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Sara Fusco

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ARTICLE



Restorative justice in Finnish constitutional law: reconciling Sámi rights and ecology

Sara Fusco ^{a,b}

^aFaculty of Law, University of Lapland, Rovaniemi, Finland; ^bFaculty of Law, University of Akureyri, Akureyri, Iceland

ABSTRACT

This paper examines the application of *environmental* restorative justice within constitutional frameworks, addressing both ecological degradation and historical injustices experienced by the Sámi People in Finland. It investigates the intersection of Sámi rights and environmental regulation, proposing a model of justice that respects Indigenous autonomy while safeguarding ecological integrity and contributing to long-term sustainability. Through the study of the Finnish environmental legal framework, including recent case law, legislative reforms, and the growing relevance of international instruments, this research highlights the evolving ecological perspective of the Finnish Parliamentary Committee of Constitutional Affairs. The study also evaluates how constitutional interpretation has shifted towards a more rights-based and ecological understanding of Sámi cultural practices, especially with regard to land use and traditional livelihoods. Ultimately, the paper argues that environmental restorative justice advances the fulfilment of Sámi rights within their Homeland by reconnecting ecological restoration with social healing, democratic participation, and respect for cultural continuity across generations.

KEYWORDS

Sámi rights; Finland; constitutionalism; environmental restorative justice; Indigenous peoples; Arctic

1. Introduction: reconciling Sámi rights and ecology

Nature constitutes an essential component of Indigenous rights, inherently linked to cultural heritage, identity, and traditional knowledge systems.¹ However, environmental policies frequently adopt a conservation-oriented approach that prioritises ecological recovery while disregarding the cultural and territorial rights of Indigenous Peoples.² This misalignment gives rise to legal tensions when restoration measures impose restrictions on access to ancestral lands, limit traditional resource governance, or fail to accommodate Indigenous conceptions of sustainability. To reconcile these conflicts, legal frameworks governing environmental restoration must transcend a strictly ecological perspective and recognise a healthy environment as both a fundamental right of Indigenous Peoples and an intrinsic element of their cultural heritage. As proposed by modern legal studies,³ *environmental*

CONTACT Sara Fusco  sfusco@ulapland.fi  University of Lapland, Finland

¹Herrmann and Heinämäki, "Experiencing and Safeguarding the Sacred in the Arctic," 1.

²Forsyth et al. "Agenda Environmental Restorative Justice?," 18–20.

³The first literature review on this topic appears around 2022.

restorative justice is increasingly recognised as an experimental mechanism for reconciling environmental governance with the protection and affirmation of Indigenous rights. As a fundamental doctrine of environmental law, it seeks to redress ecological harm while addressing historical injustices through remedial and participatory measures.⁴ It finds expression in principles such as intergenerational equity and the right to a healthy environment, as well as in legal doctrines such as the *in dubio pro natura*.⁵

Despite its underexplored status, environmental restorative justice has spawned various principles, including the equitable distribution of managerial responsibilities, participatory conservation, environmental justice, social licencing, and green criminology.⁶ These branches respond to the imperative of greater rights-holders' inclusion in decision-making processes, as well as the need for increased transparency and justiciability of actions that affect the environment.⁷ The constitutionalising of environmental protection represents a potential application of environmental restorative justice, aligning with the increasing prominence of sustainable development in legal discourse. Crucially, this shift moves beyond the mere textual recognition of Indigenous rights, embedding environmental principles into constitutional frameworks that enable the substantive integration of Indigenous governance in the development and implementation of environmental law at national level. In concrete terms, constitutional law embeds both substantive and procedural provisions and it establishes clear obligations for state and non-state actors, ensuring the stability and enforceability of environmental protection measures.⁸

The article argues that environmental conservation is essential for Indigenous rights, given their intrinsic link to environmental well-being. While numerous international instruments recognise the cultural and environmental rights of Indigenous Peoples, this paper focuses specifically on their implementation within Finnish constitutional law. It examines the progressive integration of international principles at the national level, identifying key mechanisms of restorative justice, particularly through Articles 17 and 121 of the Finnish Constitution, that are essential for safeguarding Sámi cultural rights in the context of environmental governance. The analysis relies on existing literature and opinions of the Finnish Parliamentary Committee for Constitutional Affairs (hereafter, 'Committee') in cases addressing the preservation of biodiversity and Sámi traditional activities.

The paper first develops with an introductory part on environmental restorative justice. This is followed by an overview of constitutional law in Finland and its progressive inclusion of environmental protection. 'Section 4' explores the core of this reconciliation as it examines current limitations faced by the Sámi in managing natural resources and their cultural environment. The last section analyses procedural instances in which the Committee stated how remedial measures for ecological degradation must be proportionate and respect Sámi rights, both nationally and internationally.

⁴Ibid; and Forsyth, 18–20.

⁵Fusco, "Dubio pro natura," 1.

⁶Ibid; and Forsyth M. et al., 20–7.

⁷Idem.

⁸Kotzé "Arguing Global Environmental Constitutionalism," 400–8.

2. An alternative legal pathways for ecological and Indigenous rights: restorative justice

To begin with, existing environmental regulations fail to consider the social priorities of minority communities, which are disproportionately impacted by external factors such as climate change and the exploitation of natural resources. These regulations frequently neglect past discriminatory practices against Indigenous Peoples, which could potentially be addressed through reconciliation proceedings.^{9,10} An alternative approach, called *environmental restorative justice*, has been proposed to integrate community-based environmental practices, recognising the link between human rights and the need for reparative measures to protect future generations. Under this doctrine, enhanced participation by all rights-holders is seen as essential to promoting Indigenous self-determination through best practices in representation and access to justice. Within the scope of this study, environmental restorative justice is understood as addressing relational and physical harm between humans and the environment, with a focus on direct participation, including storytelling and dialogue, and a commitment to transparency through the clear identification of offenders and victims. For these reasons, environmental restorative justice may be applicable at various levels of governance.¹¹ In the context of this article, environmental restorative justice will be analysed solely within a domestic judicial framework ('Section 3').

However, it is also essential to consider the international legal instruments incorporated into Finnish law, particularly those with constitutional relevance, as they increasingly reflect the intrinsic connection between nature and Indigenous rights. First of all, the rights of Indigenous Peoples to exercise their traditional knowledge, cultural practices, and *ways of life* are broadly recognised and safeguarded under various international legal instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),¹² the International Covenant on Civil and Political Rights (ICCPR),¹³ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁴ and the ILO Convention No. 169 on Indigenous and Tribal Peoples.¹⁵

UNDRIP provides the most detailed articulation of Indigenous cultural rights to date, underscoring the integral relationship between Indigenous identity, traditional knowledge, and collective practices. Article 11(1) affirms Indigenous Peoples' right to 'practise and revitalise their cultural traditions and customs', including ceremonies, designs, and technologies, while Article 12(1) secures the right to 'manifest, practise, develop and teach their spiritual and religious traditions'. Further, Article 31(1) protects the right to 'maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions'. These provisions reflect a holistic understanding of culture as inherently linked to Indigenous autonomy, identity, and collective memory.¹⁶ UNDRIP also recognises

⁹Truth and Reconciliation Committee Concerning the Sámi People, "Mandate," 2021.

¹⁰See also *supra* note 9: According to The Truth and Reconciliation Concerning Sámi People in Finland, reconciliation aims to identify past and ongoing injustices against the Sámi, assess their current impacts, and propose measures to improve Sámi – state relations.

¹¹*Ibid.*; and Forsyth, 18–20.

¹²United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007.

¹³International Covenant on Civil and Political Rights (ICCPR), 1966.

¹⁴International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.

¹⁵ILO, Convention No. 169 on Indigenous and Tribal Peoples, 1989.

¹⁶Committee on Economic, Social and Cultural Rights' General Comment No. 21, 2009.

the cultural dimension of Indigenous relationships to land: article 25 upholds the right to maintain spiritual and cultural relationships with traditionally owned territories, and article 29 affirms the right to conserve and protect the environment of those lands. Although Finland has not ratified ILO Convention No. 169 and is therefore not a party to it, the Convention remains the only binding international treaty that specifically protects the rights of Indigenous and tribal peoples. It affirms their right to self-determination and control over their own development (Article 7). The Convention requires that Indigenous Peoples be consulted through appropriate procedures whenever legislative or administrative measures may affect them (Article 6). It protects their rights to land and natural resources traditionally occupied or used (Articles 13–19), recognising land as central to their identity and survival.¹⁷ Article 14 acknowledges the collective nature of land rights, while article 15 safeguards their rights to participate in the use, management, and conservation of those resources.

Regarding ICCPR, the Human Rights Committee's General Comment No. 23 (HRC) on article 27 of the ICCPR reinforces the cultural significance of land and livelihood for Indigenous communities.¹⁸ It explicitly recognises that 'culture manifests itself in many forms, including a particular way of life associated with the use of land resources'.¹⁹ This is particularly relevant for Indigenous Peoples whose subsistence activities, such as hunting, fishing, and gathering are expressions of cultural identity and survival. The HRC also highlights that Indigenous Peoples may require 'special measures' to ensure the full enjoyment of their cultural rights²⁰ and emphasises that any restriction on these rights must meet the tests of necessity, proportionality, and legitimacy.²¹

On ICESCR, the Committee on Economic, Social and Cultural Rights, in General Comment No. 21, offers a robust interpretation of cultural rights under article 15(1)(a). It states clearly that 'Indigenous Peoples have the right to act collectively to ensure access to their own culture', including language, knowledge systems, customs, religious beliefs, and control over cultural heritage.²² Paragraph 49(c) further calls upon States to respect Indigenous rights to 'preserve, control, protect and develop their cultural heritage, traditional knowledge and cultural expressions'. Importantly, the Committee recognises the inseparability of culture from land and natural resources,²³ affirming that the ability to sustain cultural practices often depends on access to ancestral territories. The comment also underscores the necessity of free, prior and informed consent when Indigenous cultural rights may be affected (para. 55), aligning with UNDRIP's procedural safeguards for participation and self-determination.

According to the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), *Nature* is recognised as part of the cultural heritage of Indigenous Peoples under international law.²⁴ The Universal Declaration on Cultural Diversity,²⁵ in its preamble, further clarifies that culture encompasses not only art and literature but also 'the set of distinctive spiritual, material, intellectual and emotional characteristics' of a society,

¹⁷International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, C169.

¹⁸Human Rights Committee's General Comment No. 23, 1994.

¹⁹Ibid; Committee on Economic, Social and Cultural Rights, para 3.2.

²⁰Ibid; and para 7.

²¹Ibid; and para 9.

²²Ibid; and Committee on Economic, Social and Cultural Rights, para 36.

²³Ibid; and para 50.

²⁴Human Rights Council "Repatriation of ceremonial objects," para 29.

²⁵UNESCO Universal Declaration on Cultural Diversity (2001).

including lifestyles, systems of values, traditions, and beliefs.²⁶ Similarly, article 2 of the Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible cultural heritage as knowledge passed down through generations, often through interaction with nature.²⁷ The second paragraph of this provision explicitly acknowledges the transmission of such heritage through ‘practices concerning nature and the universe’.²⁸

For these reasons, it is crucial to establish guidelines in Indigenous territories that respect their rights. For example, the Convention on Biological Diversity’s section 8 (j), the Akwé: Kon Voluntary Guidelines, recognise the importance of conducting cultural, environmental, and social impact assessments on Indigenous lands. This means that, as the protection of cultural heritage calls for a shared responsibility, businesses require to respect Indigenous participatory rights, by acquiring free, prior and informed consent (hereinafter, ‘FPIC’), and compensate for negative impacts of their projects on Indigenous land.²⁹ As a contracting party under Section 8(j), Finland is legally bound to comply with the same best practices in its development processes.³⁰ For instance, the Faro Convention acknowledges that ‘every person has the right to engage in the cultural heritage of their choice, while respecting the rights and freedoms of others, as part of the right to freely participate in cultural life’.³¹ This highlights that the protection of cultural heritage is closely linked to the preservation of Indigenous Peoples’ culture and the safeguarding of their land rights.³² In this context, the use of natural resources is inherently tied to the principle of intergenerational equity. As Weiss notes, the exploitation of natural resources raises concerns about their future quality, quantity, and accessibility, potentially threatening biodiversity and cultural preservation.³³ Indeed, the Human Rights Council states that ‘the destruction of, or damage to, cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights’.³⁴

2.1. Constitutional approach

So far, efforts to apply international environmental standards at the national level have been undermined by disjointed governance and unclear legal definitions, especially when external interventions override local customary systems.³⁵ According to Daly, it is constitutional law that, instead, offers a more coherent framework for environmental restorative justice as it unites human rights principles with environmental protection to address ecological degradation.³⁶ Indeed, constitutionalism encompasses both substantive and procedural rights, with constitutional justice defined by its rigidity, judicial rulings amending legal norms, and the disapplication of laws manifestly contradicting to the Rule of Law.³⁷ Courts of legitimacy, therefore, can reopen the legislative process when laws are found to be

²⁶Idem.

²⁷UNESCO, Convention for the safeguarding of the intangible cultural heritage, art. 2.

²⁸Ibid; and para 2.

²⁹Secretariat of the Convention on Biological Diversity Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment, 25.

³⁰Convention on biological diversity, June 1992.

³¹Council of Europe Framework Convention on the Value of Cultural Heritage for Society, 2005 (Preamble).

³²Vadi, “Cultural Heritage in International Law,” 57–9.

³³Fitzmaurice, “Indigenous Peoples and Intergenerational Equity,” 194–195.

³⁴Human Rights Council in its recent Resolution 33/20 (2016), para. 5.

³⁵Ibid; and Forsyth, 6.

³⁶Daly Erin, “Constitutional Protection for Environmental Rights,” 74–7.

³⁷Corte Costituzionale d’Italia ‘La corte costituzionale’, (The Constitutional Court”, English version).

manifestly in conflict with constitutional principles.³⁸ In this way, constitutional law guarantees societal needs against power abuses, providing a collective rational framework that protects diverse interests. This is achieved by extrajudicial interpretations,³⁹ enabling a reconciliatory legislative approach vital to Indigenous rights and environmental.⁴⁰ Rühls and Jones describe several ways to achieve such inclusive and collective *environmental constitutionalism*.⁴¹ Primarily, the recognition of a healthy environment may be framed as a cultural or human right, consistent with an anthropocentric perspective; alternatively, it may involve the development of novel categories of rights that move beyond strict anthropocentrism, or, in its most eco-centric form, entail the acknowledgement of nature's rights and its legal personhood.⁴² In each of these approaches, constitutional substantive rights, such as the rights to life, dignity, and health, can be identified, alongside procedural rights that allow communities to challenge historical harm and take part in environmental decision-making. Together, they offer a viable foundation of restorative justice, which aims to build lasting reconciliation between Indigenous Peoples and environmental protection.

3. Nature restoration and Finnish constitutional reception

3.1. Constitutional approaches to environmental protection in Finland

Since this paper aims to propose an alternative way to reconcile Sámi rights with ecological integrity under constitutional law, it is important to trace the origins of Finnish constitutionalism. This will help to understand its progressive integration of environmental protection with Indigenous rights and the role of the Committee.

First, the foundation of Finnish constitutionalism traces back to the early 19th century. Finland experienced its constitutional awakening during the Grand Duchy era (1809–1917) and the 1919 with the transition to an independent republic, underpinned by the principles of parliamentary democracy.⁴³ The 1995 amended constitution acknowledged the Sámi culture under article 14, safeguarding their entitlement to preserve and enhance their language. Section 14a underscored the collective duty to uphold 'the natural world and its diversity, the environment, and cultural heritage', urging public authorities to facilitate 'the right to a healthy environment and participation in decisions regarding one's living environment' for all individuals.⁴⁴ The initial integration of the constitutional framework established key principles for preserving biodiversity to ensure future generations enjoy the same benefits, in line with the equality principle in 'Section 5'.⁴⁵ The new 1999 constitution, adopted with more than two-thirds required majority in Parliament, introduced hierarchical superiority, procedural safeguards for legislative enactment, and a mechanism for informal alteration via customary regulations, exemplified by the *poikkeuslaki* or exceptive

³⁸Idem.

³⁹Extrajudicial interpretations refer to the role of other institutions, outside the courts, that contribute to construct constitutional meanings (e.g.; parliaments, agencies, committees, social actors etc).

⁴⁰De Visser Maartje and Neo L. Jaclyn, "What would pluralist institutional constitutional interpretation look like?," 1887–90.

⁴¹Rühls, Nathalie and Aled Jones, "Implementation of Earth Jurisprudence," 9.

⁴²Ibid; and Daly, 74–75.

⁴³Jussila O, Hentilä S. et al. "Storia politica della Finlandia 1809–2003," 83– 94.

⁴⁴Finnish Constitution, art.14a.

⁴⁵Finnish Constitution, article.5(1) (2).

act. In concrete, an exceptive act is law that breaches the Constitution, enacted under the procedure for constitutional revision.

The constitution was amended few times after the Constitutional Act 731/1999.⁴⁶ However, the culmination of Finland's integration into the EU manifested in the 2012 constitutional amendment.⁴⁷ This amendment, occurring seventeen years post-accession, indicative of Finland's commitment to European legal harmonisation⁴⁸ and international cooperation.⁴⁹ In particular, the European Environmental Impact Assessment (EIA) Directives, the first in 2011⁵⁰ (2011/92/EU, amended in 2014),⁵¹ have played a crucial role in biological conservation and sustainable development, aligning with the objectives outlined in the Finnish constitution (articles 6, 17, 20, 22). Specifically, the EIA directives supported Finland in its environmental law development through a more inclusive licencing systems for proposed projects, including infrastructure developments, industrial facilities, and other activities with significant environmental transformations.⁵² The 2014 amendment further promoted public participation by including climate change and biodiversity loss in the list of environmental issues requiring EIA reporting and requiring detailed analysis of cumulative effects.⁵³ Furthermore, participation mechanisms have been strengthened so that informed consent is obtained, and this is reflected in the final decisions.⁵⁴

In 2004, Finland ratified the Aarhus Convention after amending corresponding legislative acts subject to Parliamentary approval of government bill (165/2003). Indeed, according to the constitution (article 94), the approval of Parliament is required for such treaties and other international obligations. Two amendments were then passed: one to the Nuclear Energy Act (769/2004) and a new Act on Expropriation Permits Required by Certain Projects with Environmental Impacts (768/2004). The objectives of the Aarhus Convention, namely ensuring the public access to environmental information, participation in environmental decision-making, and the access to justice, were incorporated into Finnish legislation by presidential decree (866/2004).⁵⁵ Despite the EU Nature Restoration Law debates beginning in 2022, Finland has remained proactive in environmental legislation, exemplified by the 2021 Helmi Habitats Programme⁵⁶ and the 2023 amendment to the 1996 Nature Conservation Act to bolster biodiversity, protect landscapes, and support climate adaptation.⁵⁷ Nowadays, the protection of the environment and its biodiversity are currently guaranteed by article 20 of the current constitution. According to articles 20 and 22, the responsibility for the protection of the 'environment and the national heritage are

⁴⁶ Following amendments: Acts 596/2007, 802/2007, and last by Act 1112/2011.

⁴⁷ Constitution of Finland, art. 1(1); Amed. (2012), articles 1(3), 94(2), and 95(2).

⁴⁸ Mutanen A., "Towards Non-sovereignists Constitution Finland."

⁴⁹ According to the author, the innovative legal initiative originated from relevant international conventions, such as the United Nations Framework Convention on Climate Change (UNFCCC), 1992, The Convention on Biological Diversity (CBD), 1992. The Kyoto Protocol to the UNFCCC, established in 1997, and the Aarhus Convention (1998 but in force since 2001) were implemented by Finland later.

⁵⁰ 2011/92/EU.

⁵¹ 2014/52/EU.

⁵² Ministry of the environment, "Second Aarhus Convention Implementation Report."

⁵³ European Parliament. 'Transposition and implementation of the 2014 Directive on the assessment of the effects of certain public and private projects on the environment', Implementation of EIA Directive 2014/52/EU.

⁵⁴ Ibid., articles 6, 8, 8bis, and 9.

⁵⁵ Ministry of the Environment, 2.

⁵⁶ Government Resolution on the Helmi Programme.

⁵⁷ Nature Conservation Act (No. 9 of 2023).

the responsibility of everyone', while 'the public authorities shall guarantee the observance of basic rights and liberties and human rights'.⁵⁸

3.2. The Parliamentary Committee of Constitutional Affairs

At this point, it is necessary to define the role of the Committee in affirming constitutional environmental protection and Indigenous rights. Its responsibilities concerning the implementation of international obligations are defined in Articles 93(2), 94, 95, and 73. Finland follows a dualistic system, meaning that international treaties must be incorporated into domestic law through a separate legislative process before they can enter into force.⁵⁹

Eighteen legal experts form the body, which is mandated to ensure that proposed legislation adheres to both constitutional and international legal frameworks.⁶⁰ The constitutional review is conducted *ex ante*, prior to the enactment of any law. Given its *ex ante* nature, the committee is inherently politicised, with a tacit agreement that a member of parliament must resign before assuming a position within the Committee. While the Committee's composition is intended to be neutral, its neutrality is not absolute and is contingent upon the quality of the statements provided by its members.⁶¹ These statements are mandatory and grounded in constitutional customs.⁶²

Regarding cases of evident conflict with the constitutional provisions, articles 95, 73 and 106 apply mechanisms of limited derogation. To some extent, the Committee regulates the hierarchy of international legal sources. For instance, in 1990, it ratified the European Convention of Human Rights (ECHR) and its protocols, thereby granting them prevalence over domestic laws following the first regulatory conflict, where national law was initially favoured over European law (Uoti case).⁶³ The review process also involves oversight by the Chancellor of Justice and the Parliamentary Ombudsman. Finland's international compliance is likewise subject to international monitoring under the UN treaty system.

4. Applying restorative justice to constitutional Law

In domestic criminal law, restorative justice advances relational approaches between the parties, conceptualising crime not solely as a violation of legal norms, but as an infringement on interpersonal relationships and social cohesion.⁶⁴ In contrast to offender-centered models, restorative justice shifts the focus to those harmed by a crime, primarily victims and survivors, seeking their active inclusion in the justice process.⁶⁵ This approach empowers victims to participate more fully than in traditional criminal proceedings, aligning with the broader rehabilitative aims of punishment. Dialogical processes, particularly Alternative Dispute Resolution (ADR) mechanisms, thus embody the

⁵⁸S. 22, Finnish Constitution (Amed. 2012).

⁵⁹Ministry of the Environment of Finland, 2nd Aarhus report, (2007).

⁶⁰Eduskunta, "Constitutional Law Committee."

⁶¹Sormunen M, "Politicizing Constitutional Review."

⁶²*Idem*.

⁶³*Uoti v Finnish Environmental Authority* [2023] 2 KHO 344.

⁶⁴University of Wisconsin Law School, "About Restorative Justice."

⁶⁵*Ibid*.

restorative model's commitment to relational justice.⁶⁶ Within the framework of constitutional law in Finland, this rehabilitative dimension finds support in the systematic interpretation of Sections 7 and 8 of the Constitution, which establish that criminal liability must be personal and grounded in law. In this analysis, Environmental Restorative Justice (ERJ) advances dialogic justice by fostering renewed relationships with Indigenous Peoples recognising their participatory rights and emphasising cooperation in matters such as environmental governance.⁶⁷ Natural resource management has increasingly been integrated into reconciliation processes across various jurisdictions, including New Zealand, Canada, and the Nordic countries, often through institutions like Truth and Reconciliation Commission, as restorative justice body addressing historical injustices against Indigenous Peoples and promoting government accountability.⁶⁸

Rooted in the broader concept of the democratisation of law,⁶⁹ these mechanisms enhance dialogue among institutions and societal actors.⁷⁰ For these reasons, ERJ encourages alternative interpretations and legal pathways, advancing a pluralistic constitutional model capable of integrating diverse rights-holders into environmental law-making processes.⁷¹ This approach is supported by instruments like EU Directive 2008/52/, equally implemented in Finnish law.⁷²

In terms of ERJ, Finnish constitution affirms that Sámi Peoples have 'the right to maintain and develop their own language and culture',⁷³ while calling for collective responsibility to protect the environment.⁷⁴ In light of section 8(j) of CBD, articles 17 and 121 of the Finnish constitution reinforce the idea on that aforementioned legal pluralism with various multi-level norms aimed at respecting Sámi cultural expectations from ecological restoration.⁷⁵ Constitutional law thus emerges as a suitable foundation for ERJ, given its growing receptiveness to sub-national legal systems, even in the absence of binding international obligations regarding Indigenous customary practices.⁷⁶ This gradual acknowledgement of Indigenous customary law reflects a steadfast commitment to decolonisation and respect for the self-determination rights of Indigenous Peoples, recognising traditional practices like reindeer husbandry, grazing, *siida* organisation, hunting, land use, and natural resource management.⁷⁷ This commitment mitigate the adverse impacts of the doctrine of discovery by affording 'constitutional space [...] for Indigenous Peoples' sovereignty, jurisdiction, and legal orders'.⁷⁸

⁶⁶Pareek P, "Integrating Restorative Justice Practices," 818–824.

⁶⁷Definition from the Government of Canada, "Reconciliation."

⁶⁸Beyond Truth and Reconciliation Committees in Fenn Scandinavia, other examples of repair and mediation systems in Canada and New Zealand are sentencing circles and Restorative Justice Conferences.

⁶⁹Fusco, "Participation, Sharing, and Cooperation."

⁷⁰Ibid. De Visser, Maartje, and Neo L. Jaclyn, 1890, 1893–4

⁷¹Directive 2004/35/CE of the European Parliament and of the Council of April 21, 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

⁷²Act on Mediation in Civil Disputes and Certification of Settlements (Laki riita-asioiden sovittelusta ja sovinnon vahvistamisesta yleisissä tuomioistuimissa), codified as Act No. 394/2011.

⁷³Finnish Constitution, art. 17(3).

⁷⁴Finnish Constitution, art. 20.

⁷⁵Bunikowski, D. "Indigenous Peoples, Rights and Customary Laws," 75–85.

⁷⁶Heinämäki, L., Herrmann, R., and Green, C. 'Towards Sámi Self-Determination over Their Cultural Heritage: The UNESCO World Heritage Site of Lapland in Northern Sweden', 1–3.

⁷⁷Åhren M, "Indigenous Peoples' Culture, Customs," 63–112.

⁷⁸UN Economic and Social Council, "Study impacts Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress" (E/C.19/2014/3).

4.1. Practical guidelines for application

To understand how ERJ is implemented through constitutional law, it is necessary to first remind constitutional justice operates. In broader terms, according to the European Venice Commission, constitutional justice operates through constitutional adjudication and judicial review, respectively manipulative rulings and the disapplication of conflicting norms.⁷⁹ While the concept of justice traditionally suggests punitive measures, constitutional justice does not have a genuine punitive character. Instead, it adheres to principles that are widely accepted by both society and the international community, which the constitutional system itself has helped implement.⁸⁰ Thus, although constitutional justice may appear abstract, it is, in fact, the primary driver of the legislative process, particularly in jurisdictions such as Finland, where constitutional checks are applied *ex ante*. The Committee's statement practice follows own previous opinions based on expert testimonies in constitutional law. The judicial review of law (*ex post*) remains with courts, which interpret constitutional provisions and ensure laws align with the constitution, especially to protect human rights.⁸¹ The Committee demands the disapplication of the norm in evident conflict with the constitution (art. 106).⁸²

Said that, ERJ can guide constitutional law in a way that sufficiently safeguards both the environment and Sámi culture by aligning legal practices with international law standards. As Forsyth outlines, the ERJ's framework encompasses distributed environmental management, participatory consultation, environmental justice, social licence, and green criminology.⁸³ For this reason, this section first analyses the legislation under which the Committee operates and ensures the correct domestic implementation in compliance with international law. It will be followed by the last section on the judicial approach to its application.

The first element, *distributed environmental management*, advocates for a collaborative regulatory framework that ideally involves bipartite (community/state) or tripartite (community/state/company) relationships in environmental decision-making. The second one, *participatory consultation*, emphasises a value-based approach, recognising the participatory rights of all rights-holders impacted by environmental decisions, including those related to climate change, and Free, Prior, and Informed Consent (FPIC). *Environmental justice*, a core principle of restorative environmental justice, underscores community engagement in environmental decisions and the issuance of social licences to operate. The final tool, *green criminology*, is a specialised branch of criminal law focused on advancing eco-justice.⁸⁴

For methodological clarity, the evaluation of the application of environmental restorative justice to the Finnish constitution in this article is based on three key categories derived from Forsyth's review.

⁷⁹Dürr S R, "Constitutional Justice – Key Mission Venice Committee," 229–3.

⁸⁰European Committee For Democracy Through Law (Venice Committee) "Comments On The Implementation Of International Human Rights Treaties In Domestic Law And The Role Of Courts," 8–10

⁸¹See Chapter 2 for further information on constitutional justice in Finland.

⁸²Article 106: "Courts of law must apply the Constitution when a law, regulation, or other provision conflicts with it. In cases where a provision of an Act of Parliament is in conflict with the Constitution, and it is evident that the provision is unconstitutional, the court must give precedence to the Constitution."

⁸³Forsyth et al., "Agenda Environmental Restorative Justice," 17–40.

⁸⁴Idem.

The first category, *Distributed management of natural resources (DEM)*, focuses on the inclusion of the Sámi in the governance of natural resources, ensuring that their rights and knowledge are respected in resource management decisions. In 2023, Finland revised its Cultural Environment strategy, emphasising the roles of individuals, communities, and Public Administration in managing cultural and natural resources.⁸⁵ The strategy aims to harness Finland's social diversity to adapt to social, technological, and economic changes. It also advocates for more inclusive environmental organisations, particularly in Lapland, where climate change effects are already evident.⁸⁶ Although co-management has been proposed as a solution to address uncertainties around Indigenous cultural property rights, criticism suggests that it may not fully support Indigenous self-determination.⁸⁷ Co-management was conceived as a solution to the uncertainty due to Indigenous cultural property rights, especially intangible property, while maintaining Indigenous participatory rights (e.g. Heritage site of Laponia).⁸⁸ Among the activities that are part of Sámi self-identification are reindeer herding (regulated by the Act on Reindeer Husbandry, 1990). Unlike Norway and Sweden, in Finland any EU citizen residing in the Sámi Homeland has the right to be allowed to conduct reindeer herding business. Unlike forestry, reindeer herding is not as profitable, and the number of people involved in this activity is decreasing every year. Reindeer herding is subject to many threats, including climate and state economic activities. Nowadays, Metsähallitus is responsible for the conservation of natural heritage, about 90% of the region. 80% of this area is under the Nature Conservation Act (1096/1996), which ensures ecological compensation and prohibits the undermining of Sámi livelihood rights.⁸⁹ Metsähallitus also manages the traditional landscape, the old Sámi settlements and in close collaboration with the Sámi Museum and the Finnish Heritage Agency.⁹⁰ The repatriation of archaeological artefacts found in Sápmi is highly debated, especially now that the Sámi Parliament and the Sámi Museum have a stronger role in the administration of archaeological heritage in Sápmi.⁹¹

The second category, *community engagement in environmental decision*, addresses the participation of the Sámi in legislative and governmental processes related to environmental and climate policy. Forsyth argues that meaningful participation helps to build stronger, more sustainable environmental governance systems, as it empowers communities to contribute their knowledge and actively engage in restorative practices.⁹² In terms of Sámi community engagement in climate crises, the new Climate Act (2022) establishes that the Government must monitor progress in terms of ecological sustainability and propose new measures to combat pollution. The act also obliges the Government to present an Annual Report to the Parliament and include the Sámi Parliament to draft new climate policies. The Sámi Parliament has been involved in the first Climate Policy Round Table of 2020 (which is not a decision-making process) to draft climate measures in Finland. Moreover, representatives of the Sámi Parliament are always invited by the Government in the national delegation in negotiation in

⁸⁵ Finnish Government, Government Resolution for the Cultural Heritage Strategy 2023–2030, 2023, Helsinki, 1–15.

⁸⁶ Ibid., 26–29.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid; Heinämäki, 93.

⁹⁰ Ibid.

⁹¹ Harlin EK, "Sámi Archaeology Fear Political Involvement," 254–284.

⁹² Ibid., and Forsyth, 18–21.

international for climate change.⁹³ The major novelty of the Climate Act is the creation of the Sámi Climate Council, the organisation of which was made explicit in detail by a specific decree (423/2022).⁹⁴ The Sámi Climate Council (hereafter, ‘SCC’) is an independent expert body which ensures Sámi participation in the stipulation of climate policies and the assessment of impacts on indigenous culture. It is made up of a chairperson and ten members.⁹⁵ Although the SCC is still in an embryonic stage, it represents the recognition by the Finnish government of the strong link between Sámi culture and the environment and therefore vulnerable to transformations due to climate change. The work of the SCC is in parallel with the objectives of the Truth and Reconciliation Commission, established in Finland in 2021, which includes a more transparent collaboration between Sámi Parliament with Skolt Village Assembly and the state in the preservation and development of indigenous culture, including traditional livelihoods.⁹⁶

The final category pertains to *Environmental Impact Assessment* (EIA) practices, emphasising the need for assessments to incorporate Sámi cultural perspectives holistically, ensuring that impacts on Sámi ways of life are anticipated and respected within environmental and developmental policies. Forsyth stresses the importance of including local and Indigenous communities in the EIA process, ensuring that their perspectives and traditional knowledge are integrated to assess potential harms and benefits holistically.⁹⁷ From reading articles 20 and 22 of the Constitution, the EIAs reflect ERJ, through the engagement of rights-holders in the evaluation and monitoring of the environmental impacts of the projects.⁹⁸ In Finland, EIA and SIA are both regulated by the Act on the Environmental Impact Assessment Procedure, which entered into force in Finland in 2017 and subsequently amended in 2023. Annexes I and II of the Act on the Environmental Impact Assessment Procedure provide the list of projects that required EIA and which geographical characteristics that must be met for the project approval. Annex I required EIA for all activities that may impact animal husbandry and fish farming, while Annex II further necessitates the assessment of the abundance, quality and regenerative capacity of the project location.⁹⁹ The use of EIAs is defined in other legislations such as the Nature Conservation Act (1096/1996), Land Use and Building Act (132/1999) and Mining Act. The Mining Act includes regulations that must be included in the exploration permit, such as consultation with the Sámi Parliament and the Skolt Village Assembly regarding projects in their Homeland (articles 51(2)(3), 52(4) and 54(3)). However, the final decision-making authority in the environmental legal domain is linked to an authorisation mechanism that limits court intervention.¹⁰⁰ Therefore, improved coordination between primary and secondary laws is crucial to fulfil the objectives under article 20 of the Finnish constitution. Article 20(1) underscores environmental conservation as a collective responsibility.

⁹³ Croatian Presidency of the Council of European Union, “Submission by Croatia and The European Committee On Behalf Of The European Union And Its Member States,” 3–6.

⁹⁴ Valtioneuvoston päätöksen mukaisesti säädetään ilmastolain (423/2022) [in English: Climate Act (423/2022)].

⁹⁵ Ministry of the Environment of Finland (2023). Government adopts Decree on Sámi Climate Council.

⁹⁶ Truth and Reconciliation Committee In Finland, “Establishing truth reconciliation committee concerning Sámi people.”

⁹⁷ Ibid; and Forsyth (2021), 17–20.

⁹⁸ Jalava K. et al., “Precautionary Principle Management of Uncertainties,” 280–3.

⁹⁹ Act on the Environmental Impact Assessment Procedure, Annex I and II.

¹⁰⁰ Raitanen, “National Constitution Basis Furthering Human,” 8–9.

While there is no explicit provision on nature's rights or legal personality attributed to the environment, article 20 holds a declarative function, with possible constraints of property rights.¹⁰¹ Environmental rights must be read in conjunction with article 22 of the Constitution, which mandates the Government to operate considering state welfare and human rights. The Government Bill on the new Nature Conservation Act¹⁰² includes the precautionary principle in article 7 with positive impact on the constitutional environmental right (article 20) by strengthening everyone's responsibility for nature and providing voluntary ecological compensation.¹⁰³ Indeed, section 114 of the Finnish Nature Conservation Act grants the Finnish government the authority to expropriate land or specific rights for the creation of protected areas or for other conservation purposes. The government may decide on the expropriation, and the Ministry of Environment is responsible for granting expropriation permits, particularly for areas included in nature protection programs or the Natura 2000 network. Before proceeding with expropriation, the government must, if possible, negotiate with landowners.¹⁰⁴ It is unclear whether the expropriation process, which allows the state to determine land use for nature conservation or Natura 2000 areas, will limit Sámi access to these lands for traditional activities or offer the Sámi the opportunity to be consulted. This provision could either restrict Sámi land rights or serve as a chance for meaningful dialogue, depending on how the consultation process is implemented and whether Sámi communities' interests are adequately considered.

5. Reconciling legal norms and cultural practices: core challenges and perspectives

Before delving into procedural examples of ERJ applied to constitutional justice, this section aims to provide a broader understanding of the core principles of reconciliation. It seeks to highlight the current limitations faced by the Sámi in managing natural resources and their cultural environment, while also shedding light on their role in shaping Finland's constitutional law and environmental policies.

5.1. The Sámi autonomy in Finnish constitutional Law

As previously stated, Finland expresses a commitment to adhering to international legal instruments and domestic laws that specifically protect Sámi culture, guided by principles of equality and non-discrimination (Article 6, Constitution), even if its practice has at times been questioned in UN Human Rights Committee jurisprudence. Article 1 of the Finnish Constitution guarantees individual freedoms and rights, particularly emphasising peace preservation, reflecting the country's regional commitment to fostering harmonious relations among all communities. Historically, Sámi People have always advocated for increased representation in national and international bodies. In the 1970s, Sámi political participation was formalised with the Sámi Committee's (1971) recommendation to create a representative body to promote Sámi culture. However, the 1972 elected body lacked authority and was

¹⁰¹KHO:2014:57 (Supreme Administrative Court of Finland, April 8, 2014).

¹⁰²HE 76/2022.

¹⁰³HE 76/2022, Chapter 11.

¹⁰⁴Nature Conservation Act, 2023 (Art. 114).

limited to issuing statements. The Sámi Language Act¹⁰⁵ and research into land rights emphasised the need for a Sámi Act, which was proposed in 1990 but ultimately defeated due to opposition.¹⁰⁶ In 1995, Finland recognised the Sámi as an Indigenous Peoples with ‘cultural autonomy’ within their home region. However, the Sámi Parliament Act, passed the same year, confined self-government to cultural and language matters,¹⁰⁷ excluding authority over land and resources.¹⁰⁸ Along with the 1999 amendment, the Finnish constitution incorporated article 17, ensuring Sámi rights in developing and maintaining their culture.¹⁰⁹ Article 17(3) of the Finnish Constitution corresponds to article 27 of the ICCPR, ratified by Finland in 1975, which acknowledges the right of minority members to preserve and enhance their cultural heritage. Consequently, the Finnish government is obligated under both article 17(3) and article 27 to undertake affirmative measures to sustain the cultural livelihoods of the Sámi.¹¹⁰ This includes Finland’s obligation to provide legal and procedural tools that allow the Sámi to participate in decisions that shape their way of life and to acquire FPIC before accepting projects in the Sámi Homeland. The threshold for determining significant harm is weighed on a case-by-case basis through international legal practice. For example, the Committee, when the Mining act was renewed, suggested a threshold that could harmonise with the constitution and ICCPR and CERD.¹¹¹ Also, when Finland adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), it recognised autonomy and self-determination under Article 4.¹¹² However, article 121 of the constitution acknowledges only the Sámi linguistic and cultural autonomy in their Homeland.¹¹³ If understood according to principle of EU subsidiarity, similar to a regional governance structure,¹¹⁴ this autonomy should incorporate sectoral mechanisms with Sámi Parliament’s competences in the region.¹¹⁵ This perspective has been partially endorsed by Savaşan, who hypothesised a dual narrative of article 121’s concept of autonomy, as territory-based administrative autonomy rooted in culture and land use.¹¹⁶ However, a memorandum of the Finnish Ministry of Justice on the negotiation obligation under Section 9 of the Sámi Parliament Act (OM 2/551/2017), drawing on the Constitutional Law Committee’s opinion (PeVM 17/1994 vp), clarified that the Sámi Parliament has no direct powers over resource management. Instead, state authorities are legally required to conduct genuine negotiations with it on all significant measures affecting the Sámi as an Indigenous Peoples, including land use, state lands, conservation areas, and natural resource exploitation.¹¹⁷ On the other hand, in a similar

¹⁰⁵ Passed in 1992, later amended in 2024.

¹⁰⁶ Kuokkanen, “Problem Culturalizing Indigenous Self-determination,” 152-3.

¹⁰⁷ Article 9 “Obligation to Negotiate.”

¹⁰⁸ Ibid., Kuokkanen.

¹⁰⁹ Article 17 (3) states: ‘The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act’.

¹¹⁰ Ibid.; and Heinämäki L, 88.

¹¹¹ Ibid.; and Heinämäki L, 84–90.

¹¹² Article 4: “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”

¹¹³ Article 121: “In their native region, the Sami have linguistic and cultural self-government, as provided by an Act.”

¹¹⁴ Nordic Sámi Convention. Draft available here: <https://www.sametinget.se/105173>.

¹¹⁵ Bunikowski, “Indigenous peoples, their rights and customary laws,” 75–85.

¹¹⁶ Savaşan, “Land Rights Under Cultural Autonomy,” 1–11.

¹¹⁷ Finnish Ministry of Justice, “Memorandum on the negotiation obligation under Section 9 of the Sámi Parliament Act” OM 2/551/2017 §2–3, citing Constitutional Law Committee, PeVM 17/1994 vp, 2–3.

vein, the Committee on the European Charter of Local Self-Government (1991) stated that Sámi autonomy, as endorsed in Article 121 of the Finnish Constitution, should be understood as a form of administrative supremacy comparable to that of local authorities, even if restricted to areas such as economics, transport, and the electoral system.¹¹⁸ Instead, linguistic and cultural autonomy has never posed a major issue, as previously acknowledged in Article 52a of the Parliamentary Rules of Procedure, which guarantees the Sámi the right to be heard in Parliament on matters within their competence.¹¹⁹ However, this series of systemic contradictions emerged in 2017 with the Arctic Railway project's access to Sápmi. The project was harshly criticised by the Sámi Parliament for negative impacts on traditional activities (reindeer herding, fishing, and hunting). In that occasion, the Sámi Parliament cited article 17 of the Finnish constitution which reads "the right [of Sámi people] to maintain and develop their own language and culture 'which includes reindeer herding, hunting, and fishing'". Furthermore, the Sámi Parliament cited article 121 referring to article 9 of the Sámi Parliament Act according to which the authorities have the obligation to obtain consent from the Sámi community for all activities in the Homeland where cultural autonomy applies.¹²⁰

5.2. *Enduring legal impediments to Indigenous involvement in environmental decision-making*

Despite legal amendments and provisions ensuring Sámi consultation on land use, the Sámi Parliament continues to face significant limitations in its decision-making authority over natural resources. These constraints that are embedded in both national and international legal frameworks. In Finland, due to the aforementioned persistent *culturalization* of Sámi self-determination, the Sámi self-government is solely a cultural autonomy.¹²¹ Even if Finnish law mandates consultation with the Sámi on actions impacting their homeland, inadequate consultation continues to impede their participation in environmental decision-making, revealing the persistent gap between legal obligations and actual practices.¹²²

In terms of international law, Finland's ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is the one that presents the most challenges. More generally, the Committee on the Elimination of Racial Discrimination has repeatedly recalled the obligation of member states to respect Indigenous rights and environmental conservation.¹²³ In its General Recommendation XXIII, it declared that states need to 'have substantive and procedural obligations to protect human rights against the adverse impacts of environmental harm'.¹²⁴ Substantive obligations include the rights to a healthy environment and property, while procedural obligations involve EIA processes, Indigenous participation in decision-making,

¹¹⁸ Report archives are available at: <https://www.congress-monitoring.eu/en/23-pays.html>.

¹¹⁹ Finland: Parliament Act of 1928.

¹²⁰ Ibid., Heinämäki L, 86.

¹²¹ Ibid., Kuokkanen, 158–60.

¹²² Ibid.

¹²³ Report of the Committee on the Convention on the Elimination of All Forms of Racial Discrimination for the Seventieth and Seventy-first sessions, Consideration of Reports, Comments and Information Submitted by States Parties: Democratic Republic of the Congo, 1 October 2007, U.N. Doc. A/62/18, 332.

¹²⁴ UNOHCHR, "Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment," Report No. 3, 9.

compensation for land exploitation, and access to legal remedies.¹²⁵ To determine the terms of liability for environmental harm, the CERD Committee has constantly emphasised that Indigenous rights must inform land use licencing and pollution mitigation, urging states to halt support for large-scale projects threatening traditional Indigenous life.¹²⁶ In Finland, the implementation of CERD, which took place via presidential decree, therefore below the Acts of Parliament, required the amendment of other domestic regulations such as the Penal Code and the Non-Discrimination Act. The Committee expressed concerns especially with the permits licenced for machine gold prospecting in Sápmi.¹²⁷ It required further clarification on the definition of Sámi land rights as, in tandem with the Human Rights Committee, regarding decisions on the right to vote in Sámi elections.¹²⁸ Also, the CERD Committee calls on Finland to amend the Act on the Metsähallitus (Act on the Forestry Management Agency, 234/2016) which doesn't include the obligation to reach consent from Sámi Parliament before any projects ran in Homeland.¹²⁹

Recent developments within the framework of Finland's fourth-cycle Universal Periodic Review (UPR) further underscore the persistence of these legal frictions. Member states have raised concerns regarding Finland's non-ratification of ILO Convention No. 169.¹³⁰ Recommendations from several states, as Australia, Canada, Denmark, Ireland, and Norway, underscore the urgent need to amend the Sámi Parliament Act to better align Finland's laws with Indigenous self-determination principles.¹³¹

6. Procedural examples

The following two cases from 2022 provide excellent examples on how constitutional law, in application of ERJ, can reconcile state and Indigenous Rights on ecology. In those cases, the Supreme Court of Finland ruled on conflicts between the Sámi rights and domestic regulations aiming to restore specific biodiversity standards in Teno river.¹³² These cases are important because the Committee provided opinions by demonstrating novel cultural sensitivity in its approach to environmental protection. This marked a shift from earlier decisions, such as the Vuotos case,¹³³ which focused primarily on the need for environmental impact assessments and precautionary measures to address potential ecological harm, without substantially considering Indigenous cultural dimensions.

¹²⁵CERD. Report of the Committee on the Convention on the Elimination of All Forms of Racial Discrimination for the Sixty-fourth and Sixty-fifth sessions. 2004, U.N. Doc. A/59/18, 190.

¹²⁶CERD. Report of the Committee on the Convention on the Elimination of All Forms of Racial Discrimination for the Sixty-second and Sixty-third sessions, 2007, U.N. Doc. A/62/18, 12(i).

¹²⁷Pentikäinen M. "Impact of United Nations Human Rights Treaties," 500–9.

¹²⁸HRC, Concluding observations on the seventh periodic report of Finland (CCPR/C/FIN/CO/7), s.4 CESCR Concluding observations on the seventh periodic report of Finland s.50 (E/C.12/FIN/CO/7).

¹²⁹CERD, Concluding observations on the twenty-third periodic report of Finland (CERD/C/FIN/CO/23) s.16.

¹³⁰HRC. Summary of stakeholders' submissions on Finland. Report of the Office of the United Nations High Committeer for Human Right. Forty-first session 2022 A/HRC/WG.6/41/FIN/3.

¹³¹HRC. Report of the Working Group on the Universal Periodic Review. Universal Periodic Review. Fifty-second session 2023 A/HRC/52/9.

¹³²KKO:2022:25; and KKO:2022:26.

¹³³The Vuotos case involved a proposed dam and reservoir project on the upper course of Finland's Kemijoki River in 1992. The project faced significant environmental concerns, including potential harm to ecosystems and increased emissions of nutrients and heavy metals. In 2002, Finland's Supreme Administrative Court denied the permit, citing substantial harmful changes to the natural environment (KHO 2002:86).

In the first case, a Sámi man was prosecuted for fishing salmon without a state permit in the Veahčajohka river, part of his family's traditional fishing area.¹³⁴ At first, the Supreme Court found that the limitations imposed by the Tenjoki Tributary Decree were justified under Article 52 of the Fishing Act, which authorises restrictions of stationary nets in cases of stock depletion. Indeed, the fishing season was shortened by approximately one and a half months under Article 9 of the Decree to promote the sustainable recovery of migratory fish populations. The Court emphasised that the rights of the Sámi are not absolute and may be limited for purposes such as biodiversity conservation disregarding article 17(3) of the Finnish constitution, which safeguards the cultural rights of the Sámi as an Indigenous Peoples.¹³⁵ In a subsequent opinions, the Committee affirmed that maintaining sustainable salmon populations was integral to fulfilling the State's obligation to protect the Sámi's collective cultural rights under Section 17(3) as 'conducive to promoting the continuity of the Sámi culture also in the future'.¹³⁶ However, the Committee condemned the lack of proportionality between the two measures was in violation of article 27 of the ICCPR, which ensures 'the survival and continued development of the cultural, religious and social identity of the minorities concerned'.¹³⁷ The Supreme Court concluded that, in light of the Sámi people's cultural rights under Section 17(3) of the constitution, the restriction imposed by Section 9 of the Decree was constitutionally invalid under Section 107. As a result, the District Court's acquittal was affirmed.¹³⁸

The second case pertained instead to charges against certain Sámi individuals for fishing without proper authorisation as per article 10 of the Criminal Code.¹³⁹ Article 10 of the Fishing Act (379/2015), read in conjunction with article 2 of the Act on the Municipality of Domicile, granted the right to obtain a free fishing permit in Upper Lapland from Metsähallitus. Paragraph 2 of the same section required a specific permit for fishing in salmon and trout migration areas (Tenjoki) in state-owned waters. Despite the Committee had not previously addressed article 10 of the Fishing Act bill (192/2014), the Court recognised its evolving doctrine, which acknowledges reindeer herding, hunting, and commercial fishing as integral aspects of Sámi cultural heritage.¹⁴⁰ Indeed, the Court affirmed that the preparatory work of the Fishing act adhered to environmental goals (Section 20) of the constitution, but ruled they did not justify overriding Sámi constitutional rights. In this case, the court referred to the Committee's opinions, which confirmed that treating the Sámi People the same as non-Sámi fishers amounted to a breach of Article 17(3) of the Constitution and Article 27 of the ICCPR. This interpretation revealed a clear inconsistency with constitutional protections, justifying the use of Article 106 to set aside the conflicting legal provision.¹⁴¹

In conclusion, the Finnish Supreme Court affirmed that Sámi fishing rights are living cultural rights, not frozen in historical tradition. They encompass modern practices and

¹³⁴Fishing restriction imposed on the Sámi indigenous people and its relationship to their fundamental rights (fishing offence) R2019/424; ECLI:FI:KKO:2022:25.

¹³⁵Supreme Court, KKO:2022:25, "Summary of the Case," 3.

¹³⁶Ibid., 3.

¹³⁷United Nations Human Rights Committee, "CCPR General Comment No. 23: Article 27," §9.

¹³⁸Ibid.

¹³⁹Fishing restriction imposed on the Sámi indigenous people and its relationship to their fundamental rights (game offence) R2019/425 ECLI:FI: KKO:2022:26.

¹⁴⁰Committee's opinions: 27/1997, 29/2004, and 1/2016) See also: Supreme Court, "Summary of Case," KKO:2022:26, 2.

¹⁴¹Ibid.

are protected against criminalisation when expressing Sámi identity under Constitutional protection. In those cases, the Committee recognised these rights as transmissible to future generations and gave legal weight to the Sámi Parliament's interpretations, reinforcing Indigenous authority in managing of natural resources in force of their collective rights with ecological sustainability.¹⁴²

7. Conclusions

Environmental restorative justice serves as alternative tool for reconciling ecological restoration efforts with the protection of Indigenous rights. While ecological restoration has traditionally been framed within the confines of biodiversity conservation, it is important to broaden this perspective to encompass the social, cultural, and governance dimensions affecting Indigenous communities. Recent deliberations by Finnish Parliamentary Committee on Constitutional Affairs reflect a notable shift towards integrating Sámi rights into legal and policy decisions concerning environmental governance. In its examination of the Temporary Ban on Salmon Fishing Act¹⁴³ the Committee assessed the legislation considering Article 20 of the Finnish Constitution, which establishes the collective responsibility for safeguarding the environment, biodiversity, both living and non-living, and cultural heritage.¹⁴⁴ The Committee emphasised that the intrinsic value of nature constitutes a fundamental human right and must be preserved for future generations. Representatives of the Sámi Parliament actively participated in those discussions,¹⁴⁵ underscoring the significance of Indigenous engagement in environmental decision-making.¹⁴⁶ In its legal analysis, the Committee reaffirmed core principles of environmental restorative justice: as the necessity of Sámi *co- management of natural resources* in Teno river and *community engagement in environmental decision* by introducing the Sámi Parliament's interpretations on restorative measures. However, while interpreting Sámi rights under Articles 17(3), 20, and 121 of the Finnish Constitution, the Committee acknowledged that the right to traditional livelihoods is not absolute and may be subject to limitations for the purpose of ecological restoration.¹⁴⁷ Any such restrictions must, however, satisfy the principles of proportionality and necessity, ensuring that limitations on Sámi land use or governance are justified within the broader framework of environmental protection. This procedural safeguard represents an innovative application of the precautionary principle, incorporating culturally sensitive environmental assessments for prospecting activities. It aims to prevent ecological objectives from disproportionately encroaching on the Sámi's constitutional rights and supports the protection of their cultural heritage. Finally, pursuant to Article 106 of the Constitution, the Committee ultimately disapplied the domestic legislation, deeming it to be in manifest conflict with both the

¹⁴²Scheinin M, "Indigenous Peoples' Right to Fish-Recent Recognition," 43–47

¹⁴³HE 56/2022 vp.

¹⁴⁴Parliament Committee on Constitution Affair: Valiokunnan lausunto PeVL 27/2022 vp HE 56/2022 vp Perustuslakivaliokunta Hallituksen esitys eduskunnalle laiksi lohenkalastuksen määräaikaisesta kieltämisestä Tenjoen vesistössä [Government Proposal to the Parliament for an Act on the Temporary Ban on Salmon Fishing in the Teno River Basin] §5.

¹⁴⁵Sarita Kämäräinen from Saamelaiskäräjät [Sámi Parliament].

¹⁴⁶Ibid., Parliament Committee on Constitution Affair, §6.

¹⁴⁷Ibid., §11.

Finnish Constitution and international law. The decision acknowledges that enforcing the law could undermine Sámi rights and set a harmful precedent. The Committee's evolving jurisprudence signals a shift towards restorative environmental justice, promoting a governance model that balances ecological integrity with Indigenous cultural preservation.

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ORCID

Sara Fusco  <http://orcid.org/0009-0005-9104-3210>

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