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MASTERARBEIT / MASTER'S THESIS

Titel der Masterarbeit / Title of the Master's Thesis

“Indigenous Peoples’ Rights and the Problem of Saami”

verfasst von / submitted by

Mariia Kostetckaia

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master (MA)

Wien, 2018 / Vienna 2018

Studienkennzahl lt. Studienblatt /
degree programme code as it appears on
the student record sheet:

A 067 805

Studienrichtung lt. Studienblatt /
degree programme as it appears on
the student record sheet:

Individuelles Masterstudium:
Global Studies – a European Perspective

UNIVERSITÄT LEIPZIG



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Betreuer/Supervisor:

Ao. Univ.-Prof. Mag. Dr. Friedrich Edelmayer

Abstract

The Saami are an indigenous people of Northern Europe living on the territory of the four states: Norway, Sweden, Finland, and Russia. Despite the fact that they did not face the same challenges the indigenous peoples of other parts of the world faced, they are still struggling for the recognition of their right to self-determination, the right to own, govern and use the lands they traditionally inhabited, and the right to develop their culture. This paper compares how the Saami rights are protected in the four states and whether this protection is sufficient for the Saami to preserve and develop their traditional livelihoods and culture. A historical background of the relations between indigenous peoples of the world and states, also provided in this paper, helps to put the Saami struggle for their rights into a broader context.

Die Samen sind ein indigenes Volk Nordeuropas, deren Lebensraum sich über Teile der vier Staaten Norwegen, Schweden, Finnland und Russland erstreckt. Ungeachtet der Tatsache, dass sie nicht denselben Problemen und Herausforderungen wie viele andere indigenen Völker anderer Erdteile ausgesetzt waren, kämpfen sie dennoch um die Anerkennung ihres Rechtes auf Selbstbestimmung, um die Rechte des Besitzes, der Verwaltung und des Regierens, wie auch das Recht der Benutzung jener Regionen, die sie bereits seit jeher bewohnen und für die Entfaltung und das Praktizieren ihrer Kultur. Die folgende Arbeit behandelt den Vergleich zwischen den durch die vier betroffenen Staaten geschützten Rechte der Samen, sowie die Frage, ob diese gesetzlichen Vorkehrungen dem Anspruch dieser Volksgruppe auf das Beibehalten und Ausleben ihrer traditionellen Lebensweise und deren Kultur gerecht werden. Ein ebenfalls in dieser Arbeit vermittelter historischer Blick auf indigene Völker dieser Welt und jene Staaten, deren Gebiete sie bewohnen, soll dabei helfen die oben genannten Schwierigkeiten der Samen betreffend der Wahrung ihrer Rechte in globalerem Kontext zu verstehen.

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Indigenous Peoples' Rights and the Problem of Saami

Introduction

Indigenous peoples are ethnic groups that were the first settlers of the given territory, “the prior occupants of lands colonised”.¹ The subjection to colonialism is an important characteristic of indigenous communities. Despite the years of oppression indigenous peoples experienced after first encounter with the colonisers, there are still more than 370 million indigenous people living on Earth, constituting more than 5,000 indigenous communities.²

This paper focuses on the indigenous people Saami and the protection of their rights. The Saami are the only recognised indigenous people in the northernmost part of Europe inhabiting the territory of Sapmi – the Saami land – that was divided in the course of history by four sovereign states: Norway, Sweden, Finland, and Russia. There is also evidence that the Saami inhabited areas much further south, but later they were pushed back to the north by other peoples.³

The Saami lived on the territory of Sapmi long before the formation of the present-day states; the Saami often underline that they constitute one people “with common history, culture, language, traditions, civic life, trade and visions for the future”, and that the national borders shall not violate their community.⁴ The National borders that divide Sapmi today were established over a 100-year period, roughly from the middle of the 18th to the middle of the 19th centuries. They cut through linguistic and cultural communities and constrain reindeer herding activities. With the influx of the new settlers in the Sapmi area the Saami became a minority in their homeland. Nowadays, they constitute a minority in most regions of Sapmi, except for in the interior of Finnmark County in Norway and in the Utsjoki municipality in Finland. Many Saami nowadays live outside

¹ Keal, P. 2003. *European Conquest and rights of Indigenous people*. New York: Cambridge University Press. P. 9.

² United Nations. “Indigenous Peoples Factsheet”.
<http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf>
(24.01.2018).

³ Baer, L.-A. 2005. “The Rights of Indigenous Peoples -A Brief Introduction in the Context of the Sami”, *International Journal on Minority and Group Rights*, 12, 245-267.

⁴ Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169. P. 76.

their traditional homeland in bigger cities like Oslo, Stockholm, or Helsinki.

The Saami are a numerically small people and its population is estimated to be between 70,000 and 100,000, with about 40,000-60,000 Saami living in Norway, 15,000-20,000 in Sweden, about 9,000-10,000 in Finland, and less than 2,000 in Russia.⁵ However, it is difficult to estimate the real numbers of the Saami, since calculating methods differ in the four countries. It might be that the number of the Saami is much higher than estimated. For example, according to some register data, there are more than 50,000 Saami living in Sweden alone.⁶

The languages the Saami speak belong to the Finno-Ugric language group. There are nine Saami languages that are still used nowadays and they can be divided into Eastern and Western language groups. Western languages are Northern, Southern, Pite, Ume and Lule Saami. The Eastern language group consists of Skolt, Inari, Kildin and Ter Saami.⁷ Northern Saami is the most widely spoken language with about 20,000 speakers. All the Saami languages remain highly endangered, as less than a half of the Saami are active Saami speakers.⁸ It is also important to note that the linguistic boundaries do not correspond to the national borders of the four respective states; instead they reflect the internal boundaries of traditional Saami settlement areas.⁹ Neighbouring Saami languages are normally close to each other in vocabulary and people speaking these languages can understand each other.¹⁰

During the course of history the Saami adapted to the severe Arctic climate and nature and this became a foundation of their culture. The relationship between man and nature is still regarded as an integrated whole.¹¹ The traditional occupations of the Saami have been hunting, reindeer herding, fishing, gathering, and trapping. Fishing activities are especially important for the Saami of the coastal areas. Semi-nomadic reindeer herding is still one of the most important activities not only for the Saami livelihood, but also for their language, culture, economy and

⁵ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2.

⁶ Hassler, S., Sjölander, P., Ericsson, A. 2004. *Construction of a Database on Health and Living Conditions of the Swedish Saami Population*. Umeå: Umeå universitet. Pp. 384-388.

⁷ Council of Europe. 2015. The Sami: the People, their Culture and Languages. <<https://edoc.coe.int/en/national-minorities/6684-the-sami-the-people-their-culture-and-languages.html>> (25.02.2018).

⁸ Ibid.

⁹ Sammallahiti, P. 1998. *The Sami languages – an Introduction*. Kárášjohka: Davvi Girji OS.

¹⁰ Ibid.

¹¹ Baer, L.-A. 2005. "The Rights of Indigenous Peoples -A Brief Introduction in the Context of the Sami", *International Journal on Minority and Group Rights*, 12, 245-267.

social relations.¹² However, nowadays less than 10 % of the Saami are involved in reindeer herding.¹³

The Saami are not the first people that come to mind when the term “indigenous peoples” is mentioned because they are quite different from other indigenous peoples of the world. Unlike indigenous peoples of North and South America, Australia or New Zealand, they were not subjects to the overseas colonialism and the consequences of the colonisation were not as drastic for the Saami as they were for some other indigenous peoples. Another distinctive feature is that the majority of the Saami nowadays live in welfare states and enjoy high living standards. However, despite having a different historical context, the Saami still face the same problems as other indigenous peoples all over the world, such as the non-recognition of their land rights, discrimination and limited possibilities for self-determination. While international law nowadays acknowledges the rights of indigenous peoples, including the Saami, in practice, they cannot fully enjoy these rights, mostly due to the lack of implementation of international law in domestic laws.

This paper aims to look into how the rights of the Saami are protected in the four states they are living in, and whether this protection is sufficient for the Saami to preserve and develop their traditional livelihoods and culture. To this end, the legislation and the international obligations of the four states will be examined; the implementation of these laws in practice will also be considered. The Saami rights protection in the four states will be compared.

Before examining the situation with the Saami rights in the four countries, a broader historical perspective will be explored. Analysing the historical background of the relations between indigenous peoples of the world and states is important, since it provides a better understanding of the complex issue of the indigenous peoples’ rights, including land rights. Looking into the development of the attitude towards the indigenous peoples from denial to international recognition of their rights puts the Saami struggle for their rights into the broader context.

This work is based on the extensive literature analysis and the analysis of the legal texts (national and regional laws, conventions, declarations). The method of comparison will also be used in order to analyse the differences and trends in the protection of the Saami rights in the four states.

¹² Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169.

¹³ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP.

Indigenous peoples' rights is a relatively new topic in the international law, since it only started to attract the broad attention of international organisations in the 1970s. Until then many states did not recognise the existence of the indigenous population on their territories, let alone provide them with any specific rights. Over the last decades, Norway, Sweden, Finland and Russia have put considerable efforts into ensuring the rights of indigenous peoples. The Saami are sometimes considered one of the most privileged indigenous peoples of the world because they live in the wealthy states, the legislation of the states is well developed and the Saami do not face many challenges indigenous people in developing countries are facing. However, being better off than others does not say anything about the actual state of the protection of their rights. The relevance of this work lies in fact that this paper is comparing the efficiency of the protection of the Saami rights in the four states, taking into account the recent developments in legislation of the states, such as signing and implementing the Nordic Saami Convention, but also giving the reader a broader perspective on the state of the world's indigenous peoples.

To fit the purpose of the research, the paper is divided into two parts. The first part provides an overview of the concept of indigenous peoples and the development of their relations with the states. Chapter 1 focuses on the issues of the definition of indigenous peoples. The first contact of indigenous peoples with the colonisers and the consequences of it are presented in chapter 2. In chapter 3, the development of the attitudes of the European states towards the indigenous peoples is described from the point of view of international law. Chapter 4 shows the developments of the contemporary international law in terms of protection of the indigenous peoples' rights. The main international instruments that are used to protect the indigenous rights are also analysed in this chapter. Chapter 5 discusses the main challenges the indigenous peoples of the world are still facing nowadays.

The second part of the paper focuses on the Saami, the indigenous people of Europe. Chapter 1 provides a brief history of relations of the Saami and the states. Chapter 2 focuses on the cooperation of the Saami across the state borders and also analyses the Nordic Saami Convention. Common challenges of the Saami are discussed in chapter 3. Chapter 4 presents the situation with the Saami rights in the four states. The existing legislation that influences the Saami is analysed in this chapter and conclusions are made on how the respective states protect the Saami rights. The main conclusions on the present-day situation with the Saami rights in the four states in a broader concept of the indigenous rights are drawn in the concluding chapter of the paper. The findings based on the comparison of the situation in the four states are also presented in the concluding chapter.

Part I. Indigenous peoples: a broader historical and theoretical context

1. Indigenous Peoples: issues of definition

According to the United Nations (UN) data there are about 370 million indigenous people living on Earth and they constitute 5 % of the world population.¹⁴ These people are members of more than 5000 indigenous communities in more than 70 states. Their cultures and traditions vary significantly from community to community and they do not form an international racial or ethnic group;¹⁵ there is no universal “indigenous identity” and this is one of the reasons why giving a definition to the term indigenous peoples is so difficult.

The simplest definition for indigenous peoples would be “the prior occupants of lands colonised”.¹⁶ However, a universal formal definition of indigenous peoples does not exist. The word indigenous itself originated from Latin word *indigena*, “a native”, in the 17th century.¹⁷ For a long time, the term indigenous peoples was used in the same meaning as aboriginal, tribal, or native peoples. The international conventions and declarations on indigenous peoples’ rights also do not define clearly what indigenous peoples are.

One of the first international documents that focused on the indigenous peoples – Indigenous and Tribal Convention, drafted by the International Labour Organisation in 1957 (ILO Convention No. 107) – does not define indigenous peoples but gives a statement of coverage. It is stated in Article 1 of the Convention that it applies to “members of tribal or semi-tribal populations in independent countries” that are regarded as indigenous “on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation”.¹⁸

¹⁴ United Nations. “Indigenous Peoples Factsheet”.

<http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf> (24.01.2018).

¹⁵ Champagne, D. 2008. *The Indigenous Peoples’ Movement: Theory, Policy, and Practice*. University of Saskatchewan, Saskatoon, Canada.

¹⁶ Keal, P. 2003. *European Conquest and rights of Indigenous people*. New York: Cambridge University Press. P. 9.

¹⁷ Oxford Dictionaries. “Definition of Indigenous”.

<<https://en.oxforddictionaries.com/definition/indigenous>> (24.01.2018).

¹⁸ C107 - Indigenous and Tribal Populations Convention, 1957 (No. 107).

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL_O_CODE:C107> (24.01.2018).

ILO Convention No. 169, a revised version of the Convention No. 107, states in Article 1 that the Convention applies to “tribal peoples in independent countries” and “peoples [...] who are regarded as indigenous”.¹⁹ Unlike the ILO Convention No. 107, ILO Convention No. 169 includes an important note that self-identification as indigenous “shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply”.²⁰

The ILO Conventions are applied to both indigenous and tribal peoples because there are tribal peoples who are not “indigenous” (or native) to the places where they live (for example Afro-descended tribal peoples in Central America) but they still face the same problems as indigenous peoples.²¹

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, also does not give a definition of indigenous peoples. However, the term “tribal peoples” is not used in the text of the Declaration; it’s replaced by the term “indigenous peoples” for the practical reasons since many tribal people identify themselves under indigenous agenda.

Despite the fact that no definition of “indigenous peoples” has ever been officially adopted by any United Nations (UN) body, the international community and the UN are using a working definition proposed in 1983 by José Martínez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his Study on the Problem of Discrimination against Indigenous Populations. His definition reads as follows:²²

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

¹⁹ C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169). <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL O_CODE:C169> (24.01.2018).

²⁰ Ibid.

²¹ UN. 2004. Workshop on Data Collection and Disaggregation for Indigenous Peoples. PFII/2004/WS.1/3.

²² Cobo, J. M. 1983. Study of the Problem of Discrimination against Indigenous Populations, Chapter XXI-XXII: Conclusions, proposals and recommendations. United Nations. E/CN.4 Sub.2 /1983/21/Add.8. Para 379.

Cobo also highlights the importance of self-identification as an indigenous person by saying that “an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group)”.²³

The fundamental element of any definition of indigenous peoples is their distinctive connection to a particular land,²⁴ but Cobo’s definition, in fact, encompasses four important factors that are common to many other definitions of indigenous peoples: “subjection to colonial settlement, historical continuity with pre-invasion or pre-colonial societies, an identity that is distinct from the dominant society in which they are encased, and a concern with the preservation and replication of culture.”²⁵

Indigenous peoples themselves usually reject an idea of a formal definition of indigenous peoples. For example, in the report of the Working Group on Indigenous Populations (WGIP) in 1996 representatives of the indigenous peoples stated that they “categorically reject any attempts that Governments define Indigenous Peoples” and that they “endorse the Martinez Cobo report in regard to the concept of ‘indigenous’”.²⁶ Moreover, governmental delegations within the Working Group also considered the formal definition not necessary.²⁷ Finally, in 1997 the WGIP concluded that “a definition of ‘indigenous peoples’ at the global level was not possible at this time, and certainly not necessary for the adoption of the draft United Nations declaration on the rights of indigenous peoples.”²⁸ The WGIP also underlined that for the common understanding of the issue Cobo’s definition of indigenous peoples is sufficient and that it is important to define indigenous peoples both with objective criteria, such as historical continuity with pre-colonial societies, and subjective criteria of self-identification.

²³ Cobo, J. M. 1983. Study of the Problem of Discrimination against Indigenous Populations, Chapter XXI-XXII: Conclusions, proposals and recommendations. United Nations. E/CN.4 Sub.2 /1983/21/Add.8. Para 381.

²⁴ Gilbert, J. 2006. *Indigenous Peoples’ Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers.

²⁵ Keal, P. 2003. *European Conquest and rights of Indigenous people*. New York: Cambridge University Press.

²⁶ Daes, E-I. A. 1996. Discrimination Against Indigenous Peoples: Report of the Working Group on Indigenous Populations on its fourteenth session. United Nations. E/CN.4/Sub.2/1996/21.

²⁷ UN. 2004. Workshop on Data Collection and Disaggregation for Indigenous Peoples. PFII/2004/WS.1/3.

²⁸ Daes, E-I. A. 1997. Human Rights of Indigenous Peoples: Report of the Working Group on Indigenous Populations on its fifteenth session. United Nations. E/CN.4/Sub.2/1997/14.

Indigenous peoples are often defined by their subjection to European colonialism, even though Europeans were not the only colonisers. For this reason some Asian and African countries argue that the concept of “indigenous peoples” is not applicable to them, as some parts of Asia never experienced European colonialism.²⁹ These countries claim that the term “ethnic minorities” is more appropriate than indigenous peoples. However, there are significant differences between indigenous peoples and ethnic minorities, and defining a particular group of people as a minority rather than indigenous people leads to legal consequences as these groups possess different rights according to international law.

Similar to the absence of definition of indigenous peoples, there is no universal definition of minorities in international law. Nevertheless, in 1979, the former Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti, developed a definition of a minority, according to which a minority group is identified by the following characteristics: numerical inferiority to the rest of the population, non-dominant or marginalised position in relation to the rest of the population, ethnic, religious, or linguistic characteristics distinct from those of the rest of the population, and a desire to preserve their distinct culture, traditions, language, and religion.³⁰

Capotorti also emphasizes the importance of the subjective criteria (self-identification) when defining a minority. The rights of the minorities to “enjoy their own culture, to profess and practise their own religion, or to use their own language”³¹ are protected by Article 27 of the International Covenant on Civil and Political Rights, as well as other international instruments.

There are no clear boundaries between the definitions of minorities and indigenous peoples. In fact, these definitions are overlapping. They share the same characteristics, such as a usually non-dominant position in a society, different cultures from the majority, and the wish to retain and promote their identity.³² Some indigenous peoples are minorities, like the Saami in Scandinavia, but not all minority groups are indigenous peoples.

²⁹ Kingsbury, B. 1999. “The Applicability of the International Legal Concept of “Indigenous Peoples” in Asia”, in Bauer, J. R. and Bell, D. A. (eds.). *The East Asia Challenge For Human Rights*. Cambridge University Press. P. 340.

³⁰ Capotorti, F. 1979. Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities. United Nations. E/CN.4/Sub.2/384/Rev.1. Para 568.

³¹ International Covenant on Civil and Political Rights.

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> (24.01.2018).

³² Right to Education. “Minorities and Indigenous Peoples”. <<http://www.right-to-education.org/issue-page/marginalised-groups/minorities-and-indigenous-peoples>> (24.01.2018).

Despite some similarities, differences between ethnic minorities and indigenous peoples exist. First of all, indigenous people are characterised by a strong connection to the lands they occupied from the times immemorial, and it is not always the case for minority groups. Second, another distinctive feature of many indigenous peoples is their experience of colonisation. Third, indigenous peoples, unlike ethnic minorities, are not always inferior in numbers; for example, in Bolivia indigenous groups constitute more than half of the population.

These differences define the status of a group and therefore also its rights. The first fundamental difference is that the rights of indigenous peoples are collective and the rights of the minorities are individual; the latter is even reflected in the phrasing of Article 27 of the ICCPR, namely “*persons* belonging to such minorities shall not be derived the right...”,³³ and in the name of the UN Declaration on the Rights of *Persons* Belonging to National or Ethnic, Religious and Linguistic Minorities (emphases added).

Another important difference stems from the previous one. If minorities are not regarded as peoples, they are also not given the right to self-determination, which is given to indigenous peoples by Article 4 of the UNDRIP. Commentary No. 15 to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities further clarifies that the right to self-determination as a group right does not apply to minorities.³⁴ Some states are still reluctant to acknowledge the indigenous status of peoples living on their territories because of the fear the consequences of the right to self-determination might have on the state’s integrity.³⁵

While the purpose of minority rights is to ensure effective participation of minority groups in the larger society, indigenous peoples’ rights “intend to allow for a higher degree of autonomous development” so that they can make their own decisions.³⁶ As it can be seen, indigenous peoples’ rights are quite different from minority rights, which is why having an indigenous status is so crucial for indigenous peoples. It gives them freedom to claim their collective rights to land and self-

³³ International Covenant on Civil and Political Rights.

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> (24.01.2018).

³⁴ UN. 2005. Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. E/CN.4/Sub.2/AC.5/2005/2.

³⁵ Kugelmann, D. 2007. “The protection of Minorities and Indigenous Peoples respecting Cultural Diversity”, in Bogdandy, A and Wolfrum, R. (eds.). *Max Planck Yearbook of United Nations Law*, Volume 11, pp. 223-263.

³⁶ UN. 2000. Prevention of Discrimination against and the Protection of Minorities: Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples’. Para 8. E/CN.4/Sub.2/2000/10.

determination. It is also important for indigenous peoples to be able to define themselves rather than be defined by others.³⁷ Therefore, an official definition is not desirable, provided that this lack of definition does not prevent the international indigenous protection mechanisms from working.

2. The first contact of Europeans with Indigenous peoples

2.1. Dealing with cultural differences

As it was discussed in the first paragraph, one of the main characteristics of indigenous peoples is their occupancy of a land before colonisation; so colonisation plays an important role in understanding the development of indigenous peoples and the challenges they faced at that time and are still facing nowadays.

The history of European colonialism started in the late 15th century with the Age of Discovery. The policies of mercantilism and protectionism were dominant at that time in Europe. European states tried to accumulate as much wealth as possible because it was associated with political power. The desire to get economically and, therefore, politically stronger forced European states to travel and look for lands where they could get raw materials. For this purpose, they founded colonies overseas allowing European states to shut out commercial competition and to become more self-reliant.

When the Spaniards and the Portuguese “discovered” the Americas they found out that those lands were not uninhabited, and for the first time, they encountered peoples who did not belong to the European culture and significantly differed from themselves culturally and racially. The absence of a common measure between cultures became a crucial element in the development of relations between Europeans and non-Europeans.³⁸

Europeans failed to understand indigenous peoples and instead conceptualised them as inferior people who were on lower stages of development. When Columbus was describing America, he was more

³⁷ Xanthaki, A. 2007. *Indigenous Peoples Rights and United Nations Standards: Self-Determination, Culture and Land*. New York: Cambridge University Press.

³⁸ Keal, P. 2003. *European Conquest and rights of Indigenous people*. New York: Cambridge University Press. P. 56.

interested in plants and animals; he regarded natives as “specimens” and did not associate them with human beings like himself.³⁹

A. Pagden describes four types of responses that Europeans adopted when they were trying to understand the radical cultural differences with “others”.⁴⁰ The first type is the principle of attachment, which means that Europeans tried to translate unfamiliar actions of the natives into familiar practices of Europeans. This approach was supposed to help Europeans to understand the culture by comparing it with something familiar but, of course, native cultures could not be measured by the European means.

The second mode of behaviour is what Padgen calls capacity for cognitive travel. Europeans took Indians to Europe as curiosities that were supposed to represent all the natives and to introduce Indian Americans to the European public. The third mode is autoptic imagination, which means that the New World and its population can only be known by first-hand experience. The fourth mode of European response to the unknown culture was to regard indigenous peoples as representatives of an earlier stage of evolution. Again, Europeans tried to understand Indians by the means of their own history, finding resemblance of the native culture with ancient Mediterranean culture. All four responses were, in fact, failures to engage with differences of other cultures.⁴¹ This failure led to the perception of Indians and other indigenous peoples of the world as inferior, which was a justification of conquest.

2.2. The consequences of the colonisation for indigenous peoples

The consequences of these encounters of Europeans with the unknown cultures were disastrous. Colonisation brought a lot of misery to the indigenous peoples of the Americas. Rodolfo Stavenhagen writes that “the entire population of the Americas decreased by 95 per cent in the century and a half following the first encounter [with Europeans]”.⁴² The population of, for example, Mexico in 1532 is estimated to be about 16 million, but after the European invasion, within several decades, it

³⁹ Keal, P. 2003. *European Conquest and rights of Indigenous people*. New York: Cambridge University Press. P. 56.

⁴⁰ Pagden, A. 1993. *European Encounters with the New World: from Renaissance to Romanticism*. New Haven: Yale University Press.

⁴¹ Ibid.

⁴² Stavenhagen, Rodolfo. 1991. “The status and rights of the indigenous peoples of America”, report prepared for the Inter-American Commission on Human Rights.

dropped to 2.65 million.⁴³ The reasons for such a drastic demographic deterioration lay in wars, enslavement, maltreatment, homicide, diseases, destruction of the natural environment and, as a consequence of it, lack of nutrition.⁴⁴

Their suffering was so large-scale that in 1987 a Cherokee-American anthropologist Russel Thornton even compared it to the Holocaust:⁴⁵

“For them [Indians] the arrival of the Europeans marked the beginning of a long holocaust, although it came not in ovens, as it did for Jews. The fires that consumed North American Indians were fevers brought on by newly encountered diseases, the flashes of settlers’ and the soldiers’ guns, the ravages of firewater, the flames of villages and fields burned by the scorched-earth policy of vengeful Euro-Americans. The effects of this holocaust of North American Indians, like that of Jews, was millions of deaths. In fact, the holocaust of the North American Tribes was, in a way, even more destructive than that of the Jews, since many American Indian peoples became extinct.”

Thornton was the first, but not the only one who drew such a parallel. This comparison was made to emphasize the scale of the oppression of the indigenous peoples of the Americas by Europeans. Despite the fact that many of the deaths were rather a by-product of European colonisation (many people died because they did not have immunity against infectious diseases brought by Europeans: smallpox, typhus, influenza, diphtheria, measles, and cholera), the numerous acts of aggression, cultural genocide, and dislocation cannot be denied.⁴⁶ The Europeans had more advanced weapons, like gunpowder, and it made killing of Indians easier for them. For example, in 1540 in a battle between a Spanish explorer Hernando de Soto and the Alibamu Indians in the area of Mississippi, the indigenous people lost more than 2,500 people while the Spaniards lost only 20.⁴⁷

The loss of indigenous languages and cultures by forced assimilation caused no less trauma to the indigenous peoples than physical killings. Forced assimilation gave birth to the phenomenon of the “lost

⁴³ White, P. 2006. *American Indian Chronology: Chronologies of the American Mosaic*. Westport: Greenwood Press. P. 14.

⁴⁴ Daes, E.-I. A. 2001. Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: Indigenous Peoples and their Relationship to Land. United Nations. E/CN.4/Sub.2/2001/21. Para 22.

⁴⁵ Thornton, R. 1987. *American Indian Holocaust and Survival: A Population History since 1492*. Norman: University of Oklahoma Press. PP. xv-xvi.

⁴⁶ Gone, J.M., Kirmayer, J.P., Laurence J. 2014. “Rethinking Historical Trauma”, *Transcultural Psychiatry*, 51/3, 299-319.

⁴⁷ White, P. 2006. *American Indian Chronology: Chronologies of the American Mosaic*. Westport: Greenwood Press. P. 15.

generations” of indigenous peoples that were not connected to their culture anymore. Canada, for example, established boarding schools for indigenous children that provided general education and aimed at weakening the ties of these children with their families and communities.

South and North America were not the only continents where indigenous peoples suffered from the European colonisation. In 1606, Dutch navigators in the course of the East India Company became the first Europeans who made a documented landfall in Australia. Since then, for more than one and a half centuries, Australia was visited by European explorers and traders. These Europeans considered indigenous peoples of Australia savages without culture, religion, and laws; such an attitude led to the mistreatment of the natives in the future.

In the end of the 18th century, the British government decided to establish a penal colony on the Australian land. In 1788, the First Fleet of 11 vessels arrived to Australia with more than 1,000 people of whom 736 were convicts;⁴⁸ these people founded the first settlement. In the 80 years following the arrival of the First Fleet came an additional 800 vessels that delivered around 160,000 convicts to the colony.⁴⁹

In the very beginning of the British colonisation of Australia, indigenous peoples mostly tried to avoid the contacts with the settlements of the colonisers. However, when the Brits started to occupy more and more fertile lands for farming, violence erupted.⁵⁰ At times peace with indigenous peoples would be reached but then again it would be interrupted by the outbreaks of violence and massacres. More than 20,000 indigenous people died during the frontier conflicts with the colonisers, despite the fact that many governors of Australia tried to maintain peaceful relations with the local population.⁵¹

It is estimated that, by the time of the arrival of the Europeans, the population of Australia constituted around one million people.⁵² The diseases brought by Europeans killed many natives in the following years. It is difficult to estimate how many indigenous people died from

⁴⁸ Bateson, C. 1985. *The Convict Ships, 1787–1868*. Glasgow: Brown, Son & Ferguson. P. 115.

⁴⁹ Nicholas, S., Shergold, P. R. 1988. “Transportation as Global Migration”, in Nicholas, S. (ed.) *Convict Workers: Reinterpreting Australia's Past*. Cambridge: Cambridge University Press. P. 30.

⁵⁰ White, P. 2006. *American Indian Chronology: Chronologies of the American Mosaic*. Westport: Greenwood Press. P. 106.

⁵¹ Grey, J. 2008. *A Military History of Australia (Third ed.)*. Port Melbourne: Cambridge University Press. Pp. 28–40.

⁵² Ibid, p. 294.

the infectious diseases but, for example, in Victoria the number of natives decreased from 60,000 in 1788 to 650 in 1901.⁵³

The Aboriginal Protection Act, enacted in Australia in 1869, gave the government broad powers over the lives of indigenous peoples. It led to the removal of the indigenous and mixed children from their families and communities with a goal to assimilate them into the “white” society. This practice that continued until the end of the 1960s contributed to the decline of the number of Aboriginal population and to the loss of their culture.

Indigenous peoples of New Zealand also suffered from the European invasion. The Dutch explorers reached this land in the middle of the 17th century. Since the 18th century many Europeans visited New Zealand to trade with the native people and these first encounters were mostly peaceful. In the beginning of the 19th century Christian missionaries started to settle there, aiming to convert the indigenous peoples to Christianity.

Before the arrival of Europeans, Maori, the indigenous people of New Zealand, did not have advanced weapons and when they came into possession of European muskets it changed their lives dramatically. It caused more than 3,000 conflicts between different Maori tribes in the first half of the 19th century during which at least 20,000 people died.⁵⁴ These conflicts also changed the tribes’ lands boundaries. The number of indigenous people also decreased due to infectious diseases, from which they had no immunity.

By the end of the 18th century, more and more settlers were coming to New Zealand and in 1839 the New Zealand Company established colonies on the islands. In 1840 Maori chiefs and the representatives of the British governments signed the Treaty of Waitangi. The treaty recognised the Maori right to own their lands and made them British subjects. However, it is unclear what Maori gave to Britain in return. This treaty was one of the examples of how European colonisers could acquire indigenous peoples’ lands without their informed consent. The treaty was signed in English and Maori versions, and these versions differed. In the Maori language version, the Maori agreed to give Great Britain the right to govern their land (the term that was used in the Maori text was *Kawanatanga* which means “governorship”), whereas in English version the term “sovereignty” was used, which meant that

⁵³ Smith, L. et al. 2011. “Fractional Identities: The Political Arithmetic of Aboriginal Victorians”, in Axelsson, P. and Sköld, P. (eds). *Indigenous Peoples and Demography: The Complex Relation between Identity and Statistics*. New York: Berghahn Books. Pp. 15–31.

⁵⁴ Teara: The Encyclopedia of New Zealand. “Story: Musket Wars”.
<<https://teara.govt.nz/en/musket-wars>> (24.01.2018).

Maori people agreed to cede to the Crown sovereignty over their lands.⁵⁵ Since the treaty was signed, the Maori could only sell their lands to the Crown. First, the Maori did it willingly, but later, with the growth of the white population in New Zealand, the pressure on Maori to sell their lands increased and it led to the land competition and to the New Zealand wars that resulted in the confiscation of the indigenous people's lands.

The British government introduced the policy of cultural assimilation that also led to the loss of indigenous people's culture. The combination of all these factors – diseases, wars, assimilation, land loss – led to the decrease of the Maori population of New Zealand. It is estimated that around 100,000 Maori lived in New Zealand in the 18th century before the foundation of British colonies.⁵⁶ In 1896 the Maori population reached the lowest point of 42,000 people and it was believed that they would eventually disappear, however, their numbers have been steadily increasing since then.

The indigenous peoples of other parts of the world, like San and Khoikhoi people of South Africa or numerous indigenous groups of Indonesia also experience the negative impact of the European colonisation starting from the 16th century. Europeans brought diseases, caused wars and conflicts, made the indigenous peoples indentured servants or slaves, drove them out of their lands and deprived them of their rights to use it. The Saami also experienced colonisation from the states, which took the form of oppression and forced assimilation.

European colonisation significantly influenced the indigenous peoples in different parts of the world. The indigenous population declined after the first encounters with the colonisers because of diseases, wars, forced assimilation, loss of land and culture, and lack of nutrition. Many problems that indigenous peoples face nowadays are consequences of the numerous mistreatments of native populations by the colonial powers in past centuries.

⁵⁵ Gilbert, J. 2006. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers. P. 49.

⁵⁶ Teara: The Encyclopedia of New Zealand. "Story: Taupori Māori – Māori population change". <<https://teara.govt.nz/en/taupori-maori-maori-population-change/page-1>> (24.01.2018).

3. International law in the times of European colonisation

3.1. Evolution of international law

Renaissance Europe was characterised by the appearance of liberal ideas that influenced public opinion on colonisation and contributed to the development of the law of nations (the early form of the international law). Some theorists of the time claimed that it was not legal to conquer the territories of indigenous peoples since, according to natural law, Indians possessed rights because they were humans. Later, however, these views were abandoned as international law further developed to “facilitate colonial patterns promoted by European states”.⁵⁷ Societies that were not “advanced enough” were excluded from the international community and their members were deprived of any rights.⁵⁸ There was an evolution of the public opinion, which can be traced in the works of the writers of that time, from the idea that non-Europeans should be granted some rights to the idea that they should not possess any rights because they are barbarians. This paragraph will follow the development of the public opinion and international law regarding the native population in the colonised world.

European thinkers of the first half of the 16th century like Bartolmé de Las Casas or Francisco de Vitoria recognised indigenous societies as true owners of their lands and disputed Spanish sovereignty over the Indians. They questioned the legality and justifiability of the conquest and what is also important, “implicit in these questions was the view that Amerindians were human beings entitled to rights Spaniards claimed for themselves”.⁵⁹ Despite considering Indians as human beings and recognising rights of the indigenous peoples for ownership (which was revolutionary at that time), these thinkers legitimised the conquest of the territories if Indians were not collaborating with the colonisers: if they resisted propagation of Christianity, refused a free passage through their territories, or prevented colonisers from trading with them and making profit of their land.⁶⁰ For Europeans these were the causes to unleash a “just” war against Indians.

⁵⁷ Anaya, J. 2000. *Indigenous Peoples in International Law*. Oxford: Oxford University Press. P. 9.

⁵⁸ Keal, P. 2003. *European Conquest and rights of Indigenous people*. New York: Cambridge University Press. Pp. 107-108.

⁵⁹ Ibid, p. 90.

⁶⁰ Gilbert, J. 2006. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers.

Renaissance thinkers also developed an idea that the colonisation was beneficial to Indians as they were “underdeveloped” and therefore it was also a moral responsibility of Europeans to colonise and civilise them.⁶¹ For example, Vitoria in his works wrote that Indians are indeed humans and are able to possess lands but they are not developed enough to govern themselves, and therefore Spaniards should take care of it for the benefits of Indians.⁶² The same ideas applied to indigenous peoples outside of the Americas.

A century later Grotius in his treatise “On the Law of War and Peace” confirmed it is not lawful to occupy lands inhabited by humans, “even though the occupant may be wicked, may hold wrong views about God, or may be dull of wit. For discovery applies to those things which belong to no one”.⁶³ Nevertheless, Grotius still endorsed the concept of just war and identified three causes for it: defence, recovery of property, and punishment.⁶⁴

All these early international law theorists shared the idea that conquest was justified by the spread of commerce, Christianity, and civilisation but they still granted indigenous peoples the right to own their land on a basis of natural law. With the emergence of the modern system of states in Europe the concept of natural law was transformed into the regime of the natural rights of individuals and the natural rights of states, and these changes are expressed in the works of Emmerich de Vattel. In his famous treatise “The Law of Nations, or The Principles of Natural Law” he defined the law of nations as “the science of the rights which exist between Nations or States, and of the obligations corresponding to these rights”.⁶⁵

Vattel acknowledged the rights of individuals and the rights of states, but indigenous peoples were not regarded as nations or states and therefore their group rights were not protected according to the law of nations. As Anaya explains it, if indigenous peoples are not regarded as nations, they will be “conceptually reduced to their individual

⁶¹ Gilbert, J. 2006. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers.

⁶² Anaya, J. 2000. *Indigenous Peoples in International Law*. Oxford: Oxford University Press. P. 11.

⁶³ Grotius, H. 1925. *The Law of War and Peace*. Francis W. Kelsey translation of 1646 edition. Oxford: Oxford University Press. P. 550. Cited by Anaya, S.J. 2000. *Indigenous Peoples in International Law*. Oxford: Oxford University Press. P. 12.

⁶⁴ Ibid.

⁶⁵ Vattel, E. 1916. *The Law of Nations, or The Principles of Natural Law*. Charles G. Fenwick translation of 1758 edition. Oxford: Oxford University Press. P. 3. Cited by Anaya, J. 2000. *Indigenous Peoples in International Law*. New York: Oxford University Press. P. 13.

constituents [...] and their rights of group autonomy would not be accounted for”.⁶⁶

Vattel acknowledged that some indigenous peoples might constitute a nation but he also recognised that sedentary peoples that cultivate their lands have more rights to this status and to the land than hunting and gathering societies.⁶⁷ Vattel’s ideas developed by the later theorists led to a new phase in the evolution of international law in the 19th century: indigenous peoples were completely denied of their territorial rights because their existence as groups was not legally recognised by international law.

Three doctrines developed at that time: the doctrine of *terra nullius*, the requirement of effective occupation of the land and the *uti possidetis* doctrine.⁶⁸ According to the public opinion of that time, Indian indigenous populations could not use their land efficiently because they formed non-agricultural societies and therefore were not “civilised”. Lands that were not considered “civilised” by Europeans were regarded as open to occupation: all territory that was “not in the possession of States [accepted as]... members of the Family of Nations and subjects of International Law” was *terra nullius*.⁶⁹ The criteria of civilisation was “whether there was a sufficient degree of political organisation to allow European settlers to live in much the same degree of personal safety that they had enjoyed in their countries of origin.”⁷⁰ Basically all indigenous lands were considered *terra nullius* prior to the colonial occupation.

As indigenous peoples were not recognised by international law as groups that possess any right, it gave the colonisers legal reasons to ignore all the treaties concluded with indigenous peoples. In relations with each other, European nations followed international law but they were not obliged to treat non-members of this community of states according to the same rules and norms that applied to the relations between themselves.⁷¹ Indigenous peoples were not considered as equal actors of international relations, and therefore, mistreatment towards them was not illegal.

⁶⁶ Anaya, J. 2000. *Indigenous Peoples in International Law*. Oxford: Oxford University Press. P. 15.

⁶⁷ Ibid, p. 16.

⁶⁸ Gilbert, J. 2006. *Indigenous Peoples’ Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers. P. 211.

⁶⁹ Lindley, M. F. 1969 [1926]. *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion*. New York: Negro Universities Press. P. 18.

⁷⁰ Keal, P. 2003. *European Conquest and rights of Indigenous people*. New York: Cambridge University Press.

⁷¹ Ibid, p. 84.

By the end of the 19th century most of the indigenous peoples in Americas were under the control of the colonial powers, who adopted trusteeship doctrine towards “inferior” natives. The main idea of the trusteeship was to “civilise” indigenous peoples. The European states brought these notions to Africa and the Pacific. For example, in Article 6 of the General Act of the Berlin Conference of 1884-1885, which is considered a starting point of the “scramble for Africa”, it is stated that the European states shall aim at “instructing the natives and bringing home to them the blessings of civilization.”⁷²

Despite early affirmations of the rights of indigenous peoples by the thinkers of Renaissance Europe, international law soon became a tool of European nations that supported colonisation and deprived indigenous peoples of any rights. Indigenous peoples were considered as inferior and not treated as equals and their right to determine their own future was taken from them.

3.2. Means of acquisition and extinguishment of the Indigenous peoples’ land rights during the time of colonisation

As the previous paragraph has shown, the colonial powers either considered indigenous peoples as legally non-existing or acknowledged their existence but treated them as inferior. Both views led to the forceful acquisition and extinguishment of indigenous peoples’ rights to land. States had recourse to conquest, territorial occupation, purchase, and other methods that will be discussed in this paragraph.

Conquest was the first method of the acquisition of lands which was used by the colonisers. European powers were looking for ways to justify this conquest, and international law at that time was used as a tool to do it.⁷³ Conquest was not something unknown to human history but Europeans were the first ones who legitimised their actions by international law. These laws of conquest were based on the concepts of Christianity, commerce, and civilisation.

Pope Nicholas V issued a papal bull in 1452 declaring a war against non-Christians all over the world. This bull granted Europeans rights to conquer the territories where “enemies of Christ” were living in order to bring them into the Christian faith.⁷⁴ After the discovery of the Americas, the lands where natives lived were open for colonisation

⁷² General Act of the Berlin Conference on West Africa, 26 February 1885. Article 6.

⁷³ Gilbert, J. 2006. *Indigenous Peoples’ Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers.

⁷⁴ Ibid, p. 5.

because these people were regarded as barbaric and needed to be brought to the Christian faith. When Spaniards arrived to the New World they established the system of *encomienda* (tributary labour) that meant that colonisers received grants of a land and Indians who worked on it as serfs. In turn, colonisers were obliged to build a church in the area to give Indians a parcel of land to cultivate, and to “civilize” them.⁷⁵ If Indians resisted the Spaniards (and therefore the Church), it was a justification for entering the war and conquest of the lands.

Later some European theorists started to criticise the Christian justification of the conquest and insisted that Indians have natural rights for the land they occupy. These theorists rejected the idea that discovery gives the colonisers title to the land. Land cannot be taken from indigenous peoples unless there is a “just cause” for it. If Indians did not obey certain rules (for example, if they did not share the wealth of their lands or if they resisted the propagation of Christianity) Spaniards had a legal right to enter a war, to conquer the territories, and to get a title to the land. For several centuries conquest remained a recognised practice that provided a legal title to land. Only in 1974 the UN General Assembly adopted Resolution 3314 on Definition of Aggression which stated that “no territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful”.⁷⁶

Beginning in the 18th century, occupation of indigenous peoples’ territories became another method of acquiring land. As it was discussed in the previous paragraph, by that time the natural law was not applied to the indigenous peoples. International law did not recognise the legal existence of indigenous peoples, and therefore, they could not possess collective rights and their lands were open for occupation. As Gilbert writes, “any territory that was not under the jurisdiction of a State, in the sense defined by the actors of international law, was an empty territory.”⁷⁷ The process of decolonisation of the 20th century did not bring justice to indigenous peoples because of the *uti possidetis* doctrine, according to which the colonial borders of the states were maintained.

Treaties between colonial powers and indigenous peoples were another method of how indigenous peoples’ rights to land were extinguished. Treaties were one of the first forms of dialogue between locals and colonisers and they aimed for peaceful relations between the two. However, treaties often meant different things for indigenous peoples and the colonial powers: for the natives, these treaties meant the

⁷⁵ Gilbert, J. 2006. *Indigenous Peoples’ Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers. Pp. 6-7.

⁷⁶ Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX). Article 5 (3).

⁷⁷ Gilbert, J. 2006. *Indigenous Peoples’ Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers. P. 27.

recognition of their land rights but for Europeans they meant a guarantee of their authority over the territories.⁷⁸

Treaties between indigenous peoples and the colonial powers differed from treaties between European states in many ways, and in many cases indigenous peoples were victims of such treaties. First of all, the parties to the treaties were not considered as equals. If in the early stages of development, international law acknowledged the ability of indigenous peoples to enter into a treaty relationship with colonial powers, later international law only recognised treaties between states, and treaties with indigenous peoples became “domestic affairs”.⁷⁹ It gave the colonisers the possibility to nullify the treaties and be free from any obligations to indigenous peoples.

Secondly, indigenous peoples did not always understand the meaning of the treaties and, therefore, their consent to sign them cannot be called informed. As Newton noted, “Although the treaty terms were translated from the English language, even well-meaning translators had trouble accurately rendering feudal concepts of fee simple title to peoples who believed in the common ownership of land.”⁸⁰ In many cases indigenous people thought they agreed to give the colonisers the right to govern the land or the right to use it but in reality they agreed to hand over the sovereignty over their lands, as was the case with the Maori people of New Zealand after they signed the Waitangi treaty with the British Crown.

Third, in many cases treaties were not consensual or voluntary, as indigenous peoples were forced into signing them because of threats from the colonial powers or because of frauds.⁸¹ When the lands were purchased from indigenous peoples, the money they were given did not correspond to the real value of the land. Sometimes Europeans took advantage of the fact that indigenous peoples were not familiar with the European system of measurement and they ended up selling more land than they intended to.⁸² Furthermore, there were cases where the colonial powers concluded treaties with individual members of the tribes

⁷⁸ Gilbert, J. 2006. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers. P. 27.

⁷⁹ Ibid, p. 47.

⁸⁰ Newton, N. J. 1994. “Compensation, Reparations, & Restitution: Indian Property Claims in the United States”, 28 *G.A. L. REV.* 453, cited in Gilbert, J. 2006. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers. P. 49.

⁸¹ Gilbert, J. 2006. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers.

⁸² Göcke, K. 2013. “Protection and Realisation of Indigenous Peoples' Land Rights at the National and International Level”, *Goettingen Journal of International Law*, 5/1, 87-154.

who did not have an authority to represent the tribe and to sell the lands.⁸³

Another method to which the governments had recourse to was land reforms, when collective indigenous land rights were exchanged for individual fee simple titles. For example, after the USA enacted the General Allotment Act (Dawes Act) in 1887, Indians lost two thirds of their lands.⁸⁴ The same happened with the Maori in New Zealand after the Native Lands Act was enacted.

The colonisation period was the darkest page in the history of the indigenous peoples around the world. Many people died in wars with the colonisers or because of diseases the Europeans brought to their lands. Many others were deprived of their land and lost their connection to the culture of their ancestors. As this paragraph has shown, the loss of the lands was inevitable, whether the colonisers acknowledged the rights of the indigenous peoples to their lands or whether they regarded these lands as *terra nullius*, and international law served the colonisers to justify the acquisition of territories. The rights of indigenous peoples became an issue in international law only in the second half of the 20th century, and the next paragraph will be devoted to the development of indigenous rights protection.

4. Protection of indigenous peoples' rights under contemporary international law

It took several hundred years for the international community to recognise that indigenous peoples are humans and their human rights must be protected. As Jérémie Gilbert writes, indigenous peoples made a long way from being victims of international law to becoming its subjects and then finally actors.⁸⁵

The first attempts of indigenous peoples to bring attention to their problems occurred in the 1920s. Deskaheh, the speaker of the Council of the Iroquois Confederacy, travelled to Geneva to appear before the League of Nations to bring his concerns about the Iroquois disputes with Canada. Deskaheh found some support among members of the League and among the general public and media, but the League did not allow him to speak as they considered the Iroquois grievances “a

⁸³ Banner, S. 2005. *How the Indians Lost Their Land: Law and Power on the Frontier*. Harvard: Harvard University Press. Pp. 62-74.

⁸⁴ Göcke, K. 2013. “Protection and Realisation of Indigenous Peoples' Land Rights at the National and International Level”, *Goettingen Journal of International Law*, 5/1, 87-154.

⁸⁵ Gilbert, J. 2006. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers.

domestic concern of Canada and hence outside the League's competency".⁸⁶ Ratana, a Maori religious leader, also presented himself in front of the League and was denied access as well. After these failed attempts for several decades, indigenous peoples' issues received only scant attention from the international community.

Despite this, the International Labour Organisation (ILO) was the first international organisation that expressed interest in indigenous issues. Already in the early 1920s it started to work on the situation of indigenous workers in the European colonies.⁸⁷ After World War II, the work continued and in 1957 the Indigenous and Tribal Populations Convention No. 107 was adopted, the first binding instrument in international law fully devoted to the protection of indigenous peoples' rights. Indigenous peoples' rights stopped being an exclusively national matter.

Starting from the 1960s indigenous peoples and their demands were becoming more and more visible; indigenous peoples mobilised themselves in order to attract attention to their problems. They organised international conferences and appealed to international organisations. Scholars all over the world devoted their time to research the issues concerning indigenous peoples. Indigenous peoples started to appear in front of the UN bodies, demanding protection of their rights, and in 1972 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities launched a Study of the problem of discrimination against indigenous populations (Martínez Cobo Study), the first parts of which were published in 1981.

In 1982, the UN established the WGIP which was a subsidiary organ to the Sub-Commission on the Promotion and Protection of Human Rights. Within this Working Group, indigenous peoples were given an opportunity to raise their concerns directly at the UN.⁸⁸

Since then, indigenous peoples have enjoyed special attention from international organisations. In 1989, the ILO Convention No. 169 was adopted, replacing the outdated Convention No. 107. 1993 was proclaimed the Year of the World's Indigenous People, and then two subsequent decades (1995-2004 and 2005-2014) were proclaimed International Decades of the World's Indigenous People. Regional organisations also started to express interest in indigenous peoples'

⁸⁶ Anaya, J. 2000. *Indigenous Peoples in International Law*. New York: Oxford University Press. P. 46.

⁸⁷ Swepston, L. 2005. "Indigenous Peoples in International Law and Organizations", in Castellino, J. and Walsh, N. (eds.). *International Law and Indigenous Peoples*. Leiden/Boston: Martinus Nijhoff Publishers. Pp. 53-66.

⁸⁸ United Nations. "Indigenous Peoples at the UN."

<<https://www.un.org/development/desa/indigenouspeoples/about-us.html>> (24.01.2018).

issues. For example, in 1994, the European Parliament adopted a resolution on “Measures Required Internationally to Provide Effective Protection for Indigenous Peoples”.

In 2000, the UN established the Permanent Forum on Indigenous Issues with a mandate to “discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.”⁸⁹ In 2001, the Commission on Human Rights decided to appoint a Special Rapporteur on the human rights and fundamental freedoms of indigenous people to “examine the situation of indigenous peoples worldwide on the basis of communications received and country-specific visits”.⁹⁰ In 2007, the UN General Assembly adopted the UNDRIP after more than 25 years of work and negotiations.

Nowadays, indigenous peoples use different international tools to protect their rights. First of all, indigenous peoples enjoy the same human rights as all persons and, therefore, they are also protected by general human rights instruments, for example, the International Covenant on Civil and Political Rights (ICCPR). Secondly, they are protected by the specific instruments that aim to protect indigenous peoples’ rights, like the ILO Convention No. 169. There are also several regional instruments protecting indigenous peoples. The following paragraph will explore the most important international law tools that address indigenous peoples’ issues.

4.1. Human rights instruments

The ICCPR contains several provisions that are of particular significance for indigenous peoples’ rights, even though it does not address these rights directly. Article 1 of the Covenant states that all people have the right to self-determination, and by virtue of that right they “freely determine their political status and freely pursue their economic, social and cultural development”.⁹¹ These words caused many disagreements when drafting international documents devoted to the indigenous peoples’ affairs. Some states were reluctant to use the word “people” when referring to the native population because they expressed fear that the right to self-determination in the phrasing of Article 1 of the ICCPR would mean the right of secession for the indigenous population if they consider themselves “peoples”.

⁸⁹ United Nations. “Indigenous Peoples at the UN.”

<<https://www.un.org/development/desa/indigenouspeoples/about-us.html>> (24.01.2018).

⁹⁰ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 4.

⁹¹ International Covenant on Civil and Political Rights.

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> (24.01.2018).

Article 27 is another important provision of the Covenant. It provides that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”⁹² Indigenous peoples usually consider their status as being different from the status of the minorities, but nonetheless they are also protected by this provision.

Article 1 of another important human rights instrument, the International Covenant on Economic, Social and Cultural Rights (ICESCR), is identical to Article 1 of the ICCPR, confirming, once again, the rights of peoples for self-determination. As well as the ICCPR, the ICESCR does not contain articles that refer to the indigenous peoples directly but it remains a very important tool for the indigenous peoples as their social, economic, and cultural rights are often violated.

The International Convention on the Elimination of all Forms of Racial Discrimination is also important for the protection of indigenous rights. The convention does not mention indigenous people directly but it is obvious that it also applies to them as indigenous peoples are often suffering from racial discrimination.

The UN Convention on the Rights of the Child can be applicable to indigenous peoples as a general instrument of human rights protection, but it also contains an article that specifically focuses on the rights of indigenous children. Article 30 of the Convention states:⁹³

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”.

Indigenous peoples also enjoy protection under the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. As was mentioned above, indigenous people differentiate themselves from other minorities but as their rights intersect, indigenous peoples are also able to use this tool for protection of their rights.

The World Bank also contributed to the protection of the indigenous rights by establishing procedural and substantive requirements before

⁹² International Covenant on Civil and Political Rights.

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> (24.01.2018).

⁹³ Convention on the Rights of the Child.

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>> (24.01.2018).

approving loans for the projects that would affect indigenous or local population.⁹⁴

4.2. Specific instruments of indigenous peoples' rights protection

4.2.1. ILO Convention No. 107

The Indigenous and Tribal Populations Convention No. 107 was designed by the ILO and adopted in 1957. It became binding for 27 states that ratified the Convention and it still remains in force for those countries that have not ratified the revising Convention No. 169.

The Convention aims to protect indigenous and tribal peoples' rights and provides a framework for addressing violation of their rights. Governments of the states with indigenous populations are made responsible for "developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries".⁹⁵ It became their responsibility to promote social, economic, and cultural development of the indigenous peoples. Governments were also obliged to respect indigenous customs and institutions. Article 11 of the Convention protects the right of ownership, individual or collective, of the indigenous population over the lands they traditionally occupy, and Article 12 prohibits indigenous peoples' removal from their territories without their free consent. Article 15 ensures protection of indigenous peoples' rights with regard to recruitment and conditions of employment, recognising that indigenous peoples are at high risk of being exploited. The Convention also pays close attention to the social security and health situation of indigenous populations and to their rights for education.

Nevertheless, the Convention has many limitations and it was criticised for that since its adaptation. First of all, the Convention was drafted without participation of the indigenous populations, which made it more difficult for indigenous people to express their opinions and needs. Secondly, the Convention took a paternalistic approach to indigenous and tribal peoples that can be seen, for example, in the phrasing of Article 2, which says that indigenous people are "at less advanced stage" of the development. The third point of critique is that the Convention assumes that the best way for indigenous and tribal

⁹⁴ Osherenko, G. 2001. "Indigenous Rights in Russia: Is Title to Land Essential for Cultural Survival," *Geo. Int'l Envtl. L. Review*, 13, 695-734.

⁹⁵ C107 - Indigenous and Tribal Populations Convention, 1957 (No. 107). Article 2.1. <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL O_CODE:C107> (24.01.2018).

people to prosper is to be integrated into the national society. Integration is a vague term that, with some interpretation, might mean assimilation and the loss of indigenous culture.⁹⁶ However, the negative aspects of the Convention have been minimised by the progressive interpretation of the Committee of Experts on the Application of Conventions and Recommendations.⁹⁷

In spite of integrationist and the patronising approach of the Convention, its influence shall not be underestimated. It became the first mechanism of indigenous rights' protection and attracted attention of the international community to the abuses of indigenous peoples' rights by the states.

4.2.2. ILO Convention No. 169

The ILO Convention No.107 was criticised for its limitations by academics, international organisations and indigenous peoples since it was adopted. Finally, in 1986, when the ILO organised a "Meeting of Experts" which included representatives of indigenous peoples, the meeting recommended the revision of Convention No. 107 because of its integrationist language.⁹⁸ The work started and in 1989 the ILO adopted Convention Concerning Indigenous and Tribal Peoples in Independent Countries No. 169 which represents a partial revision of Convention No. 107 and is nowadays ratified by 22 states.

When drafting the new Convention, the governments were asked to consult their indigenous populations on the issues that concern them. The indigenous representatives were also invited to the General Conference devoted to the revision of the Convention. However, indigenous peoples were not allowed to actively participate in the formulation of the document.⁹⁹

In addition to Convention No. 107, Convention No.169 covers a wide range of issues, and not only those related to labour. As Anaya puts it, the Convention can be seen as a "manifestation of the movement toward responsiveness to indigenous peoples demands through international law and, at the same time, the tension inherent in that movement."¹⁰⁰ Indigenous peoples demanded recognition of their

⁹⁶ Xanthaki, A. 2007. *Indigenous Peoples Rights and United Nations Standards: Self-Determination, Culture and Land*. New York: Cambridge University Press.

⁹⁷ Ibid.

⁹⁸ Anaya, J. 2000. *Indigenous Peoples in International Law*. New York: Oxford University Press. P. 47.

⁹⁹ Xanthaki, A. 2007. *Indigenous Peoples Rights and United Nations Standards: Self-Determination, Culture and Land*. New York: Cambridge University Press. P. 68.

¹⁰⁰ Anaya, J. 2000. *Indigenous Peoples in International Law*. New York: Oxford University Press. P. 48.

collective rights and, on the other hand, states were reluctant to recognise them as they feared for their sovereignty.

Despite these difficulties, Convention No. 169 was adopted and in its orientation differed from Convention No. 107 in several ways.¹⁰¹ First of all, integrationist language and the assimilationist orientation of the Convention were changed. Second, the right of indigenous peoples to exercise control over their institutions and economic development was emphasized. Third, indigenous cultures were recognised as equal to dominant cultures of the states and the responsibility of states to protect and preserve indigenous cultures was established.

Article 1 of the Convention that defines to whom the Convention applies underwent some changes. First of all, self-identification as indigenous became a fundamental criterion of belonging to indigenous groups. Secondly, the word “peoples” was used for the first time in the international instrument to identify the beneficiaries of the Convention. Some states strongly opposed the usage of this word in the text of the Convention as they expressed fears that according to the rights of peoples to self-determination indigenous peoples would have the right to secede from the states. As a compromise, it was decided to formulate Article 1.3. of the Convention in the following way: “The use of the term ‘peoples’ in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.”

Part I of the Convention “lays down basic requirements for States dealing with indigenous peoples”.¹⁰² Article 1 says that the Convention covers both indigenous and tribal peoples so that indigenous peoples living in the countries that deny the existence of indigenous peoples on their territories could also be covered by the Convention.

The rights of the indigenous peoples to take an active role in the decisions affecting their own lives are emphasized in the text of the Convention. Protection of the indigenous rights shall not be the primary responsibility of governments, as it was stated in Convention No. 107 but the responsibility with “participation of the peoples concerned”.¹⁰³ Article 6 requires consulting indigenous peoples “whenever consideration is being given to legislative or administrative measures which may affect them directly”. Article 7 states that indigenous peoples

¹⁰¹ Anaya, J. 2000. *Indigenous Peoples in International Law*. New York: Oxford University Press. P. 69.

¹⁰² Swepston, L. 2005. “Indigenous Peoples in International Law and Organizations”, in Castellino, J. and Walsh, N. (eds.). *International Law and Indigenous Peoples*. Leiden/Boston: Martinus Nijhoff Publishers. P. 57.

¹⁰³ C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 2.1. <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL_O_CODE:C169> (24.01.2018).

“shall have the right to decide their own priorities” and “to exercise control, to the extent possible, over their own economic, social and cultural development”. In addition, indigenous peoples shall participate in the formulation of plans and programmes for national and regional development that affect them directly.¹⁰⁴

The right to self-determination is not expressed in the Convention explicitly, as the drafters consciously left this question for a wider discussion within the UN.¹⁰⁵ However, there are provisions that protect some aspects of this right, for example, the right to control matters that concern indigenous peoples. The Convention, in a way, also recognises collective elements of indigenous rights, especially of their land rights.

Convention No. 169 differs from other instruments of indigenous rights protection by stronger guarantees on land rights, expressed in the Part II of the Convention. Article 13 states that governments “shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories”. Article 14 obliges states to recognise the rights of ownership and possession of indigenous peoples over their lands. Although rights of indigenous peoples over the natural resources pertaining to their lands are not confirmed, Article 15 says that such rights shall be safeguarded and governments shall consult indigenous peoples before exploiting natural resources.

The Convention also contains provisions that prevent displacement of indigenous peoples. In contrast to the Convention No. 107, Convention No. 169 “sets specific criteria to be fulfilled before any exception to the rule is allowed: the indigenous group in question must give their free and informed consent”.¹⁰⁶ If it is impossible to obtain consent, relocation shall only take place “following appropriate procedures established by national laws and regulations”.¹⁰⁷ The Convention also recognises the right of indigenous peoples to return to their lands, when possible.

Article 20 of the Convention deals with recruitment and conditions of employment and covers a wider range of measures than in

¹⁰⁴ C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 7.1. <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL_O_CODE:C169> (24.01.2018).

¹⁰⁵ Swepston, L. 2005. “Indigenous Peoples in International Law and Organizations”, in Castellino, J. and Walsh, N. (eds.). *International Law and Indigenous Peoples*. Leiden/Boston: Martinus Nijhoff Publishers. P. 57.

¹⁰⁶ Xanthaki, A. 2007. *Indigenous Peoples Rights and United Nations Standards: Self-Determination, Culture and Land*. New York: Cambridge University Press. P. 86.

¹⁰⁷ C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 16.2. <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL_O_CODE:C169> (24.01.2018).

Convention No. 107. The main principle of the article is to ensure fair employment of indigenous peoples.

Convention No. 169 also differs from Convention No. 107 in its approach to education. The latter aimed at integration of indigenous peoples into the society, and Convention No. 169 aims to protect indigenous systems. Article 27 of the Convention claims that educational programmes for the peoples concerned “shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.” Indigenous children, according to Article 28, shall be taught to read and write in their own language, but it also must be ensured that indigenous peoples have the opportunity to learn the national language of the state.

Nowadays, Convention No. 169 still remains one of the most important mechanisms of indigenous peoples’ rights protection and, unlike the UNDRIP, the Convention is binding. Despite the fact that some advocates of the indigenous peoples’ rights critiqued the Convention because of some of its compromising provisions, the positive influence of the Convention on the rights of indigenous peoples is undeniable. In the states that ratified the Convention, the ILO supervisory bodies regularly monitor the process of implementation of the Convention and inform the states in cases of violations. The influence of Convention No. 169 goes far beyond the ratifying countries, as it inspired other governments and indigenous peoples “in their work to promote and protect indigenous peoples’ rights”.¹⁰⁸ For example, countries that previously denied the existence of indigenous peoples on their territories (Cambodia, Thailand, and Vietnam) launched studies of the situation of indigenous peoples within their borders.¹⁰⁹ Convention No. 169 set a standard of the protection of indigenous peoples’ rights and became a point of reference for many indigenous peoples. Anaya claims that the Convention is also meaningful “as a part of a larger body of developments that can be understood as giving rise to new customary international law with the same normative thrust”.¹¹⁰

¹⁰⁸ ILO. 2009. *Indigenous & Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169*. P. 5.

¹⁰⁹ Sweptson, L. 2005. “Indigenous Peoples in International Law and Organizations”, in Castellino, J. and Walsh, N. (eds.). *International Law and Indigenous Peoples*. Leiden/Boston: Martinus Nijhoff Publishers. Pp. 53-66.

¹¹⁰ Anaya, J. 2000. *Indigenous Peoples in International Law*. New York: Oxford University Press. P. 49.

4.2.3. United Nations Declaration on the Rights of Indigenous Peoples

Work on the universal UN instrument devoted to the rights of indigenous peoples started in 1985 by the WGIP, subsidiary organ to the Sub-Commission on the Promotion and Protection of Human Rights. The Working group was comprised of human rights experts, but indigenous peoples, as well as states, were actively involved in the drafting of the declaration. For the first time in history, indigenous peoples were allowed to speak directly to one of the UN organs.

The final text of the declaration was completed by 1993 and it was forwarded to the Sub-Commission, which adopted it in 1994 and forwarded it to the UN Commission of Human Rights. The Commission, however, decided not to accept it “because of states’ concerns that the provisions concerning self-determination went further than the states were prepared to accept in an international document”.¹¹¹ The work on the document continued on the level of the Commission, and indigenous representatives were allowed again to take part in drafting. The final version of the declaration was adopted by the Human Rights Council – the body that succeeded the Commission on Human Rights – in 2006 and then it was forwarded to the UN General Assembly. The General Assembly adopted the Declaration on 13 September 2007 with 143 votes in favour, four against, and 11 abstaining. The adaptation of the Declaration became a great achievement in the field of indigenous rights protection after years of negotiations and discussions between governments and indigenous peoples.

Articles 1 to 6 of the Declaration recognise the general rights of indigenous peoples for human rights and fundamental freedoms, freedom from any kind of discrimination, the right to self-determination, the right to maintain and strengthen their institutions, and the right to a nationality.

For the first time, the international document explicitly recognised the right of indigenous peoples to self-determination. Article 3 states that “By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Including the right to self-determination into the text of the Declaration caused arguments among states because of their concerns about their territorial integrity. The difficulty is that after World War II the right of peoples to self-determination was closely linked to decolonisation and

¹¹¹ Magallanes C. J. I. 1999. “International Human Rights and their Impact on Domestic Law on Indigenous Peoples’ Rights in Australia, Canada, and New Zealand”, in Haverman, P. (ed.). *Indigenous Peoples’ Rights in Australia, Canada, and New Zealand*. Auckland: Oxford University Press. P. 24.

was only applied to the former colonies and in exercising this right they formed new states. However, indigenous peoples understand self-determination in its internal meaning that does not include secession; for them, self-determination means having control over decisions that concern them, determining their own future within the existing structures of the states.

The right to self-determination is connected to the right to self-governing, and as it is mentioned in Article 4, in exercising their right to self-determination, indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Articles 7-10 deal with indigenous individuals rights to life, integrity and security. The declaration prohibits discrimination, assimilation, genocide or any other act of violence towards indigenous peoples. Article 10 forbids forced removal of indigenous peoples from their lands without their free and informed consent.

Articles 11-13 focus on indigenous peoples' rights to their culture, spirituality and languages. Articles 14-16 deal with rights to education, emphasising indigenous peoples' rights to have control over their educational systems and to be able to be educated in their own languages. Article 17 guarantees labour rights of indigenous peoples.

Articles 18-23 establish the right of indigenous peoples to decision-making in matters that affect their lives, especially in questions of development, economic and social issues. In the articles that focus on indigenous land rights, the UNDRIP recognises the distinctive spiritual relationship of indigenous peoples with their lands and gives them rights to "own, use, develop and control the lands, territories and resources that they possess".¹¹² Article 28 emphasises the right to restitution or fair compensation for the lands and resources which have been confiscated, occupied or damaged without their consent.

Articles 31-36 explain how indigenous peoples can exercise their right to self-determination: by developing their cultural heritage, determining priorities for development or use of their lands, territories and resources, determining their identity, maintaining their institutional structures, maintaining contacts with indigenous peoples across borders.

Article 37 focuses on the right to "the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States". Article 38 provides that states shall take responsibility for achieving the ends of the Declaration.

¹¹² United Nations Declaration on the Rights of Indigenous Peoples. Article 26.2. <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf> (24.01.2018).

The UNDRIP goes beyond the ILO Convention No. 169 in terms of recognition of indigenous peoples' rights to self-determination, collective rights to lands and resources and political autonomy. The Declaration not only acknowledges collective rights of indigenous peoples to their lands but also recognises the close connection of indigenous peoples to the lands and its importance for their culture and spirituality.

Nowadays the UN Declaration on the Rights of Indigenous Peoples is "the most comprehensive and advanced of international instruments dealing with indigenous peoples' rights".¹¹³ Unlike the ILO Convention No. 169, the UNDRIP is not a binding instrument but it set certain standards in treating indigenous peoples and contributes to customary international law. It also serves as a tool that helps to raise awareness of the situation with indigenous peoples all over the world and to monitor this situation.

5. Threats to indigenous peoples

Despite the fact that indigenous peoples' rights nowadays are recognised and protected by several international instruments, many indigenous peoples around the world are still marginalised and face such problems as discrimination, poverty, conflicts, environmental threats, dispossession of lands and loss of culture. The challenges they face are often the same in all indigenous communities around the world because the indigenous peoples share the same history of oppression.

Creating international instruments aimed to protect indigenous peoples' rights is only the first step to the improvement of their position. Nowadays there is a general consensus among the states that "there must be a focus on implementation of indigenous peoples' rights at the country-level to ensure that international instruments bring the necessary changes for the millions of indigenous peoples around the world, who are still living in marginalized and disadvantaged situations."¹¹⁴ International conventions and declarations cannot make a difference without active participation of the states and measures they implement to protect their indigenous populations.

In 2009 the Department of Economic and Social Affairs of the United Nations published a study called "State of the World's

¹¹³ Charters, C., Stavenhagen, R. 2009. "The UN Declaration on the Rights of Indigenous Peoples: How It Came to Be and What It Heralds", in Charters, C., Stavenhagen, R. (eds.). *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*. Copenhagen: IWGIA. P. 10.

¹¹⁴ ILO. 2009. *Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*.

Indigenous Peoples” in which the situation with some indigenous peoples was described as follows:¹¹⁵

“indigenous peoples face systemic discrimination and exclusion from political and economic power; they continue to be over-represented among the poorest, the illiterate, the destitute; they are displaced by wars and environmental disasters; the weapon of rape and sexual humiliation is also turned against indigenous women for the ethnic cleansing and demoralization of indigenous communities; indigenous peoples are dispossessed of their ancestral lands and deprived of their resources for survival, both physical and cultural; they are even robbed of their very right to life. In more modern versions of market exploitation, indigenous peoples see their traditional knowledge and cultural expressions marketed and patented without their consent or participation.”

All the threats that indigenous peoples face nowadays are interconnected. For example, mining and logging lead to the environmental problems and to the loss of lands, and the loss of land in turn leads to poverty and threatens the existence of indigenous cultures as for many indigenous peoples their connection to their lands is vital. In this paragraph the main problems that indigenous peoples around the world are experiencing will be identified.

5.1. Poverty

The World Bank estimated that indigenous peoples represent about 5% of the world population but 15% of those living in poverty.¹¹⁶ Moreover, indigenous peoples make up one third of the world's 900 million extremely poor rural people.¹¹⁷ The liberal market economy of the globalised world added to the historical reasons of indigenous poverty (colonisation, dispossession of lands, discrimination and oppression). The benefits of globalisation did not reach indigenous peoples who rather became victims of globalisation as they suffer from environmental degradation and the loss of their traditional lands.¹¹⁸ One of the examples of such consequences is the privatisation of the mining industry. In many countries, mineral extraction enterprises were sold to transnational corporations and it increased the pressure on indigenous lands and worsened the wellbeing of indigenous peoples. Even in the

¹¹⁵ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 1.

¹¹⁶ The World Bank. 2003. “Report No. 25332. Implementation of Operational Directive 4.20 on Indigenous Peoples: An Independent Desk Review”.
<https://ieg.worldbankgroup.org/Data/reports/ip_evaluation.pdf> (24.01.2018).

¹¹⁷ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 21.

¹¹⁸ Ibid, p. 16.

countries where mining companies are obligated to consult and get approval of indigenous peoples, the well-being of the native populations is still threatened due to pollution and the destruction of their territories.¹¹⁹ Another example of the negative influence of globalisation and neo-liberalism on indigenous communities that leads to poverty is the situation with agriculture. Cheap agricultural products from big corporations supplant products from indigenous small-scale farms and, as a result, some indigenous persons are forced to sell their farms as they cannot profit from them.

According to a study that applied Human Development Index (HDI) to indigenous peoples in Australia, Canada, New Zealand and the United States, there is a significant gap in HDI between indigenous peoples and the general populations in these countries.¹²⁰ Non-indigenous populations of these countries are more educated, have a longer life expectancy, and enjoy a higher income. The situation is improving in all four countries, but it is still far from being equal. For example, in the United States indigenous peoples earn only half of the average salary.¹²¹

The situation with the lower salary for the indigenous peoples is not unique for the USA. Indigenous peoples quite often face discrimination when it comes to employment. For example, in some countries, in the sectors of economy where labour conditions are the toughest and the salaries are the lowest, there is a tendency for the labour force to be comprised almost exclusively of indigenous peoples.¹²²

The gap between indigenous peoples and general populations in less developed countries of Latin America is even more striking. For example, in Paraguay poverty is 7.9 times higher among indigenous peoples, in Panama – 5.9 times, In Mexico – 3.3 times, in Guatemala – 2.8 times.¹²³ Basically, in these countries, being indigenous equals being poor.

Not only poverty is an issue in itself, but it also leads to other kinds of problems. Poor people cannot afford good health care or to educate their children. Poverty also forces indigenous peoples to make sometimes unwanted decisions: for example, to sell their lands, to open their lands for tourists or to allow commodification of their cultures.

¹¹⁹ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 17.

¹²⁰ Beavon, D., Cooke, M., Guimond, E., Lawrence, D., Mitrou, F. 2007. "Indigenous well-being in four countries: An application of the UNDP'S Human Development Index to Indigenous Peoples in Australia, Canada, New Zealand, and the United States", *BMC International Health and Human Rights*, 7/9.

¹²¹ Ibid.

¹²² Cobo, J. M. 1983. Study of the Problem of Discrimination against Indigenous Populations, Chapter XXI-XXII: Conclusions, proposals and recommendations. United Nations. E/CN.4 Sub.2 /1983/21/Add.8. Para 177.

¹²³ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 27.

5.2. Loss of culture

Indigenous peoples' cultures are rich and diverse, and they are a significant part of indigenous life. These cultures are based on a profound spiritual relationship with their land and natural resources.¹²⁴ Preserving their culture (including languages, sacred places and objects) is essential for indigenous peoples as culture is one of the most important components of their indigeness.

When Europeans first faced indigenous cultures they could not understand it, could not comprehend their all-encompassing nature, and, as a result, viewed them as being inferior and primitive. As it was not seen as something valuable, European colonisers did not care about preserving the indigenous cultures, they rather aimed at the eradication of these cultures and the integration of indigenous peoples into national societies. Such a policy, together with acquisition of indigenous territories, resulted in the extinction of many indigenous cultures around the world.

Land is crucial for indigenous cultures and identity, and many indigenous representatives claimed that the loss of their lands led to the loss of culture. For example, The Aboriginal and Torres Strait Islander Social Justice Commission of Australia makes a following claim:¹²⁵

“Hunting, fishing and harvesting activities are not merely economic activities or the exercise of property rights. The denial, loss or impairment of hunting, fishing and harvesting rights amounts to a denial, loss or impairment of the opportunity to maintain and participate in the enjoyment and exercise of indigenous cultural life and to transmit culture from one generation to another.”

Language is another component of indigenous culture that is at risk. 3 % of people of the world speaks 96 % of world's languages, and a great majority of those are spoken by indigenous people.¹²⁶ It is also estimated that 90 % of those languages might become extinct by the end of the 21st century.¹²⁷ Thousands of languages died during the European colonisation period as a result of the assimilation policies. For a long

¹²⁴ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 52.

¹²⁵ Aboriginal and Torres Strait Islander Social Justice Commission (ATSIC), 1993. First Report 1993, Australian Parliamentary Paper 261. P. 29, cited in Keal, P. 2003. *European Conquest and rights of Indigenous people*. New York: Cambridge University Press. P. 123.

¹²⁶ Bernard, H.R. 1997. “Language Preservation and Publishing”, in Hornberger, N.H. (ed.). *Indigenous Literacies in the Americas: Language Planning from the Bottom up*. Berlin: Mouton de Gruyter. P. 142.

¹²⁷ UNESCO. 2003. *Language Vitality and Endangerment*. UNESCO Ad Hoc Expert Group on Endangered Languages.

period of time states did not put any stress on teaching indigenous languages as it was assumed that they would disappear anyway.¹²⁸ Sometimes indigenous communities themselves contribute to the extinction of their languages. Many indigenous peoples associate their disadvantage position in the states they live with their culture and they believe that their languages “are not worth retaining”¹²⁹ and thus these languages, abandoned in hopes of overcoming discrimination, become extinct. The loss of indigenous languages is a loss for humanity and the world’s cultural diversity, but it is even worse for indigenous peoples: they lose their cultures and identities, their feeling of connection to their communities.

Appropriation of indigenous spirituality also harms indigenous culture. Many non-indigenous peoples nowadays are becoming disappointed in the “western way of life” and are trying to find themselves and their spirituality in indigenous culture. This appropriation is often seen by indigenous peoples as “a continuation of colonialism because it does not appreciate the political understandings that accompany and reinforce indigenous belief systems”.¹³⁰ Indigenous spirituality is usually not fixed, it does not consist of a set of rules, and it is rather socially constructed “according to changing circumstances in the world or immediate environment”.¹³¹ Appropriation of such spirituality is usually done without respect and it does not take into account the dynamism of indigenous cultures, thus reinforcing the colonial understanding of indigenous peoples.¹³²

A great deal of traditional knowledge (all indigenous experiences, know-how, practices) that forms indigenous culture was destroyed with the arrival of colonisers. Nowadays it is especially important to give indigenous peoples opportunities to develop and maintain their traditional knowledge so that future generations can also benefit from it. This right is protected by Article 31 of the UNDRIP. Indigenous peoples are also faced with the commercial use of their knowledge. Big companies produce medicines based on plants traditionally used by indigenous people without granting recognition to the indigenous communities whose knowledge system they are using for the creation of those medicines.¹³³

¹²⁸ Cobo, J. M. 1983. Study of the Problem of Discrimination against Indigenous Populations, Chapter XXI-XXII: Conclusions, proposals and recommendations. United Nations. E/CN.4 Sub.2 /1983/21/Add.8. Para 121.

¹²⁹ UNESCO. 2003. *Language Vitality and Endangerment*. UNESCO Ad Hoc Expert Group on Endangered Languages. P. 2.

¹³⁰ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 61.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid, p. 69.

Another threat to indigenous cultures is their commodification. There are several problems with commercial products that exploit indigenous arts and ideas to produce profits. First of all, often those products represent indigenous culture in an offensive and disrespectful way. Secondly, indigenous peoples usually do not get any profit from the usage of their traditional symbols and images.

Tourism poses another challenge to indigenous cultures. In the increasingly globalised world, more and more people travel to see something different from their everyday experience in their home countries; tourism has become a huge industry that generates a lot of profit. Along with traditional tourists' destinations, the last several decades witnessed the development of the so-called ecotourism to the places that were unknown for tourists before, including indigenous lands.

On the one hand, tourism brings income, but on the other hand there are negative effects of the tourist industry that influence indigenous lifestyles. Firstly, indigenous sacred spaces become subjected to tourist gaze, often without free informed consent of indigenous peoples. Such a gaze is often an intrusion into people's lives. Secondly, there is a problem of the so-called staged authenticity.¹³⁴ It means that indigenous cultures become constructed specifically for the consumption of travellers, who expect indigenous cultures to look a certain way. In order to comply with those expectations, and therefore produce income from it, local people construct their culture for tourist consumption. It is needless to say that such staged authenticity is bad for indigenous culture, as it becomes a parody of itself and denies the culture its natural development. Thirdly, tourism brings disruption to the environment, eviction of indigenous peoples from traditional lands, and the destruction of habitats to create tourist infrastructure.¹³⁵ Fourthly, indigenous peoples do not often benefit from tourism on their lands, as big companies usually retain the income. Fifthly, not all the tourists are very considerate about the rules of behaviour in sacred indigenous sites and these tourists might defile such places and thus insult indigenous culture and people.

Nevertheless, tourism is not an entirely negative concept for indigenous peoples. It can be an important source of money, create jobs, and raise awareness of the state of the modern indigenous peoples, provided that indigenous peoples themselves are involved in decision-making processes regarding tourism on their lands.¹³⁶

¹³⁴ Larsen, J., Urry, J. 2011. *The Tourist Gaze 3.0*. Los Angeles: Sage.

¹³⁵ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 72.

¹³⁶ Ibid, p. 73.

5.3. Environmental threats

Despite the fact that indigenous peoples' rights to their lands, resources, and their participation in decisions related to their lands are protected by various international law instruments, on the national level indigenous peoples still face many challenges in "protecting their environmental rights from structural discrimination, corporate interests, globalization, etc., and in adapting their livelihoods to climate changes."¹³⁷

A report on the State of Modern Indigenous Peoples points out several major issues related to the environmental challenges indigenous people are facing nowadays.¹³⁸ First of all, traditional land dispossession is a problem that has existed for centuries, first as a result of colonialism, and nowadays as a consequence of development policies and globalisation. Indigenous peoples' rights to their lands are not always recognised on the national level, and it leads to the loss of traditional lands and/or degradation of lands and resources. Their lands are often exposed to logging and mining without their consultation, let alone free and prior informed consent. In many countries, traditional indigenous activities, like hunting and gathering, are undermined by development paradigms. New technologies such as improved seeds and chemical fertilisers and large plantation schemes have caused "environmental degradation and destroyed self-sustaining eco-systems, affecting many indigenous communities to the point of forcing them to resettle elsewhere."¹³⁹

Secondly, large-scale development projects also influence the traditional environment of indigenous peoples. Such projects include the exploitation of natural resources, the establishment of plantations and industrial plants, tourist developments, and the construction of ports, dams, military bases, etc.¹⁴⁰ These changes deprive indigenous peoples of their rights to lands, pollute their environment, and force them to migrate from their traditional lands to other areas.

Thirdly, development projects often require logging, and as a result, indigenous peoples lose access to forests and natural resources, which in turn forces indigenous peoples to abandon their traditional lifestyles. Fourthly, even the creation of protected areas by states harms indigenous peoples. Many of those protected areas were taken over by states without the consent of indigenous peoples living there, and again indigenous peoples were forced to leave their homelands since they were not

¹³⁷ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 86.

¹³⁸ Ibid, pp. 87-98.

¹³⁹ Ibid, p. 88.

¹⁴⁰ Ibid.

allowed to continue their traditional lifestyles on the protected areas. Nowadays, the situation is changing and the native population is taken into consideration when designing protected areas, but the problem still exists.

Fifthly, indigenous peoples suffer from climate change and they are more affected by it than other people because of their dependence upon environment and its resources.¹⁴¹ The consequences of climate change that affect indigenous peoples can already be seen nowadays: the change of migratory pattern of fish, birds, and mammals, the population size of certain plants and animals, the availability of water resources, etc.¹⁴² The rise of sea level that is happening because of climate change might force indigenous populations in the coastal regions to abandon their traditional lands and resettle.

5.4. Problems of education

Some indigenous peoples enjoy only limited access to education due to their geographical and politically marginalised status.¹⁴³ In many countries, diverse indigenous cultures are not presented in school materials; teachers who are able to teach indigenous languages are rare; indigenous peoples do not have the power to influence the curriculum of schools and do not take part in decision-making. Some indigenous groups do not have access to education, as they live in isolated communities and lead a semi-nomadic life style, and governments fail to provide them equal opportunities for education.¹⁴⁴ These factors lead to an education gap between indigenous and non-indigenous populations when indigenous students have lower enrolment rates and higher dropout rates.¹⁴⁵ Moreover, this problem is closely connected to the problem of poverty: many indigenous students cannot afford expensive higher education.

The education gap is a serious problem in many countries with indigenous population. For example, in Venezuela, the illiteracy rate of the indigenous population (32 %) is several times higher than non-indigenous (6.4 %).¹⁴⁶ In some countries, the numbers are even more striking: in Vietnam, for instance, 83 % of indigenous men and 97 % of

¹⁴¹ UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 96.

¹⁴² Ibid.

¹⁴³ Ibid, p. 130.

¹⁴⁴ Cobo, J. M. 1983. Study of the Problem of Discrimination against Indigenous Populations, Chapter XXI-XXII: Conclusions, proposals and recommendations. United Nations. E/CN.4 Sub.2 /1983/21/Add.8. Para 94.

¹⁴⁵ Ibid, para 130.

¹⁴⁶ ECLAC/CEPAL. 2006. *Pueblos indígenas y afrodescendientes de América Latina y el Caribe: Información socio demográfica para políticos y programas*. Chile: CEPAL. P. 177.

indigenous women are illiterate.¹⁴⁷ There is also a gap in the years of schooling between indigenous and non-indigenous populations and in the rates of high school graduation. Many indigenous children do not finish high school as they should work and contribute to the household economy, especially in rural areas where they participate in traditional agriculture activities.

While the situation with primary and basic education is improving in many countries, the gap in higher education is more evident. In 2001, 3.7 % of the Native American population was enrolled in college in the USA, in comparison to 5.6 % of the total population.¹⁴⁸

Formal systems of school education have been a “two-edged sword”¹⁴⁹ for indigenous peoples: on the one hand, children acquire knowledge that connects them to the broader world, but on the other hand, the formal curriculum that was established without indigenous participation does not take into account indigenous cultures. Thus, indigenous schoolchildren are at risk of losing a part of their identity and connection to their communities.

When indigenous students graduate, they face a problem of having to choose between returning to their communities and pursuing their careers in the dominant society because quite often they cannot use the obtained skills within their communities.¹⁵⁰ It is important to teach indigenous youth skills that might be useful for indigenous communities.

5.5. Health issues

Indigenous peoples quite often face obstacles when trying to access health care. UN’s report on the State of the World’s Indigenous Peoples: Indigenous Peoples’ Access to Health Service describes the situation as follows:¹⁵¹

“These [obstacles] include the lack of health facilities in indigenous communities and cultural differences with the health care providers such as differences in languages, illiteracy and lack of understanding of indigenous culture and traditional health care systems. There is also an absence of adequate health insurance or lack of economic capacity to pay for services. As a result,

¹⁴⁷ UNICEF. 2003. “Ensuring the Rights of Indigenous Children”, *Innocenti Digest no. 11*.

¹⁴⁸ UN. 2009. *State of the World’s Indigenous Peoples*. ST/ESA/328. P. 137.

¹⁴⁹ Stavenhagen, R. 2005. Indigenous Issues: Human rights and indigenous issues. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. United Nations. E/CN.4/2005/88. Para 15.

¹⁵⁰ UN. 2009. *State of the World’s Indigenous Peoples*. ST/ESA/328. P. 148.

¹⁵¹ UN. 2016. State of the World Indigenous Peoples: Indigenous Peoples’ Access to Health Services. P. 3.

indigenous peoples often cannot afford health services even if it is available.”

Health issues are strongly related to the problem of poverty as some diseases primarily affect people living in poverty. Indigenous peoples are suffering from tuberculosis much more often than non-indigenous population. For example, the disease rate among the Inuit people of Canada is 150 times higher than the non-aboriginal population.¹⁵²

Another problem of indigenous health is that many of the illnesses stem from “contamination and depletion of their land and natural resources, and from their forced displacement from their territories.”¹⁵³ All around the world indigenous peoples suffer from all kinds of diseases starting from infectious diseases to cancer and diabetes more often than non-indigenous population of the same country. Infant and child mortality is also much higher.¹⁵⁴ Poverty and malnutrition are among the main reasons of such disproportion. In some regions, the lack of access to potable water and sewerage system contributes to the spread of infectious diseases.

Mental health problems such as depression, alcohol and drugs abuse, and suicide are also connected to the historical colonisation and dispossession of indigenous peoples. Indigenous communities are still experiencing the consequences of colonialism; they are among the poorest and the most marginalised peoples in the world and they are still suffering from mistreatment and exploitation. Those factors have a negative impact on indigenous peoples’ mental health.

Other problems with health care include some practical obstacles such as geographical distance or seasonal isolation of indigenous peoples. Health services in many developing countries are concentrated in urban areas and indigenous people, who mostly live in rural areas, have difficulties accessing health institutions which are usually not adapted to their specific needs.¹⁵⁵ Another problem is that well qualified medical personnel are not always willing to work in the rural areas.

Indigenous peoples usually have their own medical practices based on their traditional knowledge but they have not been studied enough, and are not recognised by states.¹⁵⁶

¹⁵² UN. 2009. *State of the World's Indigenous Peoples*. ST/ESA/328. P. 158.

¹⁵³ Ibid, p. 159.

¹⁵⁴ Cobo, J. M. 1983. Study of the Problem of Discrimination against Indigenous Populations, Chapter XXI-XXII: Conclusions, proposals and recommendations. United Nations. E/CN.4 Sub.2 /1983/21/Add.8.

¹⁵⁵ Ibid, para 56.

¹⁵⁶ Ibid, para 59.

6. Conclusion

The first part of this work focused on the phenomenon of indigenous peoples in general from the historical perspective and on the evolution of the protection of indigenous rights. The first chapter defined indigenous people. Despite the lack of the official definition, the international community uses the definition introduced by José Martínez Cobo which includes several important indicators that help to identify people as indigenous: subjection to colonial settlement, historical continuity with pre-invasion or pre-colonial societies, an identity that is distinct from the dominant society in which they are encased, and a concern with the preservation and replication of culture, and self-identification as indigenous.

The second chapter analysed the experience of indigenous peoples after European colonisation. Paragraph 2.1 discusses the first contact of Europeans with indigenous peoples. Europeans could not understand indigenous culture and conceptualised it as inferior and indigenous peoples as barbarians. As paragraph 2.2 shows, such a misconception was one of the reasons of the miseries indigenous peoples went through during the time of colonisation. The population of indigenous peoples decreased dramatically due to infectious diseases brought by Europeans, wars, maltreatment, destruction of the environment, loss of land and loss of culture, and forced assimilation.

Chapter 3 focuses on international law during the time of colonisation and its influence on indigenous peoples. First, indigenous peoples were given some recognition by the states and international law, but later they were considered inferior and were deprived of any rights. Paragraph 3.2 shows that international law at that time did not protect indigenous peoples and rather served as an instrument of the European powers. The paragraph discusses different legal means used by European colonisers to acquire indigenous lands.

Following several centuries of the violation of indigenous peoples' rights, the problems of indigenous peoples started to receive international attention from the second half of the 20th century. Chapter 4 follows the development of the modern international law on the rights of indigenous peoples. They use various instruments to protect their rights on the international level. These tools include human rights instruments like the ICCPR and specific instruments aimed at protection of indigenous peoples rights like the ILO Convention No. 169 or the UNDRIP.

Despite the international protection indigenous peoples enjoy nowadays, they still face numerous problems. They are among the

poorest and most discriminated peoples in the world. Chapter 5 describes the challenges that threaten the wellbeing of indigenous peoples around the globe, such as poverty, loss of culture, environmental threats, educational and health problems.

The broader context provided in the first part of this study will help to analyse the state of the European indigenous peoples Saami living in the North of Europe and to understand how their experience differs from the experience of indigenous peoples outside of Europe.

Part II. Indigenous people Saami

1. The Saami and the States: brief history of relations

The Saami had been living in Sapmi long before other peoples occupied these territories. The first cultural contacts with other Europeans brought many benefits to the Saami, such as possibilities to trade with and to learn from their neighbours. There is evidence that until the 15th century the Saami and their neighbours peacefully coexisted and benefited from trade and cultural exchange.¹⁵⁷ From the 15th century onwards, the rulers of the surrounding states, realising the wealth of resources available in the North, started showing interest in the areas of the Saami traditional settlements.¹⁵⁸ The Saami were forced to pay taxes to several states who claimed their sovereignty over the Saami lands. Another way for the surrounding states to justify their land claims was to encourage settlers to move to the northern regions.¹⁵⁹ The arrival of the new settlers significantly influenced the Saami traditional lifestyle as the competition for the land and resources increased. Small-numbered and non-violent Saami could not resist such invasion on their land. The states also tried to forcefully convert the Saami into Christianity; as a result, the holy sites of the Saami were destroyed and some people who practised their traditional religion were persecuted.¹⁶⁰

With the advent of the nation-states in Europe in the 19th century, pressure on the Saami increased. Encouraged by the states, immigration to the North continued and the Saami had to compete for resources with the newcomers. Beginning in the 19th century, the Nordic countries experienced economic growth but the Saami did not benefit from it. Their traditional way of life was considered outdated and it led to the marginalisation of the Saami. In the beginning of the 20th century Norwegian authorities decided to make the Norwegian language and culture universal and put a considerable effort to wipe out Saami culture

¹⁵⁷ Mundal, E. 2000. "Coexistence of Saami and Norse Culture – Reflected in and Interpreted by Old Norse Myths", in Barners, G. and Ross, M.C. (eds.). *Old Norse Myths, Literature and Society: Proceedings of the 11th International Saga Conference, 2-7 July 2000, University of Sydney*. Sydney: Centre for Medieval Studies. Pp. 346-355.

¹⁵⁸ The Arctic. "Historical Synopsis of the Sami/United Nations Relationship". <<http://www.thearctic.is/PDF/Synopsis%20of%20Sami-UN%20Relations%20PDF.pdf>> (25.02.2018).

¹⁵⁹ The Arctic. "Historical Synopsis of the Sami/United Nations Relationship". <<http://www.thearctic.is/PDF/Synopsis%20of%20Sami-UN%20Relations%20PDF.pdf>> (25.02.2018).

¹⁶⁰ Sami Culture. "The Sami vs. Outsiders". <<http://www.laits.utexas.edu/sami/dieda/hist/sami-west.htm#more>> (25.02.2018).

by assimilation of the Saami into the Norwegian society. Sweden and Finland also tried to assimilate the Saami but their attempts were not as active as in Norway. In the USSR, the traditional lifestyle of the Saami was disrupted by collectivisation of the agriculture and reindeer herding; some Saami were persecuted during Stalin's repression.¹⁶¹

The assimilation of the Saami continued till the middle of the 20th century. At the same time, the Saami movement became stronger both within the states and on the international level, as will be discussed in the next paragraph. After the collapse of the Soviet Union, the Saami of Russia also joined the international cooperation. Starting from the late 1970s, Norway, Sweden, and Finland tried to make up for the past suppressions of the Saami culture by taking measures to rebuild the Saami identity and encourage the further development of the Saami culture and language.

As history has shown, the contact of the Saami with other peoples did not lead to the same devastating consequences as the indigenous peoples in the Americas, for example, but it nonetheless influenced Saami life significantly. Due to the assimilation policies, the Saami nowadays are a small-numbered people, with less than a half of them speaking their language. Their culture and traditional sites were destroyed, their religion erased, and their lands taken away from them. The Saami are still struggling to overcome the damage that was done to them by the states they are living in.

2. Saami cooperation across the borders

Starting from the second half of the 19th century, when the nation-state building processes were taking place in Europe, the Nordic states increased pressure on the Saami with the goal to suppress indigenous culture and identity. In order to confront the state policies of assimilation and to defend their land, resources and culture together, the Saami began to mobilise themselves. Some Saami leaders “began actively engage themselves in public advocacy to promote Saami language, culture and rights”;¹⁶² the first Saami newspaper was established in the 1870s in Norway; more and more Saami started to get involved in local, regional and national politics to address the needs and pressing issues of

¹⁶¹ The Finno-Ugric Media Centre. “Spisok Repressirovannyh kolskih Saami izdan v Finlandii [A list of the purged Kola Saami was published in Finland]”. <<http://finugor.ru/node/25216>> (25.02.2018).

¹⁶² Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169.

the Saami people.¹⁶³ Saami leaders tried to create the sense of unity among Saami living in different communities within and across the state borders.¹⁶⁴ The first Saami associations were formed in Norway and Sweden in the beginning of the 20th century.¹⁶⁵

The first Saami National Assembly that brought together more than 150 Saami participants from Norway and Sweden took place in Trondheim, Norway, from 6 to 9 February 1917. The assembly was initiated by Elsa Laula Renberg – a female Saami activist and politician from Sweden who also participated in the creation of the first Saami organisation in Sweden in 1904.¹⁶⁶ The goal of the Assembly was to discuss common issues that directly influence the Saami of Norway and Sweden, such as attempts of the states to control reindeer herding and the question of grazing across the border between Norway and Sweden, states' assimilation policies, establishment of schools with teaching in Saami languages, legislation restricting the rights of the Saami, but also some organisational issues: for example, an establishment of a Saami organisation was proposed for the first time during the Assembly. The Saami National Day is celebrated nowadays in Norway, Sweden, Finland, and Russia on February 6, the day when the first Saami National Assembly was opened in 1917.

It was only after World War II when the Saami began to organise an ethno-political movement that sought to create “a constructive alternative basis for expressing Saami identity.”¹⁶⁷ The movement aimed at creating a common Saami identity across the borders that would no longer carry “the stigma of inferiority”¹⁶⁸ with the help of the overarching political institutions and common symbols. All activities of the movement were based on the idea that the Saami should be perceived as a distinct people.¹⁶⁹

The first tangible result of the pan-Saami movement was the creation of the Nordic Saami Council in 1956. After the collapse of the USSR in 1991, the Saami in Russia also joined the Council and it was renamed the

¹⁶³ Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169.

¹⁶⁴ Ibid.

¹⁶⁵ Røros Museum. “Rijhketjåanghkoe Tråantesne 1917 - The national congress in Trondheim in 1917”. <<https://rorosmuseet.no/en/the-national-congress-in-trondheim-in-1917>> (25.02.2018).

¹⁶⁶ Ibid.

¹⁶⁷ Semb, A. J. 2001. “How Norms Affect Policy – The Case of Sami Policy in Norway”, *International Journal on Minority and Group Rights*, 8, 177-222.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

Saami Council to reflect that the Saami in Russia were also included.¹⁷⁰ The Saami Council is a non-governmental organisation that unites the Saami in the four countries and aims to promote Saami rights and interests in Norway, Sweden, Finland, and Russia, and in particular cross-border rights and interests. The main task of the organisation is to “consolidate the feeling of affinity among the Saami people, to attain recognition for the Saami as a nation and to maintain the cultural, political, economic and social rights of the Saami in the legislation of the four states.”¹⁷¹ The Saami Council meets twice a year to discuss current issues. The Saami Council consists of nine member organisations from the four countries. The Council is in consultative status with the UN Economic and Social Council, the International Labour Organization, and the Arctic Council. Nowadays, the Saami Council is one of the oldest indigenous organisations in the world.¹⁷²

The Council underlines in its activities that the Saami is one people divided by state borders and emphasises that the “nation states Finland, Norway, Russia and Sweden partly have been established on land and sea territories belonging to the Saami people”.¹⁷³ It must be mentioned, however, that despite considering themselves as one people, the Saami have never expressed a desire to secede from the nation states, but rather fought for the recognition of their rights to self-determination within the existing state borders.¹⁷⁴

Consolidation of the Saami continued within the state borders. Finland, Norway, and Sweden established the Saami Parliaments in 1972, 1987, and 1992 respectively. These parliaments act as advisory bodies and allow consultation of Saami people on the matters that affect them. The Parliaments have different mandates and functions in the three states but, overall, despite being consulted, they only have limited influence on final decisions concerning the Saami.¹⁷⁵

On a governmental level, the cross-border Saami cooperation is formalised through the establishment of the Saami Parliamentary Council in 2000, a co-operational body for the Saami Parliaments in

¹⁷⁰ Henriksen J.B. 2008. “The continuous Process of Recognition and Implementation of the Sami People’s Right to Self-determination”, *Cambridge Review of International Affairs*, 21/1, 27-40.

¹⁷¹ Saami Council. “About the Saami Council”.
<<http://www.saamicouncil.net/en/about-saami-council/>> (25.02.2018).

¹⁷² Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169.

¹⁷³ Ibid, p. 76.

¹⁷⁴ Henriksen J.B (red.). 2009. “Sami Self-Determination. Autonomy and Self-government: Education, Research and Culture”, *Gáldu Čála – Journal of Indigenous Peoples Rights*, 2.

¹⁷⁵ ILO. 2009. *Indigenous & Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169*.

Norway, Sweden, and Finland. The Saami of Russia do not have their own recognised parliament and thus only have an observer status in the Saami Parliamentary Council. The Council consists of 21 members appointed by the respective Saami Parliament. The main tasks of the Council are to strengthen collaboration between the Saami across state borders and to represent Saami internationally.¹⁷⁶

In order to further strengthen the Saami identity and self-perception as one people, in the second half of the 20th century the Saami created national symbols that represent all Saami, no matter which country they live in. The first unofficial Saami flag was designed in 1977 by a Saami artist and was used in demonstrations against the Alta Dam, the construction of which could flood the traditional Saami grazing territories in Norway. An official flag was adopted on 15 August 1986 at the 13th Saami Conference in Åre, Sweden.¹⁷⁷ The Saami Council held a competition to adopt a new flag, and the design submitted by the Saami artist Astrid Båhl (Norway) was chosen as a new Saami flag. It was based on the unofficial Saami flag, which was a tricolour of blue, red, and yellow, but the green colour and the ring were added. These colours are commonly used on traditional clothing of the Saami. The ring on the flag symbolises the Sun (the red part of the ring) and the Moon (the blue part). The designer called the flag “Saami are children of the Sun”.

The Saami national anthem was adopted at the same Saami Conference in 1986. The national anthem is a poem written by Isak Saba in 1906 with a name “Sámi soga lávlla” which means “Song of the Saami People”. Arne Sørli wrote the music to the poem and the melody was adopted by the 15th Saami Conference, held in Helsinki in 1992.¹⁷⁸ The lyrics of the anthem were translated from the Northern Saami to other Saami languages.

The cross-border Saami cooperation takes various forms, for example, cooperation between Saami radio and TV broadcasters in the four countries, but also different forms of cultural cooperation like Pan-Saami teams in football, etc.¹⁷⁹ Such cooperation is financed by the governments of Norway, Sweden, and Finland “based on a proportional

¹⁷⁶ Johansson, P. 2015. “Indigenous Self-Determination in the Nordic Countries: The Sami, and the Inuit of Greenland”, in Lennox, C. and Short, D. (eds.). *Handbook of Indigenous Peoples' Rights*. London: Routledge. P. 434.

¹⁷⁷ Saami Council. “National Symbols”. <<http://www.saamicouncil.net/en/about-saami-council/national-symbols/>> (25.02.2018).

¹⁷⁸ Ibid.

¹⁷⁹ ILO. 2009. *Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*.

formula through which the country with the biggest Saami population contributes the most”.¹⁸⁰

The Saami are also active on the international level and cooperate with other indigenous peoples within the framework of the UN and other international organisations. Starting from the end of the 1970s, the Saami organisations contributed to the development of the international indigenous movements, for example, they supported the World Council of Indigenous Peoples that was granted an NGO status in the UN system.¹⁸¹ The Saami also contributed to the creation of the declaration on indigenous peoples’ rights: it was the Saami Council that worked on the draft of the declaration for several years before it was passed to the UN’s Working Group on Indigenous Populations.¹⁸² The Saami also played an important role in the revision of the ILO Convention No. 107 “through their network both through the formal tripartite system of the ILO decision-making process, and through the indigenous lobbying groups”.¹⁸³

The Saami, through the Saami Council, have a status of the Permanent Participant of the Arctic Council that enables them to actively participate in its work.¹⁸⁴ The Saami also participate in the work of the Barents Euro-Arctic Cooperation, an organisation that aims to promote regional cooperation and sustainable development in the Barents Region.¹⁸⁵

Russian Saami is a different case from the Saami of Finland, Sweden, and Norway. For a long period of time they were excluded from the Saami cross-border cooperation. They were isolated from the Saami living in the Nordic States, and their traditional social, cultural and economic structures were destroyed as a result of the collectivisation programme of the USSR.¹⁸⁶ However, after the collapse of the USSR, the Saami of Russia started to rebuild their traditional culture and established close contacts with the Saami of Finland, Sweden, and Norway.

¹⁸⁰ ILO. 2009. *Indigenous & Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169*. P. 169.

¹⁸¹ Minde, H. 2001. “Sami Land Rights In Norway: A Test Case for Indigenous Peoples”, *International Journal on Minority and Group Rights*, 8, 107-125.

¹⁸² Ibid.

¹⁸³ Ibid, p. 117.

¹⁸⁴ Arctic Council. “Saami Council”. <<https://www.arctic-council.org/index.php/en/about-us/permanent-participants/sc>> (25.02.2018).

¹⁸⁵ Barents Euro-Arctic Cooperation. “Working Group of Indigenous Peoples”. <<http://www.barentscooperation.org/en/Working-Groups/Working-Group-of-Indigenous-Peoples>> (25.02.2018).

¹⁸⁶ ILO. 2009. *Indigenous & Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169*.

2.1. Nordic Saami Convention

As the Saami Council argues, state boundaries that divide Saami are causing problems for the Saami unity.¹⁸⁷ Therefore, it was considered important for the Council to discuss a possibility of a Saami Convention that would help to strengthen Saami rights across the borders and protect Saami traditional culture.

The Convention would not be the first legal instrument that regulated the rights of the Saami across the states' borders. Up to the middle of the 18th century, the national borders on the territories where the Saami traditionally lived had not been clearly demarcated, and the purpose of the Strömstad Border Treaty of 1751 between Norway and Sweden was to establish these boundaries.¹⁸⁸ The Lapp Codicil, an addendum to the Treaty, recognised the Saami as one nation and formalised the rights of the Saami across the borders, including the right to continue their traditional nomadic reindeer herding.¹⁸⁹ The Lapp Codicil recognises the rights of Saami living on the territory of Norway to use pastures in Sweden, and likewise Saami of Sweden can use pastures in Norway. In the absence of the cross-border reindeer herding agreement between Norway and Sweden, the Lapp Codicil still remains in force and regulates cross-border reindeer husbandry.¹⁹⁰ Reindeer husbandry across the borders of Sweden and Finland is regulated by a treaty of 1925.

These treaties are not the treaties in the same sense as those treaties concluded between the European colonisers and native people of the Americas or New Zealand because the Saami themselves did not participate in any treaty process.¹⁹¹ The treaties regulating the Saami reindeer husbandry were concluded between the sovereign states.

The Saami Convention is an attempt to create a modern treaty between the Nordic states (Norway, Sweden, and Finland) that will protect Saami rights across borders and, among other issues, address the cross-boundary reindeer husbandry rights.

The idea to start a discussion on a possible Convention was proposed for the first time to the governments of Norway, Sweden, and Finland by the Saami Council in 1986. The Convention was supposed to support

¹⁸⁷ Henriksen J.B. 2008. "The continuous Process of Recognition and Implementation of the Sami People's Right to Self-determination", *Cambridge Review of International Affairs*, 21/1, 27-40.

¹⁸⁸ Eide, A. 2001. "Legal and Normative Bases for Saami Claims to Land in the Nordic", *International Journal on Minority and Group Rights*, 8, 127-149.

¹⁸⁹ Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169.

¹⁹⁰ Ibid.

¹⁹¹ Broderstad, E.G. 2011. "The Promises and Challenges of Indigenous Self-determination: The Sami Case", *International Journal*, 66/4, 893-907.

the idea of the Saami as one people living across the national borders and to tackle the legal status and rights of the Saami.¹⁹²

The Saami Council appointed a legal committee to elaborate on the possible Saami Convention, and in 1995, the committee submitted a draft Saami Convention to the Council.¹⁹³ In turn, the Council raised the matter with the governments of the respective states; later the idea also reached the Nordic Council. Due to the fact that these ideas were developed within the framework of the overall Nordic cooperation, the Russian authorities and Russian Saami were not invited to join the process.¹⁹⁴

After receiving the proposal, the governments of Norway, Sweden, and Finland decided to establish a working group that would clarify the need for the Saami Convention and its basis.¹⁹⁵ The working group that consisted of the representatives of the Nordic States and the Saami parliaments was established in 1996 and in 1998 it concluded that the work on a Nordic Saami Convention should be continued and recommended to appoint an expert group to develop the Convention. The Expert Group started its work in 2003 and submitted a proposal on a Nordic Saami Convention to the governments and the Saami parliaments in 2005.¹⁹⁶ Each of the three states appointed a committee to prepare an assessment of the draft declaration. In 2007 the three states indicated that they were prepared to enter into negotiations on the draft, and the first session of negotiations was held in 2011.¹⁹⁷ After eleven years of negotiations, the three states and the Saami parliaments have agreed on the contents of the Convention and the Convention text was signed in January 2017. However, there is still a way to go before it can be included into national legislations.¹⁹⁸ The Convention still has to be signed by the Governments of Norway, Sweden, and Finland, and then

¹⁹² Koivurova, T. 2006. "The Draft for a Nordic Saami Convention", *European Yearbook of Minority Issues*, 6, 103-136.

¹⁹³ Henriksen J.B. 2008. "The continuous Process of Recognition and Implementation of the Sami People's Right to Self-determination", *Cambridge Review of International Affairs*, 21/1, 27-40.

¹⁹⁴ Ibid.

¹⁹⁵ Koivurova, T. 2006. "The Draft for a Nordic Saami Convention", *European Yearbook of Minority Issues*, 6, 103-136.

¹⁹⁶ Henriksen J.B. 2008. "The continuous Process of Recognition and Implementation of the Sami People's Right to Self-determination", *Cambridge Review of International Affairs*, 21/1, 27-40.

¹⁹⁷ Banks, N., Koivurova, T. (eds.). 2013. *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights*. Oxford: Hart Publishing.

¹⁹⁸ Staalesen, A. 2017. "Historic Sámi agreement starts long way towards ratification", *The Independent Barents Observer*. <<https://thebarentsobserver.com/en/2017/01/historic-sami-agreement-starts-long-way-towards-ratification>> (25.02.2018).

forwarded to the Saami Parliaments for acceptance as well as to the parliaments of the respective states.¹⁹⁹

As it is reflected in the preface, the Convention is based on the ideas that the Saami are one people residing across national borders, they possess their own culture, history, traditions, language, livelihoods and own vision of the future and have a right to self-determination.

In the Convention, the extent to which the Saami are granted a right to self-determination varies depending on how important the field is for them. In some cases that refer to the Saami internal affairs, the Saami have a full right to make their own decisions; in other cases that concern non-Saami decision-making processes the Saami have a right to be informed.²⁰⁰ In this way, the Convention seeks to strike a balance between the majority population and the Saami right to self-determination.²⁰¹

Chapter I of the Convention regulates the general rights of the Saami. The objective of the Convention as indicated in the Article 1, is to “affirm and strengthen such rights of the Saami people that are necessary to secure and develop its language, its culture, its livelihoods and society, with the smallest possible interference of the national borders”.²⁰² Article 2 acknowledges that the Saami are indigenous people of Finland, Norway, and Sweden. Article 3 states that the Saami “has the right to determine its own economic, social and cultural development and to dispose, to their own benefit, over its own natural resources”.²⁰³ Articles 5-7 determine the states’ responsibilities towards the Saami people, such as, for example, the creation of the favourable conditions for developing Saami communities. Article 10 stipulates that states should “strive to ensure continued harmonization of legislation and other regulation of significance for Saami activities across national borders.”²⁰⁴ Articles 11 and 12 say that States shall encourage cross-border Saami cooperation and remove existing obstacles to such cooperation.

Chapter II covers issues of Saami governance, especially focusing on the Saami parliaments. Article 14 confirms the status of the Saami parliaments as the highest representative body of the Saami that is

¹⁹⁹ Scheinin, M. 2007. “The rights of an individual and a people: Towards a Nordic Sami Convention”, in Åhrén, M., Scheinin, M., Henriksen, J. *The Nordic Sami Convention: International Human Rights, Self-Determination and other Central Provisions*. In Gáldu Čála - Journal of Indigenous Peoples Rights (3).

²⁰⁰ Henriksen J.B (red.). 2009. “Sami Self-Determination. Autonomy and Self-government: Education, Research and Culture”, *Gáldu Čála – Journal of Indigenous Peoples Rights*, 2.

²⁰¹ Ibid.

²⁰² Nordic Sami Convention. <<https://www.sametinget.se/105173>> (25.02.2018).

²⁰³ Ibid.

²⁰⁴ Ibid.

empowered to act on their behalf. Article 16 specifically underlines the Saami parliaments' right to negotiate on matters of importance to the Saami and states that the states shall not adopt measures "that may significantly damage the basic conditions for Saami culture, Saami livelihoods or society, unless consented to by the Saami parliament concerned."²⁰⁵ This means that on matters of great importance to the Saami, simple consultation with a Saami parliament is not enough and States should get the consent of a parliament before implementing any measures that might influence the Saami. Saami Parliaments also have a right to represent the Saami in intergovernmental matters.²⁰⁶

Chapter III is devoted to the Saami language and culture and especially focuses on responsibilities of the states to protect them by different means. According to the Convention, the Saami must have the right to use, develop and pass on to future generations its language and its traditions.²⁰⁷ The corresponding duties for states are to preserve, develop, and disseminate the Saami language, and to guarantee that the Saami language can be used in courts of law and in relations to public authorities in the Saami areas.²⁰⁸ Article 25 says that states should create favourable conditions for development of the Saami media.

In order for the Saami to pass on to future generations its language and its traditions, it is important to focus on how the educational system functions.²⁰⁹ Article 26 requires that the Saami population residing in the Saami areas shall have access to education, and that the education system should be adapted to their background. Saami children and adolescents outside the Saami areas shall have access to education in the Saami language. Health and social services in the areas of the Saami settlements should also be adapted to the Saami linguistic and cultural background.²¹⁰ It is also states a responsibility to create good conditions for research based on the knowledge and needs of the Saami society.²¹¹

Article 31 addresses the traditional knowledge of the Saami and says that the states shall respect the right of the Saami to manage it while striving to ensure that the Saami are able to preserve and develop their traditional knowledge. The states also shall ensure that when Saami culture is applied commercially by non-Saami the Saami shall get

²⁰⁵ Nordic Saami Convention. <<https://www.sametinget.se/105173>> (25.02.2018).

²⁰⁶ Ibid, article 19.

²⁰⁷ Ibid, article 23.

²⁰⁸ Ibid, article 24.

²⁰⁹ Koivurova, T. 2006. "The Draft for a Nordic Saami Convention", *European Yearbook of Minority Issues*, 6, 103-136.

²¹⁰ Nordic Saami Convention. Article 29. <<https://www.sametinget.se/105173>> (25.02.2018).

²¹¹ Ibid, article 27.

financial revenues.²¹² Article 32 of the Convention protects the Saami cultural heritage and imposes obligations on the states to protect and care of it.

Chapter III mostly protects the Saami language and culture within the Saami homeland area. This approach might seem problematic, as many Saami live outside their traditional settlements. However, in practice it would be very difficult to organise Saami language use across all three Nordic States.²¹³

Chapter IV addresses the rights of the Saami to land and water. It is especially underlined in the chapter that continuous access to natural resources may be a prerequisite for the preservation of traditional Saami knowledge and cultural expressions.²¹⁴ Article 34 states that “protracted traditional use of land or water areas constitutes the basis for individual or collective ownership right to these areas for the Saami in accordance with national or international norms concerning protracted usage.”²¹⁵ This article also confirms that if the Saami occupied or used their lands and waters they have the right to continue to exercise these usufruct rights to the same extent as before. In order to further protect the rights of the Saami, Article 34 says that when assessing what constitutes traditional Saami use of land and water it should be noted that Saami land and water usage often does not leave permanent traces in the environment. According to Article 35, the states shall protect the rights of the Saami to land and water.

Articles 36 and 37 concern the potential conflict between state’s right to initiate development activities in the areas owned or used by the Saami and the Saami rights to land.²¹⁶ Article 36 states that it is an obligation of a state to negotiate with the affected Saami and the Saami parliament before granting permission for extraction of minerals or other activities within land or water areas that are owned or used by Saami. Article 37 regulates compensations for all the damage inflicted through such activities.

Chapter V protects Saami livelihoods that constitute a material basis of their culture. Article 41 clarifies that Saami livelihoods are such activities that are essential for the maintenance and development of the local Saami communities. Articles 42 and 43 accord special protection to reindeer husbandry and rules for making it easier to exercise this

²¹² Nordic Saami Convention. Article 31. <<https://www.sametinget.se/105173>> (25.02.2018).

²¹³ Ibid.

²¹⁴ Ibid, article 36.

²¹⁵ Ibid, article 34.

²¹⁶ Koivurova, T. 2006. “The Draft for a Nordic Saami Convention”, *European Yearbook of Minority Issues*, 6, 103-136.

livelihood across national borders.²¹⁷ Article 42 also states that Norway and Sweden shall maintain and develop reindeer husbandry as a sole right of the Saami in the Saami reindeer grazing areas, and Finland shall commit itself to strengthening the position of Saami reindeer husbandry. In Finland, unlike in Norway and Sweden, reindeer herding is regarded as a general right which belongs to all the citizens of the European Economic Area, who live permanently in the reindeer herding area.²¹⁸ Article 43 claims that the right of the Saami to reindeer grazing across national borders is based on custom and outlines that, in case of the conflict of norms, agreements between Saami villages or reindeer communities concerning the right to reindeer grazing across national borders shall prevail over other sources of law.

Chapter VI focuses on the implementation and development of the Convention. For the purpose of monitoring the implementation, Article 45 establishes a Nordic Saami Convention Committee. Article 46 obliges the states to make the provisions of the Convention directly applicable as national law.

Chapter VII consists of final provisions concerning the approval of the Convention by the Saami parliaments, ratification, entry into force, and amendments to the Convention.

Due to legal technicalities, the Saami are not a party to the Convention.²¹⁹ When the expert group was working on the draft of the convention, they discussed the possibility of making the Saami a party to it, but they concluded that rendering the Saami people a party to the Convention would most likely deprive it of its status as a legally binding instrument under international law because only states can be parties to international treaties. However, the Convention cannot be ratified or changed without the approval of the Saami parliaments.

The Saami Convention is yet to be ratified and implemented into national laws of Finland, Sweden, and Norway but the long process of negotiations has already showed the commitment of the states to work together with the Saami people in order to strengthen their rights and remedy historical injustices. When ratified, it will be one of the most progressive instruments of indigenous peoples' rights protection. It would also establish an example of how to organise the legal relations between transnational indigenous people and the states they are living

²¹⁷ Koivurova, T. 2006. "The Draft for a Nordic Saami Convention", *European Yearbook of Minority Issues*, 6, 103-136.

²¹⁸ Ibid.

²¹⁹ ILO. 2009. Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169.

in.²²⁰ The Convention, however, does not protect the Saami living in Russia and there is still a way to go before the Russian Saami will be protected in the same way and will be able to enjoy the same rights as their Nordic counterparts.

3. The Saami and their common challenges

Despite these struggles, the Saami do not have to deal with many of the socio-economic concerns that commonly face indigenous peoples throughout the world, such as serious health concerns, extreme poverty or hunger.²²¹ Being among the wealthiest countries in the world, Norway, Sweden, and Finland are able to tackle many of the concerns related to the Saami people.²²² However, the Saami living in these states continue to face challenges connected to the lack of recognition of their rights. The situation is different in the three Nordic states and Russia but some of the problems are faced by the Saami irrespective of the country they are living in.

3.1. Right to self-determination

The right to self-determination is a fundamental human right and it is articulated in the main instruments of the international law, such as the ICCPR and the ICESCR.²²³ For a long time, however, this right was only applicable to the decolonised peoples of Africa and Asia who by means of secession created new nation-states. The international community did not recognise that indigenous peoples also have a right to self-determination because of the fear for the territorial integrity of the states.²²⁴ Nowadays the right of indigenous peoples to self-determination is acknowledged by the international law and articulated in Article 3 of the UNDRIP. Norway, Sweden, and Finland voted in favour of the Declaration and through the adoption of national laws and political decisions recognised that the Saami have a right to determine their own

²²⁰ Koivurova, T. 2006. "The Draft for a Nordic Saami Convention", *European Yearbook of Minority Issues*, 6, 103-136.

²²¹ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. Article 8. United Nations. A/HRC/18/35/Add.2.

²²² Ibid.

²²³ Article 1 of both the ICCPR and the ICESCR.

²²⁴ Gilbert, J. 2006. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. New York: Transnational Publishers.

future.²²⁵ Russia, on the other hand, has never explicitly stated that the indigenous peoples have a right to self-determination.

The Saami emphasise that the recognition of the right to self-determination for indigenous peoples is not related to the desire to secede from existing nation states.²²⁶ The former President of the Norwegian Saami Parliament Egil Olli once stated that “under international law, the right to self-determination per se does not include the right of secession. Moreover, the Saami do not, nor have they ever, expressed any desire for secession.”²²⁷ He also emphasised that it is more important to focus on the core content of the right of self-determination, i.e. that the Saami can make their own decisions about their economic, social, and cultural development.²²⁸

While the laws and policies of the Nordic countries, with respect to the Saami people, are relatively advanced, there are still ongoing barriers to the full realisation of the right of the Saami to self-determination, both at the cross-border and national levels.²²⁹

According to Article 4 of the UNDRIP, indigenous peoples “in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs”. One of the challenges that the Saami of the four states face is limited possibilities for self-governance within the respective states. Saami parliaments in the Nordic countries serve as self-determination tools and allow the Saami to express their voice to the Governments, but nonetheless their self-governing authority and their influence on the decisions that might affect the Saami people is very limited.²³⁰ The decision-making power is especially limited when it comes to the use of lands, waters and natural resources.²³¹ The absence of clear procedures of consultations with the Saami parliaments in Finland and Sweden on matters that concern the Saami and problems with application of such procedures in Norway further limits the possibilities of the Saami to determine their own future.²³² According to the Special Rapporteur James Anaya, budgetary constraints “were identified as restricting the

²²⁵ Henriksen J.B (ed.). 2008. “Sami Self-Determination. Scope and Implementation”, *Gáldu Čála – Journal of Indigenous Peoples Rights*, 2.

²²⁶ Henriksen J.B (ed.). 2009. “Sami Self-Determination. Autonomy and Self-government: Education, Research and Culture”, *Gáldu Čála – Journal of Indigenous Peoples Rights*, 2.

²²⁷ Ibid, p. 38.

²²⁸ Ibid.

²²⁹ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 32.

²³⁰ Ibid, para 38.

²³¹ Ibid.

²³² Ibid, para 39-40.

ability of the Sami parliaments to effectively deal with Sami issues and act as conduits of Sami self-determination.”²³³

The situation with self-governing is more complicated in Russia, since Russia is reluctant to recognise indigenous peoples’ right to self-determination, due to territorial integrity concerns.²³⁴ The Saami in Russia do not have a recognised Saami parliament, which makes it more difficult for them to express their opinion on matters of importance related to them.

3.2. Land rights

For many years, the Nordic States operated under the assumption that the nomadic character of Saami traditional reindeer herding does not give them any legal rights over their lands and resources.²³⁵ Nowadays, while Norway, Sweden and Finland recognise that Saami land use can result in ownership rights, in practise, it is difficult for the Saami to realise such rights, especially since the Saami traditionally tried not leave any physical marks on the land they used.²³⁶ Russia does not recognise the ownership rights of the Saami over their lands. In absence of the land title it becomes extremely difficult for the Saami to maintain their traditional lifestyle. The land traditionally used by the Saami also constitutes a material basis of the Saami culture and is of crucial importance to them. Thus, the inability to use their land might also lead to the loss of their indigenous culture.

Development projects, such as the construction of hydroelectric dams and windmills, mining, and tourist activities, as well as natural resource extraction and logging often promoted by Governments, threaten to diminish areas that are used for reindeer grazing.²³⁷ Despite the fact that in the Nordic countries Governments are obliged to consult the Saami parliaments before implementing the projects that might affect the Saami, this is not done adequately and the existing laws do not provide sufficient protection for the Saami rights.²³⁸ Often there is no compensation offered for the loss of pasture areas and benefit sharing

²³³ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 43.

²³⁴ Henriksen J.B. 2008. “The continuous Process of Recognition and Implementation of the Sami People’s Right to Self-determination”, *Cambridge Review of International Affairs*, 21/1, 27-40.

²³⁵ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 46.

²³⁶ Ibid, para 51.

²³⁷ Ibid, para 55.

²³⁸ Ibid.

opportunities are rare.²³⁹ For the Saami in Russia, the situation is even more pressing. Existing laws are very badly implemented and are not able to protect the Saami from the projects that influence their traditional lifestyle and do not offer the Saami an opportunity to express their concerns.²⁴⁰ Not only the Saami, but many other indigenous peoples of the Russian North face threats from mineral, oil, and gas development, timber cutting, commercial fishing, and tourism.²⁴¹

Natural resource exploitation requires good infrastructure, roads, railways, and pipelines, which decrease the areas for the reindeer grazing and cut off migration routes of reindeers. This also affects the Saami, since their livelihood is tied to reindeer herding.

Apart from causing damage to the Saami traditional lands, natural resource extraction also creates an “unstable atmosphere of social conflict” between the Saami, public authorities, and extractive companies.²⁴² Such conflicts might create a negative image of the Saami and hinder a peaceful coexistence of the Saami with the majority of the population in the four states.

3.3. Environmental problems

The lifestyle of the Saami, as well as lifestyles of many other indigenous peoples all over the world, is closely connected to their land and with nature. This is why climate change has a particular effect on the Saami, who depend upon the arctic climate for their livelihoods.²⁴³ J. Anaya explains the direct effect of the climate change on the Saami reindeer herding:²⁴⁴

“As winter temperatures rise due to global warming, snow thaws and melts into the lichen that reindeer eat, and when temperatures then drop below freezing, the lichen is encased in ice making it very difficult for the reindeer to eat and digest. Also, summer pastures may change from open to shrub vegetation land

²³⁹ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2.

²⁴⁰ Osherenko, G. 2001. “Indigenous Rights in Russia: Is Title to Land Essential for Cultural Survival”, *Georgetown Environmental Law Review*, 13, 695-734.

²⁴¹ Ibid.

²⁴² Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 7.

²⁴³ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 60.

²⁴⁴ Ibid.

and herders are finding it necessary to move their herds to drier ground.”

Oil and gas exploitation also significantly influence the environment of the Arctic region, and Arctic indigenous peoples, including the Saami, whose economies based on hunting, reindeer herding, and fishing suffer disproportionately from the negative ecological consequences of the oil and gas extraction.²⁴⁵ Numerous oil spills and gas leaks that are common in the course of the oil and gas exploitation contaminate soil, waters, and air and this leads to an increased risk of health problems among the indigenous population but it also negatively influences biodiversity.²⁴⁶ The mining industry also leaves toxic waste that mining companies dump in the traditional Saami areas.²⁴⁷

The Saami also suffer from radioactive contamination. The Chernobyl catastrophe in 1986 significantly affected south-Saami people in Norway and Sweden when radioactive pollution was carried by wind to the North. The arctic ecosystem suffered from the contamination of meat, fish, berries, and mushrooms. Lichen and moss, the main winter staple of reindeer, accumulated the radioactive material, and as a result thousands of reindeers were contaminated because of the high level of radioactive pollution.²⁴⁸ The consequences of the Chernobyl catastrophe can still be seen nowadays: much higher level of radioactivity was found among reindeer in Norway in 2016.²⁴⁹ Scientists blame it on the high mushroom crop that year in the Arctic region. Mushrooms are a favourite food of reindeers, but they also accumulate radiation. When eaten by reindeers, mushrooms contaminate the animals. Such a high amount of radiation makes reindeer meat unfit for human consumption.²⁵⁰

²⁴⁵ Fjellheim, R.S., Henriksen, J.B. 2006. “Oil and Gas Exploitation on Arctic Indigenous Peoples’ Territories. Human Rights, International Law and Corporate Social Responsibility”, *Gáldu Čála – Journal of Indigenous Peoples Rights*, 4.

²⁴⁶ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA.

²⁴⁷ Vidal, J. 2016. “Sami reindeer herders battle conservationists and miners to cling on to Arctic culture”, *The Guardian*. <<https://www.theguardian.com/global-development/2016/feb/21/sami-people-reindeer-herders-arctic-culture>> (25.02.2018).

²⁴⁸ UN. 2016. State of the World Indigenous Peoples: Indigenous Peoples’ Access to Health Services. P. 77.

²⁴⁹ The Local, 2014. “Radioactivity in Norway's reindeers hits high.” <<https://www.thelocal.no/20141006/radioactive-reindeer-found-in-norway>> (25.02.2018).

²⁵⁰ Ibid.

3.4. Saami health issues

Saami of Norway, Sweden, and Finland do not have to deal with serious health concerns like other indigenous peoples throughout the world, because Nordic countries are wealthy and well equipped to tackle health issues.²⁵¹ Despite this, there are still problems that indigenous peoples of the North, including the Saami, face. They tend to have higher risks of chronic conditions and diseases compared to the rest of the population.²⁵²

Years of discrimination is one of the main reasons of the poorer physical and mental health of the Saami.²⁵³ Although the policies of assimilation implemented by the states might be a thing of the past, the negative consequences of assimilation are still influencing the health status of indigenous peoples, and this tendency might still continue in the future.²⁵⁴ As the authors of the “State of the World Indigenous Peoples” report notice,²⁵⁵

“It takes time to fundamentally change general frameworks in politics, legislation and ordinances, as well as myths and attitudes, to appropriately redress and reclaim Sami culture, language, traditions and social needs; including equitable access to health care, education and employment and other determinants of health”.

Even nowadays, the Saami experience discrimination and racism based on their background.²⁵⁶ Russian Saami face racist stereotyping and even assaults. Indigenous peoples in Russia are stereotyped as “child-like, incapable of real work, entirely addicted to alcohol and benefiting from state”.²⁵⁷ Such discrimination is closely associated with bad physical and moral health and this fact is proven by numerous studies.²⁵⁸ Lack of

²⁵¹ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2.

²⁵² Bjerregaard, P.M.D., Young, T.K. 2008. *Health transitions in arctic populations*. Toronto: University of Toronto Press. Pp. 3-17.

²⁵³ UN. 2016. State of the World Indigenous Peoples: Indigenous Peoples' Access to Health Services.

²⁵⁴ Ibid, p. 64.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 31.

²⁵⁸ Mohammed, S.A., Williams, D.R. 2009. “Discrimination and racial disparities in health: evidence and needed research”, *Journal of Behavioural Medicine*, 32/1, 20-47.

knowledge about the Saami identity and culture is also closely associated with health problems of the Saami.²⁵⁹

Life expectancy and mortality rates of the Saami from Norway, Sweden and Finland are quite similar to those of the majority of the population.²⁶⁰ The situation with the Saami in Russia is much worse: while there is no data available on the Saami in particular, adult mortality rates for indigenous peoples of Russia is extremely high as only 38 % of indigenous men and 62 % of indigenous women reach the age of 60 in comparison to 54 % for men and 83 % for women at national level.²⁶¹ Moreover, 36 % of northern indigenous people in Russia die prematurely from unnatural causes, which is more than double the national average of 15 %.²⁶² Alcohol use and smoking are very common among the Saami of Russia and influence their health situation in a negative way.²⁶³ In one survey, 59 % of 15 to 18 years old Saami identified as regular or episodic smokers.²⁶⁴

The suicide rate among the Saami in the four states is also higher in comparison to the majority of the population.²⁶⁵ In Russia, the suicide rate among the indigenous peoples of the North is more than double that of the national average.²⁶⁶

Despite the existence of the developed health care systems in Norway, Sweden, and Finland, the Saami cannot always benefit from them. Northern-Finnish Saami, for example, have limited access to health care because of the language barrier and because the costs of medicine and travel expenditures are not covered by the Social Insurance Institution of Finland.²⁶⁷ Health care for the Russian Saami is free, including a compulsory annual check-up. However, the Saami of Russia living in remote settlements and especially in the reindeer herding camps cannot easily access it.²⁶⁸

²⁵⁹ Sjolander, P. 2011. "What is known about the health and living conditions of the indigenous people of northern Scandinavia, the Sami", *Global Health Action*, 4. P. 9.

²⁶⁰ UN. 2016. State of the World Indigenous Peoples: Indigenous Peoples' Access to Health Services.

²⁶¹ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 32.

²⁶² Ibid.

²⁶³ UN. 2016. State of the World Indigenous Peoples: Indigenous Peoples' Access to Health Services. P. 66.

²⁶⁴ Ibid.

²⁶⁵ Haldorsen, T., Kvernmo, S., Silviken, A. 2006. "Suicide among Indigenous Sami in Arctic Norway, 1970-1998", *European Journal of Epidemiology*, 21/9, 707-713.

²⁶⁶ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 32.

²⁶⁷ UN. 2016. State of the World Indigenous Peoples: Indigenous Peoples' Access to Health Services. P. 67.

²⁶⁸ Ibid, p. 68.

Among the four states where the Saami live, Norway is the only state that has a specific Saami focus in its public health system.²⁶⁹ For example, in 2002 the Saami centre for Mental Health was established that provides services in the Saami language. However, this service is not available in all the Saami settlements and some Saami face difficulties when trying to access mental health care because of the language barrier.²⁷⁰

The problem with accessing health care institutions using the Saami language is a common one in the Nordic countries. Saami patients often do not receive health services in their own language, making them more reluctant to seek medical help.²⁷¹

In general, one can conclude that the Saami health situation is better in comparison to other indigenous peoples of the world. However, they still experience problems accessing health care in remote areas and in their native language. The Saami also face many psychological problems arising from existing discrimination, leading to higher alcohol consumption, depression, and higher suicide rates.

3.5. Loss of language and culture

Years of assimilation policy and discrimination in the four states influenced the Saami culture in a negative way. In order to avoid further discrimination, many Saami rejected their Saami identity and culture, stopped speaking their language and did not pass it to their children. World War II also affected the Saami culture and language, as children were not getting any school education for several years.²⁷²

Saami language is one of the most important components of the indigenous culture and central to Saami identity, but less than a half of all Saami speak it nowadays as their mother tongue. There are nine Saami languages and all of them are endangered; some of them are on the verge of extinction. In order to overcome the consequences of the years of oppression, the Nordic states are trying to facilitate and promote the use of the Saami languages. However, the funds for language revitalisation programmes are often too limited, which leads to a lack of teachers and studying materials, especially for the less common Saami dialects.²⁷³

²⁶⁹ UN. 2016. State of the World Indigenous Peoples: Indigenous Peoples' Access to Health Services. P. 70.

²⁷⁰ Ibid.

²⁷¹ Ibid, p. 76.

²⁷² Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 63.

²⁷³ Ibid, para 64.

Sometimes Saami themselves are reluctant to the efforts of the states to introduce education in the Saami language.²⁷⁴ This is due to the fact that, for example, in Norway the Saami faced discrimination if they did not speak fluent Norwegian and they did not want their children to suffer the same fate, assuming that if the language of instruction in schools were Saami, the children would not master the Norwegian language and would be discriminated too.²⁷⁵

In Russia, the situation with the Saami languages is especially difficult. Being afraid of discrimination, the Saami living in the Soviet Union avoided speaking their language. Their children attended boarding schools and were sometimes punished by the school teachers for speaking to each other.²⁷⁶ As a result, the number of Kola Saami who named Saami as their native language dropped from 70 % in 1959 to only 44 % in 1989.²⁷⁷ Nowadays this number is even less, despite the efforts of the state to revitalise the Saami languages and the financial support from the Saami Council.²⁷⁸ Unlike in the Nordic countries, it is impossible for the Saami children in Russia to get even a primary education with the Saami as a language of instruction, partly due to the very small number of the Saami living in Russia. In one school, Saami language is taught as an optional subject once a week but these lessons are not enough for mastering the language.²⁷⁹

Education is one of the ways for the Saami to maintain their culture, knowledge, and language. In the Nordic countries, Saami students may study in the Saami language within the designated Saami areas defined by law.²⁸⁰ However, half of the Saami people live outside of the Saami areas and therefore have difficulties accessing education in the Saami language.²⁸¹ Other difficulties include the lack of Saami teachers, lack of teaching materials, and insufficient financial resources.

Increasing public awareness about the Saami and their culture is important for reviving Saami language.²⁸² However, according to reports

²⁷⁴ Semb, A.J. 2001. "How Norms Affect Policy – The Case of Sami Policy in Norway", *International Journal on Minority and Group Rights*, 8, 177-222.

²⁷⁵ Ibid.

²⁷⁶ Allemann, L. 2013. The Sami of the Kola Peninsula. About the life of an ethnic minority in the Soviet Union. Senter for samiske studier, Skriftserie nr. 19.

²⁷⁷ Shabaev, Iu. 2009. "Ethnic Conflicts in the European North of Russia", *Anthropology & Archeology of Eurasia*, 48/3, 31-75.

²⁷⁸ Ibid.

²⁷⁹ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA.

²⁸⁰ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 67.

²⁸¹ Ibid.

²⁸² Ibid, para 71.

received by the Special Rapporteur, the information about the Saami culture is not always adequately reflected in the primary school textbooks and sometimes stereotypes are used to describe the Saami culture.²⁸³

Another problem for the Saami is limited possibilities to influence educational issues. In order to address the needs of the Saami children and to give them a profound knowledge of their culture, Saami conceptions of nature, time, and place should be taken into consideration in school. In reality, the Saami right to develop an educational system that is appropriate for them is sometimes violated. Saami curriculum is made on the basis of the national curriculums that do not pay adequate attention to the traditional Saami knowledge and culture. Saami parliaments have a power to suggest study plans and educational programmes, but when final decisions are taken, their opinion might be dismissed, as has happened several times in Norway.²⁸⁴

The Saami culture can only be maintained if the material basis for Saami culture is safeguarded, including the Saami right to use their own lands and resources.²⁸⁵ When the Saami are deprived of this right, which is sometimes the case in the four states, they are also deprived of the right to their culture. The same is true for the traditional Saami livelihood such as reindeer herding, which continues to be an integral part of the Saami culture, and if for some reason they are unable to maintain their traditional livelihood it will have an adverse impact on their culture.

Nowadays growing up as a Saami person is a challenge in many ways. The Saami might feel the pressure to preserve traditional culture and knowledge, maintain the language and pass it to the next generations, keep the traditions and values while at the same time they need to adapt to the changing world around them. On the one side, they have traditional Saami culture and on the other the mainstream society and as a result many Saami people suffer from so-called “ethno stress” because they are unsure where they belong.²⁸⁶ The problem with self-identification is especially prominent for those Saami who do not speak the Saami language and/or do not live in the traditional Saami areas as for them it is more difficult to feel connected to the Saami culture.

²⁸³ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2.

²⁸⁴ Henriksen J.B (red.). 2009. “Sami Self-Determination. Autonomy and Self-government: Education, Research and Culture”, *Gáldu Čála – Journal of Indigenous Peoples Rights*, 2. P. 24.

²⁸⁵ Ibid, p. 34.

²⁸⁶ Council of Europe. 2015. The Sami: the People, their Culture and Languages. P. 13. <<https://edoc.coe.int/en/national-minorities/6684-the-sami-the-people-their-culture-and-languages.html>> (25.02.2018).

Maintaining the traditional culture in a globalised world is a challenge for all indigenous peoples, including the Saami, however it is crucial for their survival as a people.

4. The Saami in Norway, Sweden, Finland, and Russia

The legal basis for a national policy concerning the Saami in the four states is two-fold: international and national law.²⁸⁷ The Saami rights are protected by various international instruments, such as the ICCPR, the ILO Convention No. 169, the UNDRIP, as well as others. However, the implementation of the protection mechanisms is a responsibility of states with indigenous population.

The protection of the Saami rights in Norway, Sweden, Finland, and Russia is exercised in different ways. It depends on the international obligations that each of the states has and on the domestic laws that reflect the commitment of the states to grant rights beyond ordinary civil rights to the Saami. This chapter will focus on the protection of the Saami rights in the four states.

4.1. The Saami in Norway

4.1.1. The Saami and the state: brief history

The Norwegian state has a long history of a relationship with the Saami living on its territory, from giving only a limited interest to them to the policies of assimilation and finally to the recognition and protection of their rights.

Up until the middle of the 19th century, the general attitude of the authorities to the Saami was neglect, except in issues concerning religion and tax.²⁸⁸ The Norwegian government also did not claim an ownership over the Saami traditional land.

The attitude towards the Saami began to change around 1850 due to the nation-building processes within Norway and because of the international environment.²⁸⁹ In 1850, the border between Norway and Finland (governed by Russia at the time) was closed and the Norwegian Saami could no longer use the Finnish land areas for their seasonal

²⁸⁷ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP.

²⁸⁸ Eide, A. 2001. "Legal and Normative Bases for Saami Claims to Land in the Nordic", *International Journal on Minority and Group Rights*, 8, 127-149.

²⁸⁹ Ibid.

reindeer herding. As a consequence, the first discussion on the Saami issues was held in the Norwegian parliament in 1854.²⁹⁰ At that time, the policies of Norway were affected by the growing fear of Russia and Russian-controlled Finland. The Norwegian authorities were afraid that, in the event of a conflict the Saami might become a “fifth column”.²⁹¹

Internal policies of Norway were becoming more nationalistic and were also influenced by theories of social-Darwinism: the Saami were perceived as inferior people with an outdated way of life.²⁹² It was assumed that it would be better for them, and for society as a whole, if they abandoned their traditions and assimilated into the mainstream society. Because of these and other reasons, Norway launched its policy of forced assimilation of the Saami that lasted for almost a century.

This policy, also known as “Norwegianisation”, was especially evident in the school sector. According to the laws that passed in the 1880s, the Saami language was banned from usage at schools and all instructions were to be conducted in the Norwegian language.²⁹³ Since the beginning of the 20th century the Saami language was not used in the teachers training colleges either.²⁹⁴ The purpose of the school education was to assimilate the Saami children into the dominant Norwegian culture.

The next step in the discriminating policies towards the Saami was a law that the Norwegian Parliament passed in 1863. It stated that Norway owned non-registered land (land that is not in the private ownership) in Finnmark, the northernmost county of Norway, where the majority of the Saami live. It was assumed that the ownership was absolute and the usage of this land by the Saami or other people was at the grace of the state.²⁹⁵ Norway never explained the legal foundations for the state to obtain ownership over these lands. Most likely, Norway followed the logic of John Locke: the Saami were nomadic or semi-nomadic people, they did not settle on the land and did not cultivate it.²⁹⁶ Therefore, the Saami ownership of the land could not emerge.

A law that passed in 1902 aimed to prevent the Saami from buying or leasing land. The law stated “sales of land are to be solely to Norwegian citizens, and with the particular purpose of promoting the settlement of

²⁹⁰ Eide, A. 2001. “Legal and Normative Bases for Saami Claims to Land in the Nordic”, *International Journal on Minority and Group Rights*, 8, 127-149.

²⁹¹ Ibid, p. 132.

²⁹² OSCE. 2016. Statement by Norway on the Occasion of the Sami People’s Day. <<http://www.osce.org/pc/222026?download=true>> (25.02.2018).

²⁹³ Semb, A.J. 2001. “How Norms Affect Policy – The Case of Sami Policy in Norway”, *International Journal on Minority and Group Rights*, 8, 177-222.

²⁹⁴ Ibid.

²⁹⁵ Eide, A. 2001. “Legal and Normative Bases for Saami Claims to Land in the Nordic”, *International Journal on Minority and Group Rights*, 8, P. 133.

²⁹⁶ Ibid.

a population who can speak, read and write the Norwegian language and who use it in their daily communications.”²⁹⁷ The law remained in force until the 1940s and made it almost impossible for the Saami to purchase or lease property and land unless they were fully assimilated into the Norwegian culture.

The assimilation policy contributed to the negative attitudes towards the Saami and the social stigma around them.²⁹⁸ Being a Saami meant being discriminated against, not only on the institutional level, but also locally in everyday life. Norwegianisation led to the decline in the Saami population because many Saami came to reject their Saami identity in order to get more opportunities in life for them and their children. They lost command of their language and tried to dissolve into the mainstream Norwegian culture. The assimilation policy had a long-lasting negative effect on the Saami and their self-identification. According to the census conducted in 1970, there were less people with the Saami self-identification than people who stated Saami as their first language.²⁹⁹

In the 19th century there was no political disagreement in Norway on the policy of assimilation and no political party objected to it.³⁰⁰ Saami were not politically organised and there was no unity among them. Nevertheless, some individual Saami protested against this policy since the beginning of the 20th century. Only after World War II did the Saami of Norway began to organise themselves into the Saami Movement that sought to encourage the creation of the Saami identity and self-understanding as distinct people. The Movement played an important role in changing the public opinion in Norway concerning the inferiority of the Saami and their culture, allowing some Saami to accept their identity and to become proud of it.³⁰¹

However, in the 1950s the Saami were still not recognised on the political level as an indigenous people. At that time, Norway considered whether or not the Saami people were covered by the ILO Convention No. 107 (1957), but came to the negative conclusion as the Saami were well integrated into the society.³⁰² It was not until the end of the 1970s that the Norwegian state started to change its policies towards the Saami.

²⁹⁷ Semb, A.J. 2001. “How Norms Affect Policy – The Case of Sami Policy in Norway”, *International Journal on Minority and Group Rights*, 8. P. 185.

²⁹⁸ Eide, A. 2001. “Legal and Normative Bases for Saami Claims to Land in the Nordic”, *International Journal on Minority and Group Rights*, 8, 127-149.

²⁹⁹ Semb, A.J. 2001. “How Norms Affect Policy – The Case of Sami Policy in Norway”, *International Journal on Minority and Group Rights*, 8. P. 188.

³⁰⁰ Ibid, p. 185.

³⁰¹ Ibid, p. 187.

³⁰² Minde, H. 2001. “Sami Land Rights In Norway: A Test Case for Indigenous Peoples”, *International Journal on Minority and Group Rights*, 8. P. 113.

These changes occurred as a result of international and domestic developments. On the international level the role of nation-state was declining while international organisations were gaining more power in international affairs and the significance of international law was increasing. Indigenous peoples all over the world were mobilising themselves and they made their voices heard in the UN and other international organisations. On the domestic level, the major event that affected the policy towards the Saami was Alta river conflict. In 1978, the Norwegian authorities approved a hydroelectric project which required the building of a dam across the Alta River in the Finnmark County, a traditional Saami area. The decision was controversial as the construction of a 100-meter high dam would significantly influence the water system of the Finnmark area and interrupt the reindeer grazing.³⁰³ It led to the protests from the Saami and non-Saami population of the affected area, but also from environmentalists who were concerned about the effects the construction would have on the ecosystem.

The Saami argued that the dam would destroy valuable reindeer herding areas and violate their historical right to land and water. They also argued that the Norwegian Parliament had neither the moral nor legal right to make the decision that could have a devastating influence on the Saami lifestyle.³⁰⁴ For the first time, the Saami claimed that they had pre-existing rights to the land and water on the territory where they traditionally lived.³⁰⁵

In 1979, a group of Saami set up a traditional Saami tent in front of the Norwegian Parliament (*Storting*) as a protest against the construction of the dam. Later, a hunger strike was initiated in front of the *Storting* which ended only after the government agreed to halt the construction work in order to evaluate the damaging effects of the dam.³⁰⁶ Some activists also chained themselves to rocks near the construction area. As a result the Norwegian authorities reduced the scope of the project but did not abandon the idea of the project. The civil disobedience actions continued until 1981 when the decision to construct the dam was executed.

The protests attracted broad public attention to the Saami both in Norway and abroad, and the conflict became a turning point in the political attitude towards indigenous peoples in Norway. Before the Alta controversy the idea that the Saami were an indigenous people had been

³⁰³ Semb, A.J. 2001. "How Norms Affect Policy – The Case of Sami Policy in Norway", *International Journal on Minority and Group Rights*, 8, 177-222.

³⁰⁴ Ibid, p. 189.

³⁰⁵ Eide, A. 2001. "Legal and Normative Bases for Saami Claims to Land in the Nordic", *International Journal on Minority and Group Rights*, 8, P. 134.

³⁰⁶ Semb, A.J. 2001. "How Norms Affect Policy – The Case of Sami Policy in Norway", *International Journal on Minority and Group Rights*, 8, P. 189.

foreign to the authorities and to the general public in Norway.³⁰⁷ However, already in 1978 Secretary of State, Thorvald Stoltenberg, in his speech at the UN's conference against racism "linked the concept of indigenous population directly to the Sami of Norway".³⁰⁸ The speech encouraged the claims that Norway should sign the ILO Convention No. 107.

Under the influence of the international and domestic developments, the government realised that there is a need for changes in the relationship between the Saami and the state. In 1980, the Saami Rights Commission, *Samerettsutvalget*, was appointed by the government with the task to clarify the legal status of the Saami in Norway.³⁰⁹ The Commission presented its first report in 1984, in which it condemned past assimilation practises and raised doubts about the state ownership of the traditional Saami lands.³¹⁰ However, the Saami land rights were not directly addressed. It was recommended in the report to create material and political conditions for the Saami to preserve and develop their culture, in accordance with Article 27 of the ICCPR.

Following the recommendations of the Commission, the Saami Act was adopted by the Norwegian Parliament in 1987, establishing a Saami parliament. In 1988, the amendments to the Norwegian Constitution were made, aiming to legally protect the Saami culture. Article 110a states that "It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life".³¹¹ In 1990, Norway became the first state to ratify the ILO Convention No. 169 and it still remains the only state with a Saami population that did so. By ratifying it, Norway acknowledged the Saami as an indigenous people of Norway "in accordance with the statement of coverage of the Convention".³¹² A few years later, the Norwegian Parliament in White Paper No. 52 (1992-1993) also stated that "the Norwegian State is founded on the territories of two people – the Norwegians and the Saami".³¹³ This important statement was repeated by King Harald V during the opening session of the Saami Parliament in 1997.

³⁰⁷ Minde, H. 2001. "Sami Land Rights In Norway: A Test Case for Indigenous Peoples", *International Journal on Minority and Group Rights*, 8. P. 113.

³⁰⁸ Ibid, p. 114.

³⁰⁹ Semb, A.J. 2001. "How Norms Affect Policy – The Case of Sami Policy in Norway", *International Journal on Minority and Group Rights*, 8. P. 190.

³¹⁰ Eide, A. 2001. "Legal and Normative Bases for Saami Claims to Land in the Nordic", *International Journal on Minority and Group Rights*, 8. P. 135.

³¹¹ Ibid.

³¹² ILO. 2009. *Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*.

³¹³ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP. P. 9.

In 1997, the Saami Rights Commission published the second report with a special focus on the water and land rights of the Saami, which were not addressed in the previous report. The report proposed several schemes of the land management in the Finnmark area and in 2005 the Finnmark Act was adopted based on one of the schemes. The same year, the Government and the Saami Parliament entered an agreement on consultation procedures. The next step in the protection of the Saami rights was taken in 2007, when at the UN, Norway voted in favour of the Declaration on the Rights of Indigenous Peoples. Finally, in 2017 Norway signed the Nordic Saami Convention, which, however, has still not been ratified by the Norwegian Parliament.

From the point of view of international law, Norway has more obligations than any other Nordic country when it comes to the protection of the indigenous peoples' rights. In addition to being the only Nordic state that ratified the ILO Convention No. 169 and voted in favour of the UNDRIP, Norway has also incorporated the ICCPR and the ICESCR into its domestic law.

4.1.2. Protection of the Saami rights in Norway nowadays

Nowadays, Norway is home for 40,000-60,000 Saami, which is more than any other state with a Saami population. They are spread across the country, which makes it difficult to define geographically "traditional Saami areas". However, in Norway there is something called an administrative area for Saami language where Saami and Norwegian languages have equal legal status.³¹⁴ This area includes five municipalities in Finnmark County and one municipality in Troms and Nordland Counties.

Norway does not officially define the Saami but the Saami Act of 1987 established criteria for participation in the elections to the Saami Parliament. In order to be eligible to participate in the elections, one has to, first of all, consider himself or herself as a Saami and, secondly, have Saami as their native language or have parents, grandparents or great-grandparents with Saami as their native language.³¹⁵ Therefore, both objective and subjective criteria are used in the Saami Act for Saami identification, which is in line with the Cobo's definition of indigenous peoples.

Despite the fact that the Saami Act was adopted in 1987, it took some time for the law to be implemented. The Saami Parliament was established in 1989. The Parliament's mandate, according to the section

³¹⁴ Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169.

³¹⁵ ILO. 2009. *Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*.

2-1 of the Saami Act, includes all issues that the Parliament considers to be important for the Saami of Norway.³¹⁶ The Parliament can raise questions before public and private institutions and issue statements on the matters of importance.

The Saami Parliament in Norway is a recognised representative political institution of the Saami in Norway and its members are elected through democratic elections. Elections are held every fourth year and 39 representatives are elected from 7 constituencies.³¹⁷ Candidates for the Saami Parliament elections represent Norwegian political parties, Saami organisations and local lists.³¹⁸ The fact that Saami candidates are elected under the name of Norwegian parties is a unique feature of the Norwegian Saami Parliament. This motivates Norwegian political parties to have the Saami issues on their agenda.³¹⁹

The position of the Saami Parliament was strengthened in 2005 when, following Articles 6 and 7 (on indigenous participation and consultation) of the ILO Convention No. 169, the Norwegian Government and the Saami Parliament agreed on procedures for consultations. As the Special Rapporteur on the rights of indigenous peoples James Anaya mentioned in his report, this consultation mechanism represents a good practise of how a State can implement its duty to consult with indigenous peoples and it sets an example for the other Nordic countries as well as for countries in other regions of the world.³²⁰

In its preamble the agreement recognises that the Saami of Norway, as an indigenous people, have the right to be consulted in matters that may directly affect Saami interests.³²¹ The obligation to consult the Saami Parliament includes “all material and immaterial forms of Sami culture, including music, theatre, literature, art, media, language, religion, cultural heritage, immaterial property rights and traditional knowledge, place names, health and social welfare, day care facilities for children, education, research, land ownership rights and rights to use lands,

³¹⁶ Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169.

³¹⁷ Northern Norway. “The Saami Parliament”.

<<http://www.nordnorge.com/en/sapmi/?News=303>> (25.02.2018).

³¹⁸ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP.

³¹⁹ Ibid.

³²⁰ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 17.

³²¹ Government.no. “Procedures for Consultations between State Authorities and the Sami Parliament [Norway]”. <<https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtspalte/procedures-for-consultations-between-sta/id450743/>> (25.02.2018).

matters concerning land administration and competing land utilization, business development, reindeer husbandry, fisheries, agriculture, mineral exploration and extraction activities, wind power, hydroelectric power, sustainable development, preservation of cultural heritage, biodiversity and nature conservation.”³²² The agreement also stipulates that it is a responsibility of state authorities to inform the Saami Parliament on all matters that might affect the Saami.³²³

In its commentary on the agreement, the Governments states that for fulfilling the State’s obligations under the ILO Convention No. 169 it is essential that the consultations shall take place with an objective of achieving agreement and the state shall make all necessary efforts for it.³²⁴ However, this was not always realised in practise. For example, representatives of the Saami Parliament expressed concerns that sometimes the Norwegian government entered into consultations having already decided on outcomes.³²⁵

Despite the existence of the consultation procedures, the Saami Parliament in Norway remains, rather, an advisory body with limited power to influence the decision-making process or to act independently.³²⁶ Therefore, the right of the Saami of Norway to self-governance, expressed in Article 4 of the UNDRIP, is not fully implemented.

The Finnmark Act, submitted to the Norwegian Parliament in 2003, was supposed to solve the issue of the Saami land rights. However, it was strongly criticised by the Saami Parliament and other Saami and non-Saami organisations for not adequately recognising the rights of ownership over the lands which the Saami traditionally occupied.³²⁷ The ILO Committee of Experts concluded that the proposed Finnmark Act did not comply with Norway’s obligations under the ILO Convention No. 169 because the Saami were not consulted.³²⁸ The UN Committee on the Elimination of Racial Discrimination has also stated its concern

³²² Government.no. “Procedures for Consultations between State Authorities and the Sami Parliament [Norway]”. Section 2.

<<https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtpalte/procedures-for-consultations-between-sta/id450743/>> (25.02.2018).

³²³ Ibid, section 3.

³²⁴ Henriksen, J.B. 2008. *Key Principles in Implementing ILO Convention No. 169*. Programme to Promote ILO Convention No. 169. P. 26.

³²⁵ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 39 and 41.

³²⁶ Ibid.

³²⁷ ILO. 2009. *Indigenous & Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169*.

³²⁸ Ibid, p. 181.

on the proposed Act.³²⁹ In order to address the critique, the Norwegian Parliament entered into negotiations with the Saami Parliament and the County Council of Finnmark and as a result the revised version of the Finnmark Act was adopted in 2005, based on a compromise between all concerned parties.

The revised version of the Finnmark Act was drafted in conformity with the ILO Convention No. 169, in particular Article 14 that says that states shall guarantee effective protection of the indigenous peoples' rights of ownership and possession of the lands they traditionally occupy.

The purpose of the Act, as stated in section 1, is to facilitate management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner. The Act recognises that through prolonged use of land and water areas, the Saami have collectively and individually acquired rights to land in Finnmark.³³⁰

In order for the Saami to exercise this right by managing their own land, the Act transfers 95 % of Finnmark County (about 46,000 km²) to a new agency called the Finnmark Estate. Previously this land was owned by the Norwegian State and managed by a state-owned enterprise.³³¹ The Finnmark Estate will own the land in the same way as a private landowner and therefore it can decide how the land is to be utilised, although with some limitations.³³² The Finnmark Estate shall administer the land and natural resources. Section 7 of the Act determines that the Estate shall be governed by a board of six persons: three of them elected by the Finnmark County Council, and the other three by the Saami Parliament. The members of the board should be residents in Finnmark. Such scheme gives at least half of the seats in the board to the Saami representatives but also gives a chance to non-Saami residents of Finnmark to influence the decision-making.

The Act gives all residents of the Finnmark County a right to exploit natural resources in the area, including hunting, fishing and cloudberry

³²⁹ UN, CERD. 2005. Reports Submitted by States Parties under Article 9 of the Convention. Eighteenth periodic reports of States parties due in 2005. Addendum Norway. CERD/C/497/Add.1. Para 368.

³³⁰ Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act). Section 5. <<http://www.wipo.int/wipolex/en/details.jsp?id=11129>> (25.02.2018).

³³¹ The Finnmark Act – a Guide. Issued by the Ministry of Justice and the Police and the Ministry of Local Government and Regional Development. 2005. <<http://www.fefo.no/en/Documents/the%20finnmark%20act%20-%20a%20guide.pdf>> (25.02.2018).

³³² Ibid.

picking.³³³ People residing outside of the area also have a right to hunt small game, to fish with a rod and pick cloudberries for their own domestic use.³³⁴ For the purpose of the recognition of the existing land rights in Finnmark a special commission will be established.³³⁵ After investigating the area, the Commission should issue a report indicating who, in the view of the Commission, owns the land and whether there are others who have rights of use there.³³⁶ In cases when there is still disagreement concerning rights that arise after the Finnmark Commission has investigated a field, the parties may bring the case before the Uncultivated Land Tribunal for Finnmark.³³⁷ The Act does not include provisions concerning marine resources. However, the Government of Norway, realising the importance of fishing for the Saami culture, formed the Coastal Fishing Committee in order to clarify the rights of the Saami to fishing. The Committee recommended that “it will be established as a principle that people living along the fjords and coast of Finnmark have the right to fish in the ocean off Finnmark based on historical use and the rules of international law regarding indigenous peoples and minorities.”³³⁸

The Finnmark Act is an important instrument that not only strengthens the Norwegian Saami rights to self-determination and land rights but also sets an example to other Nordic states. However, the Act received criticism in the report of the Special Rapporteur on the rights of indigenous peoples Victoria Tauli Corpuz because, according to the investigations concluded to date, there are “no grounds for recognizing Sami individual or collective ownership or usage rights beyond usage rights already granted to all inhabitants in Finnmark.”³³⁹ The dual role of the Finnmark Estate, as both a resource management agency and commercial entity, has also been cause for concern since it might

³³³ Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act). Section 23. <<http://www.wipo.int/wipolex/en/details.jsp?id=11129>> (25.02.2018).

³³⁴ Ibid, section 25.

³³⁵ Ibid, sections 29-30.

³³⁶ Ibid, section 33.

³³⁷ The Finnmark Act – a Guide. Issued by the Ministry of Justice and the Police and the Ministry of Local Government and Regional Development. 2005.

<<http://www.fefo.no/en/Documents/the%20finnmark%20act%20-%20a%20guide.pdf>> (25.02.2018).

³³⁸ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 54.

³³⁹ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 23.

undermine the possibility of the Estate to genuinely advance Saami land and resource rights.³⁴⁰

Another important instrument of the protection of the Saami rights in Norway is the Reindeer Husbandry Act of 1978 (amended in 2007). It recognises that the Saami have an exclusive right to reindeer herding. The 2007 version of the Act re-introduces the traditional Saami reindeer husbandry *siida* system that was functional until the 1970s. This collective management tool brings Norwegian law “into closer conformity with traditional Sami land management”.³⁴¹ The *siida* is a traditional form of organisation of the Saami; it is a local community that historically governed the use and allocation of lands, waters and natural resources and still plays an important role in the Saami society. The form of governance was a “stateless local democracy with a leader” that presided at meetings, allocated resources and mediated the conflicts.³⁴²

The reindeer husbandry in Norway is, however, potentially threatened by oil and gas development in the far north. Despite the fact that the Norway Mineral Act of 2009 requires that Saami cultural life be safeguarded, the Saami Parliament is concerned that the Act’s recognition of the Saami rights is very limited.³⁴³ The Saami Parliament, instead of having a full right to be consulted, only has a right to comment on the applications for licenses in Finnmark.

Protection of the Saami rights to maintain their language and culture, guaranteed by the ILO Convention No. 169 and the UNDRIP, is not less important than the protection of the Saami land rights. In Norway, the right of the Saami to preserve and develop their languages is recognised in the Constitution and in other laws, including the Saami Act of 1987. The 1999 Education Act strengthens the rights of the Saami children to study and be taught in the Saami language. The Act stipulates that all pupils in primary and lower secondary school in the Saami areas are entitled to be taught in the Saami language.³⁴⁴ Moreover, outside of the Saami traditional districts any group of ten pupils, regardless of their ethnic background have the right to study and be taught in the Saami

³⁴⁰ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para. 25.

³⁴¹ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 19.

³⁴² ILO. 2009. Indigenous & Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169.

³⁴³ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 28.

³⁴⁴ ILO. 2009. Indigenous & Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169. P. 142.

language if they request so.³⁴⁵ In the Saami areas, teaching is based on the special needs of the Saami pupils and aims to build the connection to their own culture and identity. Norway has launched several language revitalisation programmes in order to overcome the effects of the harsh assimilation policies.³⁴⁶ The Government has also adopted an Action Plan for Saami Languages which has reportedly been a useful tool in strengthening and developing the Saami languages.³⁴⁷ Despite the existing problems, such as limited funds, and a lack of teachers and teaching materials, Norway has put considerable efforts into developing comprehensive Saami educational policy.

Norway has gone a long way from the policies of assimilation to the protection of the Saami rights as indigenous peoples and creating the conditions for development of their culture and language. The Saami in Norway enjoy high living standards; they have access to education and health system and they enjoy special protection. The rights of the Saami in Norway are relatively well protected by international law and its implementation in Norway, as well as by the domestic laws. However, in practice, the Saami sometimes still struggle to fully enjoy these rights. The existence of the democratically elected Saami Parliament is a way for the Saami to practice their right of self-determination and self-governance, but the limited decision-making power of the Parliament in the matters that concern the Saami continues to restrict these rights. The Finnmark act gives the Saami the opportunities to enjoy their land and resource rights but the Act is not always adequately implemented; besides, the rights of the Saami to lands and resources outside Finnmark County are not recognised. Education in the Saami language for pupils in the Saami area is guaranteed, but in practice it is not always implemented due to the lack of funding and/or teachers.

4.2. The Saami in Sweden

There are more than 20,000 Saami in Sweden; most of them live in the northern areas but some of the Saami are spread all over the country. Only ten percent of the Swedish Saami continue to earn a living by

³⁴⁵ ILO. 2009. Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169. P. 142.

³⁴⁶ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 64.

³⁴⁷ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 33.

reindeer herding, and most of them combine this business with trade, tourism, fishing or crafts.³⁴⁸

The attitude of the Swedish Crown towards the Saami changed over time following almost the same path as in Norway: from ignoring the Saami as a people to discrimination and attempts to segregate or assimilate them and finally the recognition of their rights as indigenous people. The first contact of the state and the Saami was established through tax collectors already during the 14th and 15th centuries.³⁴⁹ The Saami paid taxes for the land (so-called taxed lands) they used and could sell or inherit it, which basically made them the owners of this land. In the 17th century the State began an active colonisation of the Saami land by offering farmers from the south to settle in the north in exchange for a tax exemption. Gradually, during the 18th and 19th centuries, the settlers forced the Saami out of their lands.³⁵⁰ In the middle of the 18th century the State granted the non-Saami farmers inheritance right. At the same time, it became more and more common for the courts to reject the Saami the inheritance right on their tax lands, despite the fact that there was no royal decree concerning this.³⁵¹ The common idea of that time was that nomadic people are culturally inferior to farmers, and therefore deserve fewer rights.

Disrespect and discrimination towards the Saami as a people continued, when in the second half of the 19th century race biology ideas became popular in Sweden. Skull measurements were conducted on a large scale among the Saami; with the authorities' permission researchers also plundered the Saami graves.³⁵² In 1941 it was declared by the Board of Agriculture that the Saami were not suited for farming for "reasons of racial biology".³⁵³

In 1886, the Swedish Parliament passed the Reindeer Grazing Act in order to reduce conflicts between the Saami and the settlers. The law abolished all previously recognised Saami land rights and declared the traditional Saami land as property of the Swedish State. The Act gave the Saami a special right to maintain reindeer herding, but also to fish, hunt and use the forest on these lands. The Act was based on the assumption

³⁴⁸ Sweden. "Sami in Sweden". <<https://sweden.se/society/sami-in-sweden/>> (25.02.2018).

³⁴⁹ Lundmark, L. 1998. *Så länge vi har marker. Samerna och staten under sexhundra år*. Stockholm: Rabén Prisma. P. 18.

³⁵⁰ Ibid, p. 60.

³⁵¹ Brodin, B., Pikkarainen, H. 2008. *Discrimination of the Sami – the rights of the Sami from a discrimination perspective*. Ombudsmannen mot etnisk diskriminering (DO). DO report no. 2008:1.

³⁵² Lundmark, L. 1998. *Så länge vi har marker. Samerna och staten under sexhundra år*. Stockholm: Rabén Prisma. P. 86.

³⁵³ The Sami – an Indigenous People in Sweden. National Sami Information Centre. 2005. P. 15. <<http://www.samer.se/2137>> (25.02.2018).

that only nomadic reindeer herders were “genuine” Saami. The Reindeer Grazing Act of 1928 further institutionalised the idea that only the reindeer-herding Saami living in Saami villages were entitled to the Saami rights, like fishing or hunting on their territories.

The policy of the segregation and discrimination of the Saami was especially evident when it came to the school education of the Saami children. In the beginning of the 20th century, a special education system was designed for the nomadic mountain Saami children and they were denied admission to the public schools.³⁵⁴ The educational level of the schools for the Saami children was not the same as for Swedish children: few subjects were taught, teaching hours were shorter, and the competence of teachers was usually lower.³⁵⁵ At the same time, the Saami children whose parents were not involved in reindeer herding (the forest Saami), and thus were not recognised by the State as the Saami, had to attend public schools with Swedish children. The State aimed at segregation of the reindeer-herding Saami and assimilation of other Saami, which continued until the end of the 1930s.

The attitude of the Swedish state towards the Saami changed gradually throughout the second half of the 20th century, as a result of the international developments and the domestic pressure. After World War II, the first organisations promoting the Saami interests appeared and started to represent the Saami in governmental committees handling Saami issues.³⁵⁶

However, a new Reindeer Herding Act that was adopted by the Parliament in 1971 created a system of rights that is almost identical to the earlier laws of 1886 and 1928, despite the fact that the new law is slightly more democratic.³⁵⁷ The Act stipulates, once again, that the right to pursue reindeer herding belongs exclusively to the Saami people, but only a member of a Saami reindeer herding village may engage in reindeer husbandry. The Act recognises the rights of the Saami to use land and water within certain geographic areas.³⁵⁸ These areas traditionally used by the Saami, and where they are legally allowed to pursue their reindeer herding activities, have not been officially demarcated up to date. About 40 % of the territory of Sweden constitute

³⁵⁴ Lundmark, L. 1998. *Så länge vi har marker. Samerna och staten under sexhundra år*. Stockholm: Rabén Prisma. P. 63.

³⁵⁵ Ibid.

³⁵⁶ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP.

³⁵⁷ Brodin, B., Pikkarainen, H. 2008. *Discrimination of the Sami – the rights of the Sami from a discrimination perspective*. Ombudsmannen mot etnisk diskriminering (DO). DO report no. 2008:1.

³⁵⁸ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2.

areas of traditional reindeer husbandry.³⁵⁹ Some of this land belongs to the state, but a considerable proportion of this land is privately owned, which leads to disputes between the private landowners and the Saami.

The further development of the relationship between the State and the Saami in Sweden was facilitated by two processes. The first one is the Alta river conflict in Norway that attracted international attention to the Saami issues. The other one is the Taxed Lapp Mountain Case that was initiated after several Saami villages in the south of Sápmi claimed ownership rights to their traditional territories. Despite the fact that the Supreme Court of Sweden in 1981 ruled in favour of the Swedish government that claimed the ownership over these lands, it also acknowledged that the Saami traditional land use (fishing, hunting, reindeer herding) can give rise to legal title, in particular in the areas further north. However, Swedish Courts place the burden of proof on Saami claimants to demonstrate land ownership. In order to prove their rights over the land they traditionally used, the Saami must document a minimum of 90 years of use of the area claimed.³⁶⁰ This is a difficult requirement to fulfil, since the Saami traditionally tried not to leave marks on the land they used.

The Alta river conflict and the Taxed Lapp Mountain Case attracted public attention to the Saami in Sweden. As a result of these developments, the Saami Rights Investigation was established in 1982. In 1989 the Investigation completed its work and one of its suggestions was to establish a popularly-elected Saami body in Sweden.³⁶¹ In 1993, the first Saami Parliament in Sweden was inaugurated. 31 members of the parliament are appointed through general elections every four years. Unlike in Norway, the candidates do not represent national Swedish parties but the Saami parties.³⁶²

The principal function of the Saami Parliament in Sweden is “monitoring issues concerning the Sami culture in Sweden”.³⁶³ The bill concerning the creation of the Saami Parliament also clearly stated that “despite the designation ‘TING’ (meaning ‘Parliament’ in Sameting), there is no question of it being a body for self-determination that shall act instead Riksdag or the municipal council, or in competition with

³⁵⁹ Bankes, N., Koivurova, T. (eds.). 2013. *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights*. Oxford: Hart Publishing. P. 208.

³⁶⁰ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 51.

³⁶¹ Samediggi. “Background: The State and the Sami Parliament”.

<<https://www.sametinget.se/9688>> (25.02.2018).

³⁶² Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP.

³⁶³ Samediggi. “Background: The State and the Sami Parliament”.

<<https://www.sametinget.se/9688>> (25.02.2018).

these bodies.”³⁶⁴ Thus, the Saami Parliament in Sweden differs from its counterparts in Norway and Finland because it is both a popularly elected body and a Government agency. This creates conflicts because the Parliament should represent the Saami and at the same time also its major opponent, the Swedish State.³⁶⁵ In its capacity as a state agency the Parliament often has to implement in life politics and decisions made by the Swedish Parliament and the Government while these decisions might be in a contradiction with the Saami interests.³⁶⁶ Such a structure of the Saami Parliament in Sweden, and the double role it has to perform, significantly limits its power.

Despite the fact that, since the establishment of the Saami Parliament in 1992, the Swedish Government has acknowledged that “the Sami Parliament constitutes a body through which the Sami people can exercise right to self-government”, it still functions as both a State agency and a popularly elected body.³⁶⁷ The main task of the Saami Parliament is to “act for a living Sami culture”.³⁶⁸ The Parliament can bring up the proposals and voice the opinion on matters of concern for the Saami and their culture. However, the ability of the Parliament to influence the decision-making is limited.³⁶⁹

Other important milestones in the relationship between the Saami of Sweden and the State occurred in the years 1998, 2000, 2007 and 2011. In 1998, the Swedish government formally apologized to the Saami people for the oppression carried out against them. In 2000, the Swedish Parliament declared Saami a national minority language that gave the Saami in certain municipalities a right to communicate with authorities using their own language. In 2007, the Government of Sweden acknowledged that indigenous people, including the Saami in Sweden, have the right to self-determination, as they constitute people within the meaning of common Article 1 of the ICCPR and the ICESCR.³⁷⁰ In 2011, the Swedish Constitution recognised the Saami as a people distinct to other minority groups in Sweden. The Saami were already recognised

³⁶⁴ Samediggi. “Background: The State and the Sami Parliament”.

<<https://www.sametinget.se/9688>> (25.02.2018).

³⁶⁵ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP.

³⁶⁶ Samediggi. “Background: The State and the Sami Parliament”.

<<https://www.sametinget.se/9688>> (25.02.2018).

³⁶⁷ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 42.

³⁶⁸ Samediggi. “Organisation”. <<https://www.sametinget.se/9690>> (25.02.2018).

³⁶⁹ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 37.

³⁷⁰ UN. 2007. Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Sweden. CCPR/C/SWE/6. Para 5.

by Sweden as an indigenous people in 1977, but the State was reluctant to implement such provisions to the Constitution. Constitutional recognition as a people, rather than a minority, had been a request of the Saami for many years.³⁷¹

Today the situation with the Saami rights in Sweden is better than in the times of discrimination, but it is still far from being ideal. One of the problems is that Sweden has still not signed the ILO Convention No. 169, mainly due to the lack of interest from the government, since no clear arguments against the ratification exist.³⁷² When the Swedish Parliament discussed the issue in 1999 the main problem with ratification concerned the land rights. It was argued that there was a need to clarify the land to which the Saami would have the rights, which was done by 2006 in a report.³⁷³ However, nothing has changed since then.

The lack of land rights indeed constitutes a problem for the Saami in Sweden. The Reindeer Husbandry Act of 1971, as it was mentioned above, recognises the rights of the Saami to pursue reindeer herding and other activities on the land they traditionally used, but these areas have not been demarcated, which creates conflicts between the private landowners and the Saami. When the conflict comes to the Courts, the Saami have to prove that they have indeed used this land for at least 90 consecutive years. The Saami do not get any financial support from the State in order to assert their land rights; many communities cannot afford it and decide to withdraw from the court cases.

Mining and development projects on traditional Saami lands is another problem for the Saami in Sweden. The Mineral Act, adopted in 1991, does not include any explicit provisions to protect Saami rights, and the existing mining policies do not appear to be sufficient to protect Saami interests and rights over lands affected by mining.³⁷⁴ The Saami Parliament has a right to be informed and to express an opinion on activities proposed in the Saami reindeer herding areas. However, the mere right of being informed cannot be seen as meeting the State's duty to consult and obtain the consent of affected Saami communities as "its scope is limited to a right to state an opinion on a proposed plan of

³⁷¹ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 21.

³⁷² Eng, J. 2017. A Discourse Analysis on the Swedish Non-Ratification of the Indigenous and Tribal Peoples Convention - A Critical Postcolonial Perspective. Lund University.

<<http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8907701&fileId=8907703>> (25.02.2018).

³⁷³ Ibid.

³⁷⁴ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 58.

operations, and does not entail a right to withhold consent to the granting of the permit”.³⁷⁵ In general, it is not more difficult for a mining company to obtain a mining permit on the Saami land than for a non-Saami territory.³⁷⁶ The Saami in Sweden have a chance to negotiate with a company and to influence the final plan of the resource exploitation, but this influence is quite limited.

Like the Saami in the other states, the Saami of Sweden also suffer from the loss of their language as a result of the state policies of assimilation. There is no law in Sweden specifically designed to protect the Saami language, but along with other minority languages it is protected under the Act on National Minorities and National Minority Languages. Under this Act, within 17 municipalities the Saami individuals have a right to deal with the State authorities in the Saami language, as well as a right for pre-school and elderly care in their language.³⁷⁷ However, in practice it is not always implemented due to the shortage of Saami-speaking staff working at state institutions.³⁷⁸ Saami children living in the traditional reindeer herding areas are entitled to get an education in the Saami language in one of the Swedish Saami schools. There are also several programmes aimed at providing an education in the Saami language outside of the traditional areas, but these programmes still only reach about 10-20 % of compulsory school-age Saami children.³⁷⁹ The Swedish Educational Decree, adopted in 2011, further reduces the “possibility for full Saami language immersion”, according to the report of Victoria Tauli-Corpuz.³⁸⁰ The decree states that school children belonging to the minorities have a right to be taught in their language, but only half of the total amount of teaching can be in the mother tongue, the rest should be in Swedish. The primary aim of the decree is integration of the national minorities and the requirements the decree poses “form an obstacle to effective Saami language teaching and prevent more Saami children from learning Saami languages”.³⁸¹ In general, schools do not contribute to the strengthening of the Saami

³⁷⁵ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 43.

³⁷⁶ Koivurova, T. et.al. 2015. “Legal Protection of Sami Traditional Livelihoods from the Adverse Impacts of Mining: A Comparison of the Level of Protection Enjoyed by Sami in Their Four Home States”, *Arctic Review on Law and Politics*, 6/1, 11-51.

³⁷⁷ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 65.

³⁷⁸ Ibid.

³⁷⁹ Ibid, para 69.

³⁸⁰ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 52.

³⁸¹ Ibid, para 52.

identity, and the Saami children are often subjected to harassment and discrimination.³⁸²

While most of the Saami in Sweden have access to quality health care, they often face discrimination, according to the reports received by the Ombudsman against Ethnic Discrimination in Sweden.³⁸³ Due to the lack of Saami-speaking staff, it is not always easy for the Saami of Sweden to receive medical care in their mother tongue. There were also reported cases of medical staff commenting in negative ways when Saami parents spoke Saami to his/her child.³⁸⁴

Nowadays the situation with the Saami rights in Sweden is not ideal. While the Saami enjoy the same rights, privileges and the level of welfare as the rest of the population in wealthy Sweden (which already puts the Saami of Sweden in a more advantageous position than indigenous peoples in other parts of the world), their specific rights are not always adequately protected. First, their land rights are not recognised. In principle, the Swedish Supreme Court has recognised that the Saami traditional land use can give rise to property rights, but in practise it is extremely difficult for the Saami to prove their land ownership.³⁸⁵ The Reindeer Grazing Act gives the Saami usufruct rights for their land but only those Saami living in the traditional Saami villages and pursuing reindeer herding are entitled to these rights, which leaves the majority of the Swedish Saami without any special rights.

Secondly, while Sweden recognises the right of the Saami to self-determination, in practice this right is limited to cultural self-determination. The Saami Parliament, the main vehicle of the Saami self-determination, acts both as an elected body representing the Saami and as a governmental agency, which puts the Parliament in position when it has to implement state policies that might be against the Saami interests. The Saami Parliament has a right to express its opinion on the matters that concern the Saami, but this does not guarantee that the Parliament can influence the decision-making process and that its opinion will be taken into consideration. The absence of the consultation agreement between Sweden and the Saami Parliament of Sweden makes it even more difficult for the Saami to exercise their right to self-determination. Thirdly, despite the fact that the Saami language is officially recognised as a minority language in Sweden and is protected by legislation, the

³⁸² Brodin, B., Pikkarainen, H. 2008. *Discrimination of the Sami – the rights of the Sami from a discrimination perspective*. Ombudsmannen mot etnisk diskriminering (DO). DO report no. 2008:1. P. 24.

³⁸³ Ibid, p. 30.

³⁸⁴ Ibid.

³⁸⁵ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 51.

Saami face difficulties when trying to access authorities, health care or education in the Saami language.

Sweden voted in favour of adopting the UNDRIP but the Declaration is non-binding and does not impose any obligations on Sweden. Sweden is yet to ratify the ILO Convention No. 169 and the Nordic Saami Convention which are both binding instruments and are able to influence the situation with the Saami rights in Sweden.

4.3. The Saami in Finland

There are no more than 10,000 Saami living in Finland today. The history of the Saami in Finland is closely connected to the history of the Saami in Sweden, since Finland used to be a part of Sweden prior to 1809, when it was incorporated into the Russian Empire as the autonomous Grand Duchy of Finland. Finland became independent in 1917.

Beginning in the 15th century, the Saami living in the north of Finland paid taxes to the Swedish Crown and had an exclusive right to use the land and water areas and passed this right to their children. Towards the end of the 17th century, Sweden started to encourage farmers to settle in the north by granting them tax exemption. This caused conflicts over the resources between the indigenous population and the settlers. Gradually, in the same manner as in Sweden, the land the Saami traditionally used was taken over by the settlers. At the end of the 19th century, Finland claimed ownership over the lands in Lapland that were not privately owned. Unlike in Sweden and Norway, no policies of forced assimilation or segregation were imposed over the Saami population of Finland in the 19th and 20th centuries.

Finland was governed by Sweden for several centuries, and thus Finnish elite was Swedish speaking. When ideas of nationalism reached Finland in the 19th century, the elite decided to create their own identity. Rather than accepting Russian or Swedish ones, they found inspiration in the Finnish peasants' culture. The educated youth created several societies devoted to Finnish language and culture and tried to spread these ideas among the elite.³⁸⁶ In the beginning of the 20th century, the academics also started to pay attention to the Saami. The first organisation dealing with Saami issues in Finland was established in 1931. Most of the members were non-Saami but their goal was to promote attention to the Saami culture.³⁸⁷ After World War II, the Saami also established their own organisations. In 1947, these organisations

³⁸⁶ Singleton, F. 1998. *A short history of Finland*. Cambridge: Cambridge University Press.

³⁸⁷ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP.

met to discuss “public measures to safeguard the future of the Saami”³⁸⁸ and the meeting resulted in the establishment of a Commission on Saami issues. The Commission proposed the establishment of the Saami Parliament, which was subsequently done in 1973. The situation in Finland is unique, since the mobilisation of the Saami was started, not by the indigenous people, but by the pro-Saami academics and bureaucrats who later played an important role in the promotion of the Saami rights.³⁸⁹

Since its establishment, the Saami Parliament was given a status of an advisory body to the Government. Its role was limited to issuing statements on the Saami affairs in Finland and to raising questions to be discussed in the *Eduskunta* (the Finnish Parliament).³⁹⁰ The old Saami Parliament was replaced by a new one in 1995, after an Act on the Saami Parliament was adopted by the *Eduskunta*. The new Parliament consists of 21 representatives elected every four years. The candidates do not represent any political parties or groups which makes the elections purely individual.³⁹¹ The task of the new Saami Parliament is to “look after the Sámi language and culture, as well as to take care of matters relating to their status as an indigenous people”.³⁹²

In 1995, the same year when the Saami Parliament in Finland was established, the *Eduskunta* also passed the Skolt Act that includes provisions on the rights of the Skolt Saami in their native area. The Act also recognises the Skolt Saami Village Council as the representative body of the Skolt Saami that should be consulted in matters that could affect the Skolt Saami rights.³⁹³ The Skolt Saami is a distinct Saami group; most of them live on the territory of Finland (500-700 persons).

The Act on the Saami Parliament has influenced the position of the Saami in Finland in several ways. Firstly, section 1 of the Act states that the Saami are indigenous people that have linguistic and cultural autonomy in the Saami homeland. The Saami homeland is defined in section 4 as “the areas of the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the reindeer owners’ association of Lapland

³⁸⁸ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP. P. 15.

³⁸⁹ Ibid, p. 16.

³⁹⁰ Kuokkanen, R. 2009. “Achievements of Indigenous Self-Determination: The Case of Sami Parliaments in Finland and Norway”, in Beier, J. (ed.). *Indigenous Diplomacies*. New York: Palgrave Macmillan US. Pp. 97-114.

³⁹¹ Josefsen, E. 2010. *The Saami and the National Parliaments: Channels for Political Influence*. Geneva/New York: IPU and UNDP.

³⁹² Act on the Saami Parliament (974/1995), chapter 2, section 5 (2).

<<https://www.finlex.fi/en/laki/kaannokset/1995/en19950974.pdf>> (25.02.2018).

³⁹³ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 55.

in Sodankylä”³⁹⁴ Thus, for the first time the Saami were recognised as an indigenous people in Finland. Secondly, the Act introduced an obligation for the authorities to negotiate with the Saami Parliament in all measure which may directly affect the status of the Saami as an indigenous people, such as the management and use of state lands, applications for licences to stake mineral mine claims or file mining patents, the development of the teaching of and in the Saami language in schools or any other matters affecting the Saami language and culture or the status of the Saami as an indigenous people.³⁹⁵ This is a strong statutory affirmation, but in practice the decision-making power of the Saami Parliament is quite limited.³⁹⁶ In the absence of the clear consultation procedures, like in Norway, the representatives of the Parliament have also reported that most of their proposals and comments to the State on the matters that concern the Saami remain unanswered.³⁹⁷

One of the problems that the Saami face in Finland is the question of who can be qualified as Saami, and therefore who is eligible to take part in the elections to the Saami Parliament. The Saami Parliament Act states that a Saami is a person who considers himself a Saami, provided:³⁹⁸

(1) That he himself or at least one of his parents or grandparents has learnt Saami as his first language;

(2) That he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or

(3) That at least one of his parents has or could have been registered as an elector for an election to the Saami Delegation or the Saami Parliament.

These criteria, which were decided on without the consent of the Saami Parliament, are problematic and they become subject of interpretations by the Supreme Administrative Court.³⁹⁹ The criteria were developed on the base of a study conducted in 1962, which aimed to

³⁹⁴ Act on the Saami Parliament (974/1995), chapter 1, section 4 (2).

<<https://www.finlex.fi/en/laki/kaannokset/1995/en19950974.pdf>> (25.02.2018).

³⁹⁵ Ibid, section 9.

³⁹⁶ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 38.

³⁹⁷ Ibid, para 40.

³⁹⁸ Act on the Saami Parliament (974/1995), chapter 1, section 3.

<<https://www.finlex.fi/en/laki/kaannokset/1995/en19950974.pdf>> (25.02.2018).

³⁹⁹ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 57.

determine who might qualify as Saami in Finland.⁴⁰⁰ The study was conducted with methodological mistakes, and as a result “numerous people who were not descendants of the area’s indigenous people were entered into the Saami register at the expense of the original inhabitants.”⁴⁰¹

This problem with the ambiguity and different interpretations of the criteria might be partly solved after Finland ratifies the Nordic Saami Convention and implements it in its legislation, which is expected to happen in autumn 2019.⁴⁰² The Convention is based on the definition of the Saami used in Norway and it extends the number of people entitled to vote in the Sami Parliaments elections to anyone “who considers herself or himself as a Sami and 1) has Sami as native language or 2) has a parent, a grandparent or a grand grandparent who has had Sami as native language, or 3) has a parent who is or was enrolled in the Sami Parliament census”.⁴⁰³

However, as Juha Joona argues, the definition of the Saami included in the Nordic Saami Convention does not take into account the Finnish historical realities and creates an injustice.⁴⁰⁴ The problem is that the Forest Saami, who has been living on the territory of Finland from the time immemorial lost the ability to speak their language because the authorities and the church tried to prevent the use of the Saami language throughout the 18th century.⁴⁰⁵ Thus, the descendants of the Forest Saami are unlikely to meet the language criteria and, therefore, exercise their right to self-determination through the participation in the Saami Parliament elections, despite the fact that they are indigenous to the areas they live. The Nordic Convention definition of the Saami does not leave them a chance to be included in the electoral register on the basis that they are descendants of people who were entered into tax registers as Saami as is the case under section 3(2) of the Saami Parliament Act.

The situation with the land rights of the Saami in Finland remains unresolved. Throughout the 19th century, the Saami of Finland lost their

⁴⁰⁰ Joona, J. 2013. “The Draft Nordic Saami Convention and the Indigenous Population in Finland”, in Bankes, N., Koivurova, T. (eds.). *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights*. Oxford: Hart Publishing. P. 246.

⁴⁰¹ Ibid, p. 247.

⁴⁰² Staalesen, A. 2017. “Historic Sámi agreement starts long way towards ratification”, *The Independent Barents Observer*. <<https://thebarentsobserver.com/en/2017/01/historic-sami-agreement-starts-long-way-towards-ratification>> (25.02.2018).

⁴⁰³ Ibid.

⁴⁰⁴ Joona, J. 2013. “The Draft Nordic Saami Convention and the Indigenous Population in Finland”, in Bankes, N., Koivurova, T. (eds.). *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights*. Oxford: Hart Publishing. P. 251.

⁴⁰⁵ Ibid, p. 239.

legal rights to the lands they occupied and today, 90 % of the land within the Saami homeland is in the state ownership.⁴⁰⁶ Finland does not currently grant any special land rights to the Saami people, or acknowledge any exclusive rights for the Saami to pursue their traditional livelihoods.⁴⁰⁷ However, the adaptation of the Mining Act in 2011 increased the protection of the Saami rights and showed the willingness of the Government to respond to concerns raised by the indigenous people. The Act states that the mining activities in the Saami homeland area should be adapted “so as to secure the rights of the Saami as an indigenous people”.⁴⁰⁸ The Act contains several provisions that aim to protect the Saami rights. First of all, the holder of the exploitation permit must notify the Saami Parliament in advance of all field work that could cause any damage or harm, and of any temporary constructions to be erected.⁴⁰⁹ Secondly, the Act provides that in the case of exploration, gold panning or mining in the Saami homeland, the permit authority should assess the potential impact caused by those activities on the Saami people’s rights to maintain and develop their own language and culture and shall consider measures required for decreasing and preventing damage.⁴¹⁰ Thirdly, according to section 50 of the Act an exploitation permit must not be granted if activities under the permit undermine conditions for Saami or Skolt Saami livelihoods and culture or cause considerable harm to reindeer herding. Finally, the Saami and Skolt Saami have a right of appeal if the activity referred to in the permit undermines the rights of the Saami to maintain and develop their language and culture.⁴¹¹ However, the concern has been raised about the implementation of the Mining Act because it does not clearly define the conditions that undermine Saami or Skolt livelihoods, leaving space for interpretation.⁴¹²

Another problem for the Saami of Finland is that, unlike in Norway and Sweden, the right to reindeer husbandry is not reserved for the

⁴⁰⁶ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 61.

⁴⁰⁷ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 29.

⁴⁰⁸ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 62.

⁴⁰⁹ Mining Act (621/2011), chapter 2, section 12.

<<https://www.finlex.fi/en/laki/kaannokset/2011/en20110621.pdf>> (25.02.2018).

⁴¹⁰ Ibid, chapter 5, section 38.

⁴¹¹ Ibid, chapter 17, section 165 (5).

⁴¹² Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 66.

Saami. Instead, according to the Reindeer Husbandry Act (1990) this right is open to any citizen of the European Economic Area who is a member of a reindeer herding district and permanently resides in the municipality to which the district belongs. The Ministry of Agriculture and forestry, which is responsible for reindeer herding in Finland, argues that the reindeer husbandry has traditionally been an occupation practiced by groups of people other than Saami in the Saami homeland areas; thus, giving the Saami an exclusive right for reindeer herding would violate the rights of other people living in the area.⁴¹³ This position of the Ministry is also stipulated by the fact that out of the 13 reindeer-herding cooperatives situated within the Saami homeland area, 11 have a Saami majority, which gives them a decision-making power.⁴¹⁴ The Saami Parliament, however, insists that such a right should be exclusive to the Saami people. Saami reindeer herders in Finland also face other problems, such as logging activities in the reindeer herding areas, aging of the herders (the majority of them are over 50 years old and there is a risk that the traditional knowledge will not be passed to the younger generations), and climate change.

While the Saami of Finland still struggle for the recognition of their land and water rights, the situation with their cultural rights is more favourable. The Constitution of Finland, adopted in 2000, recognises the Saami as an indigenous people and guarantees the right to maintain and develop their own language and culture.⁴¹⁵ Section 121 of the Constitution states that the Saami have the right to linguistic and cultural self-government in their native region. The Saami Language Act of 2003 affirms that the Saami have a right to use their own language before the courts and other authorities. The education in the Saami language is also guaranteed by law within the Saami homeland. However, the implementation of these legal protections is hindered by the shortage of the Saami speaking staff. The Saami face difficulties accessing health and social care in the Saami language even in the core Saami areas.⁴¹⁶ Another problem is that the majority of the Saami students live outside of the Saami homeland, and education in the Saami language outside the Saami areas is not guaranteed by law. There is also a shortage of Saami teachers and studying materials, especially in the numerically smaller

⁴¹³ Koivurova, T. 2006. "The Draft for a Nordic Saami Convention", *European Yearbook of Minority Issues*, 6, 103-136.

⁴¹⁴ Ibid.

⁴¹⁵ The Constitution of Finland (731/1999), chapter 2, section 17.

⁴¹⁶ Anaya, J. 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum. The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/18/35/Add.2. Para 66.

Skolt and Anar Saami languages.⁴¹⁷ To tackle these problems, the Government adopted a language revitalisation programme in 2014.⁴¹⁸ It aims to increase the number of the Saami-speakers throughout the country.

The tourism industry might also negatively affect the Saami culture. On the one hand, tourism helps the Saami youth to earn a living without leaving their homeland areas. On the other hand, when tourism is pursued without consultation with the Saami or their participation, problems of staged authenticity and cultural appropriation arise. There have been reports that, for example, in the Finnish town Rovaniemi the Saami culture has been appropriated by the Finnish tourism industry: elements of the Saami dress were incorporated into the uniforms of non-Saami employees, and items made by non-Saami were sold as genuine Saami handicrafts.⁴¹⁹ Moreover, in tourism books an “Arctic Circle-crossing ceremony” is advertised as a “Lappish” tradition but in reality this tradition has nothing to do with the Saami culture.⁴²⁰ The Finnish tourism industry represents the Saami in an inappropriate way and commodifies their culture, while the Saami do not benefit from it. If the Saami took control over the tourism in their homeland area it would both benefit the Saami communities and educate the tourists by presenting the Saami culture in a genuine way.

The overall situation with the Saami rights in Finland in many ways resembles the situation in Norway and Sweden. While the Saami of Finland enjoy the high living standards and there are laws existing to protect their right, they still face obstacles accessing their rights as indigenous people.

First of all, the Saami of Finland have an elected representative body, the Saami Parliament, that allows them to exercise their right for self-determination. The problem arises from the fact that this self-determination is limited to the questions of culture, since the parliament is not in a position to influence the decisions concerning economic and social development of the Saami people.⁴²¹ The Saami Parliament lacks funding, which hinders it from doing its job. Ensuring the Saami cultural

⁴¹⁷ Tauli-Corpuz, V. 2016. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. United Nations. A/HRC/33/42/Add.3. Para 71.

⁴¹⁸ Ibid.

⁴¹⁹ Dobbin, K. 2012. “Appropriation (?) of the Month: When Did the Sami Sign Up as Santa’s Helpers?”, *IPinCH: Intellectual Property Issues in Cultural Heritage*. <<https://www.sfu.ca/ipinch/outputs/blog/appropriation-month-when-did-sami-sign-santa-s-helpers/>> (25.02.2018).

⁴²⁰ Ibid.

⁴²¹ Kuokkanen, R. 2009. “Achievements of Indigenous Self-Determination: The Case of Sami Parliaments in Finland and Norway”, in Beier, J. (ed.). *Indigenous Diplomacies*. New York: Palgrave Macmillan US. Pp. 97-114.

and linguistic rights is not enough for Saami self-determination according to international law, namely Article 3 of the UNDRIP.

Secondly, the land rights of the Saami are not recognised. The State owns most of the land in the Saami homeland and the Saami are not granted any special rights. The Mining Act of 2011 introduces some protection to the Saami land rights in their homeland areas but this protection cannot substitute the ownership and control over the lands they used from the time immemorial. Moreover, the right to reindeer husbandry on the Saami traditional land is not reserved to the Saami only like in Norway and Sweden.

Thirdly, the cultural and linguistic rights of the Saami in Finland are well protected by laws and even included in the Constitution but the difficulties arise when it comes to the implementation of these laws. The Saami children do not always have access to the education in the Saami language due to the lack of the Saami-speaking teachers and studying materials, especially if they live outside of the Saami homeland. This also might be due to the fact that the number of the Saami living in Finland is really small and the number of those speaking Saami languages is even smaller.

When it comes to the international treaties that aim to protect the right of indigenous peoples, Finland stays in the same position as Sweden. Finland voted in favour of the UNDRIP but the Declaration is non-binding. The State has not ratified the ILO Convention No. 169 yet and it does not seem like it will be done soon. The Government postponed the ratification once again in 2015. However, the ratification of the Nordic Saami Convention is expected in the near future and it is likely to improve the situation of the Saami people's rights in Finland.

4.4. The Saami in Russia

The situation of the Saami in Russia is different from the situation of the Saami in the Nordic States in many ways, mainly due to the different historical development, differences in the legal status and in current legislation, as well as the fact that Russia is home to more than 180 peoples and the Saami, whose number does not exceed 2,000 are just one of them.

The Saami inhabited the territory of the Kola Peninsula in north-western Russia at least from the 6th century B.C and were the first people living on those lands.⁴²² In earlier times, they also lived in more southern areas, but were pushed back to the north by other people groups. The

⁴²² Allemann, L. 2013. The Sami of the Kola Peninsula. About the life of an ethnic minority in the Soviet Union. Senter for samiske studier, Skriftserie nr. 19.

first contact of the Russian Saami with the State was established through taxes and Christianisation; other than that, the State did not intervene into everyday life of the Saami. The beginning of the Soviet era marked the beginning of the oppression of the numerous indigenous people living on the territory of Russia, including the Saami. The policy of collectivisation for the Saami in Russia meant that the reindeer were largely nationalised, and children of the herders were sent to boarding schools while their parents were working.⁴²³ However, it was allowed to keep a small number of private reindeer, which did not exceed 10 % of the total reindeer stock, according to some estimation.⁴²⁴ The most harm to the Saami traditional culture was caused by the policy of resettlement in 1930s-1970s.⁴²⁵ The first wave of resettlement started in 1930 when the Soviet State aimed to develop the economy of the north in a more effective way and forced relocation of the indigenous people from small villages into bigger settlements. The second wave was associated with the movements of borders and front lines during the Russian-Finnish war in 1939-1940 and World War II. The third and the final wave started in the 1950s when small collective farms were liquidated for the reasons of rationalisation and the villages were closed and their inhabitants were relocated to the bigger collective farms. After the relocation stopped in the 1970s, most of the Saami lived largely centralised in a few settlements mixed with other peoples (Russians, Komi, Nenets and other).⁴²⁶ The attitude of the State towards the Saami was mostly paternalistic during that period.⁴²⁷ The State tried to completely change the way of life of the indigenous people in order to “modernise” them. As a result of this policy, the Saami in Russia lost the connection to their lands, lost some parts of their traditional knowledge and culture, as well as their language because Saami children were sent to boarding schools where they were not allowed to speak the Saami language. The traditional way of life of the Saami turned into a professional employment when the knowledge about the reindeer herding did not pass from parents to children but was taught in colleges.

A short period from the mid-1970s until *perestroika* is remembered by the Saami in Russia as the best times.⁴²⁸ The resettlement stopped; the

⁴²³ Allemann, L. 2013. The Sami of the Kola Peninsula. About the life of an ethnic minority in the Soviet Union. Senter for samiske studier, Skriftserie nr. 19.

⁴²⁴ Ibid, p. 69.

⁴²⁵ Ibid, pp. 72-89.

⁴²⁶ Ibid, p. 91.

⁴²⁷ Shtyrov, V. 2012. “Gosudarstvennaya politika v oblasti obespecheniya ustojchivogo razvitiya korennykh malochislennykh narodov Severa, Sibiri i Dalnego Vostoka Rossijskoj Federatsii”, in Shtyrov, V. (ed.). *Sovremennoye sostoyanie i puti razvitiya korennykh malochislennykh narodov Severa, Sibiri i Dalnego Vostoka Rossijskoj Federatsii*. Moskva: Izdanie Soveta Federatsii. Pp. 8-22.

⁴²⁸ Allemann, L. 2013. The Sami of the Kola Peninsula. About the life of an ethnic minority in the Soviet Union. Senter for samiske studier, Skriftserie nr. 19. P. 91.

herdsmen were well paid; the conditions of work were favourable; the Saami language became an optional subject at school. The transition period from the state-run economy to the free market in the late 1980s and then in the 1990s was a difficult time for Russia and for the Saami. The well-being of people significantly decreased, life expectancy of the indigenous peoples of the North dropped to 45-50 years, unemployment increased up to 50 % and the household income declined dramatically.⁴²⁹ In the times of the severe economic crisis throughout the 1990s dependency of indigenous peoples on their traditional activities (such as fishing, hunting and reindeer herding) increased to an even greater extent.⁴³⁰

Against this backdrop, the end of the 1980s witnessed a development of the first indigenous peoples' organisations. In 1989, the Organisation of the Saami of the Kola Peninsula was founded "with the goal of protecting Sami interests in local politics and establishing contacts with Sami of Fennoscandia."⁴³¹ Later the Society of the Saami of Murmansk region was also formed. In 1990, a nation-wide umbrella association of indigenous peoples was founded, which is today known by the name RAIPON – Russian Association of Indigenous Peoples of the North. In 1992, the Saami Council accepted the Organisation of the Kola Saami as a member. These indigenous organisations in Russia became one of the driving forces behind the development of the legislative indigenous rights framework.⁴³²

Indigenous organisations also received technical and financial assistance from some European states. This assistance encouraged some people to identify with indigenous groups, in particular the Saami. As Iu. Shabaev writes, Saami identity became a resource that enabled people to obtain benefits.⁴³³ For example, young people could attend universities in Finland, Norway, and Sweden for free. The Saami identity was used by some people as a tool for a social start, despite the fact that they did not live in the traditional way, did not speak the Saami language

⁴²⁹ Shtyrov, V. 2012. "Gosudarstvennaya politika v oblasti obespecheniya ustojchivogo razvitiya korennykh malochislennykh narodov Severa, Sibiri i Dalnego Vostoka Rossijskoj Federatsii", in Shtyrov, V. (ed.). *Sovremennoye sostoyanie i puti razvitiya korennykh malochislennykh narodov Severa, Sibiri i Dalnego Vostoka Rossijskoj Federatsii*. Moskva: Izdanie Soveta Federatsii. P. 13.

⁴³⁰ IWGIA and RAIPON. 2011. Parallel Information concerning the situation of economic, social and cultural rights of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation. Copenhagen/Moscow. P. 4.

⁴³¹ Allemann, L. 2013. The Sami of the Kola Peninsula. About the life of an ethnic minority in the Soviet Union. Senter for samiske studier, Skriftserie nr. 19. P. 122.

⁴³² Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 25.

⁴³³ Shabaev, Iu. 2009. "Ethnic Conflicts in the European North of Russia", *Anthropology & Archeology of Eurasia*, 48/3. P. 40.

and were unfamiliar with the Saami history and culture.⁴³⁴ Their only affiliation with the Saami was their rational choice and one Saami relative in the third or fourth generation.

In the beginning of 2000s Russia tightened control over the foreign support for the indigenous people organisations and this support significantly decreased in scope. Without the financial help, the ability of the indigenous people to influence the decision-making processes was reduced.⁴³⁵

Nowadays in Russia there are many laws and acts on the federal and regional levels that aim to protect the numerous indigenous people living in Russia. However, the stand-alone term “indigenous peoples” cannot be found anywhere in the legislation. It only appears in conjunction with specific qualities referring to size and place.⁴³⁶ The full term that is used in the legal text, including the Constitution, is “Indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation”. There is also a list of those peoples that are recognised as indigenous: “Common Inventory of Indigenous Small-Numbered Peoples of the Russian Federation”. Out of 180 peoples living in Russia, only 47 are officially recognised as indigenous by being included into this list. The Saami, whose numbers in Russia do not exceed 2,000 and who live in the North of Russia, are among them. Only recognised small-numbered indigenous peoples in Russia can enjoy the protection and special rights given by the Constitution and other laws.

Article 69 of the Constitution, adopted in 1993, states that “The Russian Federation shall guarantee the rights of the indigenous small peoples according to the universally recognised principles and norms of international law and international treaties and agreements of the Russian Federation.”⁴³⁷ Article 15 (4) could potentially also protect the indigenous peoples as it states that “If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.” In theory, it puts international human rights norm over the national legislation, but in practice this norm has never been invoked in the protection of indigenous peoples’ rights.⁴³⁸

⁴³⁴ Shabaev, Iu. 2009. “Ethnic Conflicts in the European North of Russia”, *Anthropology & Archeology of Eurasia*, 48/3. P. 40.

⁴³⁵ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 26.

⁴³⁶ Ibid, p. 9.

⁴³⁷ The Constitution of the Russian Federation.

<<http://www.constitution.ru/en/10003000-04.htm>> (25.02.2018).

⁴³⁸ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 14.

In 1999-2001, Russia adopted three federal laws on the rights of indigenous peoples which aim to “align the legal status of indigenous peoples in Russia with international standards on indigenous rights”.⁴³⁹ There are also several sectoral laws that regulate some aspects of life of the indigenous peoples. These numerous acts, decrees and laws are inconsistent, at times they contradict each other, and suffer from the lack of implementation.⁴⁴⁰

The law “On guarantees of the rights of indigenous small-numbered peoples”, adopted in 1999, guarantees socio-economic and cultural development to all indigenous minorities and provides certain privileges to the indigenous peoples. The law states that indigenous small people of Russia have rights to use the land which they traditionally inhabited free of charge, as well as the resources; control the usage of their traditional lands; take part in the preparation of decisions concerning their traditional habitat and lifestyle; have their official representatives in the state bodies; the right for compensation; the right for free medical care; the right for alternative civilian service; the right to form communities and associations; obtain financial support from the state and private donors; receive assistance to reform all types of education and rearing of their younger generations in accord with their traditional way of life.⁴⁴¹ The law also establishes an obligation of the regions to ensure the protection of the indigenous peoples’ rights.

The federal law “On Territories of Traditional Nature Use of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation”, adopted in 2001, allows the creation of Territories of Traditional Nature Use (TTNU) specifically reserved for indigenous peoples’ traditional activities, which are supposed to be managed by indigenous communities. In such areas, activities such as construction or extraction of resources cannot be implemented without specific impact assessment.

The law “On the general principles of the organisation of *obshchinas* of the indigenous, small-numbered peoples of the North” was adopted in 2000. *Obshchinas* are communities of indigenous peoples based on kinship, and they were created to fulfil indigenous self-administration functions, “participate in decision-making in affairs concerning the interests of indigenous peoples, provide services in the field of culture and education and, at the same time, function as economic cooperatives through which indigenous peoples could pursue their traditional

⁴³⁹ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 14.

⁴⁴⁰ Ibid, p. 13.

⁴⁴¹ Federalnyj Zakon O garantii prav korennyh malochislennyh narodov Rossijskoj Federatsii [Federal Law On guarantees of the rights of indigenous small-numbered peoples]. Article 8.1.

economic activities in a viable manner.”⁴⁴² There are several problematic issues with the law. Article 22 (2) of the law states that an *obshchina* can be liquidated if its members stop engaging in traditional activities. Article 5 says that the activities of *obshchinas* should be of a non-profitmaking nature. Therefore, the law limits the right of indigenous peoples for development as set out in the UNDRIP.⁴⁴³

The rights of indigenous peoples of Russia can also be protected by the 1996 law on National Cultural Autonomies that gives the possibility to create a cultural autonomy to all minorities living on the territory of Russia. The goals of cultural autonomy are to preserve and develop the lifestyle, traditions and language of an ethnic group, and in order to achieve these goals, cultural autonomies have a right to ask for financial assistance from the authorities.

There are also laws that do not address indigenous peoples directly but regulate some aspects of the indigenous peoples’ rights: the Land Codex, the Water Codex, and the Forest Codex. The Land Codex (2001) used to offer only two types of tenure: private and rented property. Both options were not viable for the indigenous peoples since their land use requires huge territories.⁴⁴⁴ The 2015 version of the law gives a right of gratuitous use of the state-owned plot land to indigenous peoples for the purpose of development of traditional lifestyle for the period of up to ten years.⁴⁴⁵ At the same time, in this version of the law Article 31 was cancelled. Item 3 of the Article stipulated that local authorities in places of traditional residence of indigenous peoples should decide on the “prior determination of locations for the placing of objects” (i.e.: industrial facilities, oil rigs, pipelines etc.) on the basis of the results of meetings or referenda of the indigenous and local communities.⁴⁴⁶ The abolition of this Article means that the local authorities have lost their power to protect indigenous lands from business enterprises.

The Forest Codex, adopted in 2006, introduces a possibility of long-term renting out of forest lands to Russian and foreign investors, which de-facto means privatisation.⁴⁴⁷ This completely ignores the interests of indigenous peoples and significantly reduces their chances to use their traditional lands. The only right of indigenous peoples’ that is

⁴⁴² Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 19.

⁴⁴³ Ibid.

⁴⁴⁴ Ibid, p. 21.

⁴⁴⁵ *Zemelnyj kodeks Rossijskoj Federatsii* ot 25.10.2001 No. 136-FZ [Land Codex of the Russian Federation]. Article 39.10 (13).

⁴⁴⁶ Hansen, K. B., Jacquelin, P. L., Jepsen, K. (eds.). 2017. *The Indigenous World 2017*. IWGIA. P. 76.

⁴⁴⁷ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 22.

acknowledged in the Codex is the right to use timber for personal needs free of charge.⁴⁴⁸

The Water Codex (2006) does a better job of protecting indigenous peoples' right. Article 54 says that indigenous peoples have a right to use water resources for their traditional nature use. The federal act "On the animal kingdom" also strengthens the position of indigenous people by giving them a priority right to use the animal kingdom on the territory, which is their traditional place of inhabitancy and economic activity.⁴⁴⁹

By acknowledging the existence of the special needs of the indigenous peoples, the Government of Russia has also adopted a Concept of Sustainable Development of Small-Numbered Peoples of the North, Siberia and the Far East in 2009. The goal of the Concept is to improve the standard of living of the indigenous peoples and to update the regulations. The measures, however, are very loosely defined.⁴⁵⁰

There are also some regional laws that protect the Saami rights. For example, Article 21 (2) of the Code of the Murmansk oblast says that the authorities of the oblast should facilitate the Saami in realisation of their rights for preservation and development of their indigenous environment, traditional livelihood, customs and culture.⁴⁵¹ Article 21 (3) states that the Saami should enjoy the rights for traditional use of nature and traditional activities in historically established areas of habitation. The laws on state support for the indigenous peoples of the Murmansk oblast, and on reindeer herding in the region confirm the status of the Saami as indigenous peoples and establish a mechanism of state support for their livelihood.

International law can also be applied to the protection of indigenous peoples in Russia, since Russia is a party to many international human rights agreements, including the ICCPR, the ICESCR, and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). Russia, however, did not ratify the ILO Convention No. 169 and abstained from voting for the UNDRIP. Russia claims that signing the ILO Convention or endorsing the UNDRIP is "fundamentally incompatible with Russian legislation" mainly because

⁴⁴⁸ Lesnoj Kodeks Rossijskoj Federatsii ot 04.12.2006 No. 200-FZ [Forest Codex of Russian Federation]. Article 30 (2).

⁴⁴⁹ Federalnyj Zakon O zhivotnom mire ot 24.04.1995 No. 52-FZ [Federal Law On the animal kingdom]. Article 49.

⁴⁵⁰ French, N. et.al. 2017. "Continental divide: Shifting Canadian and Russian Arcticness", in Kelman, I. (ed.). *Arcticness: Power and Voice from the North*. London: UCL Press. P. 125.

⁴⁵¹ Ustav Murmanskoy oblasti [the Code of the Murmansk oblast]. <https://www.gov-murman.ru/regulatory/charter_mo/> (25.02.2018).

the Russian Constitution does not acknowledge the indigenous peoples as such, without restrictions to size and space.⁴⁵²

Despite the existence of such an extended web of regulations, the situation with the indigenous peoples' rights in Russia is far from being satisfactory. One of the reasons for that is that the laws are inconsistent and lack stability.⁴⁵³ It has also been argued that such a confused state of legislation might serve the government interests of preventing indigenous peoples from asserting their rights.⁴⁵⁴ Another big problem is the implementation gap. The laws might sound positive on paper and allow Russia to cite them before international organisations, but in practice the legislation is poorly implemented or not implemented at all.⁴⁵⁵ The lack of implementation also arises from the fact that the three federal laws are declaratory in nature and do not contain details on how the protection of indigenous peoples' rights should be exercised. The sectoral laws, on the other hand, are well developed and applicable, but their provisions are in conflict with the three federal laws.⁴⁵⁶

One of the brightest examples of the lack of implementation is the fact that since the adaptation of the federal law on TTNU in 2001 the Government has never confirmed any of the several hundred TTNU created by regional and local administrations.⁴⁵⁷ Without the confirmation from the Government these TTNU have no legal status and can be easily dismantled.

Another example of how the laws are ignored in Russia is the situation of the Saami and the Ponoï River on the Kola Peninsula, where the Saami traditionally lived. The Murmansk region's authorities granted exclusive fishing rights for sport fishing without consultation with the Saami, who conducted their traditional fishing activities on the river.⁴⁵⁸ The Saami and other local people were forbidden to fish in the eighty kilometre stretch of the river. This decision violated Presidential Decree No. 397 (1992) that stated that traditional territories of indigenous minorities should not be allocated for uses not connected with

⁴⁵² Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 56.

⁴⁵³ Ibid, p. 13.

⁴⁵⁴ Donahoe, B. 2009. "The law as a source of environmental injustice in the Russian Federation", in Agyeman, J., Ogneva-Himmelberger, Y. (eds.). *Environmental Justice and Sustainability in the Former Soviet Union*. Cambridge: MIT Press. Pp. 21-47.

⁴⁵⁵ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 13.

⁴⁵⁶ Ibid, p. 14.

⁴⁵⁷ Hansen, K. B., Jacquelin, P. L., Jepsen, K. (eds.). 2017. *The Indigenous World 2017*. IWGIA. P. 76.

⁴⁵⁸ Osherenko, G. 2001. "Indigenous Rights in Russia: Is Title to Land Essential for Cultural Survival," *Geo. Int'l Envtl. L. Review*, 13. P. 726.

traditional activities.⁴⁵⁹ The decision also did not take into account any existing rights of the Saami and it can also be argued that depriving the Saami of their traditional livelihood violates their rights to enjoy their culture under Article 27 of the ICCPR.

Nowadays there are no more than 2,000 Saami in Russia, with more than half of them living in the rural locality Lovozero, where the Saami were forcefully resettled during the Soviet era. All the aforementioned laws that aim to protect the numerous indigenous peoples of Russia can also be applied to the Saami since they are recognised as a small-numbered indigenous people of the Russian North. The bad implementation of these laws has led to the current situation where the Saami's right in Russia are not fully recognised.

The right of the Saami to self-determination, by virtue of which they could determine their social, economic, and cultural development, is very limited. The Saami of Russia established the Kola Saami Assembly in 2010, but this parliament is not recognised by the Russian Government and therefore does not have any legal power. The federal law “On *obshchinas*” could potentially help the Saami to practice self-governance (and hence, self-determination). To date, the Saami created 37 *obshchinas* in the Murmansk region.⁴⁶⁰ However, it has been recognised that, in practice, the *obshchinas* system “does not function to adequately or consistently secure indigenous self-governance in accordance with customary patterns of community organization and leadership”.⁴⁶¹ In attempt to exercise their right to self-determination, the Saami created several organisations that aim to promote the Saami interests and to present them to the authorities but their influence remains extremely low due to the absence of any mechanisms that would oblige the authorities to take into account the Saami views.⁴⁶² Another problem is the lack of funding from the authorities that limits the abilities of the Saami for self-governance. However, when the authorities learned that the Saami's NGOs get funding from abroad, they recognised such organisations as “foreign agents” according to the law adopted in 2012. Being labelled as

⁴⁵⁹ Ukaz Prezidenta Rossijskoj Federatsii ot 22.04.1992 No. 397 [Decree of the President of Russian Federation].

⁴⁶⁰ Pravitelstvo Murmanskoy Oblasti. “Kratkaya informatsiya ob obshchestvennyh organizatsiyah, obshchinah i natsionalnyh predpriyatiyah”. <https://www.gov-murman.ru/region/saami/short_info/> (25.02.2018).

⁴⁶¹ Anaya, J. 2010. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. United Nations. A/HRC/15/37/Add.5. Para 58.

⁴⁶² Vinogradova, S. 2005. “Saamy Kolskogo poluostrova: osnovnye tendentsii sovremennoy zhizni [The Saami of the Kola peninsula: the main tendencies]”, in Vinogradov, A. (ed.). *Formirovaniye osnov sovremennoj strategii prorodopolzovaniya v Evro-Arkticheskom regione*. Apatity: Kolskij Nauchnyj Zentr RAN. Pp. 424-434.

a foreign agent imposes constraints on the activities of NGOs and discredits them.⁴⁶³

In general, the right of the indigenous peoples to self-determination is not a subject of the public discourse in Russia because it is still considered to be a toxic concept closely associated with separatism and extremism.⁴⁶⁴ Even the Saami who initiated the creation of the Saami Assembly in Russia were also called separatists by the local authorities.⁴⁶⁵ The fear for the territorial integrity still remains one of the main factors that hinder Russia, home for numerous indigenous peoples and ethnic minorities, from signing the ILO Convention No. 169 or embracing the UNDRIP.

Land rights is the most fundamental issue for the Saami of Russia. Russian legislation does not recognise the indigenous peoples' collective rights to own the territories they traditionally inhabit or use; moreover, even the usufruct rights (to hunt, fish or herd their reindeer) are merely granted.⁴⁶⁶ The law, however, defines four districts in the Murmansk region that have a status of a territory which is a traditional place of inhabitation and economic activity of indigenous numerically small peoples of the North; these areas cover 70 % of the Kola Peninsula.⁴⁶⁷ The question of the Saami territories that were lost during the Soviet period is not discussed on any level in Russia.⁴⁶⁸

According to the federal law "On Guarantees of the Rights of Indigenous Peoples" the Saami have a right to use land free of charge in the areas they traditionally inhabited. The Land Codex, however, only provides such a right for a period of up to ten years, and only for the purpose of development of traditional lifestyle. The law on the TTNU could in theory guarantee the Saami's the right to occupy and use their lands for their traditional activities but, as was mentioned above, this law was never implemented. Even if the TTNU is created in the future, many indigenous territories will already be under the control of businesses since there are laws in Russia that allow long-term lease of forest, hunting or fishing plots to private business, even if these plots are located on the territories traditionally inhabited and used by indigenous

⁴⁶³ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA.

⁴⁶⁴ Ibid, p. 16.

⁴⁶⁵ Turovskij, D. 2013. "Saami vse delayut sami [The Saami are doing all by themselves]", *Lenta.ru*. <<https://lenta.ru/articles/2013/10/10/saami/>> (25.02.2018).

⁴⁶⁶ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA. P. 17.

⁴⁶⁷ Koivurova, T. et.al. 2015. "Legal Protection of Sami Traditional Livelihoods from the Adverse Impacts of Mining: A Comparison of the Level of Protection Enjoyed by Sami in Their Four Home States", *Arctic Review on Law and Politics*, 6/1. P. 22.

⁴⁶⁸ Ibid.

peoples.⁴⁶⁹ As a result, the Saami have to buy licenses and compete with businesses for their right to pursue traditional hunting and fishing on their lands. The same is true for the lands used for reindeer farms.

The Murmansk region, where the majority of the Saami live, is one of the most developed mining areas in Russia.⁴⁷⁰ The mining enterprises are of great importance to the region from economic and social perspectives, since they provide employment and welfare for the local population. Unlike in the Nordic states, these mining activities do not influence the Saami in Russia as they are conducted far away from the areas used by the Saami.⁴⁷¹ However, there is a fear that development of new deposits might significantly influence the Saami, as the existing legislation does not provide any mechanisms that would require consultations with indigenous peoples concerning mining activities in their traditional areas.⁴⁷²

The loss of indigenous languages and culture is yet another problem the Saami are facing. The collectivisation and forced resettlement caused an irreversible damage to the Saami culture. Before the resettlement, the Saami from different communities pursued their traditional livelihoods in different ways. Nowadays, almost no differences can be found anymore. The traditional Saami reindeer herding was also significantly changed in the Soviet time. Small-numbered herds and unattended reindeer gaze were substituted by the large-scale reindeer herding. Nowadays 90 % of all Kola reindeer belong to two big enterprises, where the Saami constitute only 17 % of the total staff.⁴⁷³ Only three Saami obshchinas deal with reindeer herding, but they have small herds and use only 4.5 % of the total pasture.⁴⁷⁴ The right to reindeer herding does not exclusively belong to the Saami since there are many indigenous groups in Russia who were traditionally involved in the reindeer herding. The Murmansk oblast law gives a priority right to reindeer herding to the indigenous small-numbered peoples of the North.⁴⁷⁵

The situation with the cultural rights of the Saami has been better than with their land rights. The interest towards the Saami culture started

⁴⁶⁹ IWGIA and RAIPON. 2011. Parallel Information concerning the situation of economic, social and cultural rights of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation. Copenhagen/Moscow. Pp. 8-9.

⁴⁷⁰ Koivurova, T. et.al. 2015. "Legal Protection of Sami Traditional Livelihoods from the Adverse Impacts of Mining: A Comparison of the Level of Protection Enjoyed by Sami in Their Four Home States", *Arctic Review on Law and Politics*, 6/1. P. 34.

⁴⁷¹ Ibid, p. 36.

⁴⁷² Ibid, p. 37.

⁴⁷³ Ibid, p. 14.

⁴⁷⁴ Ibid.

⁴⁷⁵ Zakon Murmanskoy oblasti o severnom olenevodstve Murmanskoy oblasti ot 26.12.2002 [Law of the Murmansk oblast on the Northern reindeer herding of the Murmansk oblast], article 5 (1).

to rise in the end of the Soviet period. The national museum of the Saami culture was created in Lovozero; the Saami radio station was established, and the books of Saami authors were published. Traditional indigenous cultures started to receive more and more media attention. The traditional handicrafts were on the rise again. This contributed to the national awakening of the Saami.⁴⁷⁶ The Saami youth, who were previously not very connected to the Saami culture, started to learn the Saami language and to engage in traditional activities.⁴⁷⁷ Nowadays the rights of the indigenous peoples in Russia to enjoy their culture are protected by several federal and regional laws, as well as by the international conventions to which Russia is a party. The rights of the indigenous peoples to freely use, preserve, and develop their languages are also protected by several laws, including the Constitution.

Nevertheless, the situation with the Saami language remains critical. Between 1959 and 1989 the number of the Saami who spoke Saami as their mother tongue has fallen from 70 % to 44 %, and this number is even lower today.⁴⁷⁸ This decline was due to the fact that in the Soviet period the Saami language was only spoken in families. In the Soviet time, there were no official policies that would prohibit the use of the Saami language, but the Saami sometimes experienced discrimination if they spoke their language in public.⁴⁷⁹ Education for the Saami children was only available in Russian. It was also not prohibited to speak Saami at schools but some Saami children were teased because of it, so they stopped speaking their language at school.⁴⁸⁰ Some teachers tried to persuade the indigenous families that bilingualism was bad for the children's development, and many families followed the recommendations and stopped speaking the Saami language at home as well.⁴⁸¹ The Saami children whose parents were engaged in reindeer herding were sent to boarding schools. Spending most of the year in such schools, they did not have an opportunity to speak their language or to embrace their culture.

In 1976, for the first time, the Saami language was offered at schools as an optional subject. However, few lessons per week were not enough for mastering the language. Nowadays the Saami language is neither an official language of the country nor an official language of the region

⁴⁷⁶ Vinogradova, S. 2005. "Saamy Kolskogo poluostrova: osnovnye tendentsii sovremennoy zhizni [The Saami of the Kola peninsula: the main tendencies]", in Vinogradov, A. (ed.). *Formirovaniye osnov sovremennoj strategii prorodopolzovaniya v Evro-Arkticheskom regione*. Apatity: Kolskij Nauchnyj Zentr RAN. Pp. 424-434.

⁴⁷⁷ Ibid.

⁴⁷⁸ Allemann, L. 2013. The Sami of the Kola Peninsula. About the life of an ethnic minority in the Soviet Union. Senter for samiske studier, Skriftserie nr. 19. Pp. 8-9.

⁴⁷⁹ Ibid, p. 107

⁴⁸⁰ Ibid.

⁴⁸¹ Ibid, p. 110.

where the Saami live. On the national level there is no law that would specifically protect Saami or any other indigenous language, but it is mentioned in the federal law on languages that Russia guarantees all people equal rights to protection and development of their native languages.⁴⁸² On the regional level, the law on education in the Murmansk oblast states that it is the responsibility of the local authorities to create facilities for the indigenous peoples of the region to learn their native languages.⁴⁸³ Nowadays there is one school in Lovozero where pupils of the primary school have a possibility to learn the Kildin Saami language as an optional subject one hour per week. In 2015, only 21 pupils (from grade one to grade four) were attending the Saami language classes.⁴⁸⁴ Ivanishcheva singles out several problems that complicate teaching of the Saami language in the Saami homeland in Russia.⁴⁸⁵ First of all, out of several Saami languages spoken in the region, only Kildin Saami is taught at school as the most popular Saami dialect. Secondly, one hour per week is not enough to learn the language and to get acquainted with the Saami culture. Thirdly, there is a lack of studying materials. Fourthly, pre-school children and children of the middle and high school do not have an opportunity to learn the Saami language due to the lack of funding. Finally, many parents and pupils do not see any sense in learning the Saami language because the possibilities to practice the Saami language in everyday life are very limited, since only several hundred people in Russia still have some knowledge of the Saami languages. According to one survey, the majority of 30-50 year-old Saami do not speak Saami at home and do not pass it on to their children, despite the fact that some of them still understand the language and are potential language users.⁴⁸⁶ Only less than 100 people are active speakers of the Saami language in Russia, and most of them belong to the older generation. Optional Saami language courses for children and adults are held sometimes in Lovozero and Murmansk, but they do not have permanent funding and do not take place regularly. As it can be seen, the Saami languages in Russia are seriously endangered and taking into

⁴⁸² Zakon o yazakah narodov Rossijskoj Federatsii ot 25.10.1991 No. 1807-1 [Law on the languages of the peoples of the Russian Federation].

⁴⁸³ Zakon Murmanskoy oblasti ob obrazovanii v Murmanskoy oblasti ot 28.06.2013 No. 1649-01-ZMO [Law of the Murmansk oblast on the education in the Murmansk oblast]. Chapter 2, Article 6.1.

⁴⁸⁴ Ivanishcheva, O. 2015. "Sohranyat ili ne sohranyat? Problemy prepodavaniya yazyka malogo etnosa (na materiale saamskogo yazyka) [Preserve or not to preserve? Problems of teaching a small ethnic group language (on the basis of the Sami language)], *Modern Research of Social Problems*, 4/48, 389-397.

⁴⁸⁵ Ibid.

⁴⁸⁶ Scheller, E. 2011. "The Sámi Language Situation in Russia", *Uralica Helsingiensia*, 5, 79-96.

account the lack of funding, a lack of teachers and studying methods and materials, the chances of revitalisation are quite low.⁴⁸⁷

The Saami in Russia also face problems like discrimination, bad health situations and poverty. These problems are partly the result of the years of marginalisation in the society and the fact that Saami rights as indigenous people are still not fully protected. There is no statistics about the discrimination of the Saami in particular, but in general it has been noted that indigenous peoples in Russia are the subjects of racist stereotyping and are depicted as child-like and incapable of real work.⁴⁸⁸ The health situation of the indigenous peoples in northern Russia is much worse than that of the general population. The life expectancy of indigenous peoples of the North is 10-11 years below the national average.⁴⁸⁹ One of the reasons for that is smoking and alcohol consumption. A survey identified that almost 60 % of 15 to 18-year-old Saami from Lovozero are regular or episodic smokers and half of the Saami teenagers reported having used alcohol.⁴⁹⁰ Suicide rates among indigenous peoples of Russia are four times the Russian average.⁴⁹¹ The Saami of Russia also suffer from low living standards due to poverty and unemployment, which is higher than among non-indigenous population living in the same area. In 2004, 65 % of the indigenous persons of the working age in the Murmansk oblast were unemployed.⁴⁹²

Despite the fact that, since the collapse of the USSR, Russia has taken important steps in the realisation of the rights of indigenous peoples on its territory, the Saami in Russia are in a more disadvantaged position than the Saami in Norway, Sweden, and Finland. The possibilities for the indigenous self-determination are very limited since the Saami parliament in Russia is not recognised by the Government, and the Saami do not have many tools that would allow them to determine their future. The land rights of the Saami are not recognised in practice; they are merely given the usufruct rights and face difficulties when exercising these rights. The situation with the cultural rights is slightly better since they are well recognised and protected, especially in comparison to the Soviet period, but the Saami in Russia still experience problems such as a lack

⁴⁸⁷ Scheller, E. 2011. "The Sámi Language Situation in Russia", *Uralica Helsingiensia*, 5, 79-96.

⁴⁸⁸ Rohr, J. 2014. IWGIA Report 18: Indigenous Peoples in the Russian Federation. IWGIA.

⁴⁸⁹ UN. 2016. State of the World Indigenous Peoples: Indigenous Peoples' Access to Health Services.

⁴⁹⁰ Ibid, p. 66.

⁴⁹¹ Ibid.

⁴⁹² Vinogradova, S. 2005. "Saamy Kolskogo poluostrova: osnovnye tendentsii sovremennoy zhizni [The Saami of the Kola peninsula: the main tendencies]", in Vinogradov, A. (ed.). *Formirovaniye osnov sovremennoj strategii prorodopolzovaniya v Evro-Arcticheskom regione*. Apatity: Kolskij Nauchnyj Zentr RAN. Pp. 424-434.

of funding. The lack of protection of the Saami rights leads to their marginalisation, and as a result poverty, health issues, and high suicide rates.

The problems the Saami face arise, not from the lack of legislation, but from the lack of coherence, consistency and effective mechanisms of implementation of the laws. The Saami and their rights are not a priority issue of the federal government and of the local authorities since their number in Russia is quite small. However, together with other indigenous peoples they constitute an important share of the Russian society. If Russia put more efforts into addressing indigenous issues in general, it would positively influence the lives of the Saami too.

Conclusion

5 % of the world population are indigenous peoples, meaning that their ancestors have been living on the territory they are inhabiting from the times immemorial and that they maintained their traditions, cultures and special connection to their lands. As the first part of this thesis has shown, indigenous peoples suffered from European colonialism and the miseries it brought with it, such as infectious diseases, enslavement, homicide, destruction of the natural environment, acquisition of indigenous peoples' lands, assimilation and segregation, and the destruction of their sacred places. Nowadays indigenous communities are still worse off than the non-indigenous populations of the same country when it comes to their economic or social development. These existing challenges indigenous peoples are facing show that the consequences of the centuries of mistreatment are still lingering and that discrimination of indigenous peoples still exists.

International law at the time of colonisation was used as a justification for all the injustices that were taking place against indigenous populations. Only after World War II did the problems of indigenous peoples, who were still subjects of discrimination around the world, receive attention of international organisations. The second half of the 20th century was marked by the continuous fight of indigenous peoples for the recognition of their rights, both on national and international levels. As a result of this fight, several international instruments aimed at protection of indigenous peoples' rights were adopted; at the national level, many governments acknowledged the past injustices and showed their commitment to the protection of the indigenous peoples' rights in the future.

One of the features of international law is that there is no supervising authority over the states that would see to the implementation of international law. Therefore, international law is based on the voluntary participation of the states and their voluntary observance of the laws. If a state does not observe a law, it will not result in sanctions from above. However, international law creates the code of conduct, making the violation of international law something undesirable and even unacceptable. The states that want to keep their good reputation in the international community try to obey the laws, even if the violation will not lead to direct negative consequences for the state. It was these developments of international law, alongside with some domestic developments, that forced the Nordic states to reconsider their attitude towards the Saami. Beginning in the 1970s, Norway, Sweden, Finland, and in the 1990s, Russia, adopted laws that protect the Saami rights and

implemented international mechanisms of protection into their legislations.

The living standards of the Saami are higher than that of many other indigenous peoples of the world. The majority of the Saami do not suffer from hunger, inadequate housing or poor health caused by the lack of a health care system in the regions they live. However, this does not speak of a better situation with indigenous rights' protection in the Nordic states but rather indicates that Norway, Sweden, and Finland are rich welfare states that are able to provide for their population, including indigenous peoples. What can really reflect the situation with the Saami rights is how well they can enjoy the most fundamental indigenous peoples' rights in the four states. Norway, Sweden, Finland, and Russia have recognised the Saami as indigenous people living on their territory.

The right to self-determination is one of the fundamental principles of the international law embodied in the ICCPR and the ICESCR. For indigenous peoples it means the right to determine their own economic, social and cultural development. Part II of this paper has shown that the Saami of Norway, Sweden, Finland, and Russia are enjoying this right, but to a limited extent. Since the Saami are one people living in four states, self-determination across the borders is an important aspect of the Saami self-determination. The states established good possibilities for the Saami self-determination across the borders through several cross-border institutions. For the Saami of the three Nordic states, the situation with cross-border cooperation might further improve once the Nordic Saami Convention will be ratified. It is very unlikely that Russia will join the Convention in the near future, so the possibilities of cross-border cooperation for them are more limited.

Self-governance is one of the ways for indigenous peoples to exercise their rights to self-determination within states. For this purpose the Saami parliaments were established in Norway, Sweden, and Finland, however, the extent to which the Saami in the four states enjoy this right differs. While Norway, Sweden, and Finland have recognised the rights of the Saami to self-determination, Russia has never done so due to concern regarding the state's sovereignty. The Saami of Norway seem to be in the most favourable position. The Government of Norway is obliged to consult the Saami Parliament in all matters that may directly affect the Saami. The position of the Saami Parliament was further strengthened when the Government and the Parliament agreed on procedures for consultations. Norway remains the only state with the Saami Parliament that established such provisions. The Saami Parliament in Sweden, while being the main vehicle of the Saami self-determination, also acts as a governmental agency and is obliged to implement state policies that might be against the Saami interests. This limits the

possibilities for Saami self-governance. The Saami Parliament in Finland also acts as an instrument for Saami self-governance, but its authority is limited to the matters of culture or the status of the Saami as an indigenous people. The Saami in Russia struggle for their right to self-determination more than the Saami in the Nordic states. Russia does not recognise the right of indigenous peoples to self-determination and also does not recognise the Kola Saami Assembly, a representative body established by the Saami of Russia. As a result, the possibilities for the Saami self-determination in Russia are quite limited.

However, even the Saami parliaments in the Nordic states cannot provide the full right to the Saami to determine their economic, social and cultural development, since they lack the decision-making power. The governments of the states are obliged to consult the Saami Parliaments on the matters that concern them, but it is also the governments who make the final decisions.

The self-determination rights of the indigenous peoples in Norway, Sweden, Finland and Russia are weaker than those in Canada, the USA or New Zealand.⁴⁹³ Some argue that this is due to the fact that there is no visible indigenous opposition in the Nordic countries, criticising the governments and calling the attention to the Saami issues.⁴⁹⁴ Instead of the militant and radical approaches of the indigenous peoples of North America, the Saami in the Nordic states chose the strategy of diplomacy and collaboration, which, however, did not bring the desired level of self-determination.⁴⁹⁵

The right to land is one of the most important rights of indigenous peoples of the world and it is fundamental to their self-determination. Indigenous peoples share a strong connection to their lands, and their livelihoods, cultures, and identities depend on it. Many people have been uprooted from their lands as a result of colonisation in the past, and development and economic activities in the present. The degree to which the Saami land rights are protected differs in the four states. The Norwegian Saami enjoy more control over their traditional lands than their counterparts in the other states. Norway recognises that the Saami people, through prolonged use of land and water areas, have acquired rights to land in Finnmark County. The Finnmark Act transfers 95 % of Finnmark County to an agency called the Finnmark Estate which administrates the use of lands and resources. Three out of six members

⁴⁹³ Kuokkanen, R. 2009. "Achievements of Indigenous Self-Determination: The Case of Sami Parliaments in Finland and Norway", in Beier, J. (ed.). *Indigenous Diplomacies*. New York: Palgrave Macmillan US. Pp. 97-114.

⁴⁹⁴ Jull, P. 1995. "Through a Glass Darkly: Scandinavian Sami Policy in Foreign Perspective", in Brantenberg, T., Hansen, J., Minde, H. (eds.). *Becoming Visible: Indigenous Politics and Self-Government*. Tromsø: Centre for Sami Studies, University of Tromsø.

⁴⁹⁵ Ibid.

of the board of the Finnmark Estate are appointed by the Saami Parliament, which gives them the possibility to influence the decisions about the use of land and resources.

While Sweden in principle recognises that the Saami traditional land use can give rise to property rights, in practice it is extremely difficult, if not impossible, for the Saami to prove their land ownership. Finland does not acknowledge the Saami land rights at all; however, the Mining Act of 2011 introduces some protection to the Saami land rights. Russia also does not recognise the Saami rights to lands and even the usufruct rights are quite limited since the Saami in Russia face many obstacles when trying to use their lands.

As Part II of this paper has shown, the land rights of the Saami people are quite limited. Indigenous peoples of the USA, Canada, Australia and New Zealand hold titles to their lands and enjoy a much bigger protection of their land rights.

Following the years of discrimination and land dispossession, indigenous cultures all over the world have become endangered. Recognition of the indigenous peoples' right to maintain and develop their culture is essential for the indigenous peoples' existence. Usually the governments are more willing to recognise the cultural rights of the indigenous peoples because it requires less commitment and compromises from their side. The Saami cultural rights are decently protected in the four states. In Norway, the Saami cultural rights are protected by the Constitution and other laws. Saami living in the Saami traditional areas have a right to speak Saami to authorities. Pupils in primary school have a right to be taught in the Saami language. Similarly, in Sweden the Saami are allowed to use the Saami language for communication with authorities and school children are able to have an education in the Saami language. In Finland, the Saami right to maintain and develop their own language and culture is guaranteed by the Constitution. The Saami in Finland also have a right to use their language before courts and other authorities, and Saami children have a right to be taught in the Saami language in their homeland region. In Russia, the right of the Saami to develop their cultures is protected by several laws. The Saami children have a right to learn Saami at school but in practice this right is very limited due to a lack of funding.

Reindeer herding is also regarded to be a cultural right of the Saami since it is their traditional livelihood. In Norway and Sweden, the right to pursue reindeer herding is reserved to the Saami, while in Finland and Russia it is not, since reindeer herding was traditionally pursued by other peoples as well.

Generally, the Saami cultural rights are well protected by the legislation of the four states. However, the implementation of the laws is

not always well exercised due to a lack of funding and a shortage of Saami speaking staff working in state authorities, among other reasons.

This paper aimed to show that, despite enjoying high living standards, the Saami still struggle for their rights to be fully recognised by the states they are living in. When looking at how well the Saami rights are protected in each of the four states, one can observe that the situation in Norway is the most favourable for the Saami and the situation in Russia is the least favourable. This might be due to several reasons. First, the international obligations of the state might motivate them to behave in a certain way. While all four states have endorsed the main international instruments that are protecting human rights and can also be used for the protection of the indigenous peoples' rights, Norway is the only state that has also signed the ILO Convention No. 169, which is a binding instrument. The implementation of the Nordic Saami Convention into the legislation of Norway, Sweden and Finland might strengthen the Saami rights in these states as well. Russia, on the other hand, did not sign the ILO Convention No. 169, did not vote in favour of the UNDRIP and is also not likely to become a party to the Nordic Saami Convention. Second, the more Saami live on the territory of a state, the bigger role they play in the political, economic, and social life of the state and the more difficult it is to ignore their rights. Norway is home to the biggest number of Saami, and they also get the most funding to develop their culture. There are less than 2,000 Saami living in Russia, and they are one of the smallest minorities even in their traditional region on the Kola Peninsula, let alone in the whole of Russia.

Despite the years of oppression and assimilation, the Saami of Norway, Sweden, Finland, and Russia are still maintaining their traditional lifestyles and culture, their connections across the borders, and they are still fighting for the full recognition of their rights to self-determination and to their traditional lands. They are not victims of the states anymore, but active participants of the political, economic and cultural life of the states they are living in.

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