norwegian government has several times over the years acknowledged that the right to self-determination exists within the legal framework of state-sovereignty and given an emphasis to the development of the Sámi Parliament's authority (AID, 2007, p. 16). In this way, they have concentrated the term self-determination around the right to participation. This approach requires an extension of the term to include indigenous peoples, with a prerequisite that the concept of self-determination needs to be developed anew through a parallel legal development. This alternative has been supported by former Norwegian governments, and government representatives of the WGN (AID, 2007, p. 16).

Alternative C affirms that the right to self-determination can be claimed by all "peoples" defined by cultural criteria, following ICCPR and ICESCR. Hence, the understanding of "peoples" as subjects of international law, is not to be understood based on geographical limitations, but based on criteria such as language, culture, history, and connection to land etc. However, this alone will not grant the claim to secession from the state or sovereignty. This alternative is supported by the Sámi representatives of the WGN (AID, 2007, p. 17).

The WGN concludes that it would be possible to combine the different alternatives. While Alternative A might be the principle under international law today, alternative B or C might be the preferred alternative. The two latter approaches can be found in Norwegian governments' positions of negotiations in the preparatory work towards the establishment of UNDRIP (AID, 2007, p. 17). Even though the alternatives mentioned above have different approaches to indigenous self-determination, B and C might coincide in the materialisation of the right for the Sámi people.

The WGN refers to the review made by Henriksen, Scheinin and Åhrén (2005) on the Sámi people's right to self-determination, being used as a preliminary analysis for debates on the concept when drafting the NSC (Regjeringen.no, 2006, p. 336). Here, Henriksen, Scheinin and Åhrén identify how self-determination will materialise differently for indigenous peoples than for others, given that it needs to be adapted to their specific context (Regjeringen.no, 2006, p. 335). It has been specified by indigenous representatives that they are not willing to accept a right to self-determination that is deviant from, and more restrictive than what is granted to the majority population (Regjeringen.no, 2006, p. 335). Additionally, they have opposed all notions that qualify indigenous peoples' right to self-determination to a greater extent than what is granted to others, which they, nevertheless, have made no claims to. Indigenous representatives

have accepted the limitations on self-determination set forward by international law, such as respect for states' territorial integrity (Regjeringen.no, 2006, p. 335).

When it comes to states' permanent sovereignty over natural resources, indigenous representatives have emphasised indigenous connection to ancestral lands, and its significance for maintaining their culture and traditional practices. In this way, the WGN reflects on the fact that self-determination and right to land are interrelating rights, where one is contingent upon the other. Indigenous peoples cannot exercise self-determination without it entailing influence over land, water areas, and natural resources (Regjeringen.no, 2006, p. 336). Further, the WGN acknowledges the importance of access to traditional land for indigenous peoples and recognises that this separates their claim to self-determination from other people. Additionally, they conclude that this understanding of the concept is in line with Norwegian governments' stance towards the Sámi people's claim to self-determination (AID, 2007, p. 18).

Government representatives of the WGN questions the material content of the right, and that it must be interpreted considering the implications it may have internationally, with special regards to potential conflicts and questions of secession (AID, 2007, p. 18). The development of the NSC will set the precedent of state practice in Norway, Sweden, and Finland, and thus carry legal weight outside the Nordic countries. As it may call for the development of new international norms, it is necessary to consider possible ramifications internationally (AID, 2007, p. 18). The Sámi representatives of the WGN points to a dynamic understanding of the right to self-determination, which will adapt the concept to the present global context (AID, 2007, p. 19). They continue by stating that, the effect of stressing the possibilities for secession marginalises the Sámi as a people, as well as their ability to determine their own economic, cultural, and social development (AID, 2007, p. 19).

Moreover, the Sámi representatives accentuates that Article 3 of the NSC expresses the same right to self-determination which follows from the HR Covenants, which the HRC has confirmed applies to the Sámi people. The development of the NSC can be seen as a part of the process where all the Nordic states recognise that the Sámi constitutes a people with the right to self-determination equivalent to what is provided by the Covenants (AID, 2007, p. 19-20). Furthermore, as it will be difficult to maintain an understanding of self-determination principally different from what is provided by the Covenants, it is likely that the provisions of the NSC will help clarify the content of the Sámi people's right to self-determination, and thus contribute to the interpretation of Article 1 of the HR Covenants (AID, 2007, p. 19).

5.2.3 External self-determination

The WGN recognises that while the right to self-determination in other contexts, especially related to decolonisation struggles, have been used as means for secession. These claims have been made based on violent discrimination, and attempted genocide, as a last resort against an oppressive regime. However, with relevance to the Sámi, they have never had a desire or need to secede from the state. Therefore, based on the assessments made by the EC, the reluctance to acknowledge the Sámi people's right to self-determination based on their possible secession from the state, is unfounded (AID, 2007, p. 20-21; Regjeringen.no, 2006, p. 342).

Despite this, the EC considered that a limited right to self-determination would be problematic as representatives from the Sámi cannot renounce such right on behalf of future generations of Sámi (Regjeringen.no, 2006, p. 343). It is recognised that the right to self-determination is a dynamic concept, where it needs to be viewed as an ongoing process which ensures participation in decision-making and control over their own destiny, and not a predetermined result (Regjeringen.no, 2006, p. 344).

The discussion surrounding secession is related to the external aspect of self-determination, dealing with a people's right to freely determine their own political status and relation to the international community. Moreover, external self-determination relates to their right to participate in international decision-making processes, which is a pivotal part of this right. Representatives of the Sámi people partake, alongside the Nordic states' delegations and often in their own capacity, in different international forums, primarily in the UN (Regjeringen.no, 2006, p. 337).

5.2.4 Internal self-determination

The internal right to self-determination relates to the right to internal self-governance and the right to partake in decision-making processes. This relates to the areas in which the Sámi Parliament will have extended authority, namely linguistic and cultural issues, and the management of land and water resources (AID, 2007, p. 21). ILO 169 is essential when it comes to ensuring participation of the Sámi. Article 6 of ILO 169 requires the state to consult the Sámi on questions which affect them directly (ILO, 1989, p. 3). The WGN finds this stipulation pivotal in securing the Sámi people's right to participation in decision-making processes, in resource management and other important areas (AID, 2007, p. 21).

When addressing the management of land and water resources, the WGN questions how to define what is considered "their" resources, as is mentioned in Article 3 (AID, 2007, p. 24). The Sámi representatives of the WGN notes that what is considered Sámi resources must be defined through national legislation, therefore it is natural that the HRC does not touch upon these questions in their reports (AID, 2007, p. 24). The HRC establishes that indigenous peoples have the right to their natural resources, and these resources must be identified and protected according to Article 27 of the ICCPR and Article 25 of the ICESCR which states "Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources" (OHCHR, 1966b, p. 7). Here, Article 25 will complement Article 1 of the HR Covenants, in questions related to indigenous peoples' rights to manage their natural resources (AID, 2007, p. 24). However, government representatives of the WGN do not find the provisions granted by the HR Covenants as leading in determining what is considered "their natural resources" (AID, 2007, p. 25). Article 34 of the NSC establishes that traditional use is the foundation for explicit rights to land and water areas. Article 35 of the NSC requires the state to take adequate measures for effective protection of rights of the Sámi (Regjeringen.no, 2006, p. 8).

5.2.5 Concluding remarks by the WGN on self-determination

The WGN finds in their report that it is unclear whether Article 3 includes utilisation of non-renewable energy, such as minerals, oil, and gas. If the right to self-determination were to include participation in the management of, and benefits of such resources, it would constitute conflict with current national law (AID, 2007, p. 27). Therefore, it is uncertain whether the provisions of Article 3 go beyond what is provided by national and international law. Government representatives of the WGN is of the opinion that the decisions in the Article will entail new legal obligations for the Norwegian state, while the Sámi representatives consider the provisions following the right to self-determination is already included in other instruments of international law (AID, 2007, p. 27).

5.2.6 Article 16: The Saami parliaments' right to negotiations

The Sámi people's right to self-determination is carried out by the Sámi Parliament and its mandate to make independent choices. Articles 16, 36, 39 and 40 are seen to be applicable to both self-determination and land rights, as they are contingent upon each other. Article 16

regulates public authorities' duty to negotiate with the Sámi parliaments. Article 36 "Utilization of natural resources", Article 39 "Land and resource management", and Article 40 "Environmental protection and environmental management" deals with a right to co-determination for the affected Sámi individuals or groups. While the areas in which the Sámi parliaments are granted co-determination are not explicitly listed in the articles, the WGN recognises that environmental degradation, exploitation of resources, and environmental- and resource management, covered by Article 36, 39 and 50 of the NSC, are areas that are clearly covered by the consultation right stipulated in ILO 169 (AID, 2007, p. 46).

The Sámi representatives of the WGN point out that in addition to a consultation right granted by ILO 169 Article 6, the Sámi have the right to participate in the drafting process, implementation, and evaluation of relevant development plans which may affect them directly. In particular, this right is of relevance to the use, management and safeguarding of resources. Therefore, Article 16 is somewhat limited in their right to co-determination and participation related to the management of resources, compared to the stipulations of ILO 169 (AID, 2007, p. 47).

When it comes to negotiations, it is stated in the second paragraph of Article 16 that "The states shall not adopt or permit measures that may significantly damage the basic conditions for Saami culture, Saami livelihoods or society, unless consented to by the Saami parliament concerned" (Regjeringen.no, 2018, p. 7). Here, the WGN interprets Article 16 to grant the Sámi parliaments real influence, by being included in the process at an early stage. The wording, in the WGN's opinion, does not include a right to forbid measures from being implemented (AID, 2007, p. 48). The EC acknowledges that the authorities may implement measures even though they have not reached consensus, but it necessitates real efforts of negotiations with the Sámi Parliament beforehand (Regjeringen.no, 2006, p. 218).

The WGN continues by questioning which areas of operation that are contingent upon receiving the consent of the Sámi parliaments. The WGN refers to article 36, 39 and 40, which lists certain geographical areas applicable to a right to consent of the Sámi Parliament or other affected Sámi people. It is emphasised that exploration or extraction of natural resources constitute relevant areas of interest (AID, 2007, p. 50-51). Furthermore, Article 36 gives an indication as to which areas encompassed by the right to consent as "including activities such as forest logging, hydroelectric and wind power plants, construction of roads and recreational housing and military exercise activities and permanent exercise ranges" (Regjeringen.no, 2018, p. 15).

Related to measures which may "significantly damage the basic conditions for Saami culture, Saami livelihoods or society" (Regjeringen.no, 2018, p. 7), the WGN interprets the wording to entail measures of a certain size or scope. Smaller interventions may be included as well if they might be harmful in a long-term perspective. What needs to be assessed here, according to the WGN, is the consequences of such measures on the Sámi culture, and their ability to maintain cultural practices, such as reindeer herding (AID, 2007, p. 52). The WGN remarks that urgent national considerations will override the stipulations of ICCPR Article 27, without elaborating further on the matter. However, the Sámi representatives emphasise that there is a considerable threshold to be reached to disregard the rights of indigenous peoples as a minority of the society in which there are national considerations to be prioritised (AID, 2007, p. 53).

The WGN concludes that when Article 36 affirms the right of affected Sámi to partake in negotiations, it does not in itself move further than existing legislation. However, the stipulation in Article 16 which forbids the state to implement measures harmful to Sámi culture is more definite than what is included in ICCPR and ILO 169 (AID, 2007, p. 55). Thus, including an extension of existing obligations under international law. Sámi representatives of the WGN state that the measures which are harmful to indigenous culture and livelihoods have an explicit safeguarding through ICCPR, which does not seem to be extended in the proposed NSC (AID, 2007, p. 55). While government representatives of the WGN find the Sámi Parliament's, and the affected Sámi people's right to consent moves beyond what is covered by national and international law, the Sámi representatives find it to be in line with existing obligations (AID, 2007, p. 55).

5.3 The Sámi people's right to land

Chapter IV of the NSC is dedicated to dealing with the right to land. Being interconnected with the right to self-determination, the Sámi people's right to land and water areas serves as an essential part of the NSC, and the outcome of the Convention is crucial for their ability to live out their indigeneity, ensure indigenous heritage and cultural practices. Chapter IV ranges from Article 34 to 40. Article 37 "Compensation and share of profits" will not be discussed here, as it does not explicitly deal with the right to land. It can be remarked that the WGN notes that the Article goes to some extent further than Norwegian legislation, dealing with providing compensation to affected Sámi which traditionally have used the area for expropriation of

resources (AID, 2007, p. 84). In current domestic legislation, such compensation is only provided to landowners. This provision is more explicit than what is provided through Article 15 of ILO 169, which gives an emphasis to maintaining procedures and that they shall receive fair compensation for any damages (ILO, 1989, p. 6).

Article 38 "Fjords and Coastal seas" will not be included in the analysis, as it is not of particular interest to the analysis. However, it can be mentioned that when the WGN finalised their report, Norway was in the process of establishing a report to strengthen fishing rights for Coastal Sámi people, which has since been finalised (Somby, 2008). Furthermore, articles 39 and 40 are being handled under Article 16 "The Saami parliaments' right to negotiations". Chapter V deals with Saami livelihoods, ranging from Article 41 to 43, and is therefore relevant to this research, dealing with reindeer husbandry and other essential Sámi industries being affected by the right to land.

5.3.1 Article 34: Traditional use of land and water

Article 34 of the NSC begins to explain how protracted traditional use of land and water forms the basis for individual and collective ownership rights to these areas for the Sámi, in accordance with national and international norms (Regjeringen, 2018, p. 13). Here, the WGN acknowledges that due to Norway's commitment to ILO 169 (AID, 2007, p. 77), they are obliged to recognise indigenous peoples' right to traditional land areas and take measures to safeguard and guarantee these rights of ownership and possession (ILO, 1989, p. 5). However, the first paragraph of Article 34 of the NSC will entail contradictions between the Nordic countries as Finland and Sweden have not ratified ILO 169 (Regjeringen, 2018, p. 77). Further, the Article continues by saying:

> If the Saami, without being deemed to be the owners, occupy, and have traditionally used certain land or water areas for reindeer husbandry, hunting, fishing or in other ways, they shall have the right to continue to occupy and use these areas to the same extent as before (Regjeringen, 2018, p. 13-14).

The provisions in the second paragraph in Article 34 is parallel to that of ILO 169 Article 14. Nevertheless, while ILO 169 asserts that "measures shall be taken in appropriate cases to safeguard the right of the peoples concerned" (ILO, 1989, p. 5), the NSC maintains that the Sámi "shall have the right to continue to occupy and use these areas to the same extent as

before" (Regjeringen, 2018, p. 14). Subsequently, the WGN finds that the stipulation in Article 34 is more rights-based and demands more accountability and an obligation which is more determined than what provided through ILO 169. By being rights-based, Article 34 will be easier to implement before the courts. Therefore, the WGN concludes that the second paragraph of Article 34 goes somewhat further than applicable obligations under international law (AID, 2007, p. 79).

When defining protracted usage, the EC and WGN recognise that indigenous use of land entails sustainable use, which will leave the land in the way it was found, constituting the third paragraph of the article. Here, the WGN affirms that this stipulation in Article 34 is in line with obligations Norway currently are bound by (AID, 2007, p. 79). According to the WGN's conclusion, the obligations following Article 34 in the first and second paragraph goes somewhat further than what is provided by international law. The third and fourth paragraph does not exceed provisions of international law, that the state is already bound by. Therefore, Norwegian legislation can be said to fulfil the commitments of the Article (AID, 2007, p. 81).

5.3.2 Article 35: Protection of Saami rights to land and water

Article 35 affirms that "states shall take adequate measures for effective protection of Saami rights pursuant to article 34. To that end, the states shall particularly identify the land and water areas that the Saami traditionally use" (Regjeringen.no, 2018, p. 14). As previously noted, this is consistent with the stipulations in Article 14 of ILO 169. The second paragraph of the Article claims that the Sámi "shall have access to financial support that is necessary for them to be able to have their rights to land and water tried through legal proceedings" (Regjeringen.no, 2018, p. 14). The WGN recognises that the provision of the paragraph goes further than Norway's current obligations under international law, seeing that ILO 169 does not have the same demand for financial support (AID, 2007, p. 82).

5.3.3 Article 36: Utilization of natural resources

The first paragraph of Article 36 confirms that "land and water areas falling within the scope of Article 34, must be afforded particular protection" (Regjeringen.no, 2018, p. 14). The WGN refers to Article 15 of ILO 169 which stipulates that "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded" (ILO, 1989, p. 5). Therefore, being seen as congruous rights. Moreover, it is granted that:

> Permit for prospecting or extraction of natural resources shall not be granted if the activity would make it impossible or substantially more difficult for the Saami to continue to utilize the areas concerned, and this utilization is essential to the Saami culture, unless it is consented by the respective Sámi Parliament and the affected Sámi (Regjeringen.no, 2018, p. 15).

Further, the Article accentuates how this includes activities such as forest logging, hydroelectric and wind power plants, construction of roads and recreational housing and military exercise and other permanent exercise activities and ranges (Regjeringen.no, 2018, p. 15).

The WGN has not commented on this section of Article 36. ILO 169 Article 6 and 15(2) includes important, and at the time of its drafting revolutionary, stipulations on consulting indigenous peoples through their representative institutions on measures which may affect them directly (ILO, 1989, p. 3, 6). The EC recognises that in this way, Norway has existing obligations under international law like the provisions in Article 36 of the NSC (Regjeringen.no, 2006, p. 259-260).

5.3.4 Article 41: Protection of Saami livelihoods

Article 41 is the first article under Chapter V dealing with Sámi livelihoods and reads as follows:

> Saami livelihoods and Saami use of natural resources shall enjoy special protection by means of legal or economic measures to the extent that they constitute an important fundament for the Saami culture. Saami livelihoods and Saami use of natural resources are such activities that are essential for the maintenance and development of the local Saami communities (Regjeringen.no, 2018, p. 17).

The WGN recognises the protection of Sámi livelihoods and their use of natural resources as an important foundation for the culture of the Sámi people. The WGN sees the rights granted by Article 41 as coherent with the protection stipulated in ICCPR Article 27 on the right to enjoy their own culture (AID, 2007, p. 88), and the Norwegian Constitution §108 which states: “The authorities of the state shall create conditions enabling the Sami people, as an indigenous people, to preserve and develop its language, culture and way of life” (The Constitution, 1814, §108). Hence, the WGN concludes that the stipulations in Article 41 are in accordance with

existing domestic legislation and will not entail new obligations for the state (AID, 2007, p. 88).

5.3.5 Article 42: Reindeer husbandry as a Saami livelihood

The first paragraph of Article 42 emphasises reindeer husbandry as a particular and traditional Sámi livelihood and form of culture. Further, it is established that reindeer husbandry is based on custom and "shall enjoy special legal protection" (Regjeringen.no, 2018, p. 17). The second paragraph obliges Norway and Sweden to "maintain and develop reindeer husbandry as a sole right of the Sámi in the Sámi reindeer grazing areas" (Regjeringen.no, 2018, p. 17).

Currently, Norway is not bound by rules of international law related to reindeer husbandry. The Lapp Codicil from 1751, explained more in detail in the historical background, was the first treaty to regulate cross-border reindeer husbandry between Norway and Sweden. The treaty has been renegotiated several times since but has not been renewed since 2005 (Norwegian Agriculture Agency, 2022).

The WGN recognises that Article 42 needs to be seen in light of ICCPR Article 27, and ILO 169 articles 13, 14 and 15, which imposes on the state to recognise and safeguard the land- and water areas which indigenous peoples traditionally occupy and use (AID, 2007, p. 89; ILO, 1989, p. 5).

Considering national legislation, the Reindeer Act is seen as the foundation for special legal protection of reindeer husbandry. §4 of the Act establishes the Sámi people's right to reindeer husbandry on the foundation of historical practise, which provides strengthened protection of reindeer husbandry when faced with conflicting interests of others (Reindriftsloven, 2007, §4). Reindeer husbandry in Norway is practised as an exclusive right of the Sámi people. This follows from the Reindeer Act §32, where it is stated that the right to practice reindeer husbandry in the reindeer herding areas is reserved for "persons of Sámi descent" (Reindriftsloven, 2007, §32). The WGN concludes that the obligations which follow from Article 42 are protected through Norwegian legislation and does not entail extended legal obligations for Norway (AID, 2007, p. 90).

5.3.6 Article 43: Reindeer husbandry across national borders

Article 43 establishes that cross-country reindeer grazing is based on custom (Regjeringen.no, 2018, p. 10). It is acknowledged through the Lapp Codicil that Norwegian and Swedish reindeer

herding Sámi have a custom based right to use grazing areas across national borders. The second paragraph of Article 43 relates to how agreements between Sámi villages, siidas, or reindeer grazing communities on cross-country reindeer grazing shall prevail if such agreements have been concluded. Additionally, it affirms that inter-state agreements are applicable if there are no current treaties which regulate the reindeer grazing (Regjeringen.no, 2018, p. 17).

Furthermore, the third paragraph affirms that inter-state agreements are applicable if there are no current treaties which regulate the reindeer grazing. The WGN notes that the border between Norway and Finland is closed for the movement of reindeer across the borders. The WGN agrees that the provisions of Article 43 do not move further than what is regulated through international law (AID, 2007, p. 91).

6 Finnish review of the Nordic Saami Convention

This chapter will consist of an analysis of the Nordic Saami Convention, made by the Working group of Finland (WGF), in relation to Finnish national legislation and international obligations. The analysis will focus on the articles relating to the rights-holders of the Convention, self-determination, and land rights. As a separate part of the analysis the chapter will conclude with the commentary made by Irja Seurujärvi-Kari, as the only representative from the Sámi Parliament, and in dissent from the government representatives.

The working group of Finland (WGF) was appointed in January 2009 by the Ministry of Justice, Oikeusministeriö (OM) in Finland. The group met 19 times, and by November the WGF had completed their extensive analysis of the NSC in comparison with Finnish national legislation and international HR obligations, despite extending their original deadline (OM, 2009, p. 9.

The WGF's mandate was to assess the NSC so Finnish opinion could be established when entering possible negotiations regarding the process further. The structure of the process was to assess the articles in the order they appear in the NSC. Firstly, the WGF have considered the provisions in relation to the Constitution before they are seen considering national legislation and Finland's human rights obligations relevant to the NSC. Finally, conclusions are drawn from each chapter (OM, 2009, p. 6).

In addition to dealing with human rights obligations that Finland is bound by, the WGF compares the provisions of the NSC with the UNDRIP which was adopted in 2007. Even though the UNDRIP is not legally binding, Finland actively participated in the development and supported the acceptance of its key provisions (OM, 2009, p. 11).

The assessment also involves comparing the NSC to the ILO 169, which has been of the essence to the development of the NSC. In 1990 Finland decided not to ratify ILO 169, as Finnish legislation could not be considered consistent with the provisions of the Convention, mainly with regards to the Sámi people's right to land (OM, 2009, p. 6).

In general, the WGF notes that there are several provisions which are in line with Finnish legislation. However, the NSC has provisions that conflict with the Constitution or other national legislation. Some provisions in the NSC would extend the international obligations to which Finland is bound by (OM 2009, p. 6).

6.1 Recognising Sámi in Finland

The Sámi people living in Finland are not protected by international legislation pertaining explicitly to indigenous people, as Finland has not ratified ILO 169. Consequently, the Sámi have faced critical challenges in gaining recognition on their own terms. Over the years, as the Finnish definition of Sámi has developed, the underlying power structures of the society has manifested itself in the legislation. The second stipulation in the Finnish definition of a Sámi is that "he is a descendent of a person who has been entered in the land, taxation or population register as a mountain, forest or fishing Lapp" (OM, 1995, p. 1). The concept of "Lapp" was used to refer to the original inhabitants of the area, connected to traditional indigenous livelihoods such as fishing, hunting and reindeer herding (Bankes & Koivurova, 2013, p. 267; Andresen et al., 2021, p. 70). It has been used by politicians and in legislation as a way of subjugating the Sámi, suppressing their identity and rights. Even though the word has not been widely used since the 1950's, it has still found its way into Finnish legislation (Bankes & Koivurova, 2013, p. 267).

Norway, Sweden, and Finland have subjected the Sámi to extensive assimilation policies, seeking to remove indigenous culture, languages, and livelihoods, resulting from nationalism, the creation of borders and the hierarchical ranking of peoples (Andresen et al., 2021, p. 79; 16). Finland was in a distinct position during this period, being part of the Russian empire from 1809 to 1917. Here, it was not put in place targeted assimilation measures which explicitly targeted the Sámi. However, the assimilation of minorities was still prominent within the Russian empire, leading to a large part of the Sámi population being assimilated into Finnish society (Andresen et al., 2021, p. 179).

6.1.1 Article 4: Persons to whom the Convention applies

As mentioned above, Article 4 presents the rights-holders of the NSC. In Article 4, self-identification as a Sámi is essential as well as having Sámi as their domestic language or have at least one parent or grandparent who has or has had Sámi as his or her domestic language (Regjeringen.no, 2018, p. 2). The second criterion, "have the right to pursue Sámi reindeer husbandry in Norway or Sweden" is not relevant to Finland as it does not apply to them given that reindeer husbandry is not an exclusive right of the Sámi in Finland (Regjeringen.no, 2018, p. 2; Regjeringen.no, 2006, p. 199). Further, Article 4(3) continues by including the provision of eligibility to vote in elections to the Sámi parliaments in Finland, Norway or Sweden, and

Article 4(4), that they are children of a person referred to in the sections above (Regjeringen.no, 2018, p. 2).

The WGF points to the nature of Article 4, whereby including a personal dimension relating to residence in the relevant states and to self-identification, which is a subjective criterion, and four objective criteria. Here, the objective criteria are alternative, which means that one is considered a Sámi if one of them is fulfilled. The WGF notes that according to Finnish legislation and the Act on the Sámi Parliament, there are some concerns (OM, 2009, p. 18). Section 21 of the Act stipulates that, regardless of locality of residence, the right to vote in elections to the Sámi Parliament:

> … belongs to every Sámi, who reaches the age of 18 years no later than on the last election day, provided that he or she is a Finnish citizen, or that he or she is a foreign citizen domiciled in Finland in accordance with the Municipality of Residence Act (201/1994; kotikuntalaki) on the last date when the request for inclusion in the electoral roll can be made (OM, 1995, p. 10).

A Finnish Sámi living abroad, including outside the Nordic countries, can therefore vote and be a candidate in Sámi parliamentary elections. Following the wording of the NSC, the WGF considers that such a Finnish definition is not considered a Sámi because the residence obligation required in Article 4 is not fulfilled (OM, 2009, p. 19).

The WGF concludes that Article 4 is unclear when stating that the NSC applies to "persons residing in Finland, Norway or Sweden" as it is not described what is meant by "residing in" (OM, 2009, p. 19). It is noted, following the EC's commentary, that a person should reside in one of the contracting states during a large part of the year, to maintain connection with the Sámi culture (Regjeringen.no, 2006, p. 198). Accordingly, issues may arise in situations where persons reside outside the Nordic countries for longer periods due to studies or work-related situations (OM, 2009, p. 19). The EC acknowledged the issue in their commentary and established that each state is responsible for handling this issue, based on the purpose of the NSC (Regjeringen.no, 2006, p. 198). After an overall assessment, the WGF finds that the provisions of Article 4 are in line with Finnish legislation and their international obligations (OM, 2009, p. 18).

6.2 Finnish stance to Sámi self-determination

6.2.1 Article 3: The right to self-determination

When assessing the right to self-determination, the WGF recognises the sovereignty of Finland which is asserted in the Finnish Constitution (OM, 2009, p. 16). Further, they refer to Article 2(1) of the Constitution which states that "The powers of the State in Finland are vested in the people, who are represented by the Parliament" (Constitution of Finland, 1999, §2). Here, the working group notes that the power which lies with the people includes the individual's right to participate and influence the development of the society and the environment in which they live (OM, 2009, p. 16).

The status of the Sámi people as an indigenous people is recognised in the Constitution §17(3) as having "the right to maintain and develop their own language and culture" (Constitution of Finland, 1999, p. 4). Therefore, they are considered to have self-determination regarding their own languages and culture, in their own traditional areas in accordance with the provisions of the law (OM, 2009, p. 16). Further, the WGF recognises that the Sámi have a more restricted form of self-determination than what is granted to other Finnish people, and that it is contingent upon a different set of legislation (OM, 2009, p. 16). The WGF mentions in their report which areas Finnish legislation outlines as traditional Sámi areas in which they can enjoy the right to maintain and develop their own culture, as the municipalities of Enontekiö, Inari and Utsjoki, which all lie in the north of Finland. Here, the WGF refers to how self-determination is exercised through the Sámi Parliament in clearly defined "Sámi areas" (OM, 2009, p. 16).

6.2.2 Article 3 in relation to international obligations

The WGF finds that the two HR Covenants fail at providing a generally accepted definition of indigenous peoples. The Covenants contain a provision on the right of peoples to self-determination, but the WGF notes that this right was established considering the historical background related to the independence of colonies and the emergence of sovereign states (OM, 2009, p. 16). The HR Covenants establishes the right to self-determination in Article 1 (OHCHR, 1966a, p. 2), while the additional provisions deal with the obligations of the states which are parties to the agreement, and the rights of individuals within the jurisdiction of these states, as well as monitoring the implementation (OM, 2009, p. 16).

The WGF acknowledges that Article 1 of the HR Covenants and Article 3 of the UNDRIP are alike that of Article 3 of the NSC. However, the NSC has included an absolute right of the Sámi to determine their own natural resources (Regjeringen.no, 2006, p. 2; OM, 2009, p. 17). Article 3 of the NSC on self-determination interconnects with Chapter IV of the NSC, which deals with proposals regarding the scope and nature of the right to self-determination. According to Article 1(2) of the HR Covenants, "peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law" (OHCHR, 1966a, p. 2). These rights are guaranteed according to the wording of Article 1, referring to "peoples'" rights to self-determination. Additionally, the WGF considers ILO 169 in their discussion, even though they are not legally bound by the Convention. The WGF acknowledge that ILO 169 also uses the term "peoples" to refer to indigenous and tribal peoples, according to Article 1(3), but express that this term should not be interpreted in a way that affects the rights associated with it according to international law (OM, 2009, p. 17).

6.2.3 Concluding remarks by the WGF on self-determination

Article 2 of the NSC affirms the status of the Sámi as the indigenous peoples of Finland, Norway, and Sweden (Regjeringen.no, 2006, p. 2). The WGF finds that the scope of the right to self-determination of the Sámi people in Article 3 of the NSC, is defined through the broader concept of a people than what they consider applies for indigenous peoples. In this respect, the WGF concludes that the proposal for Article 3 is not in line with the status of the Sámi as indigenous peoples defined in Article 2. Further, they find the scope to be much broader than the generally accepted rights of indigenous peoples within the framework of the UNDRIP. As a result, the WGF concludes that Article 3 conflicts with the Finnish Constitution and goes further than the international obligations to which Finland is bound by (OM, 2009, p. 18).

6.2.4 Article 16: Sámi Parliaments' right to negotiations

Article 16(1) of the NSC specifies an obligation for the state to negotiate with the Sámi parliaments. The Act on the Sámi Parliament stipulates that "authorities shall negotiate with the Sámi Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sámi" (OM, 1995, p. 3), given that the measures are being

implemented in the Sámi areas (OM, 20009, p. 36). At the time of its implementation, the provision of negotiation was included in the Act to create conditions in line with the ratification of ILO 169. Article 6 of ILO 169 requires that governments shall consult the peoples concerned through their representative institutions (ILO, 1989, p. 3).

While ILO 169 Article 6 seek to achieve consensus, the NSC implies that reaching full agreement is not an absolute requirement, which is also explained further by the EC in their preparatory work (Regjeringen.no, 2006, p. 220; Regjeringen.no, 2018, p. 4). Further, the WGF notes that the scope and content of the obligation to negotiate included in the NSC are vaguely defined and unclear, as it is only limited to matters of "major importance to the Sámi" (Regjeringen.no, 2018, p. 4).

Article 22 of the Finnish Constitution states that "public authorities shall guarantee the observance of basic rights and liberties and human rights" (Constitution of Finland, 1999, p. 5). These provisions are considered to ensure that public authorities do not implement measures that could significantly harm the Sámi culture, livelihoods, or their way of life. The WGF finds that the potential consent of the Sámi Parliament is not relevant for the binding nature of these provisions (OM, 2009, p. 37).

Article 9 of the Finnish Sámi Act specifies certain areas in which the Sámi people must be negotiated, which the WGF finds insufficient in the NSC. Additionally, the WGF points out that the obligation to negotiate has not been limited territorially as in the Finnish Sámi Act. According to the WGF, the obligation cannot, as it is proposed, reasonably apply to measures being implemented throughout the country (OM, 2009, p. 36).

With reference to the second paragraph of Article 16 of the NSC, the WGF concludes that there is no provision in the Finnish Constitution which enables the consent procedure as stipulated in paragraph 2, where the Sámi Parliament must consent to measures which may significantly harm the Sámi culture, livelihoods, or society (Regjeringen.no, 2018, p. 4). Therefore, the provision would be inconsistent with the Constitution and entail new legal obligations for Finland (OM, 2009, p. 37).

6.3 Land rights; a source of conflict

Chapter IV of the NSC deals with the Sámi people's right to land and water, key issues relating to maintaining Sámi culture and traditional livelihoods. The WGF recognises that these are issues which Finland has sought to resolve over a long period of time without success. The

background of the proposed stipulations has also been to remove obstacles to the ratification of ILO 169. However, Finland has not been willing to ratify the Convention, as Finnish legislation is not coherent with the provisions of ILO 169. This contradiction pertains specifically to the Sámi people's right to land (OM, 2009, p. 70). In this chapter Article 37, 38, 39 and 40 will not be discussed, as it is not relevant for the analysis. Finland does not have coastal seas as mentioned in Article 38 "Fjords and coastal seas", in the areas which constitute "Sámi traditional land" defined in Finnish legislation (OM, 1995, p. 2).

6.3.1 Article 34: Traditional use of land and water

Firstly, the WGF remarks that Article 34 suggests a new type of presumption of ownership, the protracted traditional use of land and water areas which constitutes the foundation for the Sámi people's individual or collective ownership. The reference to "in accordance with national or international norms concerning protracted usage" (Regjeringen.no, 2018, p. 8), connects the provision to national legislation (OM, 2009, p. 73). The interpretation of the Article is further complicated by the lack of precise definition of what constitutes "protracted traditional use", and which areas are covered by Article 34. Here, the WGF points out that over 80 percent of the state-owned land, which constitutes the Sámi people's traditional land, consists of nature reserves established under the Nature Conservation Act, wilderness areas under the Wilderness Act, and other state-owned nature conservation areas (OM, 2009, p. 74).

In terms of international law, the justification for Article 34 refers to ILO 169, Article 14, which stipulates that "the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised" (ILO, 1989, p. 5). The Article does not distinguish between private and state-owned land. In Finnish legislation, these are treated differently, where private land enjoys protection under Article 15 of the Constitution, whereas state-owned land is not covered by Constitutional protection (OM, 2009, p. 74). The second paragraph suggests that Sámi people's traditional use of land would take precedence over private owner's rights when these are in conflict. This is considered problematic from the perspective of Constitutional protection (Constitution of Finland, 1999, p. 4).

The WGF concludes that the provisions of Article 34 will be interpreted in line with national legislation, and international obligations. The WGF finds no corresponding right in the national legislation relating to traditional use of land. Further, as private owned land enjoys constitutional protection, the WGF finds rights based on traditional use problematic, as it is not

coherent with the provisions of the Constitution. Additionally, as the land and water areas described in the Article are not clearly defined, this remains open for interpretation (OM, 2009, p. 76).

6.3.2 Article 35: Protection of Saami rights to land and water

The WGF finds the obligations set forth in Article 34 to be unclear. Therefore, the first sentence in Article 35, which states "the states shall take adequate measures for effective protection of Saami rights pursuant to article 34" (Regjeringen.no, 2018, p. 8) is problematic. The second sentence of that paragraph obliges the state to identify the land and water areas that the Sámi traditionally use, reflecting Article 14(2) of ILO 169, which also acknowledges the recognition of areas not exclusively occupied by them, but which they have traditionally used (ILO, 1989, p. 5).

Here, the WGF finds the provisions to be lacking clarity as the NSC requires the state to identify areas which the Sámi have traditionally used, not only where they have ownership rights. In Finland, the land and water areas traditionally used by the Sámi are defined in national legislation. The WGF notes that it is not possible in Finnish context to separate between the land and water areas traditionally inhabited and used by the Sámi from other people but find their areas to be connected. Therefore, the NSC imposes a new legal obligation on Finland (OM, 2009, p. 77). The first sentence of the second paragraph where, "appropriate procedures for examination of questions concerning Saami rights to land and water shall be available under national law" (Regjeringen.no, 2018, p. 9) is not in conflict with national legislation or international obligations. The WGF finds the second paragraph on access to financial support through legal proceedings to be problematic from the standpoint of equality under the Finnish Constitution (OM, 2009, p. 78-79).

6.3.3 Article 36: Utilization of natural resources

Article 36 relates to the participation in decision-making processes on the use and exploitation of resources. The Article includes a provision for the state to negotiate with the Sámi being affected by the utilisation of resources, and with the Sámi Parliament on matters of significant importance to the Sámi people. If such activity could make it impossible or substantially more difficult for the Sámi to continue to utilise the area, being essential to the Sámi culture, it requires the consent of the Sámi Parliament (OM, 2009, p. 79).

When reading the first paragraph of Article 36, the WGF marks, as mentioned above, that over 80 percent of traditional Sámi areas are subject to protection through the Nature Conservation Act, the Wilderness Act, and other levels of protection (OM, 2009, p. 80). When defining areas to be preserved under these acts, special attention has been granted to ensure the maintenance of reindeer husbandry, and traditional livelihoods essential to the Sámi culture. The acts are meant to safeguard reindeer husbandry from competing land use, such as logging, mining, and hydropower construction. The WGF emphasises that the traditional land is therefore protected against all adverse effects, except from tourism (OM, 2009, p. 81).

With reference to the obligation to negotiate with the Sámi Parliament on significant matters, the WGF finds that Article 9 of the Act on the Sámi Parliament stipulates similar obligations, on clearly defined matters (OM, 1995, p. 3). Further, the WGF notes that consent is not a requirement neither in the Finnish Constitution, nor in ILO 169. Thus, the proposed Article of the NSC largely addresses the issues which have been raised when attempting to find national legislative solutions regarding the rights of the Sámi people to land and water. This ongoing process is so far without success. The effects of the NSC on national legislation are extensive, and entails creating measures deviating from current legislation. Article 36 can be said to grant full negotiation rights to Sámi groups and individuals, which may conflict with the principle of equality in the Constitution (OM, 2009, p. 82).

6.3.4 Article 41: Protection of Saami livelihoods

When assessing article 41, the WGF takes note of the preparatory work established by the EC. Here, the EC notes that "due to geographical variations and as livelihoods change over time, the expert committee has not wanted to include a detailed list of specific livelihoods or forms of utilization of resources which are applicable to Article 41" (Regjeringen.no, 2006, p. 267).

However, they continue by presenting examples, such as fishing, agriculture, and reindeer herding. The WGF separates between completely new forms of livelihoods, and those which are traditional livelihoods, practised through modern technology. As a result, the WGF interpreted completely new forms of livelihoods to not fall within the scope of Article 41. Therefore, the provisions of the Article would not be problematic from the perspective of Finnish national legislation and international obligations, insofar as the provisions concern traditional Sámi livelihoods (OM, 2009, p. 88).

6.3.5 Article 42: Reindeer husbandry as a Saami livelihood

Reindeer husbandry is regulated by the Reindeer Herding Act, meant to improve the conditions for practising reindeer herding. The WGF marks that when drafting the Reindeer Act, an essential condition was to preserve Sámi culture. However, it is recognised by Finnish law that reindeer herding is not an exclusive Sámi industry, even though it is an essential Sámi livelihood in their traditional areas. Therefore, all individuals practising reindeer husbandry in the Sámi areas, are in an equal position regarding the use of land and water areas (OM, 2009, p. 89).

Accordingly, reindeer husbandry as a distinct and traditional Sámi livelihood and cultural form does not enjoy special legal protection in Finland. In the WGF's opinion, there is no obstacle in the Constitution to protect Sámi reindeer husbandry. Read in its entirety, the Article cannot be interpreted in a way that suggests that reindeer husbandry is an exclusive right of the Sámi in Finland (OM, 2009, p. 90). According to the WGF, there are no specific international legal obligations imposed on Finland regarding reindeer herding other than the stipulations of the European Union's Treaty of Accession[2]. Based on the wording of Article 42, the WGF concludes that it does not impose an obligation for Finland to grant exclusive rights to practise reindeer husbandry to the Sámi people (OM, 2009, p. 90).

6.3.6 Article 43: Reindeer husbandry across national borders

In 1981 Finland and Norway concluded an agreement regarding the construction and maintenance of reindeer fences, including other measures to prevent reindeer from crossing borders. Accordingly, Finland and Norway built a fence on the border between the two states following the provisions of the agreement. Therefore, cross-border reindeer herding between the two is not possible. The WGF notes that following the first paragraph of Article 43, the Sámi people's cross-border cooperation is based on tradition and custom. According to Finnish legislation, tradition is hierarchically below laws and regulations (OM, 2009, p. 91).

The agreements that exist between Finland and Norway, and between Finland and Sweden, relating to reindeer fences and border control, do not allow for cross-border reindeer herding. Further, implementing agreements between Sámi villages, siidas and reindeer herding districts, as stipulated in the second paragraph, would require amendments to Finland's existing

[2] Since this relates to complex EU legislation, this will not be discussed in detail in this thesis.

national legislation and the previously mentioned agreements between the Nordic countries (OM, 2009, p. 92).

6.4 Irja Seurujärvi-Kari: final statement of the Sámi Parliament

Irja Seurujärvi-Kari, as the only Sámi representative of the WGF, has written a dissent to WGF's report on behalf of the Sámi Parliament. This dissent concerns the assessment of the relationship between the NSC and the Finnish Constitution, as well as Finland's legally binding HR obligations. Even though her statements are extensive and involve comments to the whole NSC, this chapter will relate to the Sámi Parliament's remarks to the already discussed Articles and chapters of the NSC. Irja Seurujärvi-Kari has already submitted her statements to the WGF during the process. As her previous statements have not been taken into account, she has submitted her final statements to be recorded in the final report (OM, 2009, p. 98). In the opinion of the Sámi Parliament, the WGF has repeatedly, throughout their assessment, sought to obscure clear and established national legislation, by claiming that the terminology used in the NSC is unknown in Finnish legislation (OM, 2009, p. 99).

Regarding indigeneity, and recognising the Sámi people, Irja Seurujärvi-Kari recognises that the concept of "people" and "indigenous people" deserve their own examination within the WGF's assessments, which has been completely disregarded from Finnish political debate from the 1940's to present time (OM, 2009, p. 99).

6.4.1 Article 3: The right to self-determination

According to the dissenting view of Irja Seurujärvi-Kari, the right to self-determination should be understood as broadly as is determined by international law, which is binding on Finland. Thus, Article 3 does not require a broader interpretation than what is currently given. According to international law, the right to self-determination belongs to the Sámi as an indigenous people, and therefore, Article 3 is not in conflict with the Finnish Constitution, as mistakenly stated in the WGF's conclusion of the Article. The HRC, monitoring the ICCPR, has repeatedly emphasised that Article 1 deals with, among other things, the issue of indigenous people's rights to control their natural resources (OM, 2009, p. 99-100).

Furthermore, it is recognised that the difference between "people" and "indigenous people" is seen as problematic and contradictory to the Finnish Constitution. It was the subject of extensive consideration when the NSC was originally drafted. Seurujärvi-Kari finds that

particular attention should be paid to the presentation by the Norwegian representative and Chair of the EC, Professor Carsten Smith (OM, 2009, p. 100). Here, Smith expresses the content of the Norwegian Constitution, in addition to emphasising that the Norwegian Sámi policies are based on the assertion that "The state of Norway is established on the territory of two peoples – The Sámi and the Norwegians" (The Constitution, 1814, §108). The HRC has clearly stated that the Sámi in the Nordic countries belong to those indigenous peoples who, in addition to being indigenous in relation to the majority people, are also peoples within the scope of Article 1 of the ICCPR. The contradiction is evident in the Finnish Constitution, where the Sámi as an indigenous people is placed in the same section as national languages of the country. In this way, the term "people" is meant for the "entire population", including the Sámi. Thus, the Constitution does not make language groups separate peoples, but concerns the various linguistic identities (OM, 2009, p. 100).

The Sámi Parliament has demanded that the provisions concerning the Sámi should be clearly placed in their own section of the Constitution of Finland and separately from the provisions concerning language and ethnic minorities. This is seen as the only solution if Finland wants to adhere to the international solution emphasised in the preamble of ILO 169, which necessitates the acceptance of new international norms to eliminate previous assimilation norms. Therefore, the Sámi Parliament will insist on its demands for Constitutional revision to continue (OM, 2009, p. 101).

6.4.2 Chapter IV: Saami right to land and water

In this chapter, Irja Seurujärvi-Kari notes that the rights of the Sámi to land and water must be clarified, and ILO 169 must be ratified as soon as possible, and develop its legislation in a way that promptly removes obstacles to the ratification of the Convention. The government has stated in their proposal to ratify ILO 169 "However, in Finland, upon accepting the Convention, the existing legislation for Sámi people should be further safeguarded to include their rights to traditionally inhabited lands and their rights to natural resources" (OM, 2009, p. 104). Furthermore, they have acknowledged that the purpose of ILO 169 is to ensure equal treatment of indigenous and tribal peoples compared to other groups, and to prevent the extinction of their cultures and languages. Additionally, it is meant to ensure equal treatment, and the Convention requires states to take special measures to protect the culture, language, and social and economic status of the peoples (OM, 2009, p. 104).

Despite expressing reasons mentioned above, the government concluded that they would not approve ILO 169. As Irja Seurujärvi-Kari stresses, in the 20 years from 1989 to 2009, there have been a total of six government proposals to resolve the issue of Sámi land rights, where none of the proposals reached the Parliament for consideration (OM, 2009, p. 104).

The Sámi Parliament has already on previous occasions expressed its views on the incomprehensibility of the conceptual framework that national legislation supersedes international law in all matters. If all states were to operate on the same basis, the entire international legal system would be superfluous, as would all bilateral and multilateral agreements (OM, 2009, p. 105). In any case, Irja Seurujärvi-Kari stresses, the NSC must not be interpreted in a way that would weaken the legal status of the Sámi from their current position (OM, 2009, p. 106).

7 Challenges in implementing the Nordic Saami Convention

In this chapter I will look at the overall challenges in implementing the Nordic Saami Convention. There are fundamental differences between Norway and Finland in their approach to the NSC, as seen above through the working group reports. Even though the NSC is extensive in content, with seven chapters and 51 articles, the biggest sources of conflict are the indigenous peoples' struggle for recognition of their indigeneity, self-determination, and land rights.

Overall, WGF's report is less extensive than the work completed by the WGN. This might be reasoned with the fact that Finland is not bound by international law dealing explicitly with the rights of indigenous peoples. Therefore, it might not be necessary for the WGF with a comprehensive analysis of existing international law. Their point of reference is in large part the Finnish Constitution and the Act on the Sámi Parliament, and a mention of the HR Covenants. The UNDRIP, which is not a legally binding document, and ILO 169 which is not ratified by Finland are discussed to some extent in the WGF's report.

The WGN is more representative, as they have three out of ten members from the Sámi Parliament. Throughout their report, a nuanced discussion takes place between the representatives. Norway has, in addition to the HR Covenants, obligations under ILO 169. Accordingly, Norway has implemented several national laws which protect the Sámi people's industries, culture, and languages, which are applicable to fulfilling the requirements of the NSC. Hence, it is necessary for the WGN to elaborate more on Norway's commitments to standards of international law.

It has already been recognised by the EC that the Finnish delegation was opposed to Article 3 dealing with the right to self-determination, in addition to the entirety of Chapter IV, on the right to land and water (Regjeringen.no, 2006, p. 2). Similarly, the WGF remarks in the introduction of their report that the provisions of ILO 169 are not in line with Finnish legislation with special regard to the Sámi people's right to land (OM, 2009, p. 6). Therefore, it is natural to assume that these stipulations will be difficult to implement in Finnish legislation after years of unsuccessful attempts. It becomes apparent through the WGF's assessments, that the NSC goes further than the stipulations of ILO 169, which they have refrained from ratifying due to incoherence with the Constitution.

7.1 Recognising Sámi identity: who is "*properly*" Sámi?

While the NSC does not explicitly deal with the concept of indigeneity, it would entail a comprehensive analysis which goes beyond the mandate of the EC and both WG's to discuss this concept further. However, by defining who can be considered a Sámi, the EC has attempted in their work to recognise the indigeneity which is considered a part of the Sámi identity as an indigenous group (Regjeringen.no, 2006, p. 199).

The preamble of the NSC deals with the second factor mentioned by Erica Irene Daes in her understanding of "indigenous peoples", namely that of cultural distinctiveness, as discussed in the theoretical framework (Daes, 1996, p. 22). The preamble of the NSC refers to the Sámi as having "its own culture, society, history, traditions, language, livelihoods and its own visions of the future" (Regjeringen.no, 2018, p. 1).

Furthermore, the NSC continues by stating that when determining the legal status of the Sámi "particular regard shall be paid to the fact that during the course of history the Saami have not been treated as a people of equal value and have thus been subjected to injustice" (Regjeringen.no, 2018, p. 1). This section relates to Daes' fourth factor which puts emphasis on an experience of subjugation, marginalisation, and discrimination (Daes, 1996, p. 22).

Article 4 of the NSC considers the third factor mentioned by Daes, emphasising the significance of self-identification (Daes, 1996, p. 22). The NSC includes this aspect in the first line of the Article, stating that "The Convention applies to persons residing in Finland, Norway or Sweden that identify themselves as Saami" (Regjeringen.no, 2018, p. 2).

7.1.1 Issues of national adaptation of Article 4

The criteria of Article 4 are adapted to take into consideration the different contextual settings of Norway, Finland, and Sweden. The content of the NSC is therefore somewhat limited compared to the Norwegian definition of Sámi provided in the Sámi Act. At the same time, the NSC's definition is extensive compared to the Finnish definition, which is still founded on principles which denies the Sámi ownership of their own identity.

The Norwegian Sámi Act includes an extended right, going further than the NSC by including great-grandparent in the language criterion (Sameloven, 1989, §2-6). Therefore, the second criteria of Article 4 which involves that one has rights under the Convention if a person has the right to pursue reindeer herding is excessive in the Norwegian context. As noted by the EC, the need for such stipulation, to pursue reindeer herding in Norway or Sweden, is seen as

a replacement to the language criterion, and derives from the fact that many reindeer herding Sámi throughout the Nordic countries have lost ties to the Sámi language due to decades of assimilation and harmful policies directed towards the Sámi (Regjeringen.no, 2006, p. 199).

The second criterion of Article 4 is considered not relevant for Finland, given that reindeer husbandry is not an exclusive right of the Sámi people. In their report, the WGF does not reflect on whether Finland should grant the Sámi some extended rights related to their livelihoods to accommodate standards of international law. Instead, the WGF turned to the argument of equality, which does not grant the Sámi special rights which are not applicable to the rest of the Finnish population (OM, 2009, p. 90). Here, the WGF does not acknowledge that the basis for implementing rights for indigenous peoples is to uproot the political systems and power structures which have assimilated and demolished their culture and languages for centuries.

The dissent provided by Irja Seurujärvi-Kari emphasises another key issue related to the Sámi people's stance in Finnish legislation and society (OM, 2009, p. 100). In the Finnish Constitution, it is affirmed that the Sámi "have the right to maintain and develop their own language and culture" (Constitution of Finland, 1999, p. 4), being included in Section 17 on the right to one's language and culture. In this way, the Sámi are being portrayed as only a linguistic or cultural minority, not as an indigenous people. This is intrinsically linked with upholding power structures of legislation, denying the Sámi their recognition as an indigenous people, thus neglecting their indigeneity. Despite claims of creating a separate paragraph dealing with the rights of the Sámi (OM, 2009, p. 100), these claims have never been met by Finnish governments even now in 2024, 15 years after Irja wrote her dissent of the WGF's report, as the only Sámi representative of the WGF.

7.1.2 The "false" Sámi

The Norwegian definition of Sámi, which is provided by the Sámi Act, has been exploited by non-Sámi people having political motives to deny the Sámi what they refer to as "special rights and privileges" (Hesla, 2022). The Progress Party (FrP) is considered the most right-wing party in Norway and is endeavouring to shut down the Sámi Parliament, revoke the Reindeer Act, and terminate Norway's obligations under ILO 169 (Henriksen, 2008, p. 24).

Additionally, the party has expressed its opposition for Norway, Sweden, and Finland to form a Nordic Saami Convention (Henriksen, 2008, p. 24). In 2022 the issue was brought to

light when it was discovered several non-Sámi people, which were members of the Progress Party, in the electoral roster of the Sámi Parliament (Hesla, 2022). It was since discovered that the Party encourages their members to enter the electoral roll to be able to vote against issues important to the Sámi, such as windmills and reindeer husbandry. To be included you must define yourself as a Sámi, and that you have family members who are considered Sámi. However, neither of these criteria will be followed up on, and there are no rules in the Norwegian legislation, which can punish those who enter on false pretences (Hesla, 2022).

Similarly, Section 3(2) of the Finnish Act on the Sámi Parliament refers to the "Lapp" registers, which is considered problematic as it neglects the Sámi people's indigeneity. Consequently, people without any self-identification as a Sámi can enter the electoral roster, as seen above through the complaint filed by Tiina Sanila-Aikio. Even though Finnish authorities argue that eligibility is rarely claimed through Section 3(2), the Supreme Court allowed 93 persons without any ties to the Sámi people entry (OHCHR, 2019, p. 2). The case illustrates how the Sámi are denied their own identity, when the government through the Supreme Court can decide who shall be considered a Sámi, which in turn has implications on Sámi elections. Section 3(2) allows for both ethnic Finns and ethnic Sámi to be included in the electoral roster of the Sámi Parliament, where Section 3 was never accepted by Sámi representatives (Saami Council 2022).

Finland must, with the support from Sámi representatives, revise their current national definition of a Sámi, which will bring them closer to standards of international law. Examples of these standards can be found in ILO 169 and the UNDRIP, which are seen as prerequisites to comply with the NSC. At the time of drafting the NSC, the UNDRIP was under development. The Nordic countries submitted a joint report in 2004, on their stance to the suggested Articles of the UNDRIP, which has been of significance to the EC's assessments and proposals for a Nordic Saami Convention (Regjeringen.no, 2006, p. 181-182).

These current issues will not be resolved by the definition in the NSC and need to be dealt with within national politics. It is also noted by the EC that some issues must be dealt with by the individual state. The NSC allows for national adaptation of the text which is challenging as it leaves Sámi persons in unequal positions across borders. The intention of the NSC was to strengthen the rights of the Sámi with the smallest possible interference of national borders (Regjeringen.no, 2018, p. 2). Thus, it seems as though the states' ability to adapt the provisions to national legislation will have unforeseen consequences on the Sámi people's potential to live as one people within three states (Regjeringen.no, 2018, p. 1).

7.1.3 Is indigeneity a future source of conflict?

The mandate of the working groups was to establish a future position of negotiation between the Nordic countries. The WGN, both government- and Sámi representatives, concludes that the Norwegian legislation is in line with the provisions of Article 4, defining the rights holders of the NSC (Regjeringen.no, 2018, p. 2). Correspondingly, the WGF establishes that Article 4 of the NSC is in line with national legislation (OM, 2009, p. 19).

Ultimately, both countries accept the definition of indigeneity as it is presented in the NSC. Thus, the concept of indigeneity does not seem to be a conflicting concept between Norway and Finland when moving towards ratification. However, as seen above, national contexts vary and will have implications for the Sámi across borders as the NSC opens for national adaptation to existing legislation and interpretation of Article 4. Norway and Finland have differing concerns and conflicts, which must be addressed at a national level. While attempting to unify the Nordic countries, the NSC allows Sámi identity to be defined from a state perspective. Consequently, the Sámi are denied ownership of their own identity as indigenous and Sámi. This implies that the "false" Sámi will continue to be welcomed into the Sámi electoral roster.

7.2 The Sámi people's right to self-determination

Self-determination is a source of conflict between Sámi representatives and government representatives of the WGN and WGF. The NSC is in line with the HR Covenants in defining indigenous self-determination but has included a more ambitious formulation than previously included in international law. The NSC is based on the idea that the Sámi have a right to self-determination, recognised in the preamble (Regjeringen.no, 2018, p. 1). Further, the NSC is built upon the notion that the Sámi have self-determination as a transnational people, which must be accommodated by the states where the Sámi people live (Bankes & Koivurova, 2013, p. 107).

7.2.1 Territorial concept of self-determination

States' approach to the concept of self-determination is a territorial approach, where they fear that indigenous peoples will claim secession from the state if they are granted the right to self-determination. This approach has been largely present in every process dealing with the rights of indigenous peoples. When drafting the UNDRIP, government representatives from several

states expressed disdain of the concept, as it "threatens the political unity, territorial integrity and the stability of existing UN member states" (Gilbert, 2007, p. 219).

It is evident that the concern to protect states' "territorial integrity" has been one of the main issues when drafting legal documents on indigenous peoples' right to self-determination (Gilbert, 2007, p. 219). Like the UNDRIP, the NSC has strived to establish a balance to consider states' concerns on secession. Thus, the right to self-determination will apply "in accordance with the rules and provisions of international law and of this Convention" (Regjeringen.no, 2018, p. 2), included in Article 3 of the NSC.

The territorial understanding of self-determination, relating to an imagined claim to secede from the state, disregards the essence of indigenous claims. This is not to secede, but to live out their indigeneity in the areas in which they traditionally belong to. Additionally, indigenous representatives have invited states to adopt a broadened understanding of the right to self-determination, which is not related to secession, but to have free control, choice, and determine their way of life (Gilbert, 2007, p. 220).

The WGF does not discuss the concept of territorial integrity and questions of secession in their report. However, the WGN reflects on how the claims to secession may derive from elements of external self-determination. Here, representatives of the WGN agree that the Sámi have never had a desire or need to secede from the state (AID, 2007, p. 20).

Accordingly, based on the assessments made by the EC (Regjeringen.no, 2006, p. 342), the WGN finds the reluctance to acknowledge the Sámi people's right to self-determination based on their possible secession from the state, to be unfounded (AID, 2007, p. 20). In their commentary, the EC points out that the reference to international law in Article 3 presupposes that the content of the Sámi people's self-determination develops in accordance with evolution of international law. Therefore, the right to self-determination for the Sámi might come to have a broader scope than it has today (Bankes & Koivurova, 2013, p. 121).

7.2.2 The Sámi as a "people"

The use of the term "peoples" in international law has been widely debated. Following Article 1 of the HR Covenants, self-determination is the "right of all peoples to freely determine their political status and freely pursue their economic, social and cultural development" (OHCHR, 1966a, p. 2). The EC defines the Sámi as a people following the definition in the HR Covenants,

thereby supporting the Sámi people's claim to self-determination (Regjeringen.no, 2006, p. 196).

As pointed out by Helen Quane, "once an entity is recognised as a people, the traditional position in international law is that they enjoy the full range of options in respect of both internal and external self-determination" (Allen & Xanthaki, 2011, p. 260). State practice has been based on a territorial concept of a people, restricting the definition of a people based on the population of a territory. This approach disregards ethnic, religious, and linguistic differences. Over the years, an expansive term has been present when drafting documents pertaining to indigenous peoples, but it has been found little support of this in state practice (Allen & Xanthaki, 2011, p. 261).

The WGF does not reflect on the definition of peoples used in the NSC. They refer to the Finnish Constitution where "the powers of the State of Finland are vested in the people" (Constitution of Finland, 1999, §2), which affirms that there is one people in Finland (OM, 2009, p. 16). Irja Seurujärvi-Kari criticise the WGF for disregarding the Sámi as a people, by refusing to discuss the matter further, noting that Finnish governments have refused to examine the concept of "peoples" and "indigenous peoples" from the 1940's to present time (OM, 2009, p. 99). Even though her report was submitted in 2009, Finland has still not addressed the subject today, dismissing the extended concept of self-determination, included in the UNDRIP and ILO 169.

Throughout their report, the WGF stresses the importance of equality, establishing a link with one fundamental aspect of human rights – universality. The core principle of universality is dissonant with the rights of indigenous peoples and self-determination. Here, the centrality of the principle is that the rules apply to all people everywhere (Forrest, 2006, p. 233), which is why the discussion surrounding who constitutes as a people is heavily contested, but still important to address. In this way, by accentuating that Finland consists of one people, Finland is taking a clear standpoint to the discussion.

Furthermore, the WGF emphasises that the Sámi people's right to self-determination is limited, restricted to include the right to maintain and develop their language and culture in their own traditional areas in accordance with Finnish law (OM, 2009, p. 16; Constitution of Finland, 1999, p. 4). This means that the Sámi Parliament does not have authority to make decisions on social, economic development, nor to decide on matters regarding land rights associated with self-determination (Kuokkanen, 2009, p. 105). This accentuates the difficult position Finnish Sámi find themselves in, in realising their right to self-determination and land

rights. The concept of universality also makes it difficult for states to adopt indigenous rights, as they go against the parallel principle of equality before the law. The idea of creating a special set of rights which applies to one group of people can be seen as contrary to the principle of universal rights. However, another perspective argues that by not granting rights to indigenous peoples which the majority population already have, is itself a violation of universality (Forrest, 2006, p. 233).

The WGN has an elaborate discussion on what constitutes a people, in contrast with the WGF. Even though the WGN acknowledges that the definition of "peoples" reaches beyond a territorial concept, they disagree on the approach to developing new policies (AID, 2007, p. 17). It is noted that the Norwegian government has expressed that the Sámi people have the right to self-determination and has on several occasions referred to them as a people. Already in 2000, it was issued a parliamentary notice where it is stated that the Norwegian state is built upon the territory of two people – The Sámi and the Norwegians (Regjeringen.no, 2000, p. 3), which is seen as the basis of Norway's policies towards the Sámi. Here, it is also recognised that the Sámi inhabited the land before the establishment of present state boundaries (Regjeringen.no, 2000, p. 3). In this way, Norway positions itself differently than Finland in recognising the Sámi as a people with a right to self-determination.

7.2.3 The right to self-determination as a cross-border people

The mandate of both working groups relate to assess the NSC in relation to national legislation and international obligations. Therefore, neither the WGN nor the WGF reflect largely on the purpose of the NSC to strengthen the rights of the Sámi as a transnational people. Both WG's are predominantly concerned with the Sámi residing within their own state boundaries, and the WGN emphasise that national legislation and Norway's international obligations pertaining to the Sámi is limited to Sámi people living in Norway (AID, 2007, p. 29). This concern was shared by the WGF in their report, finding it unclear what is meant by "residing in" (OM, 2009, p. 19).

It is evident that self-determination has clear limitations, which was clarified during the process of decolonisation, where transnational peoples were created by establishing state borders which placed peoples on both sides of the borders (Bankes & Koivurova, 2013, p. 123). This also applies to current legislation, where the exercise of self-determination for indigenous peoples takes place within sovereign states. This hinders the possibilities for transnational

peoples to exercise their collective self-determination, considering that each people must address its concerns towards the authorities in the state where they are located (Bankes & Koivurova, 2013, p. 123).

The UNDRIP only affirms that transnational peoples "have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic, and social purposes" (OHCHR, 2008, p. 48) across borders. Thus, the UNDRIP does not attempt to bridge the gap between peoples divided by state borders or encourage unity. In this way, the NSC contrasts with existing international legislation, taking an ambitious approach based on self-determination for the Sámi as one people across borders (Bankes & Koivurova, 2013, p. 123).

Even though the Sámi parliaments are not parties to the NSC, their right to supervision and participation in the development of the NSC makes it clear that they play a larger role in the cooperation than what current legislation allows for. In addition, the Sámi parliaments may block ratification and any amendments which may occur. Their position is further asserted in Chapter VII which stipulates the final provisions on approval, ratification, amendments, and the entry into force, which all maintain the inclusion of the Sámi parliaments (Bankes & Koivurova, 2013, p. 124; Regjeringen.no, 2018, p. 12). The NSC attempts to strengthen the role of the Sámi parliaments, joint together in what can be considered as a fourth party to the NSC. This is why Articles 14 to 16 of the NSC are important, as they establish the Sámi parliaments as the bodies of governance through which self-determination is practised. Thus, the intention can be said to unify the Sámi people across borders and for them to exercise their self-determination, which, as Koivurova (2013) emphasise, is possible if the political will for such action can be found among the Nordic states (Bankes & Koivurova, 2013, p. 124).

7.2.4 Sámi self-determination within sovereign states

Norway has implemented several measures to comply with international legislation to which they are bound by to accommodate indigenous claims. The WGN points to several national arrangements which have been established to guarantee participation of Sámi representatives. These primarily relate to language rights, culture, and the right to participation. When it comes to internal self-determination, namely internal self-governance, and the right to participate in decision-making processes, the WGN concludes that the stipulations in the NSC are in line with national legislation and international law (AID, 2007, p. 21-22).

On the one hand, the government representatives of the WGN argue that if the right to self-determination should include participation in the management of non-renewable energy, such as oil, gas, and minerals, which is currently unclear, it would be conflicting with Norwegian legislation (AID, 2007, p. 27). This exemplifies how there are certain matters of national legislation where indigenous self-determination challenges the perspective on state sovereignty. Nevertheless, despite disagreements on the scope of Article 3, the WGN found that they overall agree with the right to self-determination as presented in the NSC (AID, 2007, p. 27), acknowledging that they are willing to negotiate further to reach agreement.

On the other hand, the WGF found the scope of Article 3 to be substantially broader than existing legislation, and in conflict with Finnish obligations under international law (OM, 2009, p. 18). It is considered a prerequisite for states to have ratified and implemented measures that comply with the HR Covenants, the UNDRIP and ILO 169, to act in accordance with provisions provided by the NSC. Finland has been unwilling to ratify ILO 169, which clearly reveals their opposition to extending the rights of their Sámi population, upholding power structures reinforcing assimilationist tendencies.

Irja Seurujärvi-Kari mentioned in her dissent to the WGF's report that there had been six government proposals to resolve Sámi issues (OM, 2009, p. 105). Today, in 2024, these issues have still not been resolved. Hence, the political will which has to be present for indigenous peoples to exercise their right to self-determination, following the argument of Koivurova (Bankes & Koivurova, 2013, p. 124), does not seem to be present in Finland.

7.3 (Re)claiming traditional land

Indigenous peoples traditionally have a close connection to land and water areas, basing their livelihoods on sustainable use of natural resources. Their connection to land is often their way of living out their indigeneity, related to their use of nature and traditional industries. Such use of land and water does not leave visible traces in the landscape. Sámi representatives have stated that their vision is to leave the earth as they found it, which poses a challenge when assessing evidence for recognising land rights (Bankes & Koivurova, 2013, p. 177).

Until recently, traditional indigenous livelihoods, such as fishing, hunting, and reindeer husbandry were not considered to form the basis of recognition of rights of use, as such activities would not prove continuous use to achieve land rights (Bankes & Koivurova, 2013, p. 178). Land rights are closely connected with the right to self-determination, and one cannot

be realised without the other. This has been problematic when attempting to realise the NSC, as Finland has opposed Article 3 and Chapter IV on Sámi rights to land and water. Reasons for this are found throughout the WGF's report, which illustrates how Finnish legislation and societal structure is not adapted to include indigenous culture and practice.

7.3.1 Chapter IV: Sámi right to land and water

The NSC has acknowledged protracted traditional use of land in Article 34, which is based on Article 14 of ILO 169. Here, the NSC states that "Protracted traditional use of land or water areas constitutes the basis for individual or collective ownership rights to these areas for the Saami in accordance with national or international norms concerning protracted usage" (Regjeringen.no, 2018, p. 8). Article 14(1) of ILO 169 similarly expresses "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised" (ILO, 1989, p. 5).

Furthermore, ILO 169 acknowledges fishing, hunting and reindeer husbandry as use of land sufficient to gain land rights following international law. The articles included in Chapter IV of the NSC, the right to land and water, builds upon the stipulations in ILO 169. Chapter V of the NSC are rights related to Sámi livelihoods, which are developed dealing explicitly with the Sámi as indigenous peoples and their culture.

The WGN finds that Norway fulfils the commitments set forth by Article 34 of the NSC and has accepted the definition on traditional use and Norway's obligations following this article (AID, 2007, p. 81). The EC complements Norwegian legislation in relation to Article 34 of the NSC. Being the only Nordic country which has ratified ILO 169, Norway has implemented measures and has examples from judicial practice which affirms the "protracted traditional use of land and water" asserted in Article 34 (Regjeringen.no, 2006, p. 252). Thus, ILO 169 has been of great significance in identifying Sámi land areas, and for the development of participation rights for the Sámi in matters important to them relating to land and water (Ravna, 2014, p. 302). The WGN finds that the articles included in Chapter IV of the NSC are like what is provided through ILO 169, which means that Norway is already bound by such provisions. Accordingly, the WGN supports the proposed articles dealing with rights to land and water with few reservations (AID, 2007, p. 78).

The incoherence between the Finnish Constitution and indigenous claims to land rights is made visible by WGF's general dismissal of Chapter IV and V of the NSC. Finland is

opposed to implementing rights for indigenous peoples which cannot be enjoyed by the majority population, which the WGF justifies by using the argument of equality. However, one can question how this argument is valid when the rights meant to be enjoyed by every person residing in Finland, are the same which undermines the rights of the Sámi as indigenous peoples. The discussion surrounding traditional land and water areas is an example of this, as the Finnish Sámi Act has clearly defined limitations as to where the Sámi might enjoy their cultural and linguistic rights (OM, 1995, p. 2), disregarding Sámi people living outside these areas.

Additionally, when discussing Article 34 of the NSC, the WGF pointed out that Finnish legislation does not separate between traditional land of the Sámi and land used by other people. Here, they imply that the rights of the majority people take precedence over the rights of indigenous peoples, as if their claim to the land is of greater significance than indigenous peoples' rights to the lands which they have traditionally inhabited before the establishment of modern borders. This undermines the acknowledgement of indigenous peoples as having suffered injustice as a result of dispossession of their land, affirmed through the UNDRIP (OHCHR, 2008, p. 5), and the NSC, which acknowledges that lands and waters constitute the foundation for the Sámi culture (Regjeringen.no, 2018, p. 1).

The contrasts between Norwegian and Finnish legislation becomes apparent when assessing land rights, closely connected with the right to self-determination. Finland has not ratified ILO 169 protecting the rights of indigenous peoples, which illustrates the reluctance to accommodate indigenous claims. Debates surrounding ratification of ILO 169 have been present in Finland since its establishment in 1989 and debates still take place in 2024. As Finland lacks the political will to accommodate the Sámi people's right to self-determination, serving as a fundamental indigenous claim, it becomes apparent that they are not willing to accept the NSC being created on the Sámi people's terms. Neither has Finland been able to ratify ILO 169, which is a crucial step towards acknowledging and complying with the human rights of indigenous peoples.

7.3.2 Chapter V: Saami livelihoods

The Sámi are not exclusively reindeer herders. They practise several different livelihoods, including hunting and fishing. However, reindeer husbandry is an exclusive right of the Sámi in Norway and Sweden, and arguably more vulnerable in terms of being influenced by human

activities and industrial projects, such as the development of power lines, wind- and hydropower development, and cabin areas. The implementation of such projects often takes precedence over reindeer husbandry, which is harmful to indigenous culture. Subsequently, the NSC includes a separate chapter on Sámi livelihoods, accentuating the rights of reindeer herders. This chapter has been argued to favour reindeer husbandry over other livelihoods essential to the Sámi cultural practice and way of life. Even though the NSC contains important stipulations on Sámi livelihoods, it does not pay equal attention to safeguarding hunting, fishing, and other livelihoods throughout the Convention. Thus, it is understandable that the NSC can be argued to be disproportionate in this respect.

Norway has worked to ensure a strong position of reindeer husbandry in Norwegian legislation. Accordingly, the Reindeer Act has been implemented and amended considering international law pertaining to indigenous peoples (Reindriftsloven, 2007, §3). The purpose of the Act is to preserve reindeer husbandry as an important foundation for Sámi culture and way of life, affirmed through §1 (Reindriftsloven, 2007, §1). Norway declares that reindeer husbandry has been practised before the present state boundaries were drawn, which is why Nordic cooperation on the area is essential. Throughout the years, Norway has cooperated with Sweden to ensure cross-border reindeer husbandry. However, this bilateral agreement has not been re-negotiated due to Swedish reservations (Ravna, 2020b, p. 488).

The Finnish stance towards Sámi livelihoods and reindeer husbandry hinders the Sámi from operating as a cross-border people. This is exemplified through the bilateral agreement with Norway, where a fence has been drawn on the border between Norway and Finland, to prevent reindeers from grazing outside state boundaries (Reindriftsloven, 2007, §81). Reindeer husbandry is not established as an exclusive Sámi livelihood in Finland, which poses a challenge to Chapter V of the NSC. Article 42 protects reindeer husbandry as a sole right of the Sámi, which conflicts with Finnish legislation. Here, the possibility of interpreting the wording of the NSC is a challenge as Finland finds certain rights not applicable to them.

Given that Finland has established the Reindeer Husbandry Act, they find their obligations to be fulfilled, equating the Sámi with the majority population. This is not in line with the intention of the NSC, which is to safeguard the rights of the Sámi. Moreover, the Finnish Reindeer Husbandry Act does not recognise the siidas, through which reindeer husbandry is practised, but maintain reindeer co-operatives as a point of reference (MMM, 1990, p. 2), which upholds existing power structures by use of wording which neglects indigenous claims.

7.3.3 ICCPR as a prerequisite for achieving Sámi land rights

The relevance of the ICCPR in relation to existing obligations pertaining to land rights must be noted. Article 27 of the ICCPR protecting cultural minorities' cultural enjoyment mandates states to take positive measures in support of minority languages and culture (Ravna, 2014, p. 304). As seen, the HRC observes that "culture manifests itself in many forms including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples" (Ravna, 2014, p. 304). The HRC continues by acknowledging that this may include traditional activities such as hunting and fishing (Ravna, 2014, p. 304), which does not leave visible traces in nature. This point of view was revolutionary in recognising indigenous peoples' way of life and has had influence on political decisions and court proceedings.

As shown through the Fosen case, ICCPR Article 27 has proven to be significant in recognising indigenous land rights. However, the Fosen case has also served as an example as to how governments exploit existing legislation to their own benefit, and problems arising when state representatives are the ones which decide whether a treaty or declaration is adopted and ratified, and the content of such declaration (Koivurova, 2008b, p. 19). The agreements made between the two siidas and the government was a result of a lengthy process, forcing the Sámi into agreement. Sámi representatives have stated that if funds allowed, they would have taken the case to the Supreme Court once more to achieve justice (Opsal et al., 2024), as the current solution did not take into account fundamental claims made by the Sámi.

The Fosen case has illustrated common state practice where problems created by humans must be solved by degradation of nature, thereby also destroying indigenous culture and land. As revealed by the Fosen case, one would rather move people than the wind turbines, which is an example to how state policies are built upon a power structure which does not allow for indigenous peoples to fully live out their indigeneity without it being exercised on state terms. State sovereignty and interests takes precedence over accommodating indigenous claims, a common practice in the image of coloniality.

8 Conclusion

Norway, while meeting many of the requirements set forward by international law, are still seeking hegemony on political areas dealing with infrastructure projects and expropriation of land, where state profit takes precedence over environmental degradation. Accordingly, by maintaining legislation where states' economic interests override indigenous claims, it will compromise indigenous self-determination, and uphold existing power structures in national legislation. This is supported by the argument made by Semb (2012), where states will commit to human rights treaties when "there is congruence between the content of the convention and existing governmental normative preferences" (Semb, 2012, p. 124). Norway has proven that there is political will to accommodate indigenous claims by increasingly implementing laws and regulations which protect Sámi cultural practice, industries, language and so forth. Thus, one can find political willingness in Norway to ratify the NSC, given that the content of the Convention is adapted to their current political interests. However, the political will is limited to only when Sámi interests coincide with state interests. Limiting the Sámi people's right to self-determination by not providing them with enough authority to administer matters of importance to them, is thus threatening the survival of the Sámi culture.

The WGF puts an emphasis on Finland's support of, and contribution to the development of the UNDRIP. Nevertheless, Finland is through their legislation refusing to accept and comply with fundamental principles and standards of the Declaration. Many of the core provisions of the UNDRIP are implemented in the NSC in a legally binding nature. Finland, by opposing that the Sámi is an indigenous people with the right to self-determination and land, are in direct conflict with the purpose of the NSC, and not in line with its aims and values. The NSC puts forward a potential power shift and a reform of international law regarding states' policies and recognition of indigenous peoples and their rights. Finland's stance towards the Sámi is counteracting this possible development through upholding power structures of their national legislation which they are reluctant to counterbalance.

The argument made by Semb (2012), explains how a government's compliance to a convention is determined by the state gaining advantages from ratifying which will be greater than the potential costs (Semb, 2012, 124). The NSC would provide the ability for the Sámi to exercise their right to self-determination as a cross-border indigenous people, to which point the NSC is ground-breaking in its attempt to unify the Sámi as one people across national borders. The Nordic states would maintain their role as protectors of human rights, by setting a

precedence in the international community. This argument coincides with the point made by Koivurova (2013), that the Sámi people's ability to exercise their right to self-determination and achieve land rights, is contingent upon the fact that political will for such action can be found within the three states (Bankes & Koivurova, 2013, p. 124). Such political will can be found in Norway, based on the analysis conducted by the WGN. Discussing contentious concepts such as the right to self-determination and land rights, the WGN makes it clear that due to Norway's commitments to ILO 169, the UNDRIP, and the HR Covenants, Norway is inclined to accept the provisions set forth by the NSC (AID, 2007).

Similarly, Finland has a self-image as a human rights promoter. This identity is common for the Nordic states, which is consistent with granting self-determination to indigenous peoples. However, it is evident that the principle of individual equality is a factor which limits the implementation of indigenous peoples, as seen with Finland's ratification process of ILO 169 (Forrest, 2006, p. 235). Finland has demonstrated that the acceptance of the NSC will be problematic considering Finnish legislation and politics, contesting the right to self-determination for indigenous peoples, and denying their rights to land (OM, 2009). Arguably, a political will to amend current legislation cannot be found in previous governments, nor in the current government of Finland.

This study has not focused on covering the most recent developments, which needs to be studied further in the future. For example, in 2016, eleven years after the Draft of the NSC was prepared, agreement was finally reached after a decade of preparations. However, the process was far from over. In 2018, the Sámi parliaments of Finland, Sweden and Norway jointly decided to submit a proposal to the national governments to renegotiate the NSC, with the desire to amend certain parts of the text. In a press release, the Ministry of Justice announced that amendments to national legislation regarding voting rights would be made before the election in 2019, but this process was never completed (OM, 2016).

The Government of Finland has not yet taken a stand on whether they are prepared to continue the negotiation process on the NSC (UM, 2020, p. 1-2), which is a result from new government elections which are opposed to implementing the Nordic Saami Convention. Nonetheless, the Ministry of Justice has clearly stated that the NSC will not bring about any new changes to Sámi rights to land, and their interpretation of the NSC is to assert existing rights, not to change current legislation (OM, 2016). Hence, the NSC is currently being processed by the state governments and the Sámi parliaments for approval. While Sámi representatives are pushing for the process to move forward, it is not certain when or if the NSC

will be implemented in the states' national legislation. As seen throughout the study, several hindrances related to self-determination and land rights must be resolved for the Nordic Saami Convention to be realised.

List of References

AID (Arbeids- og inkluderingsdepartementet) (Ministry of Labour and Social Inclusion). (2007, October 3). *A review of the draft Nordic Saami Convention*. Regjeringen.no. https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_arbeidsgrrapport_gjennomgaelse_nordisk_samekonvensjon.pdf

Allen, S., & Xanthaki, A. (Eds.). (2011). *Reflections on the UN declaration on the rights of indigenous peoples*. Bloomsbury Publishing Plc.

Andresen, A., Evjen, B., & Ryymin, T. (Ed.). (2021). *Samenes historie fra 1751 til 2010*. Cappelen Damm Akademisk.

Baer, L.-A. (2005). The Rights of Indigenous Peoples – A Brief Introduction in the Context of the Sámi. *International Journal on Minority and Group Rights*, *12*(2-3), 245–268. https://doi.org/10.1163/157181105774740589

Bankes, N. & Koivurova, T. (Eds.). (2013). *The Proposed Nordic Saami Convention*. Hart Publishing.

Brännlund, I., & Axelsson, P. (2011). Reindeer management during the colonization of Sami lands: A long-term perspective of vulnerability and adaptation strategies. *Global Environmental Change*, *21*(3), 1095–1105. https://doi.org/10.1016/j.gloenvcha.2011.03.005

Bryman, A. (2016). *Social research methods*. (5th ed.). Oxford University Press.

Chilisa, B. (2012). *Indigenous Research Methodologies* (pp. XXIII, 343). SAGE publications.

Cobo, J. R. M. (1987). Study of the problem of discrimination against indigenous populations. E/CN.4/Sub.2/1986/7/Add.4. United Nations Digital Library. Retrieved 09. April 2024 from https://digitallibrary.un.org/record/133666?ln=en&v=pdf#files

Constitution of Finland. (1999). The Constitution of Finland. 731/1999. FINLEX. https://www.finlex.fi/en/laki/kaannokset/1999/en19990731_20180817.pdf

Daes, E. I. A. (1996). Working paper on the concept of "indigenous people". E/CN.4/Sub.2/AC.4/1996/2. United National Digital Library. Retrieved 09. April 2024 from https://digitallibrary.un.org/record/236429?ln=en&v=pdf

Donnelly. J., & Whelan, D. J. (2018). *International human rights* (5th ed.). Routledge.

Dorpenyo, I. K. (2019). Decolonial Methodology as a Framework for Localization and Social Justice Study in Resource-Mismanaged Context. In *User Localization Strategies in the*

Face of Technological Breakdown (pp. 53–78). Springer International Publishing AG. https://doi.org/10.1007/978-3-030-26399-7_3

Finnmark Act. (2005). Act relating to legal relations and management of land and natural resources in Finnmark. LOV-2005-06-17-85. Lovdata. https://lovdata.no/dokument/NLE/lov/2005-06-17-85

Forrest, S. (2006). *Indigenous self-determination in Finland: A case study in normative change.* Polar Record. 42(03). 229-238. 10.1017/S0032247406005328

Gilbert, J. (2007). Indigenous Rights in the Making: The United Nations Declaration on the Rights of Indigenous Peoples. *International Journal on Minority and Group Rights*, *14*(2-3), 207–230. https://doi.org/10.1163/138548707X208818

Henderson, J. S. Y. (2008) *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition.* Purich Publishing.

Henriksen, J. B. (Ed.). (2008). Sami Self-Determination: Scope and Implementation. *Gáldu Čála: Journal of Indigenous Peoples Rights, Vol. no. 2/2008* (p. 182).

Hesla, G. K. (2022, December 10). De falske samene. *NRK*. https://www.nrk.no/sapmi/xl/vil-vaere-same_-folk-i-frp-melder-seg-inn-i-sametingets-valgmanntall-uten-a-vaere-same-1.16150844

International Labour Organization. (1989). *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. Retrieved 11. January 2024 from https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.16_Indigenous%20and%20Tribal%20Peoples%20Convention.pdf

International Labour Organizations. (n.d.). *Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. Retrieved 11. January 2024 from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314

KDD (Kommunal- og distriktsdepartementet) (Ministry of Local Government and Regional Development). (2018, October 14). *Nordisk Samekonvensjon*. Regjeringen.no. https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/samepolitikk/nordisk-samisk-samarbeid/nordisk-samekonvensjon/id86937/

Koivurova, T. (2008a). The Draft Nordic Saami Convention: Nations Working Together. *International Community Law Review*, *10*(3), 279–293. https://doi.org/10.1163/187197308X346814.

Koivurova, T. (2008b). From High Hopes to Disillusionment: Indigenous Peoples' Struggle to (re)Gain Their Right to Self-determination. *International Journal on Minority and Group Rights*, *15*(1), 1–26. https://doi.org/10.1163/138548708X272500

Kuokkanen, R. (2009). Achievements of Indigenous Self-Determination: The Case of Sami Parliaments in Finland and Norway. In J.M Beier (Ed.), *Indigenous Diplomacies* (pp. 97–114). Palgrave Macmillan US. https://doi.org/10.1057/9780230102279_7

Landman, T. (2006). *Studying Human Rights*. Routledge.

Mignolo, W., & Walsh, C. E. (2018). *On decoloniality: concepts, analytics, praxis*. Duke University Press.

MMM (Maa- ja metsätalousministeriö) (Ministry of Agriculture and Forestry). (1990). Reindeer Husbandry Act. 848/1990. FINLEX. https://finlex.fi/en/laki/kaannokset/1990/en19900848_20000054.pdf

Nordic Co-operation. (n.d.). *About the Nordic Council*. Retrieved 14. February 2024 from https://www.norden.org/en/information/about-nordic-council

Nordregio. (2016). *Reindeer Herding Districts in Finland*. Retrieved 24. January 2024 from https://nordregio.org/maps/reindeer-herding-districts-in-finland/

Norwegian Agriculture Agency. (2022, October 26). *Reinkonvensjoner*. Landbruksdirektoratet. Retrieved 23. February 2024 from https://www.landbruksdirektoratet.no/nb/reindrift/reinkonvensjoner#:~:text=Reinbeitekonvensjonen%20mellom%20Norge%20og%20Sverige,-Norge%20og%20Sverige&text=Svenske%20myndigheter%20har%20n%C3%A5%20besluttet,landene%20for%20den%20grenseoverskridende%20reindriften

Nussir. (n.d.). *Project overview*. Retrieved 05. December 2023 from https://nussir.no/what-we-do/project-overview/

OHCHR (Office of the United Nations High Commissioner). (1966a). *International Covenant on Civil and Political Rights*. Retrieved 05. December 2023 from https://www.ohchr.org/sites/default/files/ccpr.pdf

OHCHR (Office of the United Nations High Commissioner). (1966b). *International Covenant on Economic, Social and Cultural Rights*. Retrieved 20. February 2024 from https://www.ohchr.org/sites/default/files/cescr.pdf

OHCHR (Office of the United Nations High Commissioner). (1994). *CCPR/C/52/D/511/1992*. Retrieved 18. January 2024 from

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F52%2FD%2F511%2F1992&Lang=en

OHCHR (Office of the United Nations High Commissioner). (2008). *United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved 10. January 2024 from https://www.ohchr.org/sites/default/files/Documents/Publications/Declaration_indigenous_en.pdf

OHCHR (Office of the United Nations High Commissioner). (2019). *CCPR/C/124/D/2668/2015*. Retrieved 30. January 2024 from https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR/C/124/D/2668/2015&Lang=en

OHCHR (Office of the United Nations High Commissioner). (n.d.). *Ratification Status for CCPR - International Covenant on Civil and Political Rights*. Retrieved 02. April 2024 from https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en

OM (Oikeusministeriö) (Ministry of Justice). (1995). Act on the Sámi Parliament. 974/1995. FINLEX. https://www.finlex.fi/fi/laki/kaannokset/1995/en19950974_20031026.pdf

OM (Oikeusministeriö) (Ministry of Justice). (2009, November 30). *Working Group Report: Draft for a Nordic Sámi Agreement*. OM025:00/2017. https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76193/omtr2009_18_arviomietinto_110_sivua.pdf?sequence=1

OM (Oikeusministeriö) (Ministry of Justice). (2016, December 12). *Agreement on the Nordic Saami Convention reached*. Retrieved 02. April 2024 from https://oikeusministerio.fi/en/-/pohjoismaisesta-saamelaissopimuksesta-neuvottelutulos

Opsal, K., Mudenia, H., Skartland, E. & Saxrud, F. M. (2024, March 6). Fosen-saken: Enighet mellom Nord-Fosen siida og staten. *NRK*. https://www.nrk.no/trondelag/enighet-om-mellom-nord-fosen-og-roan-vind-1.16792292

Protect Sápmi. (2020). *ANALYSE AV VIRKNINGEN FOR REINDRIFTEN VED PLANLAGT GRUVEDRIFT I NUSSIR OG ULVERYGGEN I KVALSUND KOMMUNE*. Samediggi. Retrieved 11. January 2024 from https://sametinget.no/_f/p1/i41f3688a-6aa5-45a4-96c4-61b3e7791185/analyse-av-virkningen-for-reindriften-ved-planlagt-gruvedrift-i-nussir-og-ulveryggen-i-kvalsund-kommune.pdf

Quijano, A. (2007). COLONIALITY AND MODERNITY/RATIONALITY. *Cultural Studies*, *21*(2-3), 168–178. https://doi.org/10.1080/09502380601164353

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*, *21*(3), 297–329. https://doi.org/10.1163/15718115-02103001

Ravna, Ø. (2019). *Same- og reindriftsrett*. (1st ed.). Gyldendal Forlag.

Ravna, Ø. (2020a). The Duty to Consult the Sámi in Norwegian Law. *Arctic Review on Law and Politics*, *11*, 233–255. https://doi.org/10.23865/arctic.v11.2582

Ravna, Ø. (2020b). Den grenseoverskridende reindriften og beiterettighetene. *Lov og rett*, *59*(8), 474–492. https://doi.org/10.18261/issn.1504-3061-2020-08-03

Ravna, Ø. (2022). The Fosen Case and the Protection of Sámi culture in Norway Pursuant Article 27 ICCPR. *International Journal on Minority and Group Rights* (2023) 1-20.

Regjeringen.no. (2000). St.meld. nr. 55 (2000-2001) Om samepolitikken. Retrieved 20. March 2024 from https://www.regjeringen.no/contentassets/8d27f3e237a94943a4f4d7e296b8ab6e/no/pdfa/stm200020010055000dddpdfa.pdf

Regjeringen.no. (2006, October 26). Nordisk samekonvensjon: Utkast fra finsk-norsk-svensk-samisk ekspertgruppe. https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonvensjon_norsk.pdf

Regjeringen.no. (2016, September 30). *Undertegning av avtale mellom Norge og Finland om fisket i Tanavassdraget*. https://www.regjeringen.no/no/dokumenter/kres_tanavassdraget/id2513150/

Regjeringen.no. (2018). *Nordic Saami Convention*. Retrieved 25. January 2024 from https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf

Regjeringen.no. (2022, April 29). *Fakta om samiske språk*. https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/samepolitikk/samiske-sprak/fakta-om-samiske-sprak/id633131/

Reindriftsloven. (2007). Lov om reindrift. LOV-2021-06-18-127. Lovdata. https://lovdata.no/dokument/NL/lov/2007-06-15-40

Saami Council. (2020, June 2). *Finland violates the rights of the Sámi people by allowing mining companies in Sámi homeland*. Retrieved 02. February 2024 from https://www.saamicouncil.net/news-archive/finland-violates-the-rights-of-the-smi-people-by-allowing-mining-companies-in-smi-homeland

Saami Council. (2022, November 8). *Are we losing our Sámi Parliament? - How the Finns are destroying our cultural self-government*. Retrieved 30. January 2024 from https://www.saamicouncil.net/news-archive/manahatgo-mii-samedikki-exf3a

Saami Council. (n.d.). *About the Saami Council*. Retrieved 14. February 2024 from https://www.saamicouncil.net/en/the-saami-council

Sámediggi.fi. (n.d.). *The Sámi in Finland*. Retrieved 11. January 2024 from https://www.samediggi.fi/sami-info/?lang=en

Sámediggi.no. (2021). *Sametingsrådet fremmer plenumssak om samenes rettssikkerhet*. Retrieved 05. December 2023 from https://sametinget.no/aktuelt/sametingsradet-fremmerplenumssak-om-samenes-rettssikkerhet.8553.aspx

Sámediggi.no. (2023). Sametingets valgmanntall 1989-2023. Retrieved 21. January 2024 from https://sametinget.no/politikk/valg/sametingets-valgmanntall/sametingets-valgmanntall-1989-2023/

Sameloven. (1989). Lov om Sametinget og andre samiske rettsforhold (Sameloven). LOV-1987-06-12-56. Lovdata. https://lovdata.no/dokument/NL/lov/1987-06-12-56

Semb, A. J. (2005). Sami self-determination in the making? *Nations and Nationalism*, *11*(4), 531–549. https://doi.org/10.1111/j.1469-8129.2005.00218.x

Semb, A. J. (2012). Why (not) commit?: Norway, Sweden and Finland and the ILO Convention 169. *Nordic Journal of Human Rights*, *30*(2). https://www.idunn.no/doi/epdf/10.18261/ISSN1891-814X-2012-02-02

Skogvang, S. F. (2022). *Samerett*. (4th ed.). Universitetsforlaget.

Somby, L. I. (2008, February 18). – Vi har rett til Havfiske. *NRK*. https://www.nrk.no/sapmi/fjordfolket-far-okte-rettigheter-1.4856938

Supreme Court of Norway. (2021). Licences for wind power development on Fosen ruled invalid as the construction violates Sami reindeer herders' right to enjoy their own culture. HR-2021-1975-S. (English translation) Full text retrieved 05. December 2023 from https://www.domstol.no/globalassets/upload/hret/decisions-in-english-translation/hr-2021-1975-s.pdf

TEM (Työ- ja elinkeinoministeriö) (Ministry of Economic Affairs and Employment). (2011). Mining Act. 10.6.2011/621. FINLEX. https://www.finlex.fi/fi/laki/kaannokset/2011/en20110621.pdf

The Constitution. (1814). The Constitution of the Kingdom of Norway. LOV-1814-05-17. Lovdata. https://lovdata.no/dokument/NLE/lov/1814-05-17

The National Committee for Research Ethics in the Social Sciences and the Humanities (NESH). (2022). *Guidelines for Research Ethics in the Social Sciences and the Humanities* (5th ed.). The National Research Ethics Committees. https://www.forskningsetikk.no/en/guidelines/social-sciences-humanities-law-and-theology/guidelines-for-research-ethics-in-the-social-sciences-humanities-law-and-theology/

Tully, J. (2000). The Struggles of Indigenous Peoples for and of Freedom. In D. Ivison. P. Patton, and W. Sanders (Eds.), *Political Theory and the Rights of Indigenous Peoples* (pp. 36-59). Cambridge University Press.

UM (Ulkoministeriö) (Ministry of Foreign Affairs). (2020, January 15). *Response by the Government of Finland to the questionnaire on "Right to Land under the UN Declaration on the Rights of Indigenous Peoples: A Human Rights focus"*. Retrieved 01. April 2024 from https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/RightToLand/Finland.docx

Xanthaki, A. (2007). *Indigenous rights and United Nations standards: Self-determination, Culture and Land.* Cambridge University Press.