

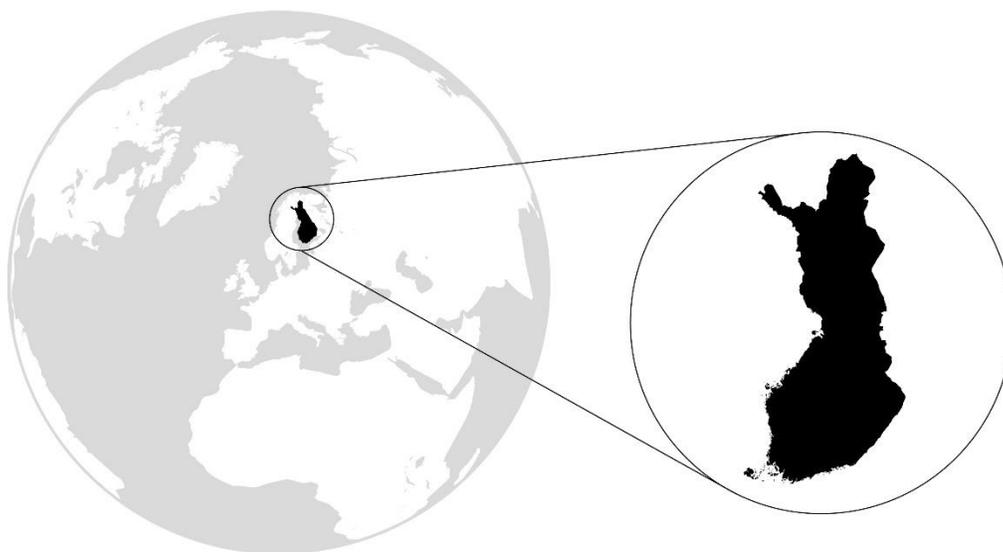


AUTONOMY ARRANGEMENTS IN THE WORLD

The Sámi Assembly in Finland

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■ FINLAND

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1. Essential Facts and Figures

There are two types of non-territorial autonomy arrangements in Finland, different in structure and scope, but which aim to promote the identity of the two distinct minority groups. These arrangements include the cultural autonomy of the indigenous Sámi and the functional autonomy of Swedish-speakers. This presentation deals with the non-territorial autonomy arrangement for the indigenous Sámi population (for the functional autonomy of Swedish-speakers, see Suksi 2008, 199-216, and Suksi 2017, 20, 27-29).

As of December 2018, the total population of Finland is 5,517,919 (Statistics Finland 2019).¹ The majority of the population consists of two linguistic groups, Finnish-speakers and Swedish-speakers, but in addition, other groups exist in Finland, too, including the Sámi, which is the only indigenous people in the European Union, also inhabiting parts of Sweden, Norway and Russia. Research literature until late 1960s used to employ the term “Lapps” when referring to the Sámi peoples, but their own usage as well as the internationalization of indigenous rights made the term “Sámi” conventional for legal terminology.

The population of Finland comprises, predominantly, Finnish-speakers (87% of the population) and Swedish-speakers (5.2% of the population), followed by Russian-speakers (1.4%), and Estonian-speakers (0.9%). Arabic-speakers represent the third largest “other languages” group, making up 0.5% of the population. Other language groups are: Somali (0.4%); English (0.4%); Kurdish (0.3%); Persian, Farsi, Chinese, Albanian, and Vietnamese which, in each case, amount to 0.2% of the population (*Ibid.*).

The total number of individuals belonging to groups other than the Finnish, Swedish and Sámi language groups in Finland amounts to 391 746 individuals or 7% of the total population (*Ibid.*). The number of foreign-born residents of Finland increased from less than 50 000 in 1990 to more than 350 000 in 2017. However, although Finland is home to 29 different language groups (*Ibid.*),

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¹ Statistics Finland provides updated data on population structure, population projection, migration, population by origin, country of birth and language, population by region etc. For details, see https://www.stat.fi/tup/suoluk/suoluk_vaesto_en.html (accessed on 1 November 2019).

the Sámi enjoy cultural autonomy based on the distinctiveness of their culture and its deep roots in Finland.

The estimated number of Sámi in Finland, Norway, Russia, and Sweden is between 75,000 and 100,000, nearly half of which live in Norway. According to the most recent official data, there are 1,995 speakers of the Sámi languages, or 0.03% of the total population of Finland (*Ibid.*). Yet there may be as many as 10,000 Sámi in Finland, which is the smallest Sámi population in the three Nordic countries.² Hence, out of these 10 000 Sámi in Finland, 1,995 have officially registered themselves as speakers of a Sámi language, although around 3,000 persons might speak Sámi as their mother tongue. Altogether, in 2015, 5,795 persons were entered into the electoral roll as Sámi for the purposes of the elections to the Sámi Assembly (*Samediggi*), the supreme representative body of the Sámi in Finland. The *Samediggi* (*Sametinget* in Swedish and *Saamelaiskäräjät* in Finnish) is often referred to as the “Sámi Parliament”. However, we use the term “Sámi Assembly” (except where source materials use the term “Sámi Parliament”) because this body has no law-making powers and almost no administrative powers. Being a Sámi in Finland may thus depend entirely on self-identification (which would give a figure of up to 10,000 persons), the statutory right to vote in Sámi elections (around 5,800 persons) or registration of Sámi as a mother tongue in the population register (around 2,000 persons).

The Sámi do not share a common language, because there are nine Sámi languages in the world (Toivanen 2015, 122), all of which belong to the Finno-Ugric language family. The Sámi of Finland speak three separate Sámi languages: North Sámi, Inari Sámi, and Skolt Sámi. The name of the Sámi Assembly in the three Sámi languages is, respectively: *Sámediggi*, *Sämetigge*, and *Sää'mte'gǧǧ*. The North Sámi language is the most commonly spoken one in Finland (as well as in Norway and Sweden). The Inari Sámi language is spoken only in Finland. Skolt Sámi is spoken in Finland and in Russia (and previously also in Norway).

The Sámi maintain traditional livelihoods, i.e. fishing, gathering, traditional handicrafts, hunting, and reindeer herding. However, very few receive their main income from these traditional livelihoods, while a majority of the Sámi engage in “ordinary” professions and economic activities carried out by the majority population.

² According to information published on the website of the Sámi Assembly of Finland, more than 60% of Sámi now live outside the Sámi Homeland. For details, see <https://www.samediggi.fi/sami-info/?lang=en> (accessed on 1 November 2019).

The Sámi have their own national symbols, including their dress, anthem and flag. The Sámi dress reveals the history of the Sámi, their origin, and even the wearer's marital status. In Finland, there are five main versions of the Sámi dress: Enontekiö, Inari, the Skolt Sámi, Utsjoki, and Vuotso. The anthem of the Sámi is called "The Song of the Sámi Family". The words were written by Isak Saba, the first Sámi Member of the Parliament of Norway, and the music was composed by the Norwegian composer Arne Sørli. The Sámi flag has been officially used by the Sámi of Finland from 1996 when the Act on the Sámi Assembly entered into force. The flag is shared by all the Sámi peoples. It was designed by the Sámi artist Astrid Båhl of the Ivgonvuonbahta region (Skibotn, Norway) and adopted at the 13th Sámi Conference in Åre (Sweden) in 1986.³

The Sámi of today descend from the people who first inhabited Fennoscandia or Fennoscandinavia, i.e. the area covering the Scandinavian Peninsula, Finland, and the Kola Peninsula, shortly after the end of the last Ice Age, approximately 10,000 years ago (Hansen and Olsen 2013, 10). There are several versions regarding when exactly the Sámi differentiated from a "Finnish" population (Hansen and Olsen 2013, 9-38). According to the Sámi Assembly of Finland "[e]thnically, the Sámi people was formed when the Sámi language and Finnish became two distinct languages around 2000 BC due to differences in livelihoods and culture."⁴

The traditional beliefs of the Sámi were not based on holy texts or hierarchical organization but, rather, were practiced "through a bundled field of actions, myths, stories, and material manifestations" (Hansen and Olsen 2013, 313). Like other polytheistic religions, the Sámi religion appeared to be tolerant and receptive of foreign religious elements (Hansen and Olsen 2013, 313-315). The most significant events regarding the autonomy of the Sámi took place in the post-Middle Ages period with the Christianization of the Sámi, which can be also seen as a means to control their territories. Sources dating from between 1670 and 1750 written by clergymen and missionaries indicate that the Nordic states (at that time Denmark, to which the territory of current Norway belonged, and Sweden, to which the current territory of Finland belonged) launched campaigns to convert the Sámi and to make expressions of their religion illegal (Hansen and Olsen 2013, 315). In this process, many aspects of indigenous culture were lost (Nyyssönen 2008, 93).

³ The flag symbolizes that the Sámi are the sons and daughters of the sun. The flag's colours – red, blue, green and yellow – are the same as in the traditional Sámi dress. More information on Sámi's national symbols is available online on the webpages of the Sámi Assembly of Finland and the Sámi Council.

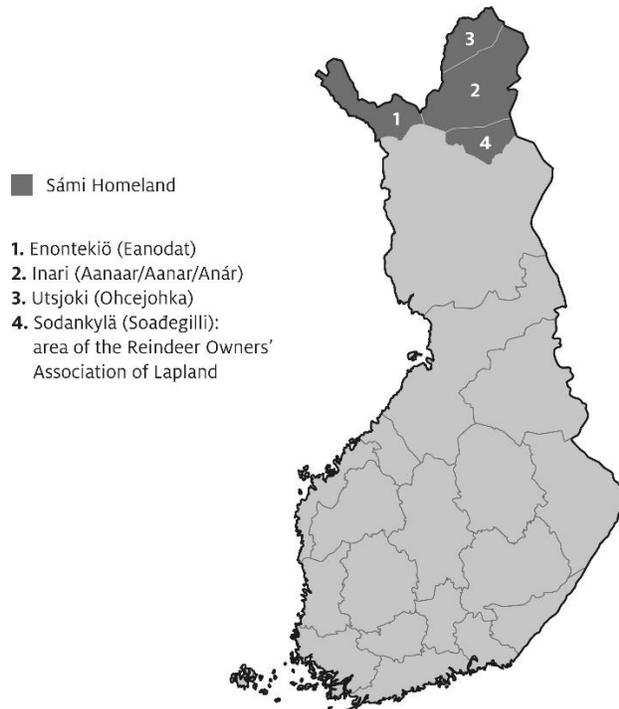
⁴ The Sámi Assembly of Finland, "History", available online at <https://www.samediggi.fi/sami-info/?lang=en> (accessed on 1 November 2019).

The next series of events that further aggravated the position of the Sámi in the Nordic states was a policy of segregation based on ethnic origin, which was carried out in Norway and Sweden at the end of the 19th century (Norway was at that point in a personal union with the Kingdom of Sweden). The policy used several mechanisms in order to make the Sámi a part of the majority population and subordinate them to the state administration, including restricting the reindeer grazing activities and thus affecting the traditional, Sámi lifestyle (Josefsen 2007, 9). The Sámi of Finland may have been somewhat less affected by such a policy. Yet the border agreement between Sweden (to which Norway was attached at that time) and Russia (to which Finland belonged between 1809 and 1917) confirmed the state borders which were based on treaties between Denmark and Sweden from the 18th century. Consequently, the Sámi of Finland were affected by the said policy as the shared borders started to prevent free movement of the reindeer herds of the “Finnish” Sámi into the areas of what is now Norway.

A significant development limiting the autonomy of the Sámi population was brought about by assimilationist policies in Finland (as was also the case in other Nordic states), that lasted from the mid-19th century until the 1980s (Minde 2005, 6; Weinstock 2013, 411). During this period (from the end of the 1940s until the 1970s), Sámi boarding schools were established and in operation, and the use of the Sámi languages in those schools was also limited in Finland (Hokkanen 2017, 78). Even after Finland signed (1967) and ratified (1975) the International Covenant on Civil and Political Rights (ICCPR), the ideas of nationalism did not always leave space to acknowledge diversity (Toivanen 2015, 122).

As for the economical features of a functioning Sámi autonomy, up to 90% of the land in the area inhabited by Sámi is state-owned (*Ibid.*, 114), although the Sámi have autonomy with respect to their language and culture. According to Section 4 of the Sámi Assembly Act, the Sámi Homeland area includes the municipalities of Enontekiö (Eanodat), Inari (Aanaar/Aanar/Anár) and Utsjoki (Ohcejohka), as well as the area of the Reindeer Owners’ Association of Lapland in Sodankylä (Soadegilli). This area covers 35,000 km², that is, 36% of the province of Lapland and about 10% of Finland (see map below).⁵

⁵ The map of this area is attached to the Governmental Decree on the Sámi Assembly (1727/1995) [Asetus saamelaiskäräjistä 1727/1995], available online at <https://www.finlex.fi/fi/laki/alkup/1995/19951727> (accessed on 1 November 2019).



Taking into consideration that the state pursues industrial activities such as mining or forestry, preserving traditional indigenous practices such as reindeer herding and fishing is difficult. This situation has been the source of past and present disputes which have reached the international treaty bodies. For instance, such disputes were the subject matter of the two cases brought by Sámi reindeer breeders against Finland before the UN Human Rights Committee (UNHRC). *Länsman et al v. Finland (No. 1)*⁶ concerned a dispute around quarrying and the transportation of stone through reindeer herding territory. *Länsman et al v. Finland (No. 2)*⁷ concerned logging and the construction of roads in the lands traditionally used by the Sámi. No violation of the ICCPR was found in either of these cases, which – indirectly - proves that the Sámi in Finland do not possess significant instruments to decide about their traditional life-style, *inter alia*, by means of their cultural autonomy (see below, Section 6).

⁶ UNHRC, *Länsman et al v. Finland (No. 1)*, Views concerning Communication No. 511/1992, 26 October 1994, UN Doc. CCPR/C/52/D/511/1992 (1994).

⁷ UNHRC, *Länsman et al. v. Finland (No. 2)*, Views concerning Communication No. 671/1995, 30 October 1996, UN Doc. CCPR/C/58/D/671/1995 (1996).

As for fishing, in the municipality of Inari some commercial Sámi fishing still takes place and “provides important support to the economy of the local community” (Koivurova 2015, 12-13), but the 2017 agreement between Finland and Norway on the fisheries in the Teno/Tana river on the border between the two countries has received harsh criticisms from the Sámi Assemblies of both countries. Finland’s Deputy Chancellor of Justice criticized the Ministry of Agriculture and Forestry for hearing the Sámi Assembly only after the Finnish-Norwegian fisheries agreement had already been signed by the two states (albeit before its ratification).⁸ Timely negotiations with the Sámi Assembly about the agreement and its contents should have been held prior to the conclusion of the negotiations between the two states in order to give the Sámi Assembly a genuine opportunity to express its opinion on the matter, as is guaranteed by law. In addition, the handling of the matter was not in harmony with the principle of good government, stipulated in Section 21 of the Constitution of Finland.⁹ In another matter, charges brought against four Sámi persons for unlicensed fishing in state-owned waters were thrown out by the Lapland Court of First Instance, because angling in their “home river” was considered an essential part of the indigenous population’s right to maintain and develop their own culture, according to Section 17(3) of the Constitution. The accused had not transgressed their fishing rights because, in accordance with the Constitution, they have a right to fish in their “home river” as Sámi individuals. The Court concluded that the accused had neither fished without a license nor transgressed their fishing rights.¹⁰

Traditional Sámi reindeer husbandry is based on small herding groups managed by families or small communities maintaining traditional pastures.¹¹ Nevertheless, by virtue of legislation in Finland, a co-operative solution for reindeer herding has been established whereby important decision-making powers are vested in the several reindeer-herding cooperatives and the Ministry of Agriculture and Forestry. A reindeer herding cooperative is a public law entity introduced through legislation in the 1930s and subsequently regulated by the Reindeer Husbandry Act.¹² This

⁸ Decision of the Deputy Chancellor of Justice OKV/12/21/2016 of 23 March 2017.

⁹ Constitution of Finland is available online at <https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf> (accessed on 1 November 2019).

¹⁰ Lapland Court of First Instance, Judgment 19/109281, R 18/519 of 6 March 2019 [Lapin käräjäoikeus, tuomio 19/109281, R 18/519, 06.03.2019], on file with authors.

¹¹ Reindeer herding is not restricted in Finland to the Sámi but can be practiced also by non-Sámi within the so-called reindeer herding area, which is much larger than the Sámi Homeland area.

¹² Reindeer Husbandry Act (848/1990) [Poronhoitolaki 848/1990], available online at https://www.finlex.fi/fi/laki/kaannokset/1990/en19900848_20000054.pdf (accessed on 1 November 2019).

leads to situations where the law interferes in issues related to traditional ways of living, as happened in the 2011 case of *Paadar v. Finland*,¹³ which reached the UNHRC after being dealt with by the Finnish administrative courts.¹⁴ The applicants, who were reindeer breeders, belonged to a small group of Sámi in the village of Nellim who opposed the mainstream policy of logging the forests. According to Section 15 of the Reindeer Husbandry Act, at the meeting of a reindeer herding cooperative, a shareholder has as many votes as he/she has registered reindeer, which creates difficult situations for some families with fewer reindeer, whenever their votes become a clear minority. As a response, the majority of shareholders made the decision to slaughter excess reindeer in those forests. The measure would, at the same time, solve a long-standing forestry dispute. Before the UNHRC, the applicants claimed in particular that the cooperative's slaughtering plans “have been formulated in a way that, in practice, has led to the number of the authors' reindeer decreasing dramatically, much more so than for the Ivalo group.”¹⁵ However, the UNHRC was not “in a position to conclude, given the limited evidence before it, that the impact of the Ivalo cooperative's reindeer reduction methods upon the authors was such as to amount to a denial of the authors' rights under articles 26 and 27 [of the ICCPR].”¹⁶

This case is not unique in the Sámi areas of Lapland. State regulation of reindeer breeding, fisheries, and other activities comprising the traditional lifestyle of the Sámi could also be, at face value, considered as an interference in Sámi matters. It could be seen as marginalisation “through law and order, be it laws regulating reindeer herding, fishing or education”, but also as marginalisation “in the socio-psychological sphere of creating ‘the other’ against which Finnish identity could be constructed” (Toivanen 2015, 122). Yet, as shown in the case of *Paadar v. Finland*, the rationale for introducing special legislative solutions of cooperatives is explained by balancing the interests of reindeer grazing, protecting timberline forests, and pursuing the timber industry.

In Finland, the evolution of the position of the Sámi during the past century has led to a situation whereby many Sámi speak Finnish as their mother tongue. Using Sámi language in school was

¹³ UNHRC, *Paadar v. Finland*, Communication No. 2102/2011, 26 March 2014, UN Doc. CCPR/C/110/D/2102/2011 (2014).

¹⁴ See, for example, Supreme Administrative Court, 11.02.2011/318, KHO: 2011:13 [Porotalousasia, Diaarinumero: 2923/2/08], available online at <https://www.edilex.fi/kho/vuosikirjat/201100318> (accessed on 1 November 2019).

¹⁵ UNHRC, *Paadar v. Finland*, Communication No. 2102/2011, 26 March 2014, UN Doc. CCPR/C/110/D/2102/2011 (2014), para. 2.8.

¹⁶ *Ibid.*, para. 7.7

never illegal in Finland but was actually made possible by an education law from the end of the 19th century through the 1960s. However, for various reasons (including a lack of Sámi-speaking teachers, but also nationalism and an unwillingness on the part of the authorities to support education in other languages than Finnish in the northernmost part of Finland), only one primary school teacher used Sámi to at least some extent in 1954, when the educational system was changed and Sámi was no longer used in primary schools (Aikio-Puoskari 2001, 137-142). By the 1960s, the authorities recognized that a lack of education in the Sámi language caused great problems such as the illiteracy of Sámi individuals in their mother tongue (Aikio-Puoskari 1998) and considerable stress for the Sámi children who had to live in dormitories (the staff of which was often Finnish-speaking) in order to fulfil the obligation of obtaining primary education (Hokkanen 2017, 44). By the end of the 1970s, 23 schools taught in the Sámi language (Aikio-Puoskari 1998, 51). The School Act reform of the 1980s further entrenched the Sámi language within the educational system of Finland (Aikio-Puoskari 1998, 52) by underlining the duty of the municipality to cater for education also in Sámi. These advancements took place well before 1992, when Finland signed the European Charter for Regional or Minority Languages, which entered into force in 1998, providing guarantees for using minority languages in education.

Education is provided in ordinary schools in the form of both education in Sámi languages and studying Sámi languages. The schools operating in the Sámi languages within the Sámi Homeland area are municipal schools. Primary and upper secondary schools within the Sámi Homeland area provide education in the Sámi language,¹⁷ and there is also a Sámi high school, where the use of Sámi is encouraged. It is possible to take the national matriculation examination with Sámi as the mother tongue.¹⁸ To some extent, teaching in Sámi languages is also available outside the Sámi Homeland area. However, 75% of Sámi children under the age of 11 years live outside the Sámi Homeland area.¹⁹ Thus in principle, they are not in a position to enjoy education in their own language. Nonetheless, the number of such pupils receiving education in Sámi language is, in practice, increasing, facilitated, for instance, by distance learning methods. Since 1996, the Sámi

¹⁷ For an introduction to Sámi education in Finland see Rahko-Ravanti and Keskitalo (2019).

¹⁸ The matriculation examination, taken after high school, is a general requirement for admission to universities. The matriculation examination consists of a minimum of four tests; one of them, the test in the candidate's mother tongue, is compulsory for all candidates. The mother tongue test is arranged in the Finnish, Swedish and Sami language. For details, see <https://www.ylioppilastutkinto.fi/en> (accessed on 1 November 2019).

¹⁹ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Finland, 8 June 2017, CERD/C/FIN/CO/23, para. 18. The document is available online at <http://www.refworld.org/docid/5978a4114.html> (accessed 1 November 2019).

Assembly has had the task of functioning as the centre of Sámi teaching materials (Aikio-Puoskari 2001, 166), which means that it funds the production of schoolbooks and other materials in the three Sámi languages for use in the municipal schools.

There is a worrying trend, however, in that, although Finland allocates funds in the state budget to offer education in Sámi, there are still difficulties in recruiting qualified teachers of Sámi languages. The same goes for the sphere of health-care and education, where the provision of services in minority languages reveals the need to strengthen the Sámi languages among staff.²⁰

As has already been mentioned, the history of Sámi autonomy in Finland is not one of violent conflict but rather the historical rejection of indigenous identity amidst policies of intended or unintended assimilation. The autonomy arrangement can, hence, be understood within the idea of reconciliation (Lehtola 2015, 22). It is also about balancing the interests of preserving indigenous heritage and the public interest in maintaining the forests, controlling the reindeer population, and enjoying the benefits of mining and other industrial activities, such as, for example, road construction. It is a classic minority problem of how to protect certain interests without doing so at the expense of other interests.

Sámi identity gained recognition in Finland at the same time in the 1990s, when other groups arrived from other states in significant numbers (Hilson 2008). A defining characteristic of Sámi autonomy in Finland is the projection of Finnish attitudes towards the Sámi which reflect a relatively relaxed position on the part of Finland, which has always been a “non-imperialistic” democracy (Lehtola 2015, 23). Perhaps this could also explain why the Sámi of Finland may have experienced somewhat fewer effects of nationalistic policies in comparison with the Sámi in other Nordic countries. Nevertheless, the plight of the Sámi should not be down-played; for instance, in 2018 the government of Finland decided upon the initiative of the Sámi Assembly, to establish a truth commission to inquire into, for instance, assimilation in boarding schools.

2. Autonomy and State Structure

Finland is a unitary state where local government, that is, municipalities, have traditionally played an important role in delivering public services, such as education, social care, health care, and environmental services. The municipalities also deliver these services for the Sámi. The

²⁰ *Ibid.*

asymmetry in this unitary structure is illustrated by the autonomy of the Åland Islands which has existed since 1920/1922 as a territorial autonomy with its own law-making powers. This is a unique feature in Finland, in particular because Åland is designated as an entity where the Swedish language is the only official language, although mainland Finland is bilingual (Finnish- and Swedish-speaking) on the basis of Section 17 of the Finnish Constitution.

As provided by Section 17(3) of the Constitution, “the Sámi, as an indigenous people (...) have the right to maintain and develop their own language and culture”. Provisions for the right of the Sámi to use the Sámi language before the authorities are laid out in the Sámi Language Act (1086/2003),²¹ which relates to Section 17(3) of the national Constitution. It regulates issues surrounding the use of the Sámi language in dealings with the courts and other public authorities. The Act stipulates the duty of the authorities to enforce and promote the linguistic rights of the Sámi. Its scope covers public authorities dealing with Sámi matters, non-discrimination, justice, consumer affairs, data protection, and the Social Insurance Institution and Farmers’ Social Insurance Institution. A Sámi, defined in Section 3 of the Sámi Language Act as a person who is a Sámi according to Section 3 of the Sámi Assembly Act (974/1995),²² has the right to use the Sámi language, in his or her own case or in a case where he or she is being heard, before any court or public authority referred to in this Act that is located within the Sámi Homeland area. A Sámi also has the same right before State authorities outside the Sámi Homeland area, when these authorities are hearing appeals against decisions of authorities within the Sámi Homeland area.

An interesting feature of the Sámi cultural autonomy in Finland is that it is both territorial and non-territorial at the same time. The functions of the Sámi Assembly are, in principle, territorially limited to the so-called Sámi Homeland area, although participation in Sámi cultural autonomy is not limited to those Sámi persons who live in the Sámi Homeland area but, rather, applies to all Sámi throughout the territory of Finland.

The cultural autonomy of the Sámi is in principle a national arrangement, as it follows from Section 121(4) of the Constitution of Finland. Although the functions of the Sámi Assembly are valid within the Sámi Homeland area, all those who meet the criteria to be considered “Sámi”, irrespective of where they reside in Finland, can participate in elections to the Sámi Assembly.

²¹ Sámi Language Act (1086/2003) [Saamen kielilaki 1086/2003], available online at <https://www.finlex.fi/fi/laki/ajantasa/2003/20031086> (accessed on 1 November 2019).

²² Sámi Assembly Act (974/1995) [Laki saamelaiskäräjistä 974/1995], available online at <https://www.finlex.fi/fi/laki/ajantasa/1995/19950974> (accessed on 1 November 2019).

However, it is mainly those Sámi who live within the Homeland area who can enjoy the benefits of using the Sámi language and culture. The government of Finland has proposed that the parliament should ratify the International Labour Organisation (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and, if this happens, the rights of the Sámi would be strengthened throughout the state of Finland, not only in the northernmost part of the country. The Sámi cultural autonomy is, hence, territorially defined with regard to the functions of the Sámi Assembly but this is not the case with regard to participation through elections to the Assembly. The three Nordic countries where the Sámi live have negotiated a draft Nordic convention concerning the Sámi.²³ If agreed to by the Sámi Assemblies in the three countries and by the three states, the convention would strengthen the position of the Sámi under international law and consolidate the position of the Sámi Assemblies as a tool for their right to internal self-determination.

The Sámi Assembly represents the Sámi as the instance that has to be officially heard when measures affecting them are contemplated by public authorities. This non-territorial form of autonomy or administration serves the purpose of providing some additional public services and avenues of influence on top of the services and participatory mechanisms that exist based on general legislation. The Sámi Assembly is an independent public entity with some public functions and budgetary allocations over the state budget for these functions.

3. Establishment and Implementation of Autonomy

The first assembly for the Sámi, the Sámi Delegation with advisory tasks, functioned in Finland between 1972 and 1975 and, in 1975, after a period with an appointed body, the first elected Sámi Delegation was instituted (Heinämäki et al. 2017, 185). The elected Sámi Delegation was replaced in 1996 by the Sámi Assembly of Finland, which is a statutory body established by the Sámi Assembly Act (974/1995).

Although they are a minority even within the Sámi Homeland area of Finland, the Sámi do not have a kin state as these populations have traditionally inhabited parts of national territories in Sweden, Finland, Norway, and Russia. Instead of a kin-state, the role of international actors and

²³ The Draft Nordic Sámi Convention, available online at <https://www.sametinget.se/105173> (accessed on 1 November 2019).

movements is more relevant. The revival of Sámi indigenous consciousness went hand in hand with the UN's work on decolonization and the intensification of environmental movements in Europe, which fortified the efforts of the Sámi to gain recognition for their right to self-determination. The UN launched its work on indigenous issues following the discourses on decolonization which started in the 1950s (Minde 2008, 53). As the assimilation policies of the Nordic states fell under the influence of these discourses, the Nordic Sámi Council was established in 1956. The UN documents mentioned the Sámi peoples for the first time in the 1960s in the series of reports on the treatment of minorities by juridical systems written by Augusto Willemsen Diaz, a lawyer in the UN Secretariat in New York (*Ibid.*). The report by Chilean diplomat Hernán Santa Cruz on the economic, social, and cultural discrimination of minorities compiled between 1966 and 1970 included a separate chapter on indigenous issues (*Ibid.*).

By the 1970s, indigenous movements appeared “all around the world” (Minde 2008, 58). Since then, all Nordic governments “have in the international arena acted as helpers and preservers of Sámi culture” (Toivanen 2015, 123). The developments in acknowledging Sámi rights were considerably affected by the Alta dam affair in Norway, which was a civil struggle against the construction of a hydroelectric power plant in the Alta River, running through the Finnmark area inhabited by the Norwegian Sámi. The initial construction plan would in fact not promote the traditional living of the Sámi, and the authorities did not prioritize indigenous interests.²⁴ The Alta case triggered both an intensification of environmental movements in the late 1970s, and an increased awareness of indigenous rights. In the aftermath of the conflict, the governments of Finland, Norway, and Sweden “made further efforts to support Sámi linguistic and cultural self-determination”, which led to the introduction of language acts in these three states (Hilson 2008, 154). In 1991, Finland adopted a law on the use of the Sámi language by the authorities which was replaced by the 2003 Sámi Language Act (1086/2003). These regulations made Sámi an official language in the Sámi Homeland area.

The legal status of the Sámi and their autonomy became constitutionally entrenched in 1995 with the amendments to the Constitution Act of 1919, and are now included in Sections 17(3) and 121(4) of the 2000 Constitution of Finland. In 1996, with the adoption of the Act on the Sámi

²⁴ See also European Commission of Human Rights, *G and E v. Norway*, Applications Nos. 9278/81 & 9415/81 (joined), Decision of 3 October 1983 on the admissibility of the applications.

Assembly, the Sámi obtained self-government in the Sámi Homeland in the areas of language and culture, as recognized in Section 121(4) of the Constitution.

The autonomy of the Sámi people in Finland has evolved to the level of constitutional entrenchment as the result of an array of efforts from the Sámi themselves, other civil movements, the international community, and the authorities. This process was also different from historical devolution that exists behind many territorial autonomies. Furthermore, there was no referendum preceding the establishment of the Sámi cultural autonomy in Finland, and the introduction of the two above mentioned provisions concerning the Sámi in the Finnish Constitution was brought about by means of a regular constitutional amendment.

One of the problems in implementing Sámi autonomy lies in the legal definition of who is a Sámi for the purposes of election to the Sámi Assembly (Heinämäki et al. 2017, 93-147). It should be observed that, unlike in Sweden and Norway, the definition of a Sámi person in Finland is not tied to reindeer herding or to other traditional livelihoods.

There are two reference points that determine a person's official belonging to the Sámi population for the purposes of elections to the Sámi Assembly, i.e., the subjective criterion of identifying oneself as a Sámi and three objective criteria. According to Section 3 of the Sámi Assembly Act, an individual who subjectively considers himself a Sámi must also meet the following more objective criteria:

- (1) he himself or at least one of his parents or grandparents has learnt Sámi as his first language;
- (2) he is a descendant of a person who has been included in a land, taxation or population register as a mountain, forest or fishing Lapp; or
- (3) at least one of his parents has or could have been registered as an elector for an election to the Sámi Delegation or the Sámi Parliament.

These criteria may allow many individuals to identify themselves as Sámi, which becomes crucial for the purposes of inclusion in the electoral roll, entitling individuals to vote in elections to the Sámi Assembly. Such an ambiguous legal regulation has caused disputes, which are dealt with by the Supreme Administrative Court of Finland, since Section 26(b) of the Act on the Sámi Assembly provides that the decisions on including a person in the electoral roll made by the Election Committee of the Sámi Assembly can be appealed to this court. Thus, this is probably the most significant ambivalent aspect of indigenous autonomy in Finland: the fact that the judicial

authorities have a final saying in matters related to the self-governance and self-determination of the indigenous peoples. In a system following the rule of law, this is necessary, but at the same time, the final say is not with the representative body of the indigenous people.²⁵

Although the Sámi Assembly does not have any significant public powers, the Supreme Administrative Court of Finland has been approached several times by persons who have applied for inclusion on the list of voters in the Sámi Assembly elections. Since the end of 1990s, the Court has reviewed all criteria for becoming a voter in the Sámi Assembly elections. The subjective criterion of self-identification as a Sámi can be found in all the cases, while the objective linguistic sub-criteria may surface in different ways. In the decision 19.09.2003/2223 of the Supreme Administrative Court,²⁶ the matter actually proceeded from the individual's father, who was enrolled as a voter for the election to the Sámi Assembly in 1999 on the basis of his grandfather's proficiency in one of the Sámi languages (the linguistic sub-criterion). However, the individual had been denied enrolment although his father was a voter. The Court granted enrolment on the basis of the linguistic sub-criterion. In the decision 22.09.1999/3181,²⁷ the ancestor of the applicant had been registered amongst the Sámi in the property rolls for the last time in 1762, but the Court held that the applicant should not be regarded as a Sámi for the purposes of cultural self-government only on this basis. Instead, the cut-off point was established at around 1875, that is, four to five generations ago, a point of time also mentioned in the *travaux préparatoires* of the Sámi Assembly Act. He was therefore not entitled to the right to vote in the elections to the Sámi Assembly in 1999 on the basis of the registration sub-criterion (Suksi 2015, 107-108). The Supreme Administrative Court upheld this definition of the cut-off point in the decision 22.09.1999/3183: "the father of the grandfather of the applicant had been registered as a Sámi in the roll of individuals of 1870, and therefore, the applicant was to be regarded as a Sámi for the purposes of Section 3(2) of the Sámi Assembly Act" (Suksi 2015, 107-108). In the decision 30.09.2015/2604,²⁸ the language criterion was emphasized for the applicant who considered

²⁵ Currently, a law-drafting project is underway within the government of Finland in which it is proposed that Section 3 would be amended to make it more language-based by deleting para. 2 of the provision.

²⁶ Supreme Administrative Court, 19.09.2003/2223, KHO:2003:61 [Saamelaiskäräjävaalit, Diaarinumero: 2245/1/03], available online at <https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2003/200302223> (accessed on 1 November 2019).

²⁷ Supreme Administrative Court, 22.09.1999/3181, KHO:1999:55 [Saamelaiskäräjävaalit, Diaarinumero: 2497/1/99], available online at <https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/1999/199903181> (accessed on 1 November 2019).

²⁸ Supreme Administrative Court, 30.09.2015/2604, KHO:2015:148 [Saamelaiskäräjävaalit, Diaarinumero: 2803/3/15], available online at <https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2015/201502604> (accessed 11 November 2019).

himself a Sámi. The Supreme Administrative Court noted that the mother tongue of the applicant's great grandmother was "Lappish", according to her birth certificate. The Court concluded that the Sámi language had to be considered as the first language that she had learned and that the mother of the applicant could therefore have been registered as a voter in the electoral roll of the Sámi Assembly. Consequently, the applicant had to be considered a Sámi on the basis of Section 3(1) and (3) of the Sámi Assembly Act and should be registered in the electoral roll. In the decision 30.09.2015/2602,²⁹ the Court's interpretation of Section 3(3) underlined the importance of previous registration, which could not be recalled by the Election Committee of the Sámi Assembly. Hence, the registration of a parent in the electoral roll meant that the applicant, originally registered upon a successful complaint at the Supreme Administrative Court, could not be de-registered. The child of this voter had, as established in decision 26.09.2019/4348,³⁰ the same right to be registered in the electoral roll on the basis of Section 3(3) and on the basis of self-identification, although the Election Committee and the Board of the Sámi Parliament had denied the child this right for the reason that group recognition, as referred to in the praxis of the UN Human Rights Committee (see below) did not support the right to vote for the person.

In a first case indicating a more radical change of interpretation (i.e., decision 26.09.2011/2710),³¹ self-identification based on an "all things considered" approach resulted in a holistic assessment (Heinämäki et al. 2017, 107-117). In this case, it was not enough for a person to be considered as a Sámi according to Section 3 of the Sámi Assembly Act based on self-identification, since, according to the certificate within an authority's archives, he was the descendant of a person who had been registered as a mountain Lapp in the 1825 roll of deeds and taxes, and, in addition, he produced some evidence that his uncle had been proficient in a Sámi language. This meant that none of the sub-criteria could have been satisfied. Instead, the Supreme Administrative Court undertook an evaluation which, in addition to the above-mentioned circumstances, took into account all the evidence that indicated that this person, living in the municipality of Inari in the

²⁹ Supreme Administrative Court, 30.09.2015/2602, KHO:2015:146 [Saamelaiskäräjävaalit, Diaarinumero: 2747/3/15], available online at <http://finlex.fi/fi/oikeus/kho/vuosikirjat/2015/201502602> (accessed on 1 November 2019).

³⁰ Supreme Administrative Court, 26.09.2019/4348, KHO:2019:123 [Saamelaiskäräjävaalit, Diaarinumero: 4279/3/19], available online at <http://finlex.fi/fi/oikeus/kho/vuosikirjat/2019/201904348> (accessed on 1 November 2019).

³¹ Supreme Administrative Court, 26.09.2011/2710, KHO:2011:81 [Saamelaiskäräjävaalit, Diaarinumero: 2087/3/11], available online at <https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2011/201102710> (accessed on 1 November 2019).

Sámi Homeland area, identified himself with everything related to the Sámi and led a Sámi life-style. Based on such a holistic assessment, the Supreme Administrative Court found that he should nonetheless be considered a Sámi and should, upon request, be included in the list of voters or persons entitled to vote in the elections to the Sámi Assembly (Suksi 2015, 108). A similar “all things considered” approach was also present in decisions 30.09.2015/2601 and 30.09.2015/2603.³²

In the context of an application by the Sámi Assembly to overturn the elections of 2011, the Supreme Administrative Court explained its holistic assessment by saying that the Sámi Assembly Act does not require that the holding of the Election Committee of the Sámi Assembly as an expression of group acceptance should alone be decisive.³³ Therefore, the matter must be decided pursuant to the criteria in Section 3 of the Sámi Assembly Act. According to the Court, a holistic assessment is of importance in situations where the person at the outset only fulfils the explicit requirement of Section 3(2), but the note in the register is from before 1875, which was established by the Court as a cut-off point, but apparently not in an absolute manner. In the opinion of the Court, the older the note in a register is, the stronger substantiation is required of the other links that a person holds with the Sámi culture. The Court said that it has thus not performed any holistic assessments in a situation where the person has not fulfilled any of the criteria included in Section 3(1)-(3).

As concerns the 2015 elections to the Sámi Assembly, the Supreme Administrative Court granted voting rights on somewhat different grounds to 93 individuals out of a total of 182 individuals who had applied for the right to vote but who had not been considered eligible by the competent organs of the Sámi Assembly (Finnish Sámi Parliament 2016; Heinämäki et al. 2017, 121-147). As a result, the Board of the Sámi Assembly ordered new elections,³⁴ claiming that the Court’s decision concerning the 93 applicants was incorrect. However, this measure of the Board was overturned by the Court. In its decision 13.01.2016/61, the Supreme Administrative Court explained that by

³² Supreme Administrative Court, 30.09.2015/2601, KHO:2015:145 [Saamelaiskäräjävaalit, Diaarinumero: 2740/3/15], available online at <https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2015/201502601> (accessed on 1 November 2019); 30.09.2015/2603, KHO:2015:147 [Saamelaiskäräjävaalit, Diaarinumero: 2757/3/15], available online at <https://www.edilex.fi/kho/vuosikirjat/201502603> (accessed on 1 November 2019).

³³ Supreme Administrative Court, 13.01.2016/79 [Vuoden 2011 saamelaiskäräjävaaleja koskeva purkuhakemus, Diaarinumero: 3120/3/15], available online at <https://www.finlex.fi/fi/oikeus/kho/muut/2016/201600079> (accessed on 1 November 2019).

³⁴ The 2015 Decision of the Sámi Assembly [Saamelaiskäräjien hallituksen ratkaisu Saamelaiskäräjävaalien 2015 lopputuloksesta tehtyjen oikaisuvaatimusten johdosta] is available online at https://www.samediggi.fi/wp-content/uploads/2016/07/sakah_ratkaisu_vv_181115.pdf (accessed on 1 November 2019).

giving approval to separate applications to correct the composition of the Sámi Assembly, the Board of the Sámi Assembly had actually re-considered the right to vote of those persons who had complained to the Supreme Administrative Court and thus disregarded the decisions of the Court by which 93 persons had been granted the right to vote. At the same time, the Board set aside the decision of the Election Committee, by which the election results had been confirmed. The Court concluded that its decisions about those entitled to vote in the elections to the Sámi Assembly are binding for the Board of the Sámi Assembly. The Board does not, according to the Court, have the competence to decide on a matter that has already been resolved by the Supreme Administrative Court. The Board is also not competent, on the basis of the reasons it put forward in its decision under appeal, to approve those requests of review that dealt with the decision of the Electoral Committee to confirm the election results. This and several similar cases from previous years appear to reflect a conflict between the Sámi Assembly, on the one hand, and the Supreme Administrative Court, on the other (as well as between the Sámi Assembly and the individuals it does not want to recognize as voters). However, in a legal order following the rule of law, a legal entity such as the Sámi Assembly cannot place itself above a supreme court by disregarding court decisions.

The power of the Supreme Administrative Court to determine the eligibility of individuals to vote in the Sámi Assembly was criticized in 2017 by the UN Committee on the Elimination of Racial Discrimination, as had already happened in 2012. In 2017, the Committee reiterated its recommendation that, “in defining who is eligible to vote for Members of the Sámi Parliament, the State party accord due weight to the rights of the Sámi people to self-determination concerning their status within Finland, to determine their own membership and to not be subjected to forced assimilation.”³⁵ These recent pieces of criticism appear to contain an interpretation which is in opposition to the interpretations of the same Committee in 2003 and 2009 and which the Supreme Administrative Court followed in its 2011 decision, where the holistic assessment was introduced (Heinämäki et al. 2017, 90).

On 1 February 2019, the UNHRC delivered its views concerning several decisions made by the Supreme Administrative Court of Finland with reference to the 2015 elections of the Sámi

³⁵ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Finland, 8 June 2017, UN Doc. CERD/C/FIN/CO/23, para. 15, available online at <http://www.refworld.org/docid/5978a4114.html> (accessed on 1 November 2019).

Assembly (called “Sámi Parliament” in the UNHRC’s documents).³⁶ These views regard the individual communication submitted by Tiina Sanila-Aikio, the president of the Sámi Assembly of Finland, arguing *inter alia* against the 2011 and 2015 decisions of the Supreme Administrative Court “that gave priority to an individual’s wish to be registered as a voter over objective criteria related to actual active membership in the group or the group’s recognition of the person as a member of the Sámi indigenous people”³⁷ against the opinions of the Sámi Assembly’s Election Committee and Executive Board. The applicant claimed that the Court’s powers to determine who must be included in the electoral roll is an unlawful interference in the Sámi people’s right to define who is entitled to participate in elections.³⁸ The UNHRC found a violation of Article 25 of the ICCPR (right to take part in public affairs), read alone and in conjunction with its Article 27 concerning the rights of persons belonging to ethnic, religious, or linguistic minorities.³⁹ In particular, the contested court decisions prevented the author “from taking part in genuine periodic elections and negatively impacting the author and the Sami people’s use of their language and enjoyment of their culture in community with other members.”⁴⁰ The UNHRC further observed that “Article 27, interpreted in light of the UN Declaration and article 1 of the Covenant, enshrines an inalienable right of indigenous peoples to ‘freely determine their political status and freely pursue their economic, social and cultural development’.”⁴¹ In a parallel case, decided on the same day, involving a group of 22 Sámi eligible to vote in elections to the Sámi Assembly, the UNHRC found a similar violation of their rights.⁴²

³⁶ UNHRC, *Sanila-Aikio v. Finland*, Views concerning Communication No. 2668/2015, 1 February 2019, UN Doc. CCPR/C/124/D/2668/2015 (2019). The document is available online at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR_C_124_D_2668_2015_28169_E.pdf (accessed on 1 November 2019).

³⁷ UNHRC, Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2668/2015, 16 October 2018, UN Doc. CCPR/C/119/D/2668/2015, para. 2.6. The document is available online at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F119%2FD%2F2668%2F2015&Lang=en (accessed on 1 November 2019). See also paras. 3.1, 3.5, 8.7.

³⁸ UNHRC, *Sanila-Aikio v. Finland*, Views concerning Communication No. 2668/2015, 1 February 2019, UN Doc. CCPR/C/124/D/2668/2015 (2019), para. 1.2. The document is available online at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR_C_124_D_2668_2015_28169_E.pdf (accessed on 1 November 2019).

³⁹ *Ibid.*, para. 6.12.

⁴⁰ *Ibid.*, para. 6.2.

⁴¹ *Ibid.*, para. 6.8.

⁴² UNHRC, *Näkkäljärvi et al. v. Finland*, Views concerning communication No. 2950/2017. 1 February 2019, UN Doc. CCPR/C/124/D/2950/2017. The document is available online at

The UNHRC's views resulted in an application to the Supreme Administrative Court to overturn three of its final decisions (i.e., 26.09.2011/2710, 30.09.2015/2601, and 30.09.2015/2603), and to use a more limited definition of the right to vote. The Supreme Administrative Court decided in the case 05.07.2019/3224 not to overturn its previous decisions on the basis of the UNHRC's views. The Court acknowledged that Finland had agreed to take into account the views of the UNHRC when it ratified the First Optional Protocol to the ICCPR. However, the Court also noted that the views of the UNHRC are not legally binding in the same manner as the judgments of the European Court of Human Rights. This makes it possible to deviate from the views of the UNHRC, provided that the Court's judgment is justified in a relevant way.⁴³ Because the application was filed within the procedural purview of extraordinary appeals, the Court held that views of the UNHRC cannot result in a conclusion that the Court would have, in its earlier decisions, carried out a patently incorrect application of the law. The fact that the interpretation of international treaty-bodies had been shifting would not in itself constitute new information about the factual situation that would make it possible to overturn the earlier decisions. In the case 05.07.2019/3166,⁴⁴ the Supreme Administrative Court dealt with an application to overturn its decision 30.09.2015/2604, filed on more or less the same grounds as those above, but the Court explained that, in this case, the decision to include the person on the list of voters was not based on a holistic interpretation, but instead on Section 3(3) of the Sámi Assembly Act. The application was rejected.

In August 2019, it was still unclear what kinds of measures Finland might undertake as a consequence of the views of the UNHRC. The Sámi Assembly had requested that the elections be postponed for a year until the problem was solved, but the Ministry of Justice concluded that there was too little time to postpone them, because preparations had already started. The most relevant action at the moment would be the legislative measures taken by the parliament of Finland with a view to re-formulating the definition of Sámi in order to determine the right to vote in the elections

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR_C_124_D_2950_2017_28170_E.pdf (accessed on 1 November 2019).

⁴³ Supreme Administrative Court, 05.07.2019/3224, KHO:2019:90 [Ylimääräinen muutoksenhaku, Diaarinumerot: 1499/3/19, 1564/3/19 ja 1561/3/19], available online at

<https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2019/201903224> (accessed on 1 November 2019).

⁴⁴ Supreme Administrative Court, 05.07.2019/3166 KHO:2019:89 [Ylimääräinen muutoksenhaku, Diaarinumero: 1552/3/19], available online at <https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2019/201903166> (accessed on 1 November 2019).

to the Sámi Assembly. The 2019 Sámi Assembly elections were held between 2 and 30 September, and because a relatively large number of persons that had not had the right to vote in previous elections filed applications for voting rights with the Sámi Assembly which were denied, the Supreme Administrative Court received around 200 complaints which it was unable to resolve before the elections. Based on decision 26.09.2019/4348,⁴⁵ it appears that the Supreme Administrative Court will not consider the UNHRC's views concerning the importance of group recognition as sufficient legal justification for the Election Committee and the Board of the Sámi Assembly to make binding decisions about the right to vote in the elections to the Sámi Assembly. It seems clear that the matter requires legislative measures.

Another problem in this regard may be the fact that Finland has yet to ratify the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Article 7 of this convention determines that “[t]he peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.” The possibility that the Sámi Assembly might gain more say than it currently has in matters concerning the use of the state-owned lands in the Sámi Homeland area is perhaps one reason for an increasing number of persons to apply for the right to vote in elections to the Sámi Assembly.

Since the land traditionally used by the Sámi is up to 90% state-owned, from the viewpoint of the Finnish government “land rights questions are especially problematic” (Toivanen 2015, 123). This is of concern to the human rights treaty monitoring bodies.⁴⁶ Ratifying the ILO Convention No. 169 would undeniably strengthen the position of the Sámi of Finland with respect to managing their land rights and the pursuits of their traditional livelihood. One problematic aspect regards the free and informed consent of the Sámi people prior to the approval of any project affecting the use and development of their traditional lands and resources. The Act on the State Forestry Board

⁴⁵ Supreme Administrative Court, 26.09.2019/4348, KHO:2019:123 [Saamelaiskäräjävaalit, Diaarinumero: 4279/3/19], available online at <http://finlex.fi/fi/oikeus/kho/vuosikirjat/2019/201904348> (accessed on 1 November 2019).

⁴⁶ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Finland, Finland, 13 March 2009, UN Doc. CERD/C/FIN/CO/19, available online at <http://www.refworld.org/docid/49e5ccfb2.html> and UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Finland, 8 June 2017, UN Doc. CERD/C/FIN/CO/23, available online at <http://www.refworld.org/docid/5978a4114.html> (accessed on 1 November 2019).

(234/2016)⁴⁷ does not require the Sámi to be consulted prior to the issuance of permits affecting the use of their land. Yet, this body is a state-owned corporation charged with the functions of protecting natural resources in the Sámi Homeland area. However, the Mining Act (621/2011)⁴⁸ contains a multitude of provisions on prior consultation and accords the Sámi Assembly general standing for complaints to relevant courts in mining-related issues (for case analysis, see Heinämäki et al. 2017, 78-84).

4. Legal Basis of Autonomy

The Sámi autonomy in Finland is constitutionally entrenched. In accordance with Section 17(3) of the Constitution of Finland, the Sámi have the right to maintain and develop their own language and culture. The vehicle for this is the Sámi Assembly, which promotes the use of the three Sámi languages spoken in Finland in, *inter alia*, schools, public administration, and public services offered either by the state or by municipalities. The constitutional foundation of the Sámi Assembly is established in Section 121(4), which stipulates that “[i]n their native region, the Sámi have linguistic and cultural self-government, as provided by an Act.”

Within the constitutional framework created by Section 121(4) of the Constitution, the Sámi Assembly Act (974/1995) establishes constitutional provisions setting up the institution of linguistic and cultural self-government. It organizes the Sámi politically into the Sámi Assembly (also known as the Sámi Parliament, although it has no law-making powers).

Since the basic principles on Sámi autonomy are stipulated in the Constitution and detailed in an act of parliament, two different procedures exist for amending this legal basis.

The rules on constitutional amendments are stipulated in Section 73 of the Constitution of Finland. A constitutional amendment would require simple majority of those voting in one Parliament and, after intervening elections, a qualified majority of two-thirds of those voting in the new Parliament. This procedure would apply if there was a demand to amend Sections 17(3) and 121(4) of the Constitution.

⁴⁷ Act on the State Forestry Board (234/2016) [Laki Metsähallituksesta 234/2016], available online at <https://www.finlex.fi/fi/laki/ajantasa/2016/20160234> (accessed on 1 November 2019).

⁴⁸ Mining Act (621/2011), [Kaivoslaki 621/2011], available online at <https://www.finlex.fi/fi/laki/ajantasa/2011/20110621> (accessed on 1 November 2019).

The procedure for amending regular acts of parliament in Finland does not follow any rigid requirements. The proposal is introduced by the government and further considered by the parliament and finally adopted in two readings, as laid down in Section 72(1) and (2) of the Constitution, where simple majority of those voting is required for the proposal to pass.

While this provision does not establish any particular protection for the provisions concerning the Sámi Assembly, the reference to Sámi's "linguistic and cultural self-government" in Section 121(4) of the Constitution and the requirement of an Act contained therein means that it would most likely be unconstitutional to abolish the Sámi Assembly by revoking the Sámi Assembly Act.

5. Autonomous Institutions

The Sámi Assembly is elected for a period of four years and, after the election result has been ratified by its Election Committee, the new members of the Sámi Assembly are confirmed, in accordance with Section 10(2) of the Sámi Assembly Act (974/1995), by the government of Finland. The constituency of the Sámi Assembly is not limited to the Sámi living in the territory of the Sámi Homeland area. Instead, according to Section 20(1) of the Act, the entire country is, for the purpose of elections to the Sámi Assembly, one electoral district. The non-territorial nature of the constituency has resulted in a peculiar system of election, established in Section 38 of the Sámi Assembly Act, which tries to combine the national interest and the local interest. The 21 members of the Sámi Assembly are the candidates who received the most votes in the election, provided that the total group contains at least three candidates from each of the four municipalities in the Sámi Homeland area. If any of these municipalities does not have three candidates among this group, then the three candidates from this municipality with the most votes shall have been elected. This means that, altogether, at least twelve members come from the municipalities of the Sámi Homeland area, while the other nine members may also originate from the rest of Finland, that is, outside of the Sámi Homeland area, depending on how strong their support is in the elections. In practice, there have been very few representatives from elsewhere in Finland (Suksi 2015, 108-109). In the Sámi Assembly elected in 2019, only one member represents the part of Finland which is outside of the Sámi Homeland area.

The right to vote in the elections to the Sámi Assembly is determined in Section 21 of the Sámi Assembly Act and shall belong to every Sámi, regardless of where they residence, who reaches

the age of 18 years no later than the election day, provided that he or she is a Finnish citizen, or that he or she is a foreign citizen living in Finland in accordance with the Municipality of Residence Act (201/1994)⁴⁹ on the last date when the request for inclusion in the electoral roll can be made. The right to vote is thus not limited to the Sámi who are citizens of Finland but rather extends itself to citizens of Nordic countries (Sweden, Norway) who are resident in Finland and who qualify as Sámi. This definition of the right to vote also means that the constituency of the Sámi Assembly is to some extent disconnected from the territory within which the cultural autonomy functions. Taking into consideration that around 60% of the Sámi of Finland live outside the Sámi Homeland area, the non-territorialization of the constituency is a significant feature of their cultural autonomy (Suksi 2015, 106).

Section 9 of the Sámi Assembly Act stipulates the obligation for public authorities to negotiate with the Sámi Assembly on the following matters concerning them: community planning; management, use, leasing and assignment of state lands, conservation areas and wilderness areas; applications for licenses to stake mineral mine claims or file mining patent; legislative or administrative changes to the occupations belonging to the Sámi culture; development of the teaching of and in the Sámi language in schools, as well as the social and health services; any other matters affecting the Sámi language and culture or the status of the Sámi as an indigenous people. However, Section 9 does not establish any veto right over measures that are contemplated.

The Mining Act (621/2011) grants the Sámi, as represented by the Sámi Assembly, the possibility of having a say in decision-making when mining licenses in the Sámi Homeland area are prepared and decided on by governmental authorities (Amatulli 2015). The provisions of several other acts also have references to the Sámi. The Reindeer Husbandry Act stipulates important provisions on reindeer herding cooperatives, which are public law associations assuming responsibility for matters concerning reindeer herding within this territory. The provisions of the Municipality of Residence Act stipulate the right of a Sámi resident in Finland to declare Sámi as his or her mother tongue for purposes of the Population Register, which is an important guarantee for the purposes of inclusion in the electoral register of the Sámi Assembly. The Mining Act, the Water Act

⁴⁹ Municipality of Residence Act (201/1994) [Kotikuntalaki 201/1994], available online at <https://www.finlex.fi/fi/laki/ajantasa/1994/19940201> (accessed on 1 November 2019).

(578/2011),⁵⁰ and the Environmental Protection Act (527/2014)⁵¹ contain provisions that aim at preventing deterioration and erosion of the Sámi culture (Finnish Sámi Parliament 2016).

According to Section 37(2) of the Rules of procedure of the parliament of Finland (40/2000),⁵² parliamentary committees have the obligation to give the representatives of the Sámi an opportunity to be heard when a matter is dealt with that especially concerns the Sámi, unless there are special reasons for the contrary. The Sámi Assembly would normally be understood as the representative of the Sámi.

6. Autonomous Powers

The Sámi Assembly is a legal person incorporated under the Sámi Assembly Act (974/1995), entitled to possess its own resources and property and to engage in economic transactions with other legal persons. According to Section 5 of the Sámi Assembly Act, the general powers of the Assembly consist of looking after the Sámi language and culture, as well as taking care of matters relating to their status as an indigenous people and, in these matters, making initiatives and proposals to the authorities, as well as to issue statements. In the pursuance of these matters the Sámi Assembly shall furthermore use the powers prescribed in the Act or elsewhere in the law. However, the Sámi Assembly Act or other pieces of law do not seem to contain, at least at the moment, any significant executive powers for the Sámi Assembly (Suksi 2015, 100). In spite of the fact that the Sámi Assembly does not have any significant public powers, the Administrative Procedure Act (434/2003)⁵³ is applicable to the activities of the Sámi Assembly.

The Sámi Assembly does not have any legislative powers. Based on Section 5 of the Sámi Assembly Act, it may make initiatives and proposals to the authorities, as well as issue statements. Under Sections 5-8 of the Sámi Assembly Act, the Sámi Assembly shall adopt its own rules of procedure, and it shall draw up an annual report to the government of Finland enumerating events

⁵⁰ Water Act (578/2011) [Vesilaki 578/2011], available online at <https://www.finlex.fi/fi/laki/ajantasa/2011/20110587> (accessed on 1 November 2019).

⁵¹ Environmental Protection Act (527/2014), [Ympäristönsuojelulaki 527/2014], available online at <https://www.finlex.fi/fi/laki/ajantasa/2014/20140527> (accessed on 1 November 2019).

⁵² The Rules of Procedure of the Parliament of Finland, available online at https://www.eduskunta.fi/EN/tietoaeduskunnasta/Documents/parliaments_rules_of_procedure.pdf (accessed on 1 November 2019).

⁵³ Administrative Procedure Act (434/2003) [Hallintolaki 434/2003], available online at <https://www.finlex.fi/fi/laki/ajantasa/2003/20030434> (accessed on 1 November 2019).

of importance in the development of matters of specific relevance to the Sámi. In addition, the obligation to negotiate, placed upon the public authorities of Finland in Section 9(2) of the Sámi Assembly Act,⁵⁴ seems to imply a task for the Sámi Assembly to engage in negotiations with authorities, whenever they become necessary on the basis of the list of items included in the Act. An important task for the Sámi Assembly is to establish, through its Election Committee, who is and who is not qualified to vote in the elections to the Sámi Assembly; that is, to decide who is entitled to participate in the decision-making over Sámi matters in the Assembly. This means that the Sámi Assembly does not have complete discretion in determining the boundaries of its own electorate but rather it needs to make the decisions on the right to vote in line with the provisions of the Act.

The Sámi Assembly is not in charge of the general delivery of public services to the Sámi population in the Sámi Homeland area. Those services are offered by the municipalities (e.g., education, social affairs, health, and the environment) or by state authorities (e.g., public order, justice) within their territorial and material jurisdictions within the Sámi Homeland area (Suksi 2015, 101). As concerns the municipalities in which the Sámi live, it should be noted that the Sámi are regular inhabitants of those municipalities and are engaged in the decision-making structures of those municipalities on an equal basis with the majority population. The Sámi Assembly is therefore a public body outside the regular public administration, but it is entitled to offer an input into the decision-making processes of the regular authorities through the obligation of the public authorities to negotiate with the Sámi Assembly. According to the Sámi Language Act, the Sámi Assembly has functions in promoting the Sámi languages and in following up the implementation of the Sámi Language Act, which means that it reports on the use of the Sámi languages in the regular public administration when it is delivering services that should be produced in the Sámi languages.

The non-territorial cultural autonomies of the Nordic Sámi (Finland, but also Sweden and Norway) can cooperate with each other over the borders of the three states. According to Section 6 of the Sámi Assembly Act, the Assembly shall represent the Sámi in national and international dealings. The latter is a clear authorization to cross the territorial boundaries of the state in the area of

⁵⁴ In order to fulfil its obligation to negotiate, the relevant authority shall provide the Sámi Assembly with the opportunity to be heard and discuss matters. Failure to use this opportunity in no way prevents the authority from proceeding in the matter. This obligation includes, *inter alia*, land use, natural resources, social and health issues, and other matters that may affect the Sámi.

representation, but it would not indicate any possibility to exercise public powers outside the borders of Finland.

In 2002, a cross-border Sámi Parliamentary Council was in place (Kivisto 2015, 32). This Council was created by means of a cooperation agreement signed by the then chairpersons of the three Nordic Sámi Assemblies, complemented by the Rules of procedure of the Parliamentary Council. Sámi from the Russian Federation participate as well in this joint Nordic forum for expressing opinions on behalf of the Sámi at the international level (Myntti 2002, 153-170). Because the management of the joint Council alternates between the three Sámi Assemblies (the Swedish one being a state agency), it seems that this Sámi Parliamentary Council is not a legal person (such as an association), but instead another, more informal form of institutional cooperation (Suksi 2015, 110-111).

7. Financial Arrangements

No powers of taxation or collection of annual membership fees is foreseen in the Sámi Assembly Act (974/1995). Under Section 2 of the Act, an appropriation shall be made in the state budget for the tasks established in the Sámi Assembly Act. The Sámi Assembly is relatively independent in deciding how to allocate the budgetary transfers from the state but has a reporting obligation. In accordance with Section 8 of the Sámi Assembly Act, “the Sámi Assembly shall decide how the funds designated for the common use of the Sámi shall be allocated”. This decision of the Sámi Assembly is not subject to appeal.

The draft budget of the state for 2018 allocated 3,317,000 Euros for the costs of maintaining Sámi cultural autonomy. Since the total budget for 2018 was 55.7 billion Euros, the expenses of Sámi autonomy represent 0.055% of the total budget. The allocations within the state budget include the general allocation for the activities of the Sámi Assembly from the budget of the Ministry of Justice and more particular allocations for educational activities, production of educational materials, language nests and youth activities from the budget line of the Ministry of Education, and particular allocations for social and health care activities from the budget of the Ministry of Social Affairs and Health. The general costs of the Sámi autonomy were distributed as follows in 2018:

Activity	Amount (€)
Sámi Culture Center of Sajos for Senate Properties	1,481,000
Index rate for Sajos rents	5,000
The grants referred to in Section 31 of the Sámi Language Act	120,000
Nordic cooperation in the maintenance of the Sámi language	84,000
The Sámi Assembly's ordinary activities	1,627,000
Total	3,317,000

Source: <https://www.samediggi.fi>

8. Intergovernmental Relations

Negotiations are commonly used to settle disputes between the parties, and the focal point for this within the government of Finland is the Ministry of Justice. The Sámi Assembly has succeeded in finding a common solution in negotiations with the state of Finland to include important paragraphs into specific legal acts in order to prevent the Sámi Homeland area from being used for purposes that would have crucial negative impacts on the Sámi culture.

There is no Constitutional Court in Finland, nor any general review of the constitutionality of legislation, although the application of an act of parliament in an individual case can be declared unconstitutional by a court under Section 106 of the Constitution. However, because Sámi autonomy has constitutional status, draft laws submitted by the government of Finland to the parliament aiming at legislating on matters that concern the Sámi Assembly or matters of relevance for the Sámi are reviewed by the constitutional committee of the parliament, which, according to Section 74 of the Constitution, is the competent body to review the constitutionality of draft legislation.

The administrative review of decisions by public authorities is possible under the Administrative Court Procedure Act (586/1996).⁵⁵ Moreover, potential violations of the autonomy arrangement resulting from government action may be reviewed by administrative courts on the basis of complaints submitted to them over administrative decisions affecting the autonomy arrangement. After the exhaustion of domestic remedies, appeals to international organs are possible (see, for

⁵⁵ Administrative Court Procedure Act (586/1996) [Hallintolainkäyttölaki 686/1996], available online at <https://www.finlex.fi/fi/laki/ajantasa/1996/19960586> (accessed on 1 November 2019).

example, UNHRC, *Länsman v. Finland* and *Paadar v. Finland*). Moreover, the Mining Act (621/2011) grants the Sámi Assembly a formal position as a complainant in situations in which the possibilities for this indigenous population to preserve and develop their culture and language could be circumscribed (Amatulli 2015).

There is no reserved quota for Sámi individuals in the parliament of Finland. National Sámi organizations do not prioritize the issue of obtaining separate seats for the Sámi in the national parliament (Josefsen 2010, 11-12). At least one person belonging to the Sámi has been a member of the Finnish parliament during the past decades. At least since 1978, the parliamentary committees have conducted hearings with Sámi representatives (*Ibid.*). The Sámi individuals, of course, have been elected to municipal councils as representatives of Finnish parties in the Sámi municipalities in Northern Finland, in addition to Sámi also having been elected on Sámi lists with no party affiliation (*Ibid.*).

9. Inter-group Relations within the Autonomous Entity

As mentioned before, traditional minority–majority disputes associated with Sámi autonomy occur around the “competing ideas regarding economic development in Lapland, particularly over whether or not to expand extractive industries, which the Sámi quite rightly see as a threat to their livelihoods” (Kivisto 2015, 32). In the early 2000s, a significant long-lasting series of disputes arose around the use of forests in the important pastures that were situated in the local forestry areas. The reason for this was the decision of the State Forestry Board to harvest old forests in Nellim, Inari (Saijets and Rasmus 2017). This decision caused a series of counteractions on the part of the indigenous communities, which led to an agreement on forest use between the parties involved.

The Skolt Sámi are to some extent singled out as a particular Sámi group by means of the Skolt Sámi Act (253/1995).⁵⁶ The Act identifies a certain territorial area with two Skolt villages, and those speaking the Skolt Sámi language are entitled to participate in the village meetings and in the election of the Skolt councils, which in turn elect a person to represent the Skolt Sámi in relation to public authorities. The election of the Skolt Sámi representative in 2014 resulted in a

⁵⁶ Act on the Skolt Sámi (253/1995) [Kolttalaki 253/1995], available online at <https://www.finlex.fi/fi/laki/alkup/1995/19950253> (accessed on 1 November 2019).

complaint on the grounds that the elected person did not fulfil the linguistic requirements of the Skolt Sámi Act, but the Supreme Administrative Court upheld the decision of the regional administrative court which found that the linguistic requirements of the Act – not very strictly and precisely formulated – had not been set aside.⁵⁷

10. Membership and Special Rights

The right to vote in the elections to the Sámi Assembly is a special right of those registered as Sámi in the separate electoral roll established for the purposes of the Sámi Assembly elections. The Sámi do not have any other special rights, although the use of Sámi language before public authorities and courts of law is to some extent a right because it is tied to the definition of who is a Sámi according to Section 3 of the Sámi Assembly Act. However, the right to vote is not limited to the Sámi Homeland area but can be exercised by a Sámi residing anywhere in Finland. Nonetheless, the functions of the Sámi Assembly cover the territory of the Sámi Homeland area and most of the entitlements to enjoy the Sámi language and culture can be practiced only in that part of Finland.

Given that every Sámi should have the right to vote, interpreting the statutory definition of who is a Sámi becomes significant. The legal definition of who is a Sámi according to Section 3 of the Sámi Assembly Act (974/1995) is based on a combination of subjective and objective criteria. A Sámi for the purposes of election to the Sámi Assembly means a person who considers himself or herself a Sámi, which means that there is an element of self-identification in the definition (the subjective criterion). However, the person must, in addition, fulfil at least one of the three more ‘objective’ criteria, that is, the linguistic sub-criterion, the registration sub-criterion, and the voter sub-criterion (Myntti 1998, 330). In practice, this definition raises several key issues that were examined in detail at section 3 of this case study. The Sámi Assembly is empowered to determine, when deciding on the list of voters before every election, who is and who is not a Sámi for the purposes of the elections to the Sámi Assembly (although once included in the list of voters, the qualification is good for the future elections and does not have to be proved for each individual

⁵⁷ Supreme Administrative Court, 28.12.2015/3858 [Kolttien luottamusmiesvaalia koskeva valitus, Diaarinumero: 1933/3/15], available online at https://www.edilex.fi/kho/muut_paatokset/201503858 (accessed on 1 November 2019).

before every election). The indigenous group is therefore primarily in charge of controlling of who is and who is not a Sámi for the purposes of the Sámi Assembly elections (Suksi 2015, 107).

The cases regarding the inclusion of an individual in the electoral list of the Sámi Assembly decided by the Supreme Administrative Court of Finland show that the creation of a constituency for the purposes of election to a body that represents a certain ethnic or linguistic group may end up in considerable definitional problems. The various court cases also indicate that there is a degree of discontent amongst the Sámi themselves as to who should and who should not be able to vote in the elections to the Sámi Assembly. There are good grounds for letting the group itself manage the membership of the cultural autonomy institution and for controlling who is granted access to the group. Complete self-identification by any person who wishes to belong to the group could result in an inflation of the list of voters by persons who show no organic affinity to the group for whom the institution has been set up, with the risk of assimilation with the majority looming at the end of the path (Myntti 1998, 347).

11. General Assessment and Outlook

The relatively limited competence of the Sámi Assembly of Finland is territorially delimited, while at the same time it is the only national body representing the Sámi as concerns its nationwide constituency. Therefore, the cultural autonomy of the Sámi may actually be viewed as a hybrid between territorial and non-territorial autonomy. It is possible, however, that the Sámi Assembly will, in the future, increasingly assume tasks also in relation to the majority of the Sámi who live outside of the Sámi Homeland area.

The autonomy of the Sámi in Finland guarantees self-government for the Sámi people in questions of language, culture, and identity. Yet from the point of view of the principle of effective participation, it is questionable whether the participation of Sámi through the Sámi Assembly can be effective as this body has no significant or relevant public powers. It is an entirely different matter that the Sámi participate in local government on the same terms as other inhabitants of the northernmost municipalities, and in that sense, the municipal organization can arguably offer an effective vehicle of participation for the Sámi on a par with the mechanisms of participation enjoyed by those inhabitants of the relevant municipalities who are not Sámi (Suksi 2015, 101, fn. 69).

For the Sámi in Finland, self-determination is not only tied to language, but also to the prospective rights to land, traditional livelihoods, and other matters of indigenous nature that the Sámi might expect to be re-arranged as a consequence of the pending ratification of ILO Convention No. 169 by Finland. Therefore, the case of the Sámi in Finland could potentially carry some far-reaching consequences because of the bond between the indigenous group and the territory. Those consequences would, of course, not go as far as independence, but the resolution of the land rights issue may have a significant impact, positive and negative, on different groups living in the Sámi Homeland area if power over the lands were to be given to the Sámi Assembly.

The Sámi Assembly has become an important mechanism for increasing the self-consciousness of the Sámi. The Sámi Assembly proposed the idea of creating a truth commission to the government of Finland and it has actively proposed amendments to the Sámi Assembly Act concerning, *inter alia*, the right to vote in the elections to the Sámi Assembly and the number of members of the Assembly. Because there is a more or less open dispute between the Sámi Assembly and the Supreme Administrative Court about the interpretation of the provisions concerning the right to vote in the Sámi Assembly Act (974/1995), it would be the task of the parliament of Finland to design a political solution, for instance, by means of amending the law so that the language criterion is emphasized as a basis for the right to vote. If the Nordic countries and their Sámi Assemblies manage to bring the planned Nordic Sámi Convention into fruition, the position of the Nordic Sámi Assemblies will be solidified under public international law, although the draft text does not propose to increase the powers of the Sámi Assemblies.

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List of abbreviations

ICCPR – International Covenant on Civil and Political Rights

ILO – International Labour Organisation

UN – United Nations

UNHRC – UN Human Rights Committee