

INTERNATIONAL LEGAL FRAMEWORK FOR SAFEGUARDING SÁMI CULTURAL HERITAGE

Toward a Holistic
Intergenerational Indigenous
Rights-Based Approach

Leena Hansen

UNIVERSITY OF LAPLAND
Rovaniemi 2026



LAPIN YLIOPISTO
UNIVERSITY OF LAPLAND

The publication has been produced as part of the MÁHTUT – Sámi Knowledge and Practices in the Era of the Green Transition project (NYPS 20361834), which is funded by the European Union, Interreg Aurora, and the Regional Council of Lapland.

The work has also been supported by the Research Council of Finland funded Centre of Excellence in Research for Multibeing Justice in Indigenous Societies, University of Lapland (decision number 374227).

© Leena Hansen 2026

Cover and layout:

Onneli Sieppi

Pdf:

ISBN 978-952-337-536-9

Permanent address of the publication:

<https://urn.fi/URN:ISBN:978-952-337-536-9>

Interreg  Co-funded by
the European Union
Aurora



LAPIN LIITTO

MÁHTUT

CONTENTS

1. THE AIM AND SCOPE OF THIS REPORT	6
2. SÁMI AS AN INDIGENOUS PEOPLE IN A CHANGING ENVIRONMENT	7
3. EVOLVING CONCEPT OF CULTURAL HERITAGE	10
3.1. Indigenous Peoples’ vis-à-vis Sámi Cultural heritage:	
Holistic and Intergenerational Approach	15
3.2. Indigenous Cultural/Intellectual Property as Cultural Heritage.....	21
3.3 Sámi Cultural Environment/Landscape as Cultural Heritage	22
3.4. Indigenous Peoples’ vis-à-vis Sámi Traditional Knowledge and Customary Laws.....	24
4. INTERNATIONAL LEGAL FRAMEWORK	
FOR PROTECTING SÁMI CULTURAL HERITAGE.....	28
4.1. Human Rights Framework.....	28
4.2. Sámi People’s Human Rights in Norway, Sweden, and Finland.....	32
4.2.1. Sámi People’s Right to Self-determination and Free, Prior and Informed Consent	
Concerning their Cultural Heritage	33
4.2.2. Rights of the Sámi People to Self-determination, Consultations,	
and Lands in the Nordic Countries	44
4.2.3. Good Practice Example: Finnish Governmental Guidelines on FPIC.....	56
4.3. Recognition of Indigenous Peoples’ Cultural Heritage in International Human Rights	
Conventions’ Treaty Bodies with Special References to Sámi People	57
4.3.1. HRC’s Views on Indigenous Peoples/Sámi People’s Rights	57
4.3.1.1. HRC and the First Indigenous Peoples’ Climate Change Case	59
4.3.2. CESCR’s Views on Indigenous Peoples’/Sámi People’s Rights	62
4.3.2.1. Case of Sámi Reindeer-herding Community (Siida) v. Finland	65
4.3.3. CERD’s Views on Indigenous Peoples’/Sámi People’s Rights	71
4.3.3.1. The Case of Sámi Land Rights v. Sweden	73
4.3.4. CRC’s Views on Indigenous Children’s/Sámi Children’s Rights	78
4.3.4.1. Two Mining Cases of Sámi Children in Finland.....	80

4.4. Cultural Heritage in Indigenous Rights Instruments	83
4.5. Examples of the Human rights-based Approach in Three Domestic Court Cases on Sámi of Finland, Norway, and Sweden	91
4.6. Convention on Biological Diversity and Protection of Sámi Cultural Heritage.....	95
4.6.1. National Implementation Example:	
Sámi Rights in Norwegian Nature Diversity Act and Management of Protected Areas	99
4.6.3. Nagoya Protocol and Finland’s Implementation of Sámi Rights and Traditional Knowledge.....	107
4.6.4. CBD Akwé: Kon Voluntary Guidelines for the Cultural, Environmental and Social Impact Assessment vis-à-vis Sámi Cultural Heritage	109
4.6.4.1. Example of Finland’s Implementation of Akwé:Kon Guidelines.....	114
4.6.5. Other Voluntary CBD Guidelines	115
4.6.5.1. The Tkarihwaié:ri Code of Ethical Conduct	117
4.6.5.1.1. Initiation to Implement Tkarihwaié:ri Code of Ethical Conduct in Finland.....	125
4.6.5.2. Mo’otz Kuxtal Guidelines for the Development of FPIC Mechanisms for Accessing Indigenous Traditional Knowledge, Innovation, and Practices	127
4.6.5.3. Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge	135
4.7. Protection of Sámi Cultural Heritage in UNESCO Cultural Heritage Conventions.....	144
4.7.1. UNESCO World Heritage Convention	146
4.7.1.1. Example from Sweden: Co-management of the Laponia World Heritage Site	151
4.7.2. UNESCO’s Protection of Intangible Cultural Heritage	153
4.8. Considering Sámi Cultural Landscapes through the Council of Europe Cultural Heritage Conventions	158
4.8.1. National Implementation Example: Strengthening Sámi Self-determination in the Protection of the Sámi Archaeological Cultural Heritage in Norway.....	164
4.9. Attempts for Legal Protection of Indigenous, Including Sámi People’s Intangible Cultural Heritage as Intellectual Property via the IPR System	168
4.9.1. WIPO and Indigenous Peoples’ Traditional Knowledge as IPR.....	177
4.9.1.1. WIPO Guidelines for Documenting Traditional Knowledge.....	179
5. CONCLUSIONS	185
6. SUMMARY AND POLICY RECOMMENDATIONS	195

1. THE AIM AND SCOPE OF THIS REPORT

The aim of this report is to outline the multifaceted international legal framework for the protection of Sámi people's rich cultural heritage. Indigenous peoples' cultural heritage is protected mainly via four separate legal fields: human rights; biodiversity protection; cultural heritage conventions; and the intellectual property framework, which is still currently evolving to embrace Indigenous peoples' rights. Traditionally, these different legal fields have operated mainly independently from each other. However, Indigenous peoples' rights discourse has helped build bridges and interrelationships between these different legal segments so that they have influenced and inspired each other. The concepts of culture and cultural heritage, which were traditionally viewed as separate, have also become aligned with each other and recognised as inseparable in the case of Indigenous peoples. The further aim of presenting the international legal framework is to argue that to safeguard Indigenous peoples' cultural heritage, Indigenous peoples' (including Sámi people's) self-determination and their right to transmit their culture to future generations should be placed at the heart of its protection.

Hence, this report argues for a holistic intergenerational Indigenous rights-based approach that places Indigenous rights to the fore of international cultural heritage discourse, which has traditionally been viewed as an affair of states and a common heritage of humanity. Furthermore, this report argues that different aspects of cultural heritage cannot be viewed in isolation, but that they instead establish an integral whole. For example, Sámi traditional knowledge cannot be protected without protecting the material and spiritual basis of this knowledge, which is the traditional land and water areas, and resources and related Sámi people's right to have access to them. Another example is that Sámi peoples' sacred sites cannot be viewed and protected separately from the larger cultural landscapes, which again are connected to Sámi people's knowledge, languages, worldviews, rituals, stories and placenames.

The protection of Sámi people's cultural heritage is directly connected to their rights to lands, biocultural diversity, and holistic health and wellbeing, thus bringing together environmental, social, and cultural aspects. Hence, the Indigenous rights-based approach unites culture and nature, individual and collective, and material and immaterial values and rights.

While the international legal framework is the focus of this report, some examples of national implementation of international legal instruments in Finland, Norway, and Sweden are provided as best practices, as well as current deficiencies, to gain a more coherent picture of the legal situation of Sámi people in the cultural heritage discourse.

2. SÁMI AS AN INDIGENOUS PEOPLE IN A CHANGING ENVIRONMENT

Sámi are the only legally recognised Indigenous people in the European Union. They have inhabited the northern parts of Scandinavia and Finland, as well as the interior of the Kola Peninsula, since long before the borders of these countries were formed¹. The word ‘Sámi’ is derived from ‘Sápmi,’ which is the name of the geographical area where the Sámi traditionally had their settlements. Sápmi is a nation without borders but with a language, history, and culture that is common for the whole area.² Sámi people are one Indigenous people who form an ethnic minority in Norway, Sweden, and Finland, all of which have granted a constitutional legal status for the Sámi people to maintain and develop their language and culture, and related traditional ways of life.³

There is also a small population of Sámi in Russia’s Kola peninsula. In more recent history—that is, from about the sixteenth century—the Sámi have inhabited nearly all the areas of the Nordic countries where they now have permanent settlements. The Sámi region extends from Idre in Dalarna, Sweden, and adjacent areas in Norway south to Engerdal in Hedmark County. To the north and east it stretches to Utsjoki in Finland, Varanger in Norway, and on to the Kola peninsula in Russia.⁴

In Finland, the Sámi Homeland includes the areas of the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the Lapland reindeer-herding cooperative in the municipality of Sodankylä.⁵ The Sámi are in the majority only in the municipality of Utsjoki. In other municipalities in their home region, they belong to a minority. There are around 10,000 Sámi in Finland, of whom about 3,400 live in the homeland. 68% of the Sámi in Finland live outside their homeland.⁶ In Norway, Sámi are concentrated mainly in Finnmark County, where there are some 25,000 out of an estimated 40,000 Norwegian Sámi.⁷ However, there are Sámi communities as far south as Innlandet county in Eastern Norway.⁸ In Sweden, there are around 20,000 Sámi. In the Swedish community, many Sámi live in Swedish Lapland—a vast landscape stretching from Sorsele and Skellefteå in Västerbotten province all the way to the country’s northernmost tip. However, Sámi enclaves also exist further south, in Dalarna county.⁹

1 For a general view, see Kent, N. *The Sámi Peoples of the North: A Social and Cultural History*, Hurst & Company, London (2018); Daher, O., Hannikainen, L., Heikinheimo, K. 2012. Suomen kansalliset vähemmistöt – Kulttuurien ja kielten rikkautta. 2. uudistettu painos. Keuruu. Otavan kirjapaino.

2 See <https://www.swedishlapland.com/stories/sapmi-the-land-of-the-sami/> (checked 3.4.2025).

3 Section 17.3. in Finnish Constitution; Chapter 1 Section 2 in Swedish Constitution (1974:152); Section 108 of the Norwegian Constitution (LOV-1814-05-17).

4 Helander, E. Sami of Norway, http://www.reisenett.no/norway/facts/culture_science/sami.html (checked 3.4.2025).

5 Laki saamelaiskäräjistä 974/1995, § 4 (Sámi Parliament Act of Finland, section 4).

6 Metsähallitus Saamelaiden kotiseutualueen luonnonvarasuunnitelma 2022–2027. Metsähallitus 2022 [Metsähallitus, Natural Resource Plan], https://julkaisut.metsa.fi/assets/pdf/muut/Saamelaiden_kotiseutualueen_LVS_suomi.pdf p.8 (checked 3.4.2025).

7 Helander, E. Sami of Norway, http://www.reisenett.no/norway/facts/culture_science/sami.html (checked 3.4.2025).

8 See <https://www.visitnorway.com/typically-norwegian/sami-people/> (checked 3.4.2025).

9 See <https://visitsweden.com/what-to-do/culture-history-and-art/culture/discover-swedens-traditional-sami-culture-and-way-life/> (checked 3.4.2025).

The Sámi languages are spoken across language borders, and have an especially rich vocabulary when it comes to nature terminology—for example, for weather, snow conditions, and reindeer herding. Although all ten Sámi languages are included in the UNESCO Atlas of the World’s Languages in Danger, there is a growing trend toward revitalization in several of them.¹⁰

Sámi languages lie at the foundation of the Sámi cultural heritage, and through a rich vocabulary especially related to traditional livelihoods, they maintain traditional knowledge, which is an important aspect of Sámi cultural heritage. Traditional Sámi cultural livelihoods include reindeer husbandry, fishing, hunting, the collection of natural products and Sámi handicrafts, and their modern forms of practice. Kinship, culture and its many different facets, belongingness to the land, and community life still constitute the heart of elements defining Sámi identities and societies today, despite environmental, social, and cultural changes.¹¹

The Sámi culture and communities have long lived under the influence of dominant cultures, and the reindeer-herding industry in particular has had to constantly adapt to external changes in land use, such as those brought about by tourism, forestry, mining, gold panning, and energy production such as wind power. The Sámi’s traditional fishing practices has also faced difficulties due to the decline in salmon stocks and the subsequent fishing restrictions. Global warming has a strong impact on traditional Sámi livelihoods and therefore on Sámi culture. Warming is faster in northern than in southern latitudes, and the Sámi culture, which is tied to snow conditions, especially through reindeer herding, is vulnerable to global warming.¹² In Sápmi, rapidly evolving climate change is already having increasingly negative effects on Sámi culture, health, and livelihoods.¹³ Climate change is exacerbating an already challenging situation for the Sámi, adding to the cumulative negative impacts of historical assimilation policies and industrial developments in Sápmi.¹⁴ The former President of the Saami Council, Áslat Holmberg, has stated that “climate change is the greatest threat of our time to the well-being of humans and nature.”¹⁵

10 See <https://www.arcticpeoples.com/sagstallamin-the-saami-languages> (checked 3.4.2025).

11 For a general view, see Heinämäki, L., Valkonen, S., & Valkonen, J. “Legal (non) recognition of Sámi customary relationship with the land in Finland. Challenges so far and prospects in the modern human rights era”, in D. Bunikowski and A. D. Hemmings (eds). *Philosophies of Polar Law*. Routledge (2021), pp. 101–118; Berg-Nordlie, M. “Sámi in the Heart: Kinship, Culture and Community as Foundations for Indigenous Sámi Identity in Norway”. *Ethnopolitics*, 21 (4), 2021:450–472. See also Lehtola, V.-P., *The Sami People: Traditions in Transition*. Fairbanks. University of Alaska Press (2004).

12 Jaakkola, J. J. K., Juntunen, S. & Näkkäläjärvi, K. “The holistic effects of climate change on the culture, well-being, and health of the Saami, the only indigenous people in the European Union.” *Current Environmental Health Reports* 5, 2018, pp. 401–417; Markkula, I., Turunen, M., & Rasmus, S. “A review of climate change impacts on the ecosystem services in the Saami Homeland in Finland.” *Science of the Total Environment* 692, 2019, pp. 1070–1085.

13 Lee, S. E. et al. “Regional effects of climate change on reindeer: A case study of the Muotkatunturi region in Finnish Lapland.” *Polar Research*, 19 (1), 2000, pp. 99–105; Rasmus, S. et al. “Suomen poronhoitoalueen muuttuvat talviset sääolosuhteet” [Changing winter weather conditions in the Finnish reindeer husbandry area]. *Ympäristö ja Terveys*, 25 (3–4), 2014, pp.169–185; Markkula, I. et al. “A review of climate change impacts on the ecosystem services in the Saami Homeland in Finland.” *Science of the Total Environment*, 677, 2019, pp. 1070–1085. Jaakkola et al. (2018), pp. 401–417, see footnote 12.

14 Norwegian National Human Rights Institution. (2021). *Climate and human rights* (Report No. R-2021-001), p.3; Hansen, L. (2025). Sami Rights in Finland’s Climate Act: Implementing a Human-Rights-Based Approach. *Journal of Northern Studies*, 17 (1), 59–76.

15 Saami Council. *Climate Change in Sápmi: The Saami Council’s Climate Change Status Report*. 2023, p. 10.

The rights of Sámi people, as is the case for many other Arctic Indigenous peoples, are threatened both by the effects of climate change and by resource and energy developments aimed at addressing climate change. This double burden places the Sámi people in a unique and specific vulnerable situation.¹⁶ In many places, Sámi have expressed serious concern about developments taking place in Sápmi that are aimed to secure what is referred to as a “green” or “just” transition, which refers to developments that include measures such as increased mining for raw materials, increased energy production through wind power plants and hydropower, and bioenergy increases from forestry; all these developments can have negative impacts on Sámi culture and livelihoods.¹⁷ The EU’s new Critical Raw Materials Act (CRMA), which entered into force in 2024 and aims to increase mining production,¹⁸ has caused widespread concern and criticism due to the inadequate recording of the rights of Indigenous peoples.¹⁹ According to the Saami Council, the EU promotes human rights violations through mineral mining.²⁰

Sámi have also used the term “green colonialism” to criticise hegemonic climate change policies, as the current climate and ecological crisis is a result of colonization of and capitalist expansion in Indigenous peoples’ traditional lands.²¹ In the Declaration from the 6th Conference of Sámi Parliamentarians in May 2022, Sámi parliamentarians emphasised that, in terms of designing climate action globally and in the Arctic, the green transition must neither violate the Sámi right to self-determination nor prevent Indigenous peoples exercising their traditional economies and land uses.²²

A new threat to Sámi people is militarization and the new NATO memberships of Finland and Sweden. According to the report prepared by Laura Junka-Aikio for the Sámi Truth and Reconciliation Commission, Finland’s NATO membership has significantly increased the presence of the Defence Forces and thus the impact on Sámi reindeer herding.²³ The effects of disturbances and noise caused by military exercises on reindeer and reindeer husbandry always depend on the whole: the season; natural conditions; the condition of the reindeer; the location of the reindeer; the condition of the pastures; how accustomed the reindeer are to disturbances; and which grazing area is affected by the disturbances and at what time. It is therefore important that troop movements are always agreed on a case-by-case basis well in advance with reindeer herders, and that the Defence Forces also take the wishes of the reindeer herders into account when planning exercises.²⁴

16 Norwegian National Human Rights Institution (2021), p. 8, see footnote 14.

17 Saami Council (2023), p. 63. See footnote 15.

18 Critical Raw Materials Act (CRMA), 2024/1252.3.5.2024. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401252 (checked 12.11.2025).

19 Ranta, K., “Väistämisaalueita ei enää ole” – uudet teolliset maankäyttöpaineet saamelaisen kotiseutualueella”. Valtioneuvoston julkaisuja 2025:70. Valtioneuvoston kanslia, p. 25.

20 Saami Council 28.3.2025; Saami Council President Per Olof Nutti 23.4.2025. See, Ranta, K. (2025), p. 27.

21 Fjellheim, A. M. N. (2022). “Green colonialism, wind energy and climate justice in Sápmi.” *The International Journal of Human Rights*, 26 (7), 1184–1200.

22 Conference of Sámi Parliamentarians, “Declaration from the Sixth Conference of Sámi Parliamentarians in Aanaar,” 2022.

23 Junka-Aikio, L. “Effects of the militarisation of Sápmi on the culture, livelihoods and rights of the Sámi indigenous people in Finland.” A separate report for the Sámi Truth and Reconciliation Commission. Government Publications 2025:84.

24 Junka Aikio (2025), p. 86 (ibid), sourced from Tiina Sanila-Aikio’s Teams interview on 17.1.2025.

3. EVOLVING CONCEPT OF CULTURAL HERITAGE

The grounds of cultural heritage as a concept lie in the concept of culture, which is generally understood as the sum of a society's spiritual and material outputs.²⁵ However, heritage generally refers to something inherited from the past, whereas culture is often viewed as the manifestation of the past in the present, which is constantly changing and recreating itself. Cultural heritage has largely been viewed as the legacy of tangible and intangible pieces of a given culture inherited from the past and considered worth protecting and passing on to the next generations.²⁶ Although cultural heritage has traditionally been viewed as a somewhat separate concept from the culture, indicating cultural remains with special, often even outstanding, universal value, worth safeguarding for the benefit of all, this dualistic division has at least largely faded, especially with the recognition of intangible cultural heritage and its interlinkages to the human rights framework, as will be discussed later.

At the practical level, the traditional concept of cultural heritage and its legal framework, with its dualistic divisions between natural and cultural heritage, has been problematic especially from Indigenous peoples' perspective, as has the challenging question of who does and does not get to decide which parts of the culture can be viewed as a heritage worth protecting, for whom, and on whose terms. Whereas cultural heritage is generally viewed as having a universal value for humanity and is defined by nation-states, Indigenous peoples have slowly moved from being marginalised voices toward a more vocal demand. This has been done with the aid of the evolving human rights law framework, especially Indigenous peoples' right to self-determination of their own cultural heritage, including its definition, usage, and the right to pass it on to future generations.

To understand the historical development of the original, somewhat artificial division between the concepts of culture and cultural heritage and related different legal frameworks on cultural heritage law and human rights law, one must understand the context of cultural heritage preservation. The protection of cultural heritage at the international level started with a discourse on the loss of cultural memory in connection with the colonial era, and continued with a discussion concerning the outcomes of the massive destruction of historical monuments in the major wars of specially the twentieth centuries.²⁷ The tasks of recognising and protecting cultural heritage have traditionally been entrusted mainly to UNESCO, a special agency of the United Nations (UN) that aims to promote cooperation in the educational, scientific, and cultural fields.²⁸

25 Rosaldo, R. "Ideology, Place, and People without Culture." *Cultural Anthropology*, 3 (1), (1988) pp. 77–87.

26 Konsa, K. "Heritage as a Socio-Cultural Construct: Problems of Definition, *Baltic Journal of Art History*, 6 (2013), pp. 125–151.

27 Sikora, K. "The right to cultural heritage in international law, with special reference to Indigenous Peoples' rights." *Santander Art & Culture Law Review*, 2/2021 (7), pp. 149–172;

Kono, T. (ed). *The Impact of Uniform Laws on the Protection of Cultural Heritage and the Preservation of Cultural Heritage in the 21st Century*; Martinus Nijhoff Publishers, Leiden 2010.

28 Constitution of the United Nations Educational, Scientific and Cultural Organization, November 16, 1945, 4 UNTS 275 ("UNESCO Constitution").

However, the concept of cultural heritage has evolved considerably in recent decades. Whereas cultural heritage mainly referred to monumental cultural remains in the past, it is increasingly considered today to include the multiple aspects of intangible cultural heritage as well.²⁹ For example, as Knuutila points out, the concept of cultural heritage has first expanded from the earlier use of historical monuments and sites to include built historical environments, works of art, and other objects, and later to include cultural landscapes and intangible cultural heritage.³⁰

According to the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972),³¹ cultural heritage consists of “monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.”³²

According to the Convention, natural heritage consists of “natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.”³³

According to the UNESCO Convention on Intangible Cultural Heritage (2003), “intangible cultural heritage” means “the practices, representations, expressions knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and

29 UN Human Rights Council, Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage Study by the Expert Mechanism on the Rights of Indigenous Peoples, August 19, 2015, A/HRC/30/53, p. 3.

30 Knuutila, S. “Kulttuuriperintö, arvot ja identiteetti” “Kulttuuriperintö, arvot ja identiteetti” [Cultural heritage, values and identity], in P. Venäläinen (ed.). *Kulttuuriperintö ja oppiminen*. Suomen Museoliiton julkaisuja 58. Gummerus Kirjapaino Oy, Jyväskylä, 2008, pp. 12–19, 12.

31 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, signed on November 16, 1972, <https://whc.unesco.org/en/conventiontext/> (checked April 12, 2024).

32 Article 1.

33 Article 2.

continuity, thus promoting respect for cultural diversity and human creativity.”³⁴ The intangible cultural heritage “is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship.”³⁵

In the Convention, “safeguarding” means “measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.”³⁶

It is nowadays a commonplace to define cultural heritage as tangible and intangible cultural expressions and traditions which groups transmit from one generation to the next. Intangible and tangible cultural heritage are seen as the embodiment and transmission of values. It has been said that cultural heritage is a value in itself; it is not solely the objects or customs that are important to people, but the values they represent and embody. Values and meanings are embedded in objects, customs, and natural objects, from which they are transmitted to future generations.³⁷ The aim of protecting cultural heritage is to safeguard and preserve these values and meanings, and to ensure that they are passed on to future generations.³⁸

The Council of Europe Framework Convention on the Value of Cultural Heritage to Society (Faro Convention, 2005)³⁹ defines cultural heritage as “a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time.”⁴⁰ According to the Convention, “a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations.”⁴¹

The Faro Convention blurs the distinction between the concept of cultural heritage and culture by explicitly stating that the rights related to cultural heritage are an integral part of

34 Article 2.1.

35 Article 2.2.

36 Article 2.3.

37 Peterzens, T., *The Protection of Cultural Objects: The Return of Illegal Cultural Objects as an International Problem*. University of Helsinki, Unigrafia Oy, Helsinki, 2018, p. 58;

See also Forrest, C., *International Law and the Protection of Cultural Heritage*. Routledge, 2011, pp. 3–4; Vilkuina, J., “Interfaces and Definitions of Tangible and Intangible Cultural Heritage”, in A. and R. Mitchell (eds), *Living Intangible Cultural Heritage*. Cupore, 2015, pp. 113–125, 114.

38 Peterzens (2018), p. 58, *ibid*.

39 See <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=199> (checked 13.4.2024).

40 Article 2.

41 *Ibid*.

the right to participate in cultural life as defined in the Universal Declaration of Human Rights.⁴² Noting that no list is exhaustive, the UN Special Rapporteur in the field of cultural rights has defined cultural heritage as “tangible heritage (e.g. sites, structures and remains of archaeological, historical, religious, cultural or aesthetic value), intangible heritage (e.g. traditions, customs and practices, aesthetic and spiritual beliefs; vernacular or other languages; artistic expressions, folklore) and natural heritage (e.g. protected natural reserves; other protected biologically diverse areas; historic parks and gardens and cultural landscapes).”⁴³ The rapporteur adds that cultural heritage should be understood as resources enabling the cultural identification and development processes of individuals and communities which they implicitly or explicitly wish to transmit to future generations.⁴⁴

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression (2005)⁴⁵ continues building bridges between the protection of cultural heritage and human rights by declaring that “[c]ultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.”⁴⁶

The UNESCO Cultural Expression Convention defines “cultural expressions” as “those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.”⁴⁷ “Cultural content” refers to the symbolic meaning, artistic dimension, and cultural values that originate from or express cultural identities.⁴⁸ “Cultural activities, goods and services” refers to “those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services.”⁴⁹ “Cultural industries” refers to “industries producing and distributing related cultural goods or services.”⁵⁰ WIPO’s definition, which emphasises the significance of traditional cultural expressions as an expression of collective identity and the related

42 Article 1.

43 A/HRC/17/38 and Corr. 1, para. 4.

44 Ibid., para. 6.

45 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression, signed 20 October 2005.

<https://www.unesco.org/en/legal-affairs/convention-protection-and-promotion-diversity-cultural-expressions> (checked 14.4.2024).

46 Article 2.1.

47 Article 4.3.

48 Article 4.2.

49 Article 4.4.

50 Article 4.5.

creative process as long-term development over many generations, can be considered a key element in international dialogue on intellectual property.⁵¹

Despite the evolution of international cultural heritage law over the years, it is argued that its prevailing discourse still strives to set heritage within universal, clear, and cognitive structures. Such structures provide a common approach to the uniform conservation of heritage, focusing predominantly on its tangible aspects, substantially narrowing the understanding of heritage.⁵² As mentioned, the dualistic view of cultural heritage and the division into tangible and intangible heritage, as developed in heritage law and theory, may not necessarily reflect the views of certain groups such as Indigenous peoples who understand heritage holistically.⁵³ Moreover, the current literature has criticised the notion that some sites and monuments are more valuable than others due to their “universal” significance. This has given rise to tension between “universal heritage” and “heritage of local and/or Indigenous significance,” the latter of which can be challenged by grass-roots initiatives, leading to conflicts between local communities and officials.⁵⁴

However, it should be seen that the concept of cultural heritage is evolving and living, shaping the legal structures that are somewhat slow to respond to rapid changes, thus trailing behind the commonly accepted renewed articulations. However, as will be discussed later, Indigenous peoples have and continue to act as subjects of change in the field of cultural heritage legal framework, promoting a more holistic legal framework, which helps unite culture and nature, and individual, collective, and material and immaterial values and rights. Indeed, since as early as the 1970s, heritage theory has been gradually and persistently influenced by Indigenous peoples’ ontologies and the emerging Indigenous peoples’ rights movement.⁵⁵ This has had a profound impact on a gradual adoption of a new approach to heritage not as something frozen in the past but as an uninterrupted process that undergoes constant (re)creation each time it is enjoyed,⁵⁶ thus blurring the somewhat artificial distinction between the concepts of cultural heritage and culture. Instead of viewing single historical monuments in isolation, a new approach

51 According to WIPO’s definition, TCEs can cover an enormous variety of customs, traditions, forms of artistic expression, knowledge, beliefs, products, processes which express a traditional culture that form part of the Indigenous group’s or traditional community’s identity and tradition, and which are passed on from one generation to the next. See, Mattila, T. “Saamelaiisten tarpeet henkisen omaisuuden suojaan tekijänoikeussuojan ja tavaramerkkisuojan näkökulmasta -erityisesti duodji-käsitön ja saamenpuvun osalta.” Opetus- ja kulttuuriministeriön julkaisu, 2018:39, p. 14.

52 Bortolotto, C. “UNESCO and Heritage Self-Determination: Negotiating Meaning in the Intergovernmental Committee for the Safeguarding of the ICH”, in N. Adell et al. (eds), *Between Imagined Communities of Practice: Participation, Territory and the Making of Heritage*. Göttingen University Press, Göttingen, 2015. See Sikora, K. “The Right to Cultural Heritage in International Law, with Special Reference to Indigenous Peoples’ Rights.” *Santander Art and Culture Law Review*, 2 (7), 2021, pp. 149–172, 154.

53 Lenzerini, F. “Reparations for Wrongs against Indigenous Peoples Cultural Heritage” in A. Xanthaki et al. (eds), *Indigenous Peoples’ Cultural Heritage: Rights, Debates, Challenges*, Brill, Leiden 2017, pp. 327–346.

54 Taruvinga, P. & Ndoro, W. “The Vandalism of the Domboshava Rock Painting Site, Zimbabwe: Some Reflections on Approaches to Heritage Management.” *Conservation and Management of Archaeological Sites*, 2003, 6 (1), pp. 3–10. See Sikora, K. “The Right to Cultural Heritage in International Law, with Special Reference to Indigenous Peoples’ Rights.” *Santander Art and Culture Law Review*, 2021, 2 (7), pp.149–172, 136.

55 Francioni, F. & Lixinski, L. “Opening the Toolbox of International Human Rights Law in the Safeguarding of Cultural Heritage”, in A. Durbach, L. Lixinski (eds), *Heritage, Culture and Rights: Challenging Legal Discourses*. Hart Publishing, Oxford, 2017; see Sikora, K. (2021), p. 137, *ibid*.

56 For a general discussion, see Smith, L. *Uses of Heritage*. Routledge, London, 2006.

has emerged, interrelating them with people and cultural groups from a multidimensional perspective, with tangible and intangible cultural heritage.⁵⁷

3.1. Indigenous Peoples' vis-à-vis Sámi Cultural heritage: Holistic and Intergenerational Approach

From Indigenous peoples' perspective, the distinction between tangible and intangible heritage is artificial, as both aspects are intertwined: Material heritage often encompasses a range of intangible meanings such as stories and knowledge articulating ontologies and values. Certain aspects of Indigenous peoples' heritage may also be co-produced with non-human agencies.⁵⁸ For example, in Sámi culture, as described by Anne-Maria Magga, an important tenet of reindeer herders' success, "boazolihkku", reindeer luck, is considered to depend on "listening" to the reindeer's opinions.⁵⁹ Extensive relationships, often described as kinships, with entire ecosystems, do not separate culture from nature.⁶⁰ In Indigenous peoples' relational ontologies and epistemologies, humans and their social worlds are indivisible from the environment. Animals, plants, land, air, and water are seen as relational entities, which exist through their inter-connectedness and inter-substantiation.⁶¹ Indigenous peoples' legal and political orders and governance systems involve other life forms as agents.⁶²

From this perspective, Indigenous peoples' ontologies may confront anthropocentrism vis-à-vis their approach to humans as superior to nature.⁶³ Additionally, heritage understood as a process can no longer be placed within a framework of a linear concept of time but must instead be perceived as a self-repeating cycle,⁶⁴ aligning with Indigenous peoples' perceptions and cosmologies. The recognition of the constant creation of cultural heritage allows Indigenous communities to sustain their cultural continuity, which determines their communities' survival as distinct peoples.⁶⁵ In multiple legal frameworks, including the rights of the nature and the rights of future generations, Indigenous peoples have played a role in a paradigm shift to a holistic, intergenerational, and even interspecies approach to

57 See World Heritage Committee, Expert Meeting on the "Global Strategy" and Thematic Studies for a Representative World Heritage List, October 13, 1994, UN Doc. WHC-94/CONF.003/INF.6, p. 3.

58 Harrison, R., Rose, D. "Intangible Heritage" in T. Benton (ed). *Understanding Heritage and Memory*. Manchester University Press, Manchester, 2010; Virtanen, P. K.

"Ancestors' Times and Protection of Amazonian Indigenous Biocultural Heritage". *AlterNative: An International Journal of Indigenous Peoples*, 2019, 15 (4), pp. 330–339; see, Sikora, K. (2021), p. 155, see footnote 54.

59 See Magga, A-M., *Siidan lait. Saamelaisen poronhoidon oikeusperiaatteet ja -teoria*. Vastapaino, 2024.

60 Harrison, R. "Beyond 'Natural' and 'Cultural'" Heritage: Toward an Ontological Politics of Heritage in the Age of Anthropocene". *Heritage & Society*, 2015, 8 (1), pp. 24–42; See, Sikora, K. (2021), p. 155, see footnote 54.

61 Valkonen, S. "Multiple Worlds of Sámi Research," in R. Heikka, H. Kotka, K. Komu, P. Seppälä, L. Vartiainen, & A. Alakotila (eds). *Knowledge, Action, Power: The Finnish Academy of Science and Letters in the World*. 2022. Finnish Academy of Science and Letters, pp. 132-151.

62 Virtanen, P. K. "The Sámi Parliament as a Political Institution: A Tool for Self-Determination or a State Authority?" *Arctic Review on Law and Politics*, (2022), 13, pp. 61–79.

63 Ibid.

64 Virtanen P. K. "Ancestors' Times and Protection of Amazonian Indigenous Biocultural Heritage." *AlterNative: An International Journal of Indigenous Peoples* (2019), 15 (4).

65 Sikora, K. "The Right to Cultural Heritage in International Law, with Special Reference to Indigenous Peoples' Rights." *Santander Art and Culture Law Review* (2021) 2 (7), pp. 149–172,155.

cultural heritage. An Indigenous rights-based approach to cultural heritage is a key to further fostering a wholesome and coherent view of heritage, which enables sufficient protection of Indigenous peoples' cultures and way of life.

Indigenous peoples' view of cultural heritage is also practical and directly connected with traditional lands and waters and related cultural activities. As the Sámi Parliament of Sweden states, "biodiversity and healthy ecosystems are crucial to our livelihoods, health and culture. Nature is fundamental to our livelihoods, culture and languages; to our environment, kinship, intergenerational transmission of our knowledge, well-being, food systems and spirituality."⁶⁶ The Sámi Parliament continues by explaining how loss of biodiversity directly affects Sámi livelihoods, food security, and culture and related rights.⁶⁷ Hence, the protection of Indigenous peoples' cultural heritage is directly linked with their rights to lands, biocultural diversity, and holistic health and wellbeing.⁶⁸ The wellbeing of nature and species interlink with the wellbeing of humans. The foundational principle of Sámi reindeer herding is that when reindeer do well, so do humans.⁶⁹

From this perspective, Indigenous peoples' right to cultural heritage necessarily comprises their right to traditional livelihoods as cultural and social practices. Hence, the concept of Indigenous peoples' cultural heritage is very much in line and synonymous with the concept of culture. When discussing Indigenous peoples' rights, the concepts of cultural heritage and culture are often used in parallel to refer to the same elements.⁷⁰ On the one hand, cultural heritage is sometimes seen as part of culture or as a sub-concept; on the other, for example, Indigenous peoples' traditional livelihoods, which are recognised as the core of their culture, may be seen as cultural and social practices, and thus a part of intangible cultural heritage.

In the case of Indigenous peoples, an important starting point has therefore been to allow them to define their cultural heritage themselves. Tuomas Mattila reminds us that we should remember that concepts always have an impact in their given context, and whatever is meant by "cultural heritage" or traditional cultural expressions depends on the purpose for which the definition was created in the first place.⁷¹ When defining the traditional cultural expressions that belong to Sámi culture, we must therefore give weight to how the concept is understood by the Sámi community.⁷²

66 Submission from the Sámi Parliament in Sweden to the report of the Special Rapporteur on Human Rights and Environment on Healthy Ecosystems and Human Rights Sustaining the Foundations of Life, 29 May 2020, dnr. 1.6.3-2020-816.

67 Ibid.

68 For a general account, see D. Short, C. Lennox (eds). *Handbook of Indigenous Peoples' Rights*, Routledge, London, 2018.

69 See Magga, A-M. *Siidan lait. Saamelaisen poronhoidon oikeusperiaatteet ja -teoriat*. Vastapaino, 2024.

70 See Xanthaki, A. "International Instruments on Cultural Heritage: Tales of Fragmentation", in A. Xanthaki, S. Valkonen, L. Heinämäki, & P. Nuorgam (eds), *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*. Brill/Nijhoff, Leiden/Boston, 2017, pp. 1–19, 2.

71 Mattila, T. "Saamelaisten tarpeet henkisen omaisuuden suojaan tekijänoikeussuojan ja tavaramerkkisuojan näkökulmasta -erityisesti duodji-käsityön ja saamenpuvun osalta." *Opetus- ja kulttuuriministeriön julkaisuja* 2018:39, p. 14; WIPO Intellectual Property Handbook, 2004, 2nd Edition, p. 58.

72 Ibid.

The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) states in its report on the cultural heritage of Indigenous peoples that Indigenous peoples' cultural heritage includes tangible and intangible manifestations of their ways of life, worldviews, achievements, and creativity, and should be considered an expression of their self-determination and their spiritual and physical relationships with their lands, territories, and resources. EMRIP notes that while the notion of heritage broadly encompasses traditional practices, including language, art, music, dance, song, stories, sport and traditional games, sacred sites, and ancestral human remains, the preservation of Indigenous peoples' heritage is deeply embedded and linked to the protection of their traditional territories.⁷³

EMRIP emphasises that Indigenous peoples' cultural heritage is a holistic and intergenerational concept based on common material and spiritual values influenced by the environment. It also includes biocultural heritage and traditional food production systems such as rotational farming, pastoralism, artisanal fisheries and other forms of access to natural sources.⁷⁴ EMRIP's report reminds that it is important to acknowledge that the traditional categorisation of heritage as "tangible", "intangible", and "natural" demonstrates its limitations: tangible heritage carries out meanings, while intangible heritage is often embodied in specific objects. According to EMRIP, this categorisation is particularly inappropriate in the case of Indigenous peoples. It is therefore important to adopt a holistic approach to cultural heritage and acknowledge that the rigid legal cultural heritage protection regime may be problematic for Indigenous peoples.⁷⁵

As mentioned, Indigenous peoples' traditional culture appears in both tangible and intangible forms that cannot be separated. For example, the materials for traditional Sámi *duodji* originate mostly in nature, and the handicrafts' patterns, symbols, designs, and forms and how they are made reflect the Sámi's intangible cultural heritage. However, at the same time, other forms of cultural heritage such as reindeer husbandry and the diversity of the natural environment – biocultural richness – directly affect what types and amounts of materials are available for use in the making of traditional handicrafts.⁷⁶

As noted, it is not meaningful to separate the concepts of culture and cultural heritage. Traditions often refer to those customs and beliefs that are passed down from one generation to the next. According to Elina Helander-Renvall and Inkeri Markkula, Sámi traditions include the Sámi language, traditional occupations, the relationship with the land, worldview, and cultural expressions such as songs, stories, myths, and symbols. Sámi

⁷³ UN Human Rights Council, Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, Study by the Expert Mechanism on the Rights of Indigenous Peoples, 19 August 2015, A/HRC/30/53, p. 4.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ See, Mattila (2018), p. 13, see footnote 71.

traditions consist of practices, understandings, characteristics, and features that remain important for the survival of the Sámi as a people.⁷⁷

Yet in Indigenous peoples' context, it has been stressed that both culture and traditions live in time and cannot be locked into a particular historical manifestation. What constitutes "tradition" to people is everchanging. Culture is not static and cannot be "frozen" in expressions associated with a particular period.⁷⁸ The UN Human Rights Committee (HRC) has confirmed this in case practice, stating that Article 27 of the ICCPR protects culture even when traditional cultural practices are carried out through modern means such as technology.⁷⁹

Helander-Renvall and Markkula also state that tradition is by its nature both continuous and adaptive and transformative. For example, the above scholars cite words in the Sámi language that are thousands of years old, originally related to the hunting of wild reindeer, but now used in the sense of reindeer husbandry.⁸⁰ To protect and guarantee the continuity of the culture, traditions are reinterpreted and recreated, and can become disarticulated and kept secret for the same reason. A tradition is thus an adaptive and selective process of continuity and transformation.⁸¹ Hence, recognition of the constant creation of and transformative nature of heritage allows Indigenous communities to sustain their cultural continuity, which determines the survival of Indigenous communities as distinct peoples, enjoying a specific legal status in both international and domestic legal systems.⁸²

An important aspect of the right to cultural heritage of Indigenous peoples is their right to transmit their cultural heritage to future generations. A UN document co-prepared by the Saami Council highlights both the traditional context and intergenerational character of the development, preservation, and transmission of Indigenous peoples' cultural heritage, as well as its relationship with an Indigenous people's cultural and social identity and integrity, beliefs, spirituality and values, and constantly evolving character within the people.⁸³ The document maintains that "cultural heritage, transmitted from generation to generation, is constantly recreated by indigenous peoples in response to changes in their environment and their interaction with nature and their history, and provides them with a sense of identity and continuity".⁸⁴

77 Helander-Renvall, E. and Markkula, I. "On Transfer of Sámi Traditional Knowledge: Scientification, Traditionalization, Secrecy, and Equality", in A. Xanthaki, S.

Valkonen, L. Heinämäki & P. Nuorgam (eds), *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*. Brill/Nijhoff, Leiden/Boston 2017, pp. 104-129, 122.

78 Hynes, D. "Folklore's Nature and the Sun's Myth." *Journal of American Folklore* 88, 1975, pp. 345-69; Trask, H. K. 1991. "Natives and Anthropologists: The Colonial Struggle." *The Contemporary Pacific* 3(1): 159-167.

79 Human Rights Committee, Communication No. 511/1992, Länsman et al. v. Finland, views adopted on 26 October 1994, para. 9.3.

80 Helander-Renvall, E. and Markkula, I. 2017. "Traditional Sámi Knowledge on Climate Change in the Reindeer Husbandry Area of Finland." *Fennia – International Journal of Geography*, 195(1): 115-128, 122.

81 Ibid.

82 See Sikora, K. (2021) "The Right to Cultural Heritage in International Law, with Special Reference to Indigenous Peoples' Rights." *Santander Art and Culture Law Review*, 2(7): 149-172, 155.

83 E/CN.4/Sub.2/AC.4/2005/3 21 June 2005, p. 5, item j.

84 Ibid, p. 7.

The document reminds us that substantial parts of Indigenous peoples' cultural heritage, and in particular their knowledge systems, are contained in or dependent on the continued existence of their mother tongue. The continued existence of Indigenous peoples' languages is therefore a prerequisite for Indigenous peoples' ability to transmit their cultural heritage to future generations. Protection for Indigenous peoples' cultural heritage must therefore recognise the intrinsic link between Indigenous peoples' cultural heritage and their languages.⁸⁵

Jelena Porsanger and Pirjo Kristiina Virtanen point out that there is no consensus on the concept of Indigenous peoples' cultural heritage, even among Indigenous peoples. The whole concept of cultural heritage may be a relatively new concept for Indigenous communities.⁸⁶ Klemetti Näkkäljärvi notes that the Sámi language itself has not had traditional terms for cultural heritage, cultural expressions, or traditional knowledge because there has been no need for such terms. The need for a definition has arisen from the concepts and protection created by international agreements.⁸⁷

The Sámi language word *kulturárbi*, meaning cultural heritage, is a modern term borrowed from the majority language (i.e. the Norwegian term *kulturarv*).⁸⁸ *Árbi* means heritage. It is the very idea of cultural heritage being passed on from one generation to the next: the link between past, present, and future. *Árbi* also means inheritance, property, or similar legal entitlement based on having inherited it from someone. The concept comes close to the concept of cultural property, which has often been considered ill-suited to be applied in Indigenous peoples' holistic, collective, and interactive relationship with nature.⁸⁹

Elina Helander (now Helander-Renvall) emphasises that according to the traditional Sámi worldview, the human is part of nature and cannot be placed above it, but the relationship is equal and requires negotiation, compromise, and respect.⁹⁰ The Sámi Parliament of Sweden states in its "Eallinbiras" (Environment programme) that Sámi are part of the Sápmi landscape, and the Sámi way of life requires a diversity of detailed knowledge and open-mindedness, and that both individuals and the community take independent responsibility.⁹¹ In "Eallinbiras", the Sámi Parliament identify key aspects as their vision – for example,

⁸⁵ Ibid., pp. 7–8.

⁸⁶ Porsanger, J. and Virtanen, P. "Introduction – a Holistic Approach to Indigenous Peoples' Cultural Heritage." *Alternative* 2019, Vol 15/4: 289-298, 291.

⁸⁷ Näkkäljärvi, K. "Saamelaisen perinteinen tieto muuttuvassa ilmastossa ja globaalissa maailmassa", in A. Kivilaakso and L. Marsio (ed). *Elossa, Luonto ja elävä kulttuuriperintö*. Museovirasto, Helsinki, 2017, pp. 91–106, 92.

⁸⁸ Porsanger and Virtanen (2019), p. 291, see footnote 86.

⁸⁹ For a general view, see Tsosie, R., "Cultural Challenges to Biotechnology: Native American Genetic Resources and the Concept of Harm." *Journal of Law, Medicine & Ethics* (Fall 2007): 396–411, 397–398; Coombie, R. J., "The Expanding Purview of Cultural Properties and their Politics." *Annual Review of Law and Social Sciences* (2009): 2: 293–412.

⁹⁰ Helander, E., "Saamelainen maailmankuva ja luontosuhde", in I. Seurujärvi-Kari (ed). *Beaivvi mánát. Saamelaisen juuret ja nykyaika*. Tietolipas 164, Suomalaisen Kirjallisuuden Seura, Helsinki, 2000, pp. 171–182, 171–173; Helander-Renvall, E. "Saamelainen tapaoikeus", in P. Magga and E. Ojanlatva (eds). *Ealli Biras, Saamelainen kulttuuriympäristöohjelma*. Inari, Sámi Museum – Saamelaismuseosäätiö, 2013, pp. 132–134. See also Valkonen, S., Valkonen, J., and Lehtola, V. P. "An Ontological Politics of and for the Sámi Cultural Heritage – Reflections on Belonging to the Sámi Community and the Land", in A. Xanthaki et al. (eds). *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*. Brill/Nijhoff, Leiden/Boston 2017, pp. 149–174, 165.

⁹¹ Sametinget (Sámi Parliament). *Eallinbiras, Living environment*, English version, 2021, p. 4. <https://www.sametinget.se/9008> (checked 20.11.2024).

“Ealli eallinbiras juohkeaktii – Nature as a vital habitat and living environment. Where what we take from nature is balanced with what it can give”, as well as “Dássálas ovdanahttin – Balanced development. Where we lead a sustainable lifestyle and high quality of life without causing negative impacts on nature and environment”.⁹² The Sámi Parliament of Finland points out that a protective, caring relationship with the land, the provider, has been the basis of all rules, regulations, laws, practices, and actions concerning the Sámi community.⁹³

It can generally be said that Sámi cultural heritage consists of physical artefacts and places, spiritual expressions, languages, worldviews, traditions, practices, knowledge, and skills. These different components are often interlinked, and tangible and intangible aspects cannot be completely separated.⁹⁴ Eivind Falk and Dag Feldborg give examples of Sámi cultural heritage, including artistic expressions, material and value-based aspects of daily life, lifestyles, livelihoods, the relationship with the environment, the value system, beliefs and religion, language, traditional knowledge, and customs.⁹⁵ According to Jelena Porsanger, Sámi heritage and customs refer to how people do certain things, which involve certain values (*vierru*), which are confirmed and verified by the *árbi* (heritage). The Sámi understanding of heritage includes norms and values, traditional thought forms, action, and behaviour and values criteria related to good/evil, right/wrong, beautiful/rude, useful/useless, and ethical questions about what is and is not acceptable, for example. Customs, innovations, wisdom, knowledge, value, heritage, and continuity are inseparable in the Sámis’ understanding of their heritage.⁹⁶

Despite culture and cultural heritage being overlapping interrelated concepts, cultural heritage has sometimes been viewed as a subcategory in Indigenous peoples’ culture. The Sámi Parliament of Finland defines Sámi culture as the Sámi language, the Sámi cultural heritage, cultural expressions, Sámi art, traditional Sámi knowledge, traditional Sámi customs and their modern forms of practice, and other customs and forms of culture practised by the Sámi as an Indigenous people.⁹⁷ Elsewhere, the Sámi Parliament states that tangible and intangible cultural heritage such as the tradition of stories, traditional knowledge, traditional livelihoods, and cultural practices are part of Sámi culture. According to the Sámi Parliament, in Sámi culture, traditional cultural expressions include *yoik* music, Sámi handicrafts, Sámi art, narrative traditions and myths, literature, Sámi placenames,

92 Ibid.

93 Saamelaiskäräjien kestävä kehityksen ohjelma 2006 [Sámi Parliament of Finland, Sustainable Development Programme], p. 9.

94 Mattila, T., Jaakonaho, P., Meidän pohjoisen alueen alkuperäiskansojen kulttuuria koskevat aineettomat oikeudet, Saamelaisalueen koulutuskeskus, 2022, p. 17, <https://www.sogsakk.fi/loader.aspx?id=22b040b0-a304-4d52-81f7-15fef2b48494>. (checked 20.04.2024).

95 Falk, E., & Feldborg, D. (ed.), *Leve kulturarven!* [Livingcultural heritage]. Trondheim: Museumsforlaget, 2013, p. 18. See Porsanger, J., & Virtanen, P., “Introduction – a Holistic Approach to Indigenous Peoples’ Cultural Heritage”, *Alternative*, 2019, Vol 15/4: 289–298, p. 291.

96 Porsanger, J., “The problematisation of the dichotomy of modernity and tradition in indigenous and Sámi contexts”, in J. Porsanger & G. Guttorm (eds), Working with traditional knowledge: Communities, institutions, information systems, law and ethics. Kautokeino: Sami University, pp. 225–252. See Porsanger and Virtanen, (2019), p. 291, *ibid.*

97 Sámediggi, Saamelaiskäräjät: Kulttuurisesti vastuullinen saamelaismatkailu, <https://samediggi.fi/vastuualueet/elinkeinoit-oikeus-ja-ymparisto/vastuullinen-ja-eettisesti-kestava-saamelaismatkailu/> (checked 20.4.2024).

and Sámi building traditions. In addition, sacrifice to the Sámi Sacred Sites (*Sieidi*) is a cultural expression of Sámi antiquity. More recent cultural expressions include modern Sámi music, theatre, and film art.⁹⁸

3.2. Indigenous Cultural/Intellectual Property as Cultural Heritage

Intellectual property (IP) refers to creations of the mind, such as inventions, literary and artistic works, designs and symbols, and names and images used in commerce. For example, IP is protected by patents, copyright, and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. Under the conventional IP system, Indigenous peoples' traditional knowledge and traditional cultural expressions are generally regarded as being in the public domain and therefore ineligible for IP protection. However, both traditional knowledge and traditional cultural expressions of Indigenous peoples from the perspective of people outside communities ("third parties") constitute a rich, affordable, and in many cases easily accessible source of inspiration and innovation, or even a template for reproduction. Indigenous peoples and local communities, as well as governments, mainly in developing countries, have therefore demanded IP protection for traditional forms of creativity and innovation, thereby rejecting a public domain status for traditional knowledge and cultural expressions.⁹⁹

A UN document co-created by the Saami Council states that the principle of free, prior, and informed consent (FPIC) also applies to elements of Indigenous peoples' cultural heritage that are already readily available to the general public (that is, already in the public domain). As a general rule, therefore, the use of elements of Indigenous peoples' heritage that conventional intellectual property laws regard as being in the public domain that had been placed there without the FPIC of the relevant Indigenous peoples or individuals should be discontinued if FPIC for their continued use cannot be obtained.¹⁰⁰

Legal protection of IP, which is discussed later in this report, refers to the use of IP laws, values, and principles to prevent unauthorised or inappropriate uses by third parties of traditional knowledge and traditional cultural expressions, including those of Indigenous peoples. The objective of IP protection is to ensure that the intellectual innovation and creativity embodied in traditional knowledge or traditional cultural expressions are not wrongly used.¹⁰¹

⁹⁸ See <https://samediggi.fi/vastuualueet/kulttuuri/tutkimuseettinen-menettelyohje/> (checked 20.4.2024).

⁹⁹ Johnsson, Z.D & Tualima, H.-Y. "Cultural Heritage, Traditional Knowledge and Intellectual Property", in A. Xanthaki et al. (ed.), *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*. Brill/Nijhoff, Leiden/Boston 2017, pp. 218–228, 219.

¹⁰⁰ E/CN.4/Sub.2/AC.4/2005/3 21 June 2005, p. 8.

¹⁰¹ Johnsson and Tualima (2017), p. 220, *ibid*.

According to Tobin, the concept of cultural property is problematic from an Indigenous perspective because it is based on a positivist “Western” legal system and does not recognise Indigenous peoples’ own customary laws.¹⁰² In Barsh’s view, the idea of cultural property and intellectual property rights is ill-suited for Indigenous peoples’ relationship with nature because it does not address the fact that culture cannot be effectively separated from the natural landscape from which it springs.¹⁰³ The Saami Council states that a distinct category of rights for elements of Indigenous peoples’ cultural heritage is needed, possibly through *sui generis* systems that do not necessarily include elements of intellectual property rights but recognise the relevant customary laws of the Indigenous peoples concerned.¹⁰⁴

UN Special Rapporteur Daes considers the concept of cultural heritage to be more appropriate than cultural property in the context of the rights of Indigenous peoples, while noting that the concept itself includes both cultural property and intellectual property rights. According to her, cultural heritage includes “everything that is part of a person’s specific identity and that they themselves can choose to share with others”.¹⁰⁵

3.3. Sámi Cultural Environment/Landscape as Cultural Heritage

The concepts of Sámi cultural heritage and cultural environment/cultural landscape also come close to each other and overlap to some extent. The cultural environment is also often seen as part of the cultural heritage.¹⁰⁶ Mechtild Rössler states that cultural environments are a combination of culture and nature, tangible and intangible cultural heritage, and confluences between biological and cultural diversity that represent the core of Indigenous peoples’ culture and identity, and the relationships between them.¹⁰⁷ The Sámi Parliament of Sweden reminds that the Sámi perception of nature as a spirited living entity stands in strong contrast to the Western world’s perception of nature. It states that “[o]ur perception has influenced our values, customs, social structures and relationships”.¹⁰⁸

The Sámi cultural environment is defined as including ancient remains, architectural heritage, traditional landscapes, and biotopes created by Sámi livelihoods, and the spiritual tradition associated with the environment and landscape. The spiritual tradition related to

102 See Tobin, B., “Redefining Perspectives in the Search for Protection Traditional Knowledge: A Case Study from Peru”, *Review of European Community and International Environmental Law*, 2001, 10(1):47–64.

103 Barsh, R.L., “How Do You Patent A Landscape? The Perils of Dichotomizing Cultural and Intellectual Property”, *International Journal on Cultural Property*, 1999, 8(1): 14–47, 15.

104 E/CN.4/Sub.2/AC.4/2005/3 21 June 2005, p. 6, item h.

105 Daes, E. I., “Discrimination Against Indigenous Peoples: Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples”, E/CN.4/Sub.2/1993)28, UNCHR, Geneva, para. 23.

106 Knuuttilla, S. “Kulttuuriperintö, arvot ja identiteetti”, in P. Venäläinen (ed.), *Kulttuuriperintö ja oppiminen*. Suomen Museoliiton julkaisuja 58, Gummerus Kirjapaino Oy, Jyväskylä, 2008, pp. 12–19, 12.

107 Rössler, M., “World Heritage Cultural Landscapes: A UNESCO Flagship Programme 1992–2006”, *Landscape Research* 31(4), 2006: 333–353, 334. See also Herrmann, T., Heinämäki, L., and Morin, C., “Protecting sacred sites, maintaining cultural heritage, and sharing power, Co-management of the SGang Gwaay UNESCO World Heritage Site in Canada”, in L. Elenius, C. Allard, and C. Sandström (eds), *Indigenous Rights in Modern Landscapes: Nordic Conservation Regimes in Global Context*. Abingdon, Routledge, 2017, pp. 62–81, 65.

108 See Sametinget, <https://www.sametinget.se/9008>, p. 5.

the landscape is understood as an oral tradition that gives meaning to the landscape and the environment. Oral tradition includes knowledge about specific places or wider areas, expressed in the form of stories, placenames, music, and knowledge.¹⁰⁹ Päivi Magga equates the concept of spiritual tradition with the concept of traditional knowledge. She summarises the definition of the “Sámi cultural environment”, which includes archaeological heritage, the built environment, traditional knowledge and the cultural landscape. It is through this heritage that the landscape is interpreted and the meanings that transform it into a cultural landscape are created.¹¹⁰

Taarna Valtonen notes that many of the traces left by the Sámi way of life are almost invisible or the result of such long-term development that it is difficult to perceive them as the result of human activity. Exceptions include observable relics such as reindeer roundup areas. However, site-specific traditions and learned adaptations to the environment as hereditary knowledge or, for example, changes in vegetation caused by reindeer, make the landscape and nature charged with cultural content.¹¹¹

A key aspect of the Sámi cultural environment and heritage is placenames. According to Valtonen, the origin of the placename is linked to the cultural appropriation of the landscape. The nominator, that is, the human being with their cultural and linguistic rules, selects, delimits, and gives meaning to a part of the landscape, incorporating it into their own cultural experience.¹¹²

The UN Document co-created by the Saami Council emphasises that as Indigenous peoples’ cultural heritage is intrinsically connected with their traditional lands and waters, protection for Indigenous cultural heritage should also include measures to preserve and safeguard the environment that Indigenous peoples traditionally inhabit. The protection for Indigenous peoples’ cultural heritage should therefore recognise that Indigenous traditional lands and waters can only be adequately preserved if managed by the Indigenous peoples themselves.¹¹³ The Sustainable Development Programme of the Sámi Parliament of Finland (2006) explicitly states that the natural, cultural, social, and the human environments form a whole, an environmental concept that is considered a whole because they are interdependent.¹¹⁴

109 Magga, P., “Rakennuksia, kotasijoja, muistoja – saamelaista kulttuuriympäristöä inventoimassa”, in T. Elo and P. Magga (eds), *Eletty; koettu maisema – näkökulmia saamelaiseen kulttuuriympäristöön*. Suomen ympäristö 34/2007, Lapin ympäristökeskus, Rovaniemi, pp. 11–24.

110 Magga, P., “Mikä tekee kulttuuriympäristöstä saamelaisen?”, in P. Magga and E. Ojanlatva (eds), *Ealli Biras Elävä ympäristö, Saamelainen kulttuuriympäristöohjelma*. Sámi museum – Saamelaismuseosäätiö, 2013, p. 10.

111 Valtonen, T., “Báiki báikki manjis” “paikka paikan perään”, Paikannimet Käsivarren saamelaisessa kulttuurimaisemassa”, in T. Nykänen and L. Valkeapää, *Kilpisjärven poliittinen luonto, Matkoja Käsivarren kulttuurimaisemassa*, Suomen kirjallisuuden seura, Helsinki, 2016, pp. 41–80, 46.

112 Ibid., p. 50.

113 E/CN.4/Sub.2/AC.4/2005/3 21 June 2005, p. 7.

114 Saamelaiskäräjien kestävä kehityksen ohjelma, 2006, pp. 4–5. [Sámi Parliament’s (of Finland) Sustainable Development Programme].

3.4. Indigenous Peoples' vis-à-vis Sámi Traditional Knowledge and Customary Laws

Indigenous peoples' traditional knowledge is seen as one of the most important aspects of intangible cultural heritage.¹¹⁵ The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions recognises the importance of traditional knowledge as a source of intangible and spiritual wealth and, in particular, the importance and positive contribution of Indigenous knowledge systems to sustainable development, and the need for their appropriate protection and promotion.¹¹⁶

There is no single exhaustive definition of traditional knowledge.¹¹⁷ Slightly different terms are also used for the same subject, such as ecological traditional knowledge or Indigenous knowledge,¹¹⁸ Indigenous environmental knowledge,¹¹⁹ or native science.¹²⁰ In writing about Sámi traditional knowledge, Elina Helander-Renvall and Inkeri Markkula use the definition of traditional knowledge developed by Fikret Berkes in his *Handbook of Ecological Traditional Knowledge*, which is well established in the academic research:

“Traditional Ecological Knowledge is a cumulative body of knowledge, practice and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living things (including humans) with one another and with their environment.”¹²¹

The UN Permanent Forum on Indigenous Issues defines traditional knowledge as “the knowledge, innovations and practices of indigenous peoples. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is often transmitted orally from generation to generation. It tends to be collectively owned and can be expressed in stories, songs, folklore, proverbs, cultural values, beliefs, rituals etc. It is also the source for the traditional use and management of lands, territories and resources, with indigenous agricultural practices that care for the earth, without depleting the resources... Traditional knowledge is at the core of indigenous

115 See e.g. Johnsson, D. Z., and Tualima, H.-Y. “Cultural heritage, traditional knowledge and intellectual property”, in A. Xanthaki, et al. (eds). *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*. Brill/Nijhoff, Leiden/Boston, 2017, pp. 218–228.

116 Preambular text.

117 See Berkes, F. *Sacred Ecology: Traditional Ecological Knowledge and Resource Management*. Philadelphia: Taylor & Francis; 1999.

118 Berkes, F. “Traditional Ecological Knowledge in Perspective”, in T. Inglis (ed.), *Traditional Ecological Knowledge and Resource Management*. Philadelphia: Taylor & Francis, 1993, pp. 1–9, 3, Helander-Renvall, E. & Markkula, I. “Luonnon monimuotoisuus ja saamelaiset: Biologista monimuotoisuutta koskevan artiklan 8 (j):n toimeenpanoa tukeva selvitys Suomen saamelaisalueella”. *Suomen ympäristö* 12/2011, Ympäristöministeriö, Helsinki, Edita Prima Oy, 2011, p. 10. See also Posey, D. “Upsetting the sacred balance: Can the study of indigenous knowledge reflect cosmic connectedness?” in P. Sillotoe, A. Bicker and J. Pottier (eds). *Participating in Development: Approaches to Indigenous Knowledge*. London, Routledge, pp. 24–42; McGregor, D. “Traditional Ecological Knowledge and Sustainable Development: Towards Coexistence”, in M. Blaser, F. Mario, A. Harvey and M. Glenn (eds). *In the Way of Development: Indigenous Peoples, Life Projects and Globalization*. London & New York: ZED Books, 2004, pp. 72–91; Brokensha D. W., Warren D. M., and Werner O. *Indigenous Knowledge Systems and Development*. Washington DC: University Press of America, 1980.

119 Ellen, R. *Indigenous Environmental Knowledge and Its Transformations: Critical Anthropological Perspectives*. Vol. 5. New York: Routledge, 2000.

120 Cajete G. *Native Science: Natural Laws of Interdependence*. Santa Fe, NM: Clear Light Books, 1999.

121 Helander-Renvall, E. and Markkula, I. *Ekologisen perinnetiedon käsikirja*. Arktisen keskuksen tiedotteita 59, Rovaniemi, Lapin yliopistopaino, 2014, p. 6. See, Berkes, F. “Traditional Ecological Knowledge in Perspective”, in J. T., Inglis (ed). *Traditional Ecological Knowledge and Resource Management*. Philadelphia: Taylor & Francis. 1993, p. 1–9, 3.

peoples' identities, cultural heritage and livelihoods. The transmission of traditional knowledge across generations is fundamental to protecting and promoting indigenous peoples' cultures and identities as well as the sustainability of livelihoods, resilience to human-made and natural disasters, and sustaining culturally appropriate economic development. Traditional knowledge underlines indigenous peoples' holistic approach of life, which is a central element of the world's cultural and biological diversity."¹²²

The Ottawa Traditional Knowledge Principles defines traditional knowledge as “a systematic way of thinking and knowing that is elaborated and applied to phenomena across biological, physical, cultural and linguistic systems. Traditional Knowledge is owned by the holders of that knowledge, often collectively, and is uniquely expressed and transmitted through indigenous languages. It is a body of knowledge generated through cultural practices, lived experiences including extensive and multigenerational observations, lessons and skills. It has been developed and verified over millennia and is still developing in a living process, including knowledge acquired today and in the future, and it is passed on from generation to generation.”¹²³

Under the framework of the UN Convention on Biological Diversity (CBD), traditional knowledge is viewed as referring to the “knowledge, innovations and practices of Indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. Sometimes it is referred to as an oral tradition, for it is practiced, sung, danced, painted, carved, chanted and performed down through millennia. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, forestry and environmental management in general.”¹²⁴

The traditional knowledge of the Sámi is manifested in Sámi use of nature and the practice of traditional Sámi livelihoods, as well as in the relationship with nature. This knowledge is conveyed in Sámi language terminology related to nature, landscape, weather, reindeer husbandry, crafts, hunting and fishing, and in Sámi language paraphrases. Traditional knowledge is transmitted through conscious teaching, models from older generations, *yoiks*, and oral storytelling traditions, as well as in reindeer husbandry, fishing, gathering, craft and hunting practices.¹²⁵ Elina Helander (now Helander-Renvall) notes that nature-

122 See <https://social.desa.un.org/sites/default/files/migrated/19/2019/04/Traditional-Knowledge-background-FINAL.pdf> (checked 24.4.2024).

123 See https://static1.squarespace.com/static/58b6de9e414fb54d6c50134e/t/5dd4097576d4226b2a894337/1574177142813/Ottawa_TK_Principles.pdf (checked 24.4.2024).

124 See <https://www.cbd.int/traditional/intro.shtml> (checked 10.6.2024).

125 Artikla 8 j työryhmän loppuraportti, Ympäristöministeriö, 2013, p. 8.

related knowledge, values, and goals are transmitted through traditional land use and Sámi livelihoods and are inseparable.¹²⁶

According to Jelena Porsanger and Gunvor Guttorm, Sámi traditional knowledge – *árbediehtu* – is the collective wisdom and skills of the Sámi people that they have used for centuries to strengthen their livelihoods. It is passed down orally from generation to generation, through work and practical experience. It is through this continuum that the concept of *árbediehtu* links the past, the present, and the future.¹²⁷

According to Päivi Magga, traditional knowledge is both oral knowledge and a skill learned through shared practice. The fact that the landscape is a cultural landscape for the Sámi means that it is not necessarily built, but that the values, meanings, and ability to use the knowledge are transmitted through traditional knowledge.¹²⁸ The concept of cultural landscape is also directly related to the traditional livelihoods of the Sámi. Magga states that the cultural landscape includes the resources the Sámi need – the traditional knowledge and skills to use the right resources in the right way at the right time of year. Knowledge of how to use the area is part of the traditional knowledge of the cultural landscape.¹²⁹

Kyle Whyte argues that traditional ecological knowledge should be understood as a collaborative concept. According to her, it serves to invite diverse populations to continually learn from one another about how each approaches the very question of “knowledge” in the first place, and how these different approaches can be blended to better steward natural resources and adapt to climate change. She argues that instead of focusing on the creating of definition of traditional ecological knowledge, environmental scientists, policy professionals, and Indigenous and non-indigenous should focus more on creating long-term processes that allow the different implications of approaches to knowledge in relation to stewardship goals to be responsibly thought through.¹³⁰

Sámi traditional knowledge is also closely linked to Sámi customary laws, which also form an integral part of their intangible cultural heritage. Customary laws consist of traditions and legal concepts based on traditional knowledge and traditional practices.¹³¹ Indigenous customary laws can be defined as a set of customs, norms, and corresponding practices that Indigenous peoples have developed or adopted to regulate their activities.¹³² Customary

126 Helander, E. “Saamelainen maailmankuva ja luontosuhde”, in I. Seurujärvi-Kari (ed.). *Beaivvi Mánát, Saamelaisten juuret ja nykyaika*. Helsinki, Suomalaisen Kirjallisuuden Seura, 2000, pp. 171–175, 175.

127 Porsanger, J. and Guttorm, G. “Árbediehtu-fágasuorggi huksen”, in J. Porsanger and G. Guttorm (eds). *Working with Traditional Knowledge: Communities, Institutions, Information Systems, Law and Ethics*. DIEĐUT 1/2011. Alta: Björkmanns Trykkeri AS, 2011, p. 18.

128 Magga, P. “Mikä tekee kulttuuriympäristöstä saamelaisen?”, in P. Magga and E. Ojanlatva (eds), *Ealli Biras, Elävä ympäristö, saamelainen kulttuuriympäristöohjelma*. Sámi Museum, Saamelaisääitiö, 2013, pp. 10–13, 10.

129 Ibid.

130 Whyte, K.P. “On the role of traditional ecological knowledge as a collaborative concept: a philosophical study.” *Ecological Processes* 2 (1) (2013): Article 7.

131 Svensson, T. G. “On Customary Law: Inquiry into an Indigenous Rights Issue.” *Acta Borealia* 20 (2), 2003, pp. 95–119, 96.

132 Tobin, B. *Indigenous Peoples, Customary Law and Human Rights: Why Living Law Matters*. Routledge, London, 2014, p. 10.

laws are norms that the community perceive as binding on itself; and they are the result of long-standing practice.¹³³ However, Elina Helander (now Helander-Renvall) emphasises the dynamic nature of customary laws: by adapting to new circumstances throughout history, customary laws form a dynamic and changing set of rules.¹³⁴ Sámi customary law can be characterised as unwritten, dynamic, spatially variable, and site-specific rules and legal concepts.¹³⁵ Anne Nuorgam notes that Sámi customary law is a Sámi perception of law; it may be consistent or inconsistent with the national legal order. According to Nuorgam, to define the Sámi cultural environment, it is essential to identify the Sámi customs and legal concepts concerning it.¹³⁶

The Sámi customary law is most clearly expressed in the Sámi reindeer husbandry, fishing, forestry, and gathering traditions. Sámi reindeer husbandry is still practised in some places in *siidas*, which are kinship-based herding units formed by a few reindeer families. Reindeer husbandry is controlled by the *siida* in its own area of use. The boundaries of the herding areas are not static but can be changed according to grazing conditions, and the herds can also merge.¹³⁷ Customary Sámi fishing laws involve the use of lakes, bays, or parts of rivers by certain families. All know their own territories and stay within their own areas of use. In bad fishing years, it has been possible to go fishing in the territories of other *siidas*. The Sámi values and sense of community are associated with fishing related customary laws.¹³⁸ Hunting and gathering are also governed by customary laws,¹³⁹ as well as sacred archaeological sites related to publicity and access, for example.¹⁴⁰

Kristina Labba and Anne-Maria Magga prefer to speak of Sámi people's own laws and legal principles than merely customary laws, which they state have limitations when narrowed down merely to "customs".¹⁴¹ According to Labba, Sámi legal traditions have historically been overlooked or reduced to "customary law" within the dominant national legal systems. She argues for new methods to identify, analyse, and systematise Sámi law as a living and independent legal tradition.¹⁴²

133 Heinämäki, L., Ojanlatva, E., and Magga, A.-M. "Saamelaiden pyhäät luonnonpaikat kulttuuriperintöoikeuden ja tapaoikeuden valossa", in T. Nykänen and L. Valkeapää. *Kilpisjärven poliittinen luonto, Matkoja Käsivarren kulttuurimaisemassa*. Suomen kirjallisuuden seura, Helsinki, 2016, pp. 199–239, 222.

134 Helander, E. "The Nature of Customary Law", in T. Koivurova, T. Joona and R. Shnorro (eds). *Arctic Governance*, Arktinen keskus, Rovaniemi, 2004, p. 88. For a general view, see Helander, E. *Samiska rättsuppfattningar*. Arktinen keskus, Rovaniemi, 2004.

135 Heinämäki, Ojanlatva, Magga (2016), p. 222, see footnote 33.

136 Nuorgam, A. Saamelaisia koskeva lainsäädäntö ja sopimukset kulttuuriympäristön näkökulmasta, in P. Magga and E. Ojanlatva (2013), pp. 220–224, 220.

137 Ibid., p. 9. See also Helander-Renvall, E. and Markkula, I. "Luonnon monimuotoisuus ja saamelaiset." Suomen ympäristö 12/2011, Ympäristöministeriö.

138 Ibid. For a general view, see Markkula, I. and Helander-Renvall, E. (2014). Changing climate impacts on the traditional Sámi use of nature: the case of fishing and wild berry picking. *Polar Research*, 33 (1).

139 Artikla 8 (j) työryhmän loppuraportti. Ympäristöministeriö, 2013, p. 10.

140 Heinämäki, L., Ojanlatva, E., and Magga, A.-M. "Saamelaiden pyhäät luonnonpaikat kulttuuriperintöoikeuden ja tapaoikeuden valossa", in T. Nykänen and L. Valkeapää. *Kilpisjärven poliittinen luonto, Matkoja Käsivarren kulttuurimaisemassa*. Suomen kirjallisuuden seura, Helsinki, 2016, pp. 199–239.

141 Labba, K. "Sámi Law: A Methodological Approach". *Arctic Review on Law and Politics*, Vol. 11, 2020, pp. 215–232; Magga, A.-M. *Sámiidat. Saamelaisen poronhoidon oikeusperiaatteet ja -teoria*. Vastapaino, Tampere 2024.

142 Labba, K. (2020), pp. 215–232, *ibid*.

4. INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTING SÁMI CULTURAL HERITAGE

The international legal framework for Indigenous peoples' cultural heritage consists of different yet interrelated fields of law that are better read in their entirety than as separate areas. This section deals with legal instruments on human rights on the one hand and biodiversity and cultural heritage on the other, all of which are central to the rights of the Sámi people. As the end of this section describes, Indigenous peoples' cultural heritage can also be viewed from the perspective of intellectual property rights (IPR), although the recognition of Indigenous rights is only at an evolving state.

Conventions on human rights and cultural heritage have a mutual impact on developments in both areas. On the one hand, conventions on cultural heritage have contributed to the more precise regulation of cultural heritage in legal instruments directly related to the rights of Indigenous peoples. On the other, the development of the human rights of Indigenous peoples has contributed to the recognition of Indigenous peoples' right to self-determination and free, prior, and informed consent over their own cultural heritage in the implementation and development of cultural heritage conventions. In the UN biodiversity conservation, under the Convention on Biological Diversity (CBD), Indigenous peoples have come to be seen as conservation partners rather than conservation objects, which has strengthened Indigenous peoples' international and national subjectivity in environmental and cultural heritage issues.

4.1. Human Rights Framework

As previously mentioned, the protection of cultural heritage was long considered to be primarily part of UNESCO's work and was not seen as part of human rights discourse. Traditional human rights treaties do not include the concept of cultural heritage, instead recognising the right to culture. Even today, cultural heritage is often still perceived mainly as a matter for states rather than for individuals or groups within states.¹⁴³ However, this view has been under a persistent shift for quite some time. As many as two decades ago, the Faro Convention (2005) drawn up by the Council of Europe, discussed more later in this report, played an important role in this change, placing individuals and communities at the heart of cultural heritage protection,¹⁴⁴ recognising the right of all persons to benefit from their own cultural heritage.

143 Xanthaki, A. "Introduction", in A. Xanthaki, S. Valkonen, L. Heinämäki, and P. Nuorgam (eds). *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*. Brill/Nijhoff, Leiden/Boston 2017, p. 2.

144 See Government Bill 87/2017 vp. of Finland, p. 1.

For the first time in 2011, the UN Independent Expert on Cultural Rights, Farida Shaheed,¹⁴⁵ referred specifically to cultural heritage, considering the enjoyment of and access to cultural heritage to be a human right for everyone. She stated that a human rights approach to the protection of cultural heritage was a necessary and complementary way of safeguarding and preserving cultural heritage.¹⁴⁶ In 2016, the UN Human Rights Council adopted a resolution on cultural rights and the protection of the cultural heritage¹⁴⁷ in which the right to culture and cultural heritage were aligned. The resolution calls on all states to respect, promote, and protect the right of everyone to participate in cultural life, including the ability to access and enjoy cultural heritage.¹⁴⁸ Respect for cultural rights and awareness of the value of cultural heritage is seen as essential for development, peace, building social cohesion, and the promotion of mutual respect, tolerance, and understanding between individuals and groups in all their diversity.¹⁴⁹

The cultural heritage of Indigenous peoples as a concept has not been part of traditional human rights instruments. However, the concept of cultural heritage is considered part of the concept of culture and of the right to culture.¹⁵⁰ As stated in the previous chapter, the concepts of culture and cultural heritage are inseparable. From the UN Universal Declaration of Human Rights¹⁵¹ to the universal human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR),¹⁵² the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁵³ the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),¹⁵⁴ and the UN Convention on the Rights of the Child (UNCRC)¹⁵⁵ all protect the right to culture. In particular, the monitoring bodies of these conventions have taken a clear position on the right of Indigenous peoples to self-determination and their own culture, including traditional livelihoods and access to their traditional areas. Several regional human rights treaties such as the European Convention on Human Rights,¹⁵⁶ the Council of Europe Framework Convention for the Protection of National Minorities,¹⁵⁷ the Council of Europe Regional

145 The UN Independent Expert in the Field of Cultural Rights.

146 United Nations, Report of the Independent Expert in the field of Cultural Rights, Farida Shaheed, UN Doc A/HRC/17/38 of 21 March 2011, para. 2.

147 UN Human Rights Council Resolution 33/20 A/HRC/RES/33/20, 6 October 2016.

148 Preamble.

149 Sikora, K. (2021). "The Right to Cultural Heritage in International Law, with Special Reference to Indigenous Peoples' Rights." *Santander Art and Culture Law Review*, 2 (7), 149–172, 166.

150 Xanthaki (2017), p. 2, see footnote 143.

151 UN General Assembly, 10 December 1948.

152 International Covenant on Civil and Political Rights (CCPR), G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), adopted 16 December 1966, entered into force 23 March 1976.

153 International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), adopted 16 December 1966, entered into force 3 January 1976.

154 International Convention on the Elimination of All Forms of Racial Discrimination, Geneva, adopted 7 March 1966, entered into force 4 January 1969.

155 The United Nations Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), adopted 20 November 1989, entered into force 2 September 1990.

156 European Convention for Human Rights and Fundamental Freedoms, Rome, adopted 4 November 1950, entered into force 3 September 1953, 213 UNTS 222, amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively.

157 Framework Convention For the Protection of National Minorities, Strasbourg, opened for signature 1 February 1995, entered into force 1 February 1998.

Charter for Minority Languages,¹⁵⁸ and the Inter-American Convention on Human Rights¹⁵⁹ also recognise the right of Indigenous peoples to culture. The rights of Indigenous peoples have not thus far been prominent in the case law of the European Court of Human Rights. Instead, the Inter-American human rights system includes numerous court cases related to the protection of Indigenous peoples' culture that also recognise Indigenous peoples' collective ownership of their traditional lands.¹⁶⁰

The purpose of this chapter is to give examples of positions taken by universal human rights treaty monitoring bodies that specifically concern the protection of the rights of Indigenous peoples from the perspective of their cultural heritage. As the Inter-American human rights system does not protect the rights of the Sámi people, it is not analysed in this report, though it is unique in its coverage. In this context, however, it is sufficient to mention that the Inter-American human rights system serves as an encouraging example of how the cultural heritage of Indigenous peoples can, if desired, also be strongly protected by traditional human rights treaties. Among other things, the Inter-American human rights system, that is, the Inter-American Commission and Court of Human Rights, apply the right to property guaranteed by the American Convention on Human Rights (Article 21) to Indigenous peoples, extending it to include their collective right to traditional land.¹⁶¹

However, the Inter-American human rights system is indirectly relevant for the protection of Sámi rights. For example, in a recent Sámi case, the Committee on Economic, Social and Cultural Rights (CESCR), quoting the Inter-American Court of Human Rights, stated that “ownership of and control over ancestral territories are essential to Indigenous Peoples’ survival as peoples, with the preservation of their distinct culture”; and that “any denial of the exercise of their territorial rights is detrimental to values that are very representative for members of Indigenous Peoples who are at risk of losing their cultural identity and the heritage to be passed on to future generations”.¹⁶² The UN Human Rights Committee (HRC) has also stated that the recovery, recognition, demarcation, and registration of lands represent essential rights for cultural survival.¹⁶³

158 The European Charter for Regional or Minority Languages, adopted as a convention on 25 June 1992 by the Committee of Ministers of the Council of Europe, and opened for signature in Strasbourg on 5 November 1992. It entered into force on 1 March 1998.

159 General Secretariat of the Organization of American States, American Convention on Human Rights, adopted 22 November 1969, entered into force 18 July 1978.

160 See e.g. Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Judgment of 28 November 2007, IACHR Series C. No. 172; Inter-American Court of Human Rights, *Xákmok Kásek Indigenous Community v. Paraguay*, Judgment of 24 August 2010, Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, Judgment of 25 November 2015; IACtHR, *Case of Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina* Judgment of 6 February 2020, Series C No. 400. For an analysis, see Heinämäki, L. and Kirchner S. (2017), “Assessment on Recent Developments Regarding Indigenous Peoples’ Legal Status and Rights in International Law with Special Focus on Free, Prior and Informed Consent”, in L. Heinämäki, C. Allard, S. Kirchner et al., *Saamelaiusten oikeuksien toteutuminen: kansainvälinen oikeusvertailuva tutkimus*, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, valtioneuvoston kanslia, 4/2017, pp. 224–284, 253–257.

161 Ibid.

162 E/C.12/76/D/251/2022; E/C.12/76/D/289/2022, referring to CCPR/C/137/D/3585/2019, para. 8.3, quoting IACtHR, *Case of Yakye Axa Indigenous Community v. Paraguay*, para. 203

163 UN Human Rights Committee, *Roy et al v. Australia*, CCPR/C/137/D/3585/2019, 13 March 2024, para. 8.3. referring to Inter-American Commission on Human Rights, *Indigenous and Tribal People’s Rights over their Ancestral Lands and Natural Resources* (OEA/Ser.L/V/LL), para. 95.

The CESCR has further stated that the Inter-American Court of Human Rights has held that the culture of the members of Indigenous Peoples “corresponds to a specific way of life, of being, seeing and acting in the world, constituted on the basis of their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they are an integral element of their cosmology, their spirituality and, consequently, their cultural identity”.¹⁶⁴ Furthermore, the HRC has stated that ancestral cemeteries, places of religious meaning and importance, and ceremonial or ritual sites linked to the occupation and use of physical territories constitute an intrinsic part of the right to cultural identity; therefore, limitations on the right to traditional territories can also affect the right to the exercise of religion, spirituality, or beliefs.¹⁶⁵

It should also be mentioned that the monitoring bodies of both the European Charter for Regional or Minority Languages and the European Framework Convention for the Protection of National Minorities offer recommendations for the protection of Sámi culture and language.¹⁶⁶ Article 5 of the Framework Convention specifically stipulates that “the Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”.

Both Indigenous peoples and scholars and other practitioners have advocated a human-rights-based approach to cultural heritage, as it shifts more agency to Indigenous peoples to identify and select the relevant cultural components¹⁶⁷ they want to preserve for future generations. A UN Document co-created by the Saami Council calls for the enrichment of existing international agreements and other documents pertaining to cultural and natural heritage, coupled with the realisation that these documents need to be effectively supplemented by a human rights-based approach to provide adequate protection for Indigenous peoples’ cultural heritage.¹⁶⁸ In this context, the human rights dimension of cultural heritage touches on who decides on what has been protected, why, and for whom. This refers to the idea of participation in decision-making, which stems largely from the domain of human rights.¹⁶⁹ A recognition of the fact that heritage, especially Indigenous peoples’ cultural heritage, is not one-dimensional and cannot be separated from people’s lives would ensure the better implementation of laws and the better protection of the people concerned.¹⁷⁰

¹⁶⁴ E/C.12/76/D/251/2022; E/C.12/76/D/289/2022, para. 14.3.

¹⁶⁵ CCPR/C/137/D/3585/2019, para. 8.4.

¹⁶⁶ See e.g. Recommendation CM/RecChL (2018) 5 of the Committee of Ministers to Member States on the application of the European Charter for Regional or Minority Languages by Finland (Adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Ministers’ Deputies).

¹⁶⁷ Sikora, K. (2021), p. 134, see footnote 149.

¹⁶⁸ E/CN.4/Sub.2/AC.4/2005/3, p. 6.

¹⁶⁹ Sikora, K. “The Right to Cultural Heritage in International Law, with Special Reference to Indigenous Peoples’ Rights”. *Santander Art and Culture Law Review*, 2 (7), pp. 149–172, 145, see footnote 149.

¹⁷⁰ *Ibid.*, p. 152.

4.2. Sámi People's Human Rights in Norway, Sweden, and Finland

In 2016, UN Special Rapporteur on the Rights of Indigenous peoples commissioned a study on the human rights situation of the Sámi people in the Sápmi of Norway, Sweden, and Finland.¹⁷¹ In many ways, the report's findings remain valid a decade later, despite some legal developments that will be discussed in this section. The Special Rapporteur concluded that challenges remain that the governments must meet, in particular with respect to adequately defining and recognising the Sámi people's rights over their land and related resources, *a crucial aspect of their cultural heritage*, and that further efforts are needed to advance and strengthen Sámi rights, particularly in the face of increased natural resource investments in the Sápmi.¹⁷² The Special Rapporteur also recommended the strengthening of the Sámi's language rights.¹⁷³

It can be argued that the main human rights convention for the Sámi's right to culture/cultural heritage is the ICCPR, which is incorporated into the Norwegian Human Rights Act and takes precedence over other domestic legislation in the event of a conflict. General comments and findings in individual cases from the HRC are not in themselves legally binding on the states parties to the Convention. Yet the HRC's statements on the interpretation of the ICCPR generally carry "significant weight" in Norwegian courts, depending on how well the interpretations are anchored in the text of the Convention whether they express legally binding obligations, or whether they are only recommendations of best practices.¹⁷⁴

In Finland, the ICCPR is legally binding as an Act,¹⁷⁵ and is frequently applied by the court cases dealing with Sámi people. The Convention is directly applied by the state authorities, including the courts. In Sweden, the Convention has not been incorporated into Swedish law. It is, however, applied and adhered to in Swedish court proceedings, for example in the recent Sámi *Girjas* case.¹⁷⁶

Norway, unlike Finland and Sweden, has ratified ILO Convention No. 169. Besides the ICCPR, Norway has incorporated the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and UN Convention on the Rights of the Child (UNCRC)

171 UN Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, 9 August 2016, A/HRC/33/42/Add.3, available at: <https://www.refworld.org/docid/57cd77294.html> (checked 27.11.2025).

172 Ibid.

173 Ibid.

174 Rt-2008-1764, para. 81, HR-2017-2428-A (Sara), para. 57, cf. HR-2017-2247-A (Reinoya), para. 119, and HR-2021-1975-S (Fosen), para. 102. See Norwegian Human Rights Institution, *Canary in the Coal Mine: Sámi Rights and Climate Change in Norway*,

https://www.nhri.no/wp-content/uploads/2024/02/Report_Canary_in_the_Coal_Mine.pdf (checked 3.4.2025).

175 See, 7/76, <https://www.finlex.fi/fi/sopimukset/sopsteksti/1976/19760007> (checked 3.4.2025).

176 Högsta Domstolens Dom, meddelad i Stockholm den 23 januari 2020, mål nr T 853-18,

<https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/2020/t-853-18.pdf>. For an analysis of the case, see Allard, C. and Brännström, M., "Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas Case", *Arctic Review on Law and Politics*, vol 12, 2021, pp. 56–79.

into its domestic law.¹⁷⁷ In Norway, the Sámi people's right to preserve and develop their languages is recognised in the Constitution and in several Acts, including the Sámi Act of 1987. In relation to their international human rights obligations to protect the rights of Sámi people, Sweden and Finland are also party to the abovementioned UN human rights treaties. Norway, Finland, and Sweden all voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.

Under the National Minorities and Minority Languages Act, Sámi languages spoken in Sweden are granted protections within certain designated administrative areas, including with respect to dealings with state agencies. However, the Special Rapporteur points out that these legal guarantees remain only partly implemented, often as a result of a lack of staff with Sámi language skills. In Sweden, education in the Sámi language is mainly guaranteed in the Swedish Sámi schools created in the 1990s.¹⁷⁸

In Finland, education in the Sámi languages is guaranteed by law within the Sámi Homeland, where municipalities are entitled to receive increased subsidies for teaching in the Sámi language. There is still no legislation or policy that guarantees education in the Sámi language outside the core Sámi area, where the majority of Sámi students live, a concern that was raised by the Committee on the Elimination of Racial Discrimination (CERD).¹⁷⁹ A shortage of Sámi teachers and education material, especially in the numerically smaller Skolt and Ánar Sami languages, presents a further problem for education in the Sámi languages and culture.¹⁸⁰ According to the Sámi Language Act of Finland,¹⁸¹ similarly to Norway and Sweden, a Sámi has the right to use the Sámi language in their own matter or in a matter where they are being heard before any authority referred to in the Act.¹⁸² Similarly to Norway and Sweden, Sámi language rights are more strongly protected in the Sámi Homeland region than elsewhere.

4.2.1. Sámi People's Right to Self-determination and Free, Prior and Informed Consent Concerning their Cultural Heritage

Over time, international human rights institutions have started to recognise that it is impossible for Indigenous peoples to preserve, develop, and transmit their cultural heritage to future generations unless they have effective access to, control of, and influence over their traditional territories and decision-making on key issues.¹⁸³ As argued by Martin Scheinin,

¹⁷⁷ See the Human Rights Act (1999), sect. 2, and the Anti-Discrimination Act (2005), sect. 2. See *ibid.*, p. 7.

¹⁷⁸ A/HRC/33/42/Add.3, p. 14.

¹⁷⁹ *Ibid.*, pp. 18–19. See CERD/C/FIN/CO/20-22, para. 14.

¹⁸⁰ A/HRC/33/42/Add.3, pp. 18–19.

¹⁸¹ Sámi Language Act 1086/2003.

¹⁸² Chapter 2, Section 4.

¹⁸³ See e.g. the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of the Problem of Discrimination against Indigenous Populations, UN Doc E/CN.4/Sub.2/1986/7, Add. 1–4 (1996). The previous documents are UN Docs E/CN.4/Sub.2/476/Add. 1–6 (1981), E/CN.4/Sub.2/1982/2/ Add. 1–7 (1982), and E/CN.4/Sub.2/1983/21/Add. 1–7 (1983). Cobo Report Add 4 UN Sales No E.86.XIV.3 (Volume 5: "Conclusions and Recommendations").

the right to self-determination has an intergenerational element and should also be regarded as the right to a future when, by exercising their right to self-determination, Indigenous peoples make choices about their future that affect future generations.¹⁸⁴ The UN Human Rights Committee (HRC) has stated in its first climate change case related to Indigenous peoples' rights that the right to culture includes the right of Indigenous communities to transmit their cultural heritage to future generations.¹⁸⁵ This has been repeated by the UN Committee on Economic, Social and Cultural Rights (CESCR) and the UN Committee on the Rights of the Child (CRC) in recent Sámi cases related to Finland.¹⁸⁶ As Scheinin reminds us, peoples' right to self-determination establishes a continuum from past, present, to future, including the right to decide on the development of Indigenous peoples' own culture in new circumstances.¹⁸⁷ The enforcement of Indigenous peoples' right to self-determination should therefore guarantee an adequate protection of their cultural heritage, which unites past, present, and future as a single continuum.

This unbroken continuum cannot be endorsed unless the historical wrongs towards Indigenous peoples are understood and reconciled. Scheinin reminds us that Indigenous peoples' rights and the development of their international protection are accompanied by an awareness of the historical wrongs to which Indigenous peoples have been subjugated or their colonisation by a majority population that arrived later in their territory, which has generally meant that Indigenous peoples have partly or totally lost their traditional lands and natural resources to the ownership or control of others. Indigenous rights are about the relationship between the subjects of these rights and the current majority population and states. This backward-looking justification is referred to by Scheinin as the right to the past, and it results especially in an emphasis on land rights in the content of Indigenous peoples' rights.¹⁸⁸

Finland, Norway, and Sweden have all established truth and reconciliation processes with Sámi communities.¹⁸⁹ However, the rights of the Sámi to self-determination and traditional lands and waters have not been the most prominent issue in the committees' work. True reconciliation would mean Nordic states guaranteeing sufficient access to Sámi people to their traditional lands in the way that truly allows them to set priorities and influence these areas' development, and the right to withhold their free, prior, and informed consent to developments that may significantly and negatively affect their right to maintain, develop, and pass on their cultural heritage to future generations.

184 Scheinin, M. "Ihmisen ja kansan oikeudet: kohti Pohjoismaista saamelaisoppimusta." *Lakimies* 104 (2006): 27–41.

185 UN Human Rights Committee, Daniel Billie et al. v. Australia, 22 Sept. 2022, CCPR/C/135/D/3624/2019. 186 M. E. V., S. E. V. and B. I. V. v. Finland, CRC/C/97/D/172/2022, 7 October 2024. E/C.12/76/D/251/2022, E/C.12/76/D/289/2022, 8 October 2024.

187 Scheinin, M. "Kansainväliset alkuperäiskansaoikeudet ja niiden toteutuminen Suomessa. Selvitys Saamelaiten totuus- ja sovintokomissiolle." Valtioneuvoston julkaisuja 2024:5, p.15. [Report to the Sámi truth and reconciliation commission, Finnish Government].

188 *Ibid.*, p. 13.

189 Sámi truth and reconciliation commission in Finland: see <https://sdtsk.fi/en/home/>; Sámi truth and reconciliation commission in Norway:

see <https://www.stortinget.no/en/In-English/About-the-Storting/News-archive/Front-page-news/2022-2023/the-truth-and-reconciliation-commission/>; Sámi truth commission in Sweden:

<https://sanningskommissionensamer.se/en/about-the-commission/> (checked 4.4.2025).

At the heart of the international discourse of Indigenous peoples' right to cultural heritage is their right to self-determination and free, prior, and informed consent (FPIC). Both UN Indigenous Rights institutions and human rights treaty monitoring bodies have endorsed the right of Indigenous peoples to self-determination as the most crucial right on which the actualisation of other human rights is based. Indigenous peoples' rights institutions have strongly emphasised that Indigenous peoples' tangible and intangible cultural heritage is a central expression of their right to self-determination.¹⁹⁰ The basis of Indigenous peoples' right to self-determination stems from their nature-based culture, which is linked to the use and management of traditional lands, waters, and related natural resources.¹⁹¹

Human rights treaty monitoring bodies such as the UN Human Rights Committee (HRC), which monitors the International Covenant on Civil and Political Rights (ICCPR) and the Committee on Economic, Social and Cultural Rights (CESCR), which monitors the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognise the right of Indigenous peoples to self-determination as "peoples" under Article 1 of the Covenant.¹⁹² Article 1 of the ICCPR and ICESCR, which is identical, states that "all 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... All 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. In no case may a people be deprived of its own means of subsistence."

According to the recent practice of HRC, Article 27 of the ICCPR (the right of members of minority groups to culture) must also be read in conjunction with Article 1 on the collective right of peoples to self-determination.¹⁹³ According to the interpretation of HRC, Article 27 prohibits actions that may cause significant harm to the culture of Indigenous peoples. The effective participation of Indigenous peoples in decision-making affecting them and in assessing the overall impact of measures affecting them is also part of the protection under Article 27, which has been further strengthened by the recognition of Indigenous peoples' right to self-determination.¹⁹⁴ Indigenous peoples must therefore have a real opportunity to enjoy

190 UN Human Rights Council, Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage Study by the Expert Mechanism on the Rights of Indigenous Peoples, 19.8.2015, A/HRC/30/53, p. 4.

191 See e.g. Miranda, L.A., "Introduction to indigenous peoples' status and rights under international human rights law", in R. S. Abate and E. A. Kronk (eds), *Climate Change and Indigenous Peoples: The Search for Legal Remedies*. Cheltenham: Edward Elgar, 2013, p. 39, 56. See Heinämäki, L. and Kirchner, S., "Assessment on Recent Developments Regarding Indigenous Peoples' Legal Status and Rights in International Law with Special Focus on Free, Prior and Informed Consent", in L. Heinämäki, C. Allard, S. Kirchner et al., *Saamelaisen oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, valtioneuvoston kanslia, 4/2017*, pp. 224–284, 226–227. 192 E/C.12/76/D/251/2022 E/C.12/76/D/289/2022, 8 October 2024. Since 1999, the Human Rights Committee has applied Article 1 of the ICCPR to Indigenous peoples. See the first Concluding Observations on Canada and Norway, UN Human Rights Committee (HRC): Concluding Observations: Canada, 7 April 1999, CCPR/C/79/Add. 105, paras 7–8; Concluding Observations: Norway, 26 October 1999, CCPR/C/79/Add. 112, paras 16–17. For a general view of the Sámi people's right to self-determination, Heinämäki, L., "The Nordic Saami Convention: The Right of a People to Control Issues of Importance to Them", in N. Bankes and T. Koivurova (eds), *The Proposed Nordic Saami Convention, National and International Dimensions of Indigenous Property Rights*, Portland: Hart Publishing 2013, pp. 125–147; Vars, L. S., *The Sámi People's Right to Self-Determination* (Universitetet i Tromsø, Det juridiske fakultet 2010); Aikio, P., Scheinin, M., "Operationalizing the Right of Indigenous Peoples to Self-Determination", *International Journal on Minority and Group Rights*, 8 (1) (2001): 84–89.

193 CCPR/C/FIN/CO/7, 1 April 2021, para. 43. UN Human Rights Committee, *Tiina Sanila-Aikio v. Finland*, 1.2.2019., CCPR/C/124/D/2668/2015; UN Human Rights Committee, *Klemetti Näkkäljärvi et al. v. Finland*, 1.2.2019, CCPR/C/124/D/2950/2017.

194 Heinämäki, L. (2023). "The prohibition to weaken the Sámi culture in international law and Finnish environmental legislation," in D. Cambou and Ø. Ravna (eds). *The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries*. Routledge, pp. 84–100.

economic, social, and cultural development and set priorities and influence the development and decision-making concerning their cultural heritage, including their traditional lands, waters, and resources, as well as traditional livelihoods and other components of cultural heritage. In the same vein, the CESCR emphasises that Article 15 (the right to culture) must be read in conjunction with Article 1 on people's right to self-determination.¹⁹⁵

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁹⁶ adopted by the UN General Assembly in 2007, which was negotiated for more than two decades and is seen as largely reflecting the rights and principles of human rights treaties as interpreted by their monitoring bodies, recognises, in accordance with Article 3, the right of Indigenous peoples to self-determination, based on which they freely determine their political status and freely develop their economic, social, and cultural conditions. EMRIP has stated that the exercise of self-determination is indispensable for Indigenous peoples' enjoyment of all their other rights, including, importantly, land rights (Arts 25–28, 30, and 32) and political participation (Arts 18–20 and 34).¹⁹⁷

Free, prior, and informed consent

Natural resource rights are a key aspect of peoples' right to self-determination.¹⁹⁸ In the case of Indigenous peoples, this right is linked to their right to use and manage traditional areas and natural resources relevant to the exercise of their culture, and to set priorities for the development of those areas. However, in the case of natural resources, self-determination also contains the prohibition of depriving people of their own means of subsistence.¹⁹⁹ These natural resource components are called the resource dimension of self-determination.²⁰⁰ However, the resource dimension is considered to apply not only to natural resources traditionally used by Indigenous peoples but also to non-traditional natural resources such as minerals, hydropower, and forestry.²⁰¹

According to Article 32 of the UNDRIP, Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other natural resources.²⁰² This Article obliges states to consult in good faith and cooperate with the Indigenous peoples concerned through their representative bodies to obtain their free, prior, and informed consent before approving projects affecting Indigenous peoples' lands or territories and other natural resources, in particular regarding the development, use, or exploitation of mineral, water, or other natural resources.²⁰³

¹⁹⁵ E/C.12/76/D/251/2022; E/C.12/76/D/289/2022.

¹⁹⁶ UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 13 September 2007.

¹⁹⁷ A/HRC/48/75, para. 14, p. 5.

¹⁹⁸ Article 1.2.

¹⁹⁹ Article 1.2.

²⁰⁰ See Aikio, E. *Saamelaiusten kulttuuri-itsehallinnon kehittäminen*. Saamelaiskäräjien julkaisu, 2006, p. 5 [Developing Sámi cultural self-government, Publication of the Sámi Parliament of Finland].

²⁰¹ *Ibid.* See UN Human Rights Committee, Concluding Observation on Sweden, CCPR/CO/74/SWE 24 April 2002, para. 15.

²⁰² UNDRIP, Article 32.1.

²⁰³ *Ibid.*, Article 32.2.

In addition to Article 32 above, which concerns the development or use of their traditional lands, waters, and natural resources, Article 19 of the UNDRIP states that “States shall consult in good faith and cooperate with the indigenous peoples concerned through their representative bodies in order to obtain their free, prior and informed consent before States adopt and implement legislative or administrative measures that can affect indigenous peoples.” According to Article 18 of the Declaration, Indigenous peoples have the right to participate, through their representatives elected in accordance with their policies, in decision-making on matters that may affect their rights, and the right to maintain and develop their own decision-making bodies.²⁰⁴ These articles should be read in conjunction with Article 3 of the UNDRIP, discussed above, which recognises the right of Indigenous peoples to self-determination.

The rights to land, water, and natural resources guaranteed by the UNDRIP, as well as the related principle of FPIC, have also been recognised in the case practice of human rights treaty monitoring bodies, both as part of people’s right to self-determination and as part of the right to culture and equality.²⁰⁵ For example, in a case related to Sámi people, the CESCR has stated that Indigenous peoples’ cultural values and rights associated with their ancestral lands should be protected to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources, and ultimately their cultural identity.²⁰⁶

However, the UNDRIP does not affirm the most crucial external aspect of self-determination, the right to secede from existing states.²⁰⁷ Especially in Indigenous peoples’ rights discourse, it is accepted that the population of a state may include several identified groups of people, each exercising the right to self-determination, with the state still maintaining its territorial integrity.²⁰⁸ Indigenous peoples recognise their existence under the current nation-state structure.²⁰⁹ However, it is considered that there are external aspects of self-determination other than the right to secede. A primary manifestation of “external” determination is the right of Indigenous peoples, especially those divided by international borders, to maintain and develop contacts, relations, and cooperation, including activities for spiritual, cultural, political, economic, and social purposes, with their own members, as well as with other peoples across borders (Art. 36 (1)).^{30 17.}²¹⁰

205 See e.g. Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia, UN Doc. E/C.12/1/Add.74E/C.12/1/Add.74, para. 12; Concluding Observations on the sixth periodic report of Finland, E/C.12/FIN/CO/6, 17 December 2014; Committee on the Elimination of Racial Discrimination, Concluding Observations on Finland, CERD/C/FIN/CO/20-22, 31 August 2012, paras 11, 13; Concluding Observations on Canada, CERD/C/CAN/CO/19-20, 9 March 2012, para. 20 a.

206 E/C.12/76/D/251/2022 E/C.12/76/D/289/2022, 8. October 2024, para. 14.2.

207 See Article 46. See Fizmaurice, M., “The New Developments Regarding the Saami People of the North”, 16 *Journal on Minority and Group Rights* (2009): 67–156, 151.

208 Jong, D. J. (2015). *International Law and Governance of Natural Resources in Conflict and Post-Conflict Situations*. Cambridge: Cambridge University Press, p. 59.

209 Kingsbury, B. (1998). “Indigenous Peoples” in International Law: A Constructivist Approach to the Asian Controversy”. *The American Journal of International Law* 92, no. 3: 414–57, 422.

210 International Law Association, report of the Seventy-Fourth Conference, held at The Hague in 2010, focused on the rights of Indigenous peoples; see also A/HRC/EMRIP/2019/2/Rev.1.; A/HRC/48/75, para. 16, p. 5–6.

An internal aspect of self-determination, according to Article 4 of the Declaration, is that when exercising their right to self-determination, Indigenous peoples have the right to autonomy and self-government in matters related to their internal and local affairs and the means to finance their self-government tasks.²¹¹ Although Article 4 does not define what should be considered “internal and local” affairs of Indigenous peoples, the original draft of the UNDRIP, based on which the final Article was formulated, mentions culture, religion, education, information, the media, health, housing, business, social systems, economic activities, governance of land and natural resources, the environment, and financing of systems of self-government.²¹² Autonomy, as defined by the Special Rapporteur on the rights of Indigenous peoples, is the power that enables Indigenous peoples to organise and direct their lives in accordance with their own values, institutions, and mechanisms, within the framework of the state of which they are part.²¹³

Thus, although the Declaration is not legally binding as such in the same way as international treaties, the right of Indigenous peoples to self-determination has been recognised through legally binding human rights treaty monitoring bodies, as well as many, including Nordic, countries. In addition, it is noteworthy that the rights contained in the UNDRIP are also widely referred to both in government proposals on Sámi rights and in court practice. UNDRIP also serves as an interpretative framework for older binding treaties such as ILO Convention No. 169 on the Rights of Indigenous Peoples.²¹⁴ It was also used as a model for drafting the Nordic Sámi Convention.²¹⁵

At the Summit of Indigenous Peoples held in connection with the UN General Assembly in 2014, Nordic countries adopted the Summit’s final document, which reaffirms the states’ commitment to the UNDRIP and the implementation of its rights and principles.²¹⁶ It has further been argued that at least some of the provisions of the declaration are legally binding for all states, as they are considered to reflect customary international law.²¹⁷ For example, shortly after the adoption of UNDRIP, the International Law Association (ILA) appointed

211 Article 4.

212 Article 31 Draft UN Declaration on the Rights of Indigenous Peoples, E/CN.4/Sub.2/1994/, <http://www.un-documents.net/c4s29445.htm> (checked 1.5.2024).

213 A/HRC/48/75, para. 12, p. 4.

214 International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, adopted 27 June 1989, entered into force 5 September 1991, 28 International Legal Materials (1989) 1382. For an analysis, see Yupsanis, A., “ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 1989–2009: An Overview”, *Nordic Journal of International Law*, 79 (3), pp. 433–456.

215 See Luonnos Pohjoismaiseksi Saamelaisopimukseksi, Työryhmämietintö 2009:18, Oikeusministeriö [Draft for the Nordic Sámi Convention, memorandum of the Working Group, Ministry of Justice].

216 Resolution adopted by the General Assembly on 22 September 2014, Outcome document of the high-plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, GA/RES/69/2.

217 James, A. and Rodríguez-Piñero, L. “Part I The UNDRIP’s Relationship to Existing International Law, Ch. 2 The Making of UNDRIP”, in J. Hohmann and M. Weller (eds). *The UN Declaration on the Rights of Indigenous Peoples: A Commentary*. Oxford University Press 2018, pp. 38–62, 62. See Xanthaki, A. “Indigenous Rights in International Law over the Last 10 Years and Future Developments.” 10 *Melbourne Journal of International Law* (2009): 27–37; Åhren, M. *The Saami traditional dress and beauty pageants: Indigenous peoples’ rights of ownership and self-determination over their cultures*. Avhandling leveret for graden Philosophiae Doctor i rettsvitenskap (Thesis supplied for the degree of Philosophiae Doctor of Law) (2010) (unpublished), p. 103; Barelli, M. “The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples.” 58 *International and Comparative Law Quarterly* (2009): 957–983, 966. Rehman, J. “Between the Devil and the Deep Blue Sea: Indigenous Peoples as the Pawns in the US ‘War on Terror’ and Jihad of Osama Bin Laden”, in S. Allen and A. Xanthaki (eds). *Reflections on the UN Declaration on the Rights of Indigenous Peoples*. Portland: Hart Publishing, 2011, pp. 561–584.

a committee to examine UNDRIP's status in international law.²¹⁸ The ILA's final report was presented for discussion and adoption in 2012. It states that UNDRIP "as a whole cannot yet be considered as a statement of existing customary international law".²¹⁹ However, the ILA viewed several of the declaration's provisions as having already achieved such status, including Indigenous peoples' right to self-determination in Article 3.²²⁰ In the recent Sámi case related to mineral exploration, the Committee on the Rights of the Child (CRC) highlights UNDRIP "as an authoritative framework for interpreting State party obligations under the Convention [on the Rights of the Child] concerning Indigenous peoples' rights".²²¹ Moreover, Norwegian Supreme Court's *Nesseby* judgment has asserted that UNDRIP is a primary Indigenous Rights instrument, as well as that UNDRIP reflects international law, including ILO Convention No. 169.²²²

The Nordic Sámi Convention, which has not yet approved by the Nordic Sámi Parliaments, also recognises Sámi people's right to self-determination as an Indigenous people.²²³ According to Article 4 of the Convention, the right to self-determination is exercised through self-government in internal affairs and negotiations in matters that may prove of particular importance to the Sámi people.²²⁴ Similarly to UNDRIP, the Sámi Convention does not define exactly what is meant by internal affairs, but the group of experts preparing the Convention refers to the draft UNDRIP, which lists "internal and local" issues.²²⁵

When drafting the final Article 4 of UNDRIP, the Nordic countries adopted a proposal according to which Indigenous peoples, as a form of exercise of their right to self-determination, also had the right to autonomy and self-government in internal and local affairs. However, the Nordic countries suggested that the list of sub-areas should not be listed in the declaration, partly on the grounds that such lists were often unjustifiably considered exhaustive, and that it might prove difficult to reach a full consensus on the elements to be included.²²⁶ The fact that Article 4 did not exhaustively list the areas which were Indigenous peoples' internal and local affairs would enable states, in cooperation with Indigenous peoples, to develop Indigenous self-government over time and to extend the issues covered by it.

218 International Law Association, Rights of Indigenous Peoples: First Report, Conference, Rio de Janeiro 2008.

219 International Law Association, Conclusions and Recommendation of The Committee on the Rights of Indigenous Peoples, 75th Conference, Resolution No. 5/2012, Sofia 2012, para. 2

220 Ibid., para. 4.

221 CRC/C/97/D/172/2022, 7.10.2024, para. 9.12. cf. CEDAW/C/GC/39, General recommendation No. 39 (2022) on the rights of Indigenous women and girls, para. 13.

222 HR-2018-456-P (Nesseby), para. 97. <https://www.domstol.no/globalassets/upload/hret/decisions-in-english-translation/hr-2018-456-p.pdf> (accessed 16.4.2024).

223 Pohjoismainen saamelaisopimus 9.2.2017, Article 18, Oikeusministeriö

https://api.hankeikkuna.fi/asiakirjat/b9e74a8e-621c-4b16-bb4b-015c0262b60d/99ab2fa4-e9d1-442a-9117-cc896751ed02/SOPIMUS_20170822111310.pdf (7.4.2020).

For an analysis, see Heinämäki, L. and Cambou, D., "New Proposal for the Nordic Sámi Convention: An Appraisal of the Sámi People's Right to Self-Determination"

Retfærd: nordisk juridisk tidsskrift, 2018, 41 (2): 3–18.

224 Article 4.

225 See Pohjoismainen saamelaisopimus, suomalais-norjalais-ruotsalais-saamelaisasiantuntijatyöryhmän 27 lokakuuta 2005 luovuttama luonnos, p. 143.

https://www.samediggi.fi/wp-content/uploads/2016/07/saamkonv_2005_sopimusteksti_fi_koko.pdf (checked 1.5.2024).

226 Ibid., pp. 143–144.

In the Nordic countries, the self-governance of the Sámi people can and should be developed based on fundamental and human rights so that certain core issues can be recognised as internal or local matters in which self-determination is realised through self-government by giving the Sámi Parliaments decision-making powers in matters concerning them, such as the most important elements of their cultural heritage, as prioritised and defined by the Sámi Parliaments. However, as self-determination is also exercised via self-government in internal matters, this allows each Nordic country to expand the authority of the Sámi Parliament in their legislative powers on certain issues, for example. In Norway, the Sámi Parliament has already been granted decision-making power concerning certain aspects of Sámi people's cultural heritage, as is discussed later in this report.²²⁷

As mentioned above, the Sámi Convention also views the obligation of state authorities to consult with the Sámi Parliaments as an aspect of the right to self-determination, though self-determination is not limited to negotiations. According to Article 17 of the Convention, the state must consult with the Sámi Parliament when legislating, making decisions, and taking other measures that may be of particular importance for the Sámi. The consultations are conducted in good faith, with the aim of reaching a consensus with the Sámi Parliament or obtaining the consent of the Sámi Parliament before decision-making. States must also inform the Sámi Parliament as soon as possible when they start working on such matters.²²⁸

The Articles of both UNDRIP and the Nordic Sámi Convention concerning self-determination form the basis of both these legal documents, in the light of which the other Articles of these documents should be read. The drafting of both documents and lengthy negotiations themselves reflect the right of Indigenous peoples/Sámi people to self-determination, as they have not been adopted without the consent of the Indigenous peoples/Sámi Parliaments. Although Indigenous peoples are not parties to international treaties in the same way as the states, the position of the Sámi Parliaments in the Nordic Sámi Convention is strong: the convention has been negotiated between the Nordic countries and the three Sámi Parliaments, and it cannot be ratified without the consent of all the Sámi Parliaments.

Although ILO Convention No. 169 does not literally recognise the right of Indigenous peoples to self-determination, it has nevertheless been seen in practice as granting a fairly broad degree of autonomy in matters related to the development of their territories and economic, social, and cultural conditions,²²⁹ including land rights.²³⁰ Importantly, as

227 Falch, T., Selle, P., and Strømsne, K. "The Sámi: 25 Years of Indigenous Authority in Norway" *Ethnopolitics*, (2016) 15 (1):125–143.

228 Article 17.

229 HE 248/1994 vp., p. 10. [Government Bill] See, Guttorm, J. *Saamelaiten itsehallinto Suomessa – dynaaminen vai staattinen? Tutkimus perustuslaissa turvatus saamelaisten itsehallinnon kehitymisestä lainsäädännössä vuosina 1996–2015*. Acta Universitatis Lapponiensis 375, Lapin yliopisto, 2018, pp. 3-4.

230 Articles 13–19.

explained later in this report, the Convention states that in applying land rights provisions, the Convention governments must respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands and territories, which they occupy or otherwise use, and in particular the collective aspects of this relationship.²³¹

Article 6 of ILO Convention No. 169 states that consultations with Indigenous peoples must be conducted with the aim of mutual understanding or consent. The negotiations contain procedural criteria: for example, they must be conducted in “good faith”, which, according to the ILO guide, is a genuine interaction in which the priorities of Indigenous peoples are actually taken into account so that they have an impact on the outcome of the decision.²³² In accordance with Article 7 of the Convention, Indigenous peoples have the right to determine their own priorities, including development affecting the lands they inhabit or otherwise use, and to control, as far as possible, their own economic, social, and cultural development.²³³ Although FPIC is explicitly enshrined in UNDRIP,²³⁴ it is widely applied in practice in the interpretation practice of the American Court of Human Rights concerning ILO Convention No. 169, for example.²³⁵ Although ILO Convention No. 169 has not been ratified in Finland and Sweden, legislation and administration must strive to act in accordance with the provisions and spirit of the Convention.²³⁶

At the heart of Indigenous peoples’ right to self-determination is their right to control issues relevant to their culture/cultural heritage, including traditional territories and resources, and to participate effectively and comprehensively in decision-making concerning them. Human rights monitoring bodies such as the HRC, the CESCR, the CERD, and the CRC have all stressed the right of Indigenous peoples, including the Sámi people, to use and control their traditional territories: their lands, waters, and natural resources, both as part of their right to self-determination and as part of their right to culture and equality.²³⁷

Especially since the adoption of UNDRIP, human rights monitoring bodies have increasingly begun to refer to the principle of free, prior, and informed consent (FPIC) in

²³¹ Article 13.

²³² International Labour Organization, *Indigenous & Tribal Peoples’ Rights in Practice, A Guide to ILO Convention No. 169*, 2009, pp. 59–60, http://pro169.org/res/materials/en/general_resources/IPsRightsInPractice-singlepages.pdf (checked 1.5.2024).

²³³ Article 7.

²³⁴ UNDRIP, Articles 19 and 32.

²³⁵ See Inter-American Court of Human Rights, *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and reparations. Judgment of 27 June 2012. IACHR Series C, No. 245295-303. For an analysis, see Xanthaki, A. and Kirchner, S. “The interpretation of the land rights articles of the ILO Convention No. 169: International law perspectives in the context of Finnish Sámi”, in L. Heinämäki, C. Allard, S. Kirchner et al., *Saamelaiden oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, valtioneuvoston kanslia*, 4/2017, pp. 295–303.

²³⁶ *Ibid*; SoVL 11/1990 vp.

²³⁷ See Heinämäki, L. (2023). “The prohibition to weaken the Sámi culture in international law and Finnish environmental legislation”, in D. Cambou and Ø. Ravna (eds), *The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries*, Routledge, pp. 84–100.

the context of self-determination, which has been more precisely interpreted by UN human rights bodies. FPIC is seen as contributing to the realisation of Indigenous peoples' right to self-determination at the level of procedural measures,²³⁸ though the right to self-determination is not limited to it, as it also includes substantial significant aspects such as the right to economic, social, and cultural development, natural resources, and means of subsistence. The UN Human Rights Commission explicitly mentions cultural heritage as a key area in which FPIC must be observed.²³⁹

UNDRIP, the Nordic Sámi Convention, and ILO Convention No. 169 all emphasise the position of institutions representing Indigenous peoples. Participation must be secured, and consultations must be conducted with institutions representing Indigenous peoples. All the legal instruments mentioned above recognise Indigenous peoples' own traditions and customs, which are also considered to play a key role in negotiation processes.²⁴⁰ If necessary, consultations should therefore also be held with the traditional governing bodies of Indigenous peoples. Indigenous peoples should themselves define the representative bodies that concern them through which participation should take place.²⁴¹ In addition to the Sámi Parliament, the Nordic Sámi Convention mentions Sámi institutions such as Sámi villages, *siidas*, reindeer herders, the Skolt Sámi village assembly, and other Sámi organisations as parties to the consultations.²⁴² Individual Sámi families can also play an important role in protecting cultural heritage with regard to sacred cultural sites, for example. In the Sámi cases, the CESCR and CRC have recognised a Sámi *siida* as a traditional institution with whom consultations with the aim of FPIC must be conducted.²⁴³

FPIC has become an accepted legal principle and a right through the interpretative practice of legally binding human rights treaty monitoring bodies.²⁴⁴ The CERD has confirmed the human-rights-based nature of FPIC “as a norm stemming from the prohibition of racial discrimination”, which is the main underlying cause of most discrimination suffered by Indigenous peoples.²⁴⁵ The HRC, which monitors the ICCPR, has adopted FPIC as part of

238 Ibid; Ward, T. “The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law”, *Northwestern Journal of International Human Rights* 10 (2) 2011:54–84, 55.

239 UN Commission on Human Rights, Sub-Comm. on the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Working Paper: Standard-Setting: Legal Commentary on the Concept of Free, Prior and Informed Consent, 57, UN Doc. E/CN.4/Sub.2/AC.4/2005/WP.1, 2005 (14 July 2005), 3 (Motoc, A.-I. and the Tebtebba Foundation).

240 Tobin, B. *Indigenous Peoples, Customary Law and Human Rights: Why Living Law Matters*. London and New York: Routledge, 2014, p. 29; UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). 2018. “Free, Prior and Informed Consent: A Human-Rights-Based Approach”. UN Doc. A/HRC/39/62, 10 August, para. 42.

241 See International Labour Organization, *Understanding the Indigenous and Tribal Peoples Convention. Handbook for ILO Tripartite Constituents*. International Labour Office, Geneva, 2013, p.14. See, also Heinämäki, L. “Legal Appraisal of Arctic Indigenous Peoples' Right to Free, Prior and Informed Consent”, in T. Koivurova et al. (eds). *Handbook on Arctic Indigenous Peoples in the Arctic*, Routledge, 2020, pp. 335–351, 343; See also Hughes, L. “Relationships with Arctic Indigenous Peoples: To What Extent Has Prior Informed Consent Become a Norm?” *Review of European, Comparative and International Environmental Law*, 2018, 27 (1):15–27.

242 Pohjoismainen saamelaisopimus 9.2.2017, Article 18 [Nordic Sámi Convention].

243 M. E. V., S. E. V. and B. I. V. v. Finland, CRC/C/97/D/172/2022, 7 October 2024. E/C.12/76/D/251/2022, E/C.12/76/D/289/2022, 8 October 2024.

244 For a general view, see Rombouts, S. J. *Having a Say: Indigenous Peoples, International Law and Free, Prior and Informed Consent*, Oosterwijk: Wolf, 2014; Heinämäki, L. “Global Context – Arctic Importance: Free, Prior and Informed Consent, a New Paradigm in International Law Related to Indigenous Peoples”, in T. M. Herrmann and M. Thibault (eds). *Indigenous Peoples' Governance of Land and Protected Territories in the Arctic*, Cham: Springer, 2016, pp. 209–240. See UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) (2018). Free, prior and informed consent: a human-rights-based approach. A/HRC/39/62, 10 August 2018.

245 Lars-Anders Ågren et al. v. Sweden. UN Committee on the Elimination of Racial Discrimination, CERD/C/102/D/54/2013, 26 November 2020, para. 6.16; A/HRC/39/62, paras 9–10.

both Article 27 and Article 1 obligations.²⁴⁶ Additionally, in the recent Sámi cases related to mineral exploration in Finland, both the CESCR and CRC highlighted FPIC as part of Indigenous peoples' right to culture and self-determination.²⁴⁷

Above all, FPIC is related to the quality criteria for consultations with Indigenous peoples. It is a process with the obligation to conduct qualitatively defined consultations, in which the Indigenous people plays a key role from beginning to end, and with the aim of reaching an agreement, including in agreeing on the terms of the negotiation process itself, including its basic premises and conditions.²⁴⁸ It is essential to note that although UNDRIP, ILO Convention No. 169, and the Sámi Convention do not guarantee an unequivocal *veto* right to Indigenous peoples, except in exceptional cases,²⁴⁹ binding human rights monitoring bodies have nevertheless stated that if the measures are wide-ranging, can be expected to have a significant impact on the Indigenous people, or are among the core issues essential for the preservation of culture, they cannot be implemented – at least not without the consent of the Indigenous people.²⁵⁰

In UNDRIP, the abovementioned exceptional case is Article 29, for example, which prohibits the storage and disposal of dangerous substances without the FPIC of Indigenous peoples. According to a report prepared by Laura Junka-Aikio for the Sámi Truth and Reconciliation Commission in Finland, the question of the storage of dangerous substances is central in the context of military land use, as the maintenance of the Defence Forces usually requires the storage and use of hazardous substances related both directly to armaments and indirectly, for example, to equipment maintenance and fire safety, including possible chemical poisons, fuels, radioactive substances material, explosives, and, in extreme cases, nuclear weapons and related materials.²⁵¹

In a Sámi case, the CESCR, while elaborating on the meaning of FPIC, has stated that an adequate and effective FPIC process when the rights of Indigenous peoples may be affected by projects carried out in their traditional territories must include not only the sharing of information and the reception of comments from the affected community but also an interactive and continuous dialogue through Indigenous peoples' own representative institutions, from the outset and through culturally appropriate procedures, respecting the

246 See e.g. Human Rights Committee, Concluding Observations on Sweden, 28 April 2016, CCPR/C/SWE/CO/7, paras 38–39; on Venezuela, CCPR/C/VEN/CO/4, para. 21.

247 M. E. V., S. E. V. and B. I. V. v. Finland, CRC/C/97/D/172/2022, 7 October 2024. E/C.12/76/D/251/2022, E/C.12/76/D/289/2022, 8 October 2024.

248 See Heinämäki, L. (2023). "The prohibition to weaken the Sámi culture in international law and Finnish environmental legislation", in D. Cambou & Ø. Ravna (eds).

The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries. Routledge, pp. 84–100.

249 UNDRIP Articles 10 and 29.2. ILO Convention No. 169 Article 16.

250 For an analysis, see Heinämäki, L. and Kirchner, S. (2017). "Assessment on Recent Developments Regarding Indigenous Peoples' Legal Status and Rights in International Law with Special Focus on Free, Prior and Informed Consent", in L. Heinämäki, C. Allard, S. Kirchner et al., Saamelaiden oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, valtioneuvoston kanslia, 4/2017, pp. 224–284; Doyle, C. and Gilbert, J. "A New dawn over the land: Shedding light on collective ownership and consent", in S. Allen and A. Xanthaki (eds). *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, Oxford: Hart Publishing, 2011, pp. 289–328, 317.

251 Junka-Aikio, L. (2025). *Saamenmaan militarisaation vaikutukset alkuperäiskansan kulttuuriin, elinkeinoihin ja oikeuksien toteutumiseen Suomessa: Erilliselviitys saamelaisten totuus- ja sovintokomissiolle* (Valtioneuvoston julkaisuja 2025:84). Valtioneuvoston kanslia, p. 33.

right of Indigenous peoples to influence the outcome of decision-making processes affecting them. The Human Rights treaty bodies have also acknowledged that environmental, social, and cultural impact studies conducted by independent and technical competent entities should be a precondition for a process of consultations aimed at obtaining FPIC.²⁵²

The wider acceptance of Indigenous peoples' self-determination has also been fundamentally influenced by the UN's legal and political dialogue on sustainable development and biodiversity conservation. Within this framework, Indigenous peoples have come to be regarded, especially since the early 1990s, increasingly as partners rather than mere objects of protection, with significant traditional knowledge, skills, and practices that need to be considered as part of sustainable development and biodiversity conservation.²⁵³ The principle of FPIC has become part of the implementation of the Convention on Biological Diversity (CBD), in particular through its Nagoya Protocol on Genetic Resources and several voluntary guidelines related to its implementation. The CBD recognises that cultural heritage such as traditional knowledge and the traditional cultural practices of Indigenous peoples play a vital role in maintaining biodiversity. Indigenous peoples and their traditional knowledge should therefore be included in the protection of biodiversity, respecting Indigenous peoples' FPIC. The CBD, the Nagoya Protocol, and the voluntary guidelines are discussed in the later chapters of this report.

4.2.2. Rights of the Sámi People to Self-determination, Consultations, and Lands in the Nordic Countries

Sámi Governance

In the Nordic Countries, Sámi governance is based on separate institutions to ensure the political representation of the Sámi through the Samediggis (Sámi Parliaments),²⁵⁴ which were established in Norway (1989), Sweden (1993), and Finland (1995). However, the scope for Sámi Parliaments to take decisions autonomously is very limited,²⁵⁵ so the right of the Sámi people to self-determination is not actualised in its full meaning. EMRIP has stated that the fact that the Sámi people have parliamentary structures across three countries (Finland, Norway, and Sweden) should grant them the right to cultural and political self-determination on their traditional lands, of which they have usufruct as opposed to ownership rights,

252 See e.g. *Poma Poma v. Peru*, Comm. No. 1457/2006, UN Doc. CCPR/C/95/D/1457/2006, 27 March 2009; CERD/C/102/D/54/2013, para. 6.18; see Report of the Committee on the Elimination of Racial Discrimination for the Seventy-eighth and Seventy-ninth sessions, 6 January 2012, UN Doc. A/66/18, para. 28; Report of the Committee on the Elimination of Racial Discrimination, Sixty-eighth and Sixty-ninth sessions, 1 October 2006, UN Doc. A/61/18, para. 147 (Committee "recommends that the State party undertake environmental impact assessments and seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar activities"). EMRIP, A/HRC/39/62; IACrHR, *Sarayaku*, para. 167; IACrHR, *Saramaka*, para. 133; IAComHR, *Indigenous and Tribal peoples' rights over their ancestral lands and natural resources*, paras 318 and 319.

253 Heinämäki, L. "Protecting the Rights of Indigenous Peoples: Promoting the Sustainability of the Global Environment?" *International Community Law Review*, 11 (1) (March 2009):3–68.

254 See e.g. Mörkenstam U., Josefsen, E., and Nilsson, R. "The Nordic Sámediggis and the Limits of Indigenous Self-Determination Gáldu Čála." (2016) 1, *Journal of Indigenous Peoples Rights*, pp. 4–46.

255 For a general view, see e.g. Broderstad E. G. "The promises and challenges of indigenous self-determination: The Sami case", 66 (4) *International Journal*, 2011:893–907.

and decision-making authority, as well as the right to consultation.²⁵⁶ It is justifiable to argue that a broad understanding of cultural heritage, including the rights to self-determination and traditional lands and resources and hence to preserve cultural values and identity, should be considered part of the internal affairs of the Sámi people, or at least core issues in which the Sámi Parliaments should have some significant control as part of their cultural autonomy. Rauna Kuokkanen correctly argues in a study of Sámi cultural autonomy in Finland, that the prevailing framework of Sámi cultural autonomy acts as a significant barrier to the effective realisation and practice of the right to Indigenous self-determination, while granting mere consultation and limiting Sámi rights in the sphere of language and culture and failing to pass comprehensive legislation addressing land rights, central to operationalising Indigenous self-determination and exercising self-government.²⁵⁷

The Sámi people's own perception of which issues are among the most important for cultural heritage/culture should be given weight. The Sámi Parliament of Finland has highlighted that, in addition to traditional livelihoods, for example, decision-making and control over ancient Sámi antiquities are one of the core issues of cultural autonomy.²⁵⁸ Norway is the only Nordic country that grants at least to a great degree of self-determination or the Sámi in relation to their archaeological heritage, as is discussed later in this report.

Consultation Rights

Finland, Norway, and Sweden all grant consultation rights to the Sámi Parliaments and to some extent other affected Sámi groups such as reindeer-herding organisations. All the countries have taken steps towards embracing FPIC, though not yet in its fullest sense.

Finland has recently (2025) taken a step forward by embracing FPIC as “the obligation to cooperate and negotiate” instead of mere consultations with the Sámi Parliament according to reformed Section 9 of the Act on Sámi Parliament, which states that “authorities and other entities performing public administrative functions shall negotiate with the Sámi Parliament when preparing legislation, administrative decisions, and other measures that may have a particular significance for the Sámi, with the aim of achieving consensus with or obtaining the consent of the Sámi Parliament before a decision is made. The obligation to cooperate and negotiate applies to measures implemented in or extending to their effects to the Sámi Homeland, as well as other measures that particularly affect the Sámi language or culture or their status or rights as an indigenous people...”²⁵⁹ The Article lists many separate areas in which negotiations must be conducted, from land-use planning and mining to climate

²⁵⁶ See A/HRC/45/38.; A/HRC/48/75, para. 20, p. 7.

²⁵⁷ Kuokkanen, R. “The Problem of culturalization of indigenous self-determination: Sámi cultural autonomy in Finland.” *The Polar Journal* 14, (1) 2024:148–166.

²⁵⁸ Saamelaiskäräjien kansainvälistä toimintaa koskeva strategia, 18.12.2017, p. 24 [Sámi Parliament's Strategy on international activities].

²⁵⁹ Section 9.

change regulation, Sámi-related legislative or administrative changes, the teaching of Sámi language, and other issues, and finally any “other similar matters affecting the Sámi language, culture or their status or rights as an indigenous people”.²⁶⁰

Section 9 has two additional items that give more weight and content to the negotiations. Section 9a is called “taking the rights of the Sámi into account in the activities of the authorities and other persons performing public administrative duties”.

According to 9a, when planning and implementing the measures referred to in section 9, the authorities and other persons performing public administrative duties must, by the means at their disposal: 1) promote the maintenance and development of the Sámi languages and the right and conditions of the Sámi to maintain and develop their culture, including their traditional livelihoods; and 2) reduce the negative impacts of its measures on the Sámi languages and on the right and conditions of the Sámi to maintain and develop their own culture, including their traditional livelihoods.²⁶¹

Section 9b addresses “procedure in cooperation and negotiations”. Accordingly, the authorities and other persons performing public administrative duties must notify the Sámi Parliament as soon as possible when they start working on the matters referred to in section 9. In the case of continuous operations, the notification must be made well in advance of the negotiations. The authorities and other persons performing public administrative duties must notify the Sámi Parliament of the deadline by which the Sámi Parliament must notify its willingness to negotiate on the matter. The time limit must be reasonable, and it can consider the urgency of the matter. Failure to take advantage of the opportunity does not prevent the authority or the person performing a public administrative task continuing the processing of the matter.

The Sámi Parliament has the right to receive a written explanation of the matter, including the matters referred to in section 9a, and the related plans before the negotiations. The Sámi Parliament must be given a reasonable amount of time to prepare for the negotiations. Cooperation must be initiated and negotiations conducted in good faith and in a timely manner so that it is possible to influence the outcome of the matter before it is resolved. Minutes must be drawn up of the negotiations that have taken place, recording the views of the parties on the matter and the outcome of the negotiations.²⁶²

²⁶⁰ Ibid.

²⁶¹ Section 9a.

²⁶² Section 9b.

This duty of the authorities under section 9 of the Sámi Parliament Act has been separately referred to in some other acts such as mining²⁶³ and climate acts.²⁶⁴ Finland's Reindeer Husbandry Act does not recognise the rights of the Sámi, but does require negotiations with the reindeer herder's associations, which also include Sámi reindeer herders.²⁶⁵ However, Sámi reindeer herders are underrepresented in reindeer-herding administration, which is dominated by Finnish reindeer herders.

In Norway, the original Consultation Agreement was signed in 2005 between the Norwegian government and the Sámi Parliament. Consultation on land-use issues should be carried out in the traditional Sámi area.²⁶⁶ Guidelines for the application of the Convention have also been drawn up by the Ministry of Labour and Social Affairs (2006).²⁶⁷ According to the agreement, consultation between the state or other authorities or between persons performing similar duties and the Sámi Parliament must be conducted in a good spirit, with the aim of reaching an agreement.²⁶⁸ Other Sámi parties affected by a measure should also be consulted if necessary, in coordination with the Sámi Parliament.²⁶⁹ The Consultation Agreement has been particularly influential in legislative processes. For example, the Sámi Parliament has had substantial influence in respect of the Reindeer Herding Act 2007, the Plan and Building Act 2008, and the Nature Diversity Act 2009, apart from the Finnmark Act which was the starting point for proper consultations. The other major consultation agreement signed concerns nature conservation matters in traditional Sámi areas. The signatories are the Ministry for Environment and the Sámi Parliament, and it was concluded in January 2007.²⁷⁰

In 2021, consultation provisions were also added to the Sámi Act,²⁷¹ and a formal link between ILO Convention No. 169 and the Sámi Act of Norway was established. While section 1-1, subsection 1 on the purpose of the Sámi Act basically has the same wording as Article 108 of the Constitution, a new paragraph was added to section 1-1 as part of the adoption of the chapter on consultation. The new subsection 2 reads: "The Act applies with the reservation of what follows from ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. The law should be applied in accordance with the rules

263 Mining Act 621/2011.

264 Climate Act 423/2022.

265 Reindeer Herding Act 848/1990, section 53.

266 The traditional Sámi area includes Troms, Finnmark, and Nordland, as well as the municipalities of Engerdal, Flatanger, Folldal, Frosta, Grong, Holtålen, Høylandet, Inderøy, Indre Fosen, Leka, Levanger, Lierne, Meråker, Midtre Gauldal, Namsskogan, Namsos, Nærøysund, Oppdal, Orkland, Os, Osen, Overhalla, Rendalen, Rennebu, Rindal, Roros, Røyrvik, Selbu, Snåsa, Steinkjer, Stjørdal, Sunndal, Surnadal Tolga, Tydal, Tynset, Verdal, Ørland, and Ålfjord.

267 Veileder for statlige myndigheters konsultasjoner med sametinget og eventuelle øvrige samiske interesser, 2006,

https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_-veileder_for_konsultasjoner.pdf (checked 20.7.2022).

268 Procedures for Consultations between State Authorities and The Sami Parliament [Norway] section 6, General provisions concerning the consultation procedures.

269 Ibid., section 9, Consultation with other affected Sámi.

270 Allard, C., "Chapter on Norway", in L. Heinämäki et al. Saamelaiden oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, valtioneuvoston kanslia, 4/2017, pp. 311–260.

271 Lov om Sametinget og andre samiske rettsforhold (sameloven) – Lovdata, Lov om endringer i sameloven mv. (konsultasjoner), LOV-2021-06-11-76.

of international law on Indigenous peoples and minorities”. The preparatory work for the law emphasises that this additional paragraph is particularly relevant for the application of consultation requirements because they have been drafted very much with the intent of shaping Norwegian law in line with Norway’s international obligations.²⁷² Since 2021, chapter 4 of the Sámi Act contains ten sections on consultation. Section 4-1 establishes in which cases consultations should be undertaken. The chapter applies to legislation, delegated legislation, and other decisions and projects “which could influence Sami interests directly”.

Subsection 3 has a lower threshold for consultation concerning projects and decisions that are planned and executed in “traditional Sámi areas, or which may affect the exercise of Sámi material culture in traditional Sámi areas”. A special exemption follows from subsection 4 with respect to cases where the Sámi Parliament has a right to raise objections according to the general Plan and Building Act. In addition to the Sámi Parliament, “other representatives for affected Sami interests” must also be consulted (section 4-2).²⁷³

The consultations’ operation has qualitative criteria for FPIC: they must be conducted in good faith and with the purpose of reaching agreement. The body that has the consultation duty must give full information about all relevant issues (Norwegian: “forhold”) at all points of time in the handling of the case. The consultations must start sufficiently early to give the parties a real possibility to reach an agreement about the decision. The consultations must not be concluded if the parties assume that it is possible to reach an agreement about the case (section 4-6). A protocol should be set up based on the consultations. It must state what the case is about, “the assessments and positions of the parties as well as the conclusions in the case”. If an agreement is reached, this must be clearly stated (4-7).

The Norwegian consultation legislation is an important step towards embracing the Sámi’s FPIC, especially when strictly interpreted in the light of international human rights standards. However, the Saami Council has stated that although the adoption of a new Consultations Act in 2021 marks some progress, it falls short of implementing the Sámi people’s right to FPIC. Agreement or consent is therefore rarely achieved in the most crucial issues for the Sámi people.²⁷⁴

In Sweden, the participation of the Sámi Parliament and other Sámi parties in decision-making has been considerably weaker than in Norway and Finland. The authorities’ obligation to consult the Sámi people has previously been based mainly on the Act on the

272 See, Mestad, O. “Consultations and Multi-Level Meaningful Stakeholder Engagement in the Norwegian Sami Areas”, in Buhmann, K., Fonseca, A., Andrews, N., and Amatulli, G. (eds). (2024). *The Routledge Handbook on Meaningful Stakeholder Engagement* (1st ed.). Routledge, pp. 176–192, 178–179.

273 L.OV-2021-06-11-76, translated to English by Mestad, O., *ibid*.

274 See Saami Council Statement, <https://upr-info.org/sites/default/files/country-document/2024-08/SaamiCouncilUPRStatement.pdf> (checked 20.6.2025).

Protection of Minorities,²⁷⁵ section 5 of which obliges representatives of minorities to participate in issues that concern them. In its role as an authority, the Sámi Parliament can also issue statements on issues related to the drafting of legislation that are central to the Sámi people.²⁷⁶ In addition, sector-specific acts contain limited consultation obligations concerning the Sámi. For example, the Forestry Act contains an obligation to consult Sámi villages (sameby).²⁷⁷

Some years ago, however, there was an improvement in the situation regarding the Sámi's participation, when a new Act on Sámi Consultation entered into force in Sweden on 1 March 2022,²⁷⁸ with the corresponding addendum for municipalities (SFS 2022:69), which entered into force on 1 March 2024. According to the government proposal concerning the Act,²⁷⁹ the obligation to consult may apply to land use, business, reindeer husbandry, fishing, hunting, predators, mines, wind power, forestry, cultural issues, placenames, biodiversity in the reindeer-herding area, and matters related to early childhood education, education, and research and care for elderly Sámi.²⁸⁰ The Act also specifies matters that are not consulted (e.g. related to national security, state funding or research, etc.). In addition to the Sámi Parliament, Sámi villages (sameby) or Sámi organisations should also be consulted if the matter is particularly significant for them. Consultation with Sámi villages or organisations must be notified to the Sámi Parliament unless the consultation is carried out with the Sámi Parliament.²⁸¹

However, the new law on consultation does not use wording that corresponds to FPIC. Yet the negotiations must be conducted in a good faith and will continue until an agreement has been reached, or until it is established that it has not.²⁸² It is important that other qualitative criteria have been set for the consultation, such as the early timing of the consultation and sufficient time for the Sámi people to prepare and receive the necessary information as a basis for the consultation.²⁸³ Consultations should also be carefully documented.²⁸⁴

Legal Protection of Sámi Land Rights

The recognition and actualisation of rights to traditional lands, waters, and resources of the Sámi is an inherent part of their right to self-determination, as discussed in the previous chapter. Lands and waters are the basis of Indigenous peoples', including the Sámi people's,

275 National Minorities and Minority Languages Act (2009:724).

276 Chapter 7 Section 2 Paragraph 6 Instrument of Government, Government of Sweden, (Ds 2017:43) 24; see Forsgren, A., *Sámi Influences in Decision-Making Processes: Consultation, Consent or Somewhere In-between?* Master's Thesis in Environmental Law, Department of Law, Uppsala University, 2019, p. 37.

277 Skogsvårdslag (1979:429), § 20.

278 Lag om konsultation i frågor som rör det samiska folket, SFS 2022:66.

279 Proposition 2021/22:19 En konsultationsordning i frågor som rör det samiska folket.

280 Ibid.

281 Lag om konsultation i frågor som rör det samiska folket, SFS 2022:66), section 7.

282 § 11.

283 Articles 8 and 9.

284 § 12.

cultural heritage. As human rights monitoring bodies continually remind us, these rights are insufficiently implemented in any of the Nordic countries. In Nordic comparison, Norway appears in many respects to be the leading country for recognising Sámi land rights. Norway has done much to decolonise its law and policy, and this is a process that began before the ratification of ILO Convention No. 169. In relation to the ratification of ILO Convention No. 169, the Finnmark Act was adopted in 2005 after decades of investigations and legal/political debates. Christina Allard maintains that it is a milestone because the long-claimed state ownership of Finnmark has been replaced by a legal subject, the Finnmark Estate, FeFo, to own and manage these lands. The Council of FeFo, which has the authority to make decisions, consists of six members – half appointed by the Sámi Parliament and half by Finnmark County Council. A new provision was also added with respect to existing ownership or user rights, recognising that “the Sámi have collectively and individually acquired rights to land in Finnmark”. Such rights may be claimed and investigated by specific bodies, an investigative commission and a court, established under the Act.²⁸⁵

However, the UN Special Rapporteur on the Rights of Indigenous peoples, has noted that in the investigations, the Commission has almost exclusively found no grounds for recognising individual or collective Sámi ownership or usage rights beyond usage rights already granted to all Finnmark inhabitants.²⁸⁶ The UN Human Rights bodies have maintained that a starting point for identifying and recognising Indigenous peoples’ land and resource rights should be their own traditional and customary use of the lands. This is also clear in UNDRIP Article 26(3), which indicates that states are obligated to provide legal recognition and protection to those lands, territories, and resources that Indigenous peoples have traditionally owned, occupied, or otherwise used or acquired “with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”. Similarly, Article 8 (1) of ILO Convention No. 169 provides that due regard must be paid to the customs and customary law of the Indigenous peoples concerned in applying national laws and regulations.²⁸⁷ Another outstanding concern identified by the human rights bodies is the lack of specialised mechanisms in place to identify Sámi land and resource rights outside Finnmark outside the ordinary court system.²⁸⁸

Sámi representatives in Norway have emphasised different aspects of the Sámi cultural heritage and explained how resource areas, the diversity of nature, cultural monuments,

285 Allard, C. “Chapter on Norway”, in L. Heinämäki et al. Saamelaisten oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus. Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, valtioneuvoston kanslia, 4/2017, pp. 311–360.

286 Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, A/HRC/33/42/Add.3, para. 23.

287 Para. 24.

288 See A/HRC/18/35/Add.2, para. 81; CERD/C/NOR/CO/21-22, para. 30 (b).

the landscape, and the fjords comprise an important part of the basis for their culture, and how the management of areas, nature, and cultural heritage is important to ensure the basis for preserving and development of Sámi culture, including reindeer husbandry, freshwater and seawater fishing, small-scale farming, and hunting and gathering.²⁸⁹ One of the major concerns the Sámi have expressed is with the Minerals Act and its limited recognition of Sámi rights, and its differentiation between Sámi in Finnmark and those outside Finnmark, who have no specific rights or safeguards.²⁹⁰ The human rights bodies have noted that consultation rights do not meet international standards, even in Finnmark, as it is merely a right of the Sámi Parliament to comment on proposals, and it does not require consultation with the affected Sámi communities.²⁹¹ For example, the deficiencies of the Mining Act were criticised by the CERD, which recommended its revision concerning Sámi rights.²⁹²

Responding to the critics and demands from the Sámi, the proposal for a new Mineral Act was presented by the government in early April 2025. The Norwegian Parliament has now adopted the new Mineral Act, which will replace the old Mineral Act from 2009 and will enter into force on 1 July 2026.²⁹³ In the new Act, the protection of the Sámi is substantially increased. It includes consultations, compensation, and the extension of the scope of application of special rules on Sámi matters from Finnmark to the entire traditional Sámi area.²⁹⁴

Norway's planning and building legislation includes requirements for impact assessments, including on Sámi culture. The Planning and Building Act, which is the basis for the impact assessment rules, has as one of its purposes the safeguarding of the natural foundation of Sámi culture, industry, and society.²⁹⁵ The Planning and Building Act also gives the Sámi Parliament a specific right to object to plans related to questions of substantial interest for Sámi culture or industry.²⁹⁶ The Sámi Parliament also has a right to make complaints about administrative decisions and a duty to participate in planning activities if necessary.²⁹⁷

Section 10 of the Norwegian Impact Assessment Regulation (2017), which regulates factors that should be assessed before a plan decision is made, includes the effects on Sámi land use and reindeer husbandry.²⁹⁸ Section 21 also lists factors that should be identified and

289 A/HRC/33/42/Add.3, para. 27.

290 Para. 28.

291 Para. 29.

292 CERD/C/NOR/CO/21-22, para. 30.

293 See <https://haavind.no/en/new-mineral-act-adopted-by-the-parliament/> (checked 20.11.2025).

294 Ibid. See also Mestad, O. "Consultations and Multi-Level Meaningful Stakeholder Engagement in the Norwegian Sami Areas", in Buhmann, K., Fonseca, A., Andrews, N., and Amatulli, G. (eds). (2024). *The Routledge Handbook on Meaningful Stakeholder Engagement* (1st ed.). Routledge, pp. 176–192.

295 Section 3-1c.

296 Section 5-4 subsection 3. See also Mestad (2024), 176–192.

297 Sections 1–9 subsection 3 and 3-2 subsection 3.

298 Subsection 3b.

described in an impact assessment, including Sámi nature and cultural foundations. Section 21 also recognises the cumulative impacts by stipulating the important rule that impact assessments must include all effects of a plan or project, including those already existing and projects that have been approved. Where reindeer husbandry interests are affected, the total effects of plans and projects for the reindeer-herding district must be assessed.²⁹⁹

In Sweden, the limited protection for the Sámi people of their right to their traditional lands and resources, and the lack of tangible action, including the adoption of specific legislation, is cause for concern and continues to be subject to criticism by the UN human rights treaty bodies.³⁰⁰ Reindeer-herding Sámi have land rights on their traditional territories, recognised as private property rights.³⁰¹ At the same time, however, the forest areas in which most of the traditional land of the Sámi is situated are owned by private landowners. Parallel property rights therefore exist on the same land: the right of the Sámi to use the land; and the rights of landowners, which includes their right to exploit the forest as regulated by the Forestry Act.³⁰² The Reindeer Herding Act recognises the rights of the Sámi people to use land and water traditionally used for themselves and their reindeer.³⁰³ Reindeer-herding rights in Sweden are exclusive to the Sámi people, who are members of reindeer-herding communities, known as *samebyar*, and who practise reindeer herding as their principal livelihood. Specific reindeer grazing areas have yet to be officially demarcated in Sweden.³⁰⁴ Reindeer husbandry is also protected to some extent through the Environmental Code, as special areas reserved for reindeer husbandry that must be protected from activities that may significantly hinder reindeer husbandry. However, other interests are also considered in this context, so protection may not be implemented in practice.³⁰⁵

Sweden's Minerals Act³⁰⁶ does not include any explicit references to Sámi rights, unlike in Finland and Norway. Following amendments in 2014, the Minerals Ordinance³⁰⁷ specifies that for activities proposed in reindeer-herding areas, the Sámi Parliament has the right to be informed and to express an opinion on applications for exploitation permits. Reindeer-herding communities also have a right to be informed about the workplan and to express their opinion or opposition to the plan. The human rights monitoring bodies have stated that these provisions fall short of international standards on consultations and the consent of affected Sámi communities.³⁰⁸

299 See Mestad (2024), p. 182, see footnote 294.

300 A/HRC/33/42/Add.3, para. 38; see also E/C.12/SWE/CO/5, para. 15; CERD/C/SWE/CO/19-21, para. 17; and CCPR/C/SWE/CO/7, para. 39.

301 The function of private property rights within Swedish Real Estate Law is described in section 4.1. See Brännström, M. "The implementation of Sámi land rights in the Swedish Forestry Act", in D. Cambou and O. Ravna (2024), pp. 101–115, 101–102.

302 Forestry Act, 1979: 429.

303 Rennäringslagen (1971: 437).

304 A/HRC/33/42/Add.3, para. 38.

305 For a general view, see Raitio, K., Allard, C., and Lawrence, R. "Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices." *Land Use Policy* 99 2020.

306 Minerallagen (1991: 45).

307 Mineralförordning (1992: 285).

308 A/HRC/33/42/Add.3, para. 43.

Areas deemed to be of national interest for reindeer herding in Sweden are protected through the Environmental Code,³⁰⁹ and the Sámi Parliament is the responsible agency for identifying such areas.³¹⁰ A key concern is that these areas may overlap with other national interests, designated by other state agencies, including energy production, nature conservation, and mineral exploitation.³¹¹ In the view of the Special Rapporteur, a balancing of interests as foreseen by the Environmental Code, where traditional Sámi livelihoods are weighed against only possible economic gain, is not in line with the international human rights obligations and commitments that the state has assumed with respect to Indigenous peoples.³¹² The Special Rapporteur has stated that under international standards and comparative legal practice, the state's expropriation of lands traditionally used by Sámi communities, whether officially titled or not, constitutes a limitation of their property rights and can be justified only if such a limitation is pursuant to a valid public purpose, which cannot be found in mere commercial interests or revenue-raising objectives.³¹³

In Finland, 90 per cent of the land within the area that is designated as Sámi Homeland is legally state land and is administered by Metsähallitus (the Finnish Forest and Park Enterprise). The Sámi people's land rights are not recognised in Finland, which is one of the main reasons for the non-ratification of ILO Convention No. 169. The Sámi people's rights to traditional livelihoods are protected through several sectoral acts, mainly in the field of the environment, including the Mining, Environmental, and Water Acts, as well as the Nature Protection Act, that include provisions prohibiting governments and other actors causing significant/more than minor harm³¹⁴ to Sámi culture and livelihoods. However, the implementation of these provisions is inadequate. While the prohibition of causing significant harm requires a cumulative impact assessment to verify the threshold for it, this is not being done in practice. No appropriate practice for a cumulative impact assessment has been thus far created,³¹⁵ but Metsähallitus has publicly announced in 2025 that it will start developing a model for cumulative impact assessment with the Sámi Parliament and other relevant actors.³¹⁶

In the current impact assessments procedures in the various abovementioned Finnish sectoral legislation, the Sámi Parliament and affected Sámi can express their opinions,

309 Miljöbalk (1998: 808).

310 Miljöbalk, chap. 3, sect. 5.

311 A/HRC/33/42/Add.3, para. 44.

312 Para. 46.

313 A/HRC/24/41, para. 35.

314 Whereas other acts talk of significant harm, the Nature Conservation Act talks of harm that is "more than minor".

315 Hansen, L. "Askelmerkkejä saamelaiskulttuuriin kohdistuvien kumulatiivisten vaikutusten kokonaisvaltaisen arvioinnin kehittämiseksi ympäristöön ja maankäyttöön liittyvissä kysymyksissä." Ympäristöministeriön julkaisuja 2024:4 [Stepping stones for developing comprehensive assessment of cumulative impacts on the Sámi culture in matters related to land use and the environment.]

316 Ibid, p. 203.

either via negotiations or statements. However, these opinions are not necessarily reflected in the authorities' final decision-making. The UN Special Rapporteur has also criticised this.³¹⁷ Unlike in Norway and Sweden, reindeer husbandry is not a right reserved exclusively for the Sámi people but is open to any citizen of the European Union. Reindeer herding is regulated through the Reindeer Husbandry Act,³¹⁸ which does not distinguish between Finnish reindeer-herding practices and traditional Sámi reindeer husbandry, a cause of ongoing concern for Sámi reindeer herders, who perceive the Act as eroding their opportunities to pursue reindeer husbandry in a manner that is culturally appropriate. The Sámi have been requesting the revision of the Act for many years.³¹⁹

However, a positive development that should be mentioned is that Metsähallitus has notably improved their consultation procedures in relation to the Sámi people on a voluntary basis in recent years, including the application of the CBD Akwé:Kon guidelines for environmental, social, and cultural impact assessment, which is discussed later in this report.

Another positive development in Finland is the Climate Act,³²⁰ which recognizes the rights of the Sámi people. Section 14 of Finland's Climate Act has been titled "Promotion of Sámi culture"; it states that, when climate policy plans are prepared, consideration shall be given to the right of the Sámi people to maintain and develop their own language and culture in the Sámi homeland. To safeguard this right, the authorities are to negotiate with the Sámi Parliament of Finland when preparing the plans. These negotiations are to take place in accordance with the procedure laid down in section 9 of the Act on the Sámi Parliament. The provisions of Finland's Skolt Act (253/1995), on promoting the living conditions of the Skolt people and opportunities to practice their livelihoods in the Skolt area, and on maintaining and promoting the Skolt culture, are also to be taken into account in the preparation of the plans.³²¹

Section 21 of Finland's Climate Act establishes a Sámi Climate Council in Finland to support preparation of climate policy plans; the Government of Finland is to appoint this Sámi Climate Council for a fixed term. Appointed members of the Sámi Climate Council are to include both persons in possession of traditional Sámi knowledge and persons representing the key fields of science. The task of the Sámi Climate Council is to submit opinions on climate policy plans with regard to promotion of Sámi culture. The Sámi Climate Council might also carry out other tasks concerning the production of information related to climate change and Sámi culture and rights. A reasonable remuneration can be paid to the members of the Sámi Climate Council for carrying out their duties.³²²

317 A/HRC/33/42/Add.3, paras 66–67.

318 Reindeer Husbandry Act (No. 848/1990).

319 A/HRC/33/42/Add.3, para. 60.

320 Climate Act (423/2022).

321 Section 14.

322 Section 21.

All Nordic countries fall short of recognising Sámi peoples' rights to self-determination, FPIC, and traditional lands as recognised and understood in the human rights framework. The mere right to use land for traditional purposes or consultations with the Sámi Parliament or affected Sámi, without a real opportunity to set priorities for the development of their culture and to influence the outcome of the decisions concerning Sámi issues, cannot be considered sufficient to protect the Sámi cultural heritage in the light of the Sámi's fundamental and human rights. As has been mentioned and is elaborated later in this report, Norway has taken some important steps to grant self-governing and decision-making powers to the Sámi Parliament regarding their cultural heritage. The holistic protection of the Sámi people's cultural heritage will require the protection of the totality of their land base and the granting of their access to it without hindrances in all three Nordic countries, considering Sámi customary ways and laws, and traditional knowledge.

Language rights

Sámi right to language is embedded in the constitutions of the Nordic countries. Sámi language rights are shortly discussed also later in this report in relation to the comments of human rights treaty bodies. In Norway, the linguistic rights of the Sámi people are primarily anchored in the Sámi Act, which establishes the Sámi and Norwegian languages as equal within the administrative area for Sámi languages. This legal framework mandates that citizens have the right to receive services, judicial proceedings, and education in their native tongue, reflecting the state's constitutional obligation to protect indigenous culture.³²³ However, significant challenges persist in the practical implementation of these rights, most notably a critical shortage of Sámi-speaking professionals in healthcare and public administration.³²⁴ Furthermore, the geographic concentration of these rights within specific northern municipalities often fails to account for the increasing number of Sámi living in urban centers, creating a “geographic gap” in the provision of linguistic justice.³²⁵

In Finland, the Sámi Language Act³²⁶ specifies that North, Inari, and Skolt Sámi have the right to be used in courts and public administration. Despite these legal guarantees, recent assessments indicate that services in Sámi are often “inadequate” because authorities lack sufficient knowledge of the law or fail to recruit Sámi-speaking staff. Additionally, since the majority of Sámi now live outside the designated “Homeland” area, they face significant barriers in accessing education and social services in their native language.³²⁷

323 See, <https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/samiske-sprak/the-use-of-the-sami-language-in-the-publ/id86942/> (checked 12 December 2025). For an analysis, see Hansen, L. (2025). “Sami Rights in Finland's Climate Act: Implementing a Human Rights-Based Approach.”

Journal of Northern Studies, 17(1), 59-76.

324 See, Olsen, T. (2020). *Everyday Interactions and Dynamics Between Professionals and Sámi Youth: On the Provision of Public Services*. Tromsø: UiT The Arctic University of Norway.

325 See, Berg-Nordlie, M. (2018). *City-Saami: An overview of research and knowledge available on the growing urban Sami societies*. Oslo: NIBR Report.

326 Sámi language Act (1086/2003).

327 Ministry of Justice (Finland). (2024). *Sámi Barometer 2024: Realisation of linguistic rights*. Helsinki: Ministry of Justice Publications; Rauhala, E. V. (2025).

From law to practice: Actualization of Sámi linguistic rights in Finland [Master's thesis, University of Akureyri]. Skemman.

Sweden recognizes the Sámi as an official national minority under the Act on National Minorities and Minority Languages.³²⁸ This framework provides for “administrative areas” where individuals have the right to use Sámi when interacting with local and regional authorities, particularly regarding elderly care and preschooling. The Swedish system is often criticized for being less robust than its neighbors, as it treats Sámi primarily within a minority framework rather than as an indigenous right of “equal worth” to the state language. A major practical hurdle is the unbalanced access to education; outside of a few specialized Sámi schools, mother-tongue instruction is highly dependent on the availability of qualified teachers, which remains a chronic shortage.³²⁹

4.2.3. Good Practice Example: Finnish Governmental Guidelines on FPIC

The memorandum prepared by the Ministry of Justice and the Sámi Parliament (2019) before the legal reform of section 9 on the negotiations (2025) expresses the view of the Constitutional Law Committee of Parliament that the negotiations referred to in section 9 of the Sámi Parliament Act must enable sincere, timely, and genuinely consensual discussions. Negotiations entail direct interaction with the authorities.³³⁰ The memorandum specifies that the authorities’ obligation to seek consensus also extends to the question of which matters fall within the scope of the obligation to negotiate.³³¹ This is a very important element of the duty to negotiate because the state authorities and Sámi Parliament may have a very different view of what is a sufficiently significant issue from the perspective of Sámi culture.

The memorandum states that the aim of the negotiations must be to reach an agreement, which means in practice much the same thing as FPIC, though its tone suggests more of a compromise between the parties. In line with the procedures of the of FPIC, this objective of the negotiations requires:

1. **Timeliness:**³³² Negotiations and enabling participation must begin at the very beginning of the planning process, and the possibility to participate must be secured all the way to the final decision-making.
2. **A genuine opportunity to influence the outcome:**³³³ The negotiations must aim for mutual understanding and prior consent from representatives of the Sámi people. The negotiations must be conducted so that it is possible to change things in reality based on the negotiations.

328 Act on National Minorities and Minority Languages (2009:724).

329 Belancic, C. (2020). *Language policy and Sámi education in Sweden: Ideological and implementational spaces* [Doctoral dissertation, Umeå University]. DiVA Portal; Lloyd-Smith, M., et al. (2023). An efficacious remedy for status inequality? Indigenous policies in Norway and Sweden. *Politics, Groups, and Identities*.

330 Ministry of Justice, Memorandum 2017, footnote 29; PeVM 17/1994 vp.

331 Ibid.

332 Ibid.

333 Ibid

3. An adequate, up-to-date, and accurate knowledge base on the matter and on the effects of the envisaged measure.³³⁴
4. Sufficient time to orient and form an official position on the matter:³³⁵ The resources of the Sámi actors in familiarising themselves with the matter must be considered, and their views on how much time they need to orient to the matter.
5. Freedom from force, coercion, threats, manipulation and pressure:³³⁶ The Sámi must not be pressured or given dismissive views on the effects of their activities on Sámi culture, for example.
6. Jointly drawn up minutes:³³⁷ It would be a good idea to record in the minutes which issues have been agreed, and which have not.

4.3. Recognition of Indigenous Peoples' Cultural Heritage in International Human Rights Conventions' Treaty Bodies with Special References to Sámi People

Article 27 of the ICCPR, Article 15 of the ICESCR, and Article 30 of the UNCRC recognise the right to culture. The ICERD protects culture as part of the protection of equality (Article 5). The position taken by these treaties' monitoring bodies emphasises both the substantive aspects of these provisions and, as previously discussed in this report, the right of Indigenous peoples to self-determination and effective participation and control (FPIC) in decision-making that affects their culture and significant issues, including their traditional lands, waters, and resources.

4.3.1. HRC's Views on Indigenous Peoples/Sámi People's Rights

Article 27 of the ICCPR can be regarded as the most important human rights treaty provision to the Sámi people, especially when read in conjunction with Article 1 (people's self-determination). Article 27 applies to the members of minorities and recognises, inter alia, an individual right to enjoy their culture in community with other members of the cultural collective.³³⁸ Although protection is afforded to the individual members of minority groups, the substance of minority rights therefore entails a collective dimension,³³⁹ which is especially important for Indigenous peoples, including the Sámi people. The UN Human Rights Committee (HRC), the ICCPR's monitoring body, has interpreted this article as

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Article 27 states: "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."

³³⁹ See Hanski, R. and Scheinin, M. *Leading Cases of the Human Rights Committee*, Institute for Human Rights, Åbo Akademi University, Turku/Åbo, 2003, p. 375. See *Lubicon Lake Band v. Canada*, Communication No. 167/1984, CCPR/C/38/D/167/1984.

including the “rights of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong”.³⁴⁰ In reaching this conclusion, the Committee recognises that Indigenous peoples’ subsistence and other traditional economic and social activities are an integral part of their culture, and interference with these activities can be detrimental to their cultural integrity and survival.³⁴¹

Although Article 27 primarily sets out the negative obligation of states not to deny members of minorities the right to enjoy their culture, to profess and practise their religion, or to use their own language, in the legal literature and in the work of the HRC, positive obligations have been derived from the provision. The Committee’s General Comment No. 23 (50)30, adopted in 1994, explicitly refers to this dimension:

“Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a ‘right’ and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.”³⁴²

The Committee acknowledges that the right to culture under Article 27 may apply to a way of life that is closely connected with a territory and the use of its resources. The Committee clarifies that the right comprises traditional activities such as fishing and hunting. It further states that the enjoyment of such rights may require positive legal protection measures and measures to ensure the effective participation of members of minority communities in decisions that affect them.³⁴³ Furthermore, the Committee concludes by noting that Article 27 concerns rights whose protection imposes specific obligations on states parties. The Committee further states that the protection of such rights is directed at ensuring the survival and continued development of the cultural, religious, and social identity of the minorities concerned, which also enriches the fabric of society as a whole.³⁴⁴

Although the HRC’s views on Indigenous peoples’ culture most often concern their right to traditional livelihoods, the Committee has also considered other aspects related to cultural heritage. For example, in its Concluding Observations on Australia, the HRC expressed concern that Indigenous people’s sacred sites or other cultural sites and their protection were insufficiently taken into account in land-use issues and recommended measures in this

340 Lubicon Lake Band v. Canada, Communication No. 167/1984, CCPR/C/38/D/167/1984.

341 See also Kitok v. Sweden, Communication No. 197/1985, CCPR/C/33/D/197/1985 (1988).

342 Human Rights Committee, General Comment No. 23: The Rights of Minorities (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add. 5., para. 6.1.

343 Ibid., para. 7.

344 Ibid.

regard.³⁴⁵ Regarding the Sámi people, in the case of *Länsman v. Finland*, the HRC recognised the spiritual significance of Riutusvaara as a sacred place belonging to Sámi culture.³⁴⁶ The HRC has also expressed concern that the authorities in Finland may not sufficiently understand and take the special characteristics of Sámi culture into account.³⁴⁷ While requesting Finland to report on measures to ensure negotiations aimed at achieving FPIC of the Sámi before adopting legislation or measures that may affect their rights as an Indigenous people,³⁴⁸ the HRC expressed its concern that vague criteria were used to assess the impact of measures, including development projects, on Sámi culture and traditional livelihoods, resulting in the authorities' failure to engage in meaningful consultations to obtain their FPIC.³⁴⁹

As is well known, reindeer herding is a vital part of the Sámi culture and way of life; it is a carrier of cultural heritage, including traditional knowledge and language.³⁵⁰ In relation to Norway, the HRC has emphasised both rights to lands and traditional livelihoods, as well as linguistic rights. The Committee stressed that the legal framework on Sámi land, fishing, and reindeer-herding rights should be enhanced to strengthen the Sámi people's land rights outside Finnmark, endorse consultations with the aim of FPIC, and increase the recruitment and training of Sámi language teachers and the availability of Sámi language instruction for Sámi kindergarten children in all regions.³⁵¹

Similarly, in relation to Sweden, the HRC has expressed its concerns about the Sámi's land and grazing rights, requesting the state party, among others, to review the existing legislation, policies, and practices regulating activities that may have an impact on the rights and interests of the Sámi people, including development projects and extractive industries operations, with a view to guaranteeing meaningful consultation with the affected Sámi communities aimed at attempting to obtain their FPIC.³⁵²

4.3.1.1. HRC and the First Indigenous Peoples' Climate Change Case

The first climate change case concerning the rights of Indigenous peoples, *Billie et al. v. Australia* (2022),³⁵³ touched on the issue of Indigenous peoples' cultural heritage from many different aspects, including traditional way of life and traditional diet, kinship relations,

345 UN Human Rights Committee, Concluding Observations on Australia, UN Doc. CCPR/CO/69/AUS, 2000, para. 51.

346 UN Human Rights Committee, *Länsman et al. v. Finland*, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992, 26 October 1994, para. 9.3.

347 UN Human Rights Committee, Concluding Observations on Finland, UN Doc. CCPR/C/FIN/CO/6, 2013, para. 16.

348 UN Human Rights Committee, List of issues prior to submission of the seventh periodic report of Finland, CCPR/C/FIN/QPR/7, 2.4.2019.

349 UN Human Rights Committee, Concluding Observations on Finland, UN Doc. CCPR/C/FIN/CO/7, 3 May 2021, para. 42.

350 See Raitio, K., Allard, C., and Lawrence, R. "Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices." *Land Use Policy* 99 (2020).

351 UN Human Rights Committee, Concluding Observations on Norway, CCPR/C/NOR/CO/7, 25 April 2018, para. 37.

352 UN Human Rights Committee, Concluding Observations on Sweden, CCPR/C/SWE/CO/7, 28 April 2016, paras 38–39.

353 Daniel Billie et al. v. Australia, 22 September 2022, CCPR/C/135/D/3624/2019.

and sacred sites and ceremonies. In the case, a group of eight Torres Strait Islanders, Australian nationals, and six of their children submitted a petition against the Australian government to the HRC. They were all Indigenous inhabitants of four small low-lying islands in Australia's Torres Strait region. They claimed that changes in weather patterns had direct harmful consequences for their livelihood, culture, and traditional way of life. The plaintiffs indicated that severe flooding caused by the tidal surge in recent years had destroyed their family graves and left human remains scattered across their islands. They argued that maintaining ancestral graveyards and visiting and communicating with deceased relatives were at the very heart of their cultures.³⁵⁴

In addition, the most important ceremonies such as coming-of-age and initiation ceremonies, were only culturally meaningful when performed in the community's native lands. The group also argued that changes in climate, with heavy rainfall and storms, had degraded the land and trees and thus reduced the amount of food available from traditional fishing and farming. On one of the islands, for example, the rising sea level had caused saltwater to seep into the soil and coconut trees to become diseased, killing the fruit, and depriving the islanders of it and its water, both part of their traditional diet.³⁵⁵

The authors claimed the violation of Article 27 of the ICCPR since climate change had already compromised their traditional way of life and threatened to displace them from their islands.³⁵⁶ They also claimed the violation of Article 17, as climate change was already affecting the private, family, and home life of the authors, and the state party had failed to take any adequate adaptation and mitigation measures.³⁵⁷ Additionally, the authors claimed the violation of Article 24(1) (rights of the child), as the state party had failed to take adequate steps to protect the rights of future generations of the authors' community, including six named children, who were the most vulnerable to and affected by climate change. According to the complaint, future generations, including the children named, had a fundamental right to a stable climate system capable of sustaining human life, based on the right of the child to a healthy environment.³⁵⁸

The HRC found that Australia's failure to adequately protect Indigenous Torres Islanders against the adverse impacts of climate change violated their rights to enjoy their culture (Art. 27) and to be free from arbitrary interference with their private, family, and home life (Art. 17). Importantly, the Committee considered that the traditional Indigenous way of life

³⁵⁴ Ibid.

³⁵⁵ CCPR/C/135/D/3624/2019, <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/> (checked 10.5.2024).

³⁵⁶ Para. 3.5.

³⁵⁷ Para. 3.6.

³⁵⁸ Para. 3.7.

of the authors, who enjoyed a special relationship with their territory, could be considered to fall within the scope of protection of Article 17 of the Covenant.³⁵⁹ Significantly, in this decision, the HRC highlighted the claimants' spiritual connection with their traditional lands, as well as the dependence of the claimants' cultural integrity on the health of their surrounding ecosystems.³⁶⁰

In *Daniel Billie et al. v. Australia*, the HRC set a significant precedent for Indigenous peoples' land rights and the right to cultural heritage in relation to environmental interference, including that of climate change, by recalling that ICCPR Article 27, when interpreted in the light of UNDRIP,³⁶¹ enshrined the inalienable right of Indigenous peoples to enjoy the territories and natural resources that they had traditionally used for their subsistence and cultural identity.³⁶² The decision also verified that UNDRIP was no longer regarded as merely a non-binding, aspirational, quasi-judicial declaration, but that it was and could be used internationally and nationally as a legal source, including in the interpretation of legally-binding conventions, as discussed earlier in this report.

However, what is particularly significant in the *Billie et al. v. Australia* case is the recognition by the HRC that the rights falling under ICCPR Article 27 include the right of Indigenous peoples to transmit their culture and traditions to future generations: in this case, Australia had violated this right by failing to adopt timely adequate climate change adaptation measures.³⁶³ The case also sets important standards and guidance in Sápmi for the safeguarding of the cultural heritage and the right of the Sámi people to transmit their heritage, keeping in mind Sámi children and young people, as well as future Sámi generations. It is also important that the case recognises both tangible and intangible aspects of Indigenous peoples' cultural heritage. Regrettably, the HRC did not consider the rights of the child specifically, which would have been important in advancing the rights of future generations.

Renewable energy developments and the extraction of certain minerals are an important aspect of mitigating climate change and thus indirectly protect Indigenous peoples from the harmful consequences of climate change. However, such industrial developments may also result in violations of the human rights of Indigenous peoples, specifically through their loss of access to the lands and waters they have traditionally used for cultural practices. To avoid Indigenous peoples being disproportionately impacted by both climate harm and

359 Para. 8.10.

360 Ibid.; see also <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/> (accessed 16.4.2024).

361 United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007, 61/295.

362 Ibid., para. 8.13.

363 *Billie et al. v. Australia*, para. 8.14.

climate solutions, mitigation and adaptation measures must be implemented in a way that respects their rights.³⁶⁴

The right of the Sámi to transmit their cultural heritage to future generations therefore includes that their rights are respected regarding green transition projects. NHRI has recommended that the Norwegian state authorities should adopt measures to ensure that Sámi rights are respected in the renewable energy transition, including under ICCPR Article 27, and considering the cumulative impacts of past, present, and potential future interference.³⁶⁵ The NHRI report emphasises that a human-rights-based approach, with broad and inclusive public participation in decision-making by affected communities, can contribute to legitimacy and democratic support for a rapid and comprehensive green transition.³⁶⁶

In relation to Norway, the UN Special Rapporteur on human rights and the environment, David Boyd, in his 2019 country visit, expressed his great concern about the cumulative development of mines, wind farms, hydroelectric power plants, roads, and power lines that had resulted in the loss and fragmentation of pasture lands and constituted serious threats to the sustainability of reindeer husbandry in Finnmark County. The Special Rapporteur encouraged Norway to provide a model for the world in protecting the rights of Indigenous peoples, protecting the environment, and highlighting the connections between human rights, healthy ecosystems, and healthy people.³⁶⁷

4.3.2. CESCR's Views on Indigenous Peoples'/Sámi People's Rights

According to Article 15 of the ICESCR, the states parties to the present Covenant recognise the right of everyone: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.

The ICESCR's monitoring body, the Committee on Economic, Social and Cultural Rights (CESCR), has articulated Indigenous peoples' right to culture/cultural heritage on several occasions. In its General Comment No. 21, the Committee recognises the right of Indigenous peoples to act collectively to ensure that their right to preserve, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expression is realised. In this context, the Committee also mentions the various expressions of Indigenous sciences,

364 Norwegian National Human Rights Institution (2024). "Canary in the Coal Mine: Sámi Rights and Climate Change in Norway." (Report No. NIM-R-2024-005-EN), p. 56, <https://www.nhri.no/en/report/canary-in-the-coal-mine/> (checked 1 April 2025).

365 Ibid., p. 9.

366 Ibid., p. 8.

367 See, <https://www.ohchr.org/en/press-releases/2019/09/norway-must-resolve-climate-change-and-human-rights-paradox-un-expert-says> (checked 8.4.2025).

technologies, and cultures, including human and genetic heritage, seeds, medicines, traditional animal and plant knowledge, oral traditions, literature, design, sport and traditional games, and visual and expressive arts.³⁶⁸ For example, in its Concluding Observations on Russia, the Committee has expressed concern about the intellectual property rights and cultural heritage of Indigenous peoples.³⁶⁹ For the Committee, the right to take part in cultural life is also interdependent on other rights enshrined in the ICESCR, including the right of all peoples to self-determination.³⁷⁰

In 2021, the Committee adopted General Comment No. 26 on land and economic, social, and cultural rights, which notes that the right to take part in cultural life may be threatened by shifts in land use or evictions that deprive people from land that has a particular spiritual or religious significance to them, such as when the land serves as a basis for their social, cultural, and religious practices or for the expression of their cultural identity. The Committee recognises multiple aspects of Indigenous peoples' cultural heritage by stating that culture forms a "complex whole which includes a spiritual and physical association with one's ancestral land, knowledge, belief, art, law, morals, customs and any other capabilities and habits acquired by humankind as a member of society". Furthermore, the Committee points out that Indigenous and other traditional communities rely on the natural resources on their lands for subsistence and the conduct of traditional cultural practices.³⁷¹

In General Comment No. 26, the Committee urges states parties to recognise the social, cultural, spiritual, economic, environmental, and political value of land for communities with customary tenure systems, and that they should respect existing forms of self-governance of land. It is important that traditional institutions for collective tenure systems ensure the meaningful participation of all members, including women and young people, in decisions regarding the distribution of user rights.³⁷²

The CESCR also stresses that Indigenous languages are a paramount part of cultural rights and are also a key factor for the enjoyment of all economic, social, and cultural rights,³⁷³ and that language rights are important elements of the right to self-determination.³⁷⁴ The Committee urges states parties to take all measures necessary to promote and protect Indigenous languages and ensure that Indigenous peoples can practise their languages without discrimination, and reiterates the need to urgently recognise Indigenous languages

368 UN Committee on Economic, Social and Cultural Rights, General comment No. 21: Right of everyone to take part in cultural life (article 15, para. 1(a) of the International Covenant on Economic, Social and Cultural Rights) (2009), adopted by the Committee on Economic, Social and Cultural Rights at the Forty-third Session, E/C.12/GC/21, 21 December 2009, para. 37.

369 UN Committee on Economic, Social and Cultural Rights, Concluding Observations on Russia, E/C.12/RUS/CO/5, para. 34.

370 Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009).

371 Committee on Economic, Social and Cultural Rights, General comment No. 26 (2021) on land and economic, social and cultural rights, E/C.12/69/R.2, 3 May 2021, para. 12.

372 Para. 24.

373 See E/2020/22–E/C.12/2019/32.

374 See E/C.19/2008/3.

and facilitate their active presence in education systems, including, when feasible, teaching of and through these languages.³⁷⁵

Regarding the Sámi people in Norway, in 2020, the Committee positively noted various measures taken by the state party of Norway to protect and preserve Sámi languages and cultural heritage. Nevertheless, the Committee expressed its concern that the right of Sámi children to education in Sámi languages as languages of instruction was not fully guaranteed in practice. The Committee noted its concern about reports by the Sámi Parliament that the facilities for the preservation of Sámi cultural artefacts had received much less government support than those of other Norwegian cultural items, and that there was an insufficient number of facilities for Sámi cultural items.³⁷⁶ The Committee recommended that the state party intensify its efforts to ensure that all Sámi children, whether living in Sámi districts or elsewhere, fully enjoyed their right to education in Sámi languages as languages of instruction, and to provide sufficient resources, including financial and technical resources, for the preservation and exhibition of Sámi cultural artefacts.³⁷⁷

In 2021, in relation to Finland, the Committee expressed its concern that teaching of and education through Sámi languages remained insufficient, especially outside the Sámi Homeland. The Committee was also concerned that the right of the Sámi to receive services in their languages, as provided by the Sami Language Act, was not always guaranteed. The Committee recommended the state party to recognise the teaching of and through the Sámi languages as a right. In this regard, the Committee recommended that in the context of the implementation of the revised Strategy for the National Languages and the language policy programme, the state party improve the availability, accessibility, and quality of Sámi languages education.³⁷⁸

The Committee also expressed its concern that legislative changes, infrastructure projects, and incursions into the Sámi's traditionally used lands had eroded the rights of the Sámi to maintain their way of life and traditional livelihoods, including reindeer husbandry and fishing. The Committee urged the state party to strengthen the legal recognition of the Sámi as an Indigenous people in procedural guarantees for obtaining the FPIC of the Sámi in line with international standards.³⁷⁹

Regarding Sweden, the Committee expressed its concern in 2024 about the lack of adequate consideration of the impact on the Sámi people of the development of industries such as

³⁷⁵ See E/2020/22–E/C.12/2019/32.

³⁷⁶ Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of Norway, E/C.12/NOR/CO/6, 2 April 2020, para. 46.

³⁷⁷ *Ibid.*, para. 47.

³⁷⁸ UN Committee on Economic, Social and Cultural Rights, E/C.12/FIN/CO/7, 30 March 2021, paras 48–49.

³⁷⁹ Paras 50–51.

wind power and mining of critical minerals on Sámi land, which are being implemented in the context of the green transition, adversely affecting the Sámi people's right to an adequate standard of living and enjoyment of their culture (Arts 2 (1), 11, and 15).³⁸⁰ The Committee requested the state party to ensure the meaningful and informed participation of communities, including the Sámi people, in the adoption of measures under the Climate Policy Action Plan, including green transition projects, and that these measures did not adversely affect people in vulnerable and disadvantaged situations.³⁸¹ Furthermore the state party should guarantee in both law and practice the FPIC of the Sámi in all decisions affecting them, with respect for Sámi traditions and decision-making processes.³⁸²

4.3.2.1. Case of Sámi Reindeer-herding Community (Siida) v. Finland

In the case of *J.T. and others v. Finland*, all the authors belong to the Kova-Labba *siida*, which is one of the three traditional reindeer-herding villages that are part of the Käsivarsi Reindeer Herders' Cooperative. The authors identify customary ways of practising their cultural heritage, explaining that their Sámi reindeer husbandry is semi-nomadic due to the seasonal and weather-dependent rotation of pastures, and is an essential part of Sámi culture, maintained by small groups of kin or village-based herders ("*siida*" in the Sámi language), and transmitted from generation to generation.

The authors submitted that, by granting a mineral exploration permit (Communication No. 251/2022) and an area reservation (Communication No. 289/2022) on their traditional territory without proper impact assessment and without a process of consultations aimed at obtaining their FPIC, the state party violated their rights to take part in the cultural life of a community (Article 15) and to enjoy just and favourable conditions of work ensuring remuneration that provided a decent living (Article 7(a)(ii)), both interpreted in the light of the rights to self-determination (Article 1), to work (Article 6), to an adequate standard of living (Article 11), and to health (Article 12), and both in conjunction with the right not to be discriminated against (Article 2(2)). The authors also requested the adoption of interim measures to halt the exploration works (251/2022) and to reject any request for exploration works in the area reservation (289/2022).³⁸³

On 12 January 2022, the Committee registered Communication No. 251/2022 and requested the state party to postpone the mining exploration project while the case was under consideration by the Committee. On 22 August 2022, the Committee registered Communication No. 289/2022, deciding to join it with Communication No. 251/2022,

³⁸⁰ UN Committee on Economic, Social and Cultural Rights, Concluding Observations on Sweden, E/C.12/SWE/CO/7, 22 March 2024, para. 10.

³⁸¹ Para. 11.

³⁸² Para. 15.

³⁸³ E/C.12/76/D/251/2022 E/C.12/76/D/289/2022, 8 October 2024, paras 1.1., 2.1.

and requesting the state party to postpone the project while the case was under consideration by the Committee.³⁸⁴

As explained in the complaint, the state party's Forest Agency, Metsähallitus, is the landowner of approximately 90% of the Sámi Homeland, including the authors' traditional reindeer-herding territory. According to the Mining Act, exploration can be conducted with the landowner's consent, and the exploration permit holder is obliged to pay compensation (an exploration fee) to the owners of the land within the exploration area.³⁸⁵

The case is based on the decision of the Safety and Chemicals Agency (Tukes), which is responsible for the mining permit, to grant an exploration permit to the Geological Survey of Finland (an agency under the Ministry of Economic Affairs and Employment). In relation to the Sámi, Tukes sought written comments in October and November 2014 from the Sámi Parliament and the Käsivarsi Reindeer Herders' Cooperative, inviting them to participate in meetings on 17 May 2015 and 17 May 2016. The Käsivarsi Reindeer Herders' Cooperative, acting on behalf of the authors, had submitted the statements concerning the negative impact of the mineral exploration work on Sámi reindeer herding and the failure of the state party to conduct a proper assessment of the impact of exploration and other forms of land use on reindeer herding in the area and on the rights of Sámi.³⁸⁶ The Sámi Parliament had stated on three occasions that the basic preconditions for the FPIC had not been met, given the lack of an assessment of the impact on the Sámi culture.³⁸⁷

After exhausting domestic remedies with no avail, the case was communicated to the CESCR, which accepted its admissibility. Having considered the merits, the CESCR found that the facts and information before it disclosed a violation of Article 15(1)(a) (right to take part in cultural rights), read alone and in conjunction with Articles 1 (peoples' right to self-determination), 2(2) (prohibition of discrimination), and 11 of the Covenant (right to adequate standard of living).³⁸⁸

The Committee offered recommendations in respect of the authors that the state party should provide the authors with effective reparation for the violations suffered, including through an effective review of the decisions concerning the mineral exploration project and the area reservation, based on an adequate process of FPIC, accompanied by an independent assessment of the impact on the rights of the authors.³⁸⁹ The CESCR further stated as a general recommendation that the state party was under an obligation to take all necessary

384 Para. 1.2.

385 Ibid., para. 2.2. See Mining Act (2011/621), sections 7, 9, 99.

386 Ibid., para. 2.5.

387 Ibid.

388 Ibid., para. E 15 Conclusions and Recommendations.

389 Ibid., para. E 16.

steps to prevent similar violations occurring in the future. In this regard, the state party was requested to pursue its efforts to amend its legislation and administrative procedures to enshrine the international FPIC standard, and to include the environmental, social, and cultural impact assessment. The state party was also requested to initiate the process of legal recognition of the rights of Indigenous peoples to their traditional lands, including through collective ownership.³⁹⁰

In both communications, the authors argued that the violations of the Covenant must be assessed in the context of the cumulative effects of earlier interventions in their lands, aggravated by ongoing climate change. They explained that ongoing climate change had increased the challenges faced by reindeer in their ability to dig through the snow in search of ground lichen during the critical winter months. This had led to an increase in work for the Sámi, and unpredictability in the location and timing of reindeer movements. Furthermore, alternating winter temperatures resulted in impenetrable sheets of ice between layers of new snow, preventing the reindeer from accessing the ground lichen.³⁹¹

They further mentioned the Committee's expressed concern about the impact of climate change on Indigenous peoples living in the Arctic region.³⁹² In 2016, in its Concluding Observations on Canada, the Committee had stated that it was concerned that climate change was negatively affecting the enjoyment of Covenant rights by Indigenous peoples, referring in particular to Article 12 on the right to health.³⁹³ Also in 2017, in its Concluding Observation on Russia, the Committee had expressed its concern about the climate change impact on persons and groups, including Indigenous peoples, living in that region, protected by Article 11 (adequate standard of living).³⁹⁴

Importantly, in its consideration of the merits of the case, the Committee reaffirmed that human rights treaties were living instruments. Hence, the Committee read the Covenant in the light of the evolving interpretation of the rights of Indigenous peoples, as reflected in the Committee's relevant general comments.³⁹⁵ The Committee cross-referenced to other international human rights bodies, including Inter-American Court, which is known for its expansive interpretation of American Human Rights Convention in relation to Indigenous peoples' rights. In this case, the rapidly evolving right of Indigenous peoples to FPIC was widely elaborated, forming the basis of its interpretation, and was read in the Articles providing substantive rights protection. Regarding Article 15(1)(a), which according to the Committee, must be read alone and in conjunction with Articles 1, 2(2) and 11,

³⁹⁰ Ibid., para. E 17.

³⁹¹ Ibid., para. 3.3.

³⁹² Ibid.

³⁹³ E/C.12/CAN/CO/6, 23 March 2016, para. 53.

³⁹⁴ E/C.12/RUS/CO/6, 16 October 2017, para. 42.

³⁹⁵ E/C.12/76/D/251/2022 E/C.12/76/D/289/2022, 8 October 2024, para. 13.

the Committee recalled that the communal dimension of Indigenous peoples' cultural life, including traditional activities, was closely linked to their traditional lands, territories, and resources, and was "indispensable to their existence, well-being and full development".³⁹⁶ The Committee referred to its General Comments 21 and 26 on the right to land, which elaborate that Article 15(1)(a) of the Covenant enshrines the inalienable right of Indigenous Peoples to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired. In this respect, Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources, and ultimately their cultural identity. The Committee further observed that the protection of traditional lands, territories, and resources was also a prerequisite for the right to an adequate standard of living of Indigenous peoples, as they were an important basis for their livelihoods.³⁹⁷

The Committee placed much weight on Indigenous peoples' right to self-determination and used the case law of the Inter-American Court of Human Rights as a tool for its interpretation. The Committee recalled that "land is also closely linked to the right to self-determination enshrined in Article 1 of the Covenant".³⁹⁸ Here, the Committee recalled that it was in the light of the right to self-determination set out in the Covenants that the Inter-American Court of Human Rights interpreted the rights of Indigenous peoples to traditional property, understood as traditional territories, lands, and resources.³⁹⁹ The Committee highlighted that there was a "growing tendency to recognize more forcefully the right to self-determination as a key principle when it concerns the collective rights of Indigenous Peoples".⁴⁰⁰ The Committee explained that in particular, the three UN mechanisms for the rights of Indigenous peoples had considered that the most important right for Indigenous peoples was the right to self-determination, as without the enjoyment of this right, they could not enjoy their other fundamental human rights.⁴⁰¹ Accordingly, the Committee concluded that "the realization of self-determination is an essential condition for the effective guarantee and observance of the rights of Indigenous Peoples",⁴⁰² and is also considered "the fundamental premise of the right to consultation and consent".⁴⁰³

396 Para. 14.2., referring to its General Comment No. 21, para. 36.

397 Para. 14.2.

398 Para. 14.4., referring to its General Comment No. 26, para. 11.

399 Ibid., referring to *Saramaka v. Surinam* case, para. 93.

400 Ibid., Referring to Inter-American Court, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, in *Maya Kaqchikel Indigenous Peoples of Sumpango*, para. 69.

401 Ibid., referring to Permanent Forum on Indigenous Issues, E/C.19/2013/16, para. 19. See also United Nations Declaration of the Rights of Indigenous Peoples, Article 3.

402 Ibid.; GC26, para. 11; CCPR GC12, para. 1; EMRIP, A/HRC/48/75, para. 62.

403 Ibid.; IAComHR, *Right to Self-Determination of Indigenous and Tribal Peoples*, para. 177.

Linking substantive and procedural aspects of rights, the Committee stated that in the context of Indigenous peoples, Article 15(1)(a), read in conjunction with Articles 1 and 11, entailed the right to the lands, territories, and resources which they had traditionally owned, occupied, or otherwise used or acquired, and required states parties to “take measures to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources”.⁴⁰⁴ According to the Committee, it followed that states parties must ensure the effective participation of Indigenous peoples in decision-making processes that may affect their way of life, particularly their right to land, based on the principle of their FPIC, so as not to endanger the very survival of the community and its members,⁴⁰⁵ as enshrined in Article 32(2) of UNDRIP and reaffirmed in the Committee’s General Comments.⁴⁰⁶

The Committee also observed that throughout the process, in the case in question, consultations had taken place, but there was no independent assessment of the impact of the exploration activities on reindeer herding as a fundamental part of the Sámi culture and livelihood, the Sámi’s intergenerational transmission of the practice, and the right of the Sámi as an Indigenous people. The Committee took the position that an adequate and effective process of FPIC, when the rights of Indigenous peoples might be affected by projects carried out in their traditional territories, must include not only the sharing of information and the reception of comments from the affected community but an interactive and continuous dialogue through Indigenous peoples’ own representative institutions, from the outset and through culturally appropriate procedures, respecting the right of Indigenous peoples to influence the outcome of decision-making processes affecting them.

The Committee also stated that environmental, social, and cultural impact studies conducted by independent and technically competent entities should be a precondition for a process of consultations aimed at obtaining FPIC.⁴⁰⁷ The Committee noted the observation of the state party that the principle of FPIC did not mean that a consensus should be reached if sufficient guarantees of effective participation had been provided. However, the Committee found that the consultation procedure provided in this case did not meet the standard of effective participation in accordance with the principle of FPIC.⁴⁰⁸

Importantly, the Committee also shed light on the correct understanding of the right to equality, which does not mean the same treatment for all, as indicated by the State of Finland in relation to Mining Act, but requires “positive” discrimination – affirmative action – to

404 Para. 14.5; GC21, para. 36; Article 26(2) of the UN Declaration on the Rights of Indigenous Peoples.

405 Ibid., referring to CCPR/C/132/D/2552/2015, para. 8.7; CCPR/C/137/D/3585/2019, para. 8.5.

406 Ibid; GC21, paras 37, 49(e), and 54(a); GC24, paras 12 and 17; and GC26, para. 21.

407 Para. 14.6; cf. GC26, para. 21; GC24, paras 12 and 17; CERD/C/102/D/54/2013, para. 6.18; EMRIP, A/HRC/39/62; IACrHR, Sarayaku, para. 167; IACrHR, Saramaka, para.

133; IAComHR, Indigenous and Tribal peoples’ rights over their ancestral lands and natural resources, paras 318 and 319.

408 Ibid.

create actual equality. The Committee recalled its General Comment on Article 2(2), which stated that “eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations”.⁴⁰⁹ Referring to the European Human Rights Court, the Committee also stated that “persons or groups whose situations are objectively different will constitute discrimination in effect [should be treated in an equal manner], as will the unequal treatment of persons whose situations are objectively the same”.⁴¹⁰ Hence, positive measures were required to prevent and eliminate conditions that perpetuated discrimination and to ensure equal enjoyment of rights in the Covenant.⁴¹¹ In the context of Indigenous peoples, it required measures for legal recognition, including collective ownership, and protection of their rights to their traditional lands as an essential element of the right to take part in the cultural life of the community and to provide effective remedies when these rights were infringed.⁴¹²

In relation to the right of equality and not to be discriminated against, the Committee concluded that the state party’s failure to give legal recognition to the rights of Indigenous peoples to their traditional lands, which were also the basis for their livelihood and income, had led to a situation in which the Sámi were not entitled to compensation when their traditional lands were subject to mineral exploration (251/2022), and they were not recognised as the interested party in the granting of the area reservation (289/2022), which had the effect of nullifying the recognition, enjoyment, or exercise by Indigenous peoples on an equal footing of their rights to their traditional territories and natural resources. The Committee was therefore of the view that the state party had not demonstrated how the processes of granting the permit and the reservation area under the Mining Act adequately considered the authors’ rights under Article 15(1)(a) of the Covenant, in conjunction with Article 2(2).⁴¹³

The Committee’s decision is historical for the Kova-Labba *siida*, as well as generally for the Sámi people in Finland. In Finland’s Käsivarsi area, there has been strongly vocalised resistance to mining activities by the Sámi community, supported by many others.⁴¹⁴ This case requires thorough consideration by the state authorities responsible for granting mining or gold panning and related earlier state permits. The CESCR’s argumentation is exceptional in many respects. First, it embraces a remarkable level of recognition of interdependence and integration across UN human rights treaties, UNDRIP, the Inter-American Court of Human

409 Para. 14.10.; GC20, para. 8.

410 Ibid; CERD GR32, para. 8; ECHR, *Thlimmenos v Greece*.

411 Ibid; GC20, paras 8–9.

412 Ibid; GC21, para. 36; GC26, paras 11 and 16; United Nations Declaration on the Rights of Indigenous Peoples, Article 26.

413 Para. 14.11.

414 No mining in Käsivarsi movement, <https://eikaivoksille.wordpress.com/> (checked 8.4.2025).

Rights, and even the European Court of Human Rights. The CESCR has genuinely implemented what it states about the ICESCR being a living instrument. The Committee directly and indirectly followed the practice of the Inter-American Human Rights system for expansive interpretation, as well as cross-referencing to multiple human rights instruments. Not only did it strongly confirm the decision of the HRC to read Indigenous peoples' right to culture in conjunction with their right to self-determination, it also tied it to the previously mentioned rights to an adequate standard of living, and right to non-discrimination and equal treatment. For the equality aspect, the CESCR directly used the ICERD and the interpretation of the CERD in Article 5 (the right to equality) of the ICERD, which is discussed in this report's next chapter. Importantly, the CESCR recognised that the failure of the state party to have an affirmative action to grant actual equality in relation to protecting the land rights of the Sámi, led to the violation of Article 2(2) on the prohibition of discrimination.

Sámi people's land rights were recognised as interlinked with the right to self-determination, strengthening the substantial aspect of the right to self-determination. Mattias Åhren has criticised this because a strong focus on whether Indigenous peoples' right to self-determination is a right to consent (FPIC) or to consultation reduces Indigenous peoples' material right to self-determination, that is, their right "to freely pursue their economic, social and cultural development", to a process.⁴¹⁵ Recognising and protecting Indigenous peoples' right to own, use, and control their traditional lands must be done in a way that guarantees their economic, social, and cultural development *in facto*. Additionally, FPIC as a process was given content in this decision, with an important element recognising the Sámi traditional customary decision-making, entity, *siida*, as entitled to exercise FPIC.

4.3.3. CERD's Views on Indigenous Peoples'/Sámi People's Rights

Under Article 5 of International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD), states parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the rights of the Covenant.

The UN Committee on Racial Discrimination (CERD) was proactive early on regarding Indigenous peoples. In 1997, it made General Recommendation No. 23 on Indigenous peoples, in which it highlighted that the situation of Indigenous peoples had always been a matter for its close attention and concern, and noted that the Committee had consistently

415 For an elaboration of the "consultation-consent dichotomy" in the indigenous rights discourse, see Åhren, M. "Indigenous Resource Rights at Their Core (And What These Are Not)," in D. Newman (ed.) *Research Handbook on the International Law of Indigenous Rights*. Edward Elgar Publishing, 2022.

affirmed that discrimination against Indigenous peoples fell under the scope of the Convention, and that all appropriate means must be taken to combat and eliminate such discrimination.⁴¹⁶ The Committee had shown a very expansive interpretation of Article 5, applying it to Indigenous peoples' rights to traditional lands, property, customs, and health, for example, as well as the right to participate in the decision-making affecting them from the perspective of their FPIC.⁴¹⁷

In General Recommendation No. 23, the CERD called in particular on states parties to: (a) recognise and respect Indigenous peoples' distinct culture, history, language, and way of life as an enrichment of the state's cultural identity and to promote its preservation; (b) ensure that members of Indigenous peoples were free and equal in dignity and rights and free of any discrimination, in particular based on indigenous origin or identity; (c) provide Indigenous peoples with conditions allowing sustainable economic and social development compatible with their cultural characteristics; (d) ensure that members of Indigenous peoples enjoyed equal rights in respect of effective participation in public life, and that no decisions directly related to their rights and interests were taken without their informed consent; (e) ensure that Indigenous communities could exercise their rights to practise and revitalise their cultural traditions and customs, and to preserve and practise their languages.⁴¹⁸

The Committee also especially called on states parties to recognise and protect the rights of Indigenous peoples to own, develop, control, and use their communal lands, territories, and resources, and, where they had been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.⁴¹⁹

The CERD has stated that as part of their right to own, develop, control, and use their communal lands and resources, Indigenous peoples have a "right to exclusive benefit of renewable natural resources situated on their lands".⁴²⁰ Hence, when considering the exploitation of natural resources on the territory of Indigenous peoples, states have an obligation to ensure that Indigenous people derive reasonable benefit from such activities or are otherwise compensated.⁴²¹ On several occasions, the CERD has recommended that

416 UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 23 on Indigenous Peoples, Fifty-first Session, 18.8.1997, para. 1.

417 See UN Office of the UN High Commissioner for Human Rights, Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. Individual Report on the International Convention on the Elimination of All Forms of Racial Discrimination, Report No. 3, Prepared for the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, December 2013.

418 Para. 4.

419 Para. 6.

420 Report of the Committee on the Convention on the Elimination of All Forms of Racial Discrimination for the Sixty-second and Sixty-third sessions, Consideration of Reports, Comments and Information Submitted by States Parties: Bolivia, 30 October 2001, UN Doc. A/56/18, para. 335.

421 Consideration of Reports, Comments and Information Submitted by States Parties: Ecuador, note 41 supra, para. 62 (stating that, in considering exploitation of subsoil resources, states must ensure "the equitable sharing of benefits to be derived from such exploitation", including making remedies available to Indigenous people "claiming compensation for the environmental depletion of their traditional lands").

an environmental impact assessment be conducted before exploration for or exploitation of natural resources on lands traditionally inhabited by Indigenous peoples.⁴²²

The CERD has addressed the rights of Sámi in its Concluding Observations on Nordic countries, particularly in relation to their rights to lands and resources, and traditional livelihoods such as reindeer herding and fishing,⁴²³ urging measures to enshrine the right of Sámi people to FPIC in law in accordance with international standards.⁴²⁴ In relation to Finland (2017), the Committee expressed its concern about reports that the provision of health and social care services in the Sámi languages remained insufficient, despite the state party's efforts to strengthen knowledge of these languages and this culture among health and social care personnel. The Committee encouraged the state party to continue to make efforts to revitalise the Sámi languages, including outside the Sámi Homeland. The Committee recommended that the state party ensure adequate provision of physical and mental health services and social care in the Sámi languages.⁴²⁵

4.3.3.1. The Case of Sámi Land Rights v. Sweden

The case of *Ågren et al. v. Sweden*⁴²⁶ concerned the traditional territory of the Vapsten Sámi reindeer-herding community (Sameby) in Sweden. The state party of Sweden had granted exploitation concessions to a private mining company in the community's traditional territory in the form of three open-pit mines in the Rönnebäcken isthmus, a region with pasture areas of fundamental importance to the Vapsten community's reindeer-herding cycle. In a submission to the CERD dated 31 January 2018, the petitioners alleged that the state party had violated Article 5(d) (v) (right to property) of the Convention by granting three mining concessions on their traditional territory without obtaining the consent of the reindeer-herding community, and without even considering whether taking the land amounted to a violation of the community's property rights.⁴²⁷

In addition, the petitioners claimed that the state party had breached their right to equal treatment before the tribunals and all other organs administering justice as enshrined in Article 5(a) of the Convention, by ignoring the fact that the right to non-discrimination required that the Vapsten community be treated as an Indigenous reindeer-herding community, not as a Swedish property rights holder. The petitioners argued that the mining

⁴²² See Report of the Committee on the Elimination of Racial Discrimination for the Seventy-eighth and Seventy-ninth sessions, 6 January 2012, UN Doc. A/66/18, para. 28; Report of the Committee on the Elimination of Racial Discrimination, Sixty-eighth and Sixty-ninth sessions, 1 October 2006, UN Doc. A/61/18, para. 147 (Committee "recommends that the State party undertake environmental impact assessments and seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar activities").

⁴²³ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Norway, CERD/C/NOR/CO/23-24, 2 January 2019, paras 21–22.

⁴²⁴ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Sweden, CERD/C/SWE/CO/22-23, 6 June 2018, paras 16–17.

⁴²⁵ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Finland, CERD/C/FIN/CO/23, 8 June 2017, para. 18–19.

⁴²⁶ Lars-Anders Ågren et al. v. Sweden, UN Committee on the Elimination of Racial Discrimination, CERD/C/102/D/54/2013, 26 November 2020.

⁴²⁷ Para. 1.2.

legislation and policies discriminated against Sámi reindeer herder groups specifically, not by treating the Sámi differently from the Swedish population, but by not doing so. According to the petitioners, this discrimination was the root cause of the violations. Finally, the petitioners claimed that the state party had also breached their right to effective protection and remedies, pursuant to Article 6 of the Convention, by denying them the right to bring to court the specific issue of their traditional property rights, as the Supreme Administrative Court could only review the application of domestic law when it was the law itself that had caused the breach of rights.⁴²⁸

When elaborating the merits of the case, the CERD engaged in extensive discussion of the rights of the Sámi to their traditional lands. The Committee recalled its General Recommendation No. 23 (1997) on Indigenous peoples' land rights and FPIC, and referred verbatim to UNDRIP Article 26, which grants Indigenous peoples land rights.⁴²⁹ In this respect, the Committee observed that as “the *raison d'être* of these principles”, the close ties of Indigenous peoples to the land must be recognised and understood as the fundamental basis of their culture, spiritual life, integrity, and economic survival. Referring to the case law of the Inter-American Court of Human Rights, the Committee stated that Indigenous peoples' relationship with the land was not merely a matter of possession and production but a material and spiritual element which they must fully enjoy to preserve their cultural legacy and transmit it to future generations. Hence, regarding, the realisation of Indigenous peoples' land rights might also be a prerequisite for the exercise of the right to life as such and to “prevent their extinction as a people”.⁴³⁰ The Committee stated that to ignore the inherent right of Indigenous peoples to use and enjoy land rights and to refrain from taking appropriate measures to ensure respect in practice for their right to offer FPIC whenever their rights might be affected by projects carried out in their traditional territories constituted a form of discrimination, as it resulted in nullifying or impairing the recognition, enjoyment, or exercise by Indigenous peoples on an equal footing of their rights to their ancestral territories, natural resources, and therefore their identity.⁴³¹

The Committee also recalled that in its Concluding Observations concerning the implementation by Sweden of Article 5 of the Convention, it had expressed concern about the issue of the Sámi people's land rights, especially their hunting and fishing rights, which were threatened, *inter alia*, by the privatisation of traditional Sámi lands. The Committee referred to its regular recommendations for the adoption of legislation recognising and protecting traditional Sámi land rights, reflecting the centrality of reindeer husbandry to

428 Ibid.

429 Para. 6.5.

430 Para. 6.6.

431 Para. 6.7.

the way of life of the Sámi as an Indigenous people of Sweden and enshrining the right to FPIC in law in accordance with international standards.⁴³²

In respect of the petitioners' claim that the state had party failed to fulfil its obligations under Article 5(d) (v) of the Convention, the Committee stated that, although the right to property was not absolute, states parties must respect the principle of proportionality when limiting or regulating Indigenous peoples' land rights, taking their distinctive status as an Indigenous people into account, so as not to endanger the very survival of the community and its members.⁴³³

The CERD argued that the prohibition of racial discrimination underpinned in the Convention required that states parties must guarantee everyone under their jurisdiction the enjoyment of equal rights *de jure* and *de facto*. Hence, pursuant to Article 2(1) (c), each state party must take effective measures to review government, national, and local policies, and to amend, rescind, or nullify any laws or regulations which had the effect of creating or perpetuating racial discrimination, wherever it existed. The Committee concluded that states must take positive measures to enable the realisation of human rights for Indigenous peoples, either by removing remaining obstacles or by adopting specific legislative and administrative measures to fulfil their obligations under the Convention.⁴³⁴

The Committee recalled that Indigenous peoples' land rights differed from the common understanding of civil law property rights and considered that reindeer herding was a central element of the petitioners' cultural identity and traditional livelihood.⁴³⁵ Indeed, according to the Committee, the recognition of the Sámi communities' land rights and their collective reindeer husbandry right, based on immemorial usage, entailed the obligation to respect and protect these rights in practice. The Committee emphasised that the need to safeguard Indigenous peoples' cultures and livelihoods was among the reasons why states parties should adopt tangible measures to ensure their effective consultation and participation in decision-making.⁴³⁶ The Committee confirmed that rights to lands traditionally occupied by Indigenous peoples were permanent rights, recognised as such in human rights instruments, including those adopted in the context of the United Nations and its specialised agencies.⁴³⁷

The Committee referred to its previously affirmed understanding that a lack of appropriate consultation with Indigenous peoples might constitute a form of racial discrimination and

432 Para. 6.9; CERD/C/304/Add. 103, para. 13; CERD/C/64/CO/8, para. 12; CERD/C/SWE/CO/18, para. 19; CERD/C/SWE/CO/19-21, para. 17; and CERD/C/SWE/CO/22-23, para. 17. See also the requests for free, prior, and informed consent in the Committee's Concluding Observations related to reports of other states parties: CERD/C/SUR/CO/13-15, para. 26; CERD/C/NAM/CO/13-15, para. 24; and CERD/C/PRY/CO/4-6, para. 18; and in the framework of the Committee's early warning and urgent action procedure, decision 1 (100) Canada.

433 Para. 6.10.

434 Para. 6.13.

435 Para. 6.14.

436 Para. 6.15.

437 Ibid.

could fall under the scope of the ICERD. The Committee confirmed the human-rights-based approach of FPIC “as a norm stemming from the prohibition of racial discrimination”, which was the main underlying cause of most of the discrimination suffered by Indigenous peoples.⁴³⁸

The Committee noted that it was the responsibility of states parties to provide evidence that they fulfilled this obligation, either directly, by organising and operating consultations in good faith and with a view to reaching consensus, or indirectly, by providing sufficient guarantees of effective participation of Indigenous communities and by ensuring that due weight was given by any third party to the substantive arguments raised by the Indigenous communities. The Committee considered that the duty to consult in such a context was the responsibility of the state. It therefore could not be delegated without the state’s supervision to a private company, especially to the very company that had a commercial interest in the resources within the territory of the Indigenous peoples.⁴³⁹ In the case in question, the Committee concluded that by delegating the consultation process to the mining company without effective guarantees and thus failing in its duty to respect the land rights of the Vapsten Sámi reindeer-herding community, the state party had not complied with its international obligations.⁴⁴⁰

Importantly, the CERD further considered that environmental and social impact studies should be part of the consultation process with Indigenous peoples. According to the Committee, these studies should be conducted by independent and technically competent entities prior to the awarding of a concession for any development or investment project affecting traditional Indigenous peoples’ territories. In this regard, based on these studies, the Committee stated that consultations must be held at an early stage, and before the design of the project, not only at the point when it was necessary to obtain approval; they should not start with predefined ideas according to which the project must necessarily be carried out, and they must involve constant communication between the parties.⁴⁴¹ The Committee confirmed that in the context of the process of awarding the concessions, the state must impose strict terms on studies and supervise their implementation to limit their impact on reindeer husbandry as much as possible.⁴⁴²

The Committee stated that the development and exploitation of natural resources as a legitimate public interest did not absolve states parties from their obligation not to discriminate against an Indigenous community that depended on the land in question by

438 Para. 6.16; A/HRC/39/62, paras 9–10.

439 Para. 6.17.

440 Ibid.

441 Para. 6.18.

442 Ibid.

mechanically applying a procedure of consultation without sufficient guarantees or evidence that the FPIC of the members of the community could be effectively sought and won.⁴⁴³ In light of the above, due to the lack of consideration of the petitioners' land rights in the granting of the mining concessions, the Committee concluded that the petitioners' rights under Article 5(d) (v) of the Convention had been violated.⁴⁴⁴ Furthermore, since the decisions of the Land and Environment Court and the Supreme Administrative Court could not evaluate the taking of the land from the perspective of the petitioners' fundamental right to traditional territory, the Committee concluded that the facts as submitted revealed a violation of the petitioners' rights under Article 6 of the Convention.⁴⁴⁵ Regarding the petitioners' claim concerning the violation of Article 5(a), the Committee considered that in this case, the petitioners had not sufficiently substantiated their claim under Article 5(a) of the Convention. The Committee was therefore not in a position to consider whether the state party had violated Article 5(a) of the Convention.⁴⁴⁶

The Committee recommended that the state party provide an effective remedy to the Vapsten Sámi reindeer-herding community by effectively revising the mining concessions after an adequate process of FPIC. The Committee also recommended that the state party amend its legislation to reflect the status of the Sámi as an Indigenous people in national legislation regarding land and resources, and to enshrine the international FPIC standard. Additionally, the state party was requested to disseminate this opinion of the Committee widely and to translate it to the official language of the state party, as well as to the petitioners' language.⁴⁴⁷

This case not only confirms the rights of the Sámi people to self-determination as a people and FPIC as a human right, but it is significant in articulating the rights of the Sámi people to their traditional land as a property right. The CERD stressed that Indigenous peoples' land rights were a particular form of property rights, which differed from property rights in general in that they constituted central elements of Indigenous peoples' cultural identity and traditional livelihood.⁴⁴⁸ The Committee emphasised that the ICERD required states to ensure freedom from discrimination for everyone, *de facto* and *de jure*.⁴⁴⁹ The CERD explained that the nature of the right to non-discrimination obligated the state party, when applying the proportionality test, to "strike a balance in fact and not ... in abstracto".⁴⁵⁰

443 Para. 6.20.

444 Para. 6.22.

445 Para. 6.29.

446 Para. 6.24.

447 Para. 8.

448 Para. 6.14. See Åhren, M. (2022). "Indigenusness as a Protected Ground of Discrimination", in A. Xanthaki (ed.), *Research Handbook on the Rights of Indigenous Peoples*, pp. 53–70. Edward Elgar Publishing.

449 Ibid., para. 6.13.

450 Ibid., para. 6.20.

In conclusion, the CERD clarified that Indigenous communities were in such a significantly different position that it required states to treat them differently. As Åhren maintains, in the case at hand, this meant tailoring the right to property to the community's Indigenous identity, including the element of the right which protected against infringements in the lands and resources subject to it.⁴⁵¹

4.3.4. CRC's Views on Indigenous Children's/Sámi Children's Rights

Article 30 of the UN Convention on the Rights of the Child (UCRC), like Article 27 of the ICCPR, states: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

Furthermore, Article 29 of the Convention provides that "education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin".

Additionally, Article 17 of the Convention makes a specific reference to the linguistic rights of Indigenous peoples, as states parties shall "encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous".

The Committee on the Rights of the Child (CRC) has paid particular attention to Indigenous children over the years. Its General Comment No. 11 (2009) on Indigenous children and their rights under the Convention especially emphasises the interrelationship between relevant provisions, and notably, the general principles of the Convention as identified by the Committee: non-discrimination, the best interests of the child, the right to life, survival and development, and the right to be heard.⁴⁵²

The CRC recalled the close linkage between Article 30 of the UCRC and Article 27 of the ICCPR. Both Articles specifically provide for the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, and to use their own language. The right established is conceived as being both individual and collective and is an important recognition of the collective traditions and values in

⁴⁵¹ Åhren, M. (2022), pp. 53–70, see footnote 448.

⁴⁵² Committee on the Rights of the Child, General Comment No. 11 (2009), Indigenous children and their rights under the Convention, CRC/C/GC/11, 12 February 2009, para. 14.

Indigenous peoples' cultures. The Committee noted that the right to exercise cultural rights among Indigenous peoples might be closely associated with the use of traditional territory and the use of its resources.⁴⁵³

The Committee noted that although Article 30 was expressed in negative terms, it nevertheless recognised the existence of a “right” and required that it “shall not be denied”. Consequently, as stated by the Committee, a state party was under an obligation to ensure that the existence and the exercise of this right was protected against its denial or violation. The Committee agreed with the UN Human Rights Committee (HRC) that positive protection measures were required, not only against the acts of the state party itself, whether through its legislative, judicial, or administrative authorities, but also against the acts of other persons within the state party.⁴⁵⁴

The CRC reiterated its understanding of the development of the child as set out in its General Comment No. 5 as a “holistic concept embracing the child’s physical, mental, spiritual, moral, psychological and social development”. The Committee recalled that the Preamble of the Convention stressed the importance of each person’s traditions and cultural values, particularly with reference to the protection and harmonious development of the child. In the case of Indigenous children whose communities retained a traditional lifestyle, the use of traditional land was of significant importance to their development and enjoyment of culture. Hence, states parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring children’s right to life, survival, and development to the maximum extent possible.⁴⁵⁵ The Committee further called for education that respected the child’s cultural identity, language, and values,⁴⁵⁶ and stressed the full participation of Indigenous children in decisions that affected them.⁴⁵⁷

In relation to Sámi children’s right to cultural heritage in Norway, Finland, and Sweden, the CRC has particularly highlighted the Sámi language and intercultural education for Sámi children.⁴⁵⁸ In relation to Finland, the Committee has also reminded the state to evaluate the possible effects of climate actions and mitigation measures on children, including Sámi children, and their rights.⁴⁵⁹

453 Para. 16.

454 Para. 17.

455 Para. 35.

456 Para. 56.

457 Paras 37–39.

458 Committee on the Rights of the Child, Concluding Observations on Norway, CRC/C/NOR/CO/5-6, 4 July 2018, para. 33; Concluding Observation on Sweden, CRC/C/SWE/CO/6-7, 7 March 2023, para. 38e, Concluding Observations on Finland, CRC/C/FIN/CO/5-6, 15 November 2023, para. 36, iii c.

459 Ibid., para. 34b.

4.3.4.1. Two Mining Cases of Sámi Children in Finland

The case of *M. E. V., S. E. V., and B. I. V. v. Finland*, communicated on 12 January 2022, both concern the same Sámi reindeer-herding community, Kova-Labba *siida* as the case discussed previously in relation to the example case of the CESCR.⁴⁶⁰ The authors submitted that their rights under Articles 8 (the right to identity), 27 (an adequate standard of living for the child's physical, mental, spiritual, moral, and social development), and 30 of the Convention (the right to culture), all interpreted in the light of Article 24 (the right to health) and all read alone and in conjunction with Article 2.1 (non-discrimination), had been violated by the state party in permitting a mineral exploration project on their traditional territory without a proper impact assessment and without obtaining their community's FPIC

The authors requested the adoption of interim measures to halt the exploration work.⁴⁶¹ In relation to their right to culture, the authors further submitted that in a situation where the sustainability and transmission to new generations of Sámi reindeer-herding culture was already under threat (the violation needing to be assessed in the context of cumulative effects of earlier interventions in their territory and now aggravated by ongoing climate change), any new intervention allowed by the state party also amounted to a violation of their right, as Indigenous children, individually and in community with each other and other Sámi, not be denied the right to enjoy their own culture, as protected by Article 30 of the Convention, specifically if undertaken without their FPIC.⁴⁶²

Besides elaborating on their reindeer-herding practices such as earmarking of reindeer calves, the authors described essential elements of their culture, including the traditional Sámi way of singing (*luohti yoik*), used by women in the fells during their reindeer watch to scare away predators. In addition, as girls, they bore a special responsibility in accordance with Sámi traditions for the production of traditional Sámi handicrafts (*duodji*). As reindeer provided a range of materials for traditional handicrafts, including fur, skin, veins, and bones, if traditional reindeer herding was lost, the Sámi culture would suffer as well. In the same way, their mother tongue, Northern Sámi, was a language deeply rooted in nature: the entire vocabulary used in reindeer herding was from Northern Sámi, so children did not learn the language's special vocabulary other than by being part of the reindeer-herding community. There was no future for their mother tongue if there was no place for traditional reindeer herding because of activities negatively affecting their ancestral territories.⁴⁶³

460 M. E. V., S. E. V., and B. I. V. v. Finland, CRC/C/97/D/172/2022, 7 October 2024. E/C.12/76/D/251/2022 E/C.12/76/D/289/2022, 8 October 2024.

461 Para. 1.1.

462 Para. 3.4.

463 Para. 2.3.

In considering the merits of the case, the Committee emphasised that the UCRC must be read in light of the evolutionary interpretation of Indigenous peoples' rights, and especially UNDRIP, as an authoritative framework for interpreting state party obligations under the Convention concerning Indigenous peoples' rights, bearing in mind that Indigenous children were also affected by the challenges facing their families and communities.⁴⁶⁴ The Committee then made references to several other human rights instruments and statements of their monitoring bodies, highlighting that cultural rights had an intergenerational aspect which was fundamental to the cultural identity, survival, and viability of Indigenous peoples, and in particular, in the case of Indigenous children whose communities retained a traditional lifestyle, the use of traditional land was of significant importance for their development and enjoyment of culture.⁴⁶⁵ The Committee also recalled that language, which was the "principal mode of transmission of traditional knowledge", was "a foundational element of indigenous cultures and identity. Indigenous children learning and using their languages are key to preserving indigenous cultures, historical memory and worldview".⁴⁶⁶ The Committee considered that Article 30 of the Convention enshrined the right of Indigenous children to enjoy their traditional territories, and that any decision affecting them should be taken with their effective participation.⁴⁶⁷

The Committee recalled that Article 32.2 of UNDRIP provided that states must consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions to obtain their FPIC for any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation, or exploitation of mineral, water, or other resources.⁴⁶⁸ The Committee considered that it was incumbent on states parties to prove that they organised and operated consultations in good faith and with a view to reaching consensus. In particular, an adequate and effective FPIC process whenever Indigenous Peoples' rights might be affected by projects carried out in their traditional territories must not only imply the sharing of information and the reception of comments by the affected community but an interactive and continuous dialogue at an early stage and through culturally appropriate procedures, with a genuine and sincere ambition of reaching consensus and not starting with predefined ideas according to which the project must necessarily be carried out.⁴⁶⁹

The Committee also considered that impact assessments should be part of the consultation process with Indigenous peoples. Environmental and social impact studies conducted by

464 Para. 9.12, referring to A/HRC/48/74, Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples, Expert Mechanism on the Rights of Indigenous Peoples (2021), para. 14.

465 Para. 9.14.

466 Para. 9.15, referring to A/HRC/48/74, op. cit., para. 83.

467 Para. 9.17.

468 Para. 9.19.

469 Para. 9.20.

independent and technically competent entities should be part of this consultation process, and it was based on these studies that consultations must be held from the early stages and before the design of the project.⁴⁷⁰

The Committee recalled that under Article 12 of the Convention, it was the obligation of the states parties to provide children with the opportunity to be heard in any judicial and administrative proceedings affecting them. In applying this article to Indigenous children, states parties must play an important role in promoting Indigenous children's consultation on all matters affecting them, including issues concerning their traditional territories and environment. The Committee moreover considered that Indigenous children especially must be at the heart of the process, from their consideration in impact assessments to their effective participation in consultation processes aimed at obtaining their FPIC.⁴⁷¹

In light of the above, the CRC considered that the state party had not demonstrated how the process of granting the permit under the Mining Act correctly took the standards established in international human rights law for the participation of Indigenous peoples, including Indigenous children, into account in the decision to grant the exploration permit for the authors' traditional lands used for reindeer herding, which affected their culture, identity, and standard of living.⁴⁷² The Committee recalled that to ignore the right of Indigenous peoples to use and enjoy land rights and to refrain from taking appropriate measures to ensure respect in practice for their right to offer FPIC whenever their rights might be affected by projects carried out in their traditional territories, constituted a form of discrimination, as it resulted in nullifying or impairing the recognition, enjoyment, or exercise by Indigenous peoples on an equal footing of their rights to their ancestral territories, natural resources, and therefore their identity. The Committee further considered that the discrimination suffered by an Indigenous people also affected their children, whose preservation of cultural identity was crucial, as they represented the continuity of their distinct people.⁴⁷³

Taking the above considerations into account, the Committee concluded that the granting of the permit violated the authors' rights under Articles 8, 27, and 30 of the Convention, read alone and in conjunction with Articles 2.1 and 12 of the Convention.⁴⁷⁴ The state party should therefore provide the authors with effective reparation for the violations suffered, including by effectively revising the mineral exploration project, after conducting a child rights-oriented impact assessment as the first stage that would make it possible for the authors' *siida* to carry out an adequate FPIC process in which the authors should effectively participate.

470 Para. 9.21.

471 Para. 9.22.

472 Para. 9.23.

473 Para. 9.24.

The Committee concluded that the state party was also under an obligation to take all the necessary steps to prevent similar violations occurring in the future. In this regard, the Committee requested the state party to pursue its efforts to amend its legislation to enshrine the international FPIC standard, specifically ensuring the participation of affected Indigenous children, and to include an environmental and social oriented impact assessment that included children's rights.⁴⁷⁵

This case sets important guidance to protect the rights of Sámi children, who, as confirmed by the CRC, enjoy their right to identity and culture and the effective right to participate in decision-making with the aim of FPIC. The Committee recognised many important aspects of Sámi cultural heritage, including their language and traditional knowledge, which they had the right to transmit to future generations. Moreover, the Committee acknowledged UNDRIP as an authoritative source for interpreting the current legal standards concerning Indigenous peoples, which strengthened the interpretation of Indigenous peoples' right to self-determination, in unison with their land rights.

4.4. Cultural Heritage in Indigenous Rights Instruments

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which was also partly addressed in the chapter on the Sámi people's right to the self-determination and referred to in the previous elaboration on the practice of treaty monitoring bodies, broadly safeguards many aspects of Indigenous peoples' culture and cultural heritage. Indigenous peoples' right to self-determination, recognised in Article 3, serves as the interpretative framework and basis for the entire Declaration, as previously mentioned. In this context, in the Preamble to the Declaration, the UN General Assembly "affirms that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different and to be respected as such". In relation to cultural heritage, the Preamble also states that "all peoples contribute to the diversity and richness of the civilisations and cultures that make up the common heritage of humanity".

The UN General Assembly also stresses that "respect for the knowledge, cultures and traditional practices of indigenous peoples contributes to the sustainable and equitable development and management of the environment". Thus, the protection of the knowledge and traditions of Indigenous peoples as part of their cultural heritage is seen as relevant because they benefit our environment.⁴⁷⁶ This idea, which is rooted in the discourse of

474 Para. 9.26.

475 Para.10.

476 See Heinämäki, L. "The Right to Be a Part of Nature: Greening Human Rights via Strengthening Indigenous Peoples", *Yearbook of Polar Law*, 4 (1) 2012:415–474;

Heinämäki, L. "Indigenous peoples' environmental human rights: from objects of protection towards stewardship: assessment of current international standards", 2022,

in Newman, D. G. (ed.). *Research Handbook on the International Law of Indigenous Rights*. Edward Elgar, pp. 169–201.

sustainable development and biodiversity conservation, is further elaborated in the later section of this report on the Convention on Biological Diversity.

EMRIP has stated that cultural self-determination, as one of the four main pillars of Article 3, also includes language, ceremonial and cultural heritage, spirituality, and sports rights, and its meaning is expanded on throughout the Declaration (Arts. 11–16, 31 and 34).⁴⁷⁷ According to Article 11.1 of UNDRIP, “Indigenous peoples have the right to practise and revive their cultural traditions and customs. This includes the right to maintain, protect and develop past, present and future expressions of their cultures, such as archaeological and historical sites, objects, designs and ceremonies, technology, visual and performing arts and literature.” This article includes the right of the Sámi people to maintain and protect cultural heritage sites such as sacred and other archaeological sites that are protected as antiquities. The article also protects Sámi cultural expressions such as spiritual ceremonies, and placenames and stories about them. For example, abuses of Sámi spiritual cultural heritage in Finland have been the subject of lively discussion, taking the touristic “Lapland baptism” and drum ceremonies as examples. The misuse of ancient religion and symbols in tourism has come to be viewed as a problem in the protection of Sámi cultural heritage.⁴⁷⁸

As an important aspect of cultural heritage, Article 12 seeks to safeguard Indigenous peoples’ right to spirituality. It provides that Indigenous peoples have the right to express, practise, develop, and teach their spiritual and religious traditions, customs, and ceremonies, the right to maintain, protect, and use their religious and cultural sites in peace, the right to use and determine the use of their ceremonial objects, and the right to repatriate the bodies of the deceased or their remains. The article also states that states must endeavour to enable access to and/or the return of ceremonial objects and the bodies or remains of the deceased in their possession to Indigenous peoples through fair, transparent, and effective mechanisms developed in cooperation with the Indigenous peoples concerned.⁴⁷⁹

According to Article 13.1 of UNDRIP, Indigenous peoples have the right to revitalise, use, develop, and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems, and literatures, and to designate and retain their own names for communities, places, and persons.⁴⁸⁰ Relics are an integral part of the history, language, and philosophy of the Sámi people, which also includes intangible cultural heritage such as stories. Placenames also reflect the history and cultural significance of the area, as previously mentioned. According to Article 13.2, states must take effective measures to

477 A/HRC/48/75, 4 August 2021, p. 4.

478 Heinämäki, L., Ojanlatva, E., Magga, A.-M. “Saamelaiden pyhäät luonnonpaikat kulttuuriperintöoikeuden ja tapaoikeuden valossa”, in T. Nykänen and L. Valkeapää (eds). *Kilpisjärven poliittinen luonto, Matkoja Käsiwarren kulttuurimaisemassa*. Suomen kirjallisuuden seura, Helsinki, 2016, pp.199–239, 206.

479 Article 12.

480 Article 13.1.

ensure the protection of this right.⁴⁸¹ For example, this means that Sámi traditional knowledge should be considered in decision-making concerning the Sámi people, where their FPIC in relation to their own traditional knowledge and other cultural heritage must be respected.

As previously highlighted, the basis of Indigenous peoples' culture and heritage stems from their traditional land use and relationship with the land. Indigenous peoples' relationship with nature is recognised in Article 25 of UNDRIP, which safeguards the right of Indigenous peoples to maintain and strengthen their distinctive spiritual relationship with the lands, territories, waters, coastal seas, and other natural resources traditionally owned or otherwise occupied and used by them, and to preserve their responsibilities in this regard for future generations.⁴⁸² Articles 26 and 27 recognise the right of Indigenous peoples to the lands, territories, and natural resources traditionally owned, possessed, or otherwise used or acquired by them. States must recognise and protect these lands, territories, and natural resources by law, and establish a procedure for the settlement of these rights.⁴⁸³

The articles stipulate that the recognition and settlement of these rights must respect and take Indigenous peoples' own laws, customs, traditions, and land management systems into account.⁴⁸⁴ Customs, traditions, and land management systems are an important part of the Sámi people's cultural heritage in relation to reindeer husbandry, fishing, and hunting, as previously mentioned. For example, Sámi sacred and cultural sites that are part of the cultural environment and cultural landscape are also associated with traditions, traditional knowledge, customs, and customary rights.⁴⁸⁵ These should be recognised and considered in the regulation and decision-making related to these sites and landscapes.

The Sámi people must have a primary and real opportunity to decide on issues concerning their cultural heritage. Article 31 of UNDRIP explicitly emphasises the right of Indigenous peoples to maintain, manage, protect, and develop their cultural heritage and their intellectual property in relation to cultural heritage, traditional knowledge, and traditional cultural expressions. In addition to cultural heritage, the article specifically mentions traditional knowledge, traditional cultural expressions, science, technology, and the various manifestations of cultures, including human and genetic resources, seeds, medicines, knowledge of the characteristics of animals and plants, oral tradition, literature, design, sports, and traditional games, as well as the visual and performing arts.⁴⁸⁶

481 Article 13.2.

482 Article 25.

483 Article 26.

484 Ibid.

485 See Heinämäki, L. and Xanthaki, A., "Indigenous Peoples' Customary Laws: Sámi People and Sacred Sites", in L. Heinämäki and T.M. Herrmann (eds). *Experiencing and Protecting Sacred Natural Sites of Sámi and other Indigenous Peoples, The Sacred Arctic*. Springer, 2017, pp. 65–82.

486 Article 31.

Intellectual property rights, which are discussed later in this report, protect intellectual, or intangible, property. The intellectual property of Indigenous peoples can also be collective, and efforts have been made to promote its legal protection internationally by the World Intellectual Property Organization (WIPO), for example. The current practice is that intellectual property rights do not protect Indigenous peoples' traditional knowledge as such, but various innovations or practices that incorporate traditional knowledge can be protected as intellectual property rights, including patents or trademarks.⁴⁸⁷ However, traditional Sámi knowledge is protected as such regarding genetic resources, which means that the use of traditional knowledge related to Sámi genetic resources for research and development purposes must, in accordance with the Nagoya Protocol, take national legislation into account and obtain the prior consent of Indigenous peoples.

Article 29 of UNDRIP recognises that the protection of the environment is Indigenous peoples' responsibility that states must assist. According to this article, Indigenous peoples have the right to preserve and protect the environment and the productive capacity of their lands or territories and natural resources. States must establish and implement assistance programmes for Indigenous peoples for this conservation and protection, without discrimination.⁴⁸⁸ The protection of the environment and its cultural heritage must be seen as both a right and an obligation of the Sámi people in light of their right to self-determination. The mere involvement of the Sámi Parliaments or other Sámi actors in the protection of relics or cultural landscapes, for example, by issuing statements, cannot be regarded as corresponding to their right to self-determination. The Sámi should have a primary responsibility as a people for their cultural heritage. Articles 18, 19, 32, and 29, mentioned in the earlier chapter on the Sámi's right to self-determination, concern the implementation of the principle of FPIC as part of the consultations.

According to Article 36 of UNDRIP, Indigenous peoples, especially those divided by international boundaries, have the right to maintain and develop transboundary contacts, relations, and cooperation, including spiritual, cultural, political, economic, and social activities, both with the individuals belonging to them and with other peoples.⁴⁸⁹ The Sámi, who live in the territory of four states, should also have the right to cooperate in the protection of their cultural heritage if they wish. The Sámi Parliament of Finland states that Sámi cross-border cooperation aimed at promoting the interests of the Sámi as a people is therefore of paramount importance. Sámi cross-border cooperation is both cooperation between the Sámi people and international cooperation, and can be directed at larger

487 See the section on the Akwé-Kon guidelines. See Mattila, T. and Jaakonaho, P., "Meidän pohjoisen alueen alkuperäiskansojen kulttuuria koskevat aineettomat oikeudet". Saamelaisalueen koulutuskeskus, 2022, p. 27. See, https://www.sogsakk.fi/media/pdf/hankkeet/fi_sakk_koulutusmateriaali_web.pdf (checked 28.11.2025).

488 Article 29.

489 Article 36.

international processes. As a rule, cooperation takes place through the Sámi Parliamentary Council (SPC). The Sámi Parliaments also cooperate with the Saami Council on the Indigenous issues of international environmental agreements, for example. Sámi parliamentarians also meet at the Sámi Parliamentarians' Conferences, which deal with issues of importance to the Sámi people.⁴⁹⁰

ILO Convention No. 169 also protects the cultural heritage of Indigenous peoples in many different ways. In addition to the participatory rights described in the earlier chapter on Sámi people's self-determination, the Convention contains numerous obligations for states to protect and guarantee the full realisation of the social, economic, and cultural rights of Indigenous peoples, respecting their social and cultural identity, customs, traditions, and institutions,⁴⁹¹ as well as social, cultural, religious, and spiritual values.⁴⁹² The Convention also obliges states to take due account of the customs and customary rights of Indigenous peoples in the application of national legislation.⁴⁹³ The treaty covers strong land rights,⁴⁹⁴ which has been one of the main reasons why the treaty has not been ratified in Finland or Sweden. In the context of land rights, the special spiritual and cultural significance of lands for Indigenous peoples is recognised.⁴⁹⁵

The Nordic Sámi Convention is founded on the idea that the Sámi are one people living in the territory of four states. In accordance with the Article 1 of the Sámi Convention, the purpose of the Convention is *to ensure and strengthen* the rights of the Sámi so that they can preserve, practise, and develop their culture, languages, and social life with as few obstacles as possible caused by national borders.⁴⁹⁶ The expert working group that drafted the Sámi Convention also emphasises that one of the purposes of the Convention is to harmonise the key legal rules for the Sámi.⁴⁹⁷ The Sámi Convention is not a framework convention, but its purpose is precisely to secure positive minimum rights for the Sámi living in all Nordic countries, the most important of which is the Sámi self-determination discussed in the earlier section, which can be considered the most important right of the entire agreement, in the light of which the entire Convention and individual articles must be examined and interpreted.

According to Article 3 of the Convention, the Sámi, as an Indigenous people of the contracting states, have the right to preserve, practise, and develop their culture, languages,

490 Strategy for the international activities of the Sámi Parliament, approved at the Sámi Parliament meeting on 18 December 2017, p. 8.

491 Article 2.

492 Article 5.

493 Article 8.

494 Articles 13–19.

495 Article 13.

496 Article 1.

497 See Pohjoismainen saamelaisopimus, suomalais-norjalais-ruotsalais-saamelaisasiantuntijatyöryhmän 27 lokakuuta 2005 luovuttama luonnos, p. 154.

and social life. States must safeguard these rights “effectively” and take specific measures if necessary to make it easier for the Sámi to exercise these rights.⁴⁹⁸ Article 6 further emphasises that states must promote the abovementioned rights of the Sámi. Article 20 also grants the right of the Sámi to practise, use, develop, preserve, and transmit to future generations their languages and culture, as well as the duty of the state to respect, promote, and protect these rights.

Article 22 of the Sámi Convention contains separate provisions on Sámi cultural heritage, cultural expressions, and traditional knowledge, though all of these can also be considered to be covered by cultural protection. According to the article, states must take Sámi cultural heritage, Sámi cultural expressions, and Sámi traditional knowledge into account in decision-making concerning issues relevant to the Sámi people’s conditions. The tangible cultural heritage of the Sámi must be protected by law. States must also promote the safeguarding of the Sámi’s immaterial cultural heritage.⁴⁹⁹ The article also stipulates that the Sámi Parliament, or the authorities in cooperation with the Sámi Parliament, Sámi museums, or other Sámi institutions, is responsible for matters concerning the Sámi cultural heritage. The management of the Sámi cultural heritage held by the state or other public institutions is the responsibility of the Sámi Parliament or museums or institutions, in cooperation with the Sámi Parliament. States must also promote the return and management of Sámi cultural property in cooperation with the abovementioned parties.⁵⁰⁰

The Sámi Parliaments are official bodies representing Sámi cultural self-government, which implements the right of the Sámi people to self-determination. Article 22 on cultural heritage should be read in conjunction with Article 4 on self-determination, also considering Article 12 of the Convention, according to which the Sámi Parliament shall have such responsibilities and tasks that enable them to effectively ensure the realisation of the Sámi people’s right to self-determination. In this context, due account should also be given to Article 14, which concerns the right of the Sámi to self-government. According to this Article, the Sámi Parliament makes independent decisions in matters for which they are responsible under national law and in other matters dealt with by them. The Sámi Convention can be clearly considered to require the autonomy and decision-making power of the Sámi Parliament regarding the protection of cultural heritage such as antiquities. Article 12 of the Sámi Convention on the effective realisation of self-determination should be considered in this context. The Nordic Sámi Parliament/Sámi Parliamentary Council has so far not required any changes to Article 22, so it is likely to be implemented as such if the Sámi Convention is approved.⁵⁰¹

498 Article 3.

499 Article 22.

500 Ibid.

501 Samiskt Parlamentariskt Råd, 6.7.2018.

The international development of the cultural heritage protection of the Sámi also involves Article 19 of the Sámi Convention concerning the international representation of the Sámi Parliament. According to the article, states must promote the independent representation of the Sámi Parliament in international organisations and meetings dealing with matters of particular importance to the Sámi. In international contexts, states actively involve the Sámi Parliament when dealing with issues that are of particular significance to the Sámi people.⁵⁰²

Article 11, which requires states to respect the right of the Sámi to determine the use of the Sámi flag and other Sámi symbols, and promotes their visibility, and Article 24, which stipulates that states must create conditions for research and research cooperation that are significant for the Sámi community, are also relevant to the protection of the Sámi people's cultural heritage. When conducting such research, established rules of research ethics and international principles that apply to research related to Indigenous peoples must be considered. In connection with this, the Sámi Parliament of Finland has drawn up guidelines on compliance with the principle of FPIC with regard to research related to the cultural heritage and traditional knowledge of the Sámi people.⁵⁰³

In relation to the protection of the cultural heritage of the Sámi people, according to Article 9, states must show due respect for Sámi legal concepts, legal customs, and traditions. When preparing legislation in areas where there may be Sámi customs, states examine whether such practices exist, and whether they should be safeguarded or otherwise taken into account in legislation.⁵⁰⁴ UNDRIP and ILO Convention No. 169 also recognise the traditional and customary laws of Indigenous peoples, as mentioned above. Sámi sacred sites and larger cultural landscapes involve both traditional customs and the Sámi customary laws related to their use, and whether their exact location is kept secret from outsiders, for example.⁵⁰⁵

Rights related to traditional lands, waters, and natural resources, which, as previously indicated, are directly linked to the cultural heritage of the Sámi people, are safeguarded in Chapter IV, Articles 27–33 of the Sámi Convention. The Convention recognises that the areas traditionally occupied by the Sámi are the basis for the Sámi to maintain, practise, and develop their culture, languages, and social life. The long-term traditional use of land and water by the Sámi in the states has become the basis for the Sami people's collective or individual right to own or use them.⁵⁰⁶ According to the Convention, states must take measures to ensure the rights of the Sámi to the natural resources they traditionally use,

502 Article 19.

503 See [https://www.samediggi.fi/tutkimuseettinen-menetelyohje/\(1.5.2021\)](https://www.samediggi.fi/tutkimuseettinen-menetelyohje/(1.5.2021)) (checked 8.4.2025).

504 Article 9.

505 See Heinämäki, L., Ojanlatva, E., and Magga, A.-M. "Saamelaiden pyhäät luonnonpaikat kulttuuriperintöoikeuden ja tapaoikeuden valossa", in T. Nykänen and L. Valkeapää (eds). *Kilpisjärven poliittinen luonto, Matkoja Käsivarren kulttuurimaisemassa*. Suomen kirjallisuuden seura, Helsinki, 2016, pp. 199–239.

506 Article 27.

their access, and opportunities to use them in the Sámi area. National legislation must include suitable procedures for binding confirmation of the rights of the Sámi to land and water.⁵⁰⁷

The characteristics of the Sámi cultural landscape are taken into account in the Sámi Convention by stating that the use of Sámi natural resources rarely leaves permanent traces in nature, which, according to the Convention, must be taken into account when assessing the existence of rights.⁵⁰⁸ According to the Convention, states must promote the sustainable use of the natural and cultural environment of Sámi areas, while respecting the traditional knowledge of the Sámi and taking the special significance of natural and cultural environments into account as the basis of Sámi culture, language, and social life.⁵⁰⁹

The Convention also states that states must ensure that rightsholders and all other users of land and waters show respect for each other's interests, while taking what the use of Sámi natural resources means for Sámi culture, language, and social life into account.⁵¹⁰ In this context, the legal status of the Sámi must be taken into account. The Sámi cannot be seen as mere stakeholders but have a special rightsholder status stemming from fundamental and human rights, which requires both substantive protection of the Sámi rights related to lands, waters, and natural resources and a strong and effective opportunity for the Sámi to participate in and influence decisions related to land, water, and natural resources, from the planning stage to the final decision-making. The Sámi Convention emphasises that the Sámi as an Indigenous people must not be denied the right to practise their culture, languages, and social life by interfering with natural resources or changing their use.⁵¹¹

In connection with this, the Convention also provides for a prohibition on weakening Sámi culture by stating that when states consider measures concerning the natural resources of the Sámi territories or a change in their use or the granting of permits for them, states must pay special attention to ensuring that the measures or the changed use do not cause significant harm to the Sámi language, culture, or social life. In this context, the cumulative effects of the different measures must be considered.⁵¹² The prohibition on weakening Sámi culture stems from the fundamental and human rights of the Sámi people and is most clearly articulated in the case law of the UN Human Rights Committee (Article 27 of the ICCPR).⁵¹³

507 Article 28.

508 Article 28.

509 Article 33.

510 Article 29.

511 Article 31.

512 Article 30.

513 See Heinämäki, L. "Saamelaiskulttuurin heikentämiskielto ja viranomaisen aktiivinen velvoite turvata perinteisten elinkeinojenharjoittamisen ja kehittämisen edellytykset." *Lakimies* 1/2021, pp. 3–35; See also Heinämäki, L. "Opas saamelaisia koskevien oikeusnormien tulkintaan ja soveltamiseen ympäristöön ja maankäyttöön liittyvissä kysymyksissä". Saamelaiskäräjät, 2021. <https://www.samediggi.fi/2021/03/29/opas-saamelaisia-koskevien-oikeusnormien-tulkintaan-ja-soveltamiseen-ymparistoon-ja-maankayttoon-liittyvissa-kysymyksissa-julkaistu/> (checked 8.4.2025).

The Sámi Convention also contains separate provisions on the rights of the Sámi in relation to livelihoods, which the states must promote (Chapter V, Articles 34–38). A separate provision concerning the protection of *duodji* in Sámi handicrafts stipulates that states must promote through legislative, administrative, or financial measures the opportunities of the Sámi to revitalise, preserve, protect, and develop the traditional skills and customs and knowledge associated with *duodji*, as well as the prerequisites for practicing *duodji* as a means of livelihood.⁵¹⁴

One of the key objectives of Finland’s Sámi Parliament’s cultural policy action and development programme for 2020–2023 is to map common cultural heritage and traditional knowledge policies in Finland, Sweden, and Norway, with the aim of forming a unified Sámi view of the autonomy, protection, and utilisation of cultural heritage and traditional knowledge.⁵¹⁵ In Norway, the Sámi people’s right to self-determination over their cultural, especially archaeological heritage is significantly stronger than in Sweden and Finland. The Norwegian example is discussed later in this report. In the light of the Sámi Convention, harmonising the Sámi’s cultural heritage rights in the Nordic countries can be seen as appropriate and in line with the spirit of the Convention.

4.5. Examples of the Human-rights-based Approach in Three Domestic Court Cases on Sámi of Finland, Norway, and Sweden

Fosen Case in the Supreme Court of Norway 2020

The Fosen case concerned the validity of decisions on licensing and expropriation for wind power development on the Fosen peninsula by Storheia and Roan wind farms. The key issue was whether the expropriation appraisal must be ruled invalid, as the development interfered with reindeer herders’ rights under Article 27 of the International Covenant on Civil and Political Rights (ICCPR).⁵¹⁶

The Storheia and Roan wind farms are located within the area of the Fosen grazing district. Two *siidas* practise reindeer husbandry in their respective parts of the district – Sør-Fosen *sijte* and Nord-Fosen *siida*. According to section 51 of the Reindeer Husbandry Act, a *siida* – or “*sijte*” in the South Sámi language – is a group of reindeer owners practising reindeer husbandry jointly in specific areas.⁵¹⁷

⁵¹⁴ Article 38.

⁵¹⁵ Saamelaisen kulttuuripoliittinen toiminta- ja kehittämissuunnitelma 2020-2023, Saamelaiskäräjät [Sámi Parliament], p. 4.

⁵¹⁶ Supreme Court of Norway, HR-2021-1975-S, (case no. 20-143891SIV-HRET), (case no. 20-143892SIV-HRET), and (case no. 20-143893SIV-HRET), p. 3, para. 2. <https://www.domstol.no/globalassets/upload/hret/decisions-in-english-translation/hr-2021-1975-s.pdf> (checked 16.7.2024).

⁵¹⁷ Ibid., para. 7, p. 3.

A grand chamber of the Supreme Court unanimously found a violation of Article 27 and stated that the licence and expropriation decisions were invalid. The judgment in the *Fosen* case largely relied on the practice of the Human Rights Committee (HRC), which was elaborated quite extensively. For example, the factors considered in assessing whether the threshold for violating Article 27 had been overstepped; whether the participation of the affected *siida* members in the decision on interference had been effective, whether the cumulative effects of the interference with previous interferences constituted a violation of Article 27, or whether remedial measures had been implemented that might result in the threshold not being reached after all. After concluding that the threshold for significant negative impact had been reached in the *Fosen* case, the Court established that the remedial measures taken were insufficient.⁵¹⁸

The decision was historic because it was the first time that affected Sámi parties in a case concerning a development project in their traditional areas won in the Supreme Court of Norway through reference to human rights. This judgment is considered very central because it clarified several key issues regarding Indigenous peoples' protection against interference in their traditional reindeer grazing areas.⁵¹⁹ Importantly also, the judgment confirmed that *siidas*, as bearers of collective rights, had the capacity to act on behalf of individual Sámi reindeer herders for claiming protection of their right to culture.⁵²⁰

It reaffirmed that the “green transition”, although important, does not allow balancing of the interests in relation to Article 27,⁵²¹ and that it does not allow for a proportionality assessment balancing other interests of society against minority interests. According to the Court, this is a natural consequence of the reason for the provision, as the protection of the minority population would be ineffective if the majority population were to be able to limit it based on its legitimate needs.⁵²² Furthermore, the Court held that “the green shift” could also have been taken into account by choosing other – and for the reindeer herders less intrusive – development alternatives.⁵²³ Therefore, the Court recalls, in accordance with international human rights law, that the right to culture is absolute in the sense that governments cannot curtail its protection through discretionary measures. Article 27 of the ICCPR does not allow a state to limit the application of protection to certain conditions or pursuant to its margin of appreciation.⁵²⁴

518 See <https://www.nhri.no/en/2023/about-the-wind-farms-on-fosen-and-the-supreme-court-judgment/> (checked 8.4.2024). For an analysis, see, Cambou, D.

“The significance of the Fosen decision for the protecting the cultural rights of the Sámi Indigenous people in the green transition”, in D. Cambou and O. Ravna (eds), *The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries*. Routledge Research in Polar Regions. Routledge, 2024, pp. 52–71.

519 Ibid.

520 Ibid, p. 64.

521 Para. 143.

522 Para. 129.

523 Para. 143. See Cambou (2024), p. 63, see footnote 518.

524 Ibid.

Girjas Case in the Supreme Court of Sweden 2020

The Girjas case concerned the exclusive rights of the Girjas reindeer herding community (RHC) (*sameby*) to small game hunting and fishing and the authority of the RHC over these rights. The Girjas RHC argued that they had used the land since time immemorial, continuously and without competition or protests from others. In its decision, the Supreme Court held unanimously that the Girjas RHC had both an exclusive right vis-à-vis the state and the authority to lease hunting and fishing rights to others, based on possession since time immemorial.⁵²⁵ In this respect, the case establishes an important precedent with respect to the grounds for recognising Sámi rights under the doctrine of immemorial prescription, an old Swedish property law concept.⁵²⁶

In the Girjas case, the Court referred to the role of international Indigenous peoples' and minority rights on several occasions, and these references clearly influenced the Court's decision in many respects.⁵²⁷ The Court also addressed ILO Convention No. 169, despite the fact that Sweden has not ratified the convention, mainly because of potential Sámi land rights to a vast area rich in natural resources, including water, minerals, and timber.⁵²⁸ The Court held that the convention in this respect gave expression to a public international law principle.⁵²⁹ The Court stated that even if Swedish law normally required the incorporation of a treaty to give the treaty domestic effect, it was "natural" that public international law principles would be taken into account in the interpretation of current Swedish law.⁵³⁰ The Court referred to several international human rights instruments that were to be taken into account, also giving weight to Sweden's constitutional protection of the Sámi.⁵³¹

Regarding the rights based on immemorial prescription, the Supreme Court reiterated the importance of international law, particularly Indigenous peoples' customs and customary laws.⁵³² Following ILO Convention No. 169 Article 8.1, recognising customs and customary laws, the Court held that in applying domestic law, due regard must be given to Sámi customs and customary laws.⁵³³ Moreover, the Court referred both to Article 26 of UNDRIP, regarding Indigenous peoples' rights to their lands, territories, and resources they have

525 Högsta Domstolens Dom, meddelad i Stockholm den 23 januari 2020, mål nr T 853-18,

<https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/2020/t-853-18.pdf> (checked 1.5.2025). For an analysis of the case, see Allard, C. and Brännström, M. "Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas Case." *Arctic Review on Law and Politics*, 12, 2021:56–79. Cambou, D. "The significance of the Fosen decision for the protecting the cultural rights of the Sámi Indigenous people in the green transition", in D. Cambou and O. Ravna (eds), *The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries*. Routledge Research in Polar Regions. Routledge, 2024, pp. 52–71.

526 Allard and Brännström (2021), p. 57, *ibid*.

527 *Ibid.*, p. 63.

528 *Ibid.*, p. 63; see e.g. the public investigation SOU 1999:25.

529 Girjas v. the State, para. 130.

530 Girjas v. the State, para. 94.

531 Girjas v. the State, para. 93. The treaties mentioned here are: the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), in particular Article 5.1; the UN's International Covenant on Economic, Social and Cultural Rights (ICESC); the UN's International Covenant on Civil and Political Rights (ICCPR), in particular Article 1.2; and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

532 Girjas v. the State, paras 130–132.

533 *Ibid.*; see Allard and Brännström (2021), p. 64, see footnote 525.

traditionally owned, occupied, or otherwise used, and Article 27 of ICCPR on members of the minorities' right to enjoy their own culture. The Supreme Court concluded that international case law attached significant meaning to the customary principles of Indigenous peoples, and this meant that Sámi customs must also be accorded due regard.⁵³⁴

Fishing Restrictions v. Sámi Fundamental Fishing Rights Case in Finland 2022

The Supreme Court of Finland made two simultaneous decisions in 2022 related to Sámi fishing in the Utsjoki and Vetsijoki rivers. In one case, the public prosecutor had brought a charge against a local Sámi person for a fishing offence. In 2017, he had fished for salmon with a stationary net in the Utsjoki river outside the legal fishing season. Fishing at the material time, in August, was contrary to a Government Decree then in force, governing fishing in the Tenojoki tributaries.⁵³⁵

In this case, the Supreme Court held that the provision on the legal fishing season in the Decree was in conflict with the constitutionally protected rights of the local Sámi. The Court had to weigh the right of the Sámi people to maintain and develop their right to culture under section 17(3) of the Constitution, read together with Article 27 of the ICCPR on the one hand, and section 20 of the Constitution on environmental protection on the other. The Supreme Court noted that this cultural fundamental right had also been described as a right within the sphere of property rights and referred to opinions issued by the Constitutional Law Committee. The Committee had stated in its opinion of 5/2017 that fishing in the Tenojoki river was to be allowed for the Sámi, regardless of domicile, to a greater extent than that proposed, and that stricter fishing restrictions were to be directed at such fishing that was not protected by section 17(3) of the Constitution or Article 27 of the International Covenant on Civil and Political Rights (ICCPR).⁵³⁶

The Supreme Court noted that the provisions in the Fishing Act concerning the authority to issue Decrees, which form the basis for the Tenojoki Tributary Decree, as well as the other restrictions in the Act, have as their objective the realisation of responsibility for the environment, as enshrined in section 20 of the Constitution. Under that provision, nature and its biodiversity, the environment, and the national heritage are the responsibility of everyone. According to section 20(2), the public authorities must endeavour to guarantee the right for everyone to a healthy environment and the possibility for everyone to influence the decisions that concern their own living environment.⁵³⁷

⁵³⁴ *Girjas v. the State*, para. 131. See, Allard and Brännström (2021), p. 64, see footnote 525.

⁵³⁵ Supreme Court English Summary:

<https://korkeinoikeus.fi/en/index/supremecourt/news/thesupremecourtdismissedthecriminalchargesintwocasesrelatingtothefishingrightsofthesami.html> (checked 1.6.2025).

⁵³⁶ ECLI:FI:KKO:2022:25, 13.4.2022, English summary of the Supreme Court,

https://korkeinoikeus.fi/en/index/ennakkopaatokset/shortsummariesofselectedprecedentsinenglish/2022_1/kko202225.html (checked 8.5.2025).

⁵³⁷ *Ibid.*

According to section 107 of the Constitution, if a provision in a Decree or another statutory instrument conflicts with the Constitution or an Act of Parliament, that provision must not be applied by a court of law or by any other public authority. In this assessment, the Supreme Court noted the evidence of the salmon stock in the Utsjoki river when the Decree was issued and the fact that the restriction could have been directed more strictly on such fishing that was not protected under section 17(3) of the Constitution and Article 27 of the ICCPR. The Supreme Court declined to apply the provision in the Decree and accordingly dismissed the charge of a fishing offence.⁵³⁸

In the other case, the public prosecutor had brought charges against four local Sámi for a game offence. They had fished with rods, reels, and lures on state waters in the Vetsijoki river without the required permit issued by Metsähallitus (the state land and water management agency).⁵³⁹ The Supreme Court held that the separate fishing permit required for salmon and trout migration areas under the Fishing Act in force at the material time in 2017 and the relevant permit procedure gave rise to such severe restrictions to the local Sámi that the application of the provision would be in evident conflict with their constitutionally protected rights. Also in this case, the Supreme Court declined to apply the provision in the Fishing Act and accordingly dismissed the charge of a game offence.⁵⁴⁰ The cases were heard by the Supreme Court as precedent appeals, where the public prosecutor appealed against the decisions of the District Court directly to the Supreme Court, bypassing the Court of Appeal.⁵⁴¹

The cases are very significant for the Sámi in Finland, where Sámi issues have not been resolved by the courts similarly to Norway and Sweden. The case confirms that sectoral legislation must meet the standards of the Constitution and Article 27 of the ICCPR, which is directly binding as an Act in Finland.

4.6. Convention on Biological Diversity and Protection of Sámi Cultural Heritage

The Convention on Biological Diversity (CBD), adopted in Rio de Janeiro in 1992, aims for the protection of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.⁵⁴² The parties recognise the close and traditional dependence of many Indigenous peoples and local

⁵³⁸ Ibid.

⁵³⁹ ECLI:FI:KKO:2022:26, 13.4.2022, English Summary of the Supreme Court,

<https://korkeinoikeus.fi/en/index/supremecourt/news/thesupremecourtdismissedthecriminalchargesintwocasesrelatingtothefishingrightsofthesami.html> (checked 9.5.2025).

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.

⁵⁴² See Francois, B. "The Fair and Equitable Sharing of Benefits from the Exploitation of Genetic Resources: A Difficult Transition from Principles to reality", in P. G. Le Prestre (ed.), *Governing Global Biodiversity: The evolution and implementation of the Convention on Biological Diversity*, Ashgate, 2002, pp.145–157; McGraw, D. M. "The Story of the Biodiversity Convention: From Negotiation to Implementation," in Le Prestre (ed.) (2002), p. 7.

communities with traditional lifestyles on biological resources. In the international debate on the rights of Indigenous peoples, it has generally been pointed out that the culture of Indigenous peoples is so comprehensively linked to the state of the environment that issues concerning them cannot be separated from each other.⁵⁴³ The Sámi have used and continue to use large areas for their traditional livelihoods and way of life. The use of nature is guided by the values of the Sámi community and customary law, traditions, and land-use traditions.⁵⁴⁴

The protection of the Sámi cultural environment and biodiversity are fundamentally linked. Concerning cultural landscapes of Indigenous peoples, Mechtild Rössler states that they are interfaces between nature and culture, tangible and intangible values, and cultural and biological diversity.⁵⁴⁵ Thomas Schaaf points out how one of the oldest culture-based areas of conservation has been related to the protection of Indigenous peoples' sacred sites, thereby also protecting valuable ecosystems.⁵⁴⁶ Bas Verschuuren states that in the Arctic, many sacred sites and special cultural environments of Indigenous peoples are often sensitive areas for biodiversity and the preservation of many species. According to him, the fact that spiritual values have been associated with sacred sites may have led to limited use of the sites, which has contributed to the protection of ecosystems.⁵⁴⁷

The safeguarding of biodiversity is crucial for the future of Sámi culture.⁵⁴⁸ The traditional knowledge related to the traditional land use of the Sámi cannot be separated from traditional land use itself: preserving and protecting traditional knowledge therefore always means that traditional land use must be protected.⁵⁴⁹ This must be borne in mind when applying and developing CBD-related legislation and administrative actions. The Constitutions of Finland, Norway, and Sweden, read together with Articles 27 and 1 of the ICCPR, must be interpreted as protecting the culture of the Sámi people as a whole, including traditional knowledge. Cultural heritage is a key part of the Sámi people's right to self-determination, as mentioned previously in this report. The final report of the Article 8(j) working group in Finland states that in the context of the CBD, the right of the Sámi people to self-determination is particularly related to the equitable distribution of benefits,

543 Metcalf, C. "Indigenous Rights and the Environment: Evolving International Law." (2003–2004) 35 *Ottawa Law Review* 103, p. 107; Heinämäki, L. "The Protection of the Environmental Integrity of Indigenous Peoples in Human Rights Law." (2006) XVII *Finnish Yearbook of International Law* 1, p. 2.

544 See Helander-Renvall, E. and Markkula, I. "Luonnon monimuotoisuus ja saamelaiset". Suomen ympäristö 12/2011, Ympäristöministeriö.

545 Rössler, M. "World heritage and cultural landscapes: A UNESCO flagship programme 1992–2006." *Landscape Research* 31 (4), pp. 333–353.

546 Schaaf, T. "Foreword", in R. Wild and C. McLeod (eds). *IUCN Guidelines: Sacred Natural Sites, Guidelines for Protected Area Management* (Best Practice Protected Area Guidelines Series No. 16, (2008), pp. v–vi). IUCN; UNESCO. R. Wild and C. McLeod (eds), P. Valentine, (series ed.). Best Practice Protected Area Guidelines Series No. 16, IUCN, Gland, Switzerland and UNESCO, Paris, France, 2008. See Herrmann, T.M. and Heinämäki, L. "Experiencing and Safeguarding the Sacred Sites in the Arctic: Sacred Natural Sites, Cultural Landscapes and Indigenous Peoples' Rights", in L. Heinämäki and T.M. Herrmann (eds). *Experiencing and Protecting Sacred Natural Sites of Sámi and Other Indigenous Peoples: The Sacred Arctic*. Springer (2017), pp. 1–8, 2.

547 For a general view, see Verschuuren, B., Wild, R., McNeely, J. A. and Oviedo, G. (eds). *Sacred Natural Sites: Conserving Nature & Culture*. London. Earthscan, 2010.

548 Akwé:Kon ohjeet, [Akwé:Kon Guidelines]. Ympäristöhallinnon ohjeita 1/2011, Ympäristöministeriö, p. 3.

549 See Heinämäki, L., Valkonen, S., and Valkonen, J. "Legal (non) recognition of Sámi customary relationship with the land in Finland: Challenges so far and prospects in the modern human rights era", in D. Bunikowksi and A. D. Hemmings (eds). *Philosophies of Polar Law*, Routledge London and New York, 2020, pp. 101–118.

safeguarding the traditional knowledge of the Sámi people related to biodiversity and decision-making concerning it.⁵⁵⁰ The right of Indigenous peoples to self-determination is also considered to include genetic resources, traditional knowledge, and traditional cultural expressions.⁵⁵¹

The CBD is linked to the protection of the Sámi cultural environment, including sacred sites and other archaeological heritage, especially because their protection supports the cultural diversity and cultural heritage of the Sámi people, including intangible cultural heritage such as traditional knowledge and spiritual practices. If the protection of cultural heritage sites or specific other cultural objects is seen as part of the broader protection of the Sámi cultural environment, the CBD is also relevant from the perspective of practices related to traditional land use that are considered to support the preservation of biodiversity. UN Special Rapporteur Tauli-Corpuz has strongly promoted this perspective in her work, stating that the deterioration of ecosystems always means the weakening of Indigenous peoples' knowledge systems, cultures, and identities, and vice versa.⁵⁵²

Because Indigenous peoples' right to culture and cultural heritage is seen to be directly linked to the preservation and protection of biodiversity, international Indigenous rights discourse has started to use the concept of the biocultural rights of Indigenous peoples.⁵⁵³ The term is intended to emphasise the holistic nature of the rights of Indigenous peoples. The idea of biocultural rights is to seek simultaneous advancing self-governance and safeguarding of Indigenous peoples' rights and biological diversity.⁵⁵⁴ Indigenous peoples are viewed as actors, or subjects, whose rights are to be protected because they have preserved biodiversity-relevant lifestyles.⁵⁵⁵ Another context could be the protection of cultural heritage, which includes various directly interdependent elements, including biodiversity aspects. The tangible cultural heritage of the Sámi cannot be separated from the intangible cultural heritage associated with them, including traditional knowledge, traditions, customary rights, belief systems, and stories, which are all related to

550 Biologista monimuotoisuutta koskevan yleissopimuksen alkuperäiskansojen perinnetietao käsittelevän artikla 8:n kansallisen asiantuntijaryhmän loppuraportti, kesäkuu 2011, Ympäristöministeriö, p. 26.

551 Aikio, E. Saamelaisen kulttuuri-itsehallinnon kehittäminen, Saamelaiskäräjien julkaisu, 2006, p. 5.; Pohjoismainen saamelaissopimus. Suomalais-norjalais-ruotsalais-saamelaisen asiantuntijaryhmän 27 lokakuuta 2005 luovuttama luonnos, p. 310.

552 Tauli-Corpuz, V. The importance of Indigenous peoples in biodiversity conservation. Retrieved from <http://siteresources.worldbank.org/EXTENVMAT/Resources/3011350-1271279658247/VP1-TauliCorpuz.pdf>. (checked 1.5.2021).

553 See e.g. Chen, C. W. and Gilmore, M. "Biocultural Rights: A New Paradigm for Protecting Natural and Cultural Resources of Indigenous Communities." *The International Indigenous Policy Journal*, 6 (3), (2015):1–17; Maffi, L. "What is biocultural diversity?" In L. Maffi and E. Woodley (eds). *Biocultural Diversity Conservation: A Global Sourcebook*, London: Earthscan, 2010, pp. 3–11.

554 See e.g. Bavikatte, S. K. (2014). *Stewarding the Earth: Rethinking Property and the Emergence of Biocultural Rights* (First 42 Edition) (2014), Oxford University Press; Chen, C. W., and Gilmore, M. "Biocultural Rights: A New Paradigm for Protecting Natural and Cultural Resources of Indigenous Communities." *International Indigenous Policy Journal*, 6 (3) (2020):10 <https://doi.org/10.18584/iipj.2015.6.3.3>; Macpherson, E., Torres Ventura, J., and Clavijo Ospina, F., "Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects." *Transnational Environmental Law*, 9 (3), 60 (2020):521–540. <https://doi.org/10.1017/S204710252000014X>; Sajeve, G. "The Legal Framework behind Biocultural Rights", in F. Girard, I. Hall, and C. Frison (eds). *Biocultural Rights, Indigenous Peoples and Local Communities* (1re 34 éd), pp. 165–18, 2022, Routledge. 35.

555 Sajeve (2022), *ibid.*, p. 174.

the traditional use of the environments. In turn, they are an integral part of the traditional livelihoods of the Sámi people and the Sámi languages.

According to Article 8(j) of the CBD, each party must, as far as possible and as appropriate, "...subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".

Article 10(c) of the Convention provides that each party must, as far as possible and as appropriate, "...protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements".

Taken together, these articles should be understood as recognising the right of Indigenous peoples to the sustainable exploitation of their traditional natural resources and the right to conserve, own, manage, and exploit their traditional ecological knowledge and practices, with the support of states.⁵⁵⁶ Central to this protection is the effective and meaningful participation of Indigenous peoples in decision-making concerning their cultural heritage. The CBD recognises and protects the cultural heritage of Indigenous peoples, including traditional knowledge and cultural practices related to traditional land use.⁵⁵⁷

The significance of biodiversity for the cultural heritage of Indigenous peoples is essentially linked to and determined by traditional knowledge: the preservation of biodiversity is a prerequisite for the preservation of traditional knowledge, and vice versa.⁵⁵⁸ It has been argued that Indigenous peoples' rights to self-determination are essential to sustainable development, as sustainability and conservation of biological and cultural diversity rely on Indigenous peoples' knowledge of and stewardship over key ecosystems.⁵⁵⁹

556 Barsh, R. L. "Indigenous Peoples." Chapter 36 in D. Bodansky et al. (eds). *The Oxford Handbook of International Environmental Law*, Oxford: Oxford University Press, 2007, p. 848.

557 See World Intellectual Property Organization (WIPO), *Protect and Promote Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities*. WIPO: Geneva 2017, p. 11. For an analysis, see Johnsson, D. and Tualima, H-Y. "Cultural Heritage, Traditional Knowledge and Intellectual Property", in A. Xanthaki et al. (eds), *Indigenous Peoples' Cultural Heritage: Rights, Debates, Challenges*. Brill/Nijhoff, Leiden/Boston, 2017, pp. 218–228.

558 Hassemer, M. "Genetic Resources", in S. von Lewinski, (ed.), *Indigenous Heritage and Intellectual Property: Genetic Resources, Traditional Knowledge and Folklore*, Haag, 2004, pp. 151–220,163. See Saraviita, K. "Alkuperäiskansojen oikeus omaan kulttuuriperintönsä?", in T. Elo and P. Magga, 2007, pp. 125–138, 128.

559 Reimerson, E., Flodén, L. "Navigating conservation currents: conditions for Sámi agency in collaborative governance and management models", in D. Cambou and Ø. Ravna (eds). *The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries*. Abingdon; New York: Routledge Research in Polar Regions, 2024, pp. 116–132; Schmidt, P. M. and Peterson, M. J. "Biodiversity Conservation and Indigenous Land Management in the Era of Self-Determination." 23 *Conservation Biology* (2009):1458; Heinämäki, L., Valkonen, S., and Valkonen, J. "Legal (Non) Recognition of Sámi Customary Relationship with the Land in Finland: Challenges so Far and Prospects in the Modern Human Rights Era", in D. Bunikowski and A. D. Hemmings (eds). *Philosophies of Polar Law*, Routledge 2021, pp. 101–118, 114; Degai, T. S. and Petrov, A. N. "Rethinking Arctic Sustainable Development Agenda Through Indigenizing UN Sustainable Development Goals." 28 *International Journal of Sustainable Development & World Ecology*, (2021):518.

The conservation policy field is undergoing a paradigm shift in which strict management forms without consideration of Indigenous peoples' and local knowledges and effects on Indigenous and local communities are increasingly being replaced with collaborative and decentralised modes of protected area governance and management.⁵⁶⁰ Collaborative approaches are associated with potential benefits for both environmental and social outcomes, including the strengthening of local stewardship, local empowerment, and the recognition and protection of Indigenous peoples' rights.⁵⁶¹ This paradigm shift also includes greater recognition of the interrelationship and mutual reinforcement between biological and cultural diversities and acknowledgement of the potential contributions of traditional and ecological knowledge to conservation.⁵⁶²

4.6.1. National Implementation Example: Sámi Rights in Norwegian Nature Diversity Act and Management of Protected Areas

Christina Allard maintains that the Sámi, along with many other Indigenous peoples, have long questioned the very foundations of protected areas, especially national parks, while the idea of protection is historically embedded in concepts as “wilderness” and “untouched” nature. In Norway, through consultations, the Sámi Parliament (*Sámediggi*) criticised the description “untouched” and “beautiful” in previous legislation as signalling the neglect of age-old uses and the Sámi presence. These wordings were therefore slightly amended in the new Act with respect to the three main categories of protection (national parks, protected landscapes, and nature reserves). In the Norwegian Nature Diversity Act (2009), instead of referring to “untouched” nature, the qualifications for designating a national park now referred to “[l]arge areas of natural habitat that contain distinctive or representative ecosystems or landscapes and where there is no major infrastructure development”. The bill also emphasised that reindeer was a natural species in Norway, impacting vegetation and landscape, and shaping the ecosystem. Hence, reindeer-herding areas were understood as cultural landscapes.⁵⁶⁸

560 Reimerson, E. and Flodén, L. “Navigating conservation currents: conditions for Sámi agency in collaborative governance and management models”, in D. Cambou and Ø. Ravna (eds). *The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries*. Abingdon; New York: Routledge Research in Polar Regions, 2024, pp. 116–132, 117.

561 Ibid.; Kothari, A., Camill, P. and Brown, J. “Conservation as if People Also Mattered: Policy and Practice of Community-Based Conservation.” 11 *Conservation & Society* (2013):1; Stevens, S. “New Protected Area Paradigm”, in S. Stevens (ed). *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*. Arizona UP, 2014; Bodin, Ö. “Collaborative Environmental Governance: Achieving Collective Action in Social-Ecological Systems.” 357 *Science* (2017): EAAN 1114.

562 Ibid; Tengö, M. et al. “Weaving Knowledge Systems in IPBES, CBD and Beyond: Lessons Learned for Sustainability.” (2017) 26–27 *Current Opinion in Environmental Sustainability* 17; Hill, R. et al. “Working with Indigenous, Local and Scientific Knowledge in Assessments of Nature and Nature’s Linkages with People.” (2020) 43 *Current Opinion in Environmental Sustainability* 8.

563 Allard, C. Chapter on Norway, in L. Heinämäki et al., *Saamelaiisten oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, Valtioneuvoston kanslia 4/2017*, p. 331.

564 Ibid; see NOU 2004: 28 Lov om bevaring av natur, landskap og biologisk mangfold- (Naturmangfoldloven), <https://www.regjeringen.no/no/dokumenter/nou-2004-28/id388846/.295,472,478,486>.

565 Act of 19 June 2009 No. 100 Relating to the Management of Biological, Geological and Landscape Diversity.

566 Section 35.

567 Ot.prp. nr. 52 (2008-2009) Om lov om forvaltning av naturens mangfold (naturmangfoldloven), 41.

568 Allard, C. Chapter on Norway, in L. Heinämäki et al., *Saamelaiisten oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, Valtioneuvoston kanslia 4/2017*, p. 331.

The Nature Diversity Act of Norway is the key statute for environmental considerations with a comprehensive and integrated approach,⁵⁶⁹ which seeks primarily to implement the Convention on Biological Diversity (CBD), including Articles 8(j) and 10(c). The purpose, according to section 1 of the Act is to protect biological, geological, and landscape diversity and ecological processes through conservation and sustainable use, and so that the environment provides a basis for human activity, culture, health, and wellbeing, now and in the future, including a basis for Sámi culture. Allard reminds us that the reference to Sámi culture should be understood as a clarification, founded in the Indigenous rights' discourse. Norway must secure a sufficient natural resource base for the Sámi to continue their traditional activities and livelihoods.⁵⁷⁰ Section 14 of the Act specifically highlights the need to consider important public interests in decision-making. Economic, social, and cultural needs should be weighed against conservation interests. In the interpretation of individual provisions directly affecting Sámi interests, "due importance shall be attached (...) to the natural resource base for Sámi culture".⁵⁷¹

The related bill refers to Article 27 of the ICCPR,⁵⁷² which must be considered in applying the provision. The balancing of Sámi rights, culture, and interests must, under the Act, be carried out in the decision-making process by the competent authority. If there is a direct effect on the Sámi, the state authority must consult the Sámi Parliament and/or other affected Sámi groups.⁵⁷³ The conservation legislation emphasises dynamic and flexible rules to enable a sliding scale between use and protection,⁵⁷⁴ which allows traditional Sámi uses to continue despite the designation of area protection categories. However, there are local controversies with respect to certain protected areas and discontent by the Sámi regarding how designation, decisions, and management have been carried out.⁵⁷⁵ Local Sámi reindeer herders are strongly attached to their traditional areas and feel that they have been the ones who have taken care of these land areas. When designated as a protected area, others will have access and rights to that area, which causes conflicts.⁵⁷⁶

In 2010, the Norwegian government introduced a reform in relation to the management of protected areas,⁵⁷⁷ partly because of the CBD obligations with respect to Indigenous

569 Ibid; Ot.prp. No. 52 (2008-2009), 51, 53.

570 Allard (2017), p. 331, see footnote 568; NOU 2004:28, 468, 471.

571 Nature Diversity Act, p. 14 para. 2.

572 Ot.prp. No. 52 (2008-2009), 384; NOU 2004:28, 471. See Allard (2017), p. 331, see footnote 568.

573 Allard (2017), p. 331, see footnote 568.

574 Ibid, p. 332; Ot.prp. No. 52 (2008-2009), 41; NOU 2004:28, 154, 156; Allard, C. *Renskøtselrätt i nordisk belysning*, Stockholm/Göteborg. Makadam förlag, 2015, 66-68.

See also Fauchald, O. K. Gulbrandsen, L. H., and Zachrisson, A. (eds). "Internationalization of protected areas in Norway and Sweden: examining pathways of influence in similar countries." *Int. J. Biodiversity Sci. Ecosyst. Serv. Manage.* 10 (3) (2014):240-252; Hausner, V. H., Engen, S., Bludd, E. K., and Yoccoz, N. G. "Policy indicators for use in impact evaluations of protected area networks." *Ecol. Indic.* 75 (2017):192-202; Engen, S., Runge, C., Brown, G., Fauchald, P., Nilsen, L., and Hausner, V. H. "Assessing local acceptance of protected area management using public participation GIS (PPGIS)." *J. Nat. Conservation* (2018): Elsevier BV, 2018.

575 Ibid; see also Riseth, J. Å. "Norske nasjonalparker i samenes land. In Perspektiver til fremtidig areal- og miljøpolitikk i Sápmi", 43-65. Sámediggi, Sámi Parliament, 2016.

576 Allard (2017), p. 332, see footnote 568.

577 Prop 1 S (2009-2010).

peoples.⁵⁷⁸ It allows the transfer of the management of large protected areas to local management boards, or “national park boards”⁵⁷⁹ (NPBs), established in 2022, acknowledging Sámi representation in traditional Sámi areas. The reform enables local governance of a broad range of large protected areas. These local boards consist of elected political representatives nominated by local and regional councils and, in Sámi areas, the Sámi Parliament.⁵⁸⁰ The extent of Sámi representation is determined by the importance of each area for Sámi culture and livelihoods.⁵⁸¹ Of the 42 NPBs, the Sámi Parliament has appointed representatives to 21. The Sámi Parliament’s appointees represent Sámi interests and the Sámi people in their personal capacity as Sámi individuals and are not subject to instruction from the Sámi Parliament.⁵⁸²

The NPBs’ mandates can include development and revision of protected area management plans, assessments of individual applications for exemption from protected area regulations, and management activities to safeguard the conservation values of protected areas.⁵⁸³ Management plans must be approved by the Norwegian Environment Agency (NEA). The county governors have the right to appeal the decisions of NPB to the NEA. The ministry has the power to instruct the NPBs and may withhold NPB’s authority and mandate if finding its decisions or activities is inconsistent with relevant legislation or regulations.⁵⁸⁴

The reform has been characterised as “a grand experiment”, given the scale of the reform, the unique model for managing protected area networks, and its implementation.⁵⁸⁵ As Elsa Reimerson and Linn Flodén indicate, according to an analysis of 2010, Sámi space for agency is both enabled and restrained by the discourses of decentralisation and local protected area management in Norway.⁵⁸⁶ These authors point out that connections with international Indigenous peoples’ rights and the promotion of Sámi rights within existing

578 Allard (2017), p. 332.

579 Prop. 1 S (2009–2010), Proposisjon til Stortinget (forslag til stortingsvedtak) for budsjettåret 2010.

580 Ibid; Reimerson, E. “International arenas, local space for agency and national discourse as mediator: Protected areas in Swedish and Norwegian Sápmi”, in L. Elenius, C. Allard, and C. Sandström (eds). *Indigenous Rights in Modern Landscapes: Nordic Conservation Regimes in Global Context*. London: Routledge, 2016, pp. 167–185.

581 Allard C. Chapter on Norway, in L. Heinämäki et al., Saamelaiden oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, Valtioneuvoston kanslia 4/2017, p. 332; Prop 1 S (2009–2010), p. 224.

582 Reimerson and Flodén (2024), p. 121; Prop. 1 S (2009–2010) (n 48) 223–26; Sámediggi, “Areal, Klima Og Miljø: Verneområdestyrene”. (Sámediggi—Sametinget, 2023), <https://sametinget.no/areal-klima-og-miljo/verneomradestyrene/> (checked 10.4.2025). For a general view, see Fauchald, O. K. and Gulbrandsen, L. H. “The Norwegian Reform of Protected Area Management: A Grand Experiment with Delegation of Authority?” (2012) 17 *Local Environment* 203; Reimerson, E. “Discourses of Decentralization: Local Participation and Sami Space for Agency in Norwegian Protected Area Management”, in Andersson, R-H., Boyd, D. Cothran, and Kekki, S. J. (eds). *Bridging Cultural Concepts of Nature: Indigenous People and Protected Spaces of Nature*, Helsinki UP, 2021.

583 Reimerson, E. and Flodén, L. “Navigating conservation currents: conditions for Sámi agency in collaborative governance and management models”, in D. Cambou and Ø. Ravn (eds). *The Significance of Sámi rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic countries*. Abingdon; New York: Routledge Research in Polar Regions, 2024, pp. 116–132, 121; See e.g. Midtre Nordland nasjonalparkstyre, “Vedtekter for Midtre Nordland nasjonalparkstyre” (Miljødirektoratet, 2020), https://www.nasjonalparkstyre.no/uploads/files_midtre_nordland/Vedtekter-Midtre-Nordland-1.-jan-2020.pdf (checked 10.4.2025).

584 Ibid; Prop. 1 S (2009–2010) (n 48) 225.

585 Hausner, V. H. et al. “Assessing a Nationwide Policy Reform toward Community-Based Conservation of Biological Diversity and Ecosystem Services in the Alpine North.” (2021) 49 *Ecosystem Services* 101289; p. 2; Fauchald, O. K. and Gulbrandsen, L. H. “The Norwegian reform of protected area management: A grand experiment with delegation of authority?” *Local Environ.* 17 (2012):203–222.

586 Reimerson and Flodén (2024), p. 121, see footnote 583.

structures enable space for Sámi agency through consultation and consideration of Sámi interests.⁵⁸⁷

Importantly, in relation to Sámi traditional knowledge as an important part of their cultural heritage, emphasis on Sámi contributions to conservation objectives enables space for the protection and promotion of Sámi traditional knowledge. However, the downside is that conservation will be prioritised over user interests, and that protected areas are not a means to protect any form of use, industry, or cultural practice over others.⁵⁸⁸ This may limit or qualify the recognition of Sámi rights, traditions, or traditional knowledge in its correspondence with or perceived contributions to conservation objectives.⁵⁸⁹

Furthermore, as Reimerson and Flodén conclude, Sámi participation under the reform mainly takes place within arrangements modelled on conventional centralised structures, which leaves less space to fundamentally change or challenge dominant relationships of power, divisions of responsibilities, or management objectives.⁵⁹⁰ There have also been tensions and different opinions of the role and function of the NPBs, and some disagreement on whether the reform does in fact increase local control over conservation.⁵⁹¹ For example, Sámi representatives have expressed that non-Sámi NPB members and other actors in advisory capacities lack sufficient understanding of reindeer herding and other Sámi land uses.⁵⁹²

4.6.2. National Implementation Example: Finland's Nature Conservation Act and Recognition of Sámi Traditional Knowledge

The Nature Conservation Act (NCA) (9/2023) of Finland entered into force on 1.6.2023 and replaced its predecessor from 1996. The objectives of section 1 of the Act are to safeguard biodiversity, preserve natural beauty and landscape values, promote adaptation to climate change, support the sustainable use of natural resources and the natural environment, increase citizens' knowledge of nature and environmental awareness, and promote nature research.⁵⁹³ For the Sámi, both preserving biodiversity and the values of the Sámi cultural landscape and supporting the sustainable use of natural resources and the natural environment, as well as adaptation to climate change, are of paramount importance.

587 Ibid., p. 122.

588 Reimerson, E. "Discourses of Decentralization: Local Participation and Sami Space for Agency in Norwegian Protected Area Management", in R.-H. Andersson, B. Cothran, & S. Kekki (eds). *Bridging Cultural Concepts of Nature: Indigenous People and Protected Spaces of Nature*, Helsinki University Press, 2021, pp. 61–93, 71-73.

589 Reimerson and Flodén (2024), p. 122, see footnote 583.

590 Ibid.

591 Reimerson and Flodén (2024), p. 122, see footnote 583; Overvåg, K., Skjeggedal, T., and Sandström, C. "Management of Mountain Areas in Norway and the Persistence of Local–National Conflicts." (2016) 59 *Journal of Environmental Planning and Management* 1186; Skjeggedal, T., Overvåg, K., and Riseth, J. Å. "Land-Use Planning in Norwegian Mountain Areas: Local Development or Nature Protection?" (2016) 24 *European Planning Studies* 344; Hovik, S. and Hongslo, E. "Balancing Local Interests and National Conservation Obligations in Nature Protection: The Case of Local Management Boards in Norway." (2017) 60 *Journal of Environmental Planning and Management* 708.

592 Reimerson and Flodén (2024), p. 122, see footnote 583; Hausner, V. H. et al. "Assessing a Nationwide Policy Reform toward Community-Based Conservation of Biological Diversity and Ecosystem Services in the Alpine North." (2021) 49 *Ecosystem Services* 101289.

593 Nature Conservation Act (9/2023). Section 1.

As stated in the government proposal concerning the new NCA, Sámi culture is directly linked to the preservation of biodiversity. For example, in addition to the Constitution, the NCA's provisions consider the CBD, recognising the close and traditional dependence of Indigenous peoples on biological resources and the importance of Indigenous peoples' traditional knowledge for the protection of biodiversity.⁵⁹⁴

The NCA includes a provision on Sámi culture which provides for a prohibition of weakening Sámi culture. The previous NCA stipulated that the prerequisites for maintaining and developing Sámi culture must be ensured in national parks and nature reserves located in the Sámi Homeland (section 16). The government proposal of the current NCA states that the rights of the Sámi should be regulated more thoroughly than before, as the implementation of the NCA in the Sámi Homeland may have implications for the rights of the Sámi as an Indigenous people.

According to the proposal, the fundamental environmental right in section 20 of the Constitution has been considered to be so strongly linked to the fundamental cultural right of the Sámi that it is justified to take the prohibition of weakening Sámi culture comprehensively into account in environmental legislation.⁵⁹⁵ The provision of section 20 of the Constitution forms the basis for the protection of cultural heritage in the Finnish legal system. For example, Hollo considers that the concept of the environment in section 20 of the Constitution also covers the cultural environment and cultural heritage in addition to the natural environment.⁵⁹⁶ The Sámi's cultural environment and the cultural landscape it contains are part of the cultural environment referred to in section 20 of the Constitution Act, to which the Sámi, according to international law, have the right to self-determination. Central to the whole concept of cultural heritage is precisely the idea of preserving and caring for something inherited.⁵⁹⁷

According to section 6 of the NCA, the authorities responsible for the implementation of the Act must ensure that its implementation does not alone or with other activities result in any deterioration that is greater than minor in the conditions for practising the Sámi culture, that the conditions for practising the Sámi culture can be safeguarded, and that their development can be promoted as far as possible. Decisions issued under this Act must not alone or with other activities result in any deterioration that is greater than minor in the conditions for practising traditional Sámi livelihoods or other maintenance and development of the Sámi culture in the Sámi Homeland referred to in section 4 of the Act on the Sámi

594 HE 76/2022 vp., Government proposal to Parliament for the Nature Conservation Act and amending certain related acts, pp. 101–102.

595 He 76/2022 vp., pp. 136–137.

596 Hollo, E. J. *Introduction to Environmental Law*. Talentum, Helsinki, 2009, pp. 28–29.

597 Knuuttila, S. "Cultural heritage, values and identity", in P. Venäläinen (ed). *Cultural Heritage and Learning*. Publications of the Finnish Museums Association 58, Gummerus Kirjapaino Oy, Jyväskylä, 2008, pp. 12–19, 13.

Parliament or any deterioration that is greater than minor in the living conditions and opportunities to practise the nature-based livelihoods of the Skolt Sámi referred to in the Skolt Act⁵⁹⁸ in the Skolt Sámi Area.⁵⁹⁹

The provision's scope of application is not limited to the Sámi Homeland but also focuses more broadly on safeguarding Sámi culture. In this case, account must also be taken of measures related to the implementation of the NCA outside the Sámi Homeland if it can have a more than minor impact on the conditions for practising Sámi culture.⁶⁰⁰ The provision also includes the right of appeal of the Sámi Parliament against the prohibition of impairment.⁶⁰¹

According to the government proposal, a deterioration that is more than minor referred to in subsections 1 and 2 must be assessed on a case-by-case basis, in which factors such as the nature, location, conditions, and duration of the activity are relevant. For example, according to the proposal, a minor impairment that has no significance for the collective rights of the Sámi can in principle be considered to be harmful to an individual Sámi. Even a geographically or temporally very limited disadvantage that is not relevant to the realisation of the rights of the Sámi can usually be considered minor.⁶⁰² In the government proposal, the threshold for harm greater than minor seems very low. In determining the threshold for more than minor harm, the justified views of the Sámi Parliament and local Sámi communities should have appropriate and sufficiently weighty significance in the authorities' decision-making and activities. The FPIC process discussed earlier in this report can be considered an important tool for clarifying and agreeing precisely on such issues.

According to the government proposal, the proposed provision would contribute to safeguarding the fulfilment of the obligations arising from the Constitution and the ICCPR. According to the proposal, the provision must be interpreted and applied in a manner that is favourable to fundamental rights and considers the practice of the UN Human Rights Committee (HRC) concerning Article 27 of the ICCPR. The proposal states that, according to the practice of the HRC, Article 27 implies, among other things, an obligation to plan and implement economic measures so that the economic viability of Sámi livelihoods such as reindeer husbandry is maintained.⁶⁰³ In this case, the conditions in the area and other projects carried out in the area should be taken into account. For example, this would have

598 Skolt Act (253/1995).

599 Section 6.

600 HE 76/2022 vp., p. 137.

601 § 134.

602 HE 76/2022 vp., p. 137.

603 Ibid.

an impact on the knowledge base and the scope of impact assessments. The authority should try to consider the current situation from the perspective of the realisation of the rights of the Sámi. To see the big picture, measures taken and planned by other authorities, may be relevant, for example.⁶⁰⁴

In addition to the provisions of section 6 of the NCA, section 55 requires that the conditions for maintaining and developing Sámi culture must be secured in state nature reserves located in the Sámi Homeland.⁶⁰⁵ The provision was also included in the previous NCA, and according to the preparatory work for the new Act, it emphasises the special status of Sámi culture in nature conservation areas, especially in the Sámi Homeland.⁶⁰⁶

In connection with this, section 57 stipulates that the Management Plan for a national park, nature reserve, and other state nature reserve prepared and approved by Metsähallitus must be drawn up in the Sámi Homeland in interaction with the relevant Sámi communities and in cooperation with the Sámi Parliament so that the traditional knowledge of the Sámi people is part of the planning data.⁶⁰⁷ Regarding traditional knowledge, the government proposal refers to Articles 8(j) and 10(c) of the CBD.

The government proposal states that traditional knowledge may include matters and values that are private in nature, and that people do not want to give to outsiders. For example, they can be related to places that are important for spiritual culture, and that are important because of memories passed down through generations. The acquisition and use of traditional knowledge therefore follows the principle of FPIC, according to which the Sámi local community would have the right to consider freely, without obligation, whether to make traditional knowledge available for use as part of the management plan dataset. Participation and consultation should take place well in advance of decision-making, and the local community should be carefully informed of what the information it provides will be used for and how public it will be. The local community may decide not to provide information.⁶⁰⁸ The government proposal refers to the voluntary Akwé:Kon Guidelines of the CBD, which Metsähallitus applies to the preparation of management plans and natural resource planning based on a model agreed in cooperation with the Sámi Parliament.⁶⁰⁹ These guidelines and their application in Finland are discussed in more detail in this section's later subsection.

604 Ibid., pp. 137–138.

605 Section 55.

606 HE 76/2022 vp, p. 138. [Government Bill].

607 Section 57.

608 HE 76/2022 vp., p. 192.

609 Ibid.

The traditional knowledge of the Sámi must also be used as data material in the management plans for the landscape management area of the Sámi Homeland, which the Centre for Economic Development, Transport and the Environment must draw up in interaction with the relevant Sámi communities and in cooperation with the Sámi Parliament (section 92 of the NCA). The Centre also decides on the establishment and purpose of a regional landscape management area.⁶¹⁰ The Act is important for the protection of the Sámi cultural landscape and requires the initiation of a cooperation procedure with the Centre, the Sámi Parliament, and local Sámi communities.

Under section 51(2) of the NCA, Metsähallitus may grant a permit for geological research in national parks and nature reserves, provided that the activities do not jeopardise the purpose of establishing the area. In such cases, geological surveys must be organised so that they do not cause more than minor harm to the species, habitats, water management, or landscape of the area.⁶¹¹ The organisation of geological survey activities must also take the prohibition laid down in section 6(2) of the NCA into account, according to which the decision may not cause more than a minor deterioration in the prerequisites for practising traditional Sámi livelihoods in the Sámi Homeland or otherwise maintaining and developing Sámi culture, or a corresponding deterioration in the living conditions of the Skolt Sámi people or their opportunities to engage in natural livelihoods referred to in the Skolt Act in the Skolt area.⁶¹² Under section 52(5), Metsähallitus may grant permission to search for ores in another state nature reserve. A prerequisite for granting a permit is that the activities do not jeopardise the purpose of establishing the area and do not cause more than minor harm to the species or habitat types on which the protection is based, water management, the landscape, or the rights of the Sámi people as an Indigenous people unless the harm can be eliminated under the permit conditions.⁶¹³

The NCA also contains a provision on the rights of the Sámi people in relation to voluntary ecological compensation and related compensatory measures (section 101(1)(2)). The rights of the Sámi people must also be included in the national biodiversity strategy referred to in Section 13 of the Act. Nature conservation legislation includes several other provisions on the protection of national parks and nature reserves and related exemption rules that affect the Sámi through traditional livelihoods.⁶¹⁴

The reformed NCA has substantially strengthened Sámi rights compared with the previous Act. Sections 6 and 92 of the NCA require an assessment of the effects on Sámi culture,

610 Section 92.

611 Section 51(2).

612 HE 76/2022 vp., p. 182.

613 Article 52(5).

614 See e.g. sections 49–52.

and the fundamental and human rights approach to these provisions, and especially the interpretation practice concerning Article 27 of the ICCPR, require an investigation of the combined effects of the various cumulative measures during different periods. As the traditional knowledge of the Sámi must be part of the dataset of these procedures, practitioners of traditional Sámi livelihoods must naturally participate in the procedure. The Akwé:Kon Guidelines procedure already in use by Metsähallitus can also be used as at least one basis for developing and carrying out cumulative impact assessments in measures under the NCA.

4.6.3. Nagoya Protocol and Finland's Implementation of Sámi Rights and Traditional Knowledge

The protection of the cultural heritage of the Sámi people is also linked to the Nagoya Protocol on Genetic Resources,⁶¹⁵ which was signed in 2010. The Protocol is the first general and legally binding international agreement on access to genetic resources and benefit-sharing. The Protocol aims to promote cooperation between different actors by creating a single international regulatory basis for access to genetic resources and the related traditional knowledge of Indigenous peoples and local communities, as well as for sharing the benefits arising from their utilisation.⁶¹⁶ According to the Protocol, each party to the Protocol must, in accordance with its national law, ensure that traditional knowledge related to genetic resources held by Indigenous peoples and local communities is used with their prior consent, that these communities participate in the process, and that mutually agreed conditions are established.⁶¹⁷

According to section 6 of Finland's Implementing Act on the Nagoya Protocol,⁶¹⁸ the Sámi Parliament administers a database in which traditional Sámi knowledge related to genetic resources intended for research and development purposes can be stored. The Sámi Parliament must notify the competent authority of the genetic resources which the knowledge in the database concerns. According to section 11 of the Act, the competent authorities are the Finnish Environment Institute and Natural Resources Institute Finland.

Under Article 7 of the Act, access to the database referred to in Article 6 is to be applied for to the competent authority. The application must specify the genetic resource in question, the purpose of the related information, and who the user is. The competent authority notifies the Sámi Parliament of the application. The disclosure of information from the database to

⁶¹⁵ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity was adopted at the tenth meeting of the Conference of the Parties on 29 October 2010 in Nagoya, Japan. See, www.cbd.int/abs/text (checked 20.5.2025).

⁶¹⁶ See HE 126/2015. [Government Bill].

⁶¹⁷ Finnish Act on Genetic Resources, 20.5.2016/394, sections 6 and 7.

⁶¹⁸ Ibid.

the user requires that the competent authority approves the mutually agreed terms and conditions between the Sámi Parliament and the user. The Sámi Parliament may require the fair and equitable sharing of the benefits arising from the use of the disclosed knowledge with the Sámi so that it promotes the Sámi's language, culture, and status as an Indigenous people. If necessary, the competent authority must negotiate mutually agreed terms with the Sámi Parliament. The provisions on the obligation to negotiate laid down in section 9 of the Act on the Sámi Parliament apply to negotiations.

The Implementation Act also includes the prohibition on weakening Sámi culture. According to section 8, the use of traditional knowledge contained in the database referred to in section 6 may not impair the possibilities of the Sámi to exercise their rights as an Indigenous people to maintain and develop their culture and to engage in their traditional livelihoods.

The scope of application of the Nagoya Protocol related to genetic resources has yet to be defined in Finland. The memorandum of the Sámi Parliament mentions as possible examples the plants used by the Sámi that involve special traditional knowledge.⁶¹⁹ The Protocol requires mutual terms to be agreed before sharing the details of traditional knowledge. The Sámi Parliament has initiated the development of procedures related to the management of traditional information related to genetic resources with the Ministry of the Environment, which is responsible for general steering and supervising the implementation of the Act on the Nagoya Protocol (section 9). The related document prepared by the Ministry has not yet been published at the time of writing this report.

Perhaps the most essential aspect of the adoption of the Nagoya Protocol for the Sámi is the recognition of traditional knowledge and customary rights as an integral part of Sámi culture and their existence as an Indigenous people. The role of the Sámi Parliament as the holder of the cultural heritage of the Sámi strengthens the Sámi people's right to self-determination regarding their own genetic resources. Although the Sámi Parliament does not play an authority role in the Implementation Act of the Nagoya Protocol, the competent authority must nevertheless approve the mutually agreed terms between the Sámi Parliament and the users before it can disclose knowledge about the database to the user.

The CBD and the Nagoya Protocol are intended to be read in conjunction with other legal instruments, including general human rights treaties and instruments concerning Indigenous peoples, as well as cultural heritage conventions created by UNESCO, for example.

⁶¹⁹ Dnro 686/D.a.2/2013 Saamelaiskäräjien muistio Nagoyan pöytäkirjan alkuperäiskansoja koskevasta velvoitteista.

4.6.4. CBD Akwé:Kon Voluntary Guidelines for the Cultural, Environmental and Social Impact Assessment vis-à-vis Sámi Cultural Heritage

To promote the position of Indigenous peoples and local communities and the implementation of the provisions of the CBD concerning them, a Working Group on Article 8(j) and related provisions was established in 1998 at the fourth Conference of the Parties to the Convention. In 2000, the Conference of the Parties adopted a work programme to implement the commitments contained in Article 8(j) and to strengthen the role of Indigenous peoples and local communities in achieving the goals of the Convention. During the last couple of decades, the Working Group has prepared four different yet interrelated voluntary guidelines and a Glossary of terms and concepts relevant to Article 8(j).

“Akwé:Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities”, adopted by the 7th Conference of the Parties to the Convention on Biological Diversity⁶²⁰ and published in 2004, concern, as the name indicates, the cultural, environmental, and social impact assessment of projects intended or likely to affect sacred sites and land and water traditionally inhabited or used by Indigenous peoples and local communities. The voluntary instructions were named with a Mohawk expression meaning “everything in creation” to emphasise their holistic nature.⁶²¹

The aim of the Akwé:Kon Guidelines is to provide general advice on how to integrate cultural and environmental, including biodiversity and social aspects of Indigenous peoples and local communities, into new or existing impact assessment procedures, given that some existing procedures may address these aspects differently.⁶²²

The purpose of the Guidelines is to provide a framework for cooperation between governments, Indigenous and local communities, decision-makers, and project promoters to: (a) support the full and effective participation of Indigenous peoples and local communities in defining the impacts to be studied, clarifying the scope of the assessment and designing projects; (b) take due account of the cultural, environmental and social concerns, and interests of Indigenous peoples and local communities; (c) take traditional knowledge, innovations, and practices of Indigenous peoples and local communities as part

620 Osapuolikokouksen päätös VI/7 A liitteineen.

621 Ympäristöhallinnon ohjeita 1/2011, Akwé:Kon-ohjeet, p. 7. For a general view, see Heinämäki, L., Herrmann, T., and Neumann, A. “The Protection of Culturally and Spiritually Important Landscapes of Arctic Indigenous Peoples under the Convention on Biological Diversity and First Experiences from the Application of the Akwé:Kon Guidelines in Finland.” *The Yearbook of Polar Law* VI, 2015, Brill, pp. 189–225.

622 Akwé:Kon Guidelines, 1. Purpose and Approach, pt. 2. p. Environmental administration guidelines 1 | 2011, p. 12.

of the environmental, social, and cultural impact assessment into account, with due regard to ownership of traditional knowledge, innovations, and practices, and the need to protect and preserve traditional knowledge, innovations, and practices; (d) promote the use of appropriate techniques; (e) identify and implement appropriate measures to prevent or mitigate potential adverse effects of proposed projects; (f) take interactions between cultural, environmental, and social components into account.⁶²³

The Guidelines provide more detailed methodological support for the different stages of impact assessment, consisting of preparation, actual assessment including review, reporting and decision-making of mitigation measures, monitoring, and auditing.⁶²⁴ The Guidelines advise on the establishment of mechanisms for the participation of representatives of Indigenous peoples and local communities, and for recording the views and concerns they raise.⁶²⁵ To protect the interests of Indigenous peoples and local communities, the community and project representatives may negotiate a contract for the project.⁶²⁶ The parties should endeavour to ensure the participation within the framework of national law of Indigenous peoples and local communities in the decision-making process, including review and appeal procedures, on proposed projects, taking the various mediation and dispute resolution procedures into account, which may include standard procedures.⁶²⁷ The Guidelines call for adequate human, financial, technical, and legislative resources to be allocated to enable Indigenous peoples and local communities to participate effectively.⁶²⁸ The parties should also agree on liability and compensation for damages.⁶²⁹

For the purposes of the Guidelines, “cultural impact assessment” means an assessment that examines a project’s likely impact on the lifestyle of a particular group or community, with the full participation of that group or community, and which may be carried out by that group or community. A cultural impact assessment usually examines the impacts, both beneficial and harmful, of a proposed project, such as on the values, belief systems, customary law, language or languages, customs, economy, and the community’s relationship with the local environment and certain species, as well as with the community’s social organisation and traditions.⁶³⁰

For the purposes of the Guidelines, “cultural heritage impact assessment” means an assessment that examines the likely effects of a project, both beneficial and harmful,

623 Ibid., para. 3, p. 12.

624 Ibid., para. 7, p. 20.

625 Ibid., paras 13, 14, and 17, pp. 23–24.

626 Ibid., para. 21, p. 25.

627 Ibid., para. 22, p. 25.

628 Ibid., para. 18, p. 24.

629 Ibid., para. 20, p. 25.

630 Ibid., II Definition, para. 6a, p. 16.

on physical manifestations of the community's cultural heritage, such as sites, structures and remains of archaeological, architectural, historical, religious, spiritual, cultural, ecological, or aesthetic value or significance.⁶³¹

As part of cultural heritage, a “sacred site” may mean a place, site, structure, area, or natural feature of an area which is considered to be of particular importance by national governments or Indigenous peoples in accordance with the customs of the Indigenous peoples or local community because of its religious and/or spiritual significance.⁶³²

As discussed earlier in this report, the concepts of culture and cultural heritage are parallel and overlapping. The Akwé:Kon Guidelines also distinguish between cultural and cultural heritage assessments in the chapters on definitions, yet in a later paragraph, the assessment of cultural heritage is linked to the assessment of cultural impacts. According to the Guidelines, the cultural impact assessment procedure and, in particular, the definition of the scope of the assessment and the delimitation of the impacts, must aim to identify issues that are particularly relevant to culture. These may include cultural heritage, religions, beliefs and sacred teachings, traditional practices, forms of social order, systems related to the use of natural resources such as land-use patterns, places of cultural importance, economic valuation of cultural resources, sacred places, ceremonies, languages, customary law systems, and political structures, roles, and customs. The development of cultural impact assessments must therefore take the potential impacts on all cultural manifestations into account, including sacred sites.⁶³³ Regarding traditional knowledge, the potential impact on respecting, preserving, protecting, and maintaining traditional knowledge, innovations, and practices should be assessed.⁶³⁴

For the purposes of the Guidelines, “environmental impact assessment” means an assessment procedure which examines the likely effects of a proposed project on the environment and proposes mitigation measures. The assessment must consider the link between socioeconomic, cultural, and human health impacts, both beneficial and harmful.⁶³⁵

For the purposes of the Guidelines, “social impact assessment” means an assessment that examines the likely effects of a project, both beneficial and harmful, on the economic, social, cultural, civil, and political rights, wellbeing, vitality, and viability of a given community. In other words, the evaluation examines the impact on the quality of life of

631 Ibid., para. 6b.

632 Ibid., para. 6e.

633 Ibid., A.24, p. 28.

634 Ibid., A.27b, p. 29.

635 Ibid., para. 6d, p. 16.

a community as measured by a range of socioeconomic indicators, including income distribution, physical, and social cohesion, the protection of individuals and communities, and access to and quality levels of employment, employment opportunities, health, welfare, education, housing, infrastructure, and services.⁶³⁶

For the purposes of the Guidelines, “strategic environmental assessment” means an assessment procedure that examines the likely environmental impacts of proposed policies, plans, or programmes to ensure that they are fully taken into account and addressed at an early stage of decision-making in conjunction with economic, social, and cultural considerations.⁶³⁷

The Guidelines emphasise a “holistic impact assessment”, in which cultural, environmental, and social impacts should preferably be included in the same assessment process⁶³⁸ due to the specific relationship between Indigenous peoples and local communities and nature.⁶³⁹ According to the Guidelines, the interaction between cultural, environmental, and social components should be considered in the impact assessment.⁶⁴⁰

Cultural, environmental, and social impacts are inextricably linked in their impacts on Indigenous peoples. Nature and culture cannot be seen as two separate issues. Elina Helander-Renvall maintains that the cultural, environmental, and social impact assessment referred to in the Akwé:Kon Guidelines should include the invention of the following areas: species, especially those that are important to local communities, as well as endangered species; habitats of high nature value; areas and habitats of economic importance for local people; habitats that support the local economy; and sacred sites. The areas of human impact assessment include local values, beliefs, customary law, languages, customs, economy, and the relationship of local people with the environment and other species.⁶⁴¹

In relation to the Environmental Impact Assessment Act,⁶⁴² the Sámi Parliament of Finland has proposed an assessment of the impacts on Sámi culture, traditional knowledge, innovations and practices, traditional uses of nature, sacred places, and general conditions for the exercise of culture. The Sustainable Development Programme of the Sámi Parliament of Finland (2006) states that the natural, cultural, social, and linguistic environment form a whole, an environmental concept, which is considered as a single whole because they are interdependent.⁶⁴³

636 Ibid., para. 6f, p. 16.

637 Ibid., para. 6g, p. 17.

638 Ibid., III Procedural remarks, para. 7, p. 20.

639 Para. 23, p. 28.

640 Ibid., para. 3f, p. 12.

641 Helander-Renvall, E and Markkula, I. "Luonnon monimuotoisuus ja saamelaiset. Biologista monimuotoisuutta koskevan artikla 8(j):n toimeenpanoa tukeva selvitys Suomen saamelaisalueella." Suomen ympäristö 12/2011. Helsinki: Ympäristöministeriö, p. 55.

642 Environmental Impact Assessment Act (252/2017).

643 Saamelaiskäräjien kestävän kehityksen ohjelma, 2006, pp. 4–5.

Explaining traditional knowledge and customary law concepts and applying them to the impact assessment process can be considered a key principle of the Akwé:Kon Guidelines. For the purposes of the Akwé:Kon Guidelines, “traditional knowledge” refers to the traditional knowledge, innovations, and practices of Indigenous peoples and traditional local communities that are relevant for the conservation and sustainable use of biodiversity.⁶⁴⁴

The traditional knowledge of the Sámi is also closely linked to the customary laws of the Sámi, which also form an integral part of their intangible cultural heritage. In the Akwé:Kon Guidelines, “customary law” means a right consisting of customs deemed to be legal claims or mandatory rules of conduct: practices and perceptions that are so central and integral to the social and economic system that they are treated as if they were laws.⁶⁴⁵

Traditional knowledge often includes very precise information about the use of areas. It provides information about what is happening in that particular area and when, and what effects each activity may have or have had in the past. Holders of traditional knowledge can describe in a location-specific manner what kinds of activities hinder and safeguard their culture. Sámi traditional knowledge is therefore essential to determining where the boundary between minor and significant/substantial adverse effects caused by measures lies. For example, a seemingly small activity in terms of land use may have a serious impact on the livelihoods and culture of the Sámi if the area is a central grazing or fishing area, or is sacred in nature.⁶⁴⁶

Cultural, environmental, and social impact assessment procedures under the Akwé:Kon Guidelines should refer to other relevant national legislation, regulations, and guidelines, as well as to international and multilateral environmental agreements and protocols ratified by the country concerned, and that have entered into force. In this context, states should take into account that none of these guidelines should adversely affect biodiversity, and that they should be implemented in a manner consistent with international law and other international obligations.⁶⁴⁷ The Guidelines also call on governments, state authorities, and project managers, in accordance with national legislation and international obligations, to take the rights of Indigenous peoples and local communities to land and water traditionally inhabited or used by them and to the associated biodiversity into account.⁶⁴⁸ The national application of the Guidelines must consider the legal status of the Sámi as an Indigenous

644 Akwé:Kon Guidelines, 6h, p. 17.

645 Akwé:Kon Guidelines, 6c, p. 16.

646 Heinämäki, L., Markkula, I., Saijets, J. ”Saamelaiden alkuperäiskansaoikeudet ja saamelaiskultuuria koskevien vaikutusten arviointi YVA-lain mukaisessa menettelyssä”. Ympäristöministeriön julkaisuja 2023:2, p. 336.

647 Akwé:Kon Guidelines, 5, p. 13.

648 Ibid., 57, p. 39.

people. The Guidelines must be applied in conjunction with the fundamental and human rights of the Sámi people and national legislation. The traditional knowledge of Indigenous peoples is also protected by cultural heritage agreements, which must also be considered when applying the Akwé:Kon Guidelines. Indigenous peoples' traditional knowledge is seen as one of the key aspects of intangible cultural heritage.⁶⁴⁹ As mentioned earlier in this report, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions recognises the importance and positive contribution of Indigenous peoples' traditional knowledge to sustainable development and the need to protect traditional knowledge.⁶⁵⁰

When applying the Akwé:Kon Guidelines, other cultural heritage agreements that protect the Sámi cultural environment and the related tangible and intangible cultural heritage should also be taken into account. In addition to the UNESCO Convention mentioned above, the UNESCO World Heritage Convention and the Convention on the Intangible Cultural Heritage, as well as several Council of Europe cultural heritage conventions, protect the Sámi cultural heritage.⁶⁵¹ The application of the Akwé:Kon Guidelines can also contribute to the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Nordic Sámi Convention, both of which recognise Sámi cultural heritage in multiple ways, as previously discussed in this report.

4.6.4.1. Example of Finland's Implementation of Akwé:Kon Guidelines

In 2009, the Ministry of the Environment of Finland appointed a working group on Article 8(j) of the CBD on the traditional knowledge of Indigenous peoples, whose task was to coordinate the measures concerning the traditional knowledge of Indigenous peoples referred to in Finland's Strategy and Action Plan for the Conservation and Sustainable Use of Biodiversity 2006–2016 and to increase public knowledge of the Article 8(j) on the content and objectives of the work programme, especially for the Sámi in Finland.⁶⁵² In its final report, the working group presented a proposal for measures according to which the Akwé:Kon Guidelines will be applied in the planning and steering of land use in the Sámi Homeland within the framework of national legislation. The goal was set that all new and revised management plans and natural resource plans for the Sámi Homeland comply with the Akwé:Kon Guidelines.⁶⁵³

649 See e.g. Johnsson, D. Z., and Tualima, H.-Y. "Cultural heritage, traditional knowledge and intellectual property", in A. Xanthaki, et al. (eds), 2017, pp. 218–228.

650 Preamble.

651 For more information, see Heinämäki, L. "Rights of the Sámi in the Protection of Antiquities". Ministry of Education and Culture, Publications of the Ministry of Education and Culture, 2021:38.

652 The chair of the working group was Klemetti Näkkäläjärvi, the president of the Sámi Parliament. The working group had representatives from the Ministry of the Environment, the Foreign Ministry, the Ministry of Education and Culture, the Ministry of Agriculture and Forestry, Metsähalitus, Lapland's Centre for Economic Development, Transport and the Environment, the University of Lapland's Arctic Centre, Finland's nature conservation union, the Sámi Parliament, Sámi Museum Siida, and Finland's environmental centre.

653 Final report of Article 8j of the Convention on Biological Diversity on Indigenous Peoples' Traditional Knowledge, June 2011, Ministry of the Environment.

In Finland, the application of the Akwé:Kon Guidelines began as a pilot experiment in the preparation of a management and land-use plan for the Hammastunturi wilderness area.⁶⁵⁴ The Akwé:Kon Guidelines have since been applied for years to Metsähallitus's management and land-use plans for wilderness and nature reserve areas.⁶⁵⁵ Metsätalous Oy (Metsähallitus Forestry Ltd) has used the Akwé:Kon procedure in the planning of the Juutua-Tuulispää special area.⁶⁵⁶ According to the operating model agreed between Metsähallitus and the Sámi Parliament in 2019, the impact assessment process in accordance with the Akwé:Kon Guidelines was expanded to be applied as part of the preparation of natural resource plans for the Sámi Homeland.⁶⁵⁷ The application of the Guidelines has also been prepared in the operations of the Lapland unit of the Centre for Economic Development, Transport and Environment.⁶⁵⁸

One of the strengths of the Akwé:Kon Guidelines is that they provide that representatives of Indigenous peoples should have the opportunity to participate in all phases of land-use measures, from planning to implementation and monitoring.⁶⁵⁹ This also corresponds to the Indigenous peoples' right to FPIC in international law, where participation must be secured at all stages of the measures, from the initial planning until the final decisions.

The involvement of Indigenous peoples' representatives at all stages of land-use measures can be considered the most significant improvement brought about by the Guidelines' application. Previously, the Sámi Parliament has mainly assessed the impacts of management and land-use plans only after the plans have been completed.⁶⁶⁰ When applying the Akwé:Kon Guidelines, Sámi representatives participate in the land-use planning process from the outset, and impact assessment is continuous.⁶⁶¹

Another advantage of the Akwé:Kon Guidelines is that the Akwé:Kon group, consisting of local Sámi traditional knowledge holders in the area in question and appointed by the Sámi Parliament, participates in the plan and assesses the impact on Sámi culture. In addition to the Sámi Parliament, the Sámi are represented in the Skolt region by the Skolt Village Assembly. According to the guidelines, the persons appointed to the group should represent

654 Stolt, E. and Juntunen, S. "Akwé:Kon: Application of Guidelines in the Management Plan for the Hammastunturi Wilderness Area". Final Report, Metsähallitus, 2013.

655 See operating model for the application of the Akwé:Kon Guidelines in cooperation between Metsähallitus and the Sámi Parliament: Approved at the meeting of the Sámi Parliament 4/2019, 30.10.2019, section 6, section 1, p. 2.

656 Operating model for the application of the Akwé:Kon Guidelines in cooperation between Metsähallitus and the Sámi Parliament: Approved at the meeting of the Sámi Parliament 4/2019, 30.10.2019, section 6, section 1, p. 2. <https://www.samediggi.fi/2019/11/05/saamelaiskarajat-hyvaksyi-toimintamallin-akwe-kon-ohjeiden-soveltamisesta-metsahallituksen-ja-saamelaiskarajien-valisessa-yhteistyossa/> (checked 7.4.2020).

657 Ibid., pp. 2–3.

658 See <https://www.luonnontila.fi/toimintaohjelma/toimenpiteet/poikkileikkaavat/kaavoitus-maankaytto/akwe-kon-ohjeet> (checked 12.4.2023).

659 See Akwé:Kon instructions; Stolt, E. and Juntunen, S. "Akwé:Kon: Application of Guidelines in the Management Plan for the Hammastunturi Wilderness Area." Final Report, Metsähallitus 2013; see Metsähallitus, Management Plan for the Hammastunturi Wilderness Area, Metsähallitus Nature Conservation Publications C 124, 2016, Vantaa.

See <https://julkaisut.metsa.fi/assets/pdf/lp/Csarja/c142.pdf> (checked 4.12.2023).

660 See e.g. Stolt and Juntunen (2013), *ibid*.

661 Markkula, I., Turunen, M., Tuulentie, S., and Nikula, A. "Traditional and local knowledge in land use planning – an example of Enontekiö." *Area and Environment*, 49 (2020): 45–161, 147.

Sámi people of different ages, language groups, and genders. The working group makes proposals for safeguarding biodiversity and the traditional knowledge and use of nature by the Sámi people, and presents its own view on how the management and use of areas should be developed.⁶⁶²

Regarding Sámi culture, traditional knowledge and traditional natural use, the working group prepares a description of the current state of the area and, in this regard, assesses the impacts of the plan. The working group participates interactively in the evaluation of the plan's effects on the prerequisites for practising Sámi culture throughout the process.⁶⁶³ The state has funded the working groups' work through resources granted to the Sámi Parliament and Metsähallitus. The Akwé:Kon working groups have provided the management and land-use plans of Metsähallitus with information about matters such as the current state of the area, Sámi culture, traditional livelihoods and cultural heritage, and threats to them, the effects of the measures planned for the area on the culture, traditional livelihoods, and cultural heritage of the Sámi people, and mitigating and preventing adverse effects and monitoring their implementation.⁶⁶⁴

The assessment process according to the Akwé:Kon Guidelines is an example of an assessment based on Indigenous peoples' traditional knowledge that aims to improve both the participation of Indigenous peoples and the consideration and inclusion of traditional knowledge in evaluation processes.⁶⁶⁵ To strengthen the protection of Indigenous cultures, the Akwé:Kon Guidelines emphasise the consideration of traditional knowledge and customary laws of Indigenous peoples. Their application can therefore be seen as a new tool that, being more subtle than traditional human rights treaties, takes the cultural specificities of Indigenous peoples into account.⁶⁶⁶

In Finland, as proposed, the Akwé:Kon Guidelines could be further applied in procedures for assessing the cultural, environmental, and social impacts of various activities in the Sámi Homeland. For example, they could be applied in the EIA procedure and in the implementation of the Land Use and Building Act. The Sámi Parliament has proposed that the Akwé:Kon Guidelines be extended to include the abovementioned procedures, among others. Norway and Sweden should also feel encouraged to review their possibilities

662 Heinämäki, L., Markkula, I., Saijets, J. "Saamelaisten alkuperäiskansaoikeudet ja saamelaiskulttuuria koskevien vaikutusten arviointi YVA-lain mukaisessa menettelyssä". Ympäristöministeriön julkaisuja, 2023:2, p. 320.

663 Metsähallitus. *Operating Model for the Application of the Akwé:Kon Guidelines in Cooperation between Metsähallitus and the Sámi Parliament*. Metsähallitus, 2020, pp. 9–12.

664 Olsén, L., Harkoma, A., Heinämäki, L., and Heiskanen, H. *Saamelaisten perinnetiedon huomioiminen ympäristöpäätöksenteossa*. Juridica Lapponica 41, Lapin yliopisto, Rovaniemi, 2017, pp. 87–97; Markkula, I., Turunen, M., and Kantola, S. "Traditional and local knowledge in land use planning: Insights into the use of the Akwé:Kon Guidelines in Eanodat, Finnish Sápmi." *Ecology and Society* 24 (1) (2029):20. See Heinämäki, Markkula, and Saijets (2023), pp. 318–321, see footnote 662.

665 See Heinämäki, Markkula, and Saijets (2023), p. 319, see footnote 662; Ympäristöministeriö. (2011). *Akwé: Kon -ohjeet: Biologista monimuotoisuutta koskevan yleissopimuksen alkuperäiskansojen perinnetietoa käsittelevän artikla 8(j):n kansallisen asiantuntijatyöryhmän loppuraportti*. Ympäristöhallinnon ohjeita 1/2011. Helsinki: Ympäristöministeriö.

666 Heinämäki, L., Allard, C., Kirchner et al. *Realisation of the Rights of the Sámi: A Comparative Study of International Law*, Publication series of the Government's analysis, assessment, and research activities, Prime Minister's Office, 4/2017, p. 56.

to implement Akwé:Kon Guidelines, in conjunction with the Sámi Parliaments and Sámi livelihoods practitioners and holders of Sámi traditional knowledge.

4.6.5. Other Voluntary CBD Guidelines

4.6.5.1. The Tkarihwaié:ri Code of Ethical Conduct

“The Tkarihwaié:ri Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity”, adopted by the 10th Conference of the Parties to the CBD in October 2010,⁶⁶⁷ is named after a Mohawk term meaning “the right way”. This name is intended to highlight the nature of the Code of Conduct: the right way to act. It is a code of ethics designed to provide a framework for cooperation to ensure the “effective participation and prior informed consent or participation and acceptance” of Indigenous peoples and local communities in activities targeting their knowledge, territories, and related resources, including research projects.⁶⁶⁸

Although intangible cultural heritage can be considered part of cultural heritage, including traditional knowledge, the terminology in the title of the Code of Conduct has been chosen to distinguish between cultural and intellectual heritage because in previous years, the word “cultural heritage” has been more associated with tangible cultural heritage, including in the context of Akwé:Kon Guidelines, as previously discussed.⁶⁶⁹ However, the previously mentioned dictionary adopted by the 14th Conference of the Parties to the CBD in 2018 regarding terms and concepts relevant to Article 8(j)⁶⁷⁰ does not specifically define intellectual heritage. Instead, it defines cultural heritage so that it also includes intellectual, or intangible, heritage, of which traditional knowledge is a key part.⁶⁷¹ In addition to traditional knowledge, intangible cultural heritage includes cultural expressions such as art forms, stories, values, beliefs, and worldviews.⁶⁷²

The Tkarihwaié:ri Code of Conduct states that many widely used products such as herbal medicines, health products, and cosmetics originate from the traditional knowledge of Indigenous peoples and local communities. Other valuable products based on traditional knowledge include agricultural and non-wood-based forest industry products, as well as

667 UNEP/CBD/COP/DEC/X/42 29 October 2010. Tenth meeting, Nagoya, Japan, 18–29 October 2010;

The Tkarihwaié:ri Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity. Published by the Secretariat of the Convention on Biological Diversity, 2011, Secretariat of the Convention on Biological Diversity, <https://www.cbd.int/traditional/code/ethicalconduct-brochure-en.pdf> (checked 13.4.2023).

668 Ibid., p. 2.

669 Ibid., para. 6b.

670 Secretariat of the Convention on Biological Diversity (2019). *Glossary of Relevant Key Terms and Concepts within the Context of Article 8(j) and Related Provisions*, 9 p. (CBD Guidelines Series), <https://www.cbd.int/doc/guidelines/cbd-8j-GlossaryArticle-en.pdf> (checked 12.4.2023).

671 Ibid., p. 6.

672 Ibid.

handicrafts.⁶⁷³ According to the Code of Conduct, traditional knowledge can in some cases provide researchers and others with valuable information about the specific properties and value of genetic resources, and their potential use in the development of new products such as new medicines or cosmetics. However, studies related to Indigenous and local knowledge or other activities taking place on lands and waters traditionally inhabited by Indigenous peoples and local communities have been of concern to these communities, as they may have negative effects on their cultural and intellectual heritage.⁶⁷⁴ The Code of Conduct recalls the importance of enabling Indigenous peoples and local communities to maintain traditional practices for the preservation of traditional knowledge and related languages.⁶⁷⁵

The ethical principles contained in the Code of Conduct aim to promote respect for the rights of Indigenous peoples and local communities so that they can enjoy, protect, and pass on to future generations their cultural and intellectual heritage, including traditional knowledge, innovations, and practices relevant for the conservation and sustainable use of biodiversity.⁶⁷⁶

The Tkarihwaï:ri Code of Conduct was created in response to concerns of Indigenous peoples and local communities about the negative cultural impact of various measures. Taking the recommendations of the UN Permanent Forum on Indigenous Issues (UNPFII) on this subject into account,⁶⁷⁷ the parties must also develop operational guidelines to provide guidance for researchers and others working with and/or in the lands of Indigenous peoples and local communities. The Code of Conduct reflects both equal partnership and capacity-building for Indigenous peoples and local communities, and those working with them.⁶⁷⁸

The aim is to provide guidance to parties, governments, and others interacting with Indigenous peoples and local communities on the procedures and principles to be taken into account when working with Indigenous peoples and local communities.⁶⁷⁹ In particular, the Code of Conduct invites researchers to take them into account in their work.⁶⁸⁰ The guidelines specifically refer to research related to the traditional knowledge of Indigenous peoples.⁶⁸¹

673 The Tkarihwaï:ri Code of Ethical Conduct, pp. 1–2.

674 *Ibid.*, p. 2.

675 *Ibid.*, p. 5.

676 *Ibid.*, section 2, item 5, p. 9.

677 Recommendations 1, 8, and 9 of the report of the second session of the United Nations Permanent Forum on Indigenous Issues, endorsed by the Conference of Parties in decision VII/16, paragraph 5, and decision VIII/5 F.

678 The Tkarihwaï:ri Code of Ethical Conduct, p. 2.

679 *Ibid.*, p. 4.

680 *Ibid.*

681 *Ibid.*, p. 2.

Parties and governments are invited to provide training and develop communication strategies to make relevant ministries, agencies and government institutions, academic institutions, private sector actors, stakeholders in development and/or research projects, mining, forestry, and the wider public aware of the elements of the Code of Conduct, so that they can be integrated into local, national, and cross-border policies as appropriate, and procedures involving interaction with Indigenous peoples and local communities.⁶⁸²

The elements contained in the Code of Conduct are intended to provide guidance to help create or improve national frameworks for policies in relation to Indigenous peoples and local communities.⁶⁸³ In addition, there is a call for the Code of Conduct to be taken into account in their work by various secretariats of international agreements, authorities, and organisations whose work is related to biodiversity, as well as international development and financial institutions and NGOs whose tasks include supporting Indigenous peoples and local communities.⁶⁸⁴ The Code of Conduct is intended to be used as a complement to other guides, principles, and standards such as the Akwé:Kon Guidelines.⁶⁸⁵ They should be adapted to the circumstances of each procedure.⁶⁸⁶

The Code of Conduct lists separately several international law treaties and instruments that must be considered when applying the guidelines. In addition to the Convention on Biological Diversity, these include previously the discussed universal human rights treaties: the ICCPR, ICESCR, ICERD, and the UN Universal Declaration of Human Rights. Among the separate human rights instruments of Indigenous peoples, ILO Convention No. 169 and UNDRIP are mentioned. In addition, agreements and declarations related to intangible cultural heritage, such as the UNESCO Convention on the Intangible Cultural Heritage (2003)⁶⁸⁷ and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)⁶⁸⁸ and its predecessor, the Declaration on Cultural Diversity (2001),⁶⁸⁹ must be taken into account in the application of the Code of Conduct. The Code also contains a reference to the UNESCO Declaration on Bioethics and Human Rights (2005) and to the Bonn Guidelines on Access to Genetic Resources and Benefit-Sharing (2002), which preceded the Nagoya Protocol on Genetic Resources.

682 Ibid., p. 6.

683 Ibid., section 1, item 3, p. 8.

684 Ibid., pp. 6–7.

685 The Tkarhwaie:ri Code of Ethical Conduct, pp. 2–3.

686 Ibid., p. 4.

687 The Convention for the Safeguarding of the Intangible Cultural Heritage, adopted on 17.10.2003, entered into force on 21.5.2013. Government Decree on bringing into force the Convention for the Protection of the Intangible Cultural Heritage 16.5.2013, 47/2013.

688 Act on the Implementation of the Legislative Provisions of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions 29.6.2006/600 (Treaty Series 16/2007).

689 The Universal Declaration on Cultural Diversity was adopted on 2 November 2001.

The Code of Conduct highlights its voluntary nature and the fact that it does not modify or interpret obligations under the CBD, or any other international treaty or instrument. They should not be interpreted as modifying existing national laws, agreements, or other structural arrangements.⁶⁹⁰

One of the basic premises of the Code of Conduct is that respect for traditional knowledge requires that it is valued as an equal form of knowledge alongside and complementary to scientific knowledge. This basic premise ensures that the protection of the cultural and intellectual heritage of Indigenous peoples and local communities, which is relevant for the conservation and sustainable use of biodiversity, can be promoted effectively.⁶⁹¹ This approach can be seen as an important step towards effectively taking into account and actively using Indigenous peoples' traditional knowledge in biodiversity conservation measures carried out by non-indigenous peoples in the application of the guidelines.

The third paragraph of the Operational Guidance describes the following methods to be used:

1. *Negotiations in good faith*: Those who use the elements of this Code of Conduct are encouraged to interact and formally engage in a bona fide negotiation process.
2. *Subsidiarity and decision-making*: All decisions concerning activities related to the objectives of the Convention or interactions with Indigenous peoples and local communities should be developed and prepared at the appropriate level to ensure the empowerment and effective participation of Indigenous peoples and local communities, considering that such activities or interactions should respect their decision-making structures.
3. *Partnership and cooperation*: Partnership and cooperation should guide all actions and interactions to implement the elements of the Code of Conduct to support, maintain, and ensure the sustainable use of biodiversity and traditional knowledge.
4. *Gender aspects*: The methodology should take the key role played by women in Indigenous peoples and local communities into account in the conservation and sustainable use of biodiversity, and should confirm that women are to participate fully and effectively at all levels of biodiversity conservation policy formulation and implementation wherever appropriate.
5. *Full and effective participation, participatory approach*: This principle recognises that it is crucial that Indigenous peoples and local communities are fully and effectively involved in biodiversity and conservation activities/interactions that may affect them, and that their decision-making processes and decision-making timeline are respected.

690 The Tkarihwaï:ri Code of Ethical Conduct, section 1, rationale, item 1, p. 8.

691 Ibid., pp. 4-5.

Ethical behaviour should recognise that Indigenous peoples and local communities have some legitimate circumstances in which they can limit access to their traditional knowledge.

6. *Confidentiality*: The confidentiality of information should be respected in accordance with national law. Information transmitted by Indigenous peoples and local communities should not be used or disclosed for purposes other than those for which they were approved, and should not be disclosed to a third party without the consent of Indigenous peoples and local communities. Confidentiality should apply in particular to sacred and/or secret information. Those working with Indigenous peoples and local communities should be aware that concepts such as the public domain may not adequately reflect the cultural parameters of many Indigenous peoples and local communities.
7. *Reciprocity*: Information resulting from activities/interactions with Indigenous peoples and local communities should be shared with Indigenous peoples and local communities in an understandable and culturally appropriate form to promote intercultural exchange, knowledge and technology transfer, synergies, and complementarity.⁶⁹²

Sensitive and intellectual property issues related to the use of traditional knowledge

Regarding the principle of FPIC, the Tkarihwaí:ri Code of Conduct stresses how crucial it is that Indigenous peoples and local communities are fully and effectively involved in biodiversity and conservation activities/interactions that may affect them, and that their decision-making processes and decision-making timeline are respected. Ethical behaviour should recognise that Indigenous peoples and local communities have some legitimate circumstances in which they can limit access to their traditional knowledge.

Some of the concerns of the Sámi and other Indigenous peoples are also centrally related to the possible exploitation of traditional knowledge by outsiders without the participation, approval, and consent of Indigenous peoples. Traditional knowledge may also concern genetic resources that can be exploited for commercial or research purposes. One example given in the guidelines is plants that can be used medicinally or in cosmetics. The Sámi also have traditional knowledge of the medicinal effects of plants, for example.

Another concern for Indigenous peoples is the kind of traditional knowledge that they want to keep secret from outsiders. This can be for instance associated with sacred places.⁶⁹³

692 Ibid., paras 26–32, pp. 14–15.

693 Heinämäki, L., Markkula, I., and Sajjets, J. "Saamelaiden alkuperäiskansoikeudet ja saamelaiskulttuuria koskevien vaikutusten arviointi YVA-lain mukaisessa menettelyssä". Ympäristöministeriön julkaisuja 2023:2, p. 268.

Both the Tkarihwaié:ri Code of Conduct and the Akwé:Kon Guidelines place special emphasis on the sacred places of Indigenous peoples, their protection, and access to these sites.

The Code of Conduct emphasises the safeguarding of collective and individual ownership in relation to traditional knowledge. For example, traditional knowledge related to sacred places can be collective or individual. In the Sámi region, fells, lakes, springs and sacrificial stones, or *seidas*, have sacred meanings. Some sacred places are such that they can only be known by a person aware of the sanctity of the place. Some of the sacred places in the Sámi region are well known.⁶⁹⁴ There are still sacred places yet to be made public the Sámi do not want to be revealed.⁶⁹⁵

The use of Indigenous peoples' traditional knowledge as part of research, land-use planning, and environmental impact assessment is closely linked to the question of how and for what purposes the information may be used. For example, who has the right to manage traditional knowledge passed down across generations and shared in communities? How does the transfer of traditional knowledge transferred from oral to written form affect its nature and recognisability? From an Indigenous peoples' perspective, there are two main threats to the storage and use of traditional knowledge: 1) misuse of information; and 2) loss of meaning and context of knowledge.⁶⁹⁶

In various contexts, Indigenous peoples have expressed the place and cultural specificity of traditional knowledge, as well as concerns that knowledge may become meaningless if its original context is lost.⁶⁹⁷ The solution to the problem lies in the effective and meaningful participation of Indigenous peoples: when Indigenous peoples participate in spatial planning, impact assessments, or research as partners, the relevance and context-specific nature of traditional knowledge are also best preserved.⁶⁹⁸

The question of who has the right to use and administer Sámi traditional knowledge is complex and depends greatly on the situation and nature of traditional knowledge. The Sámi have both open and non-open traditional knowledge. Traditional knowledge may belong to a specific family (e.g. information about gathering or hunting sites), *siida* or other communities (e.g. a sacred place of the community), or ultimately to the Sámi as

694 Register of Antiquities: https://www.kyppi.fi/palveluikkuna/mjreki/read/asp/r_default.aspx (checked 10.3.2023).

695 Metsähallitus (2022). Nature Resource Plan, Appendix 2: Statement of the Akwé:Kon working group, p. 42

696 See e.g. Nordin Jonsson, Å. "Ethical guidelines for the documentation of árbediehtu, Sami traditional knowledge", in J. Porsanger & G. Guttorm (eds). *Working with Traditional Knowledge: Communities, Institutions, Information Systems, Law and Ethics*. DIEDUT 1/2011. Alta: Björkmanns Trykkeri AS, pp. 97–122. See Heinämäki, Markkula and Saijets (2023), p. 342, see footnote 693.

697 See e.g. Mackenzie Valley Environmental Impact Review Board (2005); Helander-Renvall, E., and Markkula, I. "On Transfer of Sámi Traditional Knowledge: Scientification, Traditionalization, Secrecy, and Equality", in A. Xanthaki et al., *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*, Brill/Nijhoff, Leiden, Boston, 2017, pp. 104–129.

698 Heinämäki, Markkula, and Saijets (2023), p. 343, see footnote 693.

a people.⁶⁹⁹ Traditional knowledge is created through interaction and can also include individual elements such as observations and data, which, however, are often shared among the community. The same type of traditional knowledge and innovations can also emerge in different communities independently of each other. In traditional knowledge about biodiversity, observations of nature and interactions between organisms are linked to historical knowledge of how things were in the past. In other words, traditional knowledge combines individual and communal, local and regional, new and old knowledge, and the determination of data ownership is therefore ambiguous.⁷⁰⁰

The Sámi have the right to self-determination of their own cultural heritage, of which traditional knowledge is also part. The Tkarihwaié:ri Code of Conduct calls for the concerns and claims of communities and individuals regarding cultural and intellectual property relevant to the conservation and sustainable use of biodiversity to be addressed, and addressed in consultation with Indigenous peoples and local communities before taking action.⁷⁰¹ The Code of Conduct guides all parties cooperating with the Sámi to recognise that traditional knowledge may involve questions related to ownership and to discuss them with the Sámi.

Regarding the promotion of intellectual property rights to intellectual/intangible property, the Code of Conduct can support the implementation of UNDRIP, which in Article 33 calls on states to act, with Indigenous peoples, in relation to the use and protection of their intellectual property rights, as discussed earlier in this report.

Before collecting Indigenous peoples' traditional knowledge, it is recommended that the parties involved in a land-use planning project or other measure agree in writing on how the data will be collected, how it will be stored, and for whom the data will remain available after the activity has ended. The traditional knowledge collected as part of the measure should remain available and stored by the Sámi people so that the information can later be used for the benefit of the community as part of various land-use planning or impact assessment processes, for example.⁷⁰²

The Tkarihwaié:ri Code of Conduct also contains guidelines for the fair and equitable sharing of benefits related to the use of traditional knowledge and compensation for harm to Indigenous peoples' culture. The guidelines are also in line with the principle recognised

699 See Henriksen, J. B. "Árbediehtu: Some legal reflections", in J. Porsanger and G. Guttorm (eds). *Working with Traditional Knowledge: Communities, Institutions, Information Systems, Law and Ethics*. DIEĐUT 1/2011. Alta: Bjørkmanns Trykkeri AS, pp. 77–94. See Heinämäki, Markkula, and Saijets (2023), p. 343.

700 Heinämäki, Markkula and Saijets (2023), p. 343, see footnote 693.

701 Tkarihwaié:ri Code of Conduct, section 8, page 9.

702 Olsén, L., Harkoma, A., Heinämäki, L., and Heiskanen, H. *Saamelaiten perinnettiedon huomioiminen ympäristöpäätöksenteossa*. *Juridica Lapponica* 41, Lapin yliopisto, Rovaniemi (2017), p. 100. See, Heinämäki, Markkula and Saijets (2023), p. 345, see footnote 693.

in the human rights context that Indigenous peoples should benefit from activities that make use of their traditional knowledge. The Code of Conduct states that where measures lead to adverse consequences for Indigenous culture, including cultural heritage, appropriate compensation or reparation should be provided in accordance with national law and relevant international obligations where applicable and under conditions agreed between Indigenous peoples and local communities, and those engaged in such activities or interactions.

Sámi as guardians of their traditional territories

Globally, with increasing knowledge and awareness of the rights and status of Indigenous peoples, there is a growing perception in many contexts that strengthening the participation of Indigenous peoples, for example, in nature reserves, and seeing Indigenous peoples as partners rather than as burdens or objects of protection, often leads to better protection of nature and related cultural heritage.⁷⁰³ There are numerous examples in the research literature of how integrating traditional knowledge into land-use planning has improved the management of ecosystems and natural resources and the protection of biodiversity, and brought new understanding of complex socioecological interactions.⁷⁰⁴

The Tkarihwaié:ri Code of Conduct reinforces this aspect: it explicitly recognises and emphasises the important role of Indigenous peoples and local communities as traditional custodians and protectors of their sacred sites and other land and water areas, and Indigenous peoples and local communities should therefore be involved in the management of these sites and in the design and implementation of related measures. The Sámi should have a more recognised role as guardians and protectors of their traditional areas, with valuable knowledge, skills, and practices related to the conservation and sustainable use of biodiversity.

Respect for traditional knowledge as an equal form of knowledge alongside Western scientific knowledge

The Tkarihwaié:ri Code of Conduct stems from the concerns of Indigenous peoples and local communities that they often lack sufficient opportunities to protect their territories and cultural heritage and to set their own priorities for their use and development.

703 Larsen, P. B. "Reconciling indigenous peoples and protected areas: rights, governance and equitable cost and benefit sharing." IUCN, Gland, February 2006, p. 2. For a general view, see Duncan, T., Villarreal-Rosas, J., Carwardine, J., Garnett, S. T., and Robinson, C. J. "Influence of environmental governance regimes on the capacity of Indigenous Peoples to participate in conservation management." *The International Journal on Protected Areas and Conservation*, 24 (2), 2018:87–102. See Heinämäki, Markkula, and Saijets (2023), p. 64, see footnote 693.

704 E.g. Heikkilä, L. "The comparison of Indigenous and scientific perceptions of reindeer management", in B. C. Forbes, M. Bölter, L. Müller-Wille, J. Hukkinen, F. Müller, N. Gunslay, and Y. Konstantinov (eds). *Reindeer management in northernmost Europe: linking practical and scientific knowledge in social-ecological systems*. Ecological Studies 184, Springer, Berlin, 2006, pp. 73–93; Christensen, J. and Granti, M. "How political change paved the way for Indigenous knowledge: the Mackenzie Valley Resource Management Act". *Arctic* 60, 2007:115–123; Folke, C., Jansson, Å., Rockström, P., Olsson, S., Carpenter, R. et al. "Reconnecting to the Biosphere." *Ambio*, 40, 2011:719–738; see Heinämäki, Markkula, and Saijets (2023), pp. 336–347, see footnote 693.

The Code of Conduct views respect for the traditional knowledge of Indigenous peoples and local communities as a basic premise for effectively promoting their cultural and intellectual heritage, which is relevant for the conservation and sustainable use of biodiversity. The Code of Conduct is based on the premise that traditional knowledge should be valued as an equal form of knowledge alongside scientific knowledge and as a complement to it.

Knowledge based on the tradition of natural science is automatically considered rational and objective, but these qualities are not necessarily associated with traditional knowledge at all.⁷⁰⁵ The Sámi and other Indigenous peoples have pointed out that the collection of data to be included in impact assessments should take place in cooperation with members of Indigenous peoples. When Indigenous peoples produce, process, and share information in cooperation with actors involved in various projects or other measures, the end result corresponds better to their reality and values than if a consultant collects and analyses all the information, for example.⁷⁰⁶

For example, Sámi reindeer herders have pointed out that officials and decision-makers responsible for land-use planning lack a sufficient understanding of Sámi culture and traditional knowledge.⁷⁰⁷ In Finland, reindeer herders also find the legislative situation difficult: in its current form, the Reindeer Husbandry Act⁷⁰⁸ does not recognise the special characteristics of Sámi reindeer husbandry culture, as a result of which traditional knowledge is insufficiently taken into account in land-use planning.⁷⁰⁹

4.6.5.1.1. Initiation to Implement Tkarihwaié:ri Code of Ethical Conduct in Finland

The purpose of the Tkarihwaié:ri Code of Ethical Conduct is first and foremost to provide a *framework for cooperation* to ensure the “effective” participation of and cooperation with the Sámi in measures related to their traditional knowledge and traditional practices in their traditionally used areas and natural resources. The guidelines also refer specifically to research concerning traditional knowledge. “Effective” participation aims to obtain the approval or FPIC of the Sámi people for such measures. The purpose of the Code of Conduct is to promote respect for the rights of the Sámi so that they can enjoy, protect, and pass on to future generations their tangible and intangible cultural heritage, including traditional knowledge, innovations, and practices relevant for the conservation and

705 Turi, E. I. and Keskitalo, C. H. “Governing reindeer husbandry in western Finnmark: barriers for incorporating traditional knowledge in local-level policy implementation.” *Polar Geography* 37, 2014:234–251.

706 Heinämäki, L., Markkula, I., Saijets, J. ”Saamelaisten alkuperäiskansaoikeudet ja saamelaiskultuuria koskevien vaikutusten arviointi YVA-lain mukaisessa menettelyssä” Ympäristöministeriön julkaisuja 2023:23, p. 337.

707 Olsén, L., Harkoma, A., Heinämäki, L., and Heiskanen, H. *Saamelaisten perimätiedon huomioiminen ympäristöpäätöksenteossa*. Juridica Lapponica 41, Lapin yliopisto, Rovaniemi (2017), pp. 88–90; Markkula, I., Turunen, M., and Kantola, S. “Traditional and local knowledge in land use planning: Insights into the use of the Akwé:Kon Guidelines in Eanodat, Finnish Sápmi.” *Ecology and Society*, 24 (1), 2019:20.

708 Reindeer Husbandry Act (848/1990).

709 Markkula et al. (2019), see footnote 707.

sustainable use of biodiversity. The key starting point for the procedure is therefore *partnership and cooperation*, which should guide all actions and interactions with the Sámi people to support, maintain, and ensure the sustainable use of biodiversity and traditional knowledge.

In Finland, an initiative has been established to apply the Tkarihwaié:ri Code of Conduct to Sámi reindeer herding to improve the understanding of Sámi reindeer herding and cooperation with reindeer herders, and especially to improve negotiations with the herders under the Reindeer Husbandry Act. A Sámi-led research project, MÁHTUT, (See the Description sheet of this report) produced by the Association of Sámi Reindeer Herding Cooperatives and the Ministry of Environment, has created ethical guidelines called *Rivttes vuohki, Olmâ vyehi, Ôlmmvue'k̄k̄* – the right conduct: UN Biodiversity Convention based Ethical Guidelines on Negotiation and Cooperation with the Reindeer Herders of the Association of Sámi Reindeer Herding Cooperatives.⁷¹⁰

The Ethical Guidelines point to several main challenges of Sámi reindeer herders, including the lack of recognition of Sámi reindeer herding in legislation and administration and increased cumulative impacts of different land use by third parties in the traditional Sámi territories, and describe the holistic nature of Sámi reindeer herding that is poorly understood by the state authorities and others in Finland. The Ethical Guidelines have gathered information from reindeer herders belonging to reindeer herding cooperatives in the Sámi Homeland. Herders articulate many challenges in negotiations and cooperations that do not even come close to meeting the FPIC standards, which are described in the Guidelines not just as legal but as practical tools to give the reindeer herders a real possibility of influencing the plans and decisions that have impacts on Sámi reindeer herding. The Guidelines also propose innovative means to benefit sharing and compensation issues, as the Tkarihwaié:ri Code of Conduct advises concerning these issues.

Although effective participation is a fundamental and human right of the Sámi people, legal and policy documents and guidelines related to the protection and sustainable use of nature and the environment also view the participation of and cooperation with Indigenous peoples as directly benefiting the conservation of biodiversity. The participation of the Sámi in various measures related to the areas they have traditionally used should be regarded more as something that benefits the Sámi Homeland as a whole, especially in the longer term, and should not be seen as a threat to the development of the Sámi Homeland.

The partnership principle contained in the Tkarihwaié:ri Code of Ethics should be implemented in all land use, environmental and nature conservation, cultural landscape

⁷¹⁰ Hansen, L. & Alakorva, S., Sanila-Aikio, T. The report will be published by the Ministry of Environment during 2026.

activities, and land-use planning that affect Sámi culture, and especially in research related to the traditional knowledge of the Sámi people or, where applicable and depending on the situation, other forms of cultural heritage. The study commissioned by the Finnish government entitled “Actualizing Sámi Rights: International Comparative Research” (2017)⁷¹¹ recommends a partnership approach as a basis for cooperation, especially between the authorities and the Sámi Parliament, which represents the Sámi people. This study highlights that countries such as Norway, Canada, and New Zealand have adopted to a degree a partnership approach as a basis for managing Indigenous issues. The study states that negotiations with the Sámi should not be “mandatory consultation” but should aim to reach a consensus and seek mutual compromise. However, the study reminds us that the compromise solution must not lead to a violation of the rights already guaranteed to the Sámi.⁷¹²

4.6.5.2. Mo’otz Kuxtal Guidelines for the Development of FPIC Mechanisms for Accessing Indigenous Traditional Knowledge, Innovation, and Practices

The Mo’otz Kuxtal Voluntary Guidelines were adopted at the 13th Conference of the Parties to the Convention on Biological Diversity in 2016.⁷¹³ The full title of the guidelines is “Mo’otz Kuxtal Voluntary Guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the ‘prior and informed consent’, ‘free, prior and informed consent’ or ‘approval and involvement’, depending on national circumstances, of Indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge”.⁷¹⁴

Mo’otz Kuxtal means “root of life” in the Mayan language. The Mo’otz Kuxtal Guidelines provide a framework through which Parties, other governments, relevant organisations, and Indigenous peoples and local communities can build *equitable partnerships* and foster *positive engagement* between potential users and holders of traditional knowledge. The guidance aimed to provide a tangible new tool in line with the development by 2020 of a post-2020 global biodiversity framework and the achievement of target 18 of the current Strategic Plan for Biodiversity (2011–2020) on traditional knowledge.⁷¹⁵

711 Heinämäki, L., Allard, C., Kirchner, S. et al. Saamelaiden oikeuksien toteutuminen. Kansainvälinen oikeusvertaileva tutkimus. [Actualizing Sámi Rights: International Comparative Research]. Publications of the Government’s analysis, assessment and research activities 4/2017.

712 Ibid., p. 510.

713 CBD/COP/DEC/XIII/18 17 December 2016, Thirteenth meeting Cancun, Mexico, 4–17 December 2016; Secretariat of the Convention on Biological Diversity (2019). Montreal, 9 p. (CBD Guidelines Series). <https://www.cbd.int/doc/publications/8j-cbd-mootz-kuxtal-en.pdf> (checked 13.4.2023).

714 See *ibid.*

715 Ibid., preface, p. ii.

The rationale for Mo'otz Kuxtal is very similar to that for the Tkarihwaié:ri Code of Ethical Conduct a few years earlier: the concerns of Indigenous peoples and local communities about research and other activities that require access to traditional knowledge, innovation, and practices of Indigenous peoples and local communities. As both the Tkarihwaié:ri Code of Conduct and the Mo'otz Kuxtal Guidelines point out, traditional knowledge, innovations, and practices are valuable not only to those who depend on them in their daily lives but also to modern industry, research, agriculture, and livestock breeding. Most Indigenous peoples and local communities live in areas where most of the world's genetic resources are located. Traditional knowledge can also provide researchers and others with valuable information about the specific properties and value of genetic resources and their potential use. In addition, the Mo'otz Kuxtal guidelines were developed on the basis that potential users of traditional knowledge had expressed a desire for certainty and legal clarity regarding access to and use of traditional knowledge.⁷¹⁶

The Guidelines are intended to be used in conjunction with other relevant principles, codes of conduct, and guidelines. The preface to the Official Publication of the Guidelines (2019) specifically mentions the Tkarihwaié:ri Code of Ethical Conduct adopted in 2010 and the Rutzolijirisaxik Guidelines on the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities, adopted in 2018, discussed in the next section.⁷¹⁷ The Mo'otz Kuxtal Guidelines can be seen in part as a follow-up to the Tkarihwaié:ri Code of Conduct in that it provides more specific guidance on FPIC, and in particular on the fair and equitable sharing of benefits, specifically when utilising traditional knowledge, innovations, or practices of Indigenous peoples and local communities, especially for commercial or research purposes such as medicine or cosmetics. The Mo'otz Kuxtal Guidelines are intended as guidance to help parties develop procedures appropriate to each situation. The purpose of the guidelines is therefore to support the development of procedures, that is, elements can be extracted from them in relation to each national context.

The difference between the Mo'otz Kuxtal Guidelines and the Tkarihwaié:ri Code of Conduct is that the latter concerns a framework for cooperation aimed at ensuring the effective participation and FPIC of Indigenous peoples and local communities in the activities related to their traditional knowledge, including research projects, or which have an impact on the lands and waters traditionally owned or used by Indigenous peoples. The Mo'otz Kuxtal Guidelines are intended to establish procedures primarily as protection for the direct exploitation by other users of traditional knowledge, innovations, and

⁷¹⁶ Ibid., p. i.

⁷¹⁷ Ibid.

practices of Indigenous peoples and local communities for commercial or research purposes, for example.

The Mo'otz Kuxtal Guidelines emphasise that they are voluntary and should not be interpreted as altering the rights or obligations of the parties under the Convention. The Guidelines should be applied in a manner consistent with the national law of the country where traditional knowledge is used. Due weight should be given to customary rights, community protocols, and practices of Indigenous peoples and local communities.

The Mo'otz Kuxtal Guidelines do not apply directly to traditional knowledge related to genetic resources under the Nagoya Protocol,⁷¹⁸ which was discussed earlier in this report, but the Decision provides that the Guidelines may be used to develop specific instruments under the Nagoya Protocol.⁷¹⁹ For example, in practice, this means that the Mo'otz Kuxtal Guidelines do not interfere with the interpretation of the obligations contained in the Nagoya Protocol, but they can be used to supplement the national implementation of the Nagoya Protocol if necessary.

General principles of the Mo'otz Kuxtal Guidelines

A. Access to traditional knowledge

Access to the traditional knowledge of Indigenous peoples and local communities should be conditional on the “prior informed consent”, “free, prior informed consent”, or “consent and participation” of the traditional holders of that knowledge, depending on national circumstances.⁷²⁰ Variations in terminology are intended to respect national practices, possible legislation, and other guidelines. Previously developed voluntary guidelines speak of “prior informed consent”. In general, the concept of free, prior, and informed consent (FPIC) has been used in the human rights context. Since the voluntary guidelines are intended to be read in conjunction with legally binding human rights of Indigenous peoples, it would make sense to generally adopt the concept of FPIC when implemented in national setting.

According to the Mo'otz Kuxtal Guidelines, free, prior, and informed consent consists of the following elements:

a) *Free* means that Indigenous peoples and local communities are not unduly pressured, intimidated, manipulated, or influenced, and that they give their consent without coercion.

⁷¹⁸ Mo'otz Kuxtal Voluntary Guidelines, p. 2.

⁷¹⁹ CBD COP Decision XIII/18 paragraph 6, 2016.

⁷²⁰ Mo'otz Kuxtal Voluntary Guidelines, p. 2.

(b) *Prior* means that approval or consent is sought sufficiently in advance of the granting of a licence to access traditional knowledge, respecting normal decision-making processes in accordance with national law, and the time requirements of Indigenous peoples and local communities.

(c) *Informed* means the provision of information covering relevant aspects such as the intended purpose, duration, and scope of the access, a preliminary assessment of the likely economic, social, cultural, and environmental impacts, including potential risks, personnel likely to be involved in the implementation of the access, any procedures associated with access, and benefit-sharing arrangements.

(d) *Consent* or *approval* is the agreement of the Indigenous peoples and local communities who are holders of traditional knowledge or the competent authorities of those Indigenous peoples and local communities, as appropriate, to grant access to their traditional knowledge to a potential user, and it includes the right not to grant consent or approval.

(e) *Participation* refers to the full and effective participation of Indigenous peoples and local communities in decision-making processes related to their access to traditional knowledge. Consultation and full and effective participation of Indigenous peoples and local communities are crucial elements of the consent or acceptance process.⁷²¹

According to the Guidelines, depending on national circumstances, “prior informed consent”, “free, prior informed consent”, or “consent and participation” should be implemented in full respect of Indigenous peoples and local communities. Respect for Indigenous peoples and local communities means the continuous process of creating mutually beneficial, continuous arrangements between users and holders of the traditional knowledge of Indigenous peoples and local communities to build trust, good relations, mutual understanding, intercultural spaces, and knowledge exchange. Respect also entails a continuous process of new knowledge and reconciliation, involving the full and effective participation of Indigenous peoples and local communities, taking national law and customary rights, community protocols, and practices of Indigenous peoples and local communities into account, which should support and form an integral part of the development of relations between the users and providers of traditional knowledge.⁷²²

The Mo’otz Kuxtal Guidelines state that it is impractical to propose a “one-size-fits-all” approach to the prior consent, acceptance, and participation of Indigenous peoples and local communities in access to traditional knowledge in their possession, and they should

⁷²¹ Ibid., pp. 2–3.

⁷²² Ibid., p. 3.

therefore be used considering the national and local circumstances of the Indigenous peoples and local communities concerned.⁷²³

The Guidelines stress that customary rights of Indigenous peoples and local communities, community protocols, practices, and decision-making processes, as well as national legislation, should be given due weight in the procedural and substantive aspects of the consent process for access to traditional information. With prior consent, only the temporary use of traditional knowledge for the purpose for which it was granted is permitted unless otherwise mutually agreed.⁷²⁴

B. Fair and equitable sharing of benefits

According to the Guidelines, Indigenous peoples and local communities should benefit fairly and equitably from the use of traditional knowledge in their possession on mutually agreed terms. Benefit-sharing could be a way to recognise and strengthen the contribution of Indigenous peoples and local communities to the conservation and sustainable use of biodiversity, including by supporting the intergenerational transfer of traditional knowledge. Benefit-sharing should also be fair and equitable within and between the groups concerned, considering relevant procedures at Community level and, where appropriate, gender and age/intergenerational relationship considerations.⁷²⁵

C. Reporting and preventing illegal use

The Guidelines call for the creation of tools to prevent and report on the unlawful appropriation and use of traditional information. In the absence of tools and measures, the parties should take appropriate steps to allow traditional knowledge to be used with the prior consent or approval and participation of the holders of traditional knowledge, depending on national circumstances, to ensure that mutually agreed terms and conditions are established.⁷²⁶

Respect for Community Protocols and Customary Law

The Guidelines highlight the role that Indigenous and local community protocols and customary law can play in processes of access to traditional knowledge, and the fair and equitable sharing of the benefits arising from the use of such knowledge. They can contribute to legal certainty, transparency, and predictability regarding procedures for obtaining prior consent or consent and participation.⁷²⁷

⁷²³ Ibid.

⁷²⁴ Ibid.

⁷²⁵ Ibid., p. 4, points 12–14.

⁷²⁶ Ibid., p. 4, paras 15–16.

⁷²⁷ Ibid., pp. 5–6, point 18.

Community protocols is a term used in the Mo'otz Kuxtal Guidelines that encompasses a wide range of expressions, articulations, rules, and practices created by communities to define how they expect other stakeholders to interact with them. They may refer both to customary laws and to national or international law, and establish their rights to be approached in accordance with certain standards. The presentation of information, relevant elements, and details of customary and traditional decision-making bodies helps other stakeholders to better understand community values and customary laws. Community protocols provide an opportunity for communities to focus on development objectives in relation to their rights, and to express to themselves and users how they understand their biocultural heritage and on what basis they intend to engage with different stakeholders. By articulating and considering the interlinkages between their land rights, current socioeconomic situation, environmental considerations, customary law, and traditional knowledge, communities will be better able to determine for themselves how they negotiate with the various actors.⁷²⁸

Community protocols may contain, *inter alia*, the following information:

(a) Community identity; (b) Community history; (c) The territoriality of the community; (d) Use of culturally relevant practices for the conservation and sustainable use of biological diversity; Social organisation and decision-making processes (which are often collective decision-making procedures at community level).⁷²⁹

Community protocols can help solve any community problem. They can express several topics relevant to biodiversity that are important to communities, such as: (a) Biodiversity conservation; (b) Sustainable use of biological resources of plants and animals; (c) Managing and benefiting from local biodiversity; (d) Use, protection, and exploitation of traditional knowledge; (e) Guidance on how to obtain “prior informed consent”, “free, prior informed consent”, or “consent and participation” for the exploitation of traditional knowledge, depending on national circumstances; (f) Ensuring that environmental and other laws are implemented in accordance with customary law and in line with national law; (g) Implementation of sustainable development on lands traditionally inhabited or used by Indigenous peoples or local communities.

Implementation considerations for Sámi cultural heritage

As the name of the Mo'otz Kuxtal Guidelines suggests, these are guidelines for the development of legislation or other mechanisms and initiatives that could ensure the

⁷²⁸ Ibid., p. 6, point 19. See <http://www.unep.org/communityprotocols/protocol.asp> and http://www.unep.org/dele/Portals/119/publications/Community_Protocols_Guide_Policymakers.pdf. (checked 4.12.2023).
⁷²⁹ Ibid., p. 6, point 20.

participation and FPIC of the Sámi people in relation to the exploitation of their traditional knowledge, innovations, and practices related to the conservation and sustainable use of biodiversity. The Guidelines also provide aid for the development of mechanisms through which the benefits arising from the use of traditional knowledge, innovations, or practices of the Sámi can be distributed fairly and equitably, as well as instructions on how to report and prevent the unlawful appropriation of traditional knowledge.

For example, the Mo'otz Kuxtal Guidelines could be used to draw up community protocols in which the Sámi Parliaments and Sámi communities could provide more detailed guidance on sensitive and legal issues related to the use of traditional knowledge, which were discussed in the previous paragraph in the context of the Tkarihwaié:ri Code of Conduct. In the community protocol, the Sámi Parliament, the Skolt Village Assembly, *siidas*, or the Sámi communities could describe what type of traditional knowledge would require the FPIC of the communities and define the entities from whom consent would be sought. Community protocols could also compile instructions related to the collection and storage of traditional knowledge, so that traditional knowledge would return to the use of the Sámi and possibly to their storage, so that it could later be used for the benefit of the community in a way that the community considers possible.

One of the main reasons various operators and authorities may not recognise and be able to assess the harmful effects of activities on Sámi culture is their lack of proper knowledge of Sámi culture. The Community Protocols presented by the Mo'otz Kuxtal Guidelines could be used to support better knowledge and consideration of Sámi culture in the context of various measures. According to the Guidelines, Community Protocols cover a wide range of rules and practices that communities create to define how they expect other stakeholders or third parties to interact with them. They may refer both to the customary laws of Indigenous peoples themselves and to national or international law, and confirm their rights to be approached in accordance with certain standards.

Community Protocols are intended to help third parties understand the culture, values, identity, local conditions, way of life, ecosystems important to communities, and key species to be protected. A Community Protocol drawn up by the Sámi Parliament, in cooperation with the Sámi communities (and in the Skolt region with the Skolt Village Assembly) could help third parties understand Sámi culture holistically. For example, traditional knowledge cannot be separated from traditional livelihoods, and intangible cultural heritage cannot be separated from tangible cultural heritage. Traditional knowledge is always affected by the impact on traditional livelihoods, and traditional knowledge cannot be protected without also protecting traditional livelihoods. Sámi languages and traditional knowledge are also closely linked. Community Protocols drawn up by the Sámi community(s) could also

be used for other measures affecting Sámi culture, such as measures related to the protection of biodiversity, land-use planning, or environmental impact assessment processes (including cultural impacts).

Respect for Sámi culture in tourism and other commercial activities

Sámi culture is utilised in business activities in many ways. Exploitation can take place directly by using expressions borrowed from Sámi culture or indirectly by evoking a Sámi image, even if the product or service does not necessarily have any connection with the Sámi. The essential questions regarding such exploitation are: who has kept traditional expressions alive and will transmit them for future generations to enjoy, who benefits from their economic use, and how does economic exploitation contribute to their sustainable use?⁷³⁰

Tourism may also exploit the cultural heritage of the Sámi people and the practices and traditional knowledge associated with it. The Mo'otz Kuxtal Guidelines could also be applied to tourism or other economic activities where Sámi culture is utilised. In 2018, the Sámi Parliament of Finland drew up guiding principles for responsible and ethically sustainable Sámi tourism.⁷³¹ These ethical guidelines for Sámi tourism primarily concern the productisation and/or presentation of Sámi culture by actors outside the Sámi community, as well as tourism marketing and communications. The main objective is to put an end to tourism that exploits the Sámi and to eliminate misinformation about the Sámi through tourism. As a rule, the entire tourism industry must aim to ensure that all activities related to Sámi tourism support the preservation and development of Sámi culture so that it can be passed on to future generations in a form that the Sámi recognise as their own.⁷³²

The ethical guidelines for Sámi tourism state that the ownership and possession of the Sámi culture include how the Sámi and/or their cultural heritage are productised, used and/or presented in various tourism products, including images, logos, and the Sámi language. According to the ethical guidelines for Sámi tourism, the Sámi jointly define Sámi culture and related cultural expressions and collectively decide on its use and limits of its use. In Finland, in addition to the Sámi Parliament, general policies are decided by the Skolt Village Assembly in cases where the matter concerns Skolt Sámi culture. The details of the tourism utilisation of Sámi culture are decided with the Sámi Parliament and the Skolt Village Assembly, as well as the relevant Sámi communities, Sámi families and/or *siidas*, which are or may be affected by the tourism productisation and/or presentation of

730 Mattila, T. and Jaakonaho, P. (2023). *Meidän: Pohjoisten alueen alkuperäiskansojen kulttuuria koskevat aineettomat oikeudet*. Saamelaisalueen koulutuskeskus, p. 44.

731 Approved at the meeting of the Sámi Parliament on 24.9.2018. Can be downloaded from: <https://www.samedigi.fi/saamelaismatkailun-ettiset-ohjeet/> (checked 4.10.2023).

732 Ibid., p. 5.

733 Ibid., p. 7.

the Sámi culture in question. If necessary, broader collective tourism policies concerning Sámi cultural heritage are agreed through the Sámi Parliamentary Council (SPC).⁷³³

The ethical guidelines for Sámi tourism also point out that Sámi culture includes many customs and practices that do not need to be opened up to people outside the culture. There is also no desire to harness all cultural expressions for tourism purposes. These decisions are made collectively within the Sámi community, family, and/or *siida* concerned, which is subject to those aspects of cultural expression that are to be excluded only from the knowledge of the Sámi and/or related community concerned, or from tourism. In this case, the general policies of the Sámi Parliament and/or the Skolt Village Assembly, as well as the policies of the Sámi Parliamentary Council concerning the wider use of Sámi cultural heritage, must also be considered.⁷³⁴

The Mo'otz Kuxtal Guidelines could also be applied alongside the ethical guidelines for Sámi tourism to general local tourism that utilises Sámi culture in Norway and Sweden. The Mo'otz Kuxtal Guidelines could also be used to draw from elements selected by the Sámi Parliament or other Sámi actors if there is a desire to update the ethical guidelines related to Sámi tourism. Although voluntary, the guidelines are related to the implementation of the legally binding CBD, which is why they would be likely to increase the weight of ethical guidelines for Sámi tourism.

The Mo'otz Kuxtal Guidelines could also be used to extract elements for other commercial exploitation of Sámi culture (e.g. film industry or Sámi products, etc.) in a way that respects and supports Sámi culture, in compliance with the principle of FPIC and benefit-sharing. The Sámi Parliaments with other Sámi entities are the best experts on the innovations or practices of the Sámi culture that could be commercially exploited and protected in accordance with the principles contained in the Mo'otz Kuxtal Guidelines.

4.6.5.3. Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge

The Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge Relevant to the Protection and Use of Biodiversity by Indigenous Peoples and Local Communities was adopted at the 14th Conference of the Parties to the CBD in 2018.⁷³⁵

The background to this decision was Decision V/16 of the Conference of the Parties to the CBD of 2000,⁷³⁶ which adopted a work programme on Article 8(j) provisions, including

⁷³³ Ibid., p. 7.

⁷³⁴ Ibid., p. 8.

⁷³⁵ CBD/COP/DEC/14/12 30 November 2018, Fourteenth meeting Sharm El-Sheikh, Egypt, 17–29 November 2018.

⁷³⁶ See <https://www.cbd.int/decisions/cop/5/16> (checked 4.11.2023).

task 15 on the repatriation of traditional knowledge of Indigenous peoples and local communities. In this decision, the Conference of the Parties to the Agreement requested the Working Group on Article 8(j) and related provisions to develop guidelines to facilitate the return of information, including cultural property, in accordance with Article 17(2) of the CBD, to facilitate the repatriation of traditional knowledge related to biodiversity.⁷³⁷

The Rutzolijirisaxik Guidelines were named by representatives of the Indigenous people of Guatemala. It is customary in the convention that instructions drawn up in Indigenous peoples' traditional areas are named in the language of the Indigenous people of a region. The Kaqchikel Mayan word “*rutzolijirisaxik*” means “return to the native place”.⁷³⁸ The return to the place of residence reflects the essence of the guidelines: the return of traditional knowledge to the communities to which it belongs. Repatriation generally refers in other contexts to the return of cultural heritage or human remains to their original whereabouts or to their original owners or their descendants.⁷³⁹

The full title of the Guidelines is “Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity.”⁷⁴⁰ According to the Guidelines, “repatriation” means the return of knowledge, innovations, and practices of Indigenous peoples and local communities, that is, repatriation to where they originated or were acquired to restore knowledge of biodiversity for revitalisation and protection. The Guidelines' aim is to facilitate the utilisation of traditional knowledge relevant for the conservation and sustainable use of biodiversity.⁷⁴¹

The Guidelines are also linked to the other previously mentioned Guidelines of the Convention on Biological Diversity concerning Indigenous peoples and local communities: the Rutzolijirisaxik Guidelines refer specifically to the Mo'otz Kuxtal Guidelines on FPIC discussed in the previous chapter.⁷⁴² In addition, reference is made to paragraph 23 of the Tkarihwaí:ri Code of Conduct, which encourages the facilitation of data recovery for the repatriation of traditional knowledge of biodiversity. In applying the Rutzolijirisaxik Guidelines, various international bodies, instruments, programmes, strategies, standards, guidelines, reports, and relevant procedures should also be taken into account, with

⁷³⁷ The Rutzolijirisaxik Voluntary Guidelines (2019), p. iii.

⁷³⁸ Secretariat of the Convention on Biological Diversity (2019). The Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity. Montreal, 14 p. (CBD Guidelines Series), p. i–ii.

⁷³⁹ Peers, L. L. and Brown, A. K. *Museums and source communities: a Routledge reader*. Routledge, London & New York, 2003, p. 2. See Kosonen, S. *Returning a collection of Sámi objects from the National Museum of Finland to the Sámi Museum Siida: Repatriation from the perspective of museum workers*. Master's thesis, Faculty of Arts, University of Turku, 2023, p. 12.

⁷⁴⁰ Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity.

⁷⁴¹ Secretariat of the Convention on Biological Diversity (2019). The Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity. Montreal, 14 p. (CBD Guidelines Series), p. ii.

⁷⁴² *Ibid.*, p. iii.

an emphasis on their harmonisation, complementarity, and effective implementation, including the UNDRIP and the UNESCO measures related to cultural heritage/cultural property, and activities of the Intellectual Property Organization (WIPO)⁷⁴³ related to intellectual property rights.⁷⁴⁴

The protection of the cultural heritage of Indigenous peoples, and especially participatory rights, has been developed in recent decades by UNESCO in relation to both tangible and intangible cultural heritage.⁷⁴⁵ WIPO has also been actively promoting the intellectual property rights of Indigenous peoples for years and has been working on a related legal instrument,⁷⁴⁶ which will be discussed later in this report.

As mentioned in the chapter on the Tkarihwaié:ri Code of Conduct, Article 33 of UNDRIP calls on states to act with Indigenous peoples regarding the use and protection of their intellectual property rights.⁷⁴⁷ The repatriation of traditional knowledge can be seen as a key action for protecting the intellectual property of Indigenous peoples.

According to Article 11.2 of UNDRIP, states must, through effective systems developed in cooperation with Indigenous peoples, compensate Indigenous peoples for cultural, intellectual, religious, and spiritual property taken from them without their free, prior, and informed consent or in violation of their laws, traditions, and customs, and this redress procedure may include restitution.⁷⁴⁸ Repatriation can mean both the repatriation of cultural goods and the restoration of cultural heritage management or repatriation of traditional knowledge. Restitution can also refer to financial compensation or to strengthening the protection of cultural property and recognising its value in the present.⁷⁴⁹

The Rutzolijirisaxik Guidelines are intended as practical guidance for Contracting Parties, governments (including ministries and regional decision-making bodies), international and regional organisations, museums, universities, herbariums, botanical and zoological gardens, databases, registers, gene banks, libraries, archives and information services, private collections, the private sector, and other holdings in their repository or the repository of traditional knowledge and related or complementary information, as well as Indigenous peoples and local communities, for the repatriation of traditional knowledge.⁷⁵⁰

743 World Intellectual Property Organization, <https://www.wipo.int/portal/en/index.html> (checked 4.12.2023).

744 The Rutzolijirisaxik Voluntary Guidelines (2019), p. iv.

745 Heinämäki, L. *The rights of the Sámi in the protection of antiquities*. Ministry of Education and Culture, Publications of the Ministry of Education and Culture, 2021:38.

746 See https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_46/wipo_grtkf_ic_46_inf_8.pdf (checked 13.4.2023).

747 Article 33 of the UN Declaration on the Rights of Indigenous Peoples.

748 Article 11.2.

749 Heinämäki, L. (2021), see footnote 745.

750 The Rutzolijirisaxik Voluntary Guidelines (2019), p. 2, point 4.

The Guidelines are not prescriptive or final.⁷⁵¹ Their purpose is to provide good practices that must be interpreted considering the political, legal, economic, environmental, and cultural differences of each party, government, institution, community, Indigenous people, and local community. They must be applied considering the tasks and collections of each organisation and in the context of the entities concerned, considering the community protocols and other relevant procedures.⁷⁵²

The Guidelines state that for the successful repatriation of traditional knowledge, it is of paramount importance to identify its original holders. To identify holders, the origin of traditional knowledge should be established, including when, where, how, from whom, and in what form it was acquired.⁷⁵³ The processes of the repatriation of traditional knowledge may include the use of Indigenous peoples' oral history and traditions to identify where traditional knowledge may be stored or located, when, where, and from whom that knowledge was collected and in what form, and information about the arrival of knowledge in those places, including dates and initial contacts through personal contact with those places that preserve or use traditional knowledge.⁷⁵⁴

Oral reports and efforts by institutions to make their collections publicly available can help identify the original holders for possible repatriation. Ministries, institutions, and entities holding or storing traditional knowledge should cooperate with the Indigenous peoples and local communities concerned and ensure their full and effective participation in identifying the original holders of traditional knowledge.⁷⁵⁵

To clarify the return process, Indigenous peoples and local communities may wish to define standard procedures or draw up community protocols dealing with the restoration of traditional knowledge.⁷⁵⁶ In general, return agreements should recognise all possible rights of holders of original traditional knowledge, including the right to participation with FPIC in the process of returning that traditional knowledge, and they should aim to develop commonly agreed conditions for return.⁷⁵⁷

The Guidelines also propose that institutions and entities interested in restoring traditional knowledge may adapt standard framework agreements such as memoranda of understanding or cooperation to cover the repatriation of traditional knowledge.⁷⁵⁸ Where

751 Ibid., p. 2, para. 6.

752 Ibid., p. 2, para. 5.

753 Ibid., p. 8, paras 27–28.

754 Ibid., p. 8, para. 29.

755 Ibid., p. 8, paras 30–31.

756 Ibid., p. 9, para. 32.

757 Ibid., p. 9, para. 33.

758 Ibid., p. 9, para. 34.

appropriate, the agreements may include provisions on the use of dispute settlement procedures in the event of repatriation disputes.⁷⁵⁹

From the perspective of Indigenous peoples and local communities, “preparedness to receive” includes the capacity of the Indigenous peoples and local communities concerned to receive, preserve, and restore traditional knowledge, as well as the development of local mechanisms to protect and promote traditional knowledge (including intergenerational transfer) and a conservation strategy.⁷⁶⁰ This may require appropriate infrastructure to store and safeguard returned traditional knowledge.⁷⁶¹

Parties, governments, institutions, and entities interested in or involved in return are encouraged to support Indigenous peoples and local communities to prepare and provide assistance, including through technology transfer where appropriate, to develop their capacity to receive returned traditional knowledge and related or complementary knowledge.⁷⁶²

The guidelines highlight that while digitalisation can be beneficial, there are also challenges in documenting traditional knowledge. Institutions and communities considering digitising collections in support of repatriation should therefore do so with the full and effective participation of Indigenous peoples and local communities and be fully aware of both the challenges and benefits of documenting traditional knowledge, including digitisation and making it publicly available.⁷⁶³ Good return practices may also include making collections and information freely available online and facilitating access to collections that are not in digital form.⁷⁶⁴

The free online use of data must be done in cooperation with Indigenous peoples and local communities, in accordance with the principle of FPIC or acceptance and participation, and, where appropriate, under mutually agreed conditions that take the challenges and benefits of making traditional knowledge freely available into account.⁷⁶⁵ In this context, reference is also made to the World Intellectual Property Organization (WIPO) publication “Documenting Traditional Knowledge: A Toolkit”,⁷⁶⁶ which provides essential information to Indigenous peoples and local communities, including the potential benefits and challenges they can consider when deciding whether to contribute to the documentation of their knowledge.⁷⁶⁷

759 Ibid., p. 9, para. 37.

760 Ibid., p. 9, para. 38.

761 Ibid., p. 10, para. 39.

762 Ibid., p. 10, para. 40.

763 Ibid., p. 10, para. 41.

764 Ibid., p. 10, para. 42.

765 Ibid., p. 10, para. 44.

766 World Intellectual Property Organization (WIPO) (2017) Documenting Traditional Knowledge: A toolkit. WIPO: Geneva, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1049.pdf (checked 13.4.2023).

767 The Rutzolijirisaxik Voluntary Guidelines (2019), pp. 10–11, para. 43.

For the storage, documentation, digitisation, and restoration of traditional knowledge, and for the promotion of the principles of relationship building and reciprocity, traditional knowledge and related knowledge derived from activities/interactions with Indigenous peoples and local communities should, where possible, be shared with Indigenous peoples and local communities in their languages and understandable and culturally appropriate formats to promote intercultural exchanges, knowledge, and technology transfer, synergies, and complementarity.⁷⁶⁸

Both returning and receiving institutions and entities must pay particular attention to secret, sacred, or gender-specific information, as some secret or sacred information may only be visible or accessible to certain persons. It is therefore important that Indigenous peoples and local communities are fully and effectively involved in identifying the original holders of this information. For example, some materials in libraries, archives, and information services are confidential or sensitive, which may require certain restrictions to access for legal, commercial, preservation, security, or community reasons. The appropriate management practices depend on both the material and the communities that the organisations serve. Gender-specific material related to traditional knowledge should be available to culturally appropriate persons in accordance with the instructions of the host communities.⁷⁶⁹

Repatriation of Sámi traditional knowledge

Repatriation of Indigenous cultural objects has gradually become more common worldwide.⁷⁷⁰ A significant part of the Sámi cultural heritage is still located today in museums, universities, and other research institutes around the Nordic countries and Europe.⁷⁷¹ Especially in the 2000s, there has been an increasing discussion among Indigenous peoples, including the Sámi, of the need for cultural heritage to be returned to the communities' own home regions.⁷⁷²

In 1997, Norway became the first Nordic country in which Sámi human remains were repatriated,⁷⁷³ when Oslo University returned the skull of Mons Somby (one of the beheaded leaders behind the Kautokeino Uprising of 1852) to the Sámi Cultural Board (Samisk kulturminneråd) in 1996.⁷⁷⁴ More recently, some active steps have also been taken

⁷⁶⁸ Ibid., p. 11, para. 45.

⁷⁶⁹ Ibid., pp. 12–13, para. 50.

⁷⁷⁰ See Harlin, E. K. "Repatriation as Knowledge Sharing: Returning the Sámi Cultural Heritage", in M. Gabriel and J. Dahl (eds). *Utimum: Past Heritage – Future Partnerships, Discussions on Repatriation in the 21st Century*. IWGIA & the Greenland National Museum & Archives, Copenhagen, 2008.

⁷⁷¹ Harlin, E.-K. *Recalling Ancestral Voices*. Interreg III A project final report, Sámi Museum Siida, Ájtte, Várjjat Sámi Musea, 2008, p. 2.

⁷⁷² Ibid.; Mulk, I.-M. 2002. *Samiska museer och förvaltningsorgan – identitet och kulturarv*. In: *Vem äger kulturarvet? Anföranden vid konferens om återföringsfrågor vid Ájtte*, Svenskt Fjäll- och Samemuseum 6-8 juni 2000. Duoddaris 20 Rapportserie. Svenskt Fjäll- och Samemuseum, Duottar- ja Sámemusea 2002. Jokkmokk, p. 20.

⁷⁷³ Hodeskallen leverert tilbake, Uniforum (3 September 1996), See https://www.uniforum.uio.no/nyheter/1996/uni_forum11-96/hode.html, archived at <https://perma.cc/6Q5Z-W9YQ>; Norway Returns Skulls of Lappish Dead, BBC (15 December 1997), <http://news.bbc.co.uk/2/hi/39626.stm>, archived at <https://perma.cc/HHL6-H2BT> (checked 12.1.2025).

⁷⁷⁴ Hodeskallen leverert tilbake, Uniforum, Ibid. See, <https://maint.loc.gov/law/help/indigenous-heritage/norway.php> (checked 15.4.2025).

in the repatriation of Sámi cultural objects in Sweden. In 2022, the Swedish parliament voted to direct the government to propose rules and a framework for returning Sámi cultural heritage items, including cultural objects and human remains, to the Sámi people.⁷⁷⁵ The National Museums of World Culture (*Världskulturmuseerna*), which holds significant collections, have developed a “Policy for Return of Objects”. This policy allows the return of objects when there are “special ethical considerations”, including items linked to Indigenous peoples like the Sámi. In February 2023, the National Museums of World Culture transferred ownership of 476 objects from the collections of the Museum of Ethnography, as well as one object from the collections of the Museum of World Culture, to Ájtte, the Swedish Mountain and Sámi Museum in Jokkmokk. In May 2025, the National Museums of World Culture decided to transfer an additional 64 objects originating from Sápmi to Ájtte and to transport them to Jokkmokk. These objects belong to the same collections as those transferred in 2023.⁷⁷⁶

In Finland, there has also been active discussion especially among Sámi actors and people working with Sámi issues about the process of repatriation of Sámi culture, which has also been promoted especially by returning objects belonging to Sámi culture to the Sámi Museum Siida. The most extensive repatriation of Sámi artefacts took place in 2021, when the National Museum of Finland returned approximately 2,200 objects to Siida.

Eeva-Kristiina Nylander completed her doctoral dissertation on this topic at the beginning of 2023 (“From repatriation to rematriation: dismantling the attitudes and potentials behind the repatriation of Sámi heritage”).⁷⁷⁷ Her central argument is that repatriation is not an adequate concept when examining the significance of cultural heritage repatriation from a Sámi perspective. She calls the second phase of the restitution process “rematriation”, which emphasises the importance of repatriation and its potential impact on Sámi society. According to Nylander, rematriation is a continuation of the repatriation process within Sámi societies. It returns traditional knowledge and skills to objects and resocialises them in a living society. Key elements of Nylander’s research were *duodji* and archival materials in museum collections, which describe the use, history, and significance of museum objects in the future.⁷⁷⁸

Repatriation of cultural items also brings home the traditional knowledge of the Sámi, so the repatriation of traditional knowledge is also linked to the repatriation of material

⁷⁷⁵ See, <https://routestoreturn.com/sweden/#:~:text=In%20May%202022%2C%20the%20Swedish,to%20the%20indigenous%20S%C3%A1mi%20population> (checked 25.11.2025).

⁷⁷⁶ See, <https://www.varldskulturmuseerna.se/en/collections/return-of-objects-from-the-collections/return-of-sami-objects/#:~:text=The%20National%20Museums%20of%20World%20Culture%20consider%20that%20these%20transfers,S%C3%A1mi%20naturally%20live%20throughout%20Sweden>

(checked 25.11.2025).

⁷⁷⁷ Nylander, E.-K. From repatriation to rematriation: dismantling the attitudes and potentials behind the repatriation of Sámi heritage. Academic dissertation, Giellagas Institute, University of Oulu, 2023.

⁷⁷⁸ Ibid. See preface to the study, <https://www oulu.fi/fi/vaitokset/repatriatiosta-rematriatioon-saamelaisen-kulttuuriperinnon-palautuspolitiikan-haasteet-ja> (checked 10.4.2025).

cultural heritage. The process of repatriation may involve changing the ownership or location of objects, as well as the repatriation of knowledge, the use of museum collections to revive culture, or increasing the community's decision-making power over how their culture is presented in museums.⁷⁷⁹

Nylander's concept of repatriation fits well with the basic premise contained in the Rutzolijirisaxik Guidelines that traditional knowledge should be restored and integrated into the practical life of Indigenous peoples and local communities. Veli-Pekka Lehtola also divides the return process into two parts. In the first, the cultural object is returned to the source community; in the second, the community takes ownership of the object. The purpose of the second part is to make the object accessible and emphasise its importance to the Sámi.⁷⁸⁰ In this process, traditional knowledge related to an object can also play a key role in taking ownership of the object.

The Rutzolijirisaxik Guidelines explicitly address traditional knowledge relevant to the conservation and sustainable use of biodiversity. It therefore especially applies to traditional knowledge contained in practices that support biodiversity and are related to the sustainable use of nature. It is not unequivocal to draw the line between what can be Sámi traditional knowledge referred to in the Rutzolijirisaxik Guidelines that specifically benefits the conservation and sustainable use of biodiversity. The traditional knowledge of the Sámi people can concern a wide variety of cultural expressions, from Sámi art or narrative traditions to literature, which cannot necessarily be seen as directly related to the preservation of biodiversity. However, as in other Indigenous cultures, tangible and intangible cultural heritage are inextricably intertwined in Sámi culture. For example, in Sámi *duodji* handicrafts, the raw materials mainly come from nature, and the handicrafts express the Sámi intangible cultural heritage and traditional knowledge through patterns, symbols, models, shapes, and methods.

At the same time, however, other aspects of Sámi culture, such as reindeer husbandry and the diversity of the natural environment, have a direct impact on what kind of materials, and in what quantities, are available for making traditional handicrafts.⁷⁸¹ The variety of natural offerings has also influenced the type of handicraft tradition that has developed in different regions.⁷⁸² Historically, handicrafts have been utility items that have also been

779 Harlin, E.-K. "Recording Sámi Heritage in European Museums. Creating a Database for the People", in L. Förster, I. Edenheiser, S. Fründt, and H. Hartmann (eds).

Provenienzforschung zu ethnografischen Sammlungen der Kolonialzeit. Positionen in der aktuellen Debatte, Museum der Deutschen Gesellschaft für Sozial- und Kulturanthropologie, 2017, pp. 69–70. <https://edoc.hu-berlin.de/bitstream/handle/18452/19808/06-Harlin.pdf?sequence=1> (checked 10.4.2025).

780 Lehtola, V.-P. The former live in us: Sami histories and Finland. Gaudeamus, Helsinki, 2022, p. 280. See Kosonen, S. Returning the Sámi Collection from the National Museum of Finland to the Sámi Museum Siida: Repatriation from the Perspective of Museum Workers, master's thesis, Faculty of Arts, University of Turku (2023), p. 12.

781 Mattila, T. "The needs of the Sámi for the protection of intellectual property from the perspective of copyright and trademark protection – especially duodji crafts and Sami costume." Publications of the Ministry of Education and Culture, 2018:39, pp. 12–13.

782 Ibid., p. 23; Kulonen, U.-M, Seurujärvi-Kari, I., and Pulkkinen, R. The Saami: A Cultural Encyclopaedia, Finnish Literature Society, 2005, p. 74.

associated with decorative elements.⁷⁸³ For example, they may also be directly related to reindeer husbandry, including reindeer skin or bone. Handicrafts are directly linked to other Sámi cultural heritage and practices that have a direct connection with the preservation of biodiversity.

Thus, Sámi traditional handicrafts or other utility objects can be considered to contain elements that strengthen biodiversity and biocultural diversity, the restoration process of which can be considered to support both Sámi culture and the preservation of biodiversity. *Duodji* crafts also involve intellectual property rights from the perspective of copyright and trademark protection, which should also be identified in connection with the restoration process. The Ministry of Education and Culture of Finland commissioned a study, completed in 2018, on the protection of the intellectual property of *duodji* crafts.⁷⁸⁴ In addition, multilingual training material on the protection of traditional knowledge and traditional cultural expressions of the Sámi people in the current intellectual property rights system has been produced with the support of a broad-based steering group and the Sámi Education Centre.⁷⁸⁵

The main message of the Rutzolijirisaxik Guidelines is to respect the traditional knowledge of Indigenous peoples and local communities, and to establish trusting relationships between the owners/original holders of traditional knowledge and those who store or preserve traditional knowledge. According to the Guidelines, respect for traditional knowledge requires, inter alia, respect for the values, practices, worldviews, customary laws, protocols, rights, and interests of Indigenous peoples and local communities, in accordance with international obligations and national circumstances.

In the Nordic countries, an important part of the national implementation of the Guidelines would be to increase information about the legal protection and repatriation of traditional Sámi knowledge. The Rutzolijirisaxik Guidelines emphasise education regarding the customs, worldview, and priorities of Indigenous peoples. Increasing knowledge of the Rutzolijirisaxik Guidelines themselves would be the first step in identifying, understanding, respecting, and restoring the traditional knowledge of the Sámi people.

The purpose of the Rutzolijirisaxik Guidelines is to provide good practices that are flexibly applied to different situations, depending on the circumstances. An interesting example of good practice that could also be promoted in the Nordic countries is the information-sharing platforms mentioned in the Guidelines. The idea behind establishing such knowledge-sharing platforms is that institutions and communities interested in

783 Mattila, T. "The needs of the Sámi for the protection of intellectual property from the perspective of copyright and trademark protection – especially *duodji* crafts and Sami costume." Publications of the Ministry of Education and Culture, 2018:39 (2018), p. 23.

784 Ibid.

785 Mattila, T. and Jaakonaho, P. "Intellectual property rights concerning the culture of indigenous peoples in the northern region". Sámi Education Centre, 2022, p. 26. <https://www.sogsakk.fi/loader.aspx?id=22b040b0-a304-4d52-81f7-15fef2b48494> (checked 4.2.2024).

the repatriation of traditional knowledge from Indigenous peoples and local communities will establish knowledge exchange platforms for customary laws, including community-led observation programmes aimed at improving the sustainable management of natural resources. For example, the Sámi have traditional knowledge of natural genetic resources, as discussed in connection with the Mo'otz Kuxtal guidelines. On such knowledge-sharing platforms, the traditional knowledge of the Sámi people would serve as a basis for management measures and could also be used in legislative regulations such as restrictions to fishing seasons and catch quotas or the fishing methods mentioned in the Rutzolijirisaxik Guidelines to ensure sustainable use.

On such information-sharing platforms, the idea would be the protection and sustainable use of biodiversity referred to in the Rutzolijirisaxik Guidelines, which would be in line with the protection of Sámi culture. Regarding the repatriation of traditional knowledge, it would also be a question of the rematriation used by Nylander, in which storing traditional knowledge would serve the practical life of communities and the strengthening of identity.

Such knowledge-sharing platforms could encompass the conservation and sustainable use of biodiversity in the Sámi Homeland more broadly. In this respect, the Rutzolijirisaxik Guidelines could in practice complement other voluntary guidelines related to the CBD, such as the Akwé:Kon Guidelines. For example, in Finland, Metsähallitus and the Sámi Parliament already collect and store the Sámi's traditional knowledge as part of the management and use plans for wilderness areas and nature reserves, as well as the natural resource planning of the Sámi Homeland. Knowledge-sharing platforms could contribute to the implementation of the CBD Global Action Plan (2014), which aims to contribute to the implementation of Article 10(c) of the CBD in relation to customary and sustainable use, and to ensure the effective participation of Indigenous peoples and local communities at all levels of implementation.

4.7. Protection of Sámi cultural heritage in UNESCO Cultural Heritage Conventions

The United Nations Educational, Scientific and Cultural Organization UNESCO has drawn up several conventions related to cultural heritage. The oldest is the Hague Humanitarian Convention of 1954, which aims to protect cultural property in the event of armed conflict.⁷⁸⁶ Another convention, which aims to protect cultural heritage in peacetime, is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Its purpose is to establish a system

786 See Kuokkanen, T. and Parkkari, J. Kansainväliset ympäristösopimukset. Edita Publishing Oy, Helsinki, 2004, p. 126.

regulating the export and import of goods to stop the illegal movement and trade of cultural goods.⁷⁸⁷ The cultural property defined in the Convention also applies to Sámi cultural property such as antiquities or the results of archaeological excavations and archaeological finds.⁷⁸⁸ The Convention also regulates the return of cultural objects, that is, repatriation.⁷⁸⁹

Of UNESCO's conventions related to cultural heritage, the best known from the perspective of Indigenous peoples is the UNESCO Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention), drawn up in 1972, which protects fixed sites and thus material cultural heritage, including immovable relics. Since the intangible cultural heritage of Indigenous peoples is directly linked to tangible cultural heritage, as discussed earlier, it is also necessary to briefly address in this chapter the UNESCO Convention for the Protection of the Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) insofar as it is relevant from the perspective of promoting the rights of Indigenous peoples.

It should be mentioned that UNESCO also established the "Memory of the World" Programme in 1992, which set up an international Register of important documentary collections in 1995. The aim of this programme is to help preserve the world's documentary heritage and make it accessible, with due recognition of cultural mores and practicalities.⁷⁹⁰ UNESCO member states may nominate documentary archives to the Memory of the World List. An example of the Sámi cultural heritage is the Archive of the Skolt Sámi village of Suonjel/Suenjel documentary listed for Finland in 2015.⁷⁹¹

The consideration of Indigenous peoples in UNESCO's cultural heritage issues has gradually evolved as Indigenous peoples have gained recognition in different international arenas, including Indigenous rights institutions and human rights monitoring bodies, as part of their legal struggle and recognition of their rights.⁷⁹² Awareness has also increased that strengthening the participation of Indigenous peoples in nature reserves and seeing them as partners rather than burdens or protected objects often leads to better protection of nature and related cultural heritage.⁷⁹³

For example, it should be noted that the UNESCO World Heritage Convention is so old that, at the time of its drafting, Indigenous peoples' issues were only an emerging theme in

787 Forrest, C. *International Law and the Protection of Cultural Heritage*. Routledge, 2011, p. 166. See Peterzens, T. *Kulttuurisineen suoja, Laittoman kulttuurisineen palauttaminen kansainvälisenä ongelmana*. Yliopistollinen väitöskirja, Helsingin yliopisto, Unigrafia Oy, Helsinki, 2018, p.151.

788 Article 1.

789 Article 7.

790 See https://sametinget.no/_fip1/i47deed77-aebb-4ab5-b40c-48fdb764b26/report-workshop-on-sami-intangible-cultural-heritage-nov-2019-1.pdf (checked 10.4.2025).

791 See <https://www.unesco.org/eng/sub.php?menukey=289&mod=view&no=3935&page=8&scode=00000005&listCnt=10&code1=00000004> (checked 10.4.2025).

792 See, Disko, S. and Tugendhat, H. *World Heritage Sites and Indigenous Peoples' Rights*. IWGIA – Document 129, Copenhagen, 2014.

793 Larsen, P. B. *Reconciling indigenous peoples and protected areas: rights, governance and equitable cost and benefit sharing*, IUCN, Gland, February 2006, p. 2. For a general view, see Duncan, T., Villarreal-Rosas, J., Carwardine, J., Garnett, S. T., and Robinson, C. J. "Influence of environmental governance regimes on the capacity of Indigenous Peoples to participate in conservation management." *The International Journal on Protected Areas and Conservation*, 24.2, 2018:87–102.

international organisations. In the Nordic countries, the implementation of UNESCO's older conventions has given little or no consideration to the protection of the cultural heritage of the Sámi people. Of course, the Sámi Parliaments' own activity in these issues is essential, as the Sámi have the right to self-determination over their own cultural heritage. In addition to strengthening the influence of the Sámi Parliaments, sufficient resources are also required to enable the Sámi Parliaments to take more responsibility for issues related to their cultural heritage. Cultural heritage agreements and related national legislation must also always be interpreted and applied in a manner that is in line with the Sámi's fundamental and human rights.

4.7.1. UNESCO World Heritage Convention

The UNESCO World Heritage Convention⁷⁹⁴ was drawn up in 1972. Norway ratified the Convention in 1977, Sweden in 1985,⁷⁹⁵ and Finland in 1987. The agreement was established because of the concern that natural areas, archaeological relics, and cultural values would be destroyed by pollution, tourism, wars, and other factors that degenerate cultural heritage. The Convention's key aim is therefore to protect the common world heritage of all for future generations.⁷⁹⁶ The Convention makes it possible to protect sites of significant natural or cultural value by inscribing them in the World Heritage List. The aim of the World Heritage Convention is to identify and safeguard the values and preservation of the world's key natural and cultural heritage sites for future generations through cooperation between peoples. The Convention obliges the member states to ensure that the cultural and natural heritage on their territory is identified, protected, preserved, presented, and passed on to future generations. According to the Convention, there is a need for institutions with resources, research and analysis, training programmes, and the dissemination of information. In addition, the Convention obliges member states to assist their partners in the protection of valuable cultural and natural heritage sites in other countries.⁷⁹⁷

Member states are obliged to identify World Heritage Sites on their territory (drawing up a list of intentions and identifying special universal value, nominations, protected areas, border modifications, name modifications, etc.).⁷⁹⁸ To be inscribed in the World Heritage

794 See <https://whc.unesco.org/en/convention/> (checked 10.4.2025).

795 See <https://whc.unesco.org/en/statesparties/> (checked 10.4.2025).

796 Nordic Council of Ministers, For a richer future: 13 Conventions on natural and cultural environment. TeamNord 2006:565, Copenhagen, Denmark, p. 30. See Lehtinen, S. Estetiikan oikeudellinen konflikti. Maisema perusoikeutena ja kulttuuriperintönä. Tampereen yliopisto, johtamiskorkeakoulu, pro-gradu -tutkielma, julkisoikeus, 2017, p. 29.

797 Opetus- ja kulttuuriministeriö. Yhteinen perintömme, Vårt gemensamma arv, Kansallinen maailmanperintöstrategia – Nationell världsarvsstrategi 2015–2025, Opetus- ja kulttuuriministeriön julkaisuja – Undervisnings- och kulturministeriets publikationer 2015:14, p. 6., <https://minedu.fi/documents/1410845/4072878/>

Kansallinen+maailmanperintöstrategia%2C+Nationell+v%C3%A4rldarvsstrategi+2015-2025.pdf/47a34767-5a32-449a-aab4-278612f33d24/Kansallinen+maailmanperintöstrategia%2C+Nationell+v%C3%A4rldarvsstrategi+2015-2025.pdf.pdf%EF%BB%BF (checked 1.5.2021).

798 Ibid.

List, the sites must have a special Outstanding Universal Value (OUV).⁷⁹⁹ In other words, the states that have ratified the Convention submit proposals for sites on the World Heritage List. The UNESCO World Heritage Committee is responsible for the implementation of the Convention by approving the sites on the World Heritage List. In relation to the Sámi cultural heritage, the prehistoric Rock Art of Alta in Finnmark, Norway, was listed in 1985.⁸⁰⁰ The Laponian area was nominated by Sweden, and inscribed in the list in 1996.⁸⁰¹ An extension of this site, “The Laponian Area – Tysfjord, the fjord of Hellmobotn and Rago”, has been mentioned for Norway in the Tentative List since 2002.⁸⁰² The Sámi Parliament of Norway has proposed that the “*Várjjat siida*” should also be included in the Tentative List, but the process is ongoing at the national level.⁸⁰³ In Finland, Ukonsaari, a Sámi sacred sites, has been proposed but has still to be accepted by the World Heritage Committee.⁸⁰⁴

Although member states are primarily responsible for the protection of the cultural heritage of their territories, according to UNESCO, World Heritage Sites “belong to all people in the world, regardless of the territory in which they are located”.⁸⁰⁵ However, from the perspective of Indigenous peoples, this approach is problematic because it has often led to some or all of their existence being ignored or marginalised in their traditional territories.⁸⁰⁶

In 1992, the cultural landscape was recognised in the UNESCO World Heritage Convention as a new category in which the landscape is created through the interaction of humans and nature. The World Heritage Convention now divides World Heritage into natural and cultural heritage according to whether it is a purely natural site or, for example, a cultural landscape with built elements. However, Erkki Hollo states that the distinction between natural and cultural sites made in the agreement is not quite clear in terms of its demarcation.⁸⁰⁷ The addition reflected a certain paradigm shift in the perception of cultural heritage protection. A new conservation objective was set to protect living cultures and values as part of the protection of world heritage.⁸⁰⁸

799 Ibid.

800 See <https://whc.unesco.org/en/list/352/> (checked 10.4.2025).

801 See <https://whc.unesco.org/en/list/774> (checked 10.4.2025).

802 See <https://whc.unesco.org/en/tentativelists/1750/> (checked 10.4.2025).

803 See https://www.nasjonalparkstyre.no/uploads/images_varangerhalvoya/Varjjat-Siida-Samediggi-kunnskapsgrunnlag-desember-2023.pdf (checked 10.4.2025).

804 See <https://unesdoc.unesco.org/ark:/48223/pf0000117494> (checked 10.4.2025).

805 UNESCO, World Heritage Centre, <http://whc.unesco.org/en/about/> (checked 10.4.2025).

806 Disko, S. “World Heritage Sites in Indigenous Peoples’ Territories: Ways of Ensuring Respect for Indigenous Cultures, Values and Human Rights”, in D. Offenhäußer et al. (eds.) *World Heritage and Cultural Diversity*, German Commission for UNESCO, Cottbus 2010, p. 169.

807 Hollo, E. *Ympäristönsuojelu- ja luonnonsuojeluoikeus*. Talentum, Helsinki, 2004, p. 420. See Lehtinen, S. *Estetiikan oikeudellinen konflikti. Maisema perusoikeutena ja kulttuuriperintönä*. Tampereen yliopisto, johtamiskorkeakoulu, pro-gradu -tutkielma, julkisoikeus, 2017, p. 30.

808 Dahlström, Å. N. *Negotiating Wilderness in a Cultural Landscape: Predators and Saami Reindeer Herding in the Laponian World Heritage Area*. *Acta Universitatis Upsaliensis* (Uppsala Studies in Cultural Anthropology no. 32, 2003, Uppsala, p. 230, in C. Green (ed). *Managing Laponia: A World Heritage as arena for Sámi ethno-politics in Sweden*, 2009, Acta Universitatis Upsaliensis. Uppsala Studies in Cultural Anthropology 47. 221 pp. Uppsala. ISBN 978-91-554-7656-4), p. 79.

Mechtild Rössler argues that the recognition and protection of cultural landscapes symbolise a new understanding of the fundamental link between the heritage of local communities, humanity, and the natural environment.⁸⁰⁹ This new category, which includes the dichotomy of Western nature and culture and recognises that communities shape their cultural environments, was applied for the first time to the landscape of an Indigenous people. In 1993, Tongariro National Park in New Zealand was classified as a cultural landscape in recognition of the important spiritual significance of the region's mountains for the Maori.⁸¹⁰ The cultural heritage category has strengthened the position of Indigenous peoples in the World Heritage Convention and introduced key elements to the discussion, such as values and traditional knowledge, in terms of the cultural identity of Indigenous peoples.⁸¹¹

The definition of cultural and natural heritage contained in the World Heritage Convention was discussed earlier in this report in the chapter related to the definition of Sámi cultural heritage. The World Heritage Convention thus protects fixed sites, which can be cultural heritage sites such as sacred sites, monuments or buildings, or natural heritage sites such as areas of high biodiversity importance or geological formations of particular importance, or they can fall simultaneously into both categories: cultural and natural heritage sites.⁸¹²

The World Heritage Convention can and has in certain cases served as an important instrument for strengthening the cultural heritage rights of Indigenous peoples, especially in relation to their traditional lands.⁸¹³ World Heritage Sites, which explicitly recognise the cultural importance of the sites for an Indigenous people, can protect the cultural heritage of these peoples from other land uses such as mining or other land-use activities. At its best, inscribing Indigenous peoples' cultural heritage sites in the World Heritage List can promote the participation of Indigenous peoples, the sharing of benefits, or the correction of historical wrongs and violations of rights.⁸¹⁴ When properly implemented, the World Heritage Convention can strengthen the environmental agency and self-determination of Indigenous peoples.⁸¹⁵ Certain UNESCO-approved World Heritage Sites linked to the cultural heritage of an Indigenous people have implemented co-management models that

809 Rössler, M. "World Heritage cultural landscapes: A UNESCO flagship programme 1992–2006." *Landscape Research*, 31 (4), 2006:334.

810 Roué, M. "Saamelaisporonhoitajan kulttuurinen maisema: muistot, aistit ja etiikka", in N. Raasakka and S. Silvonen (eds). *Pohjoiset maisemat, Eurooppalaisen maisemayleissopimuksen toteuttaminen Pohjois-Kalotin kunnissa, Elinkeino- ympäristö- ja liikennekeskus, raportteja 48/2012*, pp. 48–53, 49.

811 Schaaf, T. and Rössler, M. "Sacred Natural Sites, Cultural Landscapes and UNESCO's Action", in B. Verschuuren, R. Wild, J. A. McNeely, and G. Oviedo (eds). *Sacred Natural Sites Conserving Nature & Culture*, Earthscan, 2010, pp.161–170; Cameron, C. and Rössler, M. "World Heritage and Indigenous Peoples: The evolution of an important relationship." 2012, 62 *World Heritage Review*, pp. 44–49.

812 See <http://whc.unesco.org/en/about/> (checked 10.4.2025); see International Working Group on Indigenous Affairs (IWGIA), <http://www.iwgia.org/human-rights/un-mechanisms-and-processes/world-heritage-convention> (checked 10.4.2025).

813 Disko, S. "Indigenous Cultural Heritage in the Implementation of UNESCO's World Heritage Convention: Opportunities, Obstacles and Challenges", in A. Xanthaki et al. (eds). *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*, Brill/Nijhoff, Leiden/Boston, 2017, p. 41.

814 *Ibid.*, pp. 41–42. See e.g. WHC Decisions 39 COM 7 B.5 (2015), para. 5 (Lake Bogoria National Reserve, Kenya); 37 COM 7 B.30 (2013) para. 8b (Talamanca Range-La Amistad Reserves/National Park, Costa Rica/Panama); 35 COM 7 B. 34 (2011), para. 4d (Manu National Park, Peru); 33 COM 7 B.9 (2009), para. 7 (Ngorongoro Conservation Area, Tanzania); 35 COM 12 E (2011), paras 15e, 15f (in general).

815 See Vrdolija, A. F. "Indigenous Peoples, World Heritage, and Human Rights." *International Journal on Cultural Property*, 25 (3), 2018:245–281.

recognise the rights, traditional values, and “protector” status of Indigenous people. Examples of such World Heritage sites are the SGang Gwaay World Heritage Site in British Columbia,⁸¹⁶ Canada, and the Laponia World Heritage Site⁸¹⁷ in Sweden. After years of disagreements and negotiations between state and regional authorities and representatives of Indigenous peoples, co-governance models have been established in the regions that take the traditional land use and cultural heritage, traditional knowledge, and views of Indigenous peoples into account. In both World Heritage Sites, these Indigenous peoples (Haida First Nation and Sámi) play a strong role in the use and management of the sites.⁸¹⁸ Laponia’s example will be returned to at the end of this chapter.

The abovementioned World Heritage Sites are successful examples of how the rights of Indigenous peoples can be strengthened through the World Heritage Convention. Unfortunately, as Stefan Disko points out, this has not happened in numerous other World Heritage Sites in areas inhabited by Indigenous peoples.⁸¹⁹ Many World Heritage Sites have been approved without taking Indigenous peoples into account, even restricting or preventing Indigenous peoples’ traditional land use. In many World Heritage Sites, Indigenous peoples are still seen more as a threat to conservation and the preservation of World Heritage.⁸²⁰ For the World Heritage Convention to truly safeguard and promote the rights of Indigenous peoples, practices related to its implementation must be further developed. One of the key problems for Indigenous peoples is the separation of natural and cultural sites into their own categories. EMRIP has taken a position on this by stating that dividing cultural and natural sites into two categories is contrary to the understanding and worldview of Indigenous peoples, according to which culture cannot be separated from nature and vice versa, and they must be protected holistically.⁸²²

Another problem with the implementation of the Convention from the perspective of Indigenous peoples is the concept of “Outstanding Universal Value” (OUV), mentioned earlier in this chapter, which does not necessarily reflect the views or values of Indigenous peoples at all.⁸²³ However, perhaps the most fundamental shortcoming in terms of the realisation of the rights of Indigenous peoples is that the Convention itself does not contain

816 See UNESCO World Heritage List, <https://whc.unesco.org/en/list/157> (checked 10.4.2025). For an analysis, see Herrmann, T., Heinämäki, L., and Morin, C. “Towards Sámi Self-determination over Their Cultural Heritage: The UNESCO World Heritage Site of Laponia in Northern Sweden”, in A. Xanthaki et al. (eds). (2017), pp. 78–103, 62–81.

817 See UNESCO World Heritage List, <https://whc.unesco.org/en/list/774> (checked 10.4.2025).

818 See Heinämäki, L., Herrmann, T., and Green, C. (2017), pp. 78–103.

819 Disko, S. “Indigenous Cultural Heritage in the Implementation of UNESCO’s World Heritage Convention: Opportunities, Obstacles and Challenges”, in A. Xanthaki et al. (eds). (2017), p. 42.

820 Ibid. See, Viikari, L. “World Heritage Convention, Climate Change and the Arctic”, in T. Koivurova et al. (eds). *Climate Governance in the Arctic*, Springer, 2009, p. 184.

821 Disko (2017), p. 42, see footnote 819.

822 Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), A/HRC/30/53, para. 8 and annex, para. 7.

823 Ibid., para. 55.

mechanisms to safeguard Indigenous peoples' right to self-determination and meaningful participation in matters concerning their cultural heritage.⁸²⁴

Although the World Heritage Committee, which oversees the implementation of the Convention,⁸²⁵ has increasingly acknowledged, for example, in its Operational Guidelines, the existence and importance of Indigenous peoples or local communities in the protection of World Heritage Sites,⁸²⁶ this is not yet often reflected in practice in the implementation of the Convention. As the Code of Conduct is not legally binding, national practices vary considerably on these issues. In addition to EMRIP, the UN Special Rapporteur and the UN Permanent Forum on Indigenous Peoples have called for the World Heritage Convention to be applied considering the provisions of UNDRIP, specifically regarding the right to self-determination and FPIC on Indigenous peoples' cultural heritage issues.⁸²⁷

Finally, in 2015, the World Heritage Committee included specific references to Indigenous peoples in its guidelines, encouraging states parties to the Convention to prepare proposals related to World Heritage Sites with the "widest possible" stakeholder support, including the participation of Indigenous peoples, applying as far as possible the principle of prior consent in matters concerning Indigenous peoples.⁸²⁸ Little by little, states have become more aware of Indigenous peoples' issues and are more prepared to acknowledge their rights, including in the protection of world heritage. According to Stefan Disco and Helen Tugendhat, the human rights approach and recognition of the rights of Indigenous peoples are the only legally meaningful and sustainable and most effective way to implement the World Heritage Convention. Indigenous peoples' rights, including their right to cultural heritage, are binding on states and must be taken into account in matters related to the World Heritage Convention.⁸²⁹ This means that the Convention must be implemented in accordance with the right of Indigenous peoples to self-determination and FPIC.⁸³⁰ The approach of states should be that cultural heritage agreements and related legislation are always understood and implemented as a whole.

824 See Herrmann, T., Heinämäki, L., and Morin, C. "Towards Sámi Self-determination over Their Cultural Heritage: The UNESCO World Heritage Site of Lapland in Northern Sweden", in A. Xanthaki et al. (eds). (2017), pp. 67–68.

825 World Heritage Committee, WHC.

826 World Heritage Committee, Operational Guidelines 1994, WHC/2/Revised, paras 14, 41; Operational Guidelines 2005, WHC. 05/2, paras 12, 64, and 123.

827 United Nations Special Rapporteur on the rights of indigenous peoples, James Anaya (2012), UN Doc.A/67/301, paras 33–42; Letter of the Special Rapporteur, James Anaya, to the World Heritage Committee, 18 November 2013 OTH 10/2013, UN Doc. A/HRC/25/74, 127; UNPFII, Report on the tenth session (2011), UN Doc. E/2011, 42, paras 40–42; UNPFII, Report on the twelfth session (2013), UN Doc. E/2013, 43, para. 23; EMRIP, Report on its fifth session (2011), UN Doc A/HRC/21/52, 7 (Proposal 9); EMRIP Study on cultural heritage, UN Doc A/HRC/30/53, para. 27.

828 WHC, Operational Guidelines 2015, para. 123.

829 See Disko, S. and Tugendhat, H. (eds). World Heritage Sites and Indigenous Peoples' Rights, IWGIA – Document 129, Copenhagen, 2014. See Gilbert, J. "Indigenous Peoples' Heritage and Human Rights", in S. Disko and H. Tugendhat (eds). *ibid.*, 2014, pp. 55–64.

830 See, Heinämäki, L. and Herrmann, T. "Sacred Natural Sites of Arctic Indigenous Peoples as Part of their Cultural Integrity." *Arctic Review on Law and Politics*, 4 (2), 2013:206–231.

4.7.1.1. Example from Sweden: Co-management of the Laponia World Heritage Site

Laponia was recognised as a UNESCO World Heritage Site in 1996 based on both natural and cultural values. Originally, Sweden had already proposed the site to the World Heritage List in the 1980s based on its natural values.⁸³¹ However, the World Heritage Committee did not consider the area to have an “outstanding universal value” (OUV) solely based on natural values. After the category of cultural landscape was approved by the World Heritage Convention in 1992, a broader debate on the participation of Indigenous peoples in the protection of cultural heritage also began within UNESCO. This was influenced by the activity of international forums, Indigenous peoples’ organisations, and nature conservation organisations.⁸³² The inclusion of the Tongariro World Heritage Site as a Maori cultural landscape on the World Heritage List mentioned earlier in this chapter also influenced the Swedish debate. Both the Sámi Parliament and several ministries and authorities supported the idea of including Sámi culture in the new letter of intent. Before this, the Sámi had not been included in the discussion related to Laponia, but the local Sámi gradually became part of the discussions.⁸³³

Laponia is an area that was combined with several national and nature parks. Although the values of the Sámi culture in the area were already recognised when it was established, the area’s management and possibilities of use are dominated by a strong nature conservation perspective.⁸³⁴ The Sámi engaged in traditional livelihoods in the area felt that cultural significance and the status and rights of the Sámi were not taken into account in the area’s administration, which continued the practices dominated by nature reserves.⁸³⁵ Nine different Sámi communities live in the area.⁸³⁶ The Sámi worked actively to gain recognition of their legal position in the World Heritage debate. They wanted to be recognised as an Indigenous people, not just as a stakeholder.⁸³⁷ They also turned to UNESCO for support in international legal instruments and actively explored good practices from around the world regarding co-management.⁸³⁸ The Sámi used a common strategy

831 Dahlström, Å. N. Negotiating Wilderness in a Cultural Landscape: Predators and Saami Reindeer Herding in the Laponian World Heritage Area. *Acta Universitatis Upsaliensis* (Uppsala Studies in Cultural Anthropology no. 32, 2003 Uppsala, p. 230.

832 Heinämäki, L., Herrmann, T., and Green, C. “Towards Sámi Self-determination over Their Cultural Heritage: The UNESCO World Heritage Site of Laponia in Northern Sweden”, in A. Xanthaki et al. (eds). *Indigenous Peoples’ Cultural Heritage, Rights, Debates, Challenges*, Brill/Nijhoff, Leiden, Boston, 2017, pp. 78–103, 94–95. For a general view, see Green, C., *Managing Laponia: A World Heritage as Arena for Sámi Ethno-politics in Sweden*. (2009), *Acta Universitatis Upsaliensis*. Uppsala Studies in Cultural Anthropology 47. 221 pp. Uppsala. ISBN 978-91-554-7656-4), 80ff.

833 Heinämäki, Herrmann, and Green (2017), pp. 94–95, *ibid*.

834 Magga, P. “Mikä tekee kulttuuriympäristöstä saamelaisen?” in P. Magga, and E. Ojanlatva (eds). *Eallit Biras, Elävä ympäristö, saamelainen kulttuuriympäristöohjelma*, Sámi museum, Saamelaisääitiö, 2013, pp.10–13, 12.

835 *Ibid*. See also Mulk, I.-M. and Bayliss-Smith, T. “Rock Art and Sami Sacred Geography in Bádjelánnda, Laponia, Sweden.” *Archaeology and Environment* 22. Kung. Skytteanska Samfundets Handlingar 58. Department of Archaeology and Sami Studies. University of Umeå, Umeå, 2006, pp. 109–117.

836 Bäste, Unna tjerusj, Sirges, Jákkákaska tjiellde, Tuorpon, Luokta-Mavas, and Gällivare skogssameby, Slakka ja Udtja. <https://laponia.nu/en/world-heritage-site/land-of-nine-communities/>. See Heinämäki, Herrmann, and Green (2017), p. 79, see footnote 832.

837 Heinämäki, L., Herrmann, T., and Green, C. “Towards Sámi Self-determination over Their Cultural Heritage: The UNESCO World Heritage Site of Laponia in Northern Sweden”, in A. Xanthaki et al. (eds). *Indigenous Peoples’ Cultural Heritage, Rights, Debates, Challenges*, Brill/Nijhoff, Leiden, Boston, 2017, pp. 78–103, 94–95.

838 *Ibid*.

according to which the Lapland villages would not agree to negotiations unless they gained a majority position in the future administrative organisation and always spoke “with one voice”, expressing their desire to change Swedish nature conservation practices.⁸³⁹

Due to the differing views of the Sámi and the state and regional authorities, cooperation in administering the area could not begin until 2007, when it was launched under the leadership of the County Administrative Board of Norrbotten. This has led to significant and more equal cooperation in the administration of the World Heritage Site in the Sámi area and in the preparation of management and use plans. The starting point for the work, dubbed the Laponia Process, has been the strong locality of the administration and the Sámi majority, as well as the shared value base of decision-making and their unanimity.⁸⁴⁰ Laponia is governed by an organisation called Laponiatjuttjudus based on the Laponia Regulation.⁸⁴¹ The organisation includes Sámi Lapland villages (*samebyar*) and municipalities in Laponia, the County Administrative Board of Norrbotten, and the Swedish Agency for Nature Conservation (*naturvårdsverket*). *Samebyar* have a majority in decision-making bodies (5 out of 9), and the principle of consensus is followed in decision-making between all parties. The chairmanship of the organisation rotates between *samebyar* and municipalities.

Although challenges and differing views have emerged in Laponia’s administration over the years, Laponia’s co-governance model is generally regarded as an example of how Indigenous peoples’ right to self-determination can be promoted in the protection of World Heritage. It also serves as an example of the relentless action of the Sámi to strengthen their legal position, and take responsibility for protecting and managing their own cultural heritage. It has also served as an inspiring example for other Indigenous peoples and states on how decision-making and structures related to the cultural environment can be changed and reformed from both within and at the local level. As Päivi Magga points out regarding the Sámi, the protection of larger cultural landscapes is often more sensible and meaningful than merely point-based protection with regard to cultural heritage sites, for example.⁸⁴² The Laponia region is rich in archaeological cultural heritage and is home to several Sámi sacred sites, as well as other cultural heritage sites, which are also subject to automatic protection under Swedish antiquities legislation.⁸⁴³

839 Heinämäki, Herrmann, and Green (2017), p. 98., see footnote 832.

840 Ibid; see also, Allard, C. Chapter on “Sweden” in Heinämäki et al. (2017), pp. 352–353. See, <https://laponia.nu/ls/mija-birra/laponiatjuttjudus/> (checked 10.4.2025).

841 Laponiaförordning 2011: 840, 1.

842 Magga, P. “Mikä tekee kulttuuriympäristöstä saamelaisen?”, in P. Magga and E. Ojanlatva (eds). Ealli Biras, Elävä ympäristö, saamelainen kulttuuriympäristöohjelma, Sámi museum, Saamelaisääitiö, 2013, p. 12.

843 Cf. Revelin, F., “Sacredness in the Laponian Area Mixed World Heritage Site.” Journal of World Heritage Studies, Special Issue 2018, Sacred Landscapes, ISSN 2189-4728, pp. 34–41.

In recent years, the future of Laponiatjuottjudus has at times seemed uncertain, as both municipal and Sámi actors have considered leaving the organisation because of disagreements concerning its order of operation and division of positions within the board.⁸⁴⁴ In Laponia, arguments for Sámi influence rely both on the positioning of the Sámi as an Indigenous people with international Indigenous rights and on the positioning of Sámi culture, knowledge, and practices as conditions for the site's World Heritage values.⁸⁴⁵ For example, while the arrangement has been criticised for not adequately strengthening Sámi influence and control,⁸⁴⁶ the Laponia management arrangement still stands out, both nationally and internationally, as a novel policy initiative that actively engages with Indigenous and Sámi rights.⁸⁴⁷

The Swedish Agency for Public Management was assigned by the government to analyse the administration of the Laponia Area. Overall, the Agency for Public Management found that this model of public administration worked relatively well, particularly regarding the administration of trails and facilities, and of cultural values. However, as argued by the Agency, Laponiatjuottjudus has not been equally successful in administering the natural values of Laponia. Furthermore, there are also shortcomings in the model of public administration that hamper the effective administration of the World Heritage Site: Laponiatjuottjudus is a small organisation that lacks both economies of scale and broad expertise. According to the Agency's report, the roles and responsibilities of the Swedish Environmental Protection Agency and, to some extent, the County Administrative Board are currently insufficiently clear, which has limited the public authorities' governance, follow-up, and demands in the association's work. However, the Agency concludes that the current model of public administration is the most appropriate for administering the natural and cultural values of the Laponia Area when applied to certain proposed reforms clarifying the tasks of different bodies, as well as enhancing monitoring and increasing funding. The Agency proposes that the government extend the Laponia Ordinance for five years, effective from July 2026, the current expiration date.⁸⁴⁸

4.7.2. UNESCO's Protection of Intangible Cultural Heritage

UNESCO began to pay increasing attention to the protection of the intangible cultural heritage in the 1980s and 1990s, as international conventions and recommendations were not considered to sufficiently cover the protection of the intangible cultural heritage.

⁸⁴⁴ Ibid.

⁸⁴⁵ Reimerson, E. and Flodén, L. "Navigating conservation currents: conditions for Sámi agency in collaborative governance and management models", in D. Cambou and Ø. Ravna (eds). *The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries*. Abingdon; New York: Routledge Routledge Research in Polar Regions, 2024, pp. 116–132, 123.

⁸⁴⁶ See e.g. Reimerson, E. "Sami Space for Agency in the Management of the Laponia World Heritage Site." *21 Local Environment* 808, 2016.

⁸⁴⁷ Reimerson and Flodén (2024), p. 122, see footnote 845.

⁸⁴⁸ The Swedish Agency for Public Management, *A Review of the Management of the Laponia World Heritage Site*, 29.4.2025, <https://www.statskontoret.se/en/publications/> (checked 28.11.2025).

In particular, it was considered that intangible expressions such as traditional customs, musical and dance performances, old rituals, and all intangible expressions strongly linked to tradition or culture in general had received insufficient attention and protection.⁸⁴⁹

In 2003, UNESCO drew up the International Convention for the Protection of the Intangible Cultural Heritage.⁸⁵⁰ The Convention was ratified by Norway in 2007, Sweden in 2011, and Finland in 2013. The aim of the Convention is to promote the protection of the intangible cultural heritage, guarantee respect for the intangible cultural heritage of different communities, groups, and individuals, and raise awareness of the importance of the intangible cultural heritage at local, national, and international level, thereby strengthening mutual understanding and providing international cooperation and assistance.⁸⁵¹

The definition of intangible cultural heritage in the Convention was presented earlier in this report in the chapter on the concept of Sámi cultural heritage. In this context, it should also be noted that, according to the Convention, intangible cultural heritage means, inter alia, practices, manifestations, expressions, knowledge, skills, tools, objects, and associated places that communities, groups, and, in some cases, individuals recognise as part of their cultural heritage.⁸⁵² The National Plan for the Implementation of the Convention of Finland emphasises that intangible cultural heritage refers specifically to living heritage that is present in the life of communities. For example, it can be knowledge, skills, and practices concerning oral tradition (including language as a tool of intangible cultural heritage), performing arts, social life practices, rituals and festivities, or nature and the universe. These can be used to create objects such as tools and handicrafts, various forms of expression such as songs, poems, placenames, and dances, or expressions of sociocultural life, such as games and dishes or cooking methods. Intangible cultural heritage is created through continuous living processes.⁸⁵³

As discussed, a key to defining the cultural heritage of Indigenous peoples is that Indigenous peoples themselves are allowed to define their own cultural heritage. The statement of the Sámi Parliament of Finland regarding the ratification of the Convention on the Intangible Cultural Heritage states that the intangible cultural heritage of the Sámi culture can be considered to be the Sámi tradition of *yoik*, knowledge related to the Sámi handicraft tradition (*duodji* tradition), and the traditional knowledge of the Sámi people related to nature, weather, and natural use, for example. In addition, Sámi art and the knowledge enshrined in the Sámi language are protected by the Convention.⁸⁵⁴

849 Hallituksen esitys eduskunnalle aineettoman kulttuuriperinnön suojelemisesta tehdyn yleissopimuksen hyväksymisestä, HE 101/2012 vp, p. 3. [Government Bill of Finland].

850 See <https://ich.unesco.org/en/convention> (checked 10.4.2025).

851 HE 101/2012 vp, p. 3.

852 Ibid.

853 Museovirasto. Aineeton kulttuuriperintö, elävä perintö, Unescon yleissopimus aineettoman kulttuuriperinnön suojelemisesta. Suunnitelma kansallisesta toimeenpanosta, Museovirasto 2015, p. 5.

854 Saamelaiskäräjien lausunto, [Sámi Parliament Statement] 14.11.2012 Dnro: 559/D.a.4/2012, p. 1.

Although the Convention focuses on intangible cultural heritage, as Leena Marsio points out, the difference between tangible and intangible is “like a line drawn in water”. Tangible cultural heritage works in dialogue with intangible cultural heritage. They are inextricably linked and complementary, forming multiple dimensions of cultural heritage.⁸⁵⁵ The preamble to the Convention on Intangible Cultural Heritage also explicitly states that “intangible cultural heritage has a profound link with tangible and natural heritage”.

As discussed in the section on the concept of cultural heritage, intangible cultural heritage refers to a very broad entity that includes practices, customs, rites, traditions, and skills. Intangible cultural heritage cannot be tied to a single time and appearance, as it is characterised by constant renewal and transformation. Intangible cultural heritage is a very significant part of Sámi culture, which is based on a mobile lifestyle and natural livelihoods.⁸⁵⁶ In accordance with the main objectives of the Convention for the Safeguarding of the Intangible Cultural Heritage, a party must conserve, identify, store and catalogue, study, protect, and support intangible cultural heritage. In addition, the party must provide education and research and promote cooperation between different actors, both nationally and internationally.⁸⁵⁷

The Preamble to the Convention recognises the importance of Indigenous peoples as communities in producing, protecting, maintaining, and recreating intangible cultural heritage, thereby also promoting cultural diversity and human creativity. Communities are mentioned as part of the purpose of the Convention, which must guarantee respect for the intangible cultural heritage of different communities, groups, and individuals.⁸⁵⁸ The National Plan of Finland for the Implementation of the Convention stresses that, according to the Convention, conservation measures, the identification and definition of traditions must always take place in cooperation with and the consent of the communities concerned. The involvement of the communities should be a key objective of all activities under the Convention. It is the responsibility of the state party to assist the communities concerned in enabling them to protect and manage their own intangible cultural heritage through their knowledge, skills, and resources.⁸⁵⁹

For example, as mentioned in relation to Sámi cultural heritage, Sámi archaeological cultural sites are associated with a wealth of intangible cultural heritage such as values and beliefs, spiritual rituals, *yoiks*, traditional knowledge, traditions and customs, stories and placenames, and related stories. Protecting the material cultural heritage such as relics also

855 Marsio, L. “Elävää perintöä vaalimassa – Unescon yleissopimus aineettoman kulttuuriperinnön suojelusta Suomessa”, in A. Kivilaakso et al (eds). *Itsetekemisen perinne, käsityöt elävänä kulttuuriperintönä*. Museovirasto 2017, pp. 11–21, 13.

856 Oikeusministeriön työryhmämietintö [Ministry of Justice] 2009, p. 65.

857 HE 101/2012 vp., p. 5.

858 Preamble.

859 Museovirasto (2015), p. 10.

helps pass on the Sámi intangible cultural heritage to future generations. At the same time, intangible cultural heritage is used to identify material cultural heritage. The Sámi's intangible cultural heritage in relation to cultural sites should be identified and considered in regulations and practices concerning them.

The statement accompanying the ratification of the Convention by the Sámi Parliament of Finland states that intangible cultural heritage is not information stored in museums or archives in the context of Sámi culture, and intangible cultural heritage cannot be protected only by storing documents and other archival and museum material about cultural heritage or by studying Sámi culture. The protection of intangible cultural heritage requires support for the preservation of cultural heritage through funding, administrative solutions, legislative development, and measures to protect cultural heritage from misuse.⁸⁶⁰ The measures taken by Nordic countries to protect the intangible cultural heritage of the Sámi require the transfer of these tasks to the Sámi Parliament and sufficient resources for the activities regarding Sámi culture.

The intangible cultural heritage of the Sámi people can best be protected by strengthening the position of Sámi culture such as traditional livelihoods by taking the traditional knowledge and practices of the Sámi people into account as part of decision-making concerning their cultural environment, and by strengthening the position of the Sámi Parliament and other Sámi institutions in storing, maintaining, preserving, and protecting intangible cultural heritage by allocating adequate financial resources to this activity, for example.

From the perspective of the protection of the intangible cultural heritage of the Sámi people, the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is also noteworthy in this context. The Convention was ratified by Finland, Norway, and Sweden in 2007.⁸⁶¹ Before this, the UNESCO General Conference had adopted the Declaration on Cultural Diversity in 2001.⁸⁶² The Convention is the first pervasive international agreement on culture and cultural policy. It constitutes an international framework for the protection and promotion of cultural diversity. The Convention confirms that states have the right to formulate their own cultural policies and cultural policy measures. It recognises the specific nature of cultural activities, goods, and services as conveyors of cultural identity, values, and meanings.⁸⁶³ It also strengthens international cooperation in the fields of culture and cultural policy, emphasising the link between culture and development.⁸⁶⁴

860 Saamelaiskäräjät, sen aikaisen presidentin Klemetti Näkkäljäjärven puhe eduskunnan sivistysvaliokunnalle Unescon aineettoman kulttuuriperinnön suojelusopimuksen ratifioimisesta, 15.11.2012. [Speech of Sámi Parliament's President Klemetti Näkkäljäjävi concerning the ratification of the UNESCO Convention on Intangible Cultural Heritage.]

861 See <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028017b236> (checked 10.4.2025).

862 Kulttuurista moninaisuutta koskeva yleismaailmallinen julistus (Universal Declaration on Cultural Diversity) hyväksyttiin marraskuun 2. päivänä vuonna 2001.

863 HE 58/2006 vp., p. 5. [Government Bill].

864 Ibid., p. 1.

The Convention does not create subjective enforceable rights for anyone.⁸⁶⁵ However, for Indigenous peoples, the Convention supports the legal protection of their intangible cultural heritage by recognising the importance of traditional knowledge as a source of intangible and material wealth and, in particular, the importance of Indigenous peoples' knowledge system and its positive contribution to sustainable development, and the need to protect and promote it appropriately.⁸⁶⁶ In the Convention, the parties also recognise that the diversity of cultural expressions, including traditional cultural expressions, is an important factor enabling individuals and peoples to express themselves and share their ideas and values with others.⁸⁶⁷ The Convention also recognises the importance of cultural viability for all, including minorities and Indigenous peoples, as manifested in their freedom to create, disseminate, and distribute their traditional cultural expressions and to have access to them to benefit their own development.⁸⁶⁸

The Convention's guiding principles are also significant for the Sámi people, including the principle of respect for human rights and fundamental freedoms⁸⁶⁹ and the principle of equality and respect for all cultures.⁸⁷⁰ It is also important for the Sámi and other Indigenous peoples that the Convention recognises the link between safeguarding cultural diversity and the principle of sustainable development.⁸⁷¹

The chapter on the definition of cultural heritage discussed the Convention's definition of cultural expression and examples of cultural expressions belonging to Sámi culture. The Convention is not limited to the protection of the intangible cultural heritage, but cultural expressions can also be material. As previously discussed, the distinction between the two is often artificial, especially in the case of Indigenous cultural heritage. It is essential that the Convention covers both traditional cultural expressions such as spiritual rituals related to sacred places and Sámi placenames and modern cultural expressions such as Sámi cinema. The Sámi languages play a very central role in the Sámi's cultural expressions. Linguistic rights are thus linked to the protection of the diversity of cultural expressions. An example of cultural policy measures under the Convention is supporting the position of minority languages and allocating sufficient resources to them.⁸⁷²

865 HE 58/2006 vp., p. 7.

866 Preamble.

867 Ibid.

868 Ibid.

869 Article 2.1.

870 Article 2.3.

871 Article 2.6.

872 See Taide, kulttuuri ja moninainen Suomi Kulttuuripolitiikka, maahanmuuttajat ja kulttuurisen moninaisuuden edistäminen -työryhmän loppuraportti, Opetus- ja kulttuuriministeriö, Helsinki, 2021, p. 23.

4.8. Considering Sámi Cultural Landscapes through the Council of Europe Cultural Heritage Conventions

The Council of Europe is an intergovernmental organisation founded in 1949, with a total of 47 states. The Council of Europe emphasises culture and cultural heritage as an essential element of strengthening democracy and human rights in Europe. The Council of Europe has more than 200 conventions, which are multilateral treaties.⁸⁷³ The Council of Europe's Convention on Human Rights and the Framework Convention for the Protection of National Minorities were previously mentioned when discussing the human rights framework. This chapter summarises three cultural heritage Conventions drawn up by the Council of Europe, especially regarding their relevance to the rights of the Sámi people. Newer agreements made in the 2000s are discussed first because they contain new perspectives that of key importance to Indigenous peoples, which must also be considered in the national implementation and development of the older agreements drawn up in the 1980s and 1990s. The Council of Europe's cultural heritage conventions should also be read as a whole, taking the fundamental and human rights of the Sámi into account.

European Landscape Convention

The Committee of Ministers of the Council of Europe adopted the European Landscape Convention (Florence) in Strasbourg on 19 July 2000. The Agreement was opened for signature by the member states in Florence on 20 October 2000 and entered into force on 1 March 2004. In Norway, the Convention entered into force in 2005, in Finland in 2006, and in Sweden in 2011.⁸⁷⁴ The aim of the Convention is to promote the protection, management, and planning of the landscape and to organise European cooperation in matters related to the landscape. The European Landscape Convention covers the European landscape in all its dimensions: the entire territory of the contracting parties; and natural, rural, urban, and peripheral areas.⁸⁷⁵ The Convention contributes to the achievement of the Council of Europe's objectives related to democracy, the promotion of human rights, and the rule of law. By respecting landscape, cultural, and natural heritage values, the Council of Europe seeks to protect the quality of life and wellbeing of Europeans.⁸⁷⁶

In the preamble to the Convention, the member states declare their desire to achieve sustainable development based on a balance between social needs, economic activity, and the environment, drawing attention to the landscape's important role in cultural, ecological,

⁸⁷³ See <https://www.coe.int/en/web/portal/the-council-of-europe-key-facts> (checked 10.4.2025).

⁸⁷⁴ See <https://www.ecolex.org/details/european-landscape-convention-tre-001326/participants/?type=treaty> (checked 10.4.2025).

⁸⁷⁵ See Preamble.

⁸⁷⁶ Déjeant-Pons, M. "Eurooppalainen maisemayleissopimus, 10 vuotta kansainvälistä yhteistyötä", in N. Raasakka and S. Sivonen (eds). *Pohjoiset maisemat. Eurooppalaisen maisemayleissopimuksen toteuttaminen Pohjois-Kalotin kunnissa. Lapin elinkeino-, liikenne- ja ympäristökeskus*, 2012, pp. 14–27, 14; Déjeant-Pons, M. (2006). "The European Landscape Convention." *Landscape Research* 21 (4), 2006:363–368.

environmental, social, and economic terms. The contracting parties also express their awareness that the landscape contributes to the shaping of local culture and is an integral part of Europe's natural and cultural heritage, contributes to people's wellbeing, and strengthens European identity. In the Preamble to the Convention, the member states also state that they will take international instruments into account, including the UNESCO World Heritage Convention and the Convention on Biological Diversity.

The Landscape Convention is the first international agreement committed to sustainable development that clearly includes a cultural dimension.⁸⁷⁷ To implement the Landscape Agreement, the contracting parties undertake to adopt means aimed at the protection, management, and/or planning of the landscape.⁸⁷⁸ At its best, the Convention can support a better understanding and consideration of Sámi cultural landscapes, including worldview, values, languages, and other expressions of cultural heritage in these measures. To a wider extent, Sámi cultural heritage and landscapes are recognised by the implementation of the CBD, especially in Finland and Norway, as discussed earlier in this report.

The first Article of chapter one of the European Landscape Convention states that landscape means an area as perceived by people and the characteristics of which result from natural and/or human activities and interactions. Päivi Magga states that the Sámi perspective fits well within this broad and ambiguous definition. However, she points out that despite the breadth of the official definition of landscape, the general understanding of the cultural environment divides the landscape into the natural landscape and the cultural landscape, according to how strongly human activity has left its mark on it and shaped it.⁸⁸⁰ Giving Finland as an example, she argues that although efforts have been made to change the concept of landscape to take different cultural ways of understanding the natural and cultural landscape into account, a dualistic understanding is strongly visible in administration and influences decision-making processes that focus on regions.⁸⁸¹

Regarding the Landscape Convention, Marie Roué believes that the fact that nature is no longer understood only as a virgin wilderness, and that the landscape is understood as a dimension that changes over the centuries in interaction with humans, is a significant achievement. Despite this, it is not self-evident that the category of cultural landscape as such can be fully applied to the worldview of Indigenous peoples because, whereas Western culture tries to prove the settlement of a region through the physical remains of

⁸⁷⁷ Ibid.

⁸⁷⁸ Article 6e.

⁸⁷⁹ Magga, P. "Mikä tekee kulttuuriympäristöstä saamelaisen?" Johdanto teoksessa P. Magga and E. Ojanlatva (eds). Ealli Biras, Elävä ympäristö, saamelainen kulttuuriympäristöohjelma, Sámi museum, Saamelaisääitiö, 2013, pp. 10–13, 12.

⁸⁸⁰ Ibid.

⁸⁸¹ Ibid.

culture, the Sámi have always tried not to leave traces of their settlement in the landscape. Roué summarises his view by stating that the two philosophies and ethics could hardly be further apart.⁸⁸²

Roué, who has worked with the Cree people in James Bay, Quebec, says she has noticed that this Indigenous people have similarities to the Sámi in their use of nature. She describes how when the Cree family dismantles their summer and winter camps, the entire area is cleaned, with the goal of leaving no trace of the camp in the area. All parts of animals are exploited because old shamanic beliefs are still respected. Animals are not seen as prey but are considered to offer themselves to the hunter as long as they are respected.⁸⁸³

For the implementation of the Landscape Convention in a way that takes better account of the Sámi concept of landscape, the authorities and other experts working with landscape issues related to the Convention should further increase their knowledge and understanding of the Sámi cultural landscape, though some important steps have already been taken, especially in Norway. According to Article 6 of the Convention, the contracting parties undertake to raise awareness in civil society, private organisations, and the public authorities of the landscape's value, importance, and transformation.⁸⁸⁴ Furthermore, the contracting parties undertake to promote the training of experts in landscape assessment and landscape activities, for example.⁸⁸⁵ The Landscape Convention has been criticised for leaving very little room for national implementation⁸⁸⁶ and for being quite idealistic and programmatic.⁸⁸⁷ Yet its advantage is that it has generally strengthened national landscape policy.⁸⁸⁸

Council of Europe Framework Convention on the Value of Cultural Heritage for Society

The Convention on the Value of Cultural Heritage for Society (Faro Convention) was adopted and opened for signature by the member states of the Council of Europe on 27 October 2005 in Faro, Portugal. The Convention was ratified by Norway in 2008 and Finland in 2017. The Convention, known as the Faro Convention, emphasises tangible and intangible cultural heritage as a common and valuable asset. The Convention is considered

882 Roué, M. "Saamelaisporonhoitajan kulttuurinen maisema: muistot, aistit ja etiikka", in N. Raasakka and S. Silvonon (eds). *Pohjoiset maisemat, Eurooppalaisen maisemayleissopimuksen toteuttaminen Pohjois-Kalotin kunnissa, Elinkeino- ympäristö- ja liikennekeskus, raportteja 48/2012*, pp. 48–53, 49.

883 *Ibid.*, p. 50.

884 Article 6a.

885 Article 6b.

886 Heikkilä, T. "Sopimus eurooppalaisista maisemista", in L. Lohtander and L. Saressalo (eds). *Kulttuuriympäristöni – Rakennettu maisema. Suomen Kotiseutuliitto ja Ympäristöministeriö, Helsinki, 2010*, p. 51; Olwig, K. R. "The Practice of Landscape 'Conventions' and the Just Landscape: The Case of the European Landscape Convention", in K. Olwig and D. Mitchell (eds). *Justice, Power and the Political Landscape (1st ed.)*. Routledge, 2009.

887 Hollo, E. J. "Maisemansuojelun nykytilanteesta", *Ympäristöjuridiikka 2/2005*, pp. 3–6, 4.

888 Heikkilä, T. "Eurooppalainen maisemayleissopimus Suomessa", in N. Raasakka and S. Silvonon (eds). *Arvot, asenteet ja maisemanhoito: kohti eurooppalaisen maisemayleissopimuksen tavoitteita. Ympäristöministeriö, raportteja 17/2012*, pp. 7-9. For a general view, see Scott, A. "Beyond the conventional: Meeting the challenges of landscape governance within the European Landscape Convention?" *Journal of Environmental Management*, 92 (10), October 2011:2754–2762.

innovative and different from all previous agreements because it places individuals and communities instead of targets at the centre. It provides a framework for a citizen- and community-centred cultural heritage policy. The main focus is not on the protection of cultural heritage but on who can participate in the definition of cultural heritage, and how cultural heritage can function as a common resource.⁸⁸⁹

The Convention does not create enforceable rights and its entry into force does not require legislative amendments.⁸⁹⁰ However, it has potential to promote the rights of the Sámi in cultural heritage issues, especially through the definition of cultural heritage and community-orientation. The Convention specifically emphasises the responsibility of individuals and communities for cultural heritage, which is an important aspect of the Sámi people's right to self-determination. From the Sámi people's perspective, it is also essential that the parties to the Convention recognise cultural heritage rights as an integral part of the right to participate in cultural life as defined in the UN Universal Declaration of Human Rights 1948 (and confirmed by the ICESCR 1966).⁸⁹¹

As the right to culture has also been recognised as a fundamental right for members of Indigenous peoples in human rights treaties based on the Universal Declaration of Human Rights, including rights related to the use and management of traditional lands, it is particularly important to consider the rights of the Sámi people in national and international measures related to the Framework Convention. In the Convention, the parties also recognise the right of everyone, individually or in association with others, to enjoy and contribute to the enrichment of cultural heritage.⁸⁹² The Convention also explicitly states that related measures may not restrict or undermine human rights and fundamental freedoms guaranteed by international human rights instruments.⁸⁹³ This provision serves as a reminder of the fundamental and human rights of the Sámi and the positive obligations they contain for action.

As already stated in the chapter concerning the concept of cultural heritage, the Faro Convention defines cultural heritage as those resources inherited from the past, irrespective of their owner, whom people consider to reflect their ever-changing values, beliefs, knowledge, and traditions. This includes all parts of the environment built from the interaction of people and places over time. The government proposal concerning the agreement states that the cultural environment refers to an environment whose

889 HE 87/2017 vp., p. 3. [Government Bill]; see Fojut, N. (2009). "The Philosophical, Political and Pragmatic Roots of the Convention", in *Heritage and Beyond*, edited by Council of Europe, pp. 13–21. See also Zagato, L. "The Notion of 'Heritage Community' in the Council of Europe's Faro Convention: Its Impact on the European Legal Framework", in N. Adell, R.F. Bendix, C. Bortolotto, and M. Tauschek (eds). *Between Imagined Communities and Communities of Practice*, Published in 2015 by Universitätsverlag Göttingen as volume 8 in the series "Göttingen Studies in Cultural Property," pp. 141–168.

890 Ibid.

891 Article 1a and preamble.

892 Article 4a.

893 Article 6a.

characteristic is primarily the result of human activity. In practice, it includes cultural landscapes, built cultural environments, ancient relics, and traditional biotopes.⁸⁹⁴ The Sámi cultural environment and its ancient relics are central to this definition. The cultural heritage community of the Convention also applies to the Sámi as an Indigenous people and communities: according to the Convention, a cultural heritage community refers to those people who value certain aspects of cultural heritage that they wish to maintain and pass on to future generations within the framework of public activities.⁸⁹⁵

Saara Tervaniemi (now Alakorva) points out that it is important for the Sámi to participate in defining their cultural environment. Otherwise, the different dimensions of the Sámi cultural environment may go unnoticed, especially as the Sámi have traditionally left few traces in the environment. For example, the importance of a place can only be expressed in the experience of the Sámi. In this case, the Sámi cultural environment cannot be defined without examining the meanings/traces that the environment leaves on people.⁸⁹⁶

In 2009, the Sámi Parliament of Sweden adopted the *Eallinbiras* programme, which focuses on their living environment. The document describes the relationship of the Sámi with nature, which, according to the document, is difficult to capture in words. The environment is sensitive; the Sámi believe that “if they – or someone else – destroys nature, it will also harm their culture”.⁸⁹⁷ The programme presents the objectives for a sustainable and resilient Sámi living environment, and it presents important facts about the Sámi’s view of nature as a soulful living whole, opposed to the Western view.⁸⁹⁸

The key significance of the Faro Convention for the Sámi people is to put Sámi communities and their representatives such as the Sámi Parliament at the centre of defining the cultural heritage of the Sámi and in decision-making concerning cultural heritage. It is important that the Sámi themselves participate in defining the concepts so that the Sámi cultural landscape is recognised and given the value of the cultural environment. The valuation of the landscape thus takes place based on the Sámi’s own cultural understanding. Otherwise, the Sámi cultural landscape may remain unrecognised and excluded from public and private decision-making related to the cultural environment. It is therefore essential to establish the concept of the Sámi cultural environment so that it also includes the aspect of traditional knowledge related to the landscape.

894 HE 87/2017 vp. [Government Bill], p. 3.

895 Article 2. HE 87/2017 vp. [Government Bill]-

896 Tervaniemi, S. “Saamelainen luontosuhde ja saamelaisen kulttuuriympäristön määrittelyn vaikeus”, in P. Magga and E. Ojanlatva, *Ealli biras – Elävä ympäristö: Saamelainen kulttuuriympäristöohjelma*. Inari: Sámi Museum – Saamelaismuseosäätiö (2013), p. 230.

897 *Eallinbiras*. 2009. Sametinget Livsmiljöprogram *Eallinbiras*; p. 5. [updated 3 March 2009; cited 12 January 2016].

Available from: <https://www.sametinget.se/7366> (checked 15.4.2025).

898 See Pinto-Guillaume, E. “The Sámi people’s cultural heritage in Swedish EIAs.” *Impact Assessment and Project Appraisal*, 35 (3), 2017:227–239, 231.

Revised European Convention for the Protection of the Archaeological Heritage (Valletta Convention)

The Council of Europe's Convention for the Protection of the Archaeological Cultural Heritage, drawn up in Valletta, Malta, in 1992, which is directly related to the protection of antiquities, entered into force in Finland in 1995, Norway in 1996, and Sweden in 1996.⁸⁹⁹ The purpose of the Convention is to protect the archaeological cultural heritage as a source of common memory for European countries and as material for historical and scientific research.⁹⁰⁰

Archaeological cultural heritage refers to remains, structures, deposits, and finds preserved on land or in water and created by human activity in prehistoric and historical times. They are primarily studied using archaeological methods. The most common archaeological field surveys are site inspections, inventories of pre-selected areas, and excavations of individual remains.⁹⁰¹

All immovable relics and movable antiquities and other traces of human activity inherited from ancient times are considered part of the archaeological cultural heritage.⁹⁰² Archaeological cultural heritage also includes structures and places that are not included in fixed antiquities, but whose preservation is considered justified due to their historical significance and cultural heritage values. For example, such cultural heritage sites can be proposed for preservation by means of town or land-use planning.⁹⁰³

The basic principle of the Convention is to develop the protection of movable and immovable antiquities and to take archaeological heritage into account in town planning and land-use planning.⁹⁰⁴ A more effective protection is sought by increasing the dissemination and exchange of information, the establishment of control methods, and the prevention of illegal excavations and the illegal movement of archaeological objects.⁹⁰⁵

A key provision of the Convention which is also essential for Sámi relics is Article 6, according to which the contracting parties undertake to provide public financial support for archaeological research from the national, regional, and local authorities in accordance with the competence of the relevant authority.⁹⁰⁶ For example, in Finland, the Sámi

⁸⁹⁹ See, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=143> (checked 15.4.2025).

⁹⁰⁰ Ibid., 1 article. See, an analysis, Trotzig, G. "The new European Convention on the Protection of the Archaeological Heritage." *Antiquity*. 1993: 67 (255), pp. 514-415; O'keefe, P. J. "The European Convention on the Protection of the Archaeological Heritage". *Antiquity*. 1993:67 (255), pp. 406-313.

See also: <https://www.museovirasto.fi/fi/tietoa-meista/kansainvalinen-toiminta/euroopan-neuvosto-ja-kulttuuriperinto> (checked 2.5.2021).

⁹⁰¹ See, <https://www.museovirasto.fi/fi/kulttuuriymparisto/arkeologinen-kulttuuriperinto> (checked 15.4.2025).

⁹⁰² Ibid.

⁹⁰³ Ibid.

⁹⁰⁴ Ulkoasiainministeriö, Muistio No. 75, 24.3.1995, Tarkistettu eurooppalainen yleissopimus arkeologisen perinnön suojelusta; voimaansaattaminen.

[Ministry of Foreign Affairs, Finland, Memo on the Convention].

⁹⁰⁵ Ibid.

⁹⁰⁶ Article 6.

Parliament has on several occasions pointed out that the protection of Sámi antiquities is hindered by the fact that they have not been comprehensively inventoried. The job description of archaeologists at the Sámi Museum Siida does not include carrying out extensive inventories.⁹⁰⁷

According to Article 1 of the Convention, the primary sources of information for the protection of the archaeological heritage are “excavations, surveys and other methods of study of mankind and its environment”. At the time the Convention was drafted, the traditional knowledge of Indigenous peoples was not considered a valid research method. Little by little, however, it has become accepted and recognised as part of the protection of nature and cultural heritage and related research, as illustrated by the more recent international documents discussed earlier in this report. In its statement, the Sámi Parliament of Finland has pointed out that, due to the special characteristics of the Sámi cultural heritage, archaeological methods may not be able to identify Sámi relics, and the Antiquities Act therefore cannot actually protect them.⁹⁰⁸

According to Eija Ojanlatva, archaeologist at the Sámi Museum Siida, non-archaeological methods are nowadays also used in the inventory to some extent. Information about relics is collected using traditional knowledge such as stories, placenames, and other oral traditional information in discussions with Sámi communities.⁹⁰⁹ In this context, knowledge of and familiarisation with the Sámi culture is very important. The objective of Article 9 of the Convention – to raise public awareness of archaeological cultural heritage – should also consider increasing knowledge and understanding of the Sámi cultural heritage and its tangible and intangible aspects. Knowledge of Sámi culture plays a key role in identifying ancient relics as belonging specifically to Sámi culture.

4.8.1. National Implementation Example: Strengthening Sámi Self-determination in the Protection of the Sámi Archaeological Cultural Heritage in Norway

Unlike Finland and Sweden, Norwegian cultural heritage legislation has created space for the special protection of Sámi cultural heritage. In Norway, the Cultural Heritage Act (*Lov om kulturminner*), which came into force in 1978,⁹¹⁰ broadened the previous definition of cultural heritage to include cultural environments. The purpose of the Act is to protect cultural monuments and cultural environments as part of cultural heritage and identity, as well as the environment and resources. Sites built before 1537 are automatically protected, as are Sámi sites built or in use in or before 1917. Structures dating from 1537 to 1649 are

907 Ojanlatva, Eija, archaeologist, Saamelaismuseo Siida, interview 5.3.2021.

908 Ibid.

909 Ibid.

910 Lov om kulturminner, 9.6.1978. The first cultural heritage act is from 1905 (Lov om fredning og bevaring av fortidslevninger), which was replaced in 1978.

automatically protected unless otherwise decided. For Sámi sites, the limit year for automatic protection is 1917.⁹¹¹

The authority may automatically take the necessary measures on protected sites, in which case compensation may be imposed on the owner or holder according to an estimate. In addition to automatic protection, the national authority responsible for cultural monuments (Riksantikvaren) may decide on the protection of buildings or sites of cultural-historical or architectural value and parts thereof. The decision can be appealed to the Ministry of Climate and Environment (*Klimaog miljødepartementet*). The county administration (*fylkeskommune*) may grant an exemption from the protection decision or orders for measures that do not significantly interfere with the protected site. Under certain conditions, a decision to derogate may lead to compensation to the owner or holder. For Sámi Sites, an exception is granted by the Sámi Parliament. The decision may be appealed to the authority that made the decision. If the decision is upheld, the authority that made the decision will forward the appeal to the national administrative authority responsible for matters concerning cultural monuments.⁹¹²

With the 1992 amendment, it is now also possible to protect large contiguous areas which promote and reflect the specific character of a particular cultural landscape. Norway has six legally protected sites classified as cultural environments: Neiden in Finnmark county, Sogndalstrand and Utstein Monastery in Rogaland county, Kongsberg silver mines in Buskerud county, Havråtunet farm in Osterøy in Hordaland county, and Birkelunden Park in Grünerløkka in Oslo.⁹¹³

The special mention of Sámi cultural heritage sites in the Cultural Heritage Act has increased their significance in Norwegian society.⁹¹⁴ In the Cultural Heritage Act, Sámi sites are not defined, but they are determined through written sources, interviews, and research results, which ensures that the development of understanding is considered.⁹¹⁵

In Norway, the Sámi people's right to self-determination over their cultural heritage has been realised because the management of cultural heritage belongs to the Sámi Parliament, which is also the administrative authority for Sámi relics.⁹¹⁶ As Marit Myrvoll et al. point

911 For a general view, see Ween, G. B., "World Heritage and Indigenous rights: Norwegian examples", in S. Ekern, W. Logan, B. Sauge, and A. Sinding-Larsen (eds), *World Heritage Management and Human Rights* (1st ed.), Routledge, 2015.

912 See HE 182/2020 vp, p. 27 [Government Bill, Finland].

913 See Nordli, K. and Mortensen, L. K., "Eurooppalaisen maisemayleissopimuksen täytäntöönpano Norjassa: keskiössä suunnittelun haasteet maiseman arvojen hoidossa", in N. Raasakka and S. Silvonen (eds) (2012) pp. 40–47, 42. <https://core.ac.uk/download/pdf/39947208.pdf#page=52> (checked 15.4.2025).

914 Guttorm, A. "Paikallisilla ihmisillä on monesti se paras tieto omasta ympäristöstään." Näkökulmia saamelaisperäisten muinaisjäännösten eettiseen hallintaan Suomessa, pro-gradu -tutkielma, Oulun yliopisto, Giallagas-instituutti, 2014, p. 21; See Myrvoll, M., Thuestad, A., Myrvoll, E. R. and Holm-Olsen, I. M. "Unpredictable Consequences of Sámi Self-determination: Rethinking the legal protection of Sámi cultural heritage in Norway." *Arctic Review on Law and Politics*, 3 (1), 2012:30–50, 31–32.

915 Anni-Helena Ruotsala's PowerPoint presentation, 10.3.2021. Based on information received from the Sámi Parliament of Norway.

See also <https://www.riksantikvaren.no/en/about-the-directorate-for-cultural-heritage/2020/> (checked 15.4.2025).

916 Ibid.

out, there was already a desire to safeguard the Sámi people's right to self-determination over their own cultural heritage in 1994,⁹¹⁷ when matters related to cultural heritage, including the management of archaeological cultural heritage, were transferred to the Cultural Council under the Sámi Parliament. The Council operated from 1994 to 2001 and consisted of five members and alternates. By 1997, 10 posts had been created for cultural heritage. The Cultural Council managed Sámi relics, registered Sámi antiquities, was responsible for protection, and issued statements, including municipal land-use plans, with powers similar to those of municipalities.⁹¹⁸ The Cultural Council drew up a strategic plan for Sámi cultural heritage that would safeguard both the built cultural environment and the archaeological cultural heritage in a way that strengthened Sámi culture and identity, linking the past to the present and the future.⁹¹⁹ Producing and increasing knowledge about the Sámi cultural heritage was seen as an important tool in administration, public relations, and research.⁹²⁰

Since 2001, powers have been transferred directly to the Sámi Parliament, which has received considerable resources from the Norwegian state and has been able to establish 12 posts to deal with cultural heritage matters. According to information received by Anni-Helena Ruotsala from the Norwegian Sámi Parliament, in addition to deciding on tampering permits for Sámi relics, the Sámi Parliament registers sites, decides what Sámi relics are, adds them to the register of antiquities, and decides how public the information is. The Sámi Parliament is also responsible for monitoring the sites, registering Sámi traditional knowledge related to the sites, and making the Sámi cultural heritage known to a wider audience.⁹²¹ Myrvoll et al. see this as a very important achievement from the perspective of the Sámi people's right to self-determination. The realisation of the Sámi people's right to self-determination in matters concerning their own cultural heritage has strengthened the documentation of Sámi history and cultural heritage, as well as the identity and historical belonging of the Sámi to the region.⁹²²

As stated earlier in this paragraph, the Norwegian Sámi Parliament Act⁹²³ defines the competence of the Sámi Parliament in much the same way as in the Finnish Sámi Parliament Act,⁹²⁴ which has been considered to make it possible to grant by law the Sámi Parliament to have decision-making powers. The management of cultural heritage in

917 Myrvoll et al. (2012), p. 32, see footnote 914.

918 Anni-Helena Ruotsala's PowerPoint presentation, 10.3.2021.

919 Samisk kulturminneråd 1995. Strategisk plan 1995–1997. See Myrvoll et al. (2012), p. 35.

920 Ibid.

921 Anni-Helena Ruotsala's PowerPoint presentation, 10.3.2021.

922 Myrvoll, M., Thuestad, A., Myrvoll, E. R., and Holm-Olsen, I. M. "Unpredictable Consequences of Sámi Self-determination: Rethinking the legal protection of Sámi cultural heritage in Norway." *Arctic Review on Law and Politics*, 3, (1), 2012:30–50.

923 LOV 1987-06-12 nr 56: Lov om Sametinget og andre samiske rettsforhold (sameloven), § 2–1.

924 Laki saamelaiskäräjistä 974/1995, § 5.

Norway has not however been entrusted to the Sámi Parliament by law but by decree, which means that although the Sámi Parliament has decision-making power over Sámi cultural heritage, the Ministry of Climate and the Environment as the responsible ministry and its subordinate cultural heritage authority (Riksantikvaren) steer these activities.⁹²⁵ However, the Sámi Parliament has taken the position that as a self-governing body, it should independently decide on Sámi antiquities.⁹²⁶

The management of the cultural heritage of the Sámi people covers areas defined in a consultation agreement between the Sámi Parliament and the state from 2005.⁹²⁷ The authorities managing the Sámi cultural heritage have offices in Norway's northernmost counties: North Trøndelag, Nordland, Tromsø, and Finnmark. The Sámi Parliament and counties have concluded cooperation agreements on the management of cultural heritage.⁹²⁸

In Finland and Sweden, there have been some developments to accord special recognition for Sámi cultural heritage. In Finland, the most important Act on Cultural Heritage is the Antiquities Act, which protects antiquities in general, including Sámi antiquities. The current Act recognises some minor procedural rights for the Sámi Parliament and Skolt Village Assembly, but the Act has been under revision for several years, with an attempt to include special recognition of Sámi archaeological heritage and an aim to increase the protection of Sámi traditional knowledge and create increased possibilities for these Sámi organisations to have a say in Sámi archaeological cultural heritage.⁹²⁹

The Swedish Sámi Parliament has repeatedly expressed tangible demands and recommendations to strengthen Sámi rights within the context of the country's cultural heritage laws and management. Several laws and regulations in Sweden protect cultural heritage and cultural environments. The Historic Environment Act, *Kulturmiljölagen* (SFS 1988:950) is the central law for the stewardship of cultural heritage.⁹³⁰

Since 1998, the Swedish National Heritage Board has allocated funds for the support of Sámi cultural heritage with four support programmes between 1998 and 2012. These programmes focused exclusively on tangible cultural heritage.⁹³¹ In the spring of 1999, the Swedish Parliament adopted proposition (1997/98:145) "Swedish environmental objectives: a sustainable Sweden" (*Svenska miljömål – ett hållbart Sverige*). Among the national

925 Falch, T., Selle, P., and Strømsne, K. "The Sámi: 25 Years of Indigenous Authority in Norway." *Ethnopolitics*, 15 (1):125–143; Falch, T. and Selle, P. *Sametinget. Institusjonalisering av en ny samepolitikk*, Gyldedal, 2018, pp. 78–79.

926 *Ibid.*

927 *Prosedyrer for konsultasjoner mellom statlige myndigheter og Sametinget*. See Myrvoll, M. et al. "Unpredictable Consequences of Sámi Self-determination: Rethinking the legal protection of Sámi cultural heritage in Norway." *Arctic Review on Law and Politics*, 3, (1), 2012:30–50, 32.

928 *Ibid.*

929 See Heinämäki, L. *Saamelaiusten oikeudet muinaisjäännösten suojelussa*. Opetus- ja kulttuuriministeriö, Opetus- ja kulttuuriministeriön julkaisuja 2021:38.

930 For more detail, see Pinto-Guillaume, E. "The Sámi people's cultural heritage in Swedish EIAs." *Impact Assessment and Project Appraisal*, 35 (3), 2017:227–239.

931 *Ibid.*

environmental objectives, one, no. 10 “Magnificent mountain landscape” (*Storslagetffällmiljö*) means among other things “the stewardship of cultural heritage, in particular the Sámi cultural heritage should be preserved and developed”.⁹³² The Swedish National Heritage Board considered that the 1998–2000 special study on Sámi cultural heritage acted as an expression of this environmental objective.⁹³³ Since the Swedish cultural heritage legislation is heavily weighted towards protecting tangible (physical) ancient monuments, it still often neglects intangible Sámi cultural heritage such as traditional knowledge and oral history. Sweden and Finland should follow Norway in strengthening the protection of Sámi tangible and intangible cultural heritage in their legislation.

4.9. Attempts for Legal Protection of Indigenous, including Sámi People’s, Intangible Cultural Heritage as Intellectual Property via the IPR System

Indigenous peoples’ right to cultural heritage can be violated by many actions and omissions by state or other actors. While from the perspective of human and fundamental rights, the right to maintain one’s own culture is guaranteed, at least in legal documents, an intellectual property (IP) issue – the matter of exclusive rights, meaning the right to determine the conditions for the use of culture or to prohibit others from using it, is much less clear in the field of Indigenous peoples’ rights. For example, a legal conflict related to cultural rights as an IP issue may emerge when a third party uses traditional cultural expressions in a manner that offends the community’s internal rules or experience.⁹³⁴

As discussed in the chapters related to the concept of cultural heritage, traditional cultural expressions can be described as the forms in which traditional culture is expressed – for example, dance, songs, handicrafts, designs, ceremonies, tales, or many other artistic or cultural expressions.⁹³⁵ Tuomas Mattila maintains that unpermitted use can dilute the semantic content of cultural expressions, as well as their appeal and authenticity, that is, intellectual capital, and can thus also prevent the implementation of human and fundamental rights related to culture.⁹³⁶

For example, Pia Nuorgam proposes that the right of the Sámi to their traditional dress as a cultural expression can be seen in terms of at least three different notions of rights, depending on the aim of the protection sought: an intellectual property right (IPR);

932 Ibid., p. 230.

933 Ibid; Selinge I. Bevarandet av det samiska kulturarvet Utvärdering av satsningen på det samiska kulturarvet under åren 1998–2000. Stockholm: Riksantikvarieämbetet.

934 Mattila, T. Saamelaiisten tarpeet henkisen omaisuuden suojaan tekijänoikeussuojan ja tavaramerkkisuojan näkökulmasta -erityisesti duodji-käsitön ja saamenpuvun osalta.

Opetus- ja kulttuuriministeriö (2018), p. 9.

935 Johnsson, Z.D. and Tualima, H.-Y. “Cultural Heritage, Traditional Knowledge and Intellectual Property”, in A. Xanthaki et al. (eds), *Indigenous Peoples’ Cultural Heritage: Rights, Debates, Challenges*, Brill Nijhoff, Leiden 2018, p. 218. See Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions, WIPO/GRTKF/IC/37/INF/7, ORIGINAL: ENGLISH, DATE: 5 JULY 2018.

936 Mattila, T. (2018), p. 9, see footnote 934.

a cultural right; and a right to equality and non-discrimination.⁹³⁷ Mattias Åhren has explored the intimate interrelatedness of Indigenous peoples' right to equality, land rights, and IPRs. He firmly argues that Indigenous and non-indigenous alike must have the same possibility to establish property rights over land, and the same should be true regarding the right to creativity.⁹³⁸

What are IPRs?

IP refers to creations of the mind such as inventions, literary and artistic works, designs, and symbols, names, and images used in commerce.⁹³⁹ Sámi artists, artisans, entrepreneurs, and other traditional practitioners can seek to protect their works against unauthorised usage and exploitation.⁹⁴⁰

Intellectual property rights include copyright, patent rights, rights to a trademark, utility model rights, design copyright, rights to a commercial name, protection of integrated circuits and layout designs, and plant variety rights. Of these, copyrights and patents are the rights most often discussed in the context of Indigenous peoples' rights. IPRs can be viewed as exclusive rights, meaning that one may not act in a certain way without the rightsholder's consent: for example, using a copyright-protected work publicly or using a protected trademark in business activities. The scope of the exclusive right, or the type of activity that requires the rightsholder's permission, is defined in more detail in each IP law. An exclusive right always has a definable owner, or rightsholder, which can be a private person, a community such as an enterprise, union, or another actor. If the rightsholder is unknown, it can in certain cases be represented by a representative. The IPR holder, the owner, or representative of the rightsholder, is always legally definable.⁹⁴³

In this context, it should be noted that IP-related protection does not intend to replace or interfere with the customary laws, protocols, and practices that define how communities develop, transmit, and use traditional knowledge and traditional cultural expressions within their own traditional context. Moreover, applying IPRs to Indigenous peoples' intellectual property does not mean that conventional IP systems should be forced on traditional knowledge and traditional cultural expressions, but that the values and principles embedded

937 Nuorgam, P. "Wider Use of Traditional Sámi Dress in Finland: Discrimination against the Sámi?", in A. Xanthaki et al. (eds). *Indigenous Peoples' Cultural Heritage, Rights, Debates, Challenges*, Brill/Nijhoff, 2018, pp. 229–252, 232.

938 Åhren, M. "Indigenous Creativity and the Public Domain: Terra Nullius Revisited?", in A. Xanthaki et al. (2018), pp. 130–148.

939 Ibid.

940 Mattila, T. and Jaakonaho, P. Meidän: Pohjoisten alueen alkuperäiskansojen kulttuuria koskevat aineettomat oikeudet (Inari: Saamelaisalueen koulutuskeskus, 2023), p. 15.

941 See <https://www.euraxess.fi/finland/information-assistance/intellectual-property-rights#:~:text=Intellectual%20property%20rights%20include%20copyright,designs%2C%20and%20plant%20variety%20rights> (checked 15.4.2025).

942 Åhren, M. "Indigenous Creativity and the Public Domain: Terra Nullius Revisited?", in A. Xanthaki et al. (2018), pp. 130–148,139; For a general view, see Zografos, D. *Intellectual Property and Traditional Cultural Expressions*. Edward Elgar, 2010, pp. 50–103.

943 See eg. Mattila and Jaakonaho (2022), p. 64, see footnote 940.

in IP law, such as that creations of the human mind should be protected against misappropriation, should be adapted and redeployed for a new subject matter and for new subjects.⁹⁴⁵

One of the objectives of intellectual property rights is to stimulate society to engage in creative work, as well as to safeguard the functionality of the market and competitiveness.⁹⁴⁶ These processes create intellectual capital, and success in the facilitation of processes that create intellectual capital (i.e. value creation) is the main idea behind the existence of the entire intellectual property rights systems.⁹⁴⁷

Sámi Creative Work as Traditional Cultural Expression and Its Need for IP Protection

Sámi creative work and art has its roots in traditional Sámi lifestyle and folklore. It has been said that there is no art for art's sake, but beauty and practicality always go hand in hand.⁹⁴⁸ Sámi handicrafts – *duodji* – reflect the nomadic lifestyle, using natural resources. Their aesthetic value has traditionally been subordinated to the practical. *Duodji* includes clothes, tools, hunting equipment, and handmade ornaments. Its shapes, patterns and colours originate from ancient everyday objects, the manufacture of which used to be an essential skill for practically everyone. Traditional *duodji* materials include horn, bone, wood, tin, leather, and fabric. Handicrafts play an important role in the Sámi's culture and livelihood. In recent decades, there has been a shift of emphasis to artistic products, and these products are unique in how they are made and shaped.⁹⁴⁹

The Sámi traditional dress is the most prominent of the national symbols of the Sámi. It bears the history of the Sámi people and is an important part of their identity. The pieces of clothing included in the costume, as well as how it is adorned, indicate from which part of the Homeland the bearer comes and even reveal their clan and marital status. In Norway and Sweden, mainly only the Sámi use Sámi dress; in Finland, imitations of the costumes have also been used as, tourist paraphernalia, for example, obscuring the link to the Sámi national identity.⁹⁵⁰

In relation to the creative works of the Sámi, as explained by the Sámi Parliament of Finland, the visual arts of the Sámi have come a long way from the times of ancient rock paintings thousands of years ago, when the Sámi picture of the world was small enough to

944 Johnsson and Tualima (2018), p. 222, see footnote 935. See Background Brief 7: Customary Law and Traditional Knowledge, available at: http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief7.pdf (checked 1.4.2025).

945 Ibid.

946 See Fisher, W. (2001). "Theories of intellectual property," in S. R. Munzer (ed). *New essays in the legal and political theory of property*, pp. 168–199). Cambridge University Press.

947 Mattila, T. *Saamelaiusten tarpeet henkisen omaisuuden suojaan tekijänoikeussuojan ja tavaramerkkisuojan näkökulmasta –erityisesti duodji-käsityön ja saamenpuvun osalta*. Opetus- ja kulttuuriministeriön julkaisuja 2018 (2018), p. 31.

948 Sámediggi, the Sámi in Finland, 2016, p. 8 <https://www.samediggi.fi/wp-content/uploads/2016/07/saamelaisetenglanti.pdf> (checked 1.4.2025).

949 Ibid., pp. 8–9.

950 Ibid, p. 9.

be preserved on a piece of reindeer skin stretched over a shamanic drum. Today's artists combine their roots with influences from the modern "Western" world, as well as modern and traditional elements.⁹⁵¹ Sámi music is best known for *yoiking*, or *luohti*, which is the traditional North Sámi form of song. Typical features include original use of tones and unrecognisable words, richness of rhythmic, improvisation, a cappella, and a strong link to the Sámi culture. Other traditional forms of Sámi music include the *livđe* of the Inari Sámi and the *leu'dd* of the Skolt Sámi, both of which are at risk of being extinguished completely. The drum, or *goavddis*, was originally used by shamans in ritual contexts. In the 1960s, the music of the Sámi started to reflect modern trends, and today one can hear anything from rock, pop, rap, heavy, techno, ethno, and dance to hymns and children's songs sung in the Sámi language.⁹⁵²

Only the Skolt Sámi are known for their dance traditions. Earlier, the dance was involved in the ritual burial of bears, for example. This tradition broke with the introduction of Christianity. The dance of the Skolt Sámi is the quadrille, which is of Russian origin. The tradition is kept alive by dance groups in the regions of Seveittijärvi and Nellim. Sámi creative expressions also include more modern forms such as literature and films.⁹⁵³

As briefly referred to earlier, the main general concern of Sámi people related to IP is the commercial utilisation of their cultural expressions as heritage by third parties without appropriate connection, respect, and benefit-sharing with Sámi. There are many direct and indirect, as well as interrelated, problems related to the misappropriation of the Sámi cultural heritage: not only does it often cause economic harm to traditional cultural practitioners and cultural erosion, but it also accelerates the loss of traditional knowledge, skills and cultural expressions, impairing the actualisation of the rights of the Sámi to their self-determination and culture.⁹⁵⁴

The exploitative use of cultural expressions often concerns the whole community and can damage its members' experience of how these cultural elements still belong to it. A threat resulting from this offence is that communal meanings related to traditional culture can be diluted due to continuous unpermitted use, which can degrade the cultural significance of the expression. This will especially harm the expressiveness of traditional cultural expression in question (i.e. the object's ability to express culture in its traditional form), causing a decline of the community's incentive to maintain their cultural heritage, as the expressive capacity of traditional cultural expressions erodes. For example, the unpermitted

951 Ibid., p. 9.

952 Ibid., p. 10.

953 Ibid., p. 10–11.

954 Mattila, T. and Jaakonaho, P. Meidän pohjoisen alueen alkuperäiskansojen kulttuuria koskevat aineettomat oikeudet. Saamelaisalueen koulutuskeskus, 2023, p. 14;

Deacon, H. J. "Ethics, Intellectual Property and Commercialization of Cultural Heritage." *Pravovedenie* 64 (1), 2020:93–111.

use of traditional Sámi clothing and the production of designs that violate cultural norms can alter the clothing's traditional semantic content and its ability to communicate important cultural information in the long run, which from the community's perspective is part of the traditional clothing's purpose.⁹⁵⁵

The violation of the Sámi people's intangible cultural heritage also poses direct economic risks that weaken traditional skills and the possibility to engage in intangible traditional work. For example, regarding Sámi *duodji* handicrafts, it has been observed that in the 1970s, craftsmanship underwent a great transformation, where the use of the wrong types of materials and saturation of the market with product copies were more extensively reflected in a general identity crisis, the core of which comprised the question of what it means to be Sámi.⁹⁵⁶

Klemetti Näkkäljärvi has noted that there are Sámi traditions and heritage in the handicrafts that are highly threatened, the protection of which will require special measures.⁹⁵⁷ For example, the Sámi's collective right to traditional handicrafts as a cultural expression is violated by the sale of copies of traditional Sámi clothing, an important part of the Sámi handicraft tradition, made from cheap materials, and their use for tourism-related programme services or renting copies of traditional clothing to tourists, for example.⁹⁵⁸ This has a negative impact on how highly traditional Sámi clothing is valued, as well as on the image the Sámi have of themselves.⁹⁵⁹

The unpermitted use of traditional Sámi clothing as part of business activities exploits the intellectual capital related to the appeal and authenticity of the tradition, which has accumulated throughout the generations with the process of collective cultural reproduction. As a livelihood, Sámi *duodji* handicrafts are threatened by cheaper non-Sámi handicrafts with which *duodji* must compete, and which may falsely suggest Sámi origin.⁹⁶⁰ The economic effects are clear: the Sámi do not benefit from the sale of the products and services that use Sámi dress in unwanted and unauthorised ways.⁹⁶¹ As Pia Nuorgam maintains, however, the cultural impacts that follow such exploitation are perhaps of greater concern. Sámi view this unwanted use of their traditional dress by outsiders as offensive and see it as having a negative impact on Sámi culture.⁹⁶² Sámi Committees,

955 Mattila, T., Saamelaisten tarpeet henkisen omaisuuden suojaan tekijänoikeussuojan ja tavaramerkkisuojan näkökulmasta -erityisesti duodji-käsityön ja saamenpuvun osalta. Opetus- ja kulttuuriministeriön julkaisuja 2018, p. 28.

956 Pennanen, J. and Näkkäljärvi, K. Siiddastallan – From Lapp Communities to Modern Sámi Life. Siida Sámi Museum, 2002, p. 166. See Mattila (2018), p. 28.

957 Näkkäljärvi, K. Saamelainen aineeton kulttuuriperintö ja sen suojelu, lecture, University of Lapland, 5 October 2016, cited by Mattila (2018), p. 28.

958 Ibid.

959 Ibid.

960 Sámediggi, the Sámi Parliament: Statement of the Sámi Parliament on the use of traditional Sámi clothing, 1 March 2010 p. 9; See Mattila (2018), p. 29.

961 Nuorgam, P. "Wider Use of Traditional Sámi Dress in Finland: Discrimination against the Sámi?", in A. Xanthaki et al. (eds). (2018), 229–252, 230. See Guttorm, G. "Duodji – Sami handicrafts – who owns the knowledge and the work" in J. T. Solbakk (ed.). Traditional Knowledge and Copyright. Samikopiija Karasjok 2007, pp. 65–66.

962 Nuorgam (2018), p. 230, *ibid.*

researchers, and organisations have highlighted the negative effects these stereotypes have on the Sámi's identity and self-image in many places, both collectively and individually.⁹⁶³

In the abovementioned context, several researchers have spoken of “cultural appropriation”, which means that one takes from a culture other than your own intellectual property, cultural expression, or artefacts, history, and ways of knowledge.⁹⁶⁴ Cultural appropriation occurs in the cases of power imbalance, discrimination, and the experience of historical and continuing dispossession that Indigenous peoples continue to experience.⁹⁶⁵

Possibilities and Challenges of Applying IPRs in Sámi Cultural Expressions

The lack of appropriate legal protection specifically aimed at preventing misappropriation of Indigenous, including Sámi, cultural heritage has led these communities to demand IP protection for traditional forms of creativity and innovation.⁹⁶⁶ Nuorgam maintains that the Sámi have discussed the need to protect their traditional dress, or *gákti*, against misuse by outsiders since the 1930s.⁹⁶⁷ The first discussion of the need for a trademark was in the 1950s, but it did not lead to its establishment at that time.⁹⁶⁸ In the 1980s, the Sámi agreed on the establishment of a certification trademark, Sámi Duodji, but according to Nuorgam, this has not met the expectations set for it.⁹⁶⁹ The Sámi Duodji trademark was established by the Saami Council, but, according to Nuorgam, it has poorly managed it over the years. In 2015–2016, there were attempts to improve the situation, and the Council established a Sámi Duodji trademark revitalisation project to assess its functioning and went through a round of negotiations with handicraft organisations in four countries to study the current needs.⁹⁷⁰

Tuomas Mattila, who has conducted a study of Sámi intellectual property rights for the Finnish Ministry of Education and Culture,⁹⁷¹ has been considering the possibilities of the Sámi Parliament to register trademarks for certain designs of traditional Sámi clothing and their features, and whether this legal practice could protect the interests of the Sámi in this respect. He maintains that this would mean that when providing tourist services traditional

63 Ibid; Aikio, M. and Aikio, P. “Saamelaiskulttuuri ja matkailu”, in R. Huopalainen (ed). Selvitytytät, Näyttely pohjoisen ihmisen sitkeydestä. Lapin maakuntamuseon julkaisuja 7, Jyväskylä 1993, pp. 95–96. Saamelaiskomitean mietintö 1976:46, p. 81.

964 Ziff, B. and Rao Pratima, V. (eds). “Introduction to Cultural appropriation: A Framework for Analysis” in *Borrowed Power: Essays on Cultural Appropriation*. Rutgers University Press, 1997, p. 2. See, Nuorgam (2018), p. 232.

965 Rileya, A. R. and Carpenter, K. A. “Owning Red: A Theory of Indian (Cultural) Appropriation.”, 94 *Tex. L. Rev.* 859. 2016, pp. 1–2; Tsosie, R., “Reclaiming Native Stories: An Essay on Cultural Appropriation and Cultural Rights.” 34 *Arizona State Law Journal* 299, 2002, p. 311. See Nuorgam (2018), p. 232.

966 Zografos Johnson D. and Tualima H. Y. “Cultural Heritage, Traditional Knowledge and Intellectual Property”, in A. Xanthaki et al. (eds). *Indigenous Peoples' Cultural Heritage: Rights, Debates, Challenges*, Brill Nijhoff, Leiden 2018, p. 219.

967 Nuorgam (2018), p. 231, see footnote 961.

968 Lehtola, V.-P. *Saamelaisten parlamentti, Suomen saamelaisvaltuuskunta 1973-1995 ja Saamelaiskäräjät 1996-2003*. Saamelaiskäräjät, 2005.

969 Nuorgam (2018), p. 231, see footnote 961.

970 Ibid., footnote 11.

971 Mattila, T. *Saamelaisten tarpeet henkisen omaisuuden suojaan tekijänoikeussuojan ja tavaramerkkisuojan näkökulmasta -erityisesti duodji-käsityön ja saamenpuvun osalta*, Opetus- ja kulttuuriministeriön julkaisuja (2018).

Sámi clothing would in itself act as a trademark that would indicate that the service was provided by the Sámi, that is, to the origin of the goods and services.⁹⁷² Mattila avers that in the light of the trademark legislation, traditional Sámi clothing should meet with the general requirements for a trademark. For example, there is a requirement to be distinctive, but if the requirements are met, the various designs of the clothing and their parts could be registered as trademarks, and an attempt could be made to prevent their unauthorised use. Similarly, individual *duodji* designs and patterns could be examined in the light of the trademark legislation. These patterns, forms, and designs are external symbols that reference the product's origin, and a trademark could therefore be applied to the protection of the handicrafts and to prevent the production and use of unpermitted copies.⁹⁷³

However, since one of the trademark's main goals is to promote sales of handicrafts, it is unsuitable for protecting heritage that has more cultural than commercial significance, as Sámi dress embodies Sámi culture's core values and codes and is an important part of the people's cultural heritage, including traditional knowledge.⁹⁷⁴ Hence, a trademark comes with limitations, as it only protects commercial use and does not consider the whole cultural and social context related to traditional Sámi clothing. A trademark would not prevent the offensive non-commercial use of the clothing.⁹⁷⁵

Furthermore, the registration of a trademark in itself is still insufficient to prevent unauthorised use. This would also require market oversight and management of the trademark portfolio, and the registration of dozens (or hundreds) of trademarks for the various patterns and shapes of the handicrafts is not necessarily appropriate for numerous reasons such as cost-efficiency. An application for trademarks is only a first step in acquiring protection, but questions such as who would own the trademark, who would control and manage the trademark, and who would benefit from any compensation paid for its use would need to be resolved beforehand, as would the question of how disputes within the Sámi community on the use of the trademark would be resolved. Yet the trademark system enables the use of communal trademarks, in which case the right to the use the trademark could be licensed to every individual Sámi person. Moreover, as Mattila maintains, it would require a thorough and preliminary examination within the communities of how such protection would suit the existing needs, and what its social impacts would be.⁹⁷⁶

As already mentioned in the context of defining the concept of intellectual property rights as cultural heritage, there are problems with protecting Indigenous peoples' intellectual property through the framework of intellectual property rights (IPR). This is because IPRs

972 Mattila (2018), *Ibid.*, p. 40.

973 *Ibid.*, p. 41.

974 Nuorgam (2018), p. 232, see footnote 961.

975 Mattila (2018), p. 41, see footnote 971.

976 *Ibid.*

do not traditionally recognise the needs and special characteristics that the protection of Indigenous peoples' cultural heritage requires. While in the legal framework, IP has been seen as either private property or the common heritage that society as a whole has the right to freely use (public domain), collectivity is also a significant aspect when it comes to traditional culture, especially in the case of Indigenous peoples. Intangible cultural heritage can be seen both as the property of each member of the traditional community and the community's collective property. The collective aspect inherently embedded in Indigenous peoples' cultural heritage, which is developing as a long creative process over generations, is not a good fit with the intellectual property system, with its dichotomy of exclusive ownership and public domain.⁹⁷⁷

To a large extent, copyrights are related to artistic expressions such as music, painting, and clothing. However, it is noteworthy that only new or original creations generally enjoy copyright protection.⁹⁷⁸ For example, Sámi craftsmen, *yoik*-performers, visual artists, and others who create traditional cultural expressions automatically receive copyright protection for their work, as long as the works meet the requirement of originality required by copyright.⁹⁷⁹

If a work is copyrightable, the protection normally expires after several years, defined by domestic law following the death of the work's creator.⁹⁸⁰ Like copyrights, patents provide the inventor with the sole right to utilise their invention as they wish.⁹⁸¹ Only new or novel inventions, that is, sufficiently dissimilar from already existing inventions, can be protected via patent.⁹⁸² Patent protection is also time-limited. It is normally valid for 20 years following the filing for registration, with the possibility to file for subsequent protection for an additional 20-year period.⁹⁸³ Both copyright and patent protection only extend to works that can be attributed to an individual creator or to an identifiable number of creators.⁹⁸⁴

In analysing the challenges to applying the IPR framework to the protection of Indigenous peoples' intellectual property, Mattias Åhren pinpoints three main reasons. The first is that Indigenous peoples' creativity tends to be less marked by the individual's original ideas than it is by a slow reworking of already existing material: a "new" work usually contains substantial elements of material that already exists within that particular Indigenous

⁹⁷⁷ Mattila (2018), p. 10, see footnote 971.

⁹⁷⁸ Åhren (2018), p. 139; Carpenter, M. M. "Intellectual Property Law and Indigenous Peoples: Adapting Copyright Law to the Needs of a Global Community." *Yale Human Rights Law & Development Law Journal*, 7 (69), 2004.

⁹⁷⁹ Mattila and Jaakonaho (2023), p. 74, see footnote 954.

⁹⁸⁰ Åhren, M. (2018). "Indigenous Creativity and the Public Domain: Terra Nullius Revisited?", in A. Xanthaki et al. (2018), pp.130–148; Sterling, A. *World Copyright Law*, Sweet & Maxwell, 2003, pp. 193–194.

⁹⁸¹ *Ibid.*, p. 140; Letterman, G. G. *Basics of International Property Law*. Transnational Publishers, 2001, p. 166.

⁹⁸² *Ibid.*; Letterman (2001), pp. 5,9,165, *ibid.*

⁹⁸³ *Ibid.*; Dutfield, G. and Suthersanen, U. *Global Intellectual Property Law*. Edward Elgar, 2008, pp. 112–113, 128.

⁹⁸⁴ *Ibid.*; Lea, D. *Property Rights, Indigenous Peoples and the Developing World: Issues From Aboriginal Entitlement to Intellectual Ownership Rights*. Martinus Nijhoff Publishers, 2008, p. 263.

peoples' culture, necessarily resulting in an apparent risk that the work is not considered sufficiently original or novel for IP purposes. It will not therefore be eligible for IP protection.⁹⁸⁵

Second, collective dimension of Indigenous peoples' creativity may often make it difficult to attribute particular elements of Indigenous peoples' cultures to one or more identifiable individuals. This may lead to the conclusion that the work's author is unknown for IP purposes and thus not protectable as IP.⁹⁸⁶ Third, the mismatch between conventional IPRs and Indigenous peoples' creativity caused by their individualistic and collective nature means most IPRs are time-limited, which renders many Indigenous peoples ineligible for IP protection. The slow evolution of Indigenous peoples' cultural heritage, where small bricks are added to the existing bulk of creativity generally results in major parts of Indigenous creativity being created "a long time ago" when measured against an IP timescale, again resulting in it being viewed as in the public domain. The IP system therefore leaves the underlying creative mass of Indigenous peoples' cultural heritage unprotected.⁹⁸⁷ As Åhren summarises this, the conclusion is that Indigenous peoples' creativity is largely ineligible for IP protection because it belongs to the public domain. Irrespective of cultural elements being clearly attributed to a particular Indigenous people, such elements should therefore be regarded as free for everyone's use, including when Indigenous people oppose this.⁹⁸⁸

Despite the abovementioned challenges, Mattila has considered whether copyrights could protect Sámi handicrafts. He maintains that from the perspective of copyright, it should first be considered whether the various designs of traditional Sámi clothing and *duodji* handicrafts can be considered works of art, and whether they are independent and original. If this is the case, they are in the scope of copyright as artistic handicrafts products, for example.⁹⁸⁹ Although the originality threshold may be considered somewhat high, Mattila notes that in this respect, it should be taken into account that the practical function of the *duodji* handicrafts has declined in recent decades, while their aesthetic values have been increased, and this may underline their nature as predominantly art.⁹⁹⁰

Mattila reminds us that the premise for all proposed measures for protecting cultural expressions of the Sámi from expropriation should be that the Sámi's collective stance and

985 Åhren (2018), p. 143, see footnote 980; Dutfield (2008), p. 104, see footnote 983.

986 Ibid. See also Gottier, T. and Panizzon, M. "A New Generation of IPR for the Protection of Traditional Knowledge in PGR for Food, Agricultural, Pharmaceutical Uses", in S. Biber-Klemm and T. Cottier (eds). *Rights to Plant Genetic Resources and Traditional Knowledge: Basic Issues and Perspectives*. CABI, 2006, pp. 216–218.

987 Ibid. See, also Von Lewinski, S. *International Copyright Law and Policy* (Oxford University Press, 2008), p. 531.

988 Ibid.

989 Mattila T. *Saamelaiten tarpeet henkisen omaisuuden suojaan tekijänoikeussuojan ja tavaramerkkisuojan näkökulmasta -erityisesti duodji-käsityön ja saamenpuvun osalta*. Opetus- ja kulttuuriministeriön julkaisuja (2018), pp. 38–39.

990 Ibid., p. 39.

opinion is a basis for any proposals.⁹⁹¹ According to Mattila, discourse should continue within the Sámi Parliament so the Sámi community can answer the following questions: (1) Which cultural elements from the Sámi community's perspective should be protected, and what exactly are those traditional cultural expressions or their parts that must be protected? According to him, in this context, a common stance could be formed on (2) what type of activity or use the traditional cultural expressions must be protected against; and (3) what the content and scope of the protection should be. The content of the protection defines whether an exclusive right to forbid the use of traditional cultural expressions and their imitations is required, or whether an ethical approach be implemented where those parties that meet all the prerequisites could be given permission to use the traditional cultural expressions. (4) Another point that needs to be considered is who can grant or license others the right to use Sámi cultural expressions, and whether issuing such a permit involves the immediate or extended family, local community, the Sámi Parliament, or the entire Nordic Sámi community in addition to individuals. Finally, (5) it should be specified who the possible beneficiary is in cases where someone benefits, that is, who should benefit from an outsider and/or a non-Sámi person using a traditional cultural expression.⁹⁹²

4.9.1. WIPO and Indigenous Peoples' Traditional Knowledge as IPR

The concept of traditional knowledge, more thoroughly discussed earlier in this report, can be generally summarised as referring to a living body of knowledge that is developed, sustained, and passed on from generation to generation within a community, often constituting part of its cultural and spiritual identity.⁹⁹³ For example, traditional knowledge concerns intellectual property in agricultural and medicinal contexts or knowledge associated with genetic resources,⁹⁹⁴ as discussed in the chapter on the CBD Nagoya Protocol, which protects Indigenous peoples' traditional knowledge in relation to genetic resources. However, similarly to the traditional cultural expressions discussed in the previous chapter, under the conventional IPR system, traditional knowledge is generally regarded as being in the public domain and therefore ineligible for IP protection.⁹⁹⁵

The World Intellectual Property Organization (WIPO) has actively promoted *sui generis* protection for Indigenous peoples' and local communities' intellectual property, while recognising that adapting existing IPRs may not be considered sufficient to cater for the holistic and unique character of traditional knowledge and traditional cultural expressions. *Sui generis* systems are specialised measures or laws aimed exclusively at addressing the

⁹⁹¹ Ibid., p. 42.

⁹⁹² Ibid., pp. 42–43.

⁹⁹³ Johnsson, D. Z. and Tualima, H.-Y. "Cultural Heritage, Traditional Knowledge and Intellectual Property", in A. Xanthaki et al. (2018), pp. 218–228, 218.

⁹⁹⁴ Ibid.

⁹⁹⁵ Ibid., p. 219.

characteristics of a specific subject matter. Some countries and regions have chosen this approach and have developed their own systems for protecting their traditional knowledge and traditional cultural expressions.⁹⁹⁶

In 1998, the WIPO established a work programme related to the traditional knowledge, traditional cultural expressions, genetic resources, and intellectual property of Indigenous peoples, starting with extensive fact-finding missions in 1998 and 1999⁹⁹⁷ with a series of consultations, workshops, and roundtables to ascertain the needs and expectations of Indigenous peoples, local communities, governments, and representatives of industry and civil society around the world.⁹⁹⁸ In 2000, WIPO members established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). In 2009, members agreed to develop an “international legal instrument” (or instruments) that would give traditional knowledge, genetic resources, and traditional cultural expressions (folklore) effective protection. According to WIPO, such an instrument could range from a recommendation to WIPO members to a formal treaty that would bind countries choosing to ratify it.⁹⁹⁹ Under the IGC’s auspices, the WIPO has conducted numerous studies and developed other resources (such as glossaries, surveys of national experiences, a legal database, and training programmes), and supported the wide participation of Indigenous peoples and local communities in their work.¹⁰⁰⁰

It should be noted that the work in WIPO has been greatly influenced by the field of human rights, especially when Indigenous peoples’ rights and issues began to demand greater international attention. In 2000, the UN Permanent Forum on Indigenous Issues was established as an advisory body to the UN Economic and Social Council. In 2007, UNDRIP was adopted by the UN General Assembly, making longstanding claims by Indigenous Peoples for control over their cultural property and IP more pressing.¹⁰⁰¹

In July 2022, WIPO member states decided to convene a Diplomatic Conference to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources, which took place between 13 and 24 May 2024, at which WIPO member states adopted by consensus a historic new WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional

996 Johnsson and Tualima (2018), p. 226.

997 WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998–1999), www.wipo.int/edocs/pubdocs/en/tk/768/wipo_pub_768.pdf (checked 15.4.2025).

998 See Johnsson and Tualima (2018), p. 220.

999 WIPO background brief: Traditional knowledge and intellectual property, https://www.wipo.int/export/sites/www/pressroom/en/documents/background_brief_tk.pdf (checked 15.4.2025).

1000 See WIPO IGC background brief, pp. 4, 6, <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-2-en-the-wipo-intergovernmental-committee-on-intellectual-property-and-genetic-resources-traditional-knowledge-and-folklore.pdf> (checked 15.4.2025).

1001 See WIPO IGC background brief, p. 2.

Knowledge on 24 May 2024.¹⁰⁰² This is the first WIPO Treaty to address the interface between IP, genetic resources, and associated traditional knowledge and the first WIPO Treaty to include provisions specifically for both Indigenous peoples and local communities. The Treaty establishes a mandatory patent disclosure requirement and suggests the establishment of information systems (such as databases).¹⁰⁰³ This means that where a patent application involves genetic resources, the applicant must disclose the country of origin or source. Moreover, if traditional knowledge associated with genetic resources is involved, the applicant must disclose the Indigenous peoples or local community that provided it.¹⁰⁰⁴

Genetic resources, which are found in entities such as medicinal plants and agricultural crops, are often utilised in patented inventions, though they themselves cannot be patented.¹⁰⁰⁵ This means that while genetic resources themselves cannot be directly protected as intellectual property, inventions developed using them can, usually through a patent. Some genetic resources are also associated with traditional knowledge through their use and conservation by Indigenous peoples and local communities, often over generations. This knowledge may be used in scientific research and may thus contribute to the development of a protected invention. The Treaty will enter into force three months after 15 eligible parties have ratified or acceded to it.¹⁰⁰⁶

4.9.1.1. WIPO Guidelines for Documenting Traditional Knowledge

As Daphne Zografos Johnsson and Hai-Yuean Tualima recall, protection in the IP sense differs from “preservation” and “safeguarding”, which involve the identification, documentation, transmission, revitalisation, and protection of cultural heritage, where the objective is to ensure that traditional knowledge and traditional cultural expressions do not disappear and are maintained and promoted.¹⁰⁰⁷ However, protection, preservation, and safeguarding are not mutually exclusive. On the contrary, although their objectives differ, implementing them together may be mutually supportive through documenting. However, these different forms of protection may also collide and conflict with each other. For example, preservation efforts that document traditional knowledge and traditional cultural expressions, particularly in digitised form, can make them more accessible and vulnerable to uses that are against their holders’ wishes, thereby undermining the effort to protect them in the IP sense. It is therefore advisable to have policies in place

1002 See WIPO IGC background brief.

1003 Ibid., p. 7.

1004 See https://www.wipo.int/pressroom/en/articles/2024/article_0007.html (checked 15.4.2025).

1005 See <https://news.un.org/en/story/2024/05/1150231> (checked 15.4.2025).

1006 https://www.wipo.int/pressroom/en/articles/2024/article_0007.html (checked 15.4.2025).

1007 Johnsson, Z.D. and Tualima, H.Y. “Cultural Heritage, Traditional Knowledge and Intellectual Property”, in A. Xanthaki et al. (eds). (2018), pp. 218–228, 221. The report will be published by the Ministry of Environment during 2026.

for the strategic management of IP during the recording, digitisation, and dissemination of traditional knowledge and traditional cultural expressions.¹⁰⁰⁸

Documentation of traditional knowledge is a process in which traditional knowledge is identified, collected, organised, registered, or recorded in some way as a means to dynamically maintain, manage, use, disseminate, and/or protect traditional knowledge according to specific goals.¹⁰⁰⁹ As the WIPO maintains, documenting traditional knowledge is now widely discussed as a way of guaranteeing the social, cultural, and economic interests of Indigenous peoples and local communities. It has emerged both as a tool that can help maintenance and impede further loss of traditional knowledge, as well as supporting benefit-sharing between holders of traditional knowledge and those who use it, and ultimately protecting traditional knowledge from unwanted uses.¹⁰¹⁰

However, Indigenous peoples have expressed concerns regarding the documentation of traditional knowledge and its potential effects on their rights, cultures, and livelihoods. For example, there are concerns that documenting traditional knowledge may mean communities lose control over it, make it widely available, and compromise the secret nature of some traditional knowledge. To address some of these concerns, the WIPO has created “A Toolkit on documenting traditional knowledge”, which aims to provide useful practical guidance for undertaking a documentation project and addressing critical issues related to IP as they arise during the documentation process.¹⁰¹¹

The aim of the Toolkit is to help conceptualise and plan a traditional knowledge documentation process and understand its key IP implications as a means to assist in safeguarding the interests and protecting the rights of traditional knowledge holders, especially Indigenous peoples and local communities. As the WIPO explains, IP is an important issue to consider as part of a documentation process, as important IPRs may be lost or strengthened, depending on how TK documentation is conducted.¹⁰¹²

According to the WIPO, the Toolkit can be used when reviewing and organising existing traditional knowledge in databases, books, studies, and so on, or directly obtaining traditional knowledge from its holders themselves in situ. The Toolkit emphasises the interests of Indigenous peoples and local communities as holders of traditional knowledge. However, the Toolkit describes documentation projects as often led by other actors. The Toolkit should therefore also prove useful for public officials from IP offices,

1008 Ibid.

1009 World Intellectual Property Organization (WIPO) (2017) Documenting Traditional Knowledge: A Toolkit. WIPO: Geneva, p. 9.
See https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1049.pdf (checked 15.4.2025).

1010 Ibid., p. 7.

1011 Ibid.

1012 Ibid.

policymakers, and research and cultural institutions that work with communities in situ (for example, ethno-botanical projects or museums, libraries, and archives).¹⁰¹³

The Toolkit focuses on traditional knowledge in its “narrower sense”, that is, the content or substance of technical knowledge and expertise related to biodiversity, food and agriculture, health, the environment, and so on. The Toolkit states that for their part, “traditional cultural expressions” or “expressions of folklore” raise a series of distinct IP-related questions.¹⁰¹⁴ For example, when community members innovate within the traditional knowledge framework, they may use the patent system to protect their innovations. However, conventional IP systems do not protect traditional knowledge as such – knowledge that has ancient roots and is often informal and oral.¹⁰¹⁵ Nevertheless, traditional knowledge and traditional cultural expressions are often closely related and documented together in practice, so much of the information in this Toolkit, especially on process, may also apply to cultural expressions.¹⁰¹⁶

For the purposes of the Toolkit, traditional knowledge documentation is broadly divided into three distinct phases with guidance and practical examples:

- Before documentation: This phase should include careful planning, assessing options, and setting objectives, as well as consultation with Indigenous peoples and local communities, and relevant stakeholders.
- During documentation: In this phase, traditional knowledge is actually collected and organised coherently, following planned actions and activities.
- After documentation: This phase involves a series of post-collection and organisation activities related to the management of the database, documentation system, or register that may have been created. It includes managing access to and use of the documented traditional knowledge.¹⁰¹⁷

The Toolkit describes two forms of IP protection that may be encountered, positive and defensive protection:

- Positive protection grants traditional knowledge holders IPRs, empowering them to use those rights for their own purposes (for example, to promote their traditional knowledge, control its use by people not belonging to the community, and benefit from its commercial exploitation if they wish).

1013 Ibid.

1014 Ibid.

1015 WIPO: Background Brief 1 on Traditional knowledge and intellectual property,

<https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-1-en-traditional-knowledge-and-intellectual-property.pdf> (checked 15.4.2025).

1016 World Intellectual Property Organization (WIPO) (2017) Documenting Traditional Knowledge: A Toolkit. WIPO: Geneva, p. 7.

1017 Ibid.

- Defensive protection allows traditional knowledge holders to prevent people not belonging to the community illegally acquiring IPRs over their traditional knowledge (for example, through the erroneous granting of patents for inventions based on traditional knowledge).¹⁰¹⁸

In the context of a documentation project, due consideration is also required for customary laws and practices, which may determine whether and how traditional knowledge can be obtained and shared, how it must be presented, in what form, by whom, and so on. According to the Toolkit, customary laws may be described as *sui generis* regimes for the protection and regulation of traditional knowledge, incorporating legal and quasi-legal norms and principles, which have been developed to respond to specific territorial, environmental, cultural, and spiritual realities of Indigenous peoples and local communities. Customary laws may control how traditional knowledge should be held and passed on to the next generations.¹⁰¹⁹

As the Toolkit explains, a general rule is that research institutions, NGOs, or other third parties undertaking documentation need to ensure that customary laws and practices are fully respected at all stages of the documentation project. Whether expressed in written guidelines, codes of conduct, community protocols, formal agreements (written or oral), or even simple instructions given by traditional knowledge custodians, communities, or their representatives, efforts should be made to ensure such requirements are met.¹⁰²⁰

Confidentiality Considerations

The Toolkit reminds us that it is important to distinguish between documenting traditional knowledge and its entry into the public domain, which refers, as previously discussed, to elements that are not subject to exclusive intellectual property rights. If a certain element is in the public domain, any person is legally entitled to use it or exploit it without any restrictions.¹⁰²¹ Documenting traditional knowledge does not entail placing it in the public domain: traditional knowledge may be documented while remaining firmly withheld from the public domain. As the Toolkit states, “publicly available” refers to traditional knowledge which is already available to the public and can be accessed through books and literature, the internet, or another kind of recording. However, publicly available traditional knowledge may not necessarily be widely open to the public. For example, some records of traditional knowledge may be kept in a specific library, archive, or other repository, and even though these records are publicly available, in practice they can be accessed only by

¹⁰¹⁸ Ibid., p. 11.

¹⁰¹⁹ Ibid., p. 10.

¹⁰²⁰ Ibid.

¹⁰²¹ Ibid., p. 13.

those with access to the repository.¹⁰²² Publicly available is therefore not the same as the public domain. For example, material may be published on the internet or made available in a library or archive, but still be protected by copyright: people can access it, but they are not legally allowed to copy it without the copyright owner's permission.¹⁰²³

The Toolkit states that documentation may include accessing and managing a variety of traditional knowledge, including knowledge already in the public domain and/or widely available, as well as confidential or secret knowledge. Accessing confidential or secret knowledge is an especially sensitive issue that may affect communities' moral, spiritual, religious, and even economic interests. Revealing undisclosed traditional knowledge may result in their losing rights that could help control its use. However, its documentation may help protect it by providing a confidential or secret record of traditional knowledge reserved for the relevant community alone. Undisclosed or secret traditional knowledge can be documented and still kept confidential, or its use restricted. Special measures should be taken to avoid inadvertently disclosing it or making it available to the public: specific confidentiality agreements or more explicit contractual clauses may be required to satisfy the interests of those participating in the documentation process, especially Indigenous peoples and local communities. These may include provisions which limit who can access traditional knowledge and in what circumstances (i.e. for patent search purposes only, by national intellectual property authorities only, by selected institutions, etc.).¹⁰²⁴

Participation and FPIC of Indigenous peoples

The Toolkit emphasises effective participation and prior consent (PIC) of Indigenous peoples and local communities as critically important for the documentation of traditional knowledge. Participation by these communities during all phases of decision-making regarding the documentation process is crucial for building trust and their sense of ownership of a project, especially when traditional knowledge is to be collected directly in situ from Indigenous peoples and local communities. Participation is also critical for enhancing communication between the parties involved, ensuring mutual understanding of interests and prevent potential conflicts. Participation must be both transparent and free, engaging the key actors and stakeholders who may have an interest in the documentation project during its development and throughout its lifespan. The Toolkit refers to several participation mechanisms that have been widely recognised in international law, including UNDRIP.¹⁰²⁵

¹⁰²² Ibid.

¹⁰²³ Ibid., p. 14.

¹⁰²⁴ Ibid., p. 17.

¹⁰²⁵ Ibid., p. 15.

PIC at the planning and collecting states:

Initially, when documentation is being planned:

- It may be necessary to contact and engage in discussions with Indigenous peoples and local communities to inform them about the planned documentation process – for example, how traditional knowledge will be collected and managed.
- This means information needs to be provided well in advance and in a form that is accessible to them.
- At this stage, there may be a need for express consent from appropriate community representatives, especially in cases when visits or interviews are to be made in the field, on community lands and in community territories.

Subsequently, when in the field and on site:

- It may be necessary to conduct more detailed discussions and negotiations to determine and define the specific terms and conditions under which traditional knowledge can be obtained and used.
- These discussions need to be based on a series of principles (most importantly, including good faith) which should guide the overall process of providing pertinent information.¹⁰²⁶

The WIPO Toolkit provides very useful and detailed guidance on appropriate documentation of Indigenous peoples' traditional knowledge, which could be useful for several institutions dealing with Sámi traditional knowledge such as museums, education centres, research centres, and universities. It could be used as a model to create Sámi-specific ethical/legal guidelines for several occasions where traditional knowledge is documented.

¹⁰²⁶ Ibid., p. 16.

5. CONCLUSIONS

Indigenous peoples' right to culture and cultural heritage cannot be viewed as two separate concepts; instead, they are overlapping and intertwined and often used in parallel or even synonymously. Traditionally, however, the human rights framework has preferred to use the concept of culture to which Indigenous peoples have a right. Within the right to culture, language and traditional nature-based livelihoods of Indigenous peoples have long been the most frequently recognised essential elements in the case practice and general comments of human rights treaty bodies, though some attention to other aspects such as sacred sites and Indigenous peoples' spiritual values has been noted.

Yet the international legal cultural heritage framework such as UNESCO Conventions has operated through the concept of cultural heritage, which was originally viewed as humanity's universal property. However, as the need to protect Indigenous peoples' rights within this framework arose, largely due to Indigenous peoples' and their advocates' efforts, it came to be recognised that Indigenous peoples had a right to their own cultural heritage. As the cultural heritage framework long focused on tangible cultural heritage such as sites and tangible objects, Indigenous peoples' sites such as sacred sites came to be recognised within this framework. As the cultural heritage framework expanded to embrace intangible cultural heritage such as innovations, knowledge, practices, and languages, Indigenous peoples' right to their intangible cultural heritage was seen as fitting this category.

Indigenous peoples themselves have strongly articulated that tangible and intangible manifestations of their culture cannot be separated but must be recognised and protected as a whole. The need to use and define the concept of cultural heritage has arisen for many Indigenous peoples due to the international legal framework. As previously mentioned, Sámi language itself has not even had traditional terms for cultural heritage, cultural expressions, or traditional knowledge because such terms were unnecessary before the international legal framework on cultural heritage was invoked.

Especially since the end of the 1980s, through the evolution of biodiversity protection and sustainable development frameworks, the recognised role of Indigenous peoples as stewards of their environments has influenced the cultural heritage framework. An apparent need arose not only to protect certain archaeological sites of Indigenous peoples but to view their larger traditional territories as cultural landscapes. This trend was supported by the UNESCO World heritage convention in 1992, which added a cultural landscape category alongside natural landscapes, creating space also for Indigenous peoples' traditional territories to be regarded as world heritage sites.

The UN Biodiversity Convention (CBD), also adopted in 1992, recognised intangible aspects of Indigenous peoples' cultural heritage such as customs and traditional knowledge, which again had a strong impact on how Indigenous peoples' rights and role began to be viewed in the UNESCO's cultural heritage framework. Under the auspices of the CBD, new concepts such as biocultural rights, indicating that nature and culture cannot be viewed dualistically, at least in the case of Indigenous peoples, aided Indigenous peoples to more powerfully criticise the dualistic division of natural and cultural heritage within the UNESCO framework. As noted earlier in the context of Sámi people's cultural landscapes, many of the traces left by the Sámi way of life can be almost invisible or the result of such long-term development that it is difficult to perceive them as the result of human activity.

Moreover, the protection of Indigenous peoples' cultural heritage cannot be separated from the protection of their cultural, living environments that, as discussed, are a combination of culture and nature, tangible and intangible cultural heritage, and conjunctions between biological and cultural diversity that represent the core of Indigenous peoples' culture and identity, and the relationships between them.

Although the concept of cultural heritage in the context of Indigenous peoples' rights was already to some extent recognised by UN human rights monitoring bodies as part of the right to culture before the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007), the Declaration incorporated the term cultural heritage, although the rights to culture and cultural heritage include similar, overlapping, and parallel elements in different articles, as discussed in this report. Overall, the use of the term cultural heritage has helped expand the content of what elements may be viewed as belonging to Indigenous peoples' cultures. Instead of the previously strong emphasis on traditional livelihoods and languages, UNDRIP named many other elements, dispersed in several different articles, such as spiritual and religious traditions, customs and ceremonies, religious and cultural sites, ceremonial objects, philosophies, writing systems, literatures, placenames, sciences, technologies, human and genetic resources, seeds, medicines, traditional knowledge, knowledge of the properties of fauna and flora, oral traditions, designs, sports and traditional games, and visual and performing arts. Importantly, UNDRIP also recognises that Indigenous peoples have the right to maintain, control, protect, and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

After the adoption of UNDRIP, and with the establishment of UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) in the same year (2007), much emphasis was placed on identifying and defining the concept of Indigenous peoples' cultural heritage, highlighting Indigenous peoples' right to self-determination and free, prior, and informed consent (FPIC)

concerning their own cultural heritage. As part of their right to self-determination, Indigenous peoples should be allowed to define what cultural heritage is for them. Sámi people's cultural heritage has not been officially defined by the Sámi Parliaments, but similar elements to UN forums have been pointed to as exemplars. Generally, and as discussed in this report, it can be said that Sámi cultural heritage consists of physical artefacts and places, spiritual expressions, languages, worldviews, traditions, practices, knowledge, and skills.

As discussed, Indigenous peoples', including Sámi people's, cultural heritage is protected via four separate international legal fields: human rights; biodiversity protection; cultural heritage conventions; and the intellectual property framework, which is still only evolving to better embrace Indigenous peoples' rights.

Human Rights Framework

The human rights framework offers the strongest protection. As all three Nordic countries recognise Sámi rights in their constitutions, and as human rights are closely linked to constitutional protection, all three countries are obliged to follow the guidance of the UN Human Rights Treaty Bodies, though their opinions are not legally binding. The fact that the Supreme Courts of all three countries in their recent Sámi cases have strongly built their argumentation on human rights obligations reveals the great potential of human rights for the evolution of Indigenous peoples' rights.

That said, the protection of Sámi people's culture/cultural heritage, including land and linguistic rights, is clearly still insufficient in all the Nordic countries. A very problematic tenet is that the Nordic countries do not necessarily apply their own legislation, let alone the Supreme Court's decisions. For example, in Norway, despite the unanimous decision of the Supreme Court in favour of the Sámi, based on human rights, particularly Article 27 of the ICCPR in the *Fosen* case, the wind turbines continued, and after the final agreement was reached on compensation, but the wind farm's operations continued.

Whereas Norway has made many progressive steps towards recognising the Sámi people's self-determination concerning their cultural property by granting the Sámi Parliament decision-making powers and creating models for co-managing Sámi cultural landscapes, Finland and Sweden have been unable to compete, despite some notable exceptions such as the UNESCO co-management regime of Laponia World Heritage Site in Sweden and the implementation of CBD voluntary guidelines on Indigenous peoples by Finland. In recent few years, all three Nordic countries have also improved the consultation rights of the Sámi towards the requirements of the international FPIC standard. Yet in practice, it is highly questionable whether this is enough: the wording of the paragraphs on consultations

leaves much scope for the authorities' interpretation, and Sámi organisations have in many places argued that they do not meet the standards of FPIC. The UN human rights monitoring bodies have frequently confirmed this, though the renewal of consultation rights in Finland is so recent (2025) that time will tell how much real progress is made.

All three Nordic countries have serious deficiencies in implementing Sámi land rights, though Norway, due to its ratification of ILO Convention No. 169, has established a co-management model through the Finnmark Act (2005) for Finnmark county, an important Sámi area. However, a large Sámi population lives outside this area, and Norway has faced significant and ongoing criticism from human rights bodies for failing to adequately protect Sámi rights in other parts of the country. As the *Fosen* case shows, there is growing pressure in Norway, quite similarly to Finland and Sweden, for energy and other development, often promoted in the name of the “green transition”, which may collide with the rights of the Sámi.

Human rights law, though not always effectively implemented by the Nordic countries, has enormous potential to improve the protection of the Sámi cultural heritage. The reason it is important to include a human rights-based approach to cultural heritage protection in international cultural heritage protection frameworks is that it places Indigenous peoples' self-determination and FPIC at the forefront of safeguarding their heritage for future generations. Indeed, international human rights treaty bodies in recent jurisprudence have emphasised that the right of Indigenous peoples to their culture includes their right to transmit their culture to future generations. This is important because the impacts of climate change, as well as some of its mitigation measures, have detrimental and irreversible effects on Indigenous peoples, including the Sámi, as this report has discussed.

Moreover, human rights treaty bodies have been dynamic and expansive in their interpretation of international conventions in the light of UNDRIP. This has led to growing recognition of and demands on states parties, including the Nordic countries, to interpret Indigenous peoples' right to culture considering their land rights, as well as the right to self-determination and FPIC. A new trend in the UN human rights treaty bodies has also been cross-referring to the Inter-American human rights system, thereby recognising spiritual values, customs, and even customary laws of Indigenous peoples. In two recent cases by two human rights treaty bodies regarding Finland Sámi *siida*, the traditional governing body of Sámi reindeer herding, was recognised as a FPIC community in addition to reindeer-herding cooperatives and the Sámi Parliament with which consultations should have been conducted.

Biodiversity Protection Framework

The UN Biodiversity Convention (CBD) has adopted an Indigenous rights-based approach and has played a major role in strengthening the subjective agency of Indigenous peoples, including the Sámi. Its greatest asset is that it acknowledges that Indigenous peoples can significantly contribute to environmental protection, where they should therefore be viewed as partners rather than objectives of protection. Especially through the work of the international Article 8(j) working group, the CBD regime has adopted voluntary guidelines on Indigenous peoples and local communities. Finland has been a pioneer country implementing Akwé:Kon Guidelines on environmental, cultural, and social impact assessment and is currently preparing to adopt the Tkarihwaié:ri Code of Ethical Conduct on Sámi reindeer herding. Both guidelines have strong potential to improve consultations and cooperation with the Sámi.

The CBD, while recognising the importance and legal protection of Indigenous peoples' traditional knowledge, influences both Norwegian and Finnish nature protection legislation, creating space for Sámi traditional knowledge. Sweden has not acted accordingly, though the government of Sweden has tasked the Sámi Parliament with coordinating and reporting on Articles 8(j) and 10(c) of the CBD.

The CBD has influenced the human rights framework to better incorporate other aspects of culture than traditional livelihoods and languages in the legal protection of Indigenous peoples' cultural heritage. Besides traditional knowledge, innovations, and customs, spiritual values and consideration of the protection of intellectual property have also become more prominent themes in the human rights field. By developing biocultural rights, the biodiversity protection regime has united the artificial divisions between culture and nature, as well as tangible and intangible cultural heritage, implementing a holistic approach in the protection.

By developing the frameworks for benefit-sharing and compensation in relation to the use of Indigenous peoples' knowledge, innovations, and practices, also recognised to an extent by ILO Convention No. 169 and UNDRIP, the CBD has contributed to the recognition of Indigenous peoples as rightsholders rather than merely stakeholders who traditionally must be only heard rather than truly considered. While Norway and Sweden have adopted some level of compensation to Sámi reindeer herders in the case of environmental interference, Finland has not made any progress in this direction, despite the encouragement of UN human rights treaty bodies.

Cultural Heritage Conventions Framework

The UNESCO cultural heritage framework, which originally almost ignored Indigenous peoples' issues, causing great harm while even dispossessing Indigenous peoples of their traditional lands by establishing World Heritage Sites, has improved its approach in recent decades, mainly due to Indigenous peoples' persistent work. As a UN agency, UNESCO's entire mission is guided by the Universal Declaration of Human Rights (UDHR). Its 2003 Strategy on Human Rights affirms that a human-rights-based approach is relevant to all its programmes, including culture.

Influenced by the human rights-based approach, especially since the adoption of the UNDRIP, UNESCO has become active in advocating Indigenous peoples' rights in the protection of both tangible and intangible cultural heritage. UNESCO has played an important role especially by recognising and creating space for Indigenous peoples' cultural landscapes as larger areas rather than just sacred or archaeological sites, which has also influenced Norway in particular in its approach to the protection of the Sámi people's cultural landscapes. In Finland and Sweden, the recognition of Sámi cultural landscapes remains vague, with the notable exception of the Laponia World Heritage Site in Sweden.

Despite many positive changes, the fact that the original world heritage framework did not mention human rights, with its primary focus on preserving the "outstanding universal value" of physical sites (monuments, natural wonders) from a conservation perspective has had and still has an influence on its somewhat rigid structure, which despite progress, keeps Indigenous peoples on the margins, along with other stakeholders. The next step for UNESCO should be to place Indigenous peoples and their right to self-determination and FPIC at the forefront of cultural heritage protection, thereby not only safeguarding Indigenous peoples' cultural heritage but also preserving cultural and natural diversity for the benefit of the Earth, and humanity as part of it.

In placing Indigenous peoples at the forefront of UNESCO's work, the anthropocentric view of humanity being the at the top of creation rather than a co-subject with other forms of life could push for a necessary paradigm shift to an eco-centric and holistic worldview. Adopting an Indigenous rights-based approach, recognising their right to self-determination, FPIC, and their right to transmit their cultural heritage to future generations, Indigenous peoples could truly play their role as guardians of the planetary wellbeing. This would affect the Sámi people's position in the cultural heritage frameworks in the Nordic countries, including increased inspiration for the co-management of their traditional lands, enhanced attention to their sacred sites, and the development of the legal protection of their intangible

cultural heritage. As discussed, the Nordic Sámi Convention recognises the protection of both tangible and intangible cultural heritage.

The Council of Europe's cultural heritage conventions, though not considered to establish positive enforceable rights for Indigenous peoples, have introduced important elements to the approach to cultural heritage protection, which at least indirectly affects the position of Indigenous peoples, especially when implemented by national settings. In particular, the Faro Cultural Heritage Convention (2005) is novel and innovative because it places individuals and communities at the centre instead of being targets, thus providing a framework for a citizen- and community-centred cultural heritage policy. From Indigenous peoples' perspective, it is also important that the Convention's focus is on who can participate in the definition of cultural heritage, and how cultural heritage can function as a common resource. For the Sámi, the definition of their cultural heritage, including their cultural landscape, which the Convention also recognises, is important, especially because the different dimensions of the Sámi cultural environment might otherwise go unnoticed, as the Sámi have traditionally left few traces in the environment. Moreover, the Convention's potential is that it adopts a human-rights-based approach, which increases its value to Indigenous peoples.

Regarding the archaeological cultural heritage, protected by the Valletta Convention (1992), Norway was already pioneering the recognition of cultural landscapes as early as 1978 in the Cultural Heritage Act. Sámi sites built or in use in or before 1917 are automatically protected by the Act. In Norway, the Sámi people's right to self-determination over their cultural heritage has been realised because the management of cultural heritage belongs to the Sámi Parliament, which is also the administrative authority for Sámi relics. Finland and Sweden lag behind here, though some legal progress has been made to better recognise and protect Sámi cultural landscapes and archaeological sites, considering the views of the Sámi Parliament. Finland is currently renewing its Antiquities Act and plans to incorporate Sámi people's rights into the Act. As proposed, this revision would still not grant self-determination for the Sámi Parliament in the same way as the Norwegian model.

Intellectual Property Rights Framework

While from the perspective of human and fundamental rights, the right to maintain one's own culture is guaranteed, at least in legal documents, an intellectual property (IP) issue, the matter of exclusive rights, meaning the right to determine the conditions for the use of culture or to prohibit others from using it, is much less clear in the field of Indigenous peoples' rights. For example, a legal conflict related to cultural rights as an IP issue can emerge when a third party uses traditional cultural expressions in a manner that offends

the community's internal rules or experience. IP refers to creations of the mind such as inventions, literary and artistic works, designs, and symbols, names, and images used in commerce. This means that Sámi artists, artisans, entrepreneurs, and other traditional practitioners can try to protect their works from unauthorised use and exploitation.

However, as this report has discussed, the IP regime is unsuitable for the protection of Indigenous peoples' intellectual property for several different reasons. The Sámi people's main general concern related to IP is the commercial use of their cultural expressions as heritage by third parties without an appropriate connection with, respect for, and benefit sharing with Sámi. Many direct and indirect and interrelated problems are related to the misappropriation of the Sámi cultural heritage: not only does it often cause economic harm to traditional cultural practitioners and cultural erosion, but it also accelerates the loss of traditional knowledge, skills, and cultural expressions, impairing the actualisation of the Sámi's rights to their self-determination and culture.

As this report has discussed, the World Intellectual Property Organization (WIPO) has been actively promoting *sui generis* (special) protection for Indigenous peoples' and local communities' intellectual property, while recognising that adapting existing IPRs may not be considered sufficient to cater for the holistic and unique character of traditional knowledge and traditional cultural expressions. The WIPO has been greatly influenced by the field of human rights, especially when Indigenous peoples' rights and issues began to demand greater international attention. In 2024, WIPO member states adopted a historic new WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge by consensus. This is the first WIPO Treaty to address the interface between IP, genetic resources, and associated traditional knowledge. It is also the first to include provisions specifically for Indigenous Peoples, as well as local communities.

It has become clear that *sui generis* protection for Sámi IP is necessary to better recognise and protect their cultural expressions from "cultural appropriation" and other forms of misuse. As referred to in this report, Mattias Åhren, who has explored the intimate interrelatedness of Indigenous peoples' right to equality, land rights, and IPRs with a focus on Sámi IPR, correctly argues that Indigenous and non-indigenous alike must have the same possibility to establish property rights over land, as well as the right to creativity. Indigenous peoples' land is the sole basis for their cultural heritage, so the most crucial element of the protection of Sámi people's cultural heritage is to recognise and protect their rights to lands, waters, and natural resources.

Holistic Indigenous Rights-based Framework

This report has presented both the normative framework and the development of the international legal framework for safeguarding Sámi cultural heritage with some examples of national implementation from three Nordic countries. It is proposed here that states, including Nordic countries, and the legal frameworks, and their implementation by the Nordic countries, should adopt a holistic intergenerational Indigenous rights-based approach to cultural heritage protection. “Holistic” has several connotations in this context: first, it proposes increased dialogue between these legal frameworks within Nordic countries, with the aim of basing the legal protection of Sámi peoples’ cultural heritage on a human rights-based approach, especially using UNDRIP as a point of reference. UNDRIP has become a minimum standard for the interpretation of Indigenous peoples’ rights, as now widely recognised by the UN Inter-American human rights monitoring bodies and applied by national courts, including those of the three Nordic countries.

Second, a holistic approach embraces Indigenous peoples’ entire understanding of cultural heritage as beyond artificial divisions between the concepts of culture and cultural heritage, nature and culture, and tangible and intangible cultural heritage. Third, a holistic approach also combines all the different elements of cultural protection: Sámi traditional knowledge cannot be preserved unless the land basis for this knowledge is preserved. Cultural rights cannot be separated from the rights to land or intellectual property. Finally, a holistic approach would also create more space for Indigenous peoples’ own understandings, worldviews, values, knowledge, and wisdom about safeguarding their cultural heritage. It is proposed here that by implementing Indigenous peoples’ right to self-determination, Indigenous peoples could establish leadership and be accepted as equal partners, along with states and international organisations, in the development of universal cultural heritage protection towards a more holistic framework.

An intergenerational approach is connected with the recent development of UN human rights treaty bodies case law, which highlights the right of Indigenous peoples to transmit their cultural heritage to future generations. As this report has discussed, referring to Martin Scheinin’s and Ánde Somby’s work, Sámi people have a right to a past, present, and future. Sámi people also have a right to develop their cultural heritage according to their own priorities so that it is not just something inherited from past generations but a vivid, dynamic, and evolving recreated living tradition that is transmitted and translated to present and future generations.

An emphasis on an intergenerational approach is also important due to drastic global environmental changes. Climate change and its mitigation measures add drastically to the

cumulative impacts of other activities on Sámi culture occurring in Sápmi. When conducting cumulative impact assessments, the Sámi people's right to a future should be considered. Human rights monitoring bodies have already started to recognise that climate change profoundly infringes Indigenous peoples' human rights.

Finally, acknowledging an intergenerational approach would support the global environmental and climate justice movements and frameworks, which are already operating to some extent with the rights of future generations. In future, Indigenous peoples will be even more vulnerable to climate change than today. Humanity is on the threshold of losing many aspects of Indigenous peoples' cultural heritage, including traditional livelihoods. Many young Sámi people will not continue traditional ways of lives because of the great concerns about the future, or because such livelihoods will become completely unsustainable. Yet Indigenous peoples, including Sámi, will be among those whose knowledge and skills will be needed to find solutions for the planetary crisis. Safeguarding Sámi cultural heritage will contribute to the sustainability of the Nordic and Arctic area: Nordic countries should finally take the lead in the protection of Indigenous peoples' rights, with the Sámi people as their partners.

6. SUMMARY AND POLICY RECOMMENDATIONS ¹⁰²⁷

This report provides an analysis and synthesis of the international legal framework for protecting Sámi cultural heritage, arguing that effective safeguarding requires a shift from fragmented state-centric approaches to a holistic, intergenerational, and Indigenous rights-based model. The report's central thesis is that the Sámi cultural heritage cannot be protected without placing Sámi self-determination – specifically, their right to free, prior, and informed Consent (FPIC) – and their rights to traditional lands, waters, and natural resources at the heart of all legal and administrative actions. It posits that Sámi cultural heritage is an indivisible whole, where tangible elements (like sacred sites and archaeological remains) and intangible elements (like traditional knowledge, languages, skills, and practices) are inextricably linked to the Sámi's traditional lands, waters, and livelihoods.

The analysis spans four traditionally separate legal fields: human rights law; biodiversity convention; cultural heritage conventions; and intellectual property (IP) rights. The report demonstrates that while these fields have often operated in isolation, an Indigenous rights discourse is building necessary bridges between them.

1. The Sámi Context and the Holistic Nature of Heritage

The Sámi in a Changing Environment

The Sámi are the only legally recognised Indigenous people in the European Union, with their traditional lands (Sápmi) spanning the borders of Norway, Sweden, Finland and Russia. Their culture is inextricably linked to traditional livelihoods such as Sámi reindeer herding, fishing, hunting, gathering, and handicrafts (*duodji*).

The report highlights a “**double burden**” threatening Sámi culture:

1. **Climate Change:** Rapid Arctic warming directly threatens the snow-dependent conditions necessary for traditional livelihoods like reindeer herding, which also poses a cumulative impact to many conflicting land-use forms in Sápmi.
2. **“Green Colonialism”:** Measures intended to *mitigate* climate change, such as large-scale wind farms and mining for critical raw materials, are being developed on traditional Sámi lands, often without their consent, leading to land fragmentation and cumulative negative impacts. New threats include increased militarisation in Sápmi following Finland's and Sweden's NATO membership, which impacts reindeer herding and other Sámi livelihoods.

1027 The summary of this document was generated using generative AI (Google Gemini) based on the author's original text (which does not use AI) and has been modified, reviewed and approved by the author.

Sámi Heritage: A Holistic vs a Western Concept

The report contrasts the traditional Western, UNESCO-led concept of cultural heritage with the Sámi understanding.

- Traditional/Western view: This view is state-centric, traditionally focusing mostly on tangible “monuments” and sites deemed to have “Outstanding Universal Value” (OUV). Although it now also embraces intangible heritage, it still to a large degree artificially separates heritage into tangible vs intangible and nature vs culture.
- Sámi/Indigenous View: For the Sámi, heritage (árbi) is not a static collection of objects but a living, holistic, and intergenerational process. This “biocultural” heritage is an indivisible whole, where:
 - Land is essential: The physical and spiritual relationship with traditional lands and waters is the material basis for culture and knowledge.
 - The tangible and intangible are inseparable: Sámi handicrafts (duodji), for example, combine natural materials (tangible) with árbediehtu (traditional knowledge), patterns, and values transmitted through them (intangible).
 - Knowledge and language are key: Traditional knowledge (árbediehtu) is a cumulative body of practice and values, transmitted orally through generations and embedded within the Sámi languages.
 - Customary Law: Traditional land use such as the siida (reindeer-herding governance unit) system, is governed by Sámi customary laws.

The report argues that culture cannot be protected if the lands and livelihoods sustaining it are degraded. The Sámi must therefore have the right to define and manage their *own* cultural heritage.

2. The Human Rights Framework: The Right to Self-Determination and FPIC

The report identifies the human rights framework as the most critical tool for protecting Sámi rights.

Self-Determination

The right of all peoples to self-determination, codified in Article 1 of the ICCPR and ICESCR, is recognised by UN treaty bodies as applying to the Sámi as an Indigenous people. This is the right to “freely pursue their economic, social, and cultural development” and dispose of their natural resources. UNDRIP (e.g. Arts 3, 4, 32) further solidifies this.

The report frames self-determination as the “core right” upon which all other Sámi rights depend.

Free, Prior, and Informed Consent (FPIC)

FPIC is the primary procedural implementation of self-determination. It is not merely “consultation”. As defined in UNDRIP (Arts 19 and 32), it is a good-faith negotiation and cooperation process that aims to obtain consent *before* any legislative or development projects affecting Sámi lands, resources, or culture are approved. UN human rights treaty bodies (HRC, CESCR, CERD, and CRC) have increasingly adopted this view, interpreting the right to culture (e.g. ICCPR Article 27) in light of self-determination and FPIC. Recent Sámi cases before these bodies have found Nordic states in violation of their human rights obligations for prioritising development projects (like mining) over Sámi cultural rights and failing to secure FPIC. Self-determination and FPIC is directly connected to Indigenous peoples' land rights, which should be implemented together.

Nordic Implementation Gaps

The report identifies a significant gap between international legal standards and domestic implementation in all three countries.

- Norway: Often considered the leader, having ratified ILO Convention No. 169 and established the Finnmark Act (a co-management model). It has also granted the Sámi Parliament decision-making power over Sámi cultural heritage and established co-management model for the cultural landscapes in the protected areas. However, protection for the Sámi outside Finnmark is weak, and the state’s failure to implement the Supreme Court’s human rights-based ruling in the Fosen wind power case highlights a serious gap in implementation.
- Sweden: Has not ratified ILO No. 169. The Girjas case was a landmark Supreme Court victory, recognising a sameby’s (reindeer-herding community) exclusive land rights based on “immemorial prescription”. The Laponia World Heritage Site is a positive example of co-management despite some shortcomings. However, land rights recognition remains limited, and the new Consultation Act (2022) falls short of full FPIC standards.
- Finland: Also has not ratified ILO No. 169, largely due to unresolved land rights issues. Ninety per cent of the Sámi Homeland is state-managed land, and reindeer herding is not an exclusive Sámi right. Finland has faced multiple adverse rulings from the HRC, CESCR, and CRC for failing to protect Sámi culture from the cumulative impacts of

logging and mining (gold panning). A 2025 reform to the Act on the Sámi Parliament substantially strengthens the duty to negotiate and related FPIC, but its practical effectiveness remains to be seen.

- Despite rather strong legal foundations of the Sámi language rights in the Nordic countries, the primary challenge is instead of remains the implementation gap, where a critical shortage of bilingual professionals often renders these rights inaccessible in practice. Additionally, as the Sámi population becomes increasingly urbanized, the current geographic restriction of these rights to specific northern homelands leaves many speakers without adequate linguistic protection in major cities.

3. Landmark Cases: UN Treaty Bodies and Domestic Courts

A significant finding is that UN treaty bodies are increasingly using the non-binding UNDRIP as an authoritative framework to interpret states' obligations under binding treaties.

UN Treaty Body Decisions

- CERD (Discrimination): In *Ågren et al. v. Sweden* (2020), the Committee found that Sweden's failure to recognise the Vapsten Sámi community's collective land rights in a mining dispute violated the right of non-discrimination. Crucially, it ruled that applying the same legal rules to Sámi and non-Sámi, thereby ignoring the Sámi's unique collective relationship with the land, constitutes a form of de facto racial discrimination.
- CESCR (Cultural Rights): In *J. T. et al. v. Finland* (2024), the Committee found that granting a mineral exploration permit in the Kova-Labba siida's territory without a proper FPIC process or independent impact assessment violated the Sámi's right to culture read in conjunction with their right to self-determination.
- CRC (Child's Rights): In *M. E. V. et al. v. Finland* (20224), the Committee found a similar violation of the UNCRC, affirming that Sámi children have a right to enjoy their culture and identity, and must be effectively included in FPIC processes affecting their heritage.
- HRC (Climate Change): The *Billie et al. v. Australia* case (2022) set a major precedent, finding that a state's failure to protect Indigenous peoples from climate change impacts violates their rights to culture and home. This case is directly relevant to the threats the Sámi face in the Arctic.

Domestic Supreme Court Decisions

National courts have begun to apply these international standards:

- Norway (Fosen Case, 2021): The Supreme Court of Norway unanimously ruled that the licences for two wind farms were invalid because they violated the Fosen Sámi's right to culture under ICCPR Art. 27. The court explicitly stated that the “green transition” did not provide a justification for overriding this fundamental right.
- Sweden (Girjas Case, 2020): The Supreme Court affirmed that the Girjas Sámi sameby (reindeer-herding community) held exclusive rights to manage hunting and fishing on their traditional lands based on “immemorial prescription” (use since time immemorial). The court used international law, including the unratified ILO 169, as well as UNDRIP, as an interpretive tool.
- Finland (Fishing Cases, 2022): The Supreme Court of Finland dismissed charges against Sámi individuals fishing in the Tenojoki/Tana/Deatnu river system. It ruled that the government's fishing restrictions were in “evident conflict” with the Sámi's constitutionally protected right to culture (and ICCPR Art. 27) and the restrictive fishing regulations could not therefore be applied to them.

4. Specialised Frameworks: Biodiversity, Cultural Heritage, and IPR

Convention on Biological Diversity (CBD)

The CBD links the protection of biodiversity directly to the protection of cultural diversity. Articles 8(j) (respecting traditional knowledge) and 10(c) (protecting customary use) are key provisions. Finland and Norway have implemented CBD in their domestic legislation.

- Best Practice (Finland): The Akwé:Kon Guidelines (for holistic cultural, social, and environmental impact assessments) are being implemented by Metsähallitus (Forestry Administration) and the Sámi Parliament. This model involves creating local Akwé:Kon groups of Sámi knowledge holders to participate in planning from the beginning. Finland is also in the process of implementing the CBD Tkarihwaié:ri Code of Ethical Conduct to improve negotiations and cooperation with the Sámi reindeer herders.
- Nagoya Protocol: This protocol requires FPIC and fair benefit-sharing for access to genetic resources and their associated traditional knowledge. Finland and Norway have included Sámi rights in the implementation of the Protocol.

UNESCO and Council of Europe Conventions

These frameworks have slowly evolved from being state-centric to community-based.

- UNESCO World Heritage Convention (1972): This convention has been problematic due to its “Outstanding Universal Value” (OUV) criterion and its separation of nature and culture. However, the “Cultural Landscape” category (1992) has allowed better inclusion for the Indigenous/Sámi cultural landscapes and embedded values.
- Best Practice (Sweden): The Laponia World Heritage Site is a “co-management” model (Laponiatjuttjudus) where the local Sámi samebyar hold a majority on the governing board, a direct result of Sámi advocacy.
- UNESCO Intangible Heritage Convention (2003): This Convention is a much better fit, as it focuses on living, community-based traditions (like duodji or yoik), empowering communities to define their own heritage.
- Council of Europe (Faro Convention, 2005): This Convention is innovative as it centres protection on the community and its right to identify and manage its own heritage.
- Best Practice (Norway): The Norwegian Cultural Heritage Act is a leading example of self-determination. It grants the Sámi Parliament decision-making authority – not just a right to be consulted – over all Sámi archaeological sites (defined as those from 1917 or earlier).

5. The Intellectual Property Rights (IPR) Challenge and Conclusions

The IPR “Mismatch”

The report concludes that conventional IPR systems (copyright, trademark) are “ill-suited” to protecting Sámi cultural expressions.

- The Problem: IPR protects individual new creations for a limited time. Sámi heritage (like gákti designs or duodji patterns) is collective, traditional, and evolves over generations. In the eyes of IPR law, this heritage is considered in the “public domain” – free for anyone to use.
- The Result: This legal gap enables widespread “cultural appropriation”. Non-Sámi businesses can commercially exploit Sámi culture (e.g. sell “shaman drums” or fake gákti to tourists) without permission or benefit-sharing, causing both economic harm to Sámi artisans and profound cultural harm by diluting and stereotyping the culture. Existing tools like the Sámi Duodji trademark, have been ineffective.

The Path Forward: WIPO and Sui Generis Systems

The solution lies in developing *sui generis* (custom-built) legal systems that protect collective heritage.

- WIPO (World Intellectual Property Organization): The WIPO's Intergovernmental Committee (IGC) is the central forum for this work.
- Historic New Treaty (May 2024): The report highlights the adoption of a new WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge. This is the first WIPO treaty to include provisions for Indigenous peoples. Its key provision is a mandatory disclosure requirement: patent applicants must disclose the country of origin of genetic resources and identify the Indigenous people or local community that provided the associated traditional knowledge.
- The WIPO also provides practical toolkits for communities on how to document their traditional knowledge while managing IP risks, confidentiality, and ensuring FPIC, which could also be used in advancing the IP protection of Sámi.

Conclusions

The report's summary concludes that:

1. **Sámi cultural heritage is holistic:** traditional livelihoods, knowledge, language, other cultural expressions, and land and related worldview are inseparable. The report concludes that the Sámi cultural heritage is not a collection of separate tangible (sites, objects) and intangible (knowledge, practices, language, art) elements. Instead, it is a holistic, intergenerational, and living system where traditional livelihoods, traditional knowledge (*árbediehtu*), language, and the spiritual, holistic inter-relational relationship with traditional lands and waters are inseparable.
2. **Self-determination is the core right** necessary for its protection. The central argument is that the effective protection of Sámi cultural heritage is impossible without the full recognition and implementation of the Sámi people's right to self-determination. This right must be manifested as recognition of Sámi people's right to their traditional lands and waters and as free, prior, and informed consent (FPIC) before states approve or undertake development projects (such as mining, wind farms, or forestry) that impact Sámi traditional territories.
3. **Nordic legal frameworks are currently insufficient**, failing to meet FPIC standards or resolve land rights, even as "green transition" projects advance. While Norway, Sweden, and Finland have legal mechanisms for Sámi consultation, the report concludes that

these frameworks are largely inadequate. They often fail to meet international FPIC standards, especially at the practical level, do not sufficiently recognise Sámi land rights, and frequently allow state-prioritised projects to proceed even when they cause significant harm to Sámi culture, as evidenced by domestic and international legal cases. The lack of sufficient and independent cumulative impact assessments makes it very difficult to adequately assess the threshold for significant harm.

4. **International human rights law is rapidly evolving:** UN treaty bodies (HRC, CESCR, CERD, CRC) are increasingly interpreting foundational human rights (right to culture, right to life, right to family) in light of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This has led to landmark decisions finding that development projects lacking genuine substantive legal protection, FPIC and cumulative impact assessments violate the rights of the Sámi people.
5. **Biodiversity protection, Indigenous peoples' practices, traditional knowledge, and Indigenous peoples' rights are intertwined:** The report highlights the clear link between biodiversity conservation (under the CBD), cultural heritage protection, and Indigenous peoples' human rights. Sámi traditional knowledge is presented as essential for sustainable environmental management, and this knowledge can only be preserved if the traditional livelihoods and cultural practices that transmit it are protected by recognising and protecting Sámi cultural landscapes.
6. **Conventional IPR is a poor fit,** enabling cultural appropriation. The future lies in sui generis systems, as exemplified by the new WIPO treaty. It is concluded that existing intellectual property rights (IPR) systems such as copyright and trademark are ill-suited for protecting collective, evolving, and intergenerational Sámi cultural expressions (like duodji handicrafts or gákti). This gap leads to widespread cultural appropriation and economic harm, pointing to the need for special (sui generis) legal systems and the specialised work being done at WIPO.

Policy Recommendations for Finland, Norway, and Sweden

Based on the report's findings, the following recommendations are provided to Finland, Norway, and Sweden to align their national laws and practices with their international human rights obligations and effectively safeguard the Sámi cultural heritage, and to guide the agencies responsible for the protection of the cultural heritage.

1. Centre Self-Determination and Governance

The right to self-determination, operationalised through FPIC and Sámi people's governance and land rights, must be the foundation of all actions concerning Sámi cultural heritage.

- **Ratify Key International Instruments:**
- **Finland and Sweden:** Ratify **ILO Convention No. 169** to provide a binding legal framework for Sámi land rights.
- **All Three Countries:** Conclude negotiations and ratify the **Nordic Sámi Convention** to harmonise and strengthen Sámi rights across borders.
- **Enshrine True FPIC in Law and Administration:**
- **All Three Countries:** Amend national legislation to move beyond consultation and explicitly and strictly codify the right to **Free, Prior, and Informed Consent (FPIC)**. This process must be defined as good-faith negotiation with the aim of achieving consensus, not as a procedural formality. Apply existing consultation provisions in light of international FPIC requirements. Develop guidance for officials and other actors to improve cooperation with the Sámi Parliaments and other Sámi organisations and units.
- **Empower Sámi Parliaments:**
- **Finland and Sweden:** Grant the Sámi Parliaments genuine **decision-making authority** over the management of Sámi cultural heritage, particularly archaeological sites and cultural landscapes. The **Norwegian model**, where the Sámi Parliament acts as the administrative authority for Sámi relics, should be adopted and expanded. Sámi people's right to self-determination over both their tangible and intangible heritage should be actualized by granting Sámi Parliaments more decision-making authority and strong participatory and governance rights related to the issues concerning their traditional lands and waters as the basis of their cultural heritage.
- **Recognise Traditional Sámi Institutions:**
- **All Three Countries:** Legally recognise traditional Sámi governing and community structures such as the *siida* (in reindeer herding) and the Skolt Sámi Village Assembly, as legitimate representative bodies and rightsholders in FPIC processes, along with the Sámi Parliaments, as affirmed by UN treaty bodies.

2. Secure the Land Base and Address “Green Colonialism”

Sámi cultural heritage cannot be protected if its land base is destroyed. The “green transition” must not be carried out at the expense of Sámi rights. The Sámi’s constitutional and human rights must be guaranteed in all activities under the umbrella of the “green transition”.

- **Recognise Land Rights:**
- **Finland and Sweden:** Initiate good-faith processes, with the full participation of the Sámi, to legally recognise and demarcate Sámi **traditional and collective land and resource rights**, moving beyond mere usage rights for traditional livelihoods.
- **Norway:** Extend Sámi land and resource rights beyond Finnmark.
- **Mandate Cumulative Impact Assessments:**
- **All Three Countries:** Make **comprehensive, independent, and holistic cumulative impact assessments** a legal prerequisite for *all* land-use projects (mining, wind, forestry, infrastructure, military). These assessments must specifically analyse the combined impacts on Sámi livelihoods, culture, and the right to transmit heritage to future generations, accounting for the “double burden” of climate change and development. Include the impacts of climate change and mitigation measures on the Sámi rights and culture in the assessment procedures.
- **Reform Sectoral Legislation:**
- **Finland:** Urgently reform the **Reindeer Husbandry Act** to recognise the special status and cultural foundation of Sámi reindeer herding, and recognise it as a Sámi right within the Sámi Homeland.
- **All Three Countries:** Revise **Minerals Acts** and other industrial legislation to ensure they comply with the *Fosen* case precedent: that a “public interest” in green energy or critical minerals does not automatically override the Sámi people’s fundamental right to culture under ICCPR Article 27, read in conjunction with Article 1.

3. Strengthen the Sámi language rights

- **De-territorialization of Linguistic Rights:**
- **All Three Countries:** Make a transition from a “homeland-centric” model to a person-based model of linguistic rights. As a majority of the Sámi population now resides in urban centers outside traditional administrative areas, legal protections must be modernized to ensure access to Sámi-language education, healthcare, and social services regardless of a citizen’s geographic location.

- **Systematic Investment in Human Capital:**
- **All Three Countries:** To address the critical shortage of bilingual professionals, implement targeted incentive programs for Sámi-speaking personnel in public administration, law, and medicine. This should include specialized scholarships, salary premiums for bilingualism, and the integration of Sámi cultural and linguistic competence into national higher education curricula for civil servants.
- **Strengthening Judicial and Administrative Accountability:**
- **All Three Countries:** Amend the legislation to include clearer oversight mechanisms and sanctions for public authorities that fail to provide services in Sámi languages. Empowering the Sámi Parliaments with greater monitoring authority and ensuring that “Sámi Barometers” (as seen in Finland) lead to mandatory policy adjustments would shift these rights from symbolic gestures to enforceable legal duties.
- **Harmonization of Cross-Border Linguistic Policy:**
- **All Three Countries:** formalize a transnational linguistic framework. Harmonizing terminology, educational standards, and digital resources across borders would optimize the use of limited resources and support the vitality of smaller languages, such as Skolt and Inari Sámi, which are particularly vulnerable.

4. Adopt a Holistic and Integrated Legal Approach

The fragmentation of legal protections must be overcome by integrating a human rights-based approach across all relevant frameworks.

- **Ensure Human Rights Primacy:**
- **All Three Countries:** Ensure that all cultural heritage, environmental, and biodiversity laws (e.g. Antiquities Acts, Nature Conservation Acts) are explicitly and consistently interpreted in light of the state’s binding obligations under human rights law, using **UNDRIP as an authoritative interpretive framework.**
- **Implement CBD Guidelines Nationally:**
- **Sweden and Norway:** Follow Finland’s example in applying the **CBD Akwé:Kon Guidelines** to conduct holistic (cultural, social, environmental) impact assessments, embedding Sámi traditional knowledge in the process.
- **Sweden and Norway:** Adopt and implement the **Tkarihwaí:ri Code of Ethical Conduct** to ensure respectful partnership-based engagement with Sámi communities,

especially in research and land management. **Finland:** Extend implementation to other traditional livelihoods, especially fishing.

- **Reform Cultural Heritage Management:**
- **Finland and Sweden:** Revise national antiquities/heritage laws to specifically recognise **Sámi cultural landscapes** and **intangible heritage** (not just physical sites) and establish co-management or Sámi-led management structures.

5. Protect Intangible Heritage and Intellectual Property

Sámi traditional knowledge and cultural expressions (*duodji*, *yoik*, etc.) must be protected from misappropriation and “cultural appropriation”.

- **Develop Sui Generis (Special) IP Protection:**
- **All Three Countries:** Acknowledge that the conventional IP system is inadequate. In partnership with the Sámi Parliaments, develop and implement *sui generis* legal systems that protect collective intergenerational Sámi cultural expressions and traditional knowledge from unauthorised commercial use and offensive misappropriation.
- **Implement the 2024 WIPO Treaty:**
- **All Three Countries:** Actively support, ratify, and implement the new **WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge** to ensure that any commercial use of Sámi traditional knowledge associated with genetic resources requires disclosure and benefit-sharing.
- **Support “Rematriation” of Heritage:**
- **All Three Countries:** Proactively fund and support Sámi-led initiatives (in line with the **CBD Rutzolijirisaxik Guidelines**) to repatriate Sámi cultural objects and, crucially, the associated traditional knowledge from museums and archives. This process, or “rematriation”, should empower Sámi communities to restore and revitalise their own living heritage.