

The Sami in Finland

On EU law, land rights and preservation of the Sami culture.

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Abstract: This thesis discusses the influence of minority rights laws created by the European Union and international organisations, such as the UN, on the situation of the Sami in Finland.

The Sami live in four different nation states: Norway, Sweden, Finland and Sweden. Due to their nomadic lifestyle, the land that the Sami traditionally inhabited has been dispossessed by the nation states in the 19th century. In all states the Sami are a minority. In this thesis a number of international rules and treaties is discussed that are designed to protect minorities, as well as the effects these rules and treaties have on the situation of the Sami in Finland: i.e. the use of Sami languages in everyday life; Sami claims to land; the preservation of Sami languages and culture.

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Introduction

A hard time I did not have, when choosing a topic for this thesis. During my studies at the University of Amsterdam I had written a paper on the Sami, an indigenous people residing in Norway, Sweden, Finland and Russia, and fascinated by a nation scattered across four (nation) states I decided to write my thesis on the Sami in Finland. I decided to focus on the Sami in Finland in order to narrow the subject. I could have chosen any of the other three countries, but decided on Finland because moving and studying in Finland was one of my big dreams. Perhaps one could say that, when starting to write this thesis, I saw my surroundings through rose-coloured glasses. Whatever it was, I wanted to put my thoughts and expectations to the test.

Even though I have previously written a paper on the Sami, I am certainly no expert when it comes to the Sami, their culture, their traditional livelihoods or any of their languages. For me, this is part of the fun; however, it also limits my sources and my understanding. The issue of the limited sources I cannot solve. I thoroughly enjoy Finnish language classes, but to add any of the Sami languages to the mix would be a bit much, especially since it would take years to master any of the languages to the point where I would be able to read and understand scientific material. Luckily for me a lot of the publications aimed at an international audience are in English. The matter of understanding is a difficult one: there are parts of the position of the Sami in Finnish society that I am unaware of. I was greatly surprised when one of my Finnish teachers told me that he did not find out that a friend of his was Sami until many years after they met, it was not a piece of information the friend liked to share. This can be a negative thing, when I would be (without intent) insensitive or blunt. It can turn into a positive trait, because I can look at the matter with relative ‘fresh eyes’.

My interest for the Sami matter stems from the ongoing land rights discussion. As I have understood so far, Sami land was dispossessed years ago and the Sami are putting up a legal fight to get it back. However, how to get land back that has been dispossessed from the 19th century onwards and is now being called a ‘colonial heritage’?¹ In the first chapter I will

¹ Sasvari, A., ‘*Consultation practices and assessment of wind power impacts on indigenous Saami lands*’, IAIA12 Conference Proceedings, Energy Future The Role of Impact Assessment, 32nd Annual Meeting of the International Association for Impact Assessment, 27 May- 1 June 2012, Centro de Congresso da Alfândega, Porto – Portugal, <http://www.iaia.org/conferences/iaia12/uploadpapers/Final%20papers%20review%20process/Sasvari,%20Anett.%20%20Consultation%20practices%20and%20assessment%20of%20wind%20power%20impacts%20on%20indigenous%20Saami%20lands.pdf>, p. 2 &3. This paper discusses the Sami situation in Sweden. However, Finland during the 19th century was both part of Sweden and later Russia and did not gain independence until 1919.

discuss the Sami. Questions that I have and will try to answer are: who are they? What did they live like before and during the nationalization process of states? Does the land play a part in their way of life? How did they come about losing their land? Why is this land so important for them?

Taken into account that Finland is a member of the European Union, the role of the EU in this matter will be discussed as well. What rules and regulations does the EU have on minority rights and land rights? Is the EU politically capable of rules and regulations that can solve the land rights issue, either in favour of the Finns or of the Sami? In order to assess legal capability I will discuss territoriality in the second chapter of this thesis. I chose territoriality as my theory, because I had read about it in an article. The authors used it on a Sami case and I thought it was a theory worth studying, since it is smaller and not well-known. This may sound ‘accidental’, and to a certain extent it is: upon further studying I found that I would like to use it since it is a lesser-known theory and therefore may offer solutions that the bigger and well-known theories might not.

Chapter 3 discusses the method used to analyse the documents that I will gather. What are some pitfalls that I should look out for when gathering and interpreting information in books, articles and reports? How should I go about interpreting and validating the information I collected from my resources?

Minority governance comes from nationalism; securing rights of minorities became an issue when it became clear that the idea of ‘one nation, one state’ did not work. Minority rights apply to the Sami, as they are an indigenous people and a minority. In the fourth chapter I will look into what minority governance is, what it does, how scientists see minority governance, as well as social exclusion of minorities from the mainstream of society.

From the fifth chapter onwards I hope to find some answers on my questions. In chapter 5 laws will be discussed. What types of EU law exist? What areas of rights (human rights, land rights, language rights) are covered by the EU? Are any of the EU laws, rights, rules and regulations useable in the court of law, when it comes to Sami land rights? Conventions and declarations from the United Nations (UN) and the International Labour Organisation (ILO) will also be discussed. Do the declarations and conventions from the

& Kuokkanen, R., ‘Towards an “indigenous paradigm” from a Sami perspective’, in *The Canadian Journal of Native Studies*, XX, 2 (2000), pp. 411-436, p. 412,
http://www2.brandonu.ca/library/cjns/20.2/cjnsv20no1_pg411-436.pdf

international organisations (IOs) add anything to EU law? Do the declarations and conventions offer whole new insights and/or do they touch upon topics untouched by EU law?

Then I will look into reports. I will gather documentation from international sources. I have found reports on the Sami in Finland from such sources as the EU, the UN, the ILO, and Amnesty International. I have also searched for English language reports from Sami sources and the Finnish government. English information from Sami resources I have gathered, however, English information on the Sami issue from the Finnish government is hard to come by and I have not found recent information. The reports will be at the foundation of my answers, since I hope to find in these reports what the situation of the Sami in Finland is like, what the problem areas are, how problems can be solved, what has happened to solve problems and/or if issues (such as the land rights discussion) have come to a screeching halt.

In the Analysis chapter the information will be digested and then I will come to a conclusion on the situation of the Sami in Finland: what is the influence of the EU? How are Sami rights protected? What can be done to protect and preserve the Sami lifestyle?

I hope that you will enjoy reading my thesis.

1. The Sami

The Sami are an indigenous people that live in northern Europe. The Sami refer to the area they live in as *Sápmi*. Sápmi is in the northernmost parts of Norway, Sweden, Finland and the Kola Peninsula in Russia.² The Sami people are the people longest to reside in northern Europe, and probably, based on genetic research, the people that have resided in the European area the longest as well.³ The traditional Sami lifestyle consists of hunting, fishing, gathering and trapping, the Sami “have a deep knowledge of the far north region that has been handed down for many generations.”⁴ Reindeer herding is central to the lifestyle, however, it is not out of the ordinary to combine reindeer herding with hunting, fishing and farming.⁵

² UN, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya’, http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p. 4

³ Baer, L.A., ‘*The Rights of Indigenous Peoples – A Brief Introduction in the Context of the Sámi*’, International Journal on Minority and Group Rights, 2005, vol. 12, no. 2/3, pp. 245-267, p. 247

⁴ UN, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya’, http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p. 4

⁵ Ibid, p. 4

The Sami people clarify and strengthen their status as one indigenous people, they want to make it “legal with a right to their own language, culture and traditional livelihoods.”⁶ The area where the Sami live is sparsely populated, with the largest population concentrations in the Russian area. The population of the European North consists of approximately four million people, the Sami (and some other indigenous people) are minority groups in the area, the respective national citizens form the majority.⁷

Sápmi is often seen as a “transnational entity of a relatively late date.”⁸ The Sami culture, languages, communities and lifestyle has existed for many centuries, but the image of Sápmi as the homeland of all Sami is a 20th century phenomenon. The effort to unite all Sami on a transnational level, is completely new and not in line with the old Sami traditions of small and decentralised *siidas*, Lapp villages.⁹

1.1 Siidas over the Centuries

The Sami live in four different nation-states, Sápmi is divided by several national boundaries. ‘The national boundaries in the Sápmi region, better known as North Calotte, were established in 1751, 1852 and 1889.’¹⁰ The fact that the Sami do not have their own nation-state, however, does not mean that they have/had no sense of territoriality. In this thesis I will use the notion territoriality as explained by Robert Sack. Territoriality is an ‘attempt by an individual or group to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control over a geographic area.’¹¹ Territory is the realisation of territoriality. The Sami approach to territoriality is different to that of modern nation-states. The Sami used to live in a *siida*, a Sami village.¹² Where states are fixed, because of their boundaries, the *siida* system was ‘more flexible, diffuse and negotiable’¹³. The Sami territory was divided into several *siidas*, each with its own administration, resources, social system and rules.¹⁴

⁶ Heininen, L., ‘The Saami as a pan-national actor’, pp. 223-238 in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 223

⁷ Ibid, p. 223

⁸ Eriksson, J., ‘The construction of Sápmi: Towards a transnational polity?’, pp. 239-250, 238 in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 239

⁹ Ibid, p. 239

¹⁰ Paraphrase from Lehtola, V-P, ‘The Saami *siida* and the Nordic states from the Middle Ages to the beginning of the 1900s’, pp. 183-202, in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 183

¹¹ Karppi, K., ‘*Encountering Different Territorialities: Political Fragmentation of the Sami Homeland*’, Tijdschrift voor Economische en Sociale Geografie, 2001, Vol. 92, No. 4, pp. 394-404, p. 396

¹² Ibid, p. 394 & 396

¹³ Ibid, p. 396

¹⁴ Ibid, p. 396

The state borders that run through Sápmi came into existence over a 100-year period, approximately from mid-18th century to mid-19th century. “Over time, the influx of new settlers within the Nordic region changed the composition of the population in the northern areas and reduced the Sami to a numerical minority in their homeland. The borders between States cut through linguistic and cultural communities and constrained reindeer-herding activities. During the 1800s and until about the time of the Second World War, Nordic Governments primarily followed policies with respect to the Sami people that were aimed at assimilating them into the majority societies.”¹⁵ The siida system existed well into the 1930s, but researchers have never believed it to be a valid criterion for Sami history. This is due to the fact that researchers for many years thought of the Sami as “a passive people, who ‘wandered from place to place’, retreating ever northward; that the Sami neither resisted nor defied these developments was considered regrettable, but unavoidable.”¹⁶ The siida system of the Skolt Sami has existed until the Second World War; researchers have considered this type of siidas to be an archetypal system. The Skolt Sami form a part of the Eastern Sami group. “The Skolt Sámi are an indigenous population of the Kola Peninsula, who lost their lands in Petsamo as a result of World War II. [...] The Skolt Sámi live in the eastern parts of the municipality of Inari, to the south, south-east and north-east of Lake Inari. This area, controlled by the state, is known as the Skolt Sámi area. It is estimated that there are some 700 Skolt Sámi in Finland today.”¹⁷ However, the Skolt Sami system differs from the Western Sami models, and therefore it cannot be used as a prototype of all Sami siida systems throughout history.¹⁸ The Skolt Sami’s annual migration cycle was based on fishing opportunities. The fishing cycle influenced the reindeer herding activities and migration in such a matter that it is said that “reindeer herding was adjusted to fishing.”¹⁹ The Petsamo area was inhabited by three different Sami groups: Suonjel, Paatsjoki and Petsamo Sami. “Each village had its territory along a distinct river system. [...] The borders between the villages were very exact. Sometimes a village meeting would decide that part of its land could

¹⁵ UN, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya’, http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p. 5

¹⁶ Lehtola, V-P, ‘The Saami siida and the Nordic states from the Middle Ages to the beginning of the 1900s’, pp. 183-202, in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 183

¹⁷ Siida – Sää’ mjie’llem, The Skolt Sámi in Finland, http://www.samimuseum.fi/saamjiellem/english/tieto_etusivu.html

¹⁸ Lehtola, V-P, ‘The Saami siida and the Nordic states from the Middle Ages to the beginning of the 1900s’, pp. 183-202, in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 186

¹⁹ Siida – Sää’ mjie’llem, From Petsamo to Inari, <http://www.samimuseum.fi/saamjiellem/english/historia.html>

be used by a neighbouring village for a certain period.”²⁰ The Winter War of 1939-1940 and the subsequent Second World War led to relocation of many Skolt Sámi to Norway, Finland (Oulu, Kalajoki) and the Kola Peninsula (the Soviet Union).²¹

The Sami siida was both a hunting group ‘responsible for community affairs’ and the territory that was hunted in. A siida was a clearly defined area, the land and its resources were owned by the siida and user rights were distributed among the families living in the siida. Each siida had a clearly defined territory, and the borders between these siidas were clearly defined as well. The Sami migrated seasonally, but they did so within clear boundaries, so therefore, one cannot speak of ‘wandering Lapps’.²²

The siidas were flexible when it came to membership, it could range from a few families to 20-30. It is thought that in the 11th century the current Sápmi area was inhabited by some 60-100 tribes. Each tribe had its own government, a family community and territorial zone.²³ In a siida private and collective ownership were combined: every family had its own right to a certain land. In the 16th and 17th century “the siida nomadic cycle was formed by the seasonal migration and the geographical extent of the siida, thus covering a broad area and a variety of ecological zones.”²⁴ Most of the boundaries between siidas were natural, i.e. mountains or rivers, so the divisions were not linear but marked the transition from one area to another. Sometimes more than one siida occupied a territory or shared boundary zones.²⁵ Nowadays one can see the old siida system in the modern Sami herding districts in the Nordic states. However, the boundaries of the old siidas have become fixed and part of modern nation-state practice, instead of being dynamic, such as the original siida boundaries.²⁶

The Sami paid taxes to the nation states as far back as the 1600s.²⁷ Usually this is interpreted by researchers as a sign of weakness. It illustrates passivity and positions the Sami in a victim role. However, according to Lehtola, it can be seen as a strength as well, since it is proof of the wealth of the siidas and to the privileges that the Sami gained by paying taxes, i.e.

²⁰ Siida – Sää’ mje’llem, From Petsamo to Inari, <http://www.samimuseum.fi/saamjiellem/english/historia.html>

²¹ Ibid.

²² Lehtola, V-P, ‘The Saami siida and the Nordic states from the Middle Ages to the beginning of the 1900s’, pp. 183-202, in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 186

²³ Eriksson, J., ‘The construction of Sápmi: Towards a transnational polity?’, pp. 239-250, 238 in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 241

²⁴ Karppi, K., ‘*Encountering Different Territorialities: Political Fragmentation of the Sami Homeland*’, Tijdschrift voor Economische en Sociale Geografie, 2001, Vol. 92, No. 4, pp. 394-404, p. 397

²⁵ Ibid, p. 396 & 397

²⁶ Ibid, p. 397

²⁷ Lehtola, V-P, ‘The Saami siida and the Nordic states from the Middle Ages to the beginning of the 1900s’, pp. 183-202, in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 185

starting in the 1600s the Sami were free from the obligation to fight in a state's army. In the 16th century, Gustav Vasa, king of Sweden, made it clear that "the Sami were valued taxpayers, to be protected."²⁸ Not being required to enter military service meant that the Sami did not have to die in a war fought by one of the nation states. Research suggests that taxation of the Sami does not need to be interpreted as a sign of weakness, it is possible that "the various states recognised the Sami siida as a viable self-government very early on, with taxation responsibilities, as well as taxation privileges."²⁹ Furthermore, the Sami were very active when it came to maintaining their privileges. They had a strategy to avoid excessive taxation or other abuse: they threatened to leave the area and become tax payers in another state. These threats made the state officials pressure the priests and bailiffs in the area to treat the Sami properly, in order to keep them from moving.³⁰

However, by the end of the 1700s the traditional siida system began to be eroded. This coincides with the establishment of national borders in the North Calotte region in 1751. Researchers find it difficult to pinpoint exact moments in time. The situation in Swedish Lapland changed with the settlement decrees of 1745 and 1749, while the Finnish autonomy in 1809, when Finland became a part of the Russian Empire, meant the final blow for the Sami in Finland. What the researchers are sure of is that the Sami rights were not eroded by laws, but by 'slowly evolving practice'.³¹

The national settlers moving into the Sami areas forced the Sami to create new settlements "as a means to secure their rights to land and waters"³². These new settlements had as a disadvantage the loss of the traditional privileges. The Swedish royal decree of 1762 said that new settlers were not entitled to traditional Sami rights. In Sweden the distinction between reindeer-herding Sami and non-reindeer-herding Sami became of huge importance: only the reindeer-herding Sami were recognised as being Sami and had access to the traditional privileges. Non-herding Sami were deprived of these privileges and "their very identity as Sami proved problematic to local officials"³³.

The situation changed even more between 1751 and 1852. In the Lapp Codicil, in the Treaty of Strömstad of 1751, the most important clause was 'den lappiske nationanes konservation', the preservation of the Lapp nation. The Sami remained the right to cross national boundaries,

²⁸ Lehtola, V-P, 'The Saami siida and the Nordic states from the Middle Ages to the beginning of the 1900s', pp. 183-202, in: Karppi, K. & Eriksson, J., 'Conflict and Cooperation in the North', Norrlands Universitetsförslag I Umeå, Umeå, 2002, p. 187

²⁹ Ibid, p. 187

³⁰ Ibid, p. 188

³¹ Ibid, p. 189

³² Ibid, p. 189

³³ Ibid, p. 189

also, they were allowed to migrate directly from the inlands to the seashore. Other rights, like hunting, reindeer herding and commerce remained in force, as well as the Sami fishing rights on the Norwegian coast. Another key clause was that any war was not supposed to interfere with the Sami life and that “they were to be treated as subjects, regardless, of which side of the border they lived”³⁴. This essentially meant that the Sami were not to serve as soldiers, retaining the old privilege. However, the Sami status changed in the 1800s with the ‘autonomy of Finland’, better known as Finland becoming a Grand Duchy of the Russian Empire, after the Swedes lost the area that is now known as Finland to Russia in 1809. This meant that the border between Finland and Sweden was clearly drawn.

Furthermore, disagreements between the Russian Tsar and the Norwegian King led to closure of the Norwegian-Finnish border in 1852, and in doing this, the Treaty of Strömstad³⁵ was dissolved. The closure of the border proved to be shattering for the Sami culture, especially when the Swedish-Finnish border was closed as well in 1889. The closure of borders hit reindeer nomadism severely. The national borders ran straight through old migration routes “precipitating an abrupt crisis among reindeer-herding Sami and causing mass displacements in Sami territories.”³⁶ On top of these borders changes national officials began to meddle with the old Sami siida organisation, i.e. the Norwegian government required inhabitants to speak Norwegian in order to obtain citizenship and municipal restructuring in Sweden and Finland.³⁷

During the 19th century the ideas of Sápmi and a shared Sami identity took form, in order to voice the values, ideas and concerns of the Sami. In this era Sami rights were further eroded by assimilation policies. Especially the assimilation policy of Norway gave a hard blow to Sami identity giving priority to Norwegian settlers and their livelihoods over the Samis, as well as, only allowing the Norwegian language in education and boarding schools. These two policies were linked to each other, so that one could only own land when one would speak Norwegian, this excluded many Sami from landownership, since many of the elder spoke only Sami and the younger learned Norwegian in school (forcing more permanent settlement upon families). Furthermore, the Norwegians abolished the old Sami privilege of

³⁴ Lehtola, V-P, ‘The Saami siida and the Nordic states from the Middle Ages to the beginning of the 1900s’, pp. 183-202, in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförslag I Umeå, Umeå, 2002 , p. 190

³⁵ The Treaty of Strömstad was established in 1751. “Ostensibly, the treaty established equitable taxation of reindeer-herding Saami, prohibiting taxation in more than one country, even if the Saami were herding in both countries. The Norwegian-Swedish border was drawn from Kilpisjärvi to Kolmisoaivi, the line that it follows today.” Ibid, p. 190

³⁶ Ibid, p. 191

³⁷ Ibid, p. 190 & 191

not having to fight for the state army in 1897.³⁸ The Swedish policy divided the Sami into two groups: reindeer-herders and non-reindeer-herders. The non-reindeer-herding Sami were seen as ‘normal’ Swedish citizens. This policy, according to Lehtola, made the “Saami culture and identity as *[an]* issue of livelihood of a small professional organisation.”³⁹ Swedish laws protected the reindeer-herding lifestyle, but at the same time allowed the Swedes to use the natural resources in these areas. The Sami had no access to the decision-making process and therefore could not protest against this practice. In Finland it was not until the 1920s and 1930s that assimilation policies were created, not odd since Finland gained independence in 1917, but “Finland’s independence in 1917 and its emergent national identity led to Finns identifying themselves as separate from Swedes and Russians, as well as from other ‘primitive’ peoples.”⁴⁰ These policies started a debate in Finland about the cultural status of the Sami people, the Sami culture was seen as a lower than the Finnish.⁴¹

1.2 Sápmi

According to Eriksson Sápmi is “a social and political construction”, that is “not a static primordial reality, but a dynamic metaphor, adaptable to changing circumstances and different purposes”⁴². Nowadays Sápmi is portrayed as the Sami homeland, divided by four states. However, Sápmi is not a static reality, over the centuries the territory of the Sami has changed and the areas where the Sami live have changed over the centuries. Also, the area of Sápmi is not clearly delimited, there are no definite boundaries. Internal political and cultural boundaries have always existed in the Sami living area, but these boundaries were never clearly defined.⁴³

The word Sápmi is used in all Sami languages. There are nine different Sami languages in total and then there exist several dialects as well. The languages are related, but differ greatly and are therefore unintelligible to people from different tribes. Sápmi means in all languages the Sami community and homeland. However, the term Sápmi is a 20th century term and the symbols that have contributed to the creation of the idea of Sápmi did not come into existence

³⁸ Lehtola, V-P, ‘The Saami siida and the Nordic states from the Middle Ages to the beginning of the 1900s’, pp. 183-202, in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförslag I Umeå, Umeå, 2002, p. 193-195

³⁹ Ibid, p. 195

⁴⁰ Ibid, p. 196

⁴¹ Ibid, p. 195 & 196

⁴² Eriksson, J., ‘The construction of Sápmi: Towards a transnational polity?’, pp. 239-250, 238 in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförslag I Umeå, Umeå, 2002, p. 240

⁴³ Ibid, p. 240 & 241

until the 1980s, when the Nordic Sami Council decided on a Sami flag, a national hymn and national commemoration days.⁴⁴

The notion of Sápmi may change over time, because, according to Eriksson, “cultural similarity cannot be equated with common identification.”⁴⁵ He suggests that the existence of different tribes in the past could mean that every Sami had his/her own Sápmi, meaning his/her tribal territory. In the 20th century the meaning of Sápmi has already changed from the presentation of Sápmi as a homeland and the Sami as a nation to speaking of Sápmi as a region in the 1990s. The change to speaking of Sápmi as a region comes from the European Union (EU) that has several northern action programs to support domestic and transnational regions.⁴⁶ The changing meanings of Sápmi can be attributed to territoriality, for example, the EU action programs can be seen as a way of influencing people and relationships in the northern area.

Lastly, Eriksson suggests that the Sami could run into difficulties as a transnational society. This difficulty consists of the fact that the Sami live in four different countries and that Sami activists have emphasised that the Sami have become culturally fragmented and that Sami in different states have different rights and opportunities in the four states. When looking at people in Africa who had been partitioned due to i.e. colonisation it is shown that even after reunification cultural differences, which came into existence when the territory was partitioned, remain in existence.⁴⁷

1.3 Sami in Finland

The northern most province of Lapland is considered the Finnish ‘Sami region’. It consists “of the communes of Utsjoki, Inari and Enontekiö and the herding cooperative in the northern part of the commune of Sodankylä. The area covers 35,000 km², that is, 36% of the province and about 10% of Finland.”⁴⁸

The unemployment rate in the Sami area is 26-33%, the long term unemployment rate is 12-29%. However, the unemployment rate of the youth under 25 is 39-60%. “The economy is unstable to sustain the population, and out-migration, mainly to neighbouring regions and

⁴⁴ Eriksson, J., ‘The construction of Sápmi: Towards a transnational polity?’, pp. 239-250, 238 in: Karppi, K. & Eriksson, J., ‘Conflict and Cooperation in the North’, Norrlands Universitetsförlag I Umeå, Umeå, 2002, p. 242

⁴⁵ Ibid, p. 242

⁴⁶ Ibid, p. 242 & 243

⁴⁷ Ibid, p. 244 & 245

⁴⁸ http://ec.europa.eu/languages/euromosaic/fi1_en.htm, chapter 2.1

to the industrial core of Finland, - which affects mainly women – is understandably high.”⁴⁹
Employment in the public sector is high, even though that sector is being restructured.⁵⁰

The Sami area consists of 25% waste land⁵¹, 20% scrub land and 53% forest⁵² -from these number I deduce that the final 2% of land is urban-, approximately 2/3 of the forested area is in state hands.⁵³

In the Sami area communities consist of Sami, Finns and ‘other’ (i.e. migrants). However, in only a few communities are the Sami a majority. In Finland live different Sami groups, the North Sami, the Mountain Sami, Lake Sami (also known as Inari Sami) and East Sami (also known as Skolt Sami). The Mountain Sami include Reindeer Sami and River Sami. The North and Mountain Sami represent around 80% of the Sami population in Finland.⁵⁴

Reindeer herding is centrally organized. “Twelve of the 56 reindeer husbandry units or cooperatives that make up the Herding Cooperative Association are in the Sami region. Each divides its land into spring, summer and reserve ranges, and calving areas. About 40% of the Finnish herding stock is in the Sami region and is owned by 1,600 herders (21% of the Finnish total). On average each herder owns 60 reindeers. As much as 85% of the reindeer in the Sami area are owned by Sami. Nowadays ownership is by right of residence: no kinship or other criteria limit it to one socio-cultural group. The overlap between kinship territory and kinship membership used to mean that only members of specifically defined families could inherit this right. But now any EU citizen can live in the area and obtain herding rights. The Sami can no longer be defined in terms of historical economic activities, and reject the existing situation.”⁵⁵

In 1996 the Sami Parliament came into existence. “It is the supreme political body of the Sámi in Finland functioning under the administrative sector of the Ministry of Justice, and representing the Sámi in national and international concerns regarding issues of Sámi language, culture, and their position as an indigenous people.”⁵⁶

⁴⁹ http://ec.europa.eu/languages/euromosaic/fi1_en.htm, chapter 2.1

⁵⁰ Ibid, chapter 2.1

⁵¹ Ibid, chapter 2.1. The Euromosaic report does not specify what waste land, but in general this is land that is contaminated with either chemicals or other by-products of industrialization processes and therefore can not be used for agricultural purposes or housing projects until the land is cleaned.

⁵² Ibid, chapter 2.1

⁵³ Ibid, chapter 2.1

⁵⁴ Ibid, chapter 2.1

⁵⁵ http://ec.europa.eu/languages/euromosaic/fi1_en.htm, chapter 2.1

⁵⁶ http://www.adh-geneva.ch/RULAC/state.php?id_state=66

2. Territoriality

2.1 Territoriality

2.1.1 What is territoriality?

There are different ways to define territoriality. Biologists and social critics have come to use it as “an offshoot of animal behaviour”⁵⁷, saying that territoriality is a human aggressive instinct to protect its own territory. The notion that Sack uses when it comes to territoriality, a notion that I share, is that territoriality is “a basis of power”⁵⁸, but not part of a human instinct, nor does it necessarily have to be aggressive. Furthermore, “because territoriality in humans supposes a control over an area or space that must be conceived of and communicated, one can argue that territoriality in this sense is quite unlikely in most if not all animals”⁵⁹. In humans territoriality can be understood as “a spatial strategy to affect, influence, or control resources and people, by controlling area: and, as a strategy, territoriality can be turned on and off.”⁶⁰ In this specific case the controlling is done by the Finnish government.

In this section I use Robert Sack’s definition of territoriality as *the attempt by an individual or group to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control over a geographic area.*⁶¹ The colonisation of Sami lands by the Norwegian, Swedish, Finnish and Russian governments is an extreme example of affecting, influencing and controlling.

With regard to humans, territoriality depends on “who is influencing and controlling whom and on the geographical contexts of place, space, and time”⁶² instead of biological urges. Use of land and spatial organisation are important elements of territoriality, and usage and organisation changes over time.⁶³

Territorial theory has been created to “disclose potential reasons for using territoriality”⁶⁴. Several reasons can be used at the same time, some reasons can be seen in almost every situation. However, “the theory is phrased generally or abstractly drawing on social structure, but its specification and exemplification depends on particular historical

⁵⁷ Sack, R.D., *Human territoriality – Its theory and history*, Cambridge University Press, Cambridge, 1986, p.

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⁵⁸ Ibid, p. 1

⁵⁹ Ibid, p. 1

⁶⁰ Ibid, p. 1 & 2

⁶¹ Ibid, p. 19

⁶² Ibid, p. 2

⁶³ Ibid, p. 2

⁶⁴ Ibid, p. 3

context and on individual agency”⁶⁵. Territoriality can be used to research the ‘rise of civilization’, since it can function as a “geographical component in the understanding how society and space are interconnected”⁶⁶.

A territory does not need to be a defended area to require territoriality. The people that are in control of the area are not required to be in the territory to defend it, since a fence or wall can control as well. Territoriality can be established by controlling the “access to things and relationships”⁶⁷. However, for an area to be regarded as a territory (an area where territoriality is practised), the area needs to have boundaries: the behaviour of people needs to be controlled/affected by controlling the access to the area.⁶⁸

Territoriality is always a social construction. It can help to create more impersonal relationships among people as well as “help mould future activities within a hierarchy”⁶⁹. Because of the social construction, territoriality is more complex than the logic of distance. However, it also proves that “human spatial relations are not neutral”⁷⁰ but are “the results of influence and power”⁷¹. Territoriality can be seen as a spatial form of power.⁷²

In this thesis laws, rules and regulations are seen as a form of territoriality. In this case territoriality is taken out of its geographical context. The area of law is one that needs to be communicated about and the EU has created a set of rules and regulations that the Finnish government needs to abide by. The rules and regulations set by the EU come on top of the existing Finnish laws, rules and regulations, some of which had to be altered to be in line with the EU standards. Perhaps Finnish governments would have taken longer to accept these laws, if it was not for the EU Commission. This is an expression of the EU to ‘influence and control’ the situation of the Sami in Finland, by dictating a set of rules.

2.1.2 Definition

When looking at the definition of territoriality: *the attempt by an individual or group to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control over a geographic area*⁷³ one can distinguish three ‘interdependent relationships’ in this definition. The first relationship is that “territoriality must involve a form of classification

⁶⁵ Sack, R.D., ‘Human territoriality – Its theory and history’, Cambridge University Press, Cambridge, 1986, p. 3

⁶⁶ Ibid, p. 3

⁶⁷ Ibid, p. 20

⁶⁸ Ibid, p. 19 & 20

⁶⁹ Ibid, p. 22

⁷⁰ Ibid, p. 26

⁷¹ Ibid, p. 26

⁷² Ibid, p. 19 & 26

⁷³ Ibid, p. 19

by area”⁷⁴. Secondly, a form of communication needs to be present, i.e. a marker or a sign of a boundary. Thirdly, “each instance must involve an attempt at influencing interactions: transgressions of territoriality will be punished and this can involve other non-territorial and territorial action”⁷⁵. These three relationships lie at the basis of territoriality, the advantages of using territoriality are linked to them.⁷⁶

Classification, communication and enforcement are the most important elements of territoriality, but there are other ‘causes’ as well. Territoriality can come into existence by one, several or all of the following ten elements.⁷⁷

The 10 elements⁷⁸:

- 1.) The first element is *classification*. “Territoriality classifies, at least in part, by area rather than by type”⁷⁹.
- 2.) *Communication*. Only one marker or sign is needed to communicate territoriality: a boundary. “The territorial boundary may be the only symbolic form that combines direction in space and a statement about possession or exclusion”⁸⁰.
- 3.) An efficient strategy to *enforce* control.
- 4.) The potentials of power and influence can be made visible by the use of territoriality as a *reifying* power.
- 5.) “Territoriality can be used to *displace* attention from the relationship between controller and controlled to the territory”⁸¹.
- 6.) The possibility to make relationships *impersonal* by using a classification by area rather than by kind or type.
- 7.) When ‘a competition for things and relationships in space’ takes place, territoriality can be used to make the territory appear to be *neutral*. It has a *place-clearing function* when interrelationships between territorial units are complicated, than territoriality can be used as a neutral means for things to exist.
- 8.) *A container*: “Territoriality acts as a *container* or *mould* for the spatial properties of events. [...] The territory becomes the object to which other attributes are assigned.”⁸²

⁷⁴ Sack, R.D., ‘Human territoriality – Its theory and history’, Cambridge University Press, Cambridge, 1986, p. 21

⁷⁵ Ibid, p. 22

⁷⁶ Ibid, p. 21 & 22

⁷⁷ Ibid, p. 32

⁷⁸ Ibid, p. 32-34

⁷⁹ Ibid, p. 32

⁸⁰ Ibid, p. 32

⁸¹ Ibid, p. 33

9.) A means to create an idea of ‘a socially *expiable place*’, place and things/relationships are separated.

10.) A means to fill space: “territoriality can help *engender more territoriality*”⁸³. New territories are created when there are more events than territories or when the events are larger than the areas.

In this case the classification is between Sami and non-Sami actors. The non-Sami actors are the Finnish government, the EU and international organisations. The boundary and communication takes place in the form of laws, rules and regulations. The enforcement of the EU laws takes place in the form of possible fines to the Finnish government. The enforcement of the international laws, rules and regulations is less clear cut, if not shady and without means of true enforcement except for encouragement.

2.1.3 *Space, Place and Identity*

For humans territoriality is used to control areas, as well as other people. Although many people are unaware of it, territoriality plays a role in everyday life and relationships. Social power is geographically expressed through territoriality. Also, “historical relationships between society, space, and time”⁸⁴ can be explained by using the changing functions of territoriality over time.⁸⁵ With regard to distance it is important to note that distance can exist without territoriality. One needs to keep in mind that “distances can be compared and measured, but there is little that can be said abstractly about their potentials to affect behaviour”⁸⁶. Travelling people focus on distance and space, not on place⁸⁷. In territoriality social context always plays a role. This social context is seen when “some people or groups are claiming differential access to things and to others”⁸⁸. The human experience of territoriality can be labelled as *relational space*: “that understanding and feeling of spatial relations which we carry with us and which are the basis for our actions”⁸⁹.

⁸² Sack, R.D., ‘*Human territoriality – Its theory and history*’, Cambridge University Press, Cambridge, 1986, p. 33

⁸³ Ibid, p. 34

⁸⁴ Ibid, p. 5

⁸⁵ Ibid, p. 5

⁸⁶ Ibid, p. 30

⁸⁷ Holt-Jensen, A., ‘*Territoriality, place and space*’, *Fennia – International Journal of Geography*, Geographical Society of Finland, Helsinki, 2001, 179:1, pp. 1-8, p. 1

⁸⁸ Sack, R.D., ‘*Human territoriality – Its theory and history*’, Cambridge University Press, Cambridge, 1986, p. 30

⁸⁹ Holt-Jensen, A., ‘*Territoriality, place and space*’, *Fennia – International Journal of Geography*, Geographical Society of Finland, Helsinki, 2001, 179:1, pp. 1-8, p. 2

A human identity is built on the relationships between three realms: *the realm of nature, the realm of social relations and the realm of meaning*. The physical world needs to be related to “objects that exist and which we use, and to distance between things”⁹⁰. Then our social relations lead to “social influence through establishment of territories”⁹¹. A human identity, ‘the self’, and place share a relationship, since both combine nature, social relations and meaning. The self needs activities in ‘place’ in order to blossom. ‘Place’ is an important factor in the ‘formation and development’ of identity.⁹²

The concept of *relational space* can help explain “exclusion, gender relations, territoriality and ‘otherness’”⁹³. Personal space seems to take the upper hand to the sense of space, “from the personal perspective, space is little more than a sequence of places”⁹⁴.

As a traveling people, the traditional Sami lifestyle focuses on distance and space, whereas the non-Sami actors (Finns, the Finnish government) focus on place and space. This distinction in lifestyle is at the core of the 19th century colonisation of Sami lands and at the core of the Sami-Finn dispute over land. Territoriality on issues of language and culture is more easily accepted, than territoriality of actual geographic areas, such as reindeer pastures.

2.2 Sack – *From Primitive Society to Modern Civilization*

2.2.1 *Primitive Society*

According to Sack “the history of territoriality is closely bound to the history of space, time, and social organization”⁹⁵. What that means is that over the centuries territorial units have changed. This claim is supported by three trends. Firstly, the number of autonomous territorial units has diminished greatly since prehistoric times. Secondly, the size of autonomous territorial units has greatly increased over time, from villages to nation states. Thirdly, the larger territorial units that have come into existence, have become fragmented into smaller territorial sub-units.⁹⁶ His claim also means that the notion of territoriality has changed over time, since “the theory of territoriality points out that societies that do not have formal hierarchies, economic classes, and other types of institutionalized differences would use

⁹⁰ Holt-Jensen, A., ‘Territoriality, place and space’, *Fennia – International Journal of Geography, Geographical Society of Finland*, Helsinki, 2001, 179:1, pp. 1-8, p. 2

⁹¹ *Ibid*, p. 2

⁹² *Ibid*, p. 2 & 3

⁹³ *Ibid*, p. 5

⁹⁴ *Ibid*, p. 5

⁹⁵ Sack, R.D., “*Human territoriality – Its theory and history*”, Cambridge University Press, Cambridge, 1986 , p. 52

⁹⁶ *Ibid*, p. 52 & 53

territoriality in a different way than those that do”⁹⁷. According to Sack territoriality as we know it today has developed from the ideas and uses of space of the earliest, primitive societies.⁹⁸ He stresses that these changes are not to be seen as inevitable, nor that they were always an improvement, or that the development was a one-way street: the newer forms of social organization are not a replacement, but a representation of the older forms.⁹⁹

A primitive society has less complexities than modern civilizations, since there is “less division of labour, internal specialization, fewer numbers of people, and [they] contain smaller geographic areas”¹⁰⁰. The household is the core unit of ‘production and consumption’ and livelihood is obtained by “any combination of gathering, hunting, foraging, herding, and agriculture”¹⁰¹. Because of the way these households obtain their livelihood, they often move with changing seasons. Households often join in (what Sack calls) bands, clans or tribes. Bands are usually quite small, with the Inuit as an exception with villages that are inhabited by several hundred inhabitants. The situation with regard to the size of clans and tribes is more difficult, since these are often held together by ‘kinship and lineages’, that can be ‘real or fictitious’. In a primitive society the social ties binding members together are weaker when the size of the group increases, than in modern civilizations. So the small size makes the internal dynamic easier to handle.¹⁰²

Among the members of a primitive society inequality was a possibility, caused by age and sex. However, these differences did not allow members (individuals or families) to “monopolize power and resources because of the constraints placed on inequality by accessible technology and low population density”¹⁰³. When talking about landownership, for example, land would remain in the hands of the community as a whole, but a family would be allowed to live in a certain area and/or reap the produce from a certain area.¹⁰⁴ A territory belongs to the society, not to a particular group or specific individuals.¹⁰⁵ This lack of need of

⁹⁷ Sack, R.D., “Human territoriality – Its theory and history”, Cambridge University Press, Cambridge, 1986 , p. 53

⁹⁸ Sidenote: the Sami who were seen as a primitive people had a system different from the one this claim is based on.

⁹⁹ Sack, R.D., “Human territoriality – Its theory and history”, Cambridge University Press, Cambridge, 1986, p. 54

¹⁰⁰ Ibid, p. 55

¹⁰¹ Ibid, p. 55

¹⁰² Ibid, p. 55

¹⁰³ Ibid, p. 57

¹⁰⁴ Ibid, p. 57

¹⁰⁵ Saltman, M. (edt), ‘*Land and territoriality*’, Berg Publishers, Oxford, New York, 2002, p. 160

territoriality can be caused by the fact that in a small society with close ties, one need not define who is a member of the group and who is not, by using territoriality.¹⁰⁶

Sack also says that closeness to nature is another important element of a primitive society. The Sami do have a special bond with nature, with many traditional professions, as well as their migration cycle, being dependent on nature. This closeness is found to exist because of the small size of the communities and a lack of specialization and labour division. As a concept ‘the unity of nature’ plays an important role, it leads to “important conceptions of space, place, time, and territory”¹⁰⁷, because of the reciprocity between humans and nature.¹⁰⁸ The closeness to nature and the territory the people live in, is also represented in a believe that the people are “organically and even spiritually linked”¹⁰⁹ to an area. The Sami also state that they have a spiritual link to the nature around them. Often in a primitive society it is believed that “the land us [...] inhabited by the spirits of the ancestors and their geographic place in the world may have been given to them by their gods”¹¹⁰.

In a primitive society territoriality comes into practice, when it is seen as “an efficient device for establishing differential access when the resources to be controlled occur relatively predictably and densely in space and time”¹¹¹. Agricultural communities and societies of hunters and gatherers will use territoriality when the resources they use are ‘predictable in time and space’, i.e. in an agricultural society territoriality could be used to keep animals out of the area. At a community level, the need for a territorial approach could be strengthened if there is competition for land from outside groups.¹¹²

When territoriality is applied, it is socially defined. This social definition is caused by the fact that these societies do not have formal hierarchies, nor are members excluded from society’s resources.¹¹³ Primitive territoriality ‘supports basic social organization’. Territory is not seen as a “mould or container with clear and precise boundaries”¹¹⁴, but as a “place on the earth inextricably tied to events, and the events are intimately and naturally associated with the place”¹¹⁵. This shows in the exclusion of non-members when it comes to society’s

¹⁰⁶ Sack, R.D., “*Human territoriality – Its theory and history*”, Cambridge University Press, Cambridge, 1986, p. 60

¹⁰⁷ Ibid, p. 57

¹⁰⁸ Ibid, p. 57

¹⁰⁹ Ibid, p. 58

¹¹⁰ Ibid, p. 58

¹¹¹ Ibid, p. 59

¹¹² Ibid, p. 59

¹¹³ Ibid, p. 60

¹¹⁴ Ibid, p. 63

¹¹⁵ Ibid, p. 63

resources, the assignment of ‘different but symmetrical tasks’ to members of society and the use of territory as a sign of unison, instead of a sign of separation of people and place.¹¹⁶

2.2.2 *Modern Civilization*

The first thing Sack says when it comes to civilizations is that “the word civilized need not connote a change for the better”¹¹⁷. The main difference between civilizations and primitive societies is that all civilizations are territorial and these societies “use territory to help define themselves and their parts”¹¹⁸. The governments of the Nordic nation states in the 19th century colonised Sami land because the Sami were a nomadic people, a primitive people and, because of their nomadic lifestyle, had no permanent inhabitation of said land. Sack’s claim shows again that the Sami and the Nordic nation states had a different approach to territory. Another important difference is that civilizations exist of elites/classes and that their economies are redistributive, whilst the primitive economies were reciprocal.¹¹⁹

When it comes to the change from primitive to civilized society, the easiest explanation is that a non-agricultural society conquered an agricultural society and posed its own rules upon the people.¹²⁰ In a more abstract way, one could say that a primitive society is made civilized when territoriality is used in a hierarchical and asymmetric way, because “territorial boundaries could be used deliberately to divide and subdue or conquer hostile communities by cutting through older ‘natural’ community areas”¹²¹. As a rule of thumb, Sack suggests that “the greater the number of territorial hierarchies, the more likely it is that the boundaries are artificially imposed. And the more the administrator are rotated from territory to territory, the more territoriality produces distant and impersonal relationships between governors and governed”¹²².

According to Sack “a modern use of territory is based most of all upon a sufficient political authority or power to match the dynamics of capitalism: the help repeatedly move, mould, and control human spatial organization at vast scales”¹²³. Territory becomes to be seen as conceptual and empty, nothing more than a “surface [...] on which events occur”¹²⁴. In

¹¹⁶ Sack, R.D., “*Human territoriality – Its theory and history*”, Cambridge University Press, Cambridge, 1986, p. 62

¹¹⁷ Ibid, p. 66

¹¹⁸ Ibid, p. 66

¹¹⁹ Ibid, p. 66

¹²⁰ Ibid, p. 67

¹²¹ Ibid, p. 74

¹²² Ibid, p. 74 & 75

¹²³ Ibid, p. 87

¹²⁴ Ibid, p. 87

a primitive society communities were gradually established and as time passed by, these communities came to be seen as ‘a natural and unified entity’. When land was conquered, the conquerors often did not attempt to change the existing communities and the territorial relationships. However, with the discovery of the New World, this social definition of territoriality was pushed aside, because the New World offered many possibilities to create new communities from scratch. The New World was sparsely populated and the original inhabitants were displaced, some to reservations, so for the European conquerors the possibilities were nigh endless.¹²⁵

In a civilized society boundaries are clear and accurate. There are some exceptions to this rule: i.e. border problems between former Soviet states and Russia). In pre-modern civilizations territory defined ‘the entire political community, state or empire’. This definition was by no means precise by today’s standards, since “mapping techniques were limited, and records of land holdings were not kept uniformly and accurately”¹²⁶. Therefore it was no exact knowledge where a territory started or ended. An emperor controlled the people within a territory, but these people were socially diverse and territorially defined.¹²⁷ When cartography started to develop, this became a great help in “conceptualizing and rendering an abstract spatial system”¹²⁸. Territoriality was given an impulse when the world became better “geographically accessible and accurately locatable”¹²⁹.

What is noticeable is that the change from primitive to pre-modern to modern territorial society started in capitalist Western Europe. The changes in space, time and territoriality were created by merchant capitalism and, later on, by industrial capitalism. “The sense of an emptiable space, the increased uses of territorial hierarchies to further impersonal relationships, and the use of territoriality to obscure sources of power”¹³⁰ are elements ‘primarily expected’ in capitalism and the modern era. Capitalism will lead to “the repeated and conscious use of territory as an instrument to define, contain, and mould a fluid people and dynamic events leads to a sense of an abstract emptiable space”¹³¹. This gives a sense of artificiality to a territory, since space and events are only ‘contingently related’ to each other.¹³²

¹²⁵ Sack, R.D., “*Human territoriality – Its theory and history*”, Cambridge University Press, Cambridge, 1986, p. 88

¹²⁶ Ibid, p. 76

¹²⁷ Ibid, p. 75 & 76

¹²⁸ Ibid, p. 86

¹²⁹ Ibid, p. 87

¹³⁰ Ibid, p. 78

¹³¹ Ibid, p. 78

¹³² Ibid, p. 78

The one thing that makes capitalist societies stand out from other societies is that changes are rationalized by a belief in progress. Other societies believe in progress and a better future as well, however this belief rests on an idea of cycles of good and bad times, something completely new will only be introduced by divine intervention. According to Sack, the believe in progress in Western capitalist societies is based on “a more or less continuous secular change to new, better, and heretofore unavailable and even unforeseen conditions”¹³³. The idea of progress is based on ‘an abstract metrical notion of time’. Whereas in primitive societies the path of the sun was followed, in modern societies “metrical units of times have come to define events”¹³⁴, because these units became to be seen in the light of “buying and selling labour time”¹³⁵ they gained more and more value in modern societies.¹³⁶

2.2.3 *Sack and the Sami*

The traditional Sami lifestyle can be labelled, without prejudice, as Sack’s ‘primitive society’, because of the moving of the households come season change, territory belonging to the community, the closeness to nature and territory being tied to events. The Finnish society is larger than that of the Sami. Finland is a capitalist country and as a Western country it can be said to adhere to Sack’s theory of a continuous secular change to new and better conditions. These differences in attitude towards territory play an important role in the dispute over land and natural resources. The different attitudes also make it more difficult to find a solution that will meet the needs and demands of both groups.

2.3 *Paasi – Territoriality and the Nation State*

Territoriality and nationalism go hand in hand. When speaking of territoriality, it is difficult to see past the nation state.¹³⁷ In his book “Territories, Boundaries and Consciousness – The changing geographies of the Finnish- Russian border” Anssi Paasi talks about territoriality and the nation state. He starts his argument by giving the three main functions of the state. These elements are, firstly “to secure social consensus, whereby all the people in its territory accept specific rule for action in society”¹³⁸, secondly “to ensure adequate conditions for

¹³³Sack, R.D., “*Human territoriality – Its theory and history*”, Cambridge University Press, Cambridge, 1986 , p. 84

¹³⁴ Ibid, p. 84

¹³⁵ Ibid, p. 85

¹³⁶ Ibid, p. 84 & 85

¹³⁷ Sack, R.D., ‘Human Territoriality: A Theory’, *Annals of the Association of American Geographers*, 1983, Vol. 73, No. 1, pp. 55-74, p. 55

¹³⁸ Paasi, A., ‘*Territories, Boundaries and Consciousness – The changing geographies of the Finnish-Russian border*’, John Wiley & Sons, Chichester, , p. 41

production, which points to the provision of an infrastructure within which production and exchange can take place”¹³⁹, and finally “to guarantee social integration by ensuring the basic welfare of all citizens – particularly the poor and exploited groups within society”¹⁴⁰.

All states are part of the international system of states. This internationality leads to a situation where all states are armed, in order to counter an attack or take away a threat in order to protect their population: as a means of human solidarity of their people. In the same respect, a state has more power than any other territorial entity, since a state has the monopoly of force. There might be several territorial entities striving for the loyalty of people, but a state – “centred on a specific, delimited territory, over which it has authoritative power”¹⁴¹ – can, in the most extreme case, claim the life of its citizens.¹⁴² Theoretically, the Finnish government, as territorial entity over the Sami, can issue authoritative power over said Sami and the Sami territory.

2.3.1 *Nation building*

The process of nation building took off in the nineteenth century. Identification of territories by using boundaries gained in importance. Boundaries came to be seen as “analogies between nature and nationalism”¹⁴³, these boundaries provided a vision for society and these “became coterminous with the boundaries of the national state.”¹⁴⁴

The notions of state and nation are parts of our everyday life, what people do not realise is that through the process of nation building – national integration and nationalism – “physical and political space of a nation will be transformed into cultural spaces”.¹⁴⁵ These cultural spaces will then be labelled ‘internally homogeneous’ and “this homogenization typically takes place in relation to the Other”.¹⁴⁶

Local and/or regional elements play small roles in nationalism, because nationalism mainly focuses on the state level. Typically, nation building involves the absorption of smaller entities into “larger units of territorial, political and economic organization”¹⁴⁷, the aim is to

¹³⁹ Paasi, A., *Territories, Boundaries and Consciousness – The changing geographies of the Finnish-Russian border*, John Wiley & Sons, Chichester, 1996, p. 41

¹⁴⁰ Ibid, p. 41

¹⁴¹ Ibid, p. 42

¹⁴² Ibid, p. 41 & 42

¹⁴³ Ibid, p. 51

¹⁴⁴ Ibid, p. 51

¹⁴⁵ Ibid, p. 47

¹⁴⁶ Ibid, p. 47

¹⁴⁷ Ibid, p. 50

redefine boundaries and reorganise 'internal social and territorial divisions' in order to make the area as homogeneous as possible.¹⁴⁸

When looking at nation building and the Sami, in the nineteenth century the Sami became geographically absorbed by four countries, Norway, Sweden, Finland and Russia. These four countries were, at that moment, engaged in nation-building processes. The fear of absorption into Finnish society still exists, because even today the Sami in Finland fear that the Finnish government only sees them as a linguistic minority, even though Finnish law recognizes their status as indigenous people.¹⁴⁹ Indigenous people have a special status in international law, regarding land rights, linguistic minorities, on the other hand, have not.

2.3.2 *Solidarity*

The ultimate goal of the nation building process is a permanent bond between a state and its inhabitants. According to Paasi nation building is a 'time-space specific' and 'context-dependent' process, since "it can also comprise the contradictory motives and actions of individuals, groups and classes in the struggle over the right to define social practices in various spatial contexts"¹⁵⁰. Inhabitants bond with a state over experiences. A valuable experience will create identification with the state. Experiences that are politically manipulated can be valuable and can lead to identification, however 'empty' experiences do nothing to enhance identification with a nation.¹⁵¹

Population is the core of a nation. In order to become a nation the population needs to be bound together through common characteristics and/or sentiments. The 'sense of belonging' is the most important element, since this allows people to identify themselves with a specific social group and a specific area. Group identity involves the idea of 'otherness' of people not belonging to the group. These 'moral value terms' that differentiate the 'insiders' from the 'outsiders' form 'negotiable markers' for social and/or cultural inclusion and exclusion.¹⁵²

Paasi borrows Durkheim's concept of 'solidarity' in his nation building argument, saying that solidarity is the glue of a social system with regard to the internalisation of norms and values of society by individuals. Solidarity can be seen as a basis of legitimacy, when

¹⁴⁸ Paasi, A., *Territories, Boundaries and Consciousness – The changing geographies of the Finnish-Russian border*, John Wiley & Sons, Chichester, 1996, p. 50

¹⁴⁹ Atarah, L., 'RIGHTS: Finland's Sami Fear Assimilation', 7 April 2008, <http://www.galdu.org/web/index.php?odas=2686&giella1=eng>

¹⁵⁰ Paasi, A., *Territories, Boundaries and Consciousness – The changing geographies of the Finnish-Russian border*, John Wiley & Sons, Chichester, 1996, p. 42

¹⁵¹ Ibid, p. 43

¹⁵² Ibid, p. 46

members of society are loyal to the state they will approve of “the basic rule of the political system as legitimate and acceptable and are ready to act on behalf of them”¹⁵³. The solidarity that is necessary for nationalism to thrive on, is based on the existence of territory. Territory is an intrinsic value of nationalism, because it binds people to an area that they feel is ‘theirs’. Nationalism is based on attaching personal life experiences to an area: ‘the homeland’.¹⁵⁴

According to Paasi “nationalism is primarily a territorial form of ideology and one part of the hierarchical structure of regional consciousness”¹⁵⁵. Nationalism aims to create feelings of belonging to an area and to producing social order. Territoriality creates boundaries that are communicated to the surrounding areas. Therefore it creates and maintains “the geographic context through which we experience the world and give it meaning”.¹⁵⁶

In the case of the Sami, nationalism can be seen in the connection the Sami feel to their homeland, Sápmi. In the case of the Finns, part of the Sami homeland is Finnish territory. Over the past 200-500 years more and more Finns have come to live in the area the Sami regard as their homeland, because the Finns have co-inhabited the area for a subsequent amount of time, feelings of nationalism and regional consciousness have been created in the mind of Finns as well. The Sami nationality is not merely based on the existence of this territory, but there is a sense of solidarity when it comes to their homeland. In Finland this can be seen from the disputes over land rights and logging on Sami homeland.¹⁵⁷

2.4 Spatial socialization

Spatial socialization means people becoming part of ‘territorially bounded spatial units’ and therefore they “adopt specific modes of thought and action”¹⁵⁸. To put it differently, spatial socialization means that people become part of the territory that they reside in; their action and ideas follow the social rules of the territory. Spatial socialization can be applied to a nation, and then it is called national socialization. National socialization refers to the general national ideology: “the dominant meaning system concerning the socio-spatial construction of

¹⁵³ Paasi, A., *Territories, Boundaries and Consciousness – The changing geographies of the Finnish-Russian border*, John Wiley & Sons, Chichester, 1996, p. 43

¹⁵⁴ Ibid, p. 51

¹⁵⁵ Ibid, p. 53

¹⁵⁶ Ibid, p. 53

¹⁵⁷ Manninen, M., ‘*Lapland: disputes over land and reindeer pit brother against brother*’, Helsingin Sanomat, 2 March 2008, <http://www.hs.fi/english/article/Lapland+disputes+over+land+and+reindeer+pit+brother+against+brother/1135234549030>

¹⁵⁸ Paasi, A., *Territories, Boundaries and Consciousness – The changing geographies of the Finnish-Russian border*, John Wiley & Sons, Chichester, 1996, p. 54

a state”.¹⁵⁹ National socialization is a part of a broader political socialization, a means to pass on a political culture from one generation to the next and, meanwhile, “produces and reproduces hegemony in the process”.¹⁶⁰

Paasi argues that territoriality stands at the centre of nationalism, since the past is a very important part of nationalism and territory is the representation of the past in the present. However, people will not have themselves put or moulded into socialization. Population/people play an important role themselves in the socialization process. National symbols become symbols and assume sentimental value, when these symbols form a part of a person’s experiences. “Furthermore, the experience in this contact must be such that it actually benefits the individual, in terms of psychological security, to identify with the nation”.¹⁶¹

For the Sami in Finland the national socialization has not made them a part of Finland. Whereas nation formation had started in the 19th century, for example by the crafting of the Kalevala, the Sami held on to their own identity. It could be because the Sami have a long and rich history, culture and language themselves and were therefore less inclined to become a part of the Finnish culture, or be less influenced by the newly established Finnish symbols and socialization process. However, this is not to say that the Sami have not integrated in Finnish society. Data on Sami that have given up their traditional way of life and have fully assimilated to Finnish society do not exist, at least to my knowledge, but I think that it would be naïve to believe that all Sami were untouched by the Finnish national socialization policies, after 200 years there must be Sami that no longer live according to the traditional lifestyle and no longer master the language.

3. Method

3.1 Using Documents

Documents are often used to support research. However, documentary research is often forgotten or neglected, when speaking of methods of social research. The two main methods in documents research are (1) the survey or (2) a form of qualitative research.¹⁶² Qualitative

¹⁵⁹ Ibid, p. 54

¹⁶⁰ Ibid., p. 54

¹⁶¹ Paasi, A., ‘Territories, Boundaries and Consciousness – The changing geographies of the Finnish-Russian border’, John Wiley & Sons, Chichester, 1996, p. 55 & 58

¹⁶² Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 194

research “covers a wide range of approaches, but by definition, none of these approaches relies on numerical measurements. Such work has tended to focus on one or a small number of cases, to use intensive interviews or depth analysis of historical materials, to be discursive in method, and to be concerned with a rounded or comprehensive account of some event or unit.”¹⁶³ Macdonald says that “there is a third method, with a longer history and of no less importance, documentary research. Many early sociologists – for example, Marx, Durkheim and Weber – used documentary research and, although advances in technology have enabled researchers to handle large sets of survey material, and to record speech and interaction on audio and video tape, documentary research remains an important research tool in its own right, as well as being an invaluable part of most schemes of triangulation.”¹⁶⁴ He also says, “Documentary research may at first sight seem to have an affinity with the survey model, but in fact documentary research is much closer to the detective work of field research, with all the excitement of the detective story and all the hard graft of checking reams of evidence.”¹⁶⁵ According to Mogalakwe, Payne and Payne in their 2004 paper ‘Key Concepts in Social Research’ say that “the documentary method as the techniques used to categorise, investigate, interpret and identify the limitations of physical sources, most commonly written documents whether in the private or public domain.”¹⁶⁶

What should my approach to documents be? Again Macdonald clarifies this issue, by quoting E. Gellner’s 1988 publication *Plough, Sword and Book*, “Basically its deductive. Conclusions are extracted from clearly stated assumptions; various possible conclusions are then checked against the available facts. Assumptions are revised if the implications fail to tally with available facts.”¹⁶⁷ However, this is for studies that are more theory-driven than this study. Still, I value this approach and will incorporate findings drawn for its story into this thesis.

Researching documents is a deductive method, “The moment of enlightenment does not precede studying the problem and does not crown it, but lies somewhere in the middle, a bit nearer to the beginning. If no sparks have been struck between the scholar and his

¹⁶³ King, G.; Keohane, R.O.; Verba, S. (1994), ‘*Designing Social Inquiry – Scientific Inference in Qualitative Research*’, 1st ed., New Jersey, USA; Chichester, West Sussex, UK, Princeton University Press, p. 4

¹⁶⁴ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 194

¹⁶⁵ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 195

¹⁶⁶ Mogalakwe, M., ‘*Research Report – The Use of Documentary Research Methods in Social Research*’, *African Sociological Review*, 10, (1), 2006, pp. 221-230, http://www.codesria.org/IMG/pdf/Research_Report_-_Monageng_Mogalakwe.pdf, p. 221 & 222

¹⁶⁷ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 195

material, there can be no synthesis. Searches in the proper sense of the word start later, for it is only worthwhile searching when you know what you are looking for.”¹⁶⁸ This is a sensitive issue, for I need to know what I am searching for, but at the same time, I need to guard the fine line between subjectivity and objectivity. This means that I should not disregard material, because it does not fit the answer I have in mind, or label material more important, because it emphasizes the point I would want to make.

3.2 What are Documents?

A document consists of a written text, “a document is an artifact which has as its central feature an inscribed text.”¹⁶⁹

There are several types of documents¹⁷⁰:

- Public Records (i.e. policy statements, reports of inquiry, ministerial departmental reports)
- Media Articles (i.e. newspaper)
- Private Papers (i.e. reports from civil society organisations, reports from private individuals)
- Biography
- Visual Documents

This study relies mostly on information derived from public records and private papers. Policy statements and laws from the EU and reports from non-governmental organisations (NGOs) will show how the influence on territorialisation is from their part on the situation of the Sami in Finland.

It is important to note that all documents are socially produced.¹⁷¹ A document is often written with a practical need in mind and not for the purpose of research.¹⁷² Even documents that

¹⁶⁸ Gumilev, L.N. (1987), *Searches for an Imaginary Kingdom: the Legend of the Kingdom of Prester John*, p.378, as quoted by Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 195

¹⁶⁹ Mogalakwe, M., ‘*Research Report – The Use of Documentary Research Methods in Social Research*’, *African Sociological Review*, 10, (1), 2006, pp. 221-230, http://www.codesria.org/IMG/pdf/Research_Report_-_Monageng_Mogalakwe.pdf, p. 222

¹⁷⁰ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 197-203

¹⁷¹ *Ibid*, p. 196

¹⁷² Mogalakwe, M., ‘*Research Report – The Use of Documentary Research Methods in Social Research*’, *African Sociological Review*, 10, (1), 2006, pp. 221-230, http://www.codesria.org/IMG/pdf/Research_Report_-_Monageng_Mogalakwe.pdf, p. 222

provide ‘objective’ information have a background of social production. This does not mean that this information is false, but that “ they are produced on the basis of certain ideas, theories or commonly accepted, taken-for-granted principles, which means that while they are perfectly correct – given certain socially accepted norms – they do not have the objectivity of, say, a measure of atmospheric pressure recorded on a barometer.”¹⁷³

A distinction into primary and secondary documents can be made regarding documents used for documentary research. “Primary documents refer to eye-witness accounts produced by people who experienced the particular event or the behavior we want to study. On the other hand secondary documents are documents produced by people who were not present at the scene but who received eye-witness accounts to compile the documents, or have read eye-witness accounts.”¹⁷⁴

In this thesis I will use both primary and secondary documents. A source of primary documents I will find in the laws and regulations of the European Union and the United Nations regarding minority rights and indigenous people, however, these laws and regulations are not a primary document on the situation of the Sami. Secondary documents are mainly books and both scientific and newspaper articles. I will also search the internet for reports regarding minority rights violations of Non-Governmental Organisations (NGO’s).

Generally speaking public records are documents such as birth/marriage/death records, records of law court proceedings and statistics on population and economic activity of a country. Actual laws and regulations are not seen as public records. The above list does not have to be seen as a comprehensive and complete list, however, laws are also not without prejudice (i.e. laws in Nazi Germany regarding the Jewish population¹⁷⁵), such as public records should be. However, since a study on bias of laws could be the topic of a PhD thesis in itself, I will have to take the current laws as they are and think of them as ‘objective’.

3.2.1 *Private Papers*

When it comes to private papers it is important to know the source. Who is the person behind the publication? Who can influence the content of the paper? Is this person a politician? Does this person have a ‘hidden agenda’: what is the ultimate goal behind the publication?

¹⁷³ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 196

¹⁷⁴ Mogalakwe, M., ‘*Research Report – The Use of Documentary Research Methods in Social Research*’, *African Sociological Review*, 10, (1), 2006, pp. 221-230, http://www.codesria.org/IMG/pdf/Research_Report_-_Monageng_Mogalakwe.pdf, p. 222 & 223

¹⁷⁵ An example is this guideline from 1938 that orders Germans to carry ‘German’ first names, whereas Jewish citizens needed to pick a name from the 276 names listed in the annex: *Richtlinien über die die Führung der Vornamen von 1938*, <http://www.beliebte-vornamen.de/3595-richtlinien-vornamen-1938.htm>

Macdonald says, “the researcher must also be cautious about the documents of a private individual, for these are also open to distortion and manipulation, especially if the person concerned is a public figure or an author whose work is so widely read and discussed as to put him or her in the public sphere.”¹⁷⁶

The information from Rauna Kuokkanen’s website is one of my ‘private paper’ sources¹⁷⁷. Information from Sami website, such as samimuseum.fi, can also be seen in this light. When evaluating these sources I need to keep in mind what the ultimate goal of the publication is and if the information that is provided is not presented in such a way that it deliberately sketches a picture that is/could be different from reality.

3.3 Evaluation and Interpretation of Documents

Documents evaluate and interpret documents by checking four things:

- Authenticity
- Credibility
- Representativeness
- Meaning

3.3.1 Authenticity

Every researcher has the duty to ensure him/herself that a document “is genuine and of reliable and dependable origin. Authenticity of the evidence for analysis is the fundamental criterion in any research.”¹⁷⁸ Documents that are purposefully falsified, such as the Hitler diaries, are rare. However, it is not unheard of that a writer “may quite innocently, or perhaps carelessly, convert fiction into fact of perpetuate the errors or deception of others.”¹⁷⁹ Also, a writer can have falsified records or ‘factual accounts’ to suit his or her own purpose. Therefore it is important that I never take information for granted, I should never think that “this comes from a reliable source and therefore the information is faultless and true.”

Macdonald uses the six questions that J. Platt discussed in his article ‘Evidence and proof in documentary research’ (1981).

¹⁷⁶ Macdonald, K., (1992), ‘*Using Documents*’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 199

¹⁷⁷ See: 6.6 Independent – Rauna Kuokkanen.

¹⁷⁸ Mogalakwe, M., ‘*Research Report – The Use of Documentary Research Methods in Social Research*’, *African Sociological Review*, 10, (1), 2006, pp. 221-230, http://www.codesria.org/IMG/pdf/Research_Report_-_Monageng_Mogalakwe.pdf, p. 225

¹⁷⁹ Macdonald, K., (1992), ‘*Using Documents*’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 204

1. “Does the document make sense or does it contain glaring errors?”¹⁸⁰
2. “Are there different versions of the original document available?”¹⁸¹
3. “Is there consistency of literary style, handwriting or typeface?”¹⁸²
4. “Has the document been transcribed by many copyists?”¹⁸³
5. “Has the document been circulated via someone with a material or intellectual interest in passing off the version given as the correct one?”¹⁸⁴
6. “Does the version available derive from a reliable source?”¹⁸⁵

After establishing that the document is authentic, “the researcher must also authenticate the authorship, that is, verify that the name inscribed on the document is that of the author. Instances exist where documents were falsely presented as being the work of certain well-known personalities.”¹⁸⁶ Mogalakwe makes an exception for government documents signed by ministers or an annual report signed by a chairman of the board. He says, “In all probability the government document would have been written by civil servants whilst the annual report will have been written by the chief executive officer with the help of his staff. Under these circumstances it is better to take for granted the names of the authors inscribed on the documents. [...] I regard such a document as an official [...] government document because it has been endorsed and accepted by the government.”¹⁸⁷

3.3.2 Credibility

Credibility is checked, when it is evaluated if a document is free from errors or distortion. Distortion can take place when “there is a long time between the event and the account of it being written down, or when the account has been through several hands and the author of the document was not present at the event.”¹⁸⁸ Mogalakwe quotes from J. Scott’s 1990 publication ‘A Matter of Record, Documentary Sources in Social Research’, “the question of credibility should concern the extent to which an observer is sincere in the choice of a point of

¹⁸⁰ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 204

¹⁸¹ Ibid, p. 204

¹⁸² Ibid, p. 204

¹⁸³ Ibid, p. 204

¹⁸⁴ Ibid, p. 204

¹⁸⁵ Ibid, p. 204

¹⁸⁶ Mogalakwe, M., ‘Research Report – The Use of Documentary Research Methods in Social Research’, *African Sociological Review*, 10, (1), 2006, pp. 221-230, http://www.codesria.org/IMG/pdf/Research_Report_-_Monageng_Mogalakwe.pdf, p. 225

¹⁸⁷ Ibid, p. 225 & 226

¹⁸⁸ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 204 & 205

view and in the attempt to record an accurate account from that chosen standpoint.”¹⁸⁹ Credibility can be tainted when it is affected by an author’s own interest, this could be “financial, to enhance a reputation or to please the readers.”¹⁹⁰ Since credibility issues can occur a researcher must always “ask who produced the document, why, when, for whom and in what context, so as to be assured of its quality.”¹⁹¹

3.3.3 Representativeness

A social researcher must ask himself/herself when gathering data, if the gathered documents “constitute a representative sample of the universe of documents as they originally existed.”¹⁹² When the social researcher comes to the conclusion that the documents do not cover the entire spectrum, he/she needs to establish what the blanks are: “what is missing, how much and why”¹⁹³. Also, when establishing that material is missing, it is important to establish if “the blanks have any pattern to them and whether anyone could have had an interest in destroying certain documents.”¹⁹⁴ Mogalakwe describes representativeness as referring to “whether the evidence is typical of its kind or if it is not, whether the extent of its untypicality is known.”¹⁹⁵

3.3.4 Meaning

“Meaning refers to whether the evidence is clear and comprehensible. The ultimate purpose of examining documents is to arrive at an understanding of the meaning and significance of what the document contains.”¹⁹⁶

A document may have two types of meaning: the literal meaning and the deeper meaning. The literal meaning, also the surface meaning, is usually a matter for historians deciphering hieroglyphs or cuneiform writing. The deeper meaning needs to be “arrived at by some form of interpretative understanding of structural analysis.”¹⁹⁷ The deeper meaning can be found by determining how important particular themes are to the author of the document, or as Mogalakwe says, “the literal meaning of a document gives only its face value meaning,

¹⁸⁹ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 226

¹⁹⁰ Ibid, p. 205

¹⁹¹ Ibid, p. 205

¹⁹² Ibid, p. 205

¹⁹³ Ibid, p. 205

¹⁹⁴ Ibid, p. 205

¹⁹⁵ Mogalakwe, M., ‘Research Report – The Use of Documentary Research Methods in Social Research’, *African Sociological Review*, 10, (1), 2006, pp. 221-230, http://www.codesria.org/IMG/pdf/Research_Report_-_Monageng_Mogalakwe.pdf, p. 227

¹⁹⁶ Ibid, p. 227

¹⁹⁷ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 205

from which its real significance must be reconstructed.”¹⁹⁸ In order to find the deeper meaning *semiotics* is often used. Semiotics is ““a science that studies the life of signs within society’, the object of which is to get to the underlying message of the text. This is to be found, not only in the words and phrases, but in the system of the rules that structures the text as a whole. It is therefore this underlying structure and the rules it embodies that can tell the researcher what its cultural and social message is. The analyst seeks to connect a *signifier* (an expression which may be words, a sound or a picture) with what is *signified* (another word, description or image).”¹⁹⁹ However, semiotics is not an answer to rivaling interpretations of texts. It is argued by social scientists (such as J. Scott in his 1990 publication ‘A Matter of Record’) that by taking a text out of its social context, its real meaning cannot be found.²⁰⁰

3.4 Triangulation

When doing survey research the “validity and reliability are secured within the method itself.”²⁰¹ Research of documents does not have this built-in mechanism. Therefore it is important to check “from more than one angle. Nothing can be taken for granted. A document may not be what it appears to be, the archive may have been collected for motives we do not understand, and the context may be crucial in determining the nature of the object before us.”²⁰²

In documentary research the notion of *triangulation* is important. “In this framework, validity is seen as having both external and internal aspects and the achievement of validity, and indeed of the research task as a whole, requires a triangulation of research strategies.”²⁰³ There are four types of triangulation.

1. Data triangulation, “data should be collected at a variety of times, in different locations and from a range of persons and collectivities.”²⁰⁴
2. Investigator triangulation, “using multiple rather than single observers of the same object.”²⁰⁵

¹⁹⁸ Mogalakwe, M., ‘Research Report – The Use of Documentary Research Methods in Social Research’, *African Sociological Review*, 10, (1), 2006, pp. 221-230, http://www.codesria.org/IMG/pdf/Research_Report_-_Monageng_Mogalakwe.pdf, p. 227

¹⁹⁹ Macdonald, K., (1992), ‘Using Documents’, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 206

²⁰⁰ Ibid, p. 207

²⁰¹ Ibid, p. 208

²⁰² Ibid, p. 208

²⁰³ Ibid, p. 208

²⁰⁴ Ibid, p. 208

²⁰⁵ Ibid, p. 208

3. Theory triangulation, “using more than one kind of approach to generate the categories of analysis.”²⁰⁶
4. Methodological triangulation, this consists of in-method (i.e. different types of questions in a questionnaire) or between-method triangulation.

Personally, I can gather different types of documents from different sources and at different times. However, since I am alone I cannot use ‘investigator triangulation’, also due to the size of this thesis ‘theory triangulation’ and ‘methodological triangulation’ does not apply.

3.5 Validity

Validity can come up in several parts of a research: sampling, measurement, design, and analysis. External validity, construct validity, internal validity, and conclusion validity are the different types of validity that can be derived from these parts of research.

3.5.1 External Validity

According to William Trochim sampling is “the process of selecting units (e.g., people, organizations) from a population of interest so that by studying the sample we may fairly generalize our results back to the population from which they were chosen.”²⁰⁷ External validity is the process of generalizing those sampling research findings back to the population.

Trochim says that “external validity is related to generalizing. [...] Recall that validity refers to the approximate truth of propositions, inferences, or conclusions. [...] Put in more pedestrian terms, external validity is the degree to which the conclusions in your study would hold for other persons in other places and at other times.”²⁰⁸ External validations can be under discussion, because generalizations are based on three factors: people, place and time.

Trochim says that this means that you can be wrong in your generalization three times, for example critics could argue that the sample group was too specific or that the place you conducted your research is not representative of other areas. External validity can be strengthened by using a random selection procedure of the sample population, testing in different places and testing at different times.²⁰⁹

²⁰⁶ Macdonald, K., (1992), *Using Documents*, in N. Gilbert (Ed.), *Researching Social Life*, 2nd ed., pp. 194-210, London, UK: Thousand Oaks, Ca, USA: New Delhi, India, Sage Publications, p. 208

²⁰⁷ Trochim, W. M., *The Research Methods Knowledge Base*, 2nd Edition. Internet WWW page, at URL: <<http://www.socialresearchmethods.net/kb/sampling.php>> (version current as of October 20, 2006)

²⁰⁸ Ibid

²⁰⁹ Ibid

3.5.2 Construct Validity

Measurement, according to Trochim, is “the process observing and recording the observations that are collected as part of a research effort.”²¹⁰ Construct validity is part of measurement, like external validity it is about generalizations. However, whereas “external validity involves generalizing from your study context to other people, places or times, construct validity involves generalizing from your program or measures to the concept of your program or measures.”²¹¹ Trochim compares construct validity to being able to label your research, this means that “construct validity refers to the degree to which inferences can legitimately be made from the operationalizations in your study to the theoretical constructs on which those operationalizations were based.”²¹² When a researcher can prove construct validity, he/she “has a theory of how the programs and measures related to each other (and other theoretical terms), a theoretical pattern if you will. And, the researcher provides evidence through observation that the programs or measures actually behave that way in reality, an observed pattern.”²¹³

For this thesis construct validity means that I have to look at my reports and data and see if I can make inferences based on the theory being used: territorialisation.

3.5.3 Internal Validity

Internal validity comes into play with design. According to Trochim, “research design provides the glue that holds the research project together. A design is used to structure the research, to show how all of the major parts of the research project -- the samples or groups, measures, treatments or programs, and methods of assignment – work together to try to address the central research questions.”²¹⁴ Internal validity is only applicable to studies that aim to establish a causal relationship: “internal validity is the approximate truth about inferences regarding cause-effect or causal relationships.”²¹⁵ Trochim says that “one of the things that’s most difficult to grasp about internal validity is that it is only relevant to the specific study in question. That is, you can think of internal validity as a ‘zero generalizability’ concern. All that internal validity means is that you have evidence that what you did in the study (i.e., the program) caused what you observed (i.e., the outcome) to

²¹⁰ Trochim, W. M., ‘*The Research Methods Knowledge Base*’, 2nd Edition. Internet WWW page, at URL: <<http://www.socialresearchmethods.net/kb/measure.php>> (version current as of October 20, 2006)

²¹¹ Ibid

²¹² Ibid

²¹³ Ibid

²¹⁴ Ibid

²¹⁵ Ibid

happen.”²¹⁶ Moreover, internal validity “doesn’t tell you whether what you did for the program was what you wanted to do or whether what you observed was what you wanted to observe – those are construct validity concerns. It is possible to have internal validity in a study and not have construct validity.”²¹⁷

Even though internal validity is not applicable to most descriptive studies, it can be useful when answering a sub question of this thesis, for example, ‘Why the Sami turn to non-EU law when it comes to the land rights issue’.

3.5.4 Conclusion Validity

Conclusion validity was initially called ‘statistical conclusion validity’ and is linked to the analysis section of research. Analysis usually follows three steps, according to Trochim.

These three steps being:

1. “Cleaning and organizing the data for analysis (Data Preparation)”²¹⁸
2. “Describing the data (Descriptive Statistics)”²¹⁹
3. “Testing hypotheses and models (Inferential Statistics)”²²⁰

Trochim regards conclusion validity as the most important of all four validity types, because “it is relevant whenever we are trying to decide if there is a relationship in our observation [...] Conclusion validity is the degree to which conclusion we reach about relationships in our data are reasonable.”²²¹ Conclusion validity is used with statistical studies, but Trochim points out that it can also be used in qualitative studies, for example, field notes can lead to a researcher seeing patterns. This pattern is based on ‘impressionistic data’, but one can argue that it has conclusion validity. Like internal validity, conclusion validity is based on determining whether or not a causal relationship exists. However, “conclusion validity is only concerned with whether there is a relationship.”²²²

Since statistics will not be used in this thesis, conclusion validity seems off the table. I will not be able to argue that document research falls under ‘impressionistic data’. Still, the analysis steps are helpful when it comes to writing this thesis. Even though statistics do not come into play, the three step process can serve as a guideline, when summarizing observations in the conclusion section.

²¹⁶ Trochim, W. M., ‘*The Research Methods Knowledge Base*’, 2nd Edition. Internet WWW page, at URL: <<http://www.socialresearchmethods.net/kb/intval.php>> (version current as of October 20, 2006)

²¹⁷ Ibid

²¹⁸ Ibid

²¹⁹ Ibid

²²⁰ Ibid

²²¹ Ibid

²²² Ibid

4. Minority Governance

4.1 Nationalism

Minority rights are a relative new branch of international human law. The first law protecting minorities was passed in Hungary, on July 28th, 1849.²²³ The first treaties on international minority rights were created in the 1950's. Minority rights and minority governance are of importance to the Sami, because national law can change from country to country, but the overarching international treaties may offer more options regarding land rights, and improve the overall condition of the Sami in all four countries. Looking at minority rights and how to secure them, it becomes clear that the roots of the cultural background of 'securitisation of minority rights' lie within nationalism. Nationalism was one of the most 'central and widespread ideologies' of the 20th century, with the basic idea being "each nation – its own state; each state – only one nation!"²²⁴. However, in the world we live in today the convergence of state borders and national groups is unworkable, and different racial, ethnical or national groups live together in one state.²²⁵

With nationalism, three positions for groups living in one state can be identified. One group represents 'the state-owning nation', another 'the national minority' and a third group can represent 'the kin state of the minority'. Nationalists practice one of three different kinds of nationalism. Firstly, there is '*nationalizing nationalism*', this group makes claims that are defined in ethno-cultural terms. Their main concern is to not weaken the state, as a result, ruling elites can try to build a nation-state, protecting the rights of the state-owning nation. This type of nationalism practices policies of exclusion. Exclusion can be aimed at minorities already living in the state, and/or at current and potential immigrants. Secondly, there is '*Minority nationalism*'. This is the opposite of *nationalizing nationalism*. *Minority nationalism* aims to protect a minority that is viewed to be ethno-culturally different from the main population. Often, proving the existence of a minority is a point of discussion between the main population and the (alleged) minority. Usually, other areas of discussion are the cultural, political and linguistic rights of minorities. The third kind of nationalism is '*homeland nationalism*'. This particular type does not occur as often as the other two types. Homeland

²²³ Héder, S., 'Contributions to the Philosophy of Linguistic Minorities in Hungary and Canada from the middle of the 19th to the end of the 20th century',

http://filozofia.btk.pte.hu/files/tiny_mce/File/Doktori%20Iskola/Dolgozatok/Heder_I_D.pdf, p. 26

²²⁴ Jutila, M., 'Desecuritizing Minority Rights: Against Determinism', Security Dialogue, June 2006, 37: pp. 167-185, p. 177

²²⁵ Ibid, p. 177

nationalists are a minority in the state they live in. Homeland nationalists claim that their kin state has a right or duty to protect them from discriminatory policies of the nationalizing state they reside in.²²⁶

These three types of nationalism “are not [a] fixed set of policies or unitary ideologies, but rather dynamically changing fields of differentiated and competing positions or stances adopted by different organizations, parties movements or individuals, each seeking to represent the ‘nation’.”²²⁷ They are connected as actors make observations of one another, describe them and use them to justify their own cause. However, combined with the ‘societal security dilemma’, the dynamics of the three nationalisms can easily intensify minority situations brewing in a state.²²⁸

Theoretically, the second type of Minority Nationalism seems to apply to the Sami: the Sami regard themselves to be ethno-culturally different from the main groups of inhabitants of Norway, Sweden, Finland and Russia. However, this would be theorizing, since it can also be argued that nationalism itself does not apply to the Sami: they are a group of likeminded people, who speak languages and dialects that share similarities, they were not moved to unite as a nation during the 19th century when nationalism was at its height, so why should we speak of Sami nationalism now?

4.2 Typology

When studying minority rights, one has to choose between two trails of thoughts: a typology based on *different types of ethnocultural groups* or based on *different types of states*. When focussing on *different types of ethnocultural groups*, rights for different types of groups have to be formulated. Depending on the diversity of ‘different groups’ the scholar distinguishes, there could be a ‘set of norms’ for indigenous people “including rights to self-government, customary law, and land claims”²²⁹; a set of norms for ‘regionally concentrated national minorities’ “including rights to territorial autonomy and official language status”²³⁰; and a set for immigrants and refugees “including rights to naturalization and reasonable accommodation”²³¹. This example shows that minority rights legitimately vary inside a state, but that the state has a duty to comply with the particular rights of each different group

²²⁶ Jutila, M., ‘Desecuritizing Minority Rights: Against Determinism’, Security Dialogue, June 2006, 37: pp. 167-185, p. 178

²²⁷ Ibid, p. 178

²²⁸ Ibid, p. 178 & 179

²²⁹ Kymlicka, W., ‘Categorizing States: Theorizing Minority Rights in a World of Deep Diversity’, Ethics & International Affairs, Winter 2009, Volume 23, Issue 4, pp. 371-388, p. 373

²³⁰ Ibid, p. 373

²³¹ Ibid, p. 373

residing in the state. However, this typology does not recognize the existence of different types of states. Depending on the group type, a minority has a right to make certain claims to the state it resides in, differences between state types are ignored, and all states have the same obligations towards minorities.²³²

If a scholar chooses the other typology, based on *different types of states*, minority rights depend on the state type, not on the group type. Different state types, such as the traditional nation state, the post-ethnic multinational state; the federation; a consociational state, and the empire, can all have legitimately different sets of minority rights. The type of state determines whether or not a minority group has a right to self-government. This typology ignores the existence of different types of minorities. Therefore a state has the same duties towards immigrants and national minorities, simply because there is no distinction being made between them.²³³

4.3 NGOs & IOS

Non-Governmental Organizations (NGOs) and International Organizations (IOs) are created to help people, or a cause, be heard. However, NGOs and IOs see themselves as ‘detached’ from the group that they are targeting, thereby creating a structural exclusion for the people and/or causes that they target.²³⁴

The inclusion of non-state actors in the international system shows that the system is changing and becoming more global “through the emergence of new policy actors and concerns about global justice and distribution.”²³⁵ At the same time, “it highlights important structural constraints that limit both the boundaries of this change and the outcomes of ongoing debates on the reform of international organizations such as the UN to allow the participation of wider voices in policy processes.”²³⁶

NGOs and IOs apply similar policy formulations in different countries. The policy frameworks are mostly uniform, reflecting ‘international policy interests’, while the ‘policy implementation contexts’ can be very different. These frameworks “support the global nature of the internationally developed social policies.”²³⁷ However, the people that are targeted by these international policies hardly have any means to access the policy making process and

²³²Kymlicka, W., ‘*Categorizing States: Theorizing Minority Rights in a World of Deep Diversity*’, *Ethics & International Affairs*, Winter 2009, Volume 23, Issue 4, pp. 371-388 , p. 373

²³³ Ibid, p. 373

²³⁴ Seckinelgin, H., ‘Global Social Policy and International Organizations: Linking Social Exclusion to Durable Inequality’, *Global Social Policy*, August 2009, 9: pp. 205-227, p. 206

²³⁵ Ibid, p. 206

²³⁶ Ibid, p. 206

²³⁷ Ibid, p. 206

therefore have no influence on the channelling of the resources that are supposed to target them.²³⁸

4.3.1 *Social Exclusion*

Seckinelgin pays attention to ‘the concept of social exclusion’ and concludes that if you look at this concept from a welfarist point of view, it “assumes a certain normality in the mainstream of society”²³⁹ and that “those who are marginalized, or perceived to be marginalized, want to be part of this mainstream”²⁴⁰. The goal of the marginalized can be achieved through top-down decisions regarding ‘their needs and demands’. In practice, this can be seen in international debates, where “international economic relations are seen as the neutral basis from which to overcome poverty.”²⁴¹ However, one can question the ‘marginalization at the international level’: what are the boundaries of inclusion in global policy processes?²⁴² The Sami do not necessarily want to be part of the mainstream; however, they do want to be part of political decision-making processes, so that they can influence decisions regarding issues that will affect the land they live on, their lifestyle and livelihoods.

The discussion regarding exclusion shows that technical policy solutions are favoured, but that “the causes of people’s needs are seen as non-political”²⁴³. When applying this concept in developing countries, solely focussing on the marginalized using technical policy approaches, a large part of structural causes for exclusion will be overlooked or disregarded, because these approaches “construct the policy context from a depoliticized perspective.”²⁴⁴ Technical policy approaches alone cannot abolish exclusion that is trans-generational and has happened over a large period of time. Even when these approaches target different forms of capital, i.e. human capital and social capital, there is no mechanism or check to see if the people targeted by these approaches manage to utilize them within their ‘existing structural relations’.²⁴⁵

²³⁸ Seckinelgin, H., ‘Global Social Policy and International Organizations: Linking Social Exclusion to Durable Inequality’, *Global Social Policy*, August 2009, 9: pp. 205-227, p. 206

²³⁹ Ibid, p. 209

²⁴⁰ Ibid, p. 209

²⁴¹ Ibid, p. 209

²⁴² Ibid, p. 209

²⁴³ Ibid, p. 210

²⁴⁴ Ibid, p. 210

²⁴⁵ Ibid, p. 210

5. Law

5.1 Human Rights and Minorities in the Treaty consolidating the European Community and the Treaty on the European Union.

In the Treaty consolidating the European Community (TEC – signed in 1957) the word ‘minority’ is not mentioned. The wording ‘human rights’ is used but twice. The first time that ‘human rights’ are mentioned is in article 177.2 on Development Cooperation. The article says:

“Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedom.”²⁴⁶

The second time that ‘human rights’ are talked about is in article 181a.1 on Economic, Financial and Technical Cooperation with Third Countries. The whole article reads:

“Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.”²⁴⁷

The wording regarding human rights is the exact same in both articles. Furthermore, both articles deal with third countries, albeit in Development Cooperation and Economic, Financial and Technical Cooperation. What human rights are is not specified.

²⁴⁶ Consolidated Version of the Treaty Establishing the European Community, at http://eur-lex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf C 325/110, article 177.2

²⁴⁷ Ibid, article 181a.1

It is not until the Treaty on the European Union (TEU – signed in 1992), that a clear understanding is provided of what the European Community regards as a measurement of human rights. Article 6 of the TEU reads:

“1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.

2. The Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as a general principle of Community law.”²⁴⁸

Whereas “the constitutional traditions common to the Member States” is not a clear definition of human rights in my regard²⁴⁹, the Convention for the Protection of Human Rights and Fundamental Freedoms²⁵⁰ (ECHR) offers answers and jurisprudence regarding human rights.

In total ‘human rights’ are discussed four times in the TEU. Apart from the two times in article 6, it says in the introduction to the TEU that the heads of state and their plenipotentiaries have decided to found a European Union (EU):

“CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and the rule of law,”²⁵¹

The last time is in Article 11.1 on Provisions on a Common Foreign and Security Policy, there it reads:

*“The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:
(...)”*

²⁴⁸ Consolidated Version of the Treaty on the European Union, at http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf Article 6 C 325/11 and C 325/12, article 6

²⁴⁹ Two questions that come to mind are: What is a constitutional tradition? As well as: what amount of time is required for a right to be recognized before it is regarded as a constitutional tradition?

²⁵⁰ Also known as the ‘European Convention on Human Rights’, hence the abbreviation ECHR.

²⁵¹ Consolidated Version of the Treaty on the European Union, at http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf Article 6 C 325/11 and C 325/12, article 6

- *To preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders*
(...)
- *To develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.*²⁵²

When taking the topic of this thesis into regard, evidently, my interest goes out to what the rights and freedoms of the ECHR mean for minorities. Many member states of the ECHR and the EU have minority issues²⁵³, hence working on a common policy is difficult: a member state could prefer to solve minority issues internally with a national policy. When reading the TEU, it is noticeable that not much is said about minorities, but what little it says, says it all. Only one time is referred to minorities in the treaty. Article 14 on Prohibition against Discrimination reads:

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*²⁵⁴

Article 14 means that all national minorities enjoy all rights and freedoms that this European Convention states, this includes rights such as, the right to life, the prohibition of torture, the right to a fair trial, the right to marry, and the freedom of assembly and association. The EU has taken these rights as its own, by incorporating the sentence “The Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950” in article 6.2 of the TEU.

²⁵² Consolidated Version of the Treaty on the European Union, at http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf Article 6 C 325/11 and C 325/12, article 11.1

²⁵³ For example: ‘*Minority Issues Mainstreaming – A Practical Guide for European Agency for Reconstruction Programmes*’, published by the EU and the European Centre for Minority Issues, http://ec.europa.eu/enlargement/archives/ear/sectors/main/documents/EAR_Practical_Guide_on_Minority_Issue_s_Mainstreaming.pdf

²⁵⁴ Convention for the Protection of Human Rights and Fundamental Freedoms – as amended by Protocols No. 11 and No. 14 <http://conventions.coe.int/Treaty/en/Treaties/html/005.htm>

Upon signing the TEU, Finland agreed to all articles, rules and regulations of the EU. Therefore, the Sami were granted the human rights and fundamental freedoms in the ECHR under the TEU. However, Finland became a member of the Council of Europe on May 5th, 1989 – an institute that also honors and respects the European Convention for the Protection of Human Rights and Fundamental Freedoms – and therefore the Sami had already formally enjoyed these rights for almost six years, before Finland became an EU member state on January 1st, 1995.

5.2 The Copenhagen Criteria

At the Copenhagen European Council in 1993, the EU prepared for a fifth enlargement, to Central and Eastern Europe. The Copenhagen Criteria were created. These three criteria need to be complied with before an aspiring member state is allowed EU membership. These three criteria are:

- “1.) *Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;*
- 2.) *The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;*
- 3.) *The ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union.*”²⁵⁵

Of course, these criteria were created for the fifth enlargement and the accession of Austria, Sweden and Finland was the fourth enlargement. At the same Copenhagen European Council as the Copenhagen Criteria were created, the accession of Austria, Sweden and Finland was confirmed.²⁵⁶ It is doubtful that these criteria were used in the negotiations with the fourth wave countries, even though the Accession Act was not signed until June 25th, 1994.²⁵⁷ However, these criteria – complete with the explicit mentioning of human rights, as well as the adoption of the *acquis communautaire*²⁵⁸ - could not have been created solely for the new applicants, they are for all member states to abide by.

²⁵⁵ Copenhagen Criteria,

http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm

²⁵⁶ILO: EU time table from the website of the ACTRAV education programme of the International Labour Organisation. <http://actrav.itcilo.org/actrav-english/telearn/global/ilo/blokit/eularge.htm>

²⁵⁷ Ibid

²⁵⁸ European Union Law: accumulated legislation, legal acts and court decisions.

The Copenhagen Criteria are stricter than conditions set for previous applicants. The EU has created the conditions, but there's no test to determine whether or not the applicant state has completely fulfilled its obligations. In her article Heather Grabbe states that this gives the EU "a license to involve itself in domestic policy-making to a degree unprecedented in the current member states."²⁵⁹

5.3 The EU Fundamental Rights Charter

The 2000 EU Fundamental Rights Charter only talks of minorities once. In article 21.1, on non-discrimination, it says:

*"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."*²⁶⁰

5.4 EU Cooperation with Human Rights Organizations

The EU has created the 'European Instrument for Democracy and Human Rights' (EIDHR) and has prioritized the rights of indigenous peoples. The goals of the EIDHR are "to increase indigenous peoples' rights and capacity to control their own social, economic and cultural development, while enhancing territorial rights and capacity for sustainable management of biological resources."²⁶¹ In 1997 the EU put rights of indigenous peoples on the agenda. In 2007 the EU supported the adoption of the UN Declaration on the Rights of Indigenous Peoples.

The focus of the EU regarding indigenous peoples' rights is outward: it is part of the EU's external policies. Through the EIDHR the EU funds projects that are run by international organisations and/or non-governmental organisations. These projects "typically support indigenous representatives as they seek to participate in relevant UN activities, or support organisations working to promote the International Labour Organization's Convention 169."²⁶² The motor behind EU development cooperation is the 'European Consensus on Development'. This Consensus is "a December 2005 Joint statement by the

²⁵⁹ Grabbe, H, *Europeanisation goes East: Power and Uncertainty in the EU Accession Process*, p. 5 http://www.ceses.cuni.cz/CESES-141-version1-3_1__Grabbe_2002_Europeanisation_goes_east.pdf

²⁶⁰ EU, Fundamental Rights Charter, article 21.1

²⁶¹ EU Policy on Indigenous Peoples, http://eeas.europa.eu/human_rights/ip/index_en.htm

²⁶² Ibid

Council, Member States, The European Parliament and the European Commission.²⁶³ The Consensus was created so that the EU applies “a strengthened approach to mainstreaming specific cross-cutting issues, including ‘indigenous peoples’, to integrate their concerns at all levels of cooperation, ensuring their full participation and free, prior and informed consent.”²⁶⁴

Furthermore, every year, around August 9th, EU delegations organize events to raise awareness for indigenous peoples on the International Day of the World’s Indigenous People.²⁶⁵

These initiatives and the EIDHR are focused externally, the programme does not apply to EU member states. Does that mean that all member states apply by the rules of the EU and the conventions it supports? In the next paragraphs the different conventions and their objectives will be discussed.

5.5 Non-EU Conventions and Declarations

5.5.1 The UN Declaration on the Rights of Indigenous Peoples

One of the reasons that the UN Declaration on the Rights of Indigenous Peoples came into existence was because of the concern “that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising in particular, their right to development in accordance with their own needs and interests.”²⁶⁶

5.5.1.1 Land Issues Addressed

In contrast to the EU rules and regulations addresses the UN Declaration land issues of indigenous peoples. Several articles are devoted to the issue. Article 25 reads:

“Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used

²⁶³ EU Policy on Indigenous Peoples, http://eeas.europa.eu/human_rights/ip/index_en.htm

²⁶⁴ Ibid

²⁶⁵ Ibid

²⁶⁶ UN Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, p. 2

lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”²⁶⁷

This article emphasizes the ‘spiritual relationship’, respecting possible different religious beliefs and/or cultural differences from the people that indigenous peoples share land with. Article 26 discusses the land ownership issue in no uncertain terms:

*“1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”*²⁶⁸

The fact that Article 26 stresses the land rights of indigenous peoples in such a clear matter is a very important feat for any indigenous people and is a key feature in the ongoing land rights discussion in Finland between the Sami and the Finnish government. Article 26 states that indigenous peoples have the right to their traditional land, territory and resources and article 27 describes the process that state and indigenous peoples have to follow in order to recognize and adjudicate the land, territories and resources:

*“States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.”*²⁶⁹

²⁶⁷ UN Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, Article 25, p. 10

²⁶⁸ Ibid, Article 26, p. 10

²⁶⁹ Ibid, Article 27, p. 10

When the land, territory and resources cannot be given back, then article 28 speaks of compensation:

“1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied or damaged without their free, prior and informed consent.

2.) Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.”²⁷⁰

Articles 29 and 30 speak of the protection of the land, territory and resources. Article 30 specifically addresses the prohibition of military activity without consent of the indigenous people(s). Article 29 states:

“1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.”²⁷¹

In short, this UN Declaration has six articles specifically aimed at rights to land, territories and resources. It addresses the issues clearly and gives clear answers and solutions to problems that may arise between indigenous peoples and the governments of the countries they live in. The UN Declaration on Rights of Indigenous Peoples does not have a specific

²⁷⁰ UN Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, Article 28, p. 10 & 11

²⁷¹ Ibid, Article 29, p. 11

section dedicated to land rights. Therefore, general land issues are addressed earlier in the Declaration. Article 8 says:

“1. Indigenous peoples and individuals have the right to not be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.”²⁷²

This article states that indigenous peoples’ land, territory and resources cannot be dispossessed; neither can the indigenous peoples be transferred. Article 10 takes it a step further, by stating that indigenous peoples are not allowed to be forcibly removed:

“Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”²⁷³

This UN Declaration was supported by the European Union. However, the EU was not able to vote in favour or against the adoption of the UN Declaration. Finland was one of the 142 countries to vote in favour of the Declaration,²⁷⁴ contributing to the adoption of the Declaration by the UN. However, the landrights issue still exists and the Finnish government continues natural resource exploitation on Sami land, even expanding mining activities in that

²⁷² UN Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, Article 8, p. 5

²⁷³ Ibid, Article 10, p. 6

²⁷⁴ UN General Assembly GA/10612, <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>

region in 2011.²⁷⁵ This immediately shows one of the downsides of this Declaration: after signing the Declaration the UN has no means to force any of the signing states to actually implement and enforce the principles laid down. In light of territorialisation the UN has created a document that many states were happy to sign, but that they have no chance of enforcing.

5.5.2 ILO Convention No. 169

The International Labour Organization's (ILO) Convention No. 169 is "a legally binding international instrument open to ratification, which deals specifically with the rights of indigenous and tribal peoples."²⁷⁶ The Convention was created in 1989 and, so far, has been ratified by twenty countries. These countries are Argentina, Bolivia (the Plurinational State of Bolivia²⁷⁷), Brazil, the Central African Republic, Chile, Columbia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal, the Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain and Venezuela (the Bolivarian Republic of Venezuela²⁷⁸).²⁷⁹ One year after ratification the Convention becomes legally binding and countries become "subject to supervision with regards to its implementation"²⁸⁰. The reason why attention is given to this Convention is because the Finnish government has been urged to adopt this Convention by the Office of the High Commissioner for Human Rights (OHCHR), the document reads "The Committee again urged the State party to find an adequate settlement of the land dispute together with the Sami people and recommended that it adhere to ILO Convention 169 as soon as possible."²⁸¹

The ILO Convention No. 169 is based on six principles:

- 1.) The Convention does not give a **definition** of whom tribal or indigenous people are. Instead, criteria describing tribal and indigenous peoples are provided. The fundamental criterion for both tribal and indigenous peoples is **self-identification**.

²⁷⁵ 'State of the World's Minorities and Indigenous Peoples 2012 – Case Study: Sami rights to culture and natural resources', UNHCR – Refworld, <http://www.unhcr.org/refworld/country,,,FIN,,4fedb3de37,0.html>

²⁷⁶ ILO Convention No. 169, <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm> & http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312314

²⁷⁷ ILO, Normlex Information System on International Labour Standards, Total Number of Ratifications, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169>

²⁷⁸ Ibid

²⁷⁹ Ibid

²⁸⁰ ILO Convention No. 169, <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

²⁸¹ 'CERD adopts recommendations on Norway, Finland, Saint Vincent and the Grenadines and Malawi', Office of the High Commissioner for Human Rights, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=5689&LangID=E>

Tribal and indigenous peoples are further described by the elements as having: traditional life styles; a different culture and way of living “from other segments of the national population, e.g. in their ways of making a living, language, customs, etc.”²⁸²

Tribal peoples are further signified as having an “own social organization and traditional customs and laws”²⁸³, whereas indigenous peoples have an “own social organization and political institutions”²⁸⁴, as well as “living in historical continuity in a certain area, or before others ‘invaded’ or came to the area.”²⁸⁵

- 2.) The second principle of Convention No. 169 is that of **non-discrimination**. The Convention states in article 3 that “indigenous peoples have the right to enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.”²⁸⁶ Moreover, no distinction between male and female indigenous persons can be made and indigenous peoples should enjoy all rights of citizenship without discrimination.
- 3.) The Convention calls for **special measures** to “be adopted for safeguarding the persons, institutions, property, labour, cultures and environment of these peoples. [...] These special measures should not go against the free wishes of indigenous peoples.”²⁸⁷
- 4.) The Convention **recognizes the cultural and other specificities of indigenous and tribal peoples**. Often indigenous and tribal peoples have “ways of life, customs and traditions, institutions, customary laws, forms of land use and forms of social organization”²⁸⁸ that are “different from those of the dominant population.”²⁸⁹ These differences are recognized by the Convention, and by the Convention these differences should be protected and taken into account when decisions are being made that could affect these peoples.
- 5.) The cornerstones of Convention No. 169 are **consultation** and **participation**. “The Convention requires that indigenous and tribal peoples are consulted on issues that affect them. It also requires that these peoples are able to engage in free, prior and

²⁸² ILO Convention No. 169,

http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312314, article 1.1(a)

²⁸³ ILO Convention No. 169, <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

²⁸⁴ Ibid

²⁸⁵ <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>, ILO Convention No. 169,

http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312314

²⁸⁶ ILO Convention No. 169,

http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312314, article 3.1

²⁸⁷ Ibid, article 4.1

²⁸⁸ ILO Convention No. 169, <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

²⁸⁹ Ibid

informed participation in policy and development processes that affect them.”²⁹⁰ An element of great importance for a process of consultation and participation is *representivity*. “If an appropriate consultation process is not developed with the indigenous and tribal institutions or organizations that are truly representative of the peoples in question, then the resulting consultations would not comply with the requirements of the Convention.”²⁹¹ Furthermore, consultation is only marked as such by the Convention, when the tribal and indigenous peoples have influence on the decision taken and are consultation is timely.

6.) Essential for consultation is the **right to decide priorities for development**.

Indigenous and tribal peoples have, according to article 7, the right to “decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control over their economic, social and cultural development.”²⁹²

The ILO Convention No. 169 was created because of the developments in international law since 1957 and “developments in the situation of indigenous and tribal peoples in all regions of the world, [*these*] have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards.”²⁹³

Whilst creating the Convention the aspirations of indigenous and tribal peoples, such as control over own institutions and developing their identities, were recognized and it was noted “that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within they live, and that their laws, values, customs and perspectives have often been eroded.”²⁹⁴

5.5.2.1 Land Rights

ILO Convention No. 169 has a special section devoted to land rights. The articles 13-19 revolve around land claims and how to solve issues surrounding land rights. Article 13 speaks of the spiritual connection between land and peoples, content-wise this article can be compared to Article 25 of the UN Declaration on the Rights of Indigenous Peoples:

²⁹⁰ ILO Convention No. 169, <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

²⁹¹ Ibid

²⁹² Ibid

²⁹³ ILO Convention No. 169, C169 Indigenous and Tribal Peoples Convention, 1989 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf, first page

²⁹⁴ Ibid, first page

“1. In applying the provision of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

*2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.”*²⁹⁵

Article 14 discusses the land rights issue, but in a different tone from Article 26 of the UN Declaration. Special attention is drawn to the possibility of a nomadic culture of indigenous and tribal peoples:

“1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

*3. Adequate procedures shall be established within the national legal system to resolve claims by the peoples concerned.”*²⁹⁶

Article 15 discusses the right to natural resources on the traditional lands of tribal and indigenous peoples. The article states that the peoples have the right to participate in the use, management and conservation of these particular resources. It does not state, as in article 29 of the UN Declaration, that the peoples have the right to “the conservation and protection of

²⁹⁵ ILO Convention No. 169, C169 Indigenous and Tribal Peoples Convention, 1989 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf, article 13

²⁹⁶ Ibid, article 14

the environment and the productive capacity of their lands or territories and resources”²⁹⁷, nor does it discuss the disposal of hazardous material on the lands of tribal or indigenous peoples. In contrast to article 29 of the UN Declaration, this article discusses the exploration and exploitation of the land with regard to mineral or sub-surface resources. Article 15 reads:

“1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specifically safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

*2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.”*²⁹⁸

Article 16 speaks of the removal of the tribal or indigenous people from the land that they occupy. It clearly states that procedures need to be put into place before removal may take place, whenever possible the peoples need to be allowed to return to their traditional land. In contrast to article 28 of the UN Declaration compensation is not discussed. Article 16 states:

“1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

²⁹⁷ UN Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, Article 29, p. 11

²⁹⁸ ILO Convention No. 169, C169 Indigenous and Tribal Peoples Convention, 1989 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf, article 15

3. *Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.*
4. *When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated for any resulting loss or injury.*²⁹⁹

Article 17 talks about transmission of land rights. Special attention is given to the transmission of land rights among members of the tribal or indigenous people:

- “1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.*
- 2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.*
- 3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.*³⁰⁰

Article 18 talks of penalties for unauthorized use of the land by people that do not belong to the tribal or indigenous people. The UN Declaration does not discuss this possibility:

*“Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the land of the peoples concerned, and governments shall take measures to prevent such offenses.”*³⁰¹

²⁹⁹ ILO Convention No. 169, C169 Indigenous and Tribal Peoples Convention, 1989 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf, article 16

³⁰⁰ Ibid, article 17

³⁰¹ Ibid, article 18

Article 19 talks about national agrarian programs and the possible consequences of these programs for tribal and indigenous peoples. The UN Declaration does not carry an article of comparable nature. Article 19 states:

“National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;*
- (b) The provision of the means required to promote the development of the lands which these peoples already possess.”³⁰²*

5.5.3 Minority Language Rights

5.5.3.1 What is a Minority Language?

The European Bureau for Lesser Used Languages (EBLUL) made a classification of the European Community’s minority languages in ... The classification is as follows.

- 1.) “The national languages of two Member States which are not official languages of the EU (i.e. Irish and Letzeburgesch);
- 2.) Languages of communities residing in a single Member State (e.g. Breton in France, Welsh in the United Kingdom);
- 3.) Languages of communities residing in two or more Member States (e.g. Basque in France/Spain; Occitan in France/Italy/Spain);
- 4.) Languages of communities which are minorities in the state in which they live but are the majority languages of other Member States (e.g. German in Belgium; Swedish in Finland);
- 5.) Non-territorial languages (e.g. Roma, Yiddish).”³⁰³

In this classification the Sámi language(s) can be grouped under no. 3: the Sámi language(s) are spoken in the EU member states Sweden and Finland.

³⁰² ILO Convention No. 169, C169 Indigenous and Tribal Peoples Convention, 1989 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf, article 19

³⁰³ Nic Shiubne, N., ‘The European Union and Minority Language Rights’, in ‘International Journal on Multicultural Societies (IJMS), vol. 3 no.2, 2001, p. 65, at <http://unesdoc.unesco.org/images/0014/001457/145796E.pdf#page=9>

5.5.3.2 Minority Languages: European Court of Justice Case Law

In the article “The European Union and Minority Language Rights” Niamh Nic Shiubne discusses three cases of the European Court of Justice (ECJ) and the importance of these cases for the rights of minority languages. These cases are: Mutsch, Groener, and Bickel & Franz.

The case of Mutsch was related to linguistic arrangements that were made for a German-speaking minority (a municipality) in Belgium. The court ruled “[i]n the context of a Community based on the principles of free movement of persons and freedom of establishment, the protection of the linguistic rights and privileges of individuals is of particular importance.”³⁰⁴ According to the author “the Court classified the right to use a particular language in domestic courts as a social advantage, meaning it should therefore be available to workers from other Member States under the same conditions as for nationals of the host state”³⁰⁵. However, a discussion of language rights on this case by Advocate General Lenz shows a narrow interpretation of the jurisprudence of this case. Although it was stated that linguistic discrimination does not comply with “the establishment of a ‘Citizen’s Europe”³⁰⁶, one could not speak of a case of minority languages, since Belgian legislation had not classified German as a minority language.³⁰⁷

According to the author the Groener case “is similarly unclear.”³⁰⁸ The case revolves around the precondition to a number of teaching jobs in Ireland, where the applicant has “to demonstrate competence in the Irish language”³⁰⁹. Irish is the first official language of Ireland, albeit it is spoken by a minority. The Court ruled that “[t]he EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and first official language.”³¹⁰ The Court ruled that the language requirement could be made “so long as the requirement is justified by the reason

³⁰⁴ Case 137/84 *Ministère Public v. Mutsch*, Grounds.11, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61984J0137:EN:HTML>

³⁰⁵ Nic Shiubne, N., ‘The European Union and Minority Language Rights’, in ‘International Journal on Multicultural Societies (IJMS), vol. 3 no.2, 2001, p. 70, at <http://unesdoc.unesco.org/images/0014/001457/145796E.pdf#page=9>

³⁰⁶ *Ibid*, p. 71

³⁰⁷ *Ibid*, p. 71

³⁰⁸ *Ibid*, p. 71

³⁰⁹ *Ibid*, p. 71

³¹⁰ *Ibid*, p. 71 & Case 379/87 *Anita Groener v. Minister for Education and the Dublin Vocational Education Committee*, Grounds. 19, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61987J0379&lg=en

of the nature of the post to be filled, is applied in a non-discriminatory manner and is proportionate to the linguistic aim to be achieved.”³¹¹

In the Bickel and Franz case, Horst Otto Bickel from Austria and Ulrich Franz from Germany were charged with a felony in Italy and needed to go to court. Neither spoke Italian and requested that the proceedings were to be done in German, as is written down in the rules for the protection of the German-speaking minority in Bolzano. The Italian national court did not know if it was obliged to apply the Bolzano rights in national court and asked for a preliminary ruling of the ECJ. The court ruled that “The right conferred by national rules to have criminal proceedings conducted in a language other than the principle language of the State concerned falls within the scope of the EC Treaty and must comply with Article 6 thereof.”³¹² According to Niamh Nic Shiubne this case manifested “a truly ‘European’ citizenship”³¹³.

These three cases show that there are changes regarding minority language rights. Unfortunately, none of the cases discussed by Niamh Nic Shiubne directly involve the Sami. However, the Sami (and other minorities) all benefit from the ECJ rulings, since the rulings universally apply to all EU citizens. Now none of these rulings involve the Sami and/or Sami languages, but these cases show that minority language rights are on the agenda and that recently decisions in favour of minorities have been made. If a case involving Sami language were to go to court these three rulings would serve as a precedent.

5.5.3.3 EU and Minority Rights

From the two subchapters above, I get the impression that the EU mainly has law touching on minority rights that are *technically* related to the Union. I use ‘technically’ in the sense that the EU rules and regulations seem to mostly touch upon issues related to the internal market and the four freedoms (free movement of goods, free movement of capital, free movement of services and free movement of people). In her article Heather Grabbe says that the EU requires its candidate states “to achieve the rule of law, human rights and respect for and

³¹¹ Nic Shiubne, N., ‘The European Union and Minority Language Rights’, in ‘International Journal on Multicultural Societies (IJMS), vol. 3 no.2, 2001, p. 70, at <http://unesdoc.unesco.org/images/0014/001457/145796E.pdf#page=9>

³¹² Case C-274/96 Criminal Proceedings against Bickel and Franz, p. 11 (Court.1) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996CJ0274:EN:PDF>

³¹³ Nic Shiubne, N., ‘The European Union and Minority Language Rights’, in ‘International Journal on Multicultural Societies (IJMS), vol. 3 no.2, 2001, p. 72, at <http://unesdoc.unesco.org/images/0014/001457/145796E.pdf#page=9>

protection of minorities.”³¹⁴ She continues to say that “the EU itself has no institutional template for any of these conditions, because they remain outside EU-level responsibilities. The Charter of Fundamental Rights endorsed at Nice in 2000 makes reference to them, but is not legally binding, and member-states exhibit a wide variety of democratic systems and policies in areas like protection of minorities. The EU has been very slow to develop a definition of its political values, and has no single, harmonized model to export to CEE³¹⁵ in such policy area.”³¹⁶

5.5.3.4 European Council - European Charter for Regional or Minority Languages

The European Charter for Regional or Minority Languages was created to create “a system of positive protection for minority languages and the communities using them”. Article 3 reads:

*“For many years various bodies within the Council of Europe have been expressing concern over the situation of regional or minority languages. It is true that the Convention for the Protection of Human Rights and Fundamental Freedoms in its Article 14 lays down the principle of non-discrimination, in particular outlawing, at least with respect to the enjoyment of the rights and freedoms guaranteed by the Convention, any discrimination based on such grounds as language or association with a national minority. Important though this is, however, it creates only a right for individuals not to be subjected to discrimination, but not a system of positive protection for minority languages and the communities using them, as was pointed out by the Consultative Assembly as long ago as 1957 in its Resolution 136. In 1961, in Recommendation 285, the Parliamentary Assembly called for a protection measure to supplement the European Convention to be devised in order to safeguard the rights of minorities to enjoy their own culture, to use their own language, to establish their own schools and so on.”*³¹⁷

³¹⁴ Grabbe, H, ‘Europeanisation goes East: Power and Uncertainty in the EU Accession Process’, p. 14 http://www.ceses.cuni.cz/CESES-141-version1-3_1_Grabbe_2002_Europeanisation_goes_east.pdf

³¹⁵ CEE stands for Central and Eastern Europe

³¹⁶ Grabbe, H, ‘Europeanisation goes East: Power and Uncertainty in the EU Accession Process’, p. 14 http://www.ceses.cuni.cz/CESES-141-version1-3_1_Grabbe_2002_Europeanisation_goes_east.pdf

³¹⁷ European Charter for Regional and Minority Languages <http://conventions.coe.int/Treaty/en/reports/html/148.htm>, Article 3

The Charter has a cultural purpose and does not set out to protect and promote linguistic minorities, as pointed out in articles 10 and 11:

“10. As is made clear in the preamble, the charter’s overriding purpose is cultural. It is designed to protect and promote regional or minority languages as a threatened aspect of Europe’s cultural heritage. For this reason it not only contains a non-discrimination clause concerning the use of these language but also provides for measures offering active support for them: the aim is to ensure, as far as reasonably possible, the use of regional or minority languages in education and the media and to permit their use in judicial and administrative settings, economic and social life and cultural activities. Only in this way can such languages be compensated, where necessary, for unfavourable conditions in the past and preserved and developed as a living facet of Europe’s cultural identity.

11. The charter sets out to protect and promote regional or minority languages, not linguistic minorities. For this reason emphasis is placed on the cultural dimension and the use of a regional or minority language in all the aspects of the life of its speakers. (...)”³¹⁸

Articles 14 and 15 stress that official state languages and regional or minority languages is not conceived as a competition or antagonism and that the charter is only meant for ‘old’ regional or minority languages not for “new, often non-European languages which may have appeared in the signatory states as a result of recent migration flows often arising from economic motives.”³¹⁹ Furthermore, the charter covers “primarily territorial languages, that is to say languages which are traditionally used in a particular geographical area.”³²⁰ The preamble stresses the philosophical approach of the charter and protection of the European cultural identity and cultural diversity by protecting the linguistic diversity.³²¹ The Sami inhabited the Sápmi area before the arrival of the Norwegians, Swedes, Finns and Russians moved to the area. So it is safe to argue that their languages fall under ‘old regional or minority languages’. Also, the Sami languages are territorial languages, since the use of these languages is tied to

³¹⁸ European Charter for Regional and Minority Languages, at <http://conventions.coe.int/Treaty/en/reports/html/148.htm>, Articles 10 & 11

³¹⁹ Ibid, Article 15

³²⁰ Ibid, Article 33

³²¹ Ibid, Article 25 & 26

the geographical area of Sápmi. This means that the European Charter for Regional and Minority Languages of the European Council applies to the Sami and their languages.

6. Reports

Reports on the Sami are discussed in this chapter. These reports all have in common that they revolve around the Sami and their position in Finnish society. Some reports focus on language issues, others on land rights or on the human rights situation. Some reports combine all these issues. I rely greatly on reports with regard to answering my research questions. Therefore I have gathered reports from different sources, from EU to UN and NGO's. I also incorporated one independent report from a university researcher who herself is Sami. These reports, from diverse sources, should paint a (as complete as possible) picture of the situation of the Sami in Finland. This chapter will describe all reports. The analysis follows in the Chapter 7.

6.1 *The European Union*

The EU has published reports on multilingualism, one of the problems of the Sami languages is that some are endangered (only 10-20 speakers left), the focus of the EU lies on supporting linguistic diversity, it does so by removing linguistic discrimination so that favourable conditions for linguistic diversity are created. However, preserving a language is difficult, especially when there are Sami languages that are endangered and have only 10-20 speakers left.

I found it difficult to find EU reports specifically regarding the situation of the Sami and their rights as an indigenous people. Therefore, I focused more on reports of international organisations and NGO's.

6.1.1 *The Euromosaic Study – Old information*

The EU has created a Euromosaic report, the Euromosaic research is “a comprehensive study of minority language groups in the European Union.”³²² The European Commission was the main initiator behind the project. This study was created because, “decisions on supporting regional and minority languages need to be based on a full understanding of their status and the challenges they face.”³²³ However, it is unclear what the influence of the Euromosaic

³²² European Commission – Languages, The Euromosaic Study
http://ec.europa.eu/languages/euromosaic/euromosaic-study_en.htm

³²³ Ibid

study is/was on member states, The Euromosaic study on the Sami in Finland falls under the Euromosaic II study undertaken in 1999.³²⁴

The Euromosaic study on Sami in Finland starts with a description of the different Sami languages and the Sami identity, “Despite treating the Sami in Finland as a single language group, it should be borne in mind that local linguistic varieties are mutually non-intelligible; that one group of speakers only recently moved into Finland; and that the Sami in northern Scandinavia have close relationship across borders. It is therefore incorrect to describe the Sami as a social group in a sociological sense, as they belong to several societies and states. The Sami transcend individual language groups. ‘Northern Sami’ is spoken by 70-80% of Sami-speakers, but the Sami are distinguished from the non-Sami: at the subjective level, by more than language, the concepts of ‘us’ and ‘them’ set boundaries of inclusion and exclusion, a critical aspect of Sami existence.”³²⁵

Even though the webpage is regularly updated, the information seems to be old. No information from the year 2000 onward is published on the site. This seems to be very odd, most of the EU rules and regulations have come into existence in the mid 1990’s and evaluation seems to be in place. Furthermore, information on the Euromosaic report is easy to find and easily accessible, making it come across as recent information.

The website provides some interesting facts about the problems that the Sami face, such as “Attempts to define Sami simply in terms of language backfire: Finns who have learnt the language are included, whereas Sami who do not speak the language, but who practice many activities which otherwise define being Sami, are not. A definition is needed which will ensure that the natural resources which enable the preservation of specific activities defines as ‘Sami’ to be reserved for those covered by the definition.”³²⁶ However, since the information is old, I will have to discard it and search for more up to date reports.

6.1.2 Multilingualism and Traveler Groups

The European Union has published reports on multilingualism and on school education of children of occupational travellers. The EU supports linguistic diversity. The EU and its Member States “ensure that linguistic discrimination is removed, and can help create favourable conditions so that linguistic diversity can thrive. However, the ultimate responsibility for the survival of a language must lie within the speakers of that language. In

³²⁴ Euromosaic III, Ciemen, <http://www.ciemen.org/mercator/actionplan/euromosaic-gb.htm>

³²⁵ European Commission – Languages, The Euromosaic Study, Sami in Finland, http://ec.europa.eu/languages/euromosaic/fi1_en.htm

³²⁶ Ibid, chapter 2.3 – Legal status and official policies

addition, EU support for linguistic diversity faces certain practical constraints. For example, what practical measures can be taken to support severely endangered languages such as Ume Sámi (10 speakers) and Pite Sámi (20 speakers)?”³²⁷

The report on the education of children of occupational travellers discusses the problems that Finnish Sami children face, when their parents move. The Norwegian government requires all children living in Norway to attend a Norwegian school, however, for Sami children who only speak Finnish and Sami this would be a difficult adjustment. Therefore, “the Pan-Nordic Saami Organisation has proposed to the parliament that Sweden, Finland and Norway should ‘take measures to provide Saami individuals residing in any of the three countries with the possibility to obtain education, medical services and social provisions in another of these countries when this appears to be more appropriate. The Saami population residing in the Saami areas shall have access to education both in and through the medium of the Saami language’ (Nordic Saami Convention). This proposal does not appear to have been accepted yet.”³²⁸ The report concludes, “however, given that the Saami population is increasingly sedentary, it would appear that the proposal is more concerned with protecting and promoting Saami culture than with providing for the needs of occupational travellers per se.”³²⁹

6.2 United Nations Report

The ‘Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya’³³⁰ of the UN Human Rights Council starts on a clear note: “The Special Rapporteur is pleased that, overall, Norway, Sweden, and Finland each pay a high level of attention to indigenous issues, relative to other countries. In many respects, initiatives related to the Sami people in the Nordic countries set important examples of securing rights of indigenous peoples.”³³¹ A cross-border initiative to develop a Nordic Sami Convention is praised. However, the report also discusses four areas of concern: self-determination; rights to lands, waters and natural resources; maintaining languages; and culturally appropriate education.

³²⁷ EU, ‘Civil Society Platform on Multilingualism – Policy Recommendations for the Promotion of Multilingualism in the European Union’, 9 June 2011, http://ec.europa.eu/languages/pdf/doc5088_en.pdf, p. 22

³²⁸ EU, ‘The school education of children of occupational travellers in the European Union – A Final Report to the Directorate General for Education and Culture of the European Commission’, ECOTEC, January 2008, http://ec.europa.eu/education/pdf/doc200_en.pdf

³²⁹ Ibid

³³⁰ UN General Assembly A/HRC/18/35/Add.2,

http://www.galdu.org/govvat/doc/2011reportsapmiahrc1835add2_en.pdf, summary, p.1

³³¹ Ibid, summary, p. 1

6.2.1 *Self-determination*

The Special Rapporteur comes to the conclusion that, even though the Nordic Countries have relatively advanced laws and policies when it comes to the Sami, there are “still ongoing barriers to the full realization of the right of Sami people to self-determination, both at the cross-border and national levels.”³³²

When it comes to cross-border self-determination, the report says that “throughout the world few examples exist to date of specific, formal arrangements to advance the self-determination of one indigenous people across the borders of several States.”³³³ Evidently, this poses a challenge, when it comes to the situation of the Sami. However, “the move toward such arrangements is part of developments over the last several decades that challenge the assumption that national borders are the sole markers of political organization and authority.”³³⁴ Furthermore, “the Sami people have made significant efforts to advance their collective self-determination through the development of cross-border institutions and initiatives, and have taken noteworthy steps in this regard.”³³⁵

In 2011 negotiations have started to develop a Nordic Sami Convention. The participants aim for the negotiations to be completed within five years. This Nordic Sami Convention “provides the principal framework for defining the common objectives of the Sami people and is an important component of the effort to advance Sami self-determination as one people (its clear shortcoming in this regard being that it does not apply to the Sami people in the Russian federation).”³³⁶

When it comes to self-determination on a national level, the Sami parliaments are discussed. The report says that “the Sami parliaments are the principal vehicles for Sami self-determination in Norway, Sweden and Finland, and they represent an important model for indigenous self-governance and participation in decision-making that could inspire the development of similar institutions elsewhere in the world.”³³⁷ Even though an example is set, there is still room for improvement. “Despite this, there is an ongoing need to increase the Sami parliaments’ autonomy and self-governance authority, as well as to strengthen their ability to participate in and genuinely influence decision-making in matters that affect Sami

³³² UN General Assembly A/HRC/18/35/Add.2,

http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p.10, no. 32

³³³ Ibid, p.10, no. 34

³³⁴ Ibid, no. 34

³³⁵ Ibid, p.10, no. 34

³³⁶ Ibid, p.10, no. 35

³³⁷ Ibid, p.11, no. 37

people within the Nordic countries.”³³⁸ The representatives of the Sami parliaments have voiced concerns regarding the degree to which they can participate and influence decision-making. In general, “Sami parliaments lack specific decision-making powers in matters pertaining to the use of lands, waters and natural resources.”³³⁹ The Finnish Sami Parliament is used as an example to show the limited matters that the parliament is concerned with: “In Finland, in particular, the statutory mandate of the Sami parliament is limited to matters concerning Sami languages, culture and indigenous status. Even within these areas, the Sami parliament’s input is restricted.”³⁴⁰ The Finnish parliament has to consult the Finnish Sami parliament regarding issues that affect Sami concerns; however, representatives of the Finnish Sami parliament said to the Special Rapporteur that “most of their proposals and comments to the State, even on matters with the parliament’s recognized sphere of competency, remain unanswered by the Finnish Government.”³⁴¹

6.2.2 *Rights to Lands, Waters and Natural Resources*

The rapporteur gives a clear summary of the situation, when writing, “The history of Sami people in the Nordic region is marked by the progressive loss of their lands and natural resources, especially lands that are essential to reindeer herding. In the past, Nordic States operated under the assumption that Sami people’s nomadic land use, which covers large areas and may vary from year to year depending on climate and ecological factors, has not given rise to legal rights over lands and resources.”³⁴² This remark by the Special Rapporteur shows the different approach to territoriality that the Sami and the 19th century governments of the Nordic States had. It also points out the difficulty of the land rights issue: the Sami have progressively lost land and natural resources and that, due to their nomadic lifestyle, they did not legally own lands and resources. The nomadic lifestyle of the Sami shows a different sort of territoriality, where land is used communally and seasonal migration leaves pastures fallow, so that nature can restore itself, and the land can be used for decades to come.

Over the years protections regarding land and reindeer herding have been put into place, but the situation in Finland is complicated by the fact that reindeer herding is not a specific Sami profession. Finns also practice reindeer herding and as such have rights to land

³³⁸ UN General Assembly A/HRC/18/35/Add.2,

http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p.11, no. 37

³³⁹ Ibid, p.11, no. 38

³⁴⁰ Ibid, p.11, no. 38

³⁴¹ Ibid, p.11, no. 40

³⁴² Ibid, p.13, no. 46

for this activity as well. On top of that, whilst Finnish law recognizes Sami land use, it has been difficult for the Sami to put this into practice.³⁴³

From 2003 to 2006 the Finnish Government conducted a research on Sami land use in the Upper Lapland region. Approximately 90 per cent of the Sami homeland is legally Finnish State land. Negotiations have taken place between the Finnish government and the Finnish Sami parliament, however “at this point the legal status of the lands that Sami people have traditionally used and occupied in Finland remains unresolved.”³⁴⁴

The rights to marine resources are mainly of concern to the Sami in Norway, where the Sami “fishing of the northern coast of Norway has been impeded greatly due to mismanagement of fisheries by non-Sami actors and environmental factors.”³⁴⁵ The diminishment of local control and fishing regulations created at national level make it even harder for the Sami to have their voice heard.³⁴⁶

6.2.3 Continued Threats to Sami Lands and Livelihoods

The Sami culture and lifestyle is threatened in a similar fashion in all three Nordic countries. The rapporteur describes the threats as such, “The Sami way of life, especially in relation to reindeer husbandry, is threatened significantly by competing usage of land, often promoted by the Governments themselves through natural resource extraction or other development projects. In all three Nordic countries, various natural resource extraction and development projects threaten to diminish areas available for grazing. Already, the construction of buildings and road, as well as hydroelectric dams, mining, forestry projects and tourism activities have resulted in loss and fragmentation of pasture lands, with detrimental effects on reindeer movement and, consequently, on their reproductive levels and survival.”³⁴⁷

It is noted that the Nordic States have laws that consider the special position of the Sami people, their livelihoods or their land when it comes to natural resource extraction, but in general “laws and policies in the Nordic States with respect to natural resource extraction and development do not provide sufficient protections for Sami rights and livelihoods, and do not involve Sami people and the Sami parliaments sufficiently in the development

³⁴³ UN General Assembly A/HRC/18/35/Add.2,

http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p.13, no. 47

³⁴⁴ Ibid, p.15, no. 52

³⁴⁵ Ibid, p.15, no. 53

³⁴⁶ Ibid, p.15, no. 53

³⁴⁷ Ibid, p.15, no. 55

processes.”³⁴⁸ This can be seen in the lack of compensation for loss of pasture and the rare occasions that the benefits from natural resource extraction are shared with the Sami.³⁴⁹

The logging of wood forms a significant threat to Sami lands vital for reindeer herding. However, in Finland, after decades of expressed concern by the Sami, Finland’s governmental forestry enterprise Metsähallitus has come to an agreement with reindeer herders, “the logging volume within the reindeer herding area has decreased significantly.”³⁵⁰

The danger of predator animals is also discussed. A large number of reindeer fall prey to predators such as wolf, wolverine, lynx, brown bear and eagle. The Swedish Agriculture University has calculated that a minimum of 60,000 reindeer are killed by predators, the total number of reindeer in Sweden is 260,000. This poses a number of risks to herds, the main risk being that the herd will not be able to sufficiently reproduce themselves and will die out within a few years. Not only have all the Nordic States regulations the restrict the herders’ right to defend and protect their herd, the Government compensation covers only a part of the total damages. However, the Finnish Government promises “improved compensation for damages to herds caused by carnivores”³⁵¹ in the new Game Damages Act.³⁵²

Climate change poses two large threats to the Sami lands and livelihoods. A global problem, the effects on the Arctic climate are noticeable. Reindeer herding is a livelihood vulnerable to temperature changes. Winter temperatures rise, posing food problems for the reindeer and the possibility for summer pastures to turn into shrub vegetation, whereas herders prefer drier ground for their herd. Changes in land aside, the solutions to climate change also endanger Sami lands. Reindeer herding pastures may be turned into sites for sustainable energy.³⁵³ According to the report, “demand for sustainable energy has resulted in a potential windmill construction boom on the coast of Troms and Finnmark in Norway, severely affecting reindeer calving grounds. In Sweden, 35 per cent of areas identified as locations for wind power are within core reindeer herding areas, and there are plans for more than 2,000 windmills to be established within reindeer grazing lands. The Swedish Government granted permission for what would be the world’s largest land-based wind power

³⁴⁸ UN General Assembly A/HRC/18/35/Add.2,

http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p.16, no. 56

³⁴⁹ Ibid, p.15 & 16, no. 56

³⁵⁰ Ibid, p. 16, no. 59

³⁵¹ Ibid, p.17 , no. 62

³⁵² Ibid, p. 17, no. 62

³⁵³ Ibid, p. 17, no. 60 &61

park in the municipality of Piteå, where the Sami community of Östra Kikkejaur has its winter reindeer herding pastures.”³⁵⁴

6.2.4 *Maintaining Languages*

Over the years the Sami languages have becoming increasingly more endangered. Sami languages are central to the Sami identity, but the variety of languages and dialects is decreasing. The Second World War provided a severe blow to the Sami education and languages, when Sami had to go “without schooling in any language for several years, with negative effects on literacy and on the capacity to pass on language abilities to future generations.” Nowadays the Sami languages are threatened by the lack of Sami spoken outside of the home and the thinly populated areas they occupy. Northern Sami, a language spoken in Finland, is vulnerable, but Ánar, Skolt Sami, Lule Sami and Southern Sami are nearly extinct.

The Finnish constitution “guarantees the right of the Sami people to maintain and develop their own language and culture and the Sami Language Act³⁵⁵ of 2003 affirms that Sami people have the right to use the Sami language before certain State authorities and in relation to certain administrative and legal procedures, especially within the Enontekiö, Inari, Sodankylä and Utsjoki municipalities, the core Sami area.” However, in reality this proves to be more difficult: the lack of knowledge of Sami languages means that municipal and state authorities, as well as the social and health care services, have trouble providing services in Sami languages. The Government’s Report to Parliament on the Human Rights Policy of Finland 2009 “will prepare a comprehensive programme to revive the Sami language, with focuses on early childhood education, teaching, social welfare and health care, culture, the media and economic policy.” In Inari such an immersion programme has proven to be very successful and the Finnish Ministry of Education and Culture has renewed funding in 2011.

6.2.5 *Culturally Appropriate Education*

In all the Nordic States the Sami have the right to study in the Sami language in designated Sami areas. These designated areas are defined by law. However, the report says, “some 50 per cent of Sami people, and 70 per cent of children under 10, live outside the designated

³⁵⁴ UN General Assembly A/HRC/18/35/Add.2,

http://www.galdu.org/govvat/doc/2011reportsapmiahrc1835add2_en.pdf, p. 17, no. 61

³⁵⁵ Sami Language Act, <http://www.ciemen.org/mercator/butlletins/58-03.htm>

areas.”³⁵⁶This is problematic, since education of Sami history, culture, and knowledge is vital to ‘maintaining and revitalizing’ the Sami way of life.³⁵⁷

The Norwegian Education Act provides “the most advancement in developing a comprehensive educational policy [...] all Sami pupils, regardless of where they live, have the right to be taught in their native language as part of their compulsory schooling. Outside the Sami area, students have the right to study Sami if at least ten pupils in the municipality request such instruction and the opportunity for distance learning in the absence of a Sami speaking teacher.”³⁵⁸In Finland the Act on Financing of Education and Culture guarantees education in the Sami language within the designated Sami lands, no legislation is made regarding education in Sami outside of the homeland. In Finland the majority of Sami students live outside of the Sami homeland, depriving them of education in their native language. The Finnish Sami Parliament has tried for many years to extend the Act on the Financing of Education and Culture, but up until now to no avail. The situation is made more difficult by “the fragmentation of Sami settlements and shortage of Sami teachers”³⁵⁹. Long-distance learning programmes face difficulties due to a lack of funding.³⁶⁰

6.2.6 Recommendations

The Special Rapporteur finalizes the report by giving a number of recommendations. An important recommendation, addressed directly at the Finnish government, regarding land rights is that “Finland should step up its effort to clarify and legally protect Sami rights to land and resources. In particular, Finland should ensure special protections for Sami reindeer husbandry, given the centrality of this means of livelihood to the culture and heritage of the Sami people.”³⁶¹

³⁵⁶ UN General Assembly A/HRC/18/35/Add.2,

http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p. 18, no. 67

³⁵⁷ Ibid, p. 18, no. 67

³⁵⁸ Ibid, p. 18, no. 68

³⁵⁹ UN General Assembly A/HRC/18/35/Add.2,

http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p. 19, no. 70

³⁶⁰ Ibid, p. 18 & 19, no. 68 & 70

³⁶¹ Ibid, p. 21, no. 84

6.3 *Amnesty International*

None of the reports in the time period 2006-2011 spoke of the situation of the Sami. Issues regarding violence against women and girls, refugees and asylum seekers and conscientious objectors to military service were discussed at length in all reports.³⁶²

Human rights were discussed in the 2005 report. Findings of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and of the UN Human Rights Committee (HRC) were discussed. The CPT "found that there was no coherent set of regulations on the use of force and means of restraint authorized during the deportation of foreign nationals, and recommended that detailed instruction on the procedures to be followed be issued without delay."³⁶³ The HRC "noted with concern that Roma still faced discrimination in housing, education, employment and access to public places."³⁶⁴ Then there is one sentence about the Sami, "It [the HRC] also reiterated its concern over the failure to settle the question of Sami rights to land ownership."³⁶⁵ The issue is stated by Amnesty International, but is not addressed further. In later years, the Sami land rights issue has disappeared from the annual reports. The only time that is talked about discrimination again is in the 2010 report, but that is regarding the Roma and migrants, not the Sami.³⁶⁶

6.4 *Freedom House*

The Freedom House reports from 2005 to 2011 all say the exact same two things about the Sami in Finland:

- 1.) "The indigenous Saami of northern Finland also have their own parliament"³⁶⁷

³⁶² Amnesty International Report 2006 – Finland, at <http://www.unhcr.org/refworld/country,,AMNESTY,,FIN,,447ff7a72,0.html>; Finland – Amnesty International Report 2007, at <http://www.amnesty.org/en/region/finland/report-2007>; Finland – Amnesty International Report 2008, at <http://www.amnesty.org/en/region/finland/report-2008>; Amnesty International Report 2009 – State of the World's Human Rights – Finland, at <http://report2009.amnesty.org/en/regions/europe-central-asia/finland>; Finland – Amnesty International Report 2010, at <https://www.amnesty.org/en/region/finland/report-2010>; Amnesty International Annual Report 2011 – Finland <http://www.unhcr.org/refworld/country,,AMNESTY,,FIN,,4dce156b3c,0.html>

³⁶³ Amnesty International Report 2005 – Finland, at <http://www.unhcr.org/refworld/topic,463af2212,4858d3382,429b27e016,0,AMNESTY,ANNUALREPORT,FIN.html>

³⁶⁴ Amnesty International Report 2005 – Finland, at <http://www.unhcr.org/refworld/topic,463af2212,4858d3382,429b27e016,0,AMNESTY,ANNUALREPORT,FIN.html>

³⁶⁵ Ibid

³⁶⁶ Finland – Amnesty International Report 2010, at <https://www.amnesty.org/en/region/finland/report-2010>

³⁶⁷ Freedom House, Freedom in the World 2005 - Finland, at http://expression.freedomhouse.org/reports/freedom_in_the_world/2005/finland;

- 2.) “Since 1991, the indigenous Saami, who make up less than 1 percent of the population, have been heard in the Eduskunta on relevant matters. The constitution guarantees the Saami cultural autonomy and the right to pursue their traditional livelihoods, which include fishing and reindeer herding. Their language and culture are also protected through public financial support. However, representatives of the community have complained that they cannot exercise their rights in practice and that they do not have the right to self-determination with respect to land use.”³⁶⁸

6.5 United States Department of State

The section on indigenous peoples in the 2005 report reads, “Sami (Lapps) constituted less than 0.1 percent of the population. The law provides for the protection of Sami language and culture, and the government financially supported these protections. Sami enjoyed full political and civil rights as citizens, as well as a measure of autonomy in their own civil and administrative affairs. Sami had the right to use their language in dealings with administrative and judicial authorities and in schools, media, economic and commercial life, and cultural activities. Sami communities received subsidies to continue their traditional way of life. There were no reports of any discrimination against Sami in employment, education, housing, health services, or land rights.”³⁶⁹ This paragraph is republished in the reports from 2006 and 2007.

6.5.1 2006 Country Report

In the 2006 report complaints and protests of the Sami against the Finnish government have been added to the previously discussed first paragraph on Indigenous Peoples. The report says, “Despite protections in the constitution, members of the Sami community continued to protest the government’s continued failure to pass legislation that would ensure protections of Sami land, resources, and economic livelihood. Sami complained that while 90 percent of the

Freedom House, *Freedom in the World 2006 - Country Report – Finland* (2006), at <http://old.freedomhouse.org/template.cfm?page=22&country=6963&year=2006>;

Freedom House, *Freedom in the World 2007 - Finland*, at http://expression.freedomhouse.org/reports/freedom_in_the_world/2007/finland;

Freedom House, *Freedom in the World 2008 - Finland*, 2 July 2008, at <http://www.unhcr.org/refworld/docid/487ca20a6e.html>;

Freedom House, *Freedom in the World 2009 - Finland*, 16 July 2009, at <http://www.unhcr.org/refworld/docid/4a6452b9c.html>;

Freedom House, *Freedom in the World 2010 - Finland*, 3 May 2010, at <http://www.unhcr.org/refworld/docid/4c0ceaf3c.html>;

Freedom House, *Freedom in the World 2011 - Finland*, 16 May 2011, at <http://www.unhcr.org/refworld/docid/4dd21a47c.html>

³⁶⁸ Ibid

³⁶⁹ United States Department of State, *2005 Country Reports on Human Rights Practices - Finland*, 8 March 2006, at <http://www.state.gov/j/drl/rls/hrrpt/2005/61647.htm>

Sami home region is considered government-owned land, the government used this land for logging and other purposes without consulting the Sami.”³⁷⁰

The logging dispute between the Sami and the Finnish government is also addressed, “During the year members of the Sami community continued to press legal challenges related to alleged violations of their land rights. In 2005 the state forestry administration extended logging into areas where Sami herdsman held reindeer during the fall months. In November 2005 the Sami brought a complaint against the government to the UN Human Rights Committee, alleging that the logging was so intense that it threatened the Sami’s traditional means of subsistence through reindeer herding. The committee issued an interim order asking the government to halt logging activities in the disputed areas; the state forestry administration abided by that order. Sami complaints about logging practices continued during the year. On June 21, Sami herdsman in Inari issued a report criticizing the National Forestry Board’s “New Plan for Natural Resources,” and noting that the plan had been prepared without Sami participation. On November 2, Sami representatives again expressed dissatisfaction with government attempts to address the logging problem and said that under the new plan, as much as four-fifths of forests outside of protected areas would be open to logging that could potentially harm traditional reindeer husbandry.”³⁷¹

A case the Sami had brought under the attention of the UN Human Rights Committee is also discussed. “In April 2005 the UN Human Rights Committee decided another case involving Sami land rights, finding no violation of the Sami right to enjoy their culture. The applicants had alleged that since the 1980s, approximately 4,000 acres of their grazing land in Paadarskaidi had been logged, thereby destroying 40 percent of the tree lichen needed by grazing reindeer in winter and threatening their reindeer husbandry activities. The committee found that although there was a decrease in the number of reindeer as a result of the logging, the total number of reindeer remained relatively high and the logging therefore did not violate the Sami right to enjoy their culture.”³⁷²

Though issues regarding the Sami are addressed, the discussion of the issues is factual and no recommendations are given, and no judgment is passed.

³⁷⁰ United States Department of State, 2006 Country Reports on Human Rights Practices - Finland, 6 March 2007, at <http://www.state.gov/j/drl/rls/hrrpt/2006/78811.htm>

³⁷¹ United States Department of State, 2006 Country Reports on Human Rights Practices - Finland, 6 March 2007, at <http://www.state.gov/j/drl/rls/hrrpt/2006/78811.htm>

³⁷² United States Department of State, 2006 Country Reports on Human Rights Practices - Finland, 6 March 2007, <http://www.state.gov/j/drl/rls/hrrpt/2006/78811.htm>

6.5.2 2007 Country Reports

The 2007 report adds to the previously discussed first paragraph, “Despite constitutional protections, members of the Sami community continued to protest the lack of explicit legislation to safeguard Sami land, resources, and economic livelihood. Sami have alleged for decades that, while 90 percent of the Sami home region is considered government-owned land, the government used this land for logging and other purposes without consulting them. During the year members of the Sami community won some legal challenges related to violations of their land right.”³⁷³

What legal challenges were won and on what ground is not discussed. The discussion goes without judgment and no recommendations are given.

6.5.3 2008 Country Reports

The 2008 report reads on the topic of Indigenous Peoples: “The law provides for the protection of Sami (Lapp) language and culture, and the government financially supported these protections, and the Sami have full political and civil rights as citizens, as well as a measure of autonomy in their civil and administrative affairs. Despite constitutional protections, members of the Sami community, which constitutes less than 0.1 percent of the population, continued to protest the lack of explicit legislation to safeguard Sami land, resources, and economic livelihood. Sami have alleged for decades that, while 90 percent of the Sami home region is considered government-owned land, the government used this land for logging and other purposes without consulting them. During the year members of the Sami community won some legal challenges related to violations of their land rights.”³⁷⁴

The paragraph previously published in the 2005-2007 reports has been replaced by this piece of information that seems to mix the previous information with the previous logging complaints, as well as the land rights cases they won.

6.5.4 2009 and 2010 Country Reports

With regard to indigenous peoples the 2009 report says, “The law provides for the protection of the Sami language and culture, and the government financially supported these protections. The Sami, who constitute less than 0.1 percent of the population, have full political and civil rights as citizens, as well as a measure of autonomy in their civil and administrative affairs. A

³⁷³ United States Department of State, 2007 Country Reports on Human Rights Practices - Finland, 11 March 2008, at <http://www.state.gov/j/drl/rls/hrrpt/2007/100558.htm>

³⁷⁴ United States Department of State, 2008 Country Reports on Human Rights Practices - Finland, 25 February 2009, at <http://www.state.gov/j/drl/rls/hrrpt/2008/eur/119078.htm>

21-member Sami parliament (Samediggi) popularly elected by the Sami is responsible for the group's language, culture, and matters concerning their status as an indigenous people. The Sami parliament can make initiatives to officials and adopt resolutions. It is an independent body but operates under the purview of the Interior Ministry. Despite constitutional protections, members of the Sami community continued to protest the lack of explicit legislation to safeguard Sami land, resources, and economic livelihood. The government owns 90 percent of the land in the Sami home region. Sami have alleged for decades that the government used their land for logging and other purposes without consulting them.”³⁷⁵

Information regarding the Sami parliament and its mode of operation has been added to the information from the 2008 report. The paragraph on indigenous peoples is the exact same in the 2009 and 2010 reports. Similar to previous reports no recommendations regarding the situation are given.

6.6 Independent – Rauna Kuokkanen

Rauna Kuokkanen is a Sami from Finland. She has an M.A. in Sami Language and Literature from the University of Oulu, Finland, and a PhD in Education from the University of British Columbia. She currently works at the University of Toronto as an Assistant Professor at the Department of Political Science/Aboriginal Studies Program. She is originally from Ohcejohka, Sápmi/Utsjoki, Finland. She has published in both English and Sami. “She was founding chair of the Sami Youth Organization in Finland, established in 1991, and served as the Vice-President of the Sami Council in 1997-98. Currently she is a board member of the Sami Women's Forum and a member of the International Feminist Network for the Gift Economy.”³⁷⁶

A post openly criticizing the approach of the Finnish government regarding Sami Rights, called “Sami Rights Policy In Finland: Delay Tactics Until The Problem Disappears?” was published on her personal website.³⁷⁷ In the post she accuses Finnish governments of having used ‘double standards for the past two decades’ when it comes to human rights: a defender of human rights on the international level and neglecting Sami rights within their own borders. She even goes so far as to talk about “Finland's dismal record of recognizing the

³⁷⁵ United States Department of State, 2009 Country Reports on Human Rights Practices - Finland, 11 March 2010, at <http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136030.htm> & United States Department of State, 2010 Country Reports on Human Rights Practices – 8 April 2011, at <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154423.htm>

³⁷⁶ Rauna Kuokkanen, homepage, May 15th, 2007 - <http://rauna.wordpress.com/>

³⁷⁷ Kuokkanen, R., ‘Sami Rights Policy In Finland: Delay Tactics Until The Problem Disappears?’, December 10th, 2008, <http://rauna.wordpress.com/2008/12/10/human-rights-policy-in-finland-delay-tactics-until-the-problem-disappears/>

human rights of the Sami”³⁷⁸, saying that Finnish governments purposefully delay decisions and shelf proposals. She supports her claims with examples: “In 2006 Finland applied for the permanent membership of the newly established UN Human Rights Council. One of the key issues mentioned in the application was the government proposal relating to Finland’s ratification of the ILO Convention 169 (Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989). According to the application, the proposal was to be submitted to the parliament during 2006. The proposal was not submitted, however, but Finland was accepted as a member of the Human Rights Council.”³⁷⁹ She quotes Professor of Law Tuomas Ojanen from his article in Finnish legal journal ‘Lakimiesuutiset’, “the lack of ratification of the ILO Convention is a stain in Finland’s records.”³⁸⁰

She claims that Finnish governments have shelved reports by international committees, such as the UN Committee on Human Rights, and have not taken to heart their recommendations to potentially save the Sami culture. At the same time, the Finnish government has given permission to Metsähallitus, Finland’s governmental forestry enterprise, to log sites that Sami use as winter grazing pastures.³⁸¹

She goes so far as to wonder if the state’s benign neglect comes forth from an “unwritten Sami policy in Finland to look elsewhere until ‘the problem’ goes away ‘by itself.’”³⁸²

7. Analysis

7.1 The Sami

A different sense of territoriality exists between the Sami and the people of Norway, Sweden, Finland and Russia. The Sami are a nomadic people, whereas most Norwegians, Swedes, Finns and Russians do not lead a travelling lifestyle. During the time of nation formation,

³⁷⁸ Kuokkanen, R., ‘*Sami Rights Policy In Finland: Delay Tactics Until The Problem Disappears?*’, December 10th, 2008, <http://rauna.wordpress.com/2008/12/10/human-rights-policy-in-finland-delay-tactics-until-the-problem-disappears/>

³⁷⁹ Ibid

³⁸⁰ Ibid

³⁸¹ Kuokkanen, R., ‘*Sami Rights Policy In Finland: Delay Tactics Until The Problem Disappears?*’, December 10th, 2008, <http://rauna.wordpress.com/2008/12/10/human-rights-policy-in-finland-delay-tactics-until-the-problem-disappears/> & The long running dispute has been solved in 2010 – Indigenous Peoples Issues & Resources, ‘*Finland: Finnish Forest Dispute Resolved With Saami Agreement*’, at http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=8019:finland-finnish-forest-dispute-resolved-with-saami-agreement&catid=26:europa-indigenous-peoples&Itemid=59

³⁸² Kuokkanen, R., ‘*Sami Rights Policy In Finland: Delay Tactics Until The Problem Disappears?*’, December 10th, 2008, <http://rauna.wordpress.com/2008/12/10/human-rights-policy-in-finland-delay-tactics-until-the-problem-disappears/>

states were created. However, the Sami have never created a state in the same sense as the Norwegian, Swedish, Finnish and Russian. As said before, this is due to the fact that the Sami had a different approach to territorialisation: their basis of power and control over resources and people was influenced by their nomadic lifestyle due to fishing and reindeer herding, whereas the Norwegians, Swedes, Finns and Russians based their power and control on permanent residency.

The siida system makes that the Sami have/had a nomadic lifestyle. During the middle-ages the Sami received privileges from the states they lived in, such as exclusion from military service. However, during the 18th and 19th century the state borders became more clearly defined and arguments between states led to the closing of state borders. The Sami, living in four countries, lived in siidas, the siida boundaries did not comply with the national state areas; this meant that when a state border would run through a siida, closing of that particular border would mean destruction of the siida, separation of Sami areas, as well as the cutting off of ancient migration routes.

During the 19th and 20th century Norway, Sweden, Finland and Russia created assimilation policies. The Finnish government of course had to deal with both Finnish and Swedish speaking inhabitants, but the assimilation policy focused on Finnish-ness, whilst at the same time, allowing for two national languages. This made it more difficult for the Sami to live according to their traditional lifestyle. During this time the notion of Sami as a people from a lower cultural background was created. This was shown in rules and regulations such as needing to be able to speak the state's language first and discouragement of speaking any Sami language (if not forbidding speaking it). In Norway one had to speak Norwegian in order to possess land, so the Sami took a double hit with this policy. The national assimilation policies meant the final blow to the Sami siida system.

In the 20th century the idea of Sápmi, one living area for all Sami, took root. The Sami are depicted as one people with the same culture, lifestyle, language and history. In reality, however, there are nine different Sami languages and several dialects these languages and dialects can be incomprehensible even to Sami from different tribes. In the 1980s a national hymn was chosen, as well as a flag and commemoration days. It is important for the Sami to present themselves as one indigenous people, in order to preserve the Sami lifestyle. Also, a unification as one people will allow them to cooperate and stand stronger against the nation states. Furthermore, there are different international treaties and organisations that support the position of indigenous peoples over the world, these treaties and organisations can also help strengthen the Sami position. During the 1990s the Sami meaning of Sápmi changed, when

they started referring to Sápmi as a region. This had to do with the emergence of EU regional programmes that strengthen cross-border cooperation.

The Sami as one transnational society is an achievable goal, because of the shared inheritance, the shared situation, the shared culture and lifestyle, the related languages and the shared history. However, because the Sami have been living in four different states for centuries, the Sami are starting to become culturally fragmented and this could pose a serious threat to the depicting of the Sami as one nation. It will now be the task of the Sami to incorporate these cultural differences into the entire Sami culture to avoid fragmentation of the Sami people.

7.2 Rights and laws

The securitisation of minority rights stems from nationalism. Sami minority rights are securitised by several sources, the Finnish state, the EU and several NGOs, however, the securitised minority rights do not cover the whole spectrum: the land rights issue has not been solved. Nationalism as an ideology was popular in the 19th and 20th century and is based on the idea of ‘one nation, one state’. However, during the second half of the 20th century and in 21st century today, it has become clear that convergence of state borders and national groups is virtually impossible and therefore rights to protect minorities are in order.

7.2.1 EU

When the Treaty on the European Economic Community (TEC) was created, minority rights were not taken into the equation. The notion ‘human rights’ was mentioned twice in the entire treaty: the Treaty only talks of “respecting human rights”, no definition of what human rights are is given. Thirty-five years later, when the Treaty on the European Union (TEU) was signed, it became clear what the European leaders meant with ‘human rights’. The TEU defines human rights, in article 6.2, as:

“The Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as a general principle of Community law.”³⁸³

³⁸³ Consolidated Version of the Treaty on the European Union http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf Article 6 C 325/11 and C 325/12, article 6.2

In my opinion, this still is not a clear definition of what human rights are. However, it seems as if the European leaders at the time did not want to come up with a definition and leave human rights to the European Court of Human Rights, perhaps to avoid clashing outcomes on cases and/or to avoid enlarging the work load of the European Court of Justice, or due to objections from member states that wanted to deal with their own problems without EU interference/as little EU interference as possible. Minorities are only mentioned once in the TEU. Article 14 states that the rights and freedoms of all inhabitants of the European Union area will be secured without discrimination. When we combine the non-discriminatory clause and the acceptance of fundamental rights as provided by the Convention of Human Rights and Fundamental Freedoms (ECHR), it means that minorities enjoy all the rights and freedoms of the ECHR under the EU flag.

Furthermore, the rights and freedoms of the ECHR are absolutely fundamental, i.e. prohibition of torture and right to a fair trial. It is necessary to formally grant inhabitants these rights and freedoms, however, I cannot fathom that the Sami in Finland did not informally enjoy these rights already.

The conditions of the Copenhagen Criteria are very clear, but no standards or tests are given to determine whether or not a prospective member state actually fulfils the obligations of the criteria. This allows the EU to involve itself in domestic policy-making of prospective member states, but does little to clarify and standardise minority rights.

The European Instrument for Democracy and Human Rights (EIDHR) is an EU initiative that has put the rights of minorities and indigenous peoples in the spotlight. The focus lies on human rights and fundamental freedoms.³⁸⁴ The EIDHR, as well as EU participation in other initiatives, is part of the EU's external policy and is therefore focused on non-EU member states.

Looking at EU legislation and initiatives from a territorialisation standpoint it is noticeable that there are certain issues the EU does not touch upon. EU legislation and initiatives is focused on language rights and human rights, but is found lacking in the department of land issues and access to natural resources. Furthermore, the EU has not incorporated ways of repercussion into the legislation and initiatives, making it difficult to force member states to comply. Of course, there is the standard procedure when countries do not apply by the rules: article 258 of the Treaty on the Functioning of the European Union

³⁸⁴ European Instrument for Democracy & Human Rights, at http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm

(TFEU – consolidated version, 2012. Ex article 226 of the TEC) and article 106a of the Euratom treaty.³⁸⁵ Article 258 says

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

*If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.*³⁸⁶

The European Court of Justice (ECJ) can then decide what consequences of non-compliance are. Usually the consequence is a monetary fine; however, a case on non-compliance with minority rights has not taken place.

The lack of measures against non-compliance, as well as the lack of influence on land and natural resource issues is in all-likelihood due to member states not willing to hand over control to the EU. Of course, the EU is not a state and therefore is limited in its territorialisation (control, effect, influence) when it comes to the actual territory of nation-states. If the EU can control a country's territory, what is left of the country? The EU has refrained from this discussion and its member states have not given it enough competencies to actually control member states' territories. The EU influences, affects and controls human rights for minorities with its Charters and laws, however, the human rights granted to the Sami by these EU rules and regulations cover human rights already granted by the Finnish state, therefore the situation of the Sami does not improve with these rules and regulations. That is not to say that the EU laws are a farce, a reaffirmation of human rights and a court whose rulings have to be abided by are always good things, however, it does not further the situation of the Sami nor solves the land rights issues.

7.2.2 International Organisations

In general the conventions and charters of international organisations, such as the United Nations (UN) and the International Labour Organisation (ILO), are more outspoken on issues

³⁸⁵ The European Commission, 'Infringements of EU law', on: http://ec.europa.eu/eu_law/infringements/infringements_en.htm

³⁸⁶ Article 258 of the TFEU on EurLex: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E258:EN:NOT>

such as land rights. The UN Declaration on the Rights of Indigenous Peoples is such an outspoken document. The declaration was created because “indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising in particular, their right to development in accordance with their own needs and interests.”³⁸⁷ The declaration addresses land issues and rights extensively. What is interesting to see is that the declaration offers room for a “spiritual relationship” with land and territory, an issue that, in my opinion, is not often understood or accepted in the western world. The Sami living in siidas and leading a nomadic lifestyle is related to the relationship with their land. The UN declaration literally says that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”³⁸⁸ When a state cannot/will not give back the traditionally owned land, the declaration speaks of compensation for indigenous people. Moreover, the declaration speaks in article 8.1 against dispossession, “Indigenous peoples and individuals have the right to not be subjected to forced assimilation or destruction of their culture.”³⁸⁹ Article 10 prohibits forcibly removing indigenous peoples from their lands and territories.

The UN Declaration on the Rights of Indigenous Peoples was adopted in 2007. Finland was one of the 142 countries to vote in favour of this declaration. The EU supported the declaration, but was unable to vote. The traditional Sami land and territories have fallen under Finnish territory for almost a hundred years now. Therefore it is easier to reclaim territory lost in 2007, because that is the year this UN Declaration was adopted, but a lot harder to reclaim territory as of 1919. How can the Sami or the Finns prove that particular areas of land are (traditionally) theirs? Over the past hundred years a web has been woven of use and ownership of territories, it is incredibly difficult to disentangle that web.

The UN faces similar issues with territorialisation as the EU: territorialisation only goes as far as member states allow it. Tools to enforce this Declaration when a state does not comply do not exist. The only thing that the UN can do is to encourage member states to completely comply with what they have signed on to do and possibly apply (peer) pressure to get a member state to comply. The UN does not get their basis of power from territory, but from a vision that is shared by member states, the member states allow to what degree. Therefore the UN cannot control land rights and natural resources issues, but only influence

³⁸⁷ UN Declaration on the Rights of Indigenous Peoples, at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, p. 2

³⁸⁸ Ibid, Article 26.1, p. 10

³⁸⁹ Ibid, Article 8.1, p. 5

them. Still, the fact that the UN has a Declaration dedicated to the rights of indigenous peoples works for the Sami. The Finnish government has ratified the Declaration, a sign of willingness to solve the land rights and natural resources issue. The discussion of rights to land and natural resources in this UN Declaration is clear and opens up a path for discussion between the Sami and the Finnish government. Of course, this Declaration does not mean that the situation will be solved in a couple of weeks and that the Sami will get all ‘their’ old land and natural resources back: Finns inhabit the area as well and have so for a couple of centuries, this should mean that these inhabitants have a say in matters as well. However, the Declaration speaks in favour of indigenous peoples when it comes to rights to land and natural resources, the Finnish government signing the declaration is a positive step in the land rights discussion. Now the Finnish government has to comply with the Declaration and it is a pity that the UN does not have any means to enforce these rules, because then the situation would be solved a lot faster.

The International Labour Organization (ILO) created Convention No. 169 that deals with the rights of indigenous and tribal peoples. Convention No. 169 was created in 1989 and so far has been ratified by twenty countries. Of the four nation states that the Sami live in only Norway has ratified the Convention.

ILO Convention No. 169 does not give a definition of whom tribal or indigenous people are. Instead it focuses on self-identification as a tribal/indigenous people. Some guidelines are given, for indigenous peoples a traditional life style; a different culture, as well as, a different way of life from ‘other segments’ of the national population; own social organizations; own political institutions; and “living in historical continuity in a certain area, or before others ‘invaded’ or came to the area”³⁹⁰.

Article 14, that talks of the possibility of tribal/indigenous peoples having a nomadic lifestyle, is very important for the Sami, per this article their non-permanent inhabitation of a certain area needs to be taken into account, when making a claim for land. This would make a successful court case more likely; however, since the Finnish government has not ratified Convention No. 169, the Sami cannot use it in Finnish court. The Finnish government has been urged by NGOs, for example the UN, to adopt ILO Convention No. 169. This Convention goes further when it comes to land rights than the UN Declaration. This is quite possibly the reason why no Finnish government has ratified this Convention so far. The ILO cannot control land rights and natural resources issues, but due to its definitions and

³⁹⁰ ILO Convention No. 169, at <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

sanctions it will contribute to affecting and influencing these matters and better the situation of the Sami when it comes to these issues.

7.2.3 *Language Rights*

The main EU minority rights laws deal with language rights. The EU has no institutional template for human and minority rights. The focus lies on the internal market and the four freedoms, human and minority rights remain outside EU-level responsibilities. The EU has not developed a blue-print that can be adopted by (prospective) member states when it comes to guaranteeing the protection of human and minority rights; a loss indeed, because now it is more difficult to hold member states accountable, especially with the diversity of democratic systems and policies among the twenty-seven member states.

The European Council has created its own charter for protection of minority language rights: the European Charter for Regional or Minority Languages. It came into existence because non-discriminatory clauses do just that: protect individuals from discrimination. However, a non-discriminatory clause does not protect minority languages or the communities that speaks those languages. For that same reason it is valuable that the EU created its own minority language rights. However, all EU member states are also members of the Council of Europe.

From a territorialisation standpoint it seems that minority language rights are 'easiest' to secure by international 'moguls' such as the EU and the European Council: language rights are an important part of a minority its identity that can be secured without influencing the actual territorial issues (land, natural resources). If the EU can control a country's territory what is left of the country? The EU and European Council influence, affect and (to a certain extent) control member states when it comes to minority language rights. However, methods fail to *make* a country comply.

Conclusion

The Sami as an indigenous people have a special connection to their land shown by traditional professions connected to nature, such as reindeer herding and fishing, and seasonal migration: living with nature and giving land and natural resources time to recuperate after use. Their migration pattern was seen as not permanently inhabiting land in the 19th century by the governments of nation states and therefore these governments reasoned that the land was

theirs to take. Whereas nowadays, it can be argued that seasonal migration and allowing land and resources a ‘time to breathe’ is a different basis of power and a different way of controlling resources and people than the more general approach of taking up permanent residency and thereby asserting power.

Securitisation of minority rights comes forth from nationalism and state formation. During the second half of the 20th century it became clear that the idea of ‘one nation, one state’ was not obtainable. In order to protect the rights of minorities, minority rights were created. The Treaty on the European Economic Community was created in the 1950’s, when minority rights just came in the picture. Therefore, it is not odd that minority rights are not mentioned in the TEC. Around the time that the Treaty on the European Union was created, in the early 1990’s, the text included a mention of human rights: the EU respects human rights, as they are described in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. The TEU does not mention what these rights are and leaves human rights and lawsuits up to the European Court of Human Rights. It is possible that EU officials and EU member states did not include a definition of human rights to avoid clashing definitions and/or lawsuits with the European Court of Human Rights. Minorities also enjoy all rights and freedoms of the ECHR under the EU flag. The rights and freedoms of the ECHR are absolutely fundamental. I cannot imagine that the Sami minority in Finland did not enjoy these rights prior to Finnish membership of the Council of Europe and the EU.

The Copenhagen Criteria talk of human rights and the protection of minorities. They were created in 1993, but not used for the 1995 enlargement round, which saw the entry into the EU of Sweden, Finland and Austria. Even though the criteria are clear, no standard is given, nor is there a test to determine whether or not a prospective member state complies with the criteria. Supposedly all member states comply with the Copenhagen criteria, but no reports on compliance exist, to my knowledge.

The EU’s European Instrument for Democracy and Human Rights is part of the EU’s external policy programme and, even though, one of its focuses lies on minorities and indigenous peoples it only applies to non-EU member states.

The focus of minority rights in an EU-framework lies on language rights. The internal market and four freedoms combined with the refraining of definitions on human rights mean that human and minority rights are left out of the direct EU realm of influence.

When searching for reports I found it very difficult to gather easily accessible EU sources of information. I found that information offered on the EU website was dated.

Furthermore, the EU website is, in my opinion, not very transparent. There must be (or should I say “should be”) information from EU sources on the situation of the Sami in Finland readily available. However, I found it difficult to find.

The situation of the Sami has changed over the past century. A lot of the Sami homeland has been owned by the Finnish government for almost a hundred years. Dispossession has taken place a long time ago and giving back lands and territories or compensating for these lands and territories has become increasingly difficult as the time has passed. How do the Sami prove that they traditionally owned, used or acquired lands, territories and resources? The formation of nation states, as well as the closing of state borders in the early 20th century has destroyed many Sami cross-border *siidas* and (reindeer) migration routes.

By EU law minorities have the right to use their own languages and human rights are protected. This is positive and reaffirmation of rights and a court to fall back on are great things to have, but these laws have not drastically improved the situation of the Sami. Yes, having to be able to speak Sami at public institutes and being able to communicate in Sami on a governmental level are great developments, however, the situation has proven difficult to live by since there are many different Sami languages and dialects and there are not enough Sami to man all these posts 24/7. From the 1990s onwards, the EU developed cross-border regional programmes, these regional programmes changed the meaning of Sápmi: the Sami started referring to Sápmi as a region. The cross-border initiatives were positive for the Sami, since the closed borders meant cut-off migration routes, but these benefits for the Sami were accidental and positive side-effects of the regional programmes, not the initial aim of the programme. So the influence of the EU in this respect has been accidental and even though protection of minorities is a positive thing, has not significantly altered the situation of the Sami.

The answer to my first question is rather simple: the Sami do not make an appeal to EU law when it comes to their land rights, because EU law does not concern itself with land rights of indigenous peoples. In light of the theory of territorialisation it is possible that the EU will extend its power and also set rules with regard to minority rights. It is also possible, in order to avoid conflicting advice, that the EU will adopt a declaration or convention of an international organisation. However, due to the difficult subject of land rights and the controversy that such an adoption might spark, especially since the topic is little talked about in an EU context, it is unlikely that this will happen in the near future.

Conventions of international organisations such as the United Nations and the International Labour Organisation are more outspoken on issues such as land rights, a subject not touched upon by the EU. This is the case, because EU member states have different interests and have kept it off the EU agenda.

Convention No. 169 of the International Labour Organization was created in 1989 to protect the rights of indigenous and tribal peoples. Up until this day, it has been ratified by twenty countries, of the states that the Sami reside in, only Norway is a member. Convention No. 169 does not give a definition of whom tribal and indigenous peoples are. It focuses on self-identification, combined with a number of guidelines for identification. The Convention is based on six principles that together form the foundation of the rights of tribal and indigenous peoples: self-identification, non-discrimination, safeguarding, recognition, consultation and participation, and the decision of priorities.

The implication of the rights in the section on land rights overlap with those stated in the UN declaration. However, different stress may be put on the rights. The ILO Convention states two issues that are not discussed in the UN declaration: penalties for unauthorized use of land; and the possible consequences of national agrarian programmes. Article 14, that talks of the possibility of tribal/indigenous peoples having a nomadic lifestyle, is very important for the Sami, per this article their non-permanent inhabitation of a certain area needs to be taken into account, when making a claim for land. This would make a successful court case more likely; however, since the Finnish government has not ratified Convention No. 169, the Sami cannot use it in Finnish court.

The UN Declaration on the Rights of Indigenous Peoples talks of land rights of indigenous peoples. It was created because of the ‘historic injustices’ suffered by indigenous peoples, such as colonization and dispossession of land, territories and (natural) resources. These historic injustices have limited and often prevented indigenous peoples from exercising their right to development. The declaration talks of a ‘spiritual relationship’ with land and territory, a notion that is often misunderstood and unknown in the western world. The Sami have a different relationship with their land, then, i.e. Swedes or Finns. Their lifestyle is nomadic and reindeer husbandry (requiring travel) forms an important part of their culture.

The UN declaration states that indigenous peoples have rights to lands, territories and resources that they have previously owned, occupied, used or acquired. In the case that a state does not or cannot give back these lands and territories, the declaration speaks of compensation in the form of other lands and territories of equal quality and value. The declaration also speaks out against dispossession.

The UN Declaration on the Rights of Indigenous Peoples was adopted in 2007. Finland was one of the 142 countries to vote in favour of this declaration. Were the Sami lose land today it would be easier to reclaim it, with this UN declaration. However, the situation of the Sami is difficult, since previous to 1919 Finland was a part of the Swedish empire and a Grand Duchy of Russia. When does land become state owned? To what date do we go back? How can the Sami or the Finns prove that land is traditionally theirs? The web of ownership that has been woven over the past hundred years is incredibly difficult to disentangle.

The Special Rapporteur on the rights of indigenous peoples, James Anaya, of the UN praises the governments of Norway, Sweden and Denmark in his 2011 Report for their high level of attention to indigenous issues. However, he still points out that there are four areas of concern when it comes to the Sami in the Nordic states: self-determination; rights to lands, waters and natural resources; maintaining languages; and culturally appropriate education.

The Special Rapporteur comes to the conclusion that there are still on-going barriers when it concerns full realization of Sami self-determination, both at cross-border and at the national level. None of the Nordic states have rules and regulations on possible cross-border Sami self-determination. The Sami have taken steps themselves towards cross-border self-determination by creating cross-border institutes. On a national level the Sami in Finland have voiced concerns that their Sami parliament lacks tools to influence decision-making. Finnish officials have to consult with the Sami parliament, when decisions are being taken that can affect the Sami.

The Sami can influence Finnish decision-making by means of consultation. They state that they have trouble being heard. Unfortunately for the Sami, consultation means that they can only give advice. Therefore, it is possible to take the advice and not do anything with it. Consultation does not hold any possibilities to bargain or use any type of overriding force in the process of decision-making. In order for the Sami people to get more influence, Finnish laws need to be changed. The Special Rapporteur advises to increase the level of Sami national and cross-border self-determination. The UN cannot force any government to take its advice, until it is a security council resolution. The Finnish government needs to assess whether or not to implement the advice from the 2011 report, and assess the possibility of an impasse when deciding on land issues, e.g. logging.

The Special Rapporteur states that Sami history in the Nordic states “is marked by the progressive loss of their lands and natural resources, especially lands that are essential to

reindeer herding.”³⁹¹ The situation in Finland is complicated by the matter of reindeer herding not being a Sami-only profession. There are Finnish reindeer herders as well. Therefore, when granting rights to Sami reindeer herders, i.e. land use, these rights have to extend to Finnish reindeer herders as well, based on the non-discrimination principle. However, this complicates the land issues in Finland, since the argument of reindeer herding is not as absolute as it is in Norway and Sweden, where reindeer husbandry is only practiced by Sami. Negotiations regarding the land issues between the Sami and the Finnish government between 2003 and 2006 failed to resolve the issue. Still, the Special Rapporteur urges the Finnish government to resolve the land rights issues and offer legal protection for these, yet to be established, rights.

The land, water and natural resource issues threaten the Sami in a second manner: the competing usage of land. Again, this competing usage of land stems from a different approach to territorialisation: the Sami and the Finns have/had a different way of ‘delimiting and asserting control over a geographical area’, the Sami migrated seasonally within a certain area, whereas Finns territorialise by permanent inhabitation. Natural resource extraction and/or development projects can have devastating effects on reindeer husbandry: fragmentation of pasture lands affects reindeer husbandry severely. The laws of all three Nordic states with regard to natural resource extraction are, according to the Special Rapporteur, insufficient in its protection of the Sami people and their livelihoods. The logging of wood poses a similar threat, although the Finnish government has decreased its logging on government-owned Sami land. A global threat is formed by climate change. These changes can alter the vegetation of land and the growth rate, negatively affecting reindeer pastures. In his conclusion the Special Rapporteur recommends that Sami reindeer husbandry is offered special protection, in order to preserve the Sami culture.

The variety of Sami languages and dialects has decreased due to the Second World War. During the war Sami children did not receive Sami language education, damaging Sami languages and dialects directly, as well as on the long term, because there were less able speakers left to pass on languages and dialects to future generations. In 2003 the Sami Language Act came into force in Finland, it protects Sami languages and cultures and states that Sami languages can be used before certain state authorities. However, the lack of able speakers, combined with the many languages and dialects make providing the service somewhat troublesome.

³⁹¹ http://www.galdu.org/govat/doc/2011reportsapmiahrc1835add2_en.pdf, p.13, no. 46

Both the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 touch upon a subject that is little talked of in national law and EU law: land rights. Therefore it comes as no surprise anymore that indigenous peoples call upon articles from these international treaties when making an appeal for land rights. Also, the calling upon the ILO convention is plausible, since this is the oldest and most established treaty. Unfortunately, it has only been ratified by twenty countries. The emphasis of the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 is different; however, considering the fact that Finland has ratified the UN Declaration and not the ILO Convention, I see a future where more appeals will be done on the UN Declaration by the Sami living in Finland. The much younger UN declaration has become a viable alternative for the ILO Convention. Still, it has to be said that even though the Finnish government has ratified the declaration, the UN has no means to force its advice upon the Finnish government; meaning that the situation of the Sami may remain similar to that of today in the foreseeable future.

My question regarding alternatives for EU laws has been partially answered, since the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 cannot offer binding solutions in court. However, my question regarding the description of land rights, as well as, solutions offered to indigenous people after they lost land to national governments have been answered. Indigenous peoples have rights to the land they have traditionally occupied. Indigenous peoples often have a spiritual connection to land, a connection that is not completely understood in the Western world, in decision-making this spiritual connection needs to be taken into account. When an indigenous people loses land to the government, they need to be compensated. The solutions offered, in answer to these issues, are non-binding: none of the Conventions and Declarations can force its ratification or compliance upon a state.

Also, the roles of the UN and ILO have become clear: they offer regulations on issues untreated by the EU.

The reports of Non-Governmental Organisations Amnesty International and Freedom House, show no infractions on human rights by the Finnish government. Seeing that Finland is a global promoter of human rights this does not come as a surprise. What I do find surprising is the lack of attention in all 2005-2011 reports on the situation of the Sami, especially when it comes to land rights. Evidently, land rights are not a basic human right, but the fact that the situation is hardly mentioned at all makes me wonder if these organizations have looked with

a critical eye at the issues at hand: no country on this planet has reached a state of utopia; therefore there should always be room for improvement. Initially I had thought that I would gather most information on the land rights situation in Finland from these reports. I was wrong. It is very well possible that I misjudged the angle of the reports these organizations publish: I expected a discussion of the bigger picture and a discussion of issues that threaten the existence of the Sami culture: since (in my opinion) a threat to existence does not necessarily have to mean an infraction *of* human rights to be an infraction *on* human rights.

The online post of Rauna Kuokkanen on her personal website was shocking. Even though, I have a healthy distrust of online information; in this case even a double dose of distrust, since she is a Sami and could have preconceived ideas on the matter. I found that I could not verify all information she provided, therefore her information loses some of its value, however, her argument is one that needs to be heard: if not entirely verifiable it is a serious concern that is not voiced in any of the reports, laws, declarations or conventions, namely, that the Sami may die out.

For decades the Sami have put up a legal fight to get (what they see as) their homeland back. Measures to protect their language and culture have been taken, but since right to education in Sami and the right to use Sami when addressing authorities only is allowed in designated areas, around 50 per cent of the Sami in Finland cannot enjoy these rights. It can be argued that there are not enough Sami speakers to fulfil the task or that the fact that the Sami in Finland are too scattered all over the country makes the issue more difficult. However, when Sami are not educated in their own language the ability to pass it on to new generations will fade. Of course, the Sami can lighten their own load by organising their own language education in areas where it is found lacking, but that does not mean that the Finnish government cannot do more in order to preserve the Sami languages and dialects, for example, a cross-regional Sami ombudsman. When thinking of territoriality, the Finnish government is *the* player when it comes to Sami language rights in Finland and there should be no obstacles to improving the language situation of the Sami.

The land rights issue is extremely complex. It is made even more complex by a matter not discussed in this thesis: money. However, the importance of money in this equation will be left unspoken of since it is a bit late to enter a whole new topic and theory into the mix. When Finland was founded in 1919 the Sami had already lived under a nationalist government, complicating the matter of ownership: who was it first? How to prove ownership? Fact of the matter is that over the past centuries the Sami lifestyle, culture and

livelihoods have become endangered. Evidently, times have changed, but it is not an argument to have a culture disappear. Quite on the contrary, now is the time to restore the Sami culture. Restore old reindeer migration routes where possible. Especially in Finland, where reindeer husbandry is not solely a Sami business, the Finnish reindeer herders could profit too. Preservation of land, waters and natural resources will keep Sami livelihoods and its culture alive. When nothing is done, Sami culture, languages and livelihoods will wither away and eventually die out. We have to ask ourselves if we want to preserve an ancient people, or if we want them to be talked off in a century or two as a legendary people only to be found in ancient tales, myths and sagas.

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