WHOSE LAND IS LAPLAND?

The Nellim Case: A Study of the Divergent Claims of Forestry, Reindeer Herding and Indigenous Rights in Northern Finland

Daniel James Moran
University of Helsinki
Faculty of Social Sciences
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HELSINGFORS UNIVERSITET
UNIVERSITY OF HELSINKI

Tiedekunta/Osasto – Fakultet/Sektion – Faculty	Laitos – Institution – Department
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Tekijä – Författare – Author
Daniel James Moran

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Tiivistelmä – Referat – Abstract

This study analyzes the various interests associated with the *Nellim Case*; that is, of the Sámi Paadar brothers and the Nellim group of the Ivalo Reindeer Herding Cooperative, within the Nellim community and the Inari municipality of Finland. Until the settlement agreements in 2009 and 2010, there has been an ongoing conflict between the Finnish state administered forest management department Metsähallitus and both Sámi and non-Sámi reindeer herders over the amount and location of the old-growth forests to be included as part of the annual timber harvest within the Sámi domicile area.

This reindeer herding and forestry conflict in northern Finland illustrates how the Sámi are embroiled in a struggle over recognition of their rights as indigenous people to claimed land and resources stemming from their traditional lands. While the Finnish state signed the United Nations Declaration on the Rights of Indigenous Peoples of 2007, and has promised to ratify the binding 1989 International Labour Organization Convention 169 Concerning Indigenous Peoples in Independent Countries (ILO 169), little has actually been done towards ratification of the ILO convention or implementation of norms required by the UN declaration. At the root of the problem for the Sámi is the fundamental desire for some form of control, decision-making power, or self-determination; one that includes their own customs and is recognized by the majority society. Finland, through its historical and recent actions and inactions, has failed to ascribe the required level of self-determination to the Sámi, despite making proud claims to be a bastion of human rights and a multicultural society.

Utilizing case study methodology, a critical analysis was undertaken on interviews and press releases by various interests related to the land conflict between reindeer herders and old-growth forestry loggers in Nellim, Finland. The justifications of the claims made by the actors in their interviews were analyzed using a form of Public Justifications Analysis, in order to attain a deeper understanding on the various intricate viewpoints that permeate throughout the case. When analyzed within inconsistent governmental responses to towards the conflict, it is argued that Finland is a symbolic multinational state, in that the results of Finland's actions vis-à-vis the Sámi, have to date, been primarily symbolic, rather than substantial in nature. Findings indicate that forms of external protection are still necessary for the Sámi in order to safe guard their rights and an increased level of substantial cooperation is necessary to avoid additional land use conflicts stemming from the future negotiations concerning indigenous rights of the Sámi.

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Sámi,
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For my Jenny

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Chapter 1 – Introduction

Nellim, a quiet village situated on the eastern side of Lake Inari in north east Finland, ten kilometres from the Russian border on the old Arctic Ocean road to Petsamo, was not always so calm. In 2005 the peacefulness of this village was uprooted when Greenpeace, along with other environmental non-governmental organizations (ENGOs) set up an information center in the wilderness, and invited journalists to visit and see first hand the effects of logging on the pastures used by reindeer herders from the area. In response, a second camp was organized by local forestry workers with the backing of Metsähallitus, the state-owned forestry administration body. Petitions were circulated, lines were drawn, and those living with Nellim and the greater Inari municipality had to choose sides: with the reindeer herders or with the loggers. Adding to the complexity of this conflict is the important detail that reindeer herding is considered a traditional indigenous activity, while Nellim is located on traditional indigenous lands.

This conflict is an example of how in recent years, questions surrounding the rights of indigenous people, whether they be social, cultural, political or resource-based economic rights, have become a highly political and debated topic throughout the world. In September 2007, indigenous people received global recognition, through the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. However, whether it be in the northernmost part of Fenno-Scandinavia and the Kola Peninsula in Russia or the rugged shoreline of British Columbia on the western coast of Canada, the rights of indigenous people, defined so due to their status and relationship with the states that colonized them, and different from the majority population by their unique ethnic identity, are being challenged by external interests. The Sámi,[1] indigenous people within the state of Finland and recognized indigenous people within the European Union, share a conflict that is common with other indigenous groups, such as the many First Nations in British Columbia, the Maori of New Zealand, or the Mapuche people of South America, with their respective states over one particular source of contention: land usage. As noted by UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya, for the Sámi, as with other indigenous peoples throughout the world, land rights

[1] The name Sámi can also be spelled Saami, Saame, Sami or Same and all are used in various literature, based on factors that include the country and language being spoken. Sámi is the spelling that will be used in this thesis.

are what are fundamental to their self-determination and a prerequisite for their continued existence as a distinct people (UN Special Rapporteur, 2011). This reindeer herding and forestry conflict in northern Finland illustrates how the Sámi are embroiled in a struggle over recognition of their rights as indigenous people to claimed land and resources stemming from their traditional lands. While the Finnish state signed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007, and has promised to ratify the binding 1989 International Labour Organization Convention 169 Concerning Indigenous Peoples in Independent Countries (ILO 169), little has actually been done towards ratification of the ILO convention or implementation of norms required by the UN declaration. At the root of the problem for the Sámi is the fundamental desire for some form of control, decision-making power, or self-determination; one that incorporates a form of self rule that is in accordance with their own customs and is recognized by the majority society (Tully, 1995; Lawrence, 2009). Finland, through its historical and recent actions and inactions, has failed to ascribe the required level of self-determination to the Sámi, despite making proud claims to be a bastion of human rights and a multicultural society.

However, notwithstanding this current state of affairs, Finland can also claim to be making steps in the direction of reconciliation of its land claims. In the autumn of 2009, in northern Finland the Nellim group of reindeer herders from the Ivalo reindeer herding cooperative in the Inari municipality, came to an agreement with the state managed forestry department Metsähallitus, over the long running conflict between forestry practices in reindeer grazing areas on Sámi claimed land (Metsähallitus, 24 August 2009). Following this agreement, two similar settlements were negotiated in other contested reindeer herding and forestry areas within the traditional Sámi territory in the Lapland region.

1.1 The Problem

This study analyzes the various interests associated with the *Nellim Case*; that is, of the Sámi Paadar brothers and the Nellim group of the Ivalo Reindeer Herding Cooperative, within the Nellim community and the Inari municipality of Finland. Three of the four Sámi brothers are employed in reindeer herding, while the fourth brother works in the forestry industry. Until the agreements in 2009 and 2010, there has been an ongoing conflict between the Finnish state administered forest management department Metsähallitus and both Sámi and non-Sámi reindeer herders over the amount and

location of the old-growth forests to be included as part of the annual timber harvest. Meanwhile environmental organizations such as Greenpeace and the Finnish Association for Nature Conservation have weighed in with their opinions on the side of the reindeer herders.

In a fundamental sense the case can be viewed as a dispute between two parties in a remote northern community, pitting those who make a living from reindeer husbandry at odds with the loggers, sawmill workers and those employed in some aspect related to the forestry industry in Finland. However, stepping back from the arguments, the dispute can be seen in the larger context of a Sámi attempt to exert a degree of self-determination: to control over what happens in their traditional territory, Sápmi[2] (Henriksen, 2008). According to the UN Declaration on the Rights of Indigenous Peoples which was signed by Finland, and specifically Article 26, the Sámi should have the right to legal recognition and protection when considering the activities that take place on their traditional lands, yet these disputes exist because this right is not upheld. Furthermore, the case can be explained as a struggle between the rights of indigenous people to self-determination and the will of a state over resource extraction.

Thus, through an analysis of the *Nellim Case*, this study aims to explore the relationship between the state of Finland and the Sámi people with respect to the concept of self-determination of indigenous peoples. This case study will be used to illustrate the complexity surrounding the issues connected to the rights of indigenous people in northern Finland; the land claims by the Sámi and the responses by the Finnish state in regards to land usage in northern Finland. Questions being addressed include:

- How did the land use conflict start?
- How are the different interests represented within the land use conflict?
- Why is it important that the conflict be resolved?
- Whose interests are being served by the various suggestions for improving Sámi rights?
- How are the policies of the Finnish state and Metsähallitus regarding the Sámi viewed, vis-à-vis mainstream society?

[2] Within this report this area is interchangeably referred to as Sápmi, the Sámi domicile region, and the Sámi homelands.

Fourteen in-depth qualitative interviews were conducted between December 2007 and December 2010, including various actors and interests associated with the case, with reindeer herding, forestry, Sámi rights and the larger issue of the land usage conflict. In addition, press releases and news articles by the actors were analyzed. The interviews were arranged according to interviewee participation or knowledge of the case and willingness to discuss their involvement at length. The justifications of the claims made by the actors in their interviews were analyzed using a form of Public Justifications Analysis, in order to attain a deeper understanding on the various intricate viewpoints that permeate throughout the case (cf. Luhtakallio, 2010).

What is being analyzed in this study are perceptions regarding this forestry and reindeer herding conflict, both of Sámi and non-Sámi, in the north. Throughout these analyses, a question is asked as to the extent to which the traditional practice of reindeer herding supports the recognition of Sámi rights as indigenous peoples, given the state advocated old-growth forestry logging of the traditional Sámi region and considering the international agreements such as the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.

Since the study of indigenous rights falls within arguably one of the more inter-disciplinary fields of scientific research, invariably one is drawn into multiple academic fields such as anthropology, history, sociology or law. Structurally, the historical side of the Sámi case is visited before moving towards a review of the legal dimensions associated with the Sámi in Finland and indigenous rights in general. The current situation of the Sámi in Finland is then discussed, along with the practice of reindeer herding. Subsequently, a theoretical operationalization of terminology and a review of pertinent literature are covered before moving into an illustration of the applicable methodological tools used. Following, is a chronological presentation of the case and the ensuing outcome, with highlighted connections to the Sámi in Finland and indigenous rights in general. A qualitative analysis of the justifications used for the various claims, as represented by the interviews, are next referred to in the second analytical chapter, and in doing so provide a deeper understanding on the various intricate viewpoints that permeate throughout the case. The discussion section then highlights the complexity of the Nellim case, as it relates to the larger areas of sociological theory, Sámi land rights and the indigenous rights discourse.

1.2 History of the Sámi[3]

When analyzing the land rights of the Sámi in Finland and the Nellim conflict, to fully understand how the impasse came to a head, it is important to consider the historical origins of the territory; the section of Sápmi that falls within the present borders of Finland (see map 1). Finland was part of the Kingdom of Sweden until 1809 and as such was governed by Swedish law. From 1809 until gaining independence in 1917, Finland was an autonomous Grand Duchy of the Russian Empire, but maintained the previous laws as when part of the Kingdom of Sweden (Aikio, 1994). Since 1917, Finland has been an independent state with its own legal system and has had consistent borders with Sweden, Norway and Russia since the end of World War II.

As noted by Sillanpää (1994), the common predisposition of the Norwegian, Swedish and Finnish states for many years had been that the Sámi did not own the land, and that the state was taking control of ownerless lands. It has been argued that the present nation-state borders are a result of a gradual encroachment of Sámi territory, by what can be deemed the colonizing presence of the states of Finland, Sweden, Norway and Russia (Aikio, 1994; Tully, 1995; Forrest, 2002). This is the crux of the question that is at the heart of many disputes between the Finnish state and the Sámi, particularly when related to land rights.

The Siida

"Tell them we don't just wander" is the aptly fitting quote put forth to anthropologist Robert Paine by a Sámi reindeer herder (Paine, 1994:11; Forrest 1998). It conveys the idea that, contrary to what the nation states would want people to believe, the Sámi system of living was not based upon aimless wandering, but on a deeply intricate system of land and resource management, based on the seasonal variations in climate and changes in ecological conditions, upon lands which had recognized territorial borders.

[3] It is important to note that over time, different terminology has been used for the Sámi, with some previously used terms presently being used by some members of the majority non-Sámi population in a derogatory manner. For example, the term *lapp* (in Finnish, lappilainen) is often used instead of Sámi; and while the meaning of the term *lapp* might have formerly been of someone who practices Sámi livelihoods such as reindeer herding, hunting and fishing, it is now used to derogatorily describe the Sámi (Pietikäinen, 2003:576). However this is not to be confused with how some descendants of Finns who live in the region of Lapland consider themselves *Laplanders* (lappalainen), to distinguish themselves from the Sámi (Ibid.). As Pietikäinen (2003) points out, whether one chooses to call the Sámi 'Sámi' or 'Lapps' depends on their perspective or attitude towards the Sámi; moreover whether they consider the Sámi to be an "independent and self-governing group" who deserve to be labelled on their own terms.

Due to historical records, the most important form of social organization to consider with the question of land rights is the Sámi Siida.

Until the 1898 state abolishment of the system, the Sámi were organized around the village or Siida, which consisted of a group of families, with flexible membership and a recognizable territorial base (Nickul, 1977; Sillanpää, 1994; Forrest, 1998). The Siida was a system of social organization for the Sámi and was of primary importance in terms of land use and ownership. Going back to the Middle Ages, or the 1400s-1500s, the traditional Forest Sámi Siida, or Sámi village, can be defined as "a village unit that provided for community activities, and it was the area wherein the members of the society had usage rights." (Lehtola, 2002:23) The Siida owned a certain area of land that had borders known to neighbouring Siidas, and the system was "a permanent socio-economic and political institution [that] had been functional for centuries." (Lehtola, 2002:23) The Sámi economy was based upon activities that nearly exclusively included hunting, trapping and fishing, and were carried out by families in areas within the Siida lands, as assigned by the Siida Chief or Siida Community, (Solbakk, 2006). Some activities within the Siidas were done on an individual basis, such as hunting and trapping small animals, while larger scale activities, notably whaling along the coast as well as salmon fishing in the summer and beaver and reindeer trapping in the winter, were done collectively (Ibid.).

Prior to reindeer herding becoming a primary activity, the organization of the Sámi Siida was based on an annual migration between summer and winter areas according to fishing and hunting needs, but within their own carefully defined areas (Lehtola, 2002). The start and end points of the migratory route for the reindeer-herding Sámi were the coniferous forests in the wintertime and the open fells or mountains, in the summer time (Solbakk, 2006:44). In the height of winter, which was roughly December to April, each Sámi Siida community would gather together during the winter at the winter village (Forrest, 1998). Members of the Siida had voting rights, and it was at the winter village that state officials, tax collectors and ministers would also gather for trade, weddings and dispute settlements (Nickul, 1977; Lehtola, 2002). Meanwhile, the families also participating in Siida related communal activities, such as wild reindeer hunting and trapping (Nickul, 1977; Lehtola, 2002). The transition from hunting and fishing to reindeer herding as a near exclusive source of income for the households, took place at different times, depending on the conditions specific to each geographical area of the Sápmi territory (Nickul, 1977; Sillanpää, 1994).

The Siida system changed over time, particularly with the encroachment of southern settlers and to adapt to the widespread use of reindeer herding (Lehtola, 2002:26). As part of a colonization decree by the Swedish crown, settlement placards (the intention of which was to protect Sámi interests and allow the settlers and the Sámi to live side by side) were issued in 1673 and 1695 that encouraged settlers from the southern areas of present Sweden and Finland to move across the Sámi border to establish farms, with the promise of tax privileges and military service exemption for those who moved (Kvist, 1992).[4] This approach by the nations states was to change, however, as from the mid-1700s, particularly with the 1751 Strömstead Treaty and the 1809 ceding of Finland to Russia, these governments began to recognize these Sámi lands as falling within the doctrine of *nerra-nullis* (land of no one) and thus belonging to the state (Kvist, 1992; Sillanpää, 1994; Lehtola, 2002; Forrest, 2002). This process would continue and the Sámi rights to land gradually eroded.

Taxation was introduced as each state expanded and attempted to consolidate their power and influence beyond the northern Sámi frontier.[5] It was in around the 1300s that taxation had begun to be implemented, firstly along the coast from the West by Denmark-Norway, the coast into the Kola Peninsula by Russia, in the south west by Sweden, from the south east by Novgorod and by the land owning Birkarls in the Gulf of Bothnia region (Lehtola, 2002:185)[6]. Within the present borders of Finland, the Swedish crown levied a *Lapp* tax, which was collected by bailiffs on behalf of the king. The Lapp tax was based on legislation that indicated Lapps should be taxed on the income or benefit gained from breeding reindeer, hunting and fishing (Ibid.). Within each Siida, each family controlled or used an area of land that was deemed to be hereditary or tax land (Sillanpää, 1994). In addition, the same legislation assessed a land tax to each Siida or Lapp villages within Sweden. Thus, the names of Siidas (Lapp villages), the names of taxpaying Sámi (Lapps) and the boundaries of the taxed lands with the amounts of taxes actually paid, were recorded in a Land Registry (Sillanpää,

[4] However, aside from in the Kemi region, the number of settlers into the Sámi areas in Finland were smaller than in Sweden, and the courts at the time repeatedly recognized Sámi and Siida property rights, with judgements against the settlers (Korpijaakko, 1989; Kvist, 1992; Korpijaakko, 1993; Lehtola, 2002).

[5] Taxation was one of the three primary methods that were employed; the others being the establishment of missions and the resettling of farmers from the majority populations (colonization) (cf. Lehtola, 2002).

[6] Within the interior however, the Sámi were taxed by multiple competing authorities: both those of Sweden and Denmark-Norway, or Sweden and Russia, or in the case of Inari, by all three, which remained the case until the 18th century (Sillanpää, 1994).

1994). It is noted that some form of Lapp tax was paid until 1923, when the post-civil war land reform was enacted in Finland[7] (Sillanpää, 1994).

The most compelling evidence of these records can be found in Kaisa Korpijaakko's (1989) research which has illustrated how the Sámi property rights were comparable to the rights afforded to Nordic farm owners during the same period of time, and which existed until the end of the 18th century (Korpijaakko, 1993; Sillanpää, 1994; Lehtola 2002). In her study, Korpijaakko makes reference to the evidence of tax rolls that suggest that the 'Lapp Villages' (Siidas) were the unit of land defined within the real estate system, which were further divided up into clearly defined plots of land controlled by individual families (Korpijaakko, 1993:11). These plots of land appear on the tax rolls as hereditary or tax land privately controlled by the particular family (Ibid.).

The second main point stressed by Korpijaakko was that court documents, as a result of disputes over boundaries, clearly delineate where one portion of land ends and the next begins (Korpijaakko, 1993). Cases heard by the district courts[8] of northern Sweden in the 17th and 18th centuries, indicate that the Sámi were afforded the legal rights as land owners and had been treated as owners (Sillanpää, 1994). Importantly, Korpijaakko refers to the two major tax assessments that were carried out in Sweden in the 17th century, one being in 1602 and the other in 1695 and these tax assessments indicate that the tax was paid according to the land and not on the individual (Ibid.). From the end of the 1600s, public land registries were also used, containing precise records of Siida by Siida, of the hereditary lands located within, who the occupants of the lands were, and how much tax was paid on these lands (Ibid.).

The point that these tax records show is that at the time covered by the Korpijaakko (1989) study, the Sámi society was based upon private ownership by Sámi families; ownership was not based solely upon collective land use[9] and the tax lands of the Sámi fulfilled the same criteria for ownership as properties for farm owners in the same time period (Korpijaakko, 1993). These records show that property rights existed and were recognized by the Swedish crown, at least until the late 18th century.

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[7] However the last reliable form of documentation listing the names of all the villages and tax payers in the public registers was in 1898.

[8] The court documentation contains a great deal of information not only regarding the village or Siida boundaries, but of the individual hereditary lands, which were described in detail by place name and the exact boundaries between the litigants (Korpijaakko, 1993).

[9] This is not to say that there were no collective activities within the Siida, as trapping and wild reindeer hunting was shared amongst the village (Korpijaakko, 1993; Solbakk, 2006; Lehtola, 2002).

Politically speaking, it was in 1751 that the northern border was established as it is today between Norway and Finland, in an agreement known as the Strömstead Treaty of 1751, to which The Sámi Codicil of 1751[10], was attached (Sillanpää, 1994). This codicil recognized the Sámi as the 'Lapp Nation' (Sámi nation) and is significant in that the rights of the Sámi, to the land as reindeer herders, was recognized by a formal legal treaty (Henriksen, 2008).

In 1809 the political landscape changed again: Finland was ceded to Russia as a result of the Peace Treaty of Hamina, which concluded the Finnish War between Sweden and Russia, and the present day border between Finland and Sweden was established (Sillanpää, 1994; Heikkilä, 2006). Finland, and the Sámi within, became part of an autonomous province of Russia and the borders were drawn up differently once more: The Border Convention of 1826 recognized the borders between the Russian Grand Duchy of Finland with Norway to the north and Sweden to the West and is the basis of the current borders (Sillanpää, 1994:48). In 1852 the border between the Grand Duchy of Finland and the Norwegian state was closed by the Russian government in respect to Sámi reindeer herders (Sillanpää, 1994). In 1889 the border between Sweden and Imperial Russia was closed (Heikkilä, 2006). The Sámi were then not allowed to travel between the winter and summer grounds with their reindeer, and these border closings resulted in major hardships felt by the Sámi reindeer herders as well as the farmers, notably in Norway, since the numbers of reindeer were now concentrated on a much smaller area.

The last reliable records of Sámi land title in Finland were dated 1898, though, at this point it is noted that the nature of the taxes paid by the Sámi, had been altered. In the aftermath of Finnish independence, in 1925 there was a further general land reform, the Land Parceling Act[11] which distributed land in the Sámi areas to settlers without recognizing Sámi land title (Heikkilä, 2006). Within this reform Sámi lands were categorized generally as 'government lands' (Korpijaakko, 1993).

Thus, it is the Siida that is the important aspect both geographically and legally when considering the Nellim case. These tax records are an important source of

[10] The treaty drew out the border between the states, and the Sámi were to choose nationality of one or the other. The objective of the Lapp Codicil was to maintain the migration of the Sámi reindeer herders, between the summer and winter pastures, ensuring the crossing of the border for annual migrations to continue unhindered, permanently (Henriksen, 2008).

[11] In Finnish this act is known as Isojako 1925 (Heikkilä, 2006).

evidence to Sámi land tenure, and central to the land rights is the practice of reindeer herding, as this is the core of the matter.

1.3 International Agreements, International Law and Finland

Continuing from the historical review, an examination of the legal responses, both internationally and domestically, is imperative in order to garner an appreciation of the indigenous claims by groups such as the Sámi in Finland. This review looks at the most pertinent legal instruments in relation to the Sámi, beginning with two Sámi cases heard by the Human Rights Committee of the United Nations (UN), a review of indigenous specific instruments of international law, including the International Labour Organization Convention 169, followed by the more recently proposed Nordic Sámi Convention and the UN Declaration on the Rights of Indigenous Peoples from 2007.

International Covenant on Civil and Political Rights, 1966 (CCPR)

The International Covenant on Civil and Political Rights (CCPR) of 1966 is an international human rights instrument that has been important for indigenous rights claims.[12] Of this covenant, articles 1 and 27 are the most important for indigenous peoples, with article 1 being important due to the statement regarding the concept of self-determination of peoples. However, due to the ambiguity surrounding who exactly falls within the definition of the term 'peoples,' this article has been problematic. In contrast, article 27 has been regularly used by indigenous groups to argue their cases, despite indigenous groups not being specifically mentioned (Lawrence, 2009). Addressing the existence of minorities in general, article 27 states that "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."

With regard to the Sámi and Finland, article 27 was central to the two Länsman cases of 1992 (Ilmari Länsman et al v. Finland) and 1996 (Jouni E. Länsman et al v. Finland), which were brought before the Human Rights Committee. The two cases were landmarks in the sense that the Sámi were deemed to be indigenous peoples who fall under the title of minorities, and thus are legally entitled to protection of their culture

[12] Finland signed this convention in October 1967 and ratified this covenant as of August 1975, before it due to come into force.

under article 27 (Hossain, 2008). In the first Länsman case, the Sámi reindeer herders complained that the quarrying of stones from the Etelä Riutusvaara Mountain and the transport of such stones through the reindeer herding territory violated article 27 in that their cultural practice of reindeer herding was under threat; meanwhile the second Länsman case was in regards to logging in reindeer herding pastures with the argument being that the logging roads were going to affect the Sámi cultural practice of reindeer herding. The UN Human Rights Committee (UNHRC) indicated that the violations were not serious enough to be considered a violation of Sámi culture, but did state that the cultural rights of the Sámi reindeer herders exist as a form of minority rights, and that there must be participation by the Sámi in decisions that affect their culture, while noting that reindeer husbandry was an integral part of Sámi culture and that adaptation to modern technologies does not play any part in extinguishing the Sámi rights (Hossain, 2008)[13]. Reindeer herding was legally recognized as an important part of Sámi culture by the HRC and therefore the Finnish state; the Sámi received formal international recognition that is binding for Finland.

International Labour Organization Convention 169, 1989 (ILO 169)

The International Labour Organization Convention No. 169 (ILO 169)[14] is notable in that it specifically concerns Indigenous and Tribal Peoples within independent countries and is the only binding piece of law that applies exclusively to indigenous peoples (Lawrence, 2009). The ILO 169 convention outlines the various states' responsibilities to protect Indigenous peoples' rights, including rights to land, resources and self-determination. Finland, Sweden and Russia have yet to ratify the convention, but Norway did so in 1990.[15]

The convention clearly provides for cultural rights (see Article 13) as well as provisions that recognize indigenous ownership over lands that were traditionally by them (Art. 13-19), protection of natural resources (Art. 15) and consultation rights

[13] See also Ilmari Länsman et al v. Finland, 1992; and Jouni E. Länsmann et al. v Finland, 1996.

[14] ILO 169 directly replaces ILO 107, which, while initially drafted to protect indigenous labourers from exploitation, has been criticized as a paternalistic, assimilationist convention and an embarrassment to the ILO (Anaya, 1996; Forrest, 2006; Koivurova, 2008).

[15] In January 2011 as the most recent round of elections approached, then Minister of Justice Tuija Brax blamed the Center Party of Finland when noting that Finland would not be ratifying ILO 169, since the framework law related to the conditions needed to ratify it would not be passed before the legislative term ended at the end of March (YLE, 21 January 2011).

(Art.6). Despite these provisions, it has been well pointed out that while ILO 169 explicitly does not fully allow for a commitment to indigenous self-determination, it does signify the demonstration of a state's general acceptance of the norm (cf. Forrest, 2006) with article 7.1 coming close in referring to indigenous 'own-development.'

However, despite the convention not specifically dealing with the definition of self-determination, it is the ambiguity surrounding land rights within ILO 169 that has kept many countries from ratifying the convention, as the breadth of the legal definition of the concept of self-determination has been found to be troublesome when considered with land rights and possible secession strategies (Anaya, 1996; Heinämäki, 2004; Forrest, 2006). Simply put, due to the historical connotations manifest in the terms *peoples* and *self-determination*, many states fear that once land rights are afforded, there will be a loss of power and a possibility of secession.[16]

Officially, both Finland and Sweden have stated that their legal systems will not accommodate the provisions of ILO 169, and that national legislation is a prerequisite for ratification (Lawrence, 2009). Since its creation there have been a number of bodies which have looked at how Finland could ratify the convention.[17] The findings of these studies have been mixed and controversial,[18] particularly in the acceptance or rejection of various pieces of evidence. The lack of trust vis-à-vis issues of impartiality, combined with a lack of consistent findings appears to be a major hindrance to Finland ratifying the convention.

Draft Nordic Sámi Convention

The Nordic Sámi Convention is an attempt to enact a common policy on Sámi affairs between the three Nordic countries with Sámi populations (Henriksen, 2008). The draft convention incorporates key aspects of ILO 169 but adapts them to the Nordic context, while referencing previous agreements such as the Lapp Codicil of 1751. The draft

[16] Land rights are what the Sámi in Finland do not currently have control over, and as Heinämäki (2004) and Forrest (2006) point out, with the threat of secession, the main reason why Finland and other countries have not ratified ILO 169.

[17] These include: special rapporteur Dr. Pekka Vihervuori in 1999; a second rapporteur Dr. Juhani Wirilander in 2001; a Sámi Commission, led by Governor of the Province of Lapland in 2001; and a research group consisting of historians and legal scholars from the University of Oulu and Lapland University, who delivered their final report in 2006 (Joona, 2003).

[18] For example, the Oulu and Lapland University study commissioned in 2003, has been criticized as being of a too narrow focus, since records from the 16th century should also have been considered in addition to the 18th century (cf. comments by Martin Scheinin, cited in Finnish Forestry Association, 8 November 2005).

convention was initially proposed in 1986 by the pan-Sámi non-governmental organization, the Sámi Council, to have the four countries and the Sámi work on a common convention. the draft or proposed convention was then developed by an expert committee made up of six representatives: one from each of the Sámi populations of the three Nordic countries as well as a government representative from each country[19]. The main premise of the draft convention can be summed up as a legal relation of four peoples (Finnish, Swedish, Norwegian and Sámi) inhabiting the territories of three states (Finland, Sweden and Norway), with only three of the four peoples enjoying full self-determination within their states (Koivurova, 2008).

The convention is wide-ranging in terms of the rights of indigenous peoples. The convention is broken down into 51 articles, including: general rights of the Sámi; Sámi governance; Sámi language and culture; Sámi rights to land and water; and Sámi livelihoods. The most relevant articles in terms of having decision making capabilities are articles 15-19 and 21, which deal with aspects of Sámi self-determination.[20]

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

The United Nations Declaration on the Rights of Indigenous Peoples was signed and entered into force in September 2007. The rights conscribed by the declaration go beyond those of ILO Convention 169, with bold statements in reference to self-determination, land and resources and for rights of political autonomy (Anaya, 1996). There are 46 articles within the declaration, and despite the wide-ranging provisions, the declaration is compelling because the non-binding nature of the document makes it politically appealing to countries that are not worried about possible succession strategies.[21] Along with 140 other countries, Finland, Sweden and Norway signed the declaration; meanwhile Russia abstained from voting, and, notably due to their indigenous populations, Canada, the United States, New Zealand and Australia did not

[19] The committee decided that the draft convention was to be a Nordic one, not involving the Russian state; this was due to both Russia's vocal opposition towards the UN Declaration on the Rights of Indigenous Peoples, and the difficulty for Russia to give special recognition to one of many indigenous peoples in Russia (Henriksen, 2008; Koivurova, 2008).

[20] For more detail see Henriksen (2008) and Koivurova (2008).

[21] The draft declaration had been criticized by some indigenous groups for not going far enough and by governments for going too far (Anaya, 1996:53).

sign onto the declaration[22]. A lack of perceived clarity regarding the rights to self-determination, particularly with regard to lands and resources were common reasons why these nations did not sign (Koivurova, 2008).

The most prominent articles from the UNDRIP in the realm of self-determination include Article 3 and 4. Article 3 states that indigenous peoples have the right to self-determination, to "freely determine their political status and freely pursue their economic, social and cultural development," while Article 4 goes further in declaring the rights of indigenous peoples to autonomy and self-government. These two articles lay down the benchmark that indigenous peoples should have the right to self-determination on par with any other nation has had in history; free from outside influence, and in charge of their own affairs.

With regards to land rights of indigenous peoples, the most important articles of the UNDRIP are articles 26-32. Article 26.1 strongly states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." Article 26.2 and 26.3 then stipulate the rights to development and control over lands and resources, in addition to legal recognition and protection of the lands, "with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned."

Significantly for the Sámi, article 32 refers to the process of development on indigenous lands. It notes that while there may still be development on the lands, that indigenous peoples will be involved in the determination and development of priorities and strategies (32.1), that states will consult and cooperate in good faith, for free and informed consent regarding any project taking place on indigenous lands (32.2), while providing just and fair redress for activities that have adversely impacted the indigenous peoples; this is the crux of the matter that the Sámi reindeer herders would strive for.[23]

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[22] Australia, New Zealand, Canada and the United States have since endorsed the declaration (Washington Times, 16 December 2010).

[23] Additionally: article 27 addresses the process of recognition, allowing for the participation of the indigenous peoples; article 28 outlines the rights to compensation for appropriated lands and resources; article 29 mentions the conservation and protection of the environment, forbidding the disposal of hazardous waste on indigenous lands; article 30 notes that military activities must not take place without agreement; while article 31 deals with the control and maintenance of cultural heritage – important vis-à-vis the practice of reindeer herding and the Sámi.

1.4 The Sámi Today

The overall Sámi population covering the four countries of Finland, Norway, Russia and Sweden falls approximately between 80,000 and 95,000 (Henriksen, 2008:27). In Norway the number is between 50-65,000, in Sweden the number is 20,000 and in Russia 2000 (Nordic Sámi Convention, 2005). Meanwhile, statistics from the Sámi Parliamentary elections in 2007 indicate that the Sámi in Finland number 9350, which, at the end of 2007 equated to 0.17% of the entire population of Finland.[24] The Sámi are also a minority within the Sámi homeland area, since in 2007 there were 3577 Sámi living there, which is approximately one third of the entire population of that area and 46.5% of all Sámi in Finland (Ibid.). This number of Sámi, however, has been disputed due to the definition of who is and who is not Sámi. Officially speaking, according to the Act on the Sámi Parliament, a person can be considered Sámi, provided:

> 1) That he or she or at least one of his or her parents or grandparents has learned Sámi as her or his first language;
>
> 2) That he or she is a descendant 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 or her parents has or could have been registered as a voter for an election to the Sámi delegation or the Sámi parliament.

It must be noted that the final say to gain access or recognition as Sámi is made by the Sámi election committee. In the late 1990s, there was an attempt by a group of local people who had previously been recognized as Finns, and who opposed the legislation in favour of the Sámi in the 1990s. This group wanted to be recognized as Sámi and have a right to vote, possibly due to future Sámi land rights, but had their applications denied by the committee on the grounds they were not Sámi (Pietikäinen, 2001). The Finnish Supreme Court upheld the decision made by the Sámi election committee.

The Act on the Sámi Parliament, as it is titled in English, was passed in the Finnish Parliament in 1995, and served to establish the new Sámi parliament,[25] thus creating a formal structure for Sámi political representation at the domestic level

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[24] See *The Fourth Periodical Report of Finland on The Application of The European Charter for Regional or Minority Languages*, Ministry for Foreign Affairs, Finland, 2010.

[25] Since 1973 there had existed what has been officially referred to as 'The Delegation for Sámi Affairs' which, while always referred to both by the Sámi as well as politicians as the Sámi Parliament, had a less formalized structure and less of a decision making capability (Sillanpää, 1994; Forrest, 2006).

(Forrest, 2006). This Sámi parliament act provided the Sámi with a form of self-government in that they would have decision making capabilities in the cultural and linguistic fields, within the Sámi homeland area (Finnish Constitution, s.121). The Finnish Constitution further stipulates that in addition to the Sámi having a right to maintain and develop their own language and culture, they also have the right to use the Sámi language before authorities (Finnish Constitution, s.17).[26] The two pieces of law ensure that with regard to language and cultural rights, the Sámi have a degree of autonomy over how the funds allocated to them are spent; the responsibility of which falls under the mandate of the Sámi parliament in Finland.

However these powers are limited by financial constraints. These restrictions naturally bound what can be accomplished, and in Finland, the level of funding for the culture and language provisions is far lower than in Sweden and Norway, with population differences considered (Henriksen, 2008). In 2007, the Finnish Sámi parliament received approximately US$3.7 Million, for a population of 8000-10,000 Sámi people. Meanwhile, the Norwegian Sámi parliament received $44.1 million and the Swedish parliament received $19.6 million, for populations of 50-65,000 and 20,000 respectively (Henriksen, 2008). Per capita, this funding equates to the Sámi parliaments receiving, in Sweden US$980, Norway $882 and in Finland $370. No matter what powers the Sámi are afforded, without due financial compensation for the wealth garnered from their traditional territories, any gains will remain largely symbolic.

The Act on the Sámi parliament also delineates the boundaries of the Sámi homelands, Sápmi, that fall within Finnish borders. This area (see maps 1 and 4) includes the municipalities of Enontekiö, Inari, Utsjoki and the Lappi Reindeer Herding Cooperative, located in the municipality of Sodankylä (Act on the Sámi Parliament, 1995). The overall dimensions of Sápmi represent approximately 40% of Swedish territory and the same percentage of Norway. In Finland, the Sámi domicile area represents approximately ten per cent of the land in Finland, which equates to roughly 31,100 square kilometres (Regional Council of Lapland, 2010).

[26] The constitutional recognition and the passing of the Act on the Sámi Parliament ensure that Finland's laws fall in line with article 27 of the International Covenant on Civil and Political Rights of 1966; and thereby fulfill Finland's requirements for minority protection.

Linguistically, three of the nine remaining Sámi language groups[27] can be found in Finland (see map 2) (Helander, 1998; Henriksen, 2008; Pietikäinen, 2010). It has been argued that the different language groups form a continuum, with languages bordering one another being mutually understandable, but groups separated by greater distances being dissimilar (Sammallahti, 1998). In 2010 there were 1832 people in the population register with a Sámi language as their mother tongue (Statistics Finland, 2010). According to Sámi Parliament voting records from 2007, the most prominent group is the Northern Sámi which has 1544 Sámi people who identify it as their mother tongue (Finland Ministry of Justice, 2009:10). As indicated in map 2, the Northern Sámi language can be found in the municipalities of Enontekiö, Utsjoki, much of Inari, northern Sodankylä and stretches across the borders into both Sweden and Norway; due to its widespread nature the language could be regarded as a Sámi *lingua franca*, though there is also a reluctance by speakers of the other Sámi languages to speak Northern Sámi (cf. POGA Inari Symposium Final Report, 2009). In contrast, there are 357 Sámi people with Skolt Sámi as a mother tongue and 279 Sámi people with Inari Sámi as their mother tongue, effectively rendering these languages minorities within a minority (Finland Ministry of Justice, 2009:10). As shown on map 2, Inari Sámi is spoken in the immediate vicinity of lake Inari, while Skolt Sámi speakers are located in the region closest to the Russian border and traditionally used portions of the Western Kola Peninsula as their territory, but were forced to flee that area to Finland as Petsamo was ceded to the Soviet Union after World War II (Solbakk, 2006). While these numbers consist only of those eligible to vote in the 2007 Sámi elections, of which there were 5317, they still highlight the need for language survival programs, seeing as the 2180 Sámi people with one of these Sámi languages as a mother tongue represent only 41% of eligible Sámi voters. Furthermore, these language programs are, however, difficult to implement when considering that more than 50% of the Sámi now live outside of the Sámi domicile region (Pietikäinen and Kelly-Holmes, 2011).

Education-wise, according to a Ministry of Justice report on the application of language legislation, as of 2009 there are approximately 165 pupils who attended the

[27] Bearing in mind that what counts as a 'language', a 'dialect', or a 'language variety' vis-à-vis the status of a 'language' can be at times a contentious and political issue (cf. Patrick, 2012); even within Sámi scholars, references to 'language' or 'dialect' have differed (cf. Sammallahti and Helander, 1998). Within the Sámi Language Act (1086/2003) the Finnish Ministry of Justice states that "[T]he Sámi language is defined as the languages of Inari Sámi, Skolt Sámi or Northern Sámi, depending on the language used or the main target population."

basic level of education in a Sámi language (Ministry of Justice, 2009). It is also noted that while the language schemes work well for the lower levels, the Inari Sámi and Skolt Sámi language nest programs in Inari being a prime example, at higher levels of education such as secondary and upper secondary school, the Sámi language is spoken sporadically, with a lack of teachers proficient in the languages cited as a major reason (Ministry of Justice, 2009). Meanwhile, no education is offered in the Sámi languages outside of the Sámi homeland, while during the 2008-2009 academic year, a total of 36 students received language training (Ibid.:72).

There are state subsidies to provide health and welfare services in the Sámi languages, within the Sámi domicile area. In a practical sense, these must be arranged in advance, and often are provided as translation or interpretation from Finnish. The 2009 Ministry of Justice Report on the Application of Language Legislation also notes that while there is widespread awareness of the possibility to use a Sámi language for services and with authorities, it is not always requested. The reasons listed include the notion that older Sámi have used Finnish with authorities for decades, a stigma associated with requesting the service in a Sámi language, and as noted by the Sámi Parliament, there is a general negative attitude toward the Sámi Language Act by the authorities in the Sámi homelands (Ministry of Justice, 2009:70).

In terms of more general demographics of the Sámi homelands, as of January 2010 the total population of both Sámi and non-Sámi living within Sápmi[28] in Finland amounted to 10,047 people, which equates to 5.5% of the population of the Region of Lapland (183,748 people) or 0.2% of the population of Finland (5,351,427 people) (Regional Council of Lapland, 2011). The main sources of employment in this area, as with other northern Lapland municipalities, depend directly on the surrounding environment. The majority of employment is in services, particularly accommodation and food service activities, rather than primary production or industry (Ibid.). In the Inari municipality, the most important livelihoods are tourism (20% of the employment in the municipality), reindeer herding (8.3%), forestry (5%) and in nature conservation (1.4%) (Raitio, 2008:82). In 2009 the rate of unemployment was 14.5% in Inari, 9.6% in Utsjoki and 20.8% in Enontekiö, while the unemployment rate for the Lapland Region was 14.3% compared to the national rate of 9.8% (Regional Council of Lapland, 2011).

[28] Figures based upon statistics for the municipalities of Enontekiö, Inari and Utsjoki. Separate statistics were not available for the Lappi reindeer herding cooperative specifically, so these were not included.

Comparatively, only the regions of Kainuu (15.1%) and Northern Karelia (15.9%) had higher rates of unemployment than the Lapland region (Ibid.).

In the Inari municipality, where most of the contested old growth forests are located, both Sámi and non-Sámi practice both reindeer herding and forestry. With reindeer herding, there are approximately 700 reindeer herders who are organized into eight reindeer herding cooperatives (RHCs). Metsähallitus has estimated there are approximately 200 people employed in forestry (Metsähallitus, 23 July, 2010). Meanwhile, Metsähallitus has also estimated that approximately twenty per cent of the people making a living from timber related jobs in Inari, are Sámi (Veijola, 2005, citied within Raitio, 2008).

1.5 Reindeer Herding Today

The definition of reindeer herding can be approached in a number of different ways, depending on the perspective used and one's position in relation to it. Reindeer Herding can be viewed as an industry, as a means of livelihood, as a social and cultural expression, and as a land usage form (Heikkilä, 2006). In practice, the notion of reindeer herding can run between a referral to the practice of shepherding reindeer in a traditional sense of taking care of reindeer at all times, to the industry of keeping reindeer on a farm, to the close relations between economic, ecological social and cultural means of living a Sámi lifestyle. There are a number of terms that are sometimes used interchangeably in everyday speech, such as reindeer herding, reindeer husbandry, reindeer farming, the reindeer industry, reindeer management, reindeer breeding (Heikkilä, 2006). However, while these terms are in fact self defining, meaning for example, that reindeer farming refers to keeping reindeer on a farm, and reindeer breeding refers to the breeding of reindeer, there is an important distinction to be made between reindeer *herding* and reindeer *husbandry*. According to Paine (1994), reindeer husbandry refers to the herd as a harvestable resource of the owners, while reindeer herding incorporates both the everyday herding aspect of day to day work, taking care of the herd and their welfare, with the aforementioned husbandry aspect. For the herder, the lifestyle treats the two parts as inseparable (Ibid.).

Whereas in Norway and Sweden reindeer herding is exclusively the right of the Sámi, in Finland this is not the case and there are statistically more Finns that practice reindeer herding than Sámi (Heikkila, 2006:93). To be able to own reindeer in Finland one must be an EU citizen, have a primary residence within the reindeer herding area,

and own a reindeer earmark (Reindeer Husbandry Act, 1990). It has been estimated that approximately 10% of all reindeer herders in Finland are Sámi, but as noted previously, definitions of Sámi are difficult, meaning that it is difficult to determine the exact number of Sámi vs non-Sámi reindeer herders in Finland. That being said, within the reindeer herding cooperatives in the Inari municipality, while there are no accurate statistics as to the division of Sámi and non Sámi, it has been estimated that the majority of reindeer herders are Sámi (Raitio, 2008).

The rights of all reindeer herders, Sámi or non-Sámi, are protected by the Reindeer Husbandry Act (1990), which also outlines the rules and regulations involved in the practice of reindeer husbandry in Finland. The act describes the reindeer herding area (Section 2 of the Act) while stipulating the laws affecting reindeer owners and non-reindeer owners in the reindeer herding area of Finland. The act defines the role and responsibility of each reindeer herding cooperative (*paliskunta*, in Finnish) as well as the rights and responsibilities of each reindeer owner (Section 9).

In terms of the number of reindeer, the Finnish Ministry of Agriculture and Forestry sets the maximum number of reindeer within the entire area (see map 3) according to a ten year cycle, based upon a number of factors including the condition of the pastures. The current allowable number is 203,700 reindeer (Reindeer Herders' Association, 2011). In the upper reindeer herding area, of which Sápmi is a part, the maximum number of reindeer per reindeer owner is 500, as opposed to 300 in the southern area (Ibid.).

Geographically speaking, the reindeer husbandry area comprises 114,000km2 which is 36% of the surface area of Finland (Reindeer Herders' Association, 2011). This area covers the majority of the region of Lapland as well as a portion of the Oulu region, and is organized into 56 reindeer herding cooperatives, with 41 of these in Lapland and 15 in the Oulu region. The RHCs have strictly defined boundaries, delineated with fences, and vary in both size and number of reindeer (Ibid.). The RHCs are profit based units whose members or shareholders are reindeer owners. Each RHC has a council and elects a Chief of District for a period of three years, who is the legally accountable representative of the RHC and acts as a manager responsible for practical activities within the RHC (Ibid.). The RHCs answer to the Ministry of Agriculture and Forestry, who regulates the largest permitted number of reindeer for each cooperative, by which the RHC must keep the number of living reindeer within. Meetings are held twice a year between all shareholders in a RHC, before the autumn roundup and in the spring at the

end of the reindeer husbandry year, at which point plans for work within the RHC and the number of reindeer to be slaughtered is determined.

As noted in map 4, there are 13 RHCs within Sápmi, with 8 within the Inari municipality. As said map indicates, the RHCs in both Enontekiö and Utsjoki municipalities do not have substantial forestry activities, and hence have not had conflicts with regard to forestry as has been within the 8 Inari RHCs and the Lappi RHC. Within the Inari municipality, 90% of the land is owned by the state and managed by Metsähallitus (Joona, 2003; Raitio, 2008:82).

Despite being at 68 degrees north, the Gulf Stream enables boreal forests to grow and commercial forestry to exist, at a higher level than anywhere else in the circumpolar area (Raitio, 2008). Due to the high latitude and associated conditions, forests grow more slowly than for example in central Finland; this ecological sensitivity rendering the region more susceptible to damage (Ibid.).

When discussing old growth forestry, it is important to note that the ages can vary. Definitions of old-growth forest range from those based solely on forest age estimates (B.C. Ministry of Forests and B.C. Ministry of Environment, Lands and Parks 1995, cited within Braumandl and Holt, 2000) to those derived from principles of forest stand development (Braumandl and Holt, 2000). Old-growth forest consists of trees of a variety of species and age, a mix that is only possible in a forest that has been undisturbed for hundreds of years. As old trees die and fall over, they are replaced by younger ones that grow beneath the canopy. Dead and dying trees are essential in old-growth systems for the habitat and nourishment they provide. Attributes used in some ecological old-growth definitions include: large old trees, a multilayered canopy, numerous large snags and logs, diverse tree community, great age of some trees, canopy gaps, hummocky microtopography, complex structure, wider tree spacing, and increased understorey production (Kneeshaw and Burton 1998 cited within Braumandl and Holt, 2000). In the Nellim Case, these age estimates of the old growth forests are over 140 years (Mustajoki et al, 2011; Greenpeace, 2004).

Chapter 2 – Theoretical and Methodological Framework

The Nellim case, and greater conflict in northern Finland, is complex due to the indigenous factor. The Paadar brothers are Sámi people wanting to protect the existence of a traditional Sámi activity, within their traditional territory. The Sámi are recognized as indigenous people within the European Union, and acknowledged as such by Finland in Section 17 of the Finnish Constitution. Due to this indigeneity, the Sámi are entitled to a form of self-determination, personified by a different standard of rights than the ethnic Finns living within the Sámi homeland; a point which Finland recognized when signing the UN Declaration on the Rights of Indigenous Peoples. At this point, before getting further into the analysis, it is important to outline what is meant by certain concepts and theoretical terminology such as indigenous, self-determination, colonization and symbolic vs consequentialist forms of multinationalism, as well as outlining the justifications theory used in the analysis of the data.

2.1 Theoretical Terminology

2.1.1 Indigenous Peoples

According to present UN Special Rapporteur James Anaya (1996), starting from roughly the 1500s, the term indigenous peoples has been part of a long process of empire building and colonial settlements, and includes those who already inhabited the lands that were encroached upon and became subjected to sometimes violent and oppressive forces; these people have become known as indigenous, native or aboriginal. Furthermore, Anaya states that today, in a broad sense the term *indigenous* refers to those

> "living descendents of preinvasion inhabitants of lands now dominated by others," while "indigenous peoples, nations or communities are culturally distinctive groups that find themselves engulfed by settler societies born of the forces of empire and conquest" (Anaya, 1996:3).

Meanwhile, according to the International Labour Organization Convention No.169, "Concerning Indigenous and Tribal Peoples in Independent Countries," the term *Indigenous Peoples* refers to:

> Peoples in independent countries who 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 or the establishment of present state boundaries and who,

> irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

In the final report of a 1986 United Nations study that was titled "Study of the Problem of Discrimination Against Indigenous Populations," Special Rapporteur Mr. Jose Martinez Cobo, in describing the term 'indigenous' noted that:

> 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 their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

Martinez Cobo[29] also noted the importance of self-identification as indigenous "which is recognized and accepted by these populations as one of its members (acceptance by the group)" (Ibid. para 381).

Will Kymlicka notes that an important distinction between indigenous peoples and minority cultures is that indigenous peoples are minority cultures who were colonized (Kymlicka, 2001). He goes on to explain that indigenous peoples are:

> "distinct cultural communities which were previously self-governing, but whose homeland has now been included in a larger state against their will" and that "they occupied and governed their lands before the state was even in existence" (Kymlicka, 2001:148).

To Kymlicka (2001) the three elements of being an indigenous people include: being previously self-governing, having territory that was concentrated, and being culturally distinct societies. The key here is that the argument for indigenous peoples to have special rights is not based upon a case of who was there first, but "to question the boundaries of the political community" (Kymlicka, 2001:149). Kymlicka's (2007) question is that if former colonizers were able to grant independence to overseas colonies, then why not recognize some form of self-determination to their internal colonies?

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[29] Martinez Cobo also outlined five other factors which could be relevant for the identification of indigenous peoples, drawing upon historical continuity into the present, including: a) occupation of ancestral lands, or at least part of them; b) common ancestry with the original occupants of these lands; c) culture; d) language; and e) residence in certain parts of the country, or in certain regions of the world (Martinez Cobo, 1986:para 380).

Thus, we can say that the definition of indigenous peoples includes aspects of previous self-governing communities, incorporated into a greater state against their will through acts of colonization, while retaining some or all of their own social, economic, cultural and political institutions. Meanwhile, a key aspect is having the option for self-identification and subsequent authority for the group to accept one as a member.

2.1.2 Self-Determination

According to Anaya (1996) self-determination is a principle of the highest order in the contemporary international system of law and politics. In a general sense, self-determination involves human rights principles "extending from core values of freedom and equality and applying in favor of human beings in relation to the institutions of government in which they live" (Anaya, 1996:81). Historically, the concept was first raised to prominence in international political discourse at the time of World War I, when American President Woodrow Wilson linked the principles to those of Western liberal democracy (Anaya, 1996). World War II led to the United Nations, where the "self-determination of peoples" was included among the UN's founding principles, while post World War II, it has been the central argument to promote the ending of the colonial institutions (Ibid.). Anaya defines self-determination "as a universe of human rights precepts concerned broadly with peoples, including indigenous peoples, and grounded in the idea that all are equally entitled to control their own destinies" (Anaya, 1996:75). Article 3 of the UN Declaration on the Rights of Indigenous Peoples states that self-determination is defined as the right to "freely determine their political status and freely pursue their economic, social and cultural development" (UNDRIP, 2007). What is at stake is the ability of a group of peoples to determine the direction of their existence.

Moreover, majority recognition of freedom and equality permeate through the concept. Anaya goes on to indicate that there are five characteristics manifested within the concept of self-determination, when considering international norms concerning indigenous peoples: freedom from discrimination, respect for cultural integrity, social welfare and development, lands and natural resources, and self-government (Anaya, 1996). As Tully notes, the concept of self-determination in practice "consists of decolonisation and the recognition of indigenous peoples as free, equal and self-governing peoples under international law, with *shared* jurisdiction over lands and resources on the basis of mutual consent" (2000:56). The emphasis is on shared

jurisdiction over lands and resources which serves to accommodate the notion of territorial integrity, while "amending an illegitimate exclusive jurisdiction into a legitimate shared jurisdiction" (Tully, 2000:56).

The challenge however, is to define who or what comprises the term 'peoples'. Anaya claims that indigenous groups, such as the Maori, Navajo and who the Sámi could be included, fall under a category of 'peoples' who comprise distinct communities, with their own cultural, social and political attributes that are rooted in history (Anaya, 1996:77). Anaya (1996) goes on to state that the use of the term peoples has led to a restriction of the scope of self-determination, to include the narrowly defined, mutually exclusive communities, with powers of sovereignty including independent statehood; in a general sense, most states found at the United Nations. Moreover, despite fears of secession associated with the term, Anaya points out that "inextricably wedding" self-determination to the entitlements or conditions of statehood or secession, is a misguided connection since the link does not necessarily follow from decolonization (Anaya, 1996:80).

As Tully argues, when indigenous peoples at the international level make a demand for "recognition as 'nations' with 'the right of self-determination', they are arguing that the prevailing criteria and reference of these terms ought to be revised to include them, rather than to exclude them, as they have done for the last five hundred years" (Tully, 1995:39). Meanwhile, Kymlicka (2001) points out that one way to experience self-determination is to enter a form of federation with another culture. Within such an agreement, it would appear likely that an indigenous group would "only choose to enter such a federation if it recognized their inherent rights of self-government over their traditional homelands" (Kymlicka, 2001:149).

In terms of how Sámi self-determination would look in practice, one could readily look at how the Sámi in Finland as well as the other Nordic countries each enjoy their own Sámi parliament with varying powers and jurisdictions. However, at present in Finland it is claimed that having a Sámi parliament does not mean the Sámi people are self-determining or even self-governing[30] (Kuokkanen, 2011). Meanwhile, secession is not part of the discourse surrounding Sámi self-determination (Henriksen, 2008).

[30] As outlined in Chapter 1, the powers available to the Sámi parliament in Finland are limited, and the financial means available, which are determined by the Finnish parliament, notably fall behind the budgets of the Sámi parliaments in Sweden and Norway (Henriksen, 2008).

2.1.3 Multination-State; Minorities and the 'Nations Within'

In policy terms, these concepts of indigenous and self-determination can be visualized through how an increasing number of Western liberal democratic states have taken a first step in dealing with diversity by the formal recognition of minorities within their borders. Many Western democracies now accept that they can be more accurately classified as a multi-nation state, rather than as a nation state: accepting that there is more than one nation within their borders, and in many cases recognizing that each nation is entitled to language provisions and some self-governing abilities that ensure the right to maintain their culture (Kymlicka, 2000). In some countries, including Finland, this distinction has been written into their constitutions.

Will Kymlicka (2000) uses Canada as an example of a multi-national state that implements different forms of multiculturalism. According to Kymlicka, there are two forms of multiculturalism taking place in Canada: the first deals with those groups who have immigrated after the founding of Canada, whereas the second deals with those who were on present day Canadian soil, before the establishment of the country by the British (Ibid.:219). Prior to the establishment of the official multiculturalism policy in 1971, the first group was expected to assimilate to the existing British cultural norms, dropping their distinct heritage (Ibid.:219).

The second group Kymlicka has deemed the 'Nations Within,' and refers to groups that "formed complete and functioning societies on their historic homeland before being incorporated into a larger state" (Kymlicka, 2000:221). Both indigenous peoples such as the First Nations, Metis and Inuit in Canada or the Sámi in Finland, Norway, Sweden and Russia, and peoples such as the Quebecois in Canada, the Scots in Britain or the Catalans in Spain, are examples of peoples who fall into this category of 'nations within' or 'national minorities'. However, the latter groups (Quebecois, Scots, Catalans) are also called 'stateless nations' or ethno-national groups, which distinguishes them from indigenous peoples (Kymlicka, 2000:221). In addition, the main criteria Kymlicka (2000) uses to distinguish the indigenous peoples from stateless nations, is the role in which each group played in the state formation. Stateless nations were often contenders but on the losing side in the processes of state formation, whereas indigenous peoples were often left outside the process altogether, and thus retaining a pre-modern way of living until this century (Ibid.:221).

At the same time, certain scholars (cf. Ivison et al., 2000; Lawrence, 2009) have made the argument against Kymlicka's idea of accommodating the claims and rights of

indigenous peoples within the current liberal political theory, by pointing out that there is a risk of perpetuating the internal colonization of indigenous peoples by taking the legitimacy of the state *a priori*. This idea is interesting, foundational and strong, but adds difficulty to the situation since the states are in the position of control: they are the ones who will be losing material wealth, whereas indigenous peoples are the ones who are to gain. Therefore this approach is one to be made with caution, since if arguments become permeated with hints towards secession, it is likely that the states will find any excuse to delay these processes further (cf. Heinämäki, 2004; Koivurova, 2008). While it may be desirable on the level of a best case scenario for indigenous peoples, not to mention admirable for the states to acknowledge and adhere to this discourse, in the current international climate this is not a likely development. In the case of the Sámi, cooperation and diplomacy has been the overall strategy[31], and, as previously noted, secession has not been an aspiration for the Sámi (Kuokkanen, 2009; Henriksen, 2008).

The situation of the Sámi can be theoretically approached through an analysis of a triangular relationship between indigenous peoples, the state and the market in which notions of responsibility are central (Lawrence, 2009). As noted by Lawrence (2009), questions over indigenous responsibility are political because they concern relations of power; relations between the indigenous group, the state and the market. Where do indigenous peoples turn when the state decides to reduce funding for language and cultural programs? What happens when traditional indigenous livelihoods are threatened by a state-owned enterprise? What do indigenous peoples do when the state allows for privately owned, sometimes foreign resource extraction on traditional indigenous land? For many indigenous peoples, the claims by the state to sovereignty over their traditional lands and lives, threatens their cultural survival and potentially their very existence (Lawrence, 2009; Tully, 2000).

2.1.4 Power[32]

Power is also manifest within the relationships between indigenous peoples and the majority societies of the states they exist within. The majority of the world's indigenous

[31] A notable (though arguably forced) exception to this strategy being the Alta-Dam conflict in late 1970s-80s (cf. Briggs 2006).

[32] This section, *Power*, and particularly the Lukes and Tilly discussion, draws heavily upon the work of Toivanen (forthcoming), within which a much deeper analysis of the arguments vis-à-vis the Sámi can be found.

peoples live under varying degrees of assimilation, domination and control by the colonizing states, while many of these indigenous populations continue to suffer discrimination and exploitation (Young, 2005; Kulonen et.al., 2005:24). A power struggle is evident when considering the goals of cultural survival and the continuing existence of indigenous peoples vis-a-vis the conditions they are subjected to by the states they exist within. In terms of indigenous peoples and power, it has been noted by Tully (1995) that when Aboriginal peoples "seek recognition as 'people' with the 'right of self-determination', established nation states with Aboriginal peoples within their borders use their considerable instrumental power to keep the claim out of public discussion. They seek to discredit their claim, or if all else fails, to silence the claimants" (41).

Charles Tilly (1991) asks a poignant question in terms of power relationships: If their interests are consistently subject to appropriation or domination, why do subordinates comply? "Why don't they rebel continuously, or at least resist all along the way?" (Tilly, 1991:594) Why do indigenous peoples not protest persistently in the streets of major cities, where their plight becomes noticeable? Why do the Sámi not construct barricades at the edge of their traditional lands, as has been done by indigenous peoples in Quebec or British Columbia, Canada? Why do the Sámi accept and obey the decisions or, perhaps more importantly, inaction by the states within which their territories are located? Interestingly, why are other, non indigenous peoples, not aware of and supportive towards the indigenous positions? In answering his question, Tilly then gives seven reasons why subordinates do comply, including: 1) that the premise is incorrect and subordinates continuously rebel covertly; 2) that subordinates get something in return for their oppression, sufficient for the subordination to continue; 3) that in their pursuit of other goals subordinates become involved in systems that exploit them; 4) that subordinates remain unaware of their true interests, through the result of mystification, repression or lack of alternative ideological frames; 5) that subordinates are held in place via force or coercion; 6) that subordinates lack the necessary financial and resource based means to resist and rebel; and finally, 7) all or a combination of these reasons (Tilly, 1991:594; see also Toivanen, forthcoming).

It is the fourth point, in which people remain unaware of their true interests, that holds particular credence with Lukes (2005), in that it is a central component of what he labels, the third dimension of power. Lukes (2005) articulates the comprehensiveness of a three dimensional view of power, with each building upon the

previous. The first dimension deals with what has become known as the 'pluralist view' in that the focus is on concrete and observable behaviour of decision making on issues, with the central focus being the *observable* conflict of interests, as illustrated in policy preferences and political participation: power in decision making only shows up in conflicts (Lukes, 2005:19). The second dimension incorporates aspects of coercion and influence into the first dimension analysis, and is based upon both decision making and non-decision making, while stressing actual, observable conflict, whether it be overt or convert (Lukes, 2005:23). Power thus appears also with non-decision making, but with the focus on a "question of control over the agenda of politics and of the ways in which potential issues are kept out of the political process" (Lukes, 2005:25).

However, for Lukes (2005) the second dimension, while being a major improvement on the first, is still 'inadequate'. The third dimension, being the 'radical view' on power, goes beyond the first and second dimensions by securing the consent of willing subjects to domination, and includes the power to prevent people

> From having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because they value it as divinely ordained and beneficial (Lukes, 2005:28).

It is this third dimension of power, in which the potential for issues to be kept out of politics is central, whether through social forces and institutional practices, or through individuals' decisions (Lukes, 2005:28). Lukes (2005) points out that contrary to the first two dimensions, this can occur in the absence of an actual, observable conflict. This conflict may be a latent conflict, between the interests of those in power and the real interests of those they exclude, "who may not even be conscious of their interests" (Lukes, 2005:28). Getting back to Tilly's (1991) checklist, it is the fourth point that 'pinpoints' the third dimension of power. It is when subordinates are unaware of their true interests, due to means such as the result of mystification, repression or a lack of alternative ideological frames, that Lukes finds is of the utmost importance, to the extent that "no view of power can be adequate unless it can offer an account of this kind of power" (Lukes, 2005:11; see also Toivanen, forthcoming).

Within the framework of this third dimension, it is the acceptance, the lack of awareness of alternatives, and the lack of observable conflict that is interesting with regard to indigenous rights. While conflicts tend to happen, quite often they can be written off as those of specialized, small interest groups, well into the periphery areas; in

the Nellim case, this could be a small group of reindeer herders who are against the trees being cut down by the government who are only trying to provide jobs for local people. However, if the local conflict was raised to a higher level and framed in the majority's conscience as a draconian act of domination being carried out by a supposedly liberal democratic government against a small, marginalized group of people on indigenous lands, then those in the majority who value freedom, justice, human rights and equality, would have more of an interest.

2.1.5 Colonization, Equality, Justice and Recognition

Intrinsically related to notions of power and self-determination are claims for recognition by minority groups such as indigenous peoples. Such claims for recognition of indigenous rights are based within moral and political arguments for concepts such as equality, justice and recognition, while referencing historical injustices and the continuing legacies of colonialism that indigenous peoples are subject to (Tully, 1995; Ivison et al., 2000; Kulonen et.al., 2005:24; Lawrence, 2009). It is important to point out that in a general sense, "at various points of history, different strands of western political thought have not only been complicit with, but helped to justify, colonial expansion and imperial control over indigenous peoples and their territories" (Ivison et al., 2000:1-2). Throughout history, these liberal democratic forms of modern political theory, have emphasized the importance of universal human rights, equality before the law and individual and collective freedoms while at the same time categorically denying such entitlements to indigenous peoples (Ivison et al., 2000:2).

What the Sámi are looking for is recognition to their rights, as indigenous people, as Finland agreed to by signing the UN Declaration on the Rights of Indigenous Peoples. Charles Taylor (1992) argues that there is a need to recognize the distinctness of a minority, and adopt a politics of difference, to avoid a situation in which the distinctness remains "ignored, glossed over, assimilated to a dominant or majority identity" (Taylor, 1992:38). Taylor points out that within the politics of equal recognition, there are two parts, comprised of the politics of difference and the politics of equal dignity or universal equality:

> With the politics of equal dignity, what is established is meant to be universally the same, an identical basket of rights and immunities; with the politics of difference, what we are asked to recognize is the unique identity of this individual or group (Taylor, 1992:38).

A point can be made that the Sámi, like many other indigenous peoples, make claims for recognition that will lead to substantive equality, while keeping in mind that treating everyone within a state equally, does not mean they are treated equitably (Tully, 1995:66). Tully (1995) argues that to treat indigenous peoples equally to the majority, is "to treat them within the imperial conventions and institutions that have been constructed to exclude, dominate, assimilate or exterminate them" (Tully, 1995:97). Many indigenous groups still feel the effects of past colonial policies.[33] Due to colonial policies it is not enough to treat indigenous peoples with equality: their unique history requires an approach of accommodation and a recognition of special group rights, that indigenous peoples are entitled to (Kymlicka 2000; Tully 2000). As noted by Kymlicka (2001) indigenous peoples would, at the very least, demand self-government and recognition as a distinct people. As Tully (1995) points out, recognition as would go some way towards rectifying inequality stemming from historical cultural imperialism, which one can argue has fostered in the history of Finland.

The challenge for recognition for the Sámi in Finland can also be rooted in the tradition of consensus politics in the Finnish national parliament. Within the Finnish political framework in which there is a preference for consensus politics, there is a liberal-democratic and egalitarian rhetoric of tradition towards levelling the playing field, in the name of equality: equal rights for all citizens (cf. Lawrence, 2009; Toivanen, forthcoming). Young however, emphasizes that these egalitarian based approaches "disadvantage groups whose experience, culture, and socialized capacities differ from those of the privileged groups" (Young, 1990:164). Furthermore, it can be argued that this consensus approach is problematic since the history of the treatment of indigenous peoples at the hands of liberal democratic states has been fraught with injustice and difficulties, so indigenous groups would be right to be cautious (Ivison et al, 2000). As further noted by Young, recognizing the difference of and the unique rights of minority, indigenous groups such as the Sámi, is integral to achieving social justice (Young, 1990:182). Meanwhile, Kymlicka (2011) notes that there is a distinct value towards adopting multiculturalism policies, as opposed to retreating from them, in that there is evidence to support the idea that it is possible to adopt multiculturalism policies without

[33] See for example the Alta Dam hydro development project in Norway (Briggs, 2006); or the Indian Residential Schools, which sought to assimilate the indigenous peoples of Canada, and ended up contributing to present day social inequality and marginalization (cf. RCAP, 1996).

jeopardizing liberal democratic values, and that countries who have continued to do so have outperformed those who have retreated, or not implemented them in the first place.

In addition, Taylor (1992) cautions that "non-recognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted and reduced mode of being" (25). Taylor goes on to warn that a person's "identity is partly shaped by recognition or by its absence, often by the misrecognition of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves" (Taylor, 1992:25). An absence of recognition can lead to difficulties with the Sámi communities in terms of pride, self-esteem and self-worth of young Sámi. Moreover, a lack of recognition could in fact lead to a situation in which "multinational societies can break up, in large part because of a lack of (perceived) recognition of the equal worth of one group by another" (Taylor, 1992:64).

As noted by Tully (1995) and Young (2005), the demands of minority groups such as indigenous peoples for recognition do not necessarily equate to demands for nationhood and the formation of an independent state. On the contrary, it can be viewed as an impractical solution to claims for cultural recognition if every group that considers themselves a nation, becomes a state. What is needed is a form of recognition, which can, as argued by Kymlicka (1995), Tully (1995) and Young (2005) among others, resemble a form of federalism in a multinational state. Recognition, in this sense, is a form of self-determination, self-rule, autonomy, but not equating to a separate state. Would the parameters surrounding the Nordic Sámi Convention provide for these principles?

2.1.6 Marginalization of Minorities: The Fourth World

Due to a combination of marginalization, levels of poverty and the social problems that are associated with low income, Indigenous communities have come to be known as belonging to what is deemed the "Fourth World" (Dyck, 1985). According to Dyck, *fourth world* communities are, to a large extent, "politically weak, economically marginal and culturally stigmatized members of the national societies that have overtaken them and their lands." (1985:1) Within the hierarchy of developed nations, the *fourth world* is deemed to be extra, or outside of the levels of status that have traditionally been affixed to nation states, either in relation to levels of democracy or levels of development (also cf. Forrest, 1998).

Again using Canada as an example, the social problems found within indigenous communities there indicate a level of poverty and cycle of abuse that is alien to Canadian mainstream society; to the extent that many of these communities are marked with higher levels of infant mortality, higher rates of substance abuse, higher rates of domestic violence, and higher proportions of incarceration than the general population (cf. RCAP, 1996; Naiman, 2000; Statistics Canada, 2004; CBC, 2011). What is interesting is that these social problems are not necessarily found in Finland to the same degree as in many Canadian indigenous communities (see also Kuokkanen, 2009). However, while there may be minimum standards of living that are higher in Sámi communities in Finland than indigenous communities in Canada, the political weakness, the lack of control over traditional territories and cultural marginalization, or the other aspects of fourth world peoples, still apply.

Within Finland, the Sámi are recognized as indigenous within the Finnish Constitution (section 17). The Sámi in Finland also benefit from the similar welfare state characteristics as citizens in the other Nordic countries, namely a social democratic welfare system based on generous social benefits; these provisions are enabled by full employment of the capable workforce (at least in theory), meaning both spouses working, and unemployment being low (Esping-Andersen, 1990). To this end, the Sámi living in Norway and Sweden also exist within nations that fall under provisions characteristic of the Nordic welfare state, while notably, the Sámi living on the Kola Peninsula of Russia do not. The quality of living for the Kola Peninsula Sámi aside, in general the standards of living for the Sámi are similar to the majority populations; a point that cannot be said of many indigenous peoples living within other nation-states such as Australia, Canada, New Zealand or the United States.

2.1.7 Symbolic vs Consequentialist Multinationalism

At the policy level, a multi-national democracy is a strategy implemented by a state, in which the result is a society that is both multi-cultural, meaning that there are many cultures within, and multi-national, in which there are two or more nations located within the state's borders (Tully, 2001). On the one hand Finland appears to be a model multinational liberal democracy, but on the other, the treatment of the Sámi in regards to use of traditional land and resources, and other minorities such as the Roma, open the door to criticism from the international community. This apparent gap in policy can be

analyzed using the difference between *symbolic* and *consequentialist* forms of multinationalism.

In a description of *symbolic* multinationalism Caron and Laforest (2009) indicate that practices such as only having constitutional or parliamentary affirmation that the state is multi-national in character, are merely symbolic in nature. Meanwhile, *consequentialist* multinationalism aims "to give concrete and practical implications to the recognition of minority nations within a larger state" while being party to an equal partnership and having equal rights to nation building and to political self-determination without interference from the other (Caron and LaForest, 2009:41). When Finland signs a declaration such as in 2007 with the UNDRIP, that outlines the rights of indigenous peoples to self-determination, notably over their traditional lands, yet does arguably very little to recognize these rights, this signing can be deemed as only a symbolic act, and thus Finland can be regarded as a form of symbolic multinationalism. It is only when the Finland is in a consequentialist form that the Sámi will be able to benefit from self-determination and Finland will be known as a truly multinational state (Caron and LaForest, 2009).

Therefore, it can be argued that levels of *external protection* are necessary for the recognition of Sámi land rights. Forms of external protection work to "reduce the vulnerability to the economic or political power of the majority," leading to relations of equality and not dominance of one group over the other (Kymlicka, 2001:22-23). In a practical sense, these would include international legal instruments(see section 1.3). Within the framework of liberal multiculturalism, Kymlicka points out that group specific rights can be consistent with liberal principles, provided that they are accorded in order to "reduce the vulnerability to the economic or political power of the majority," leading to relations of equality and not dominance of one group over the other (Ibid.).

2.2 Justification Theory

When analyzing this specific case, in order to gain a fuller understanding of the conflict it is useful to look at the justifications for actions or positions that each actor or perspective judged as legitimate. In their theory on justification, Boltanski and Thevenot (1999), look at the different forms of common good that fall into play during conflict situations. There are seven orders of worth, or common worlds of justification that can be applied to a conflict, in terms of what the actors found were appropriate arguments

for their claims (Ibid.).[34] As a point of departure, the theory takes that during everyday life situations, ordinary people possess a critical ability to justify their arguments, and, as necessary, shift from one justification to another (Ibid.:367; see also Luhtakallio, 2010:182). What is important are the justifications by each perspective, of why the events unfolded as they did, why for each interest the conflict was taking place, and how each perspective justified their support of the different actions. The interesting part of the Nellim case, is not only the topics of conflict themselves, but also the different opinions and viewpoints. In this conflict, what sort of arguments and justifications were made, and by whom? What interests were being represented by the different voices in the conflict?

2.3 Methodology

For this project, the primary data generation involved qualitative methods in the form of in-depth semi-structured interviews, applied to a case study of the Nellim based reindeer herding and forestry conflict. As Silverman (1993) notes, the advantages of using qualitative methods as a research tool are rooted in the ability to extract a deeper understanding of the subject than the variable based correlations of quantitative studies. Moreover, in contrast to a rigid, questionnaire styled structured interview, a semi-structured interview involves the researcher using the list of questions as an interview guide (Blee and Taylor, 2002:92). There is a consistent set of questions, but the interviewer has more flexibility to "digress and probe based on interactions that take place during the interview." (Blee and Taylor, 2002:92) The interview questions I used during my data collection had a general order, but was semi-structured for five reasons.

Firstly, using interview methods in general allows one to have access to a "broader and more diverse group, of social movement participants" when compared with the analysis of written material, which is in many cases often filtered and reflective of the more higher classed, privileged and influential spokespersons, rather than those actually involved (Blee and Taylor, 2002:93). Secondly, the questions asked were open-ended, so using a semi-structured format allowed the respondents to elaborate on their answers as they saw fit, to which I was able to ask secondary probing questions as necessary (Babbie, 2004). Thus, if a previously unheard of or interesting point is brought

[34] Thevenot, Moody and Lafaye (2000) have expanded the number of justifications to include a seventh, environmentally based common world.

up by one of the interviewees, then using semi-structured interviews allows the researcher to pursue and enquire further into that point; this flexibility factor helps to permit the discussion or raising of important information that is not necessarily contained in the schedule of questions (Ibid.).

Thirdly, while a generally similar set of questions were asked for each respondent, using a semi-structured format allowed me to ask the same questions in the sequence and timing that I determined was most appropriate (Silverman, 1993). This approach allowed me to gauge the flow of the interview, so as not to ask questions that jumped from one specific topic to another line of reasoning, thus extracting the most information and utility from the time as possible, while bearing in mind that no fixed set of questions are suitable to all respondents (Silverman, 1993). Fourthly, using semi structured interviews can bring human agency, or the ability for one to act on their own accord, into the center of the analysis, while limiting the voice of the researcher (Blee and Taylor, 2002). These interviews give a view into the world of each participant, allowing freedom for their voice to be heard. And, finally, as Silverman (1993) notes, by using open-ended, semi-structured questions, I did not have to pass-up on a point being made simply because it was not on my list of standard questions, while the open ended questions helped to limit any bias that may have been apparent in the questions or particular line of questioning.

2.3.1 Approach and Researcher's Position

The approach of this thesis is from a constructionist perspective, that of multiple realities. As pertinently noted by Potter (1996), to give one all-encompassing, neutral and objectively detailed description of what constuctionism is, would be an inherently anti-constructionist approach to take. Constructionism tends to reject the manner of approach that contends there is only one single describable definition or answer (Potter, 1996). Within the parameters of this study, my personal interests will be brought into the equation and will likely affect the answers of the respondents to a certain degree; just as the personal interests and experiences of any researcher would affect the research, and would happen no matter whether I specifically carried out the interviews or someone completely different (Silverman, 2005).

As Silverman (2005) points out, even the most simple and straightforward of observations cannot be considered free of presumptions that have been gathered through generations over the nature of reality. The selection of a topic of research is also affected

by personal interests, as previously gained knowledge, beliefs and thoughts on a particular subject cannot be considered neutral. Land rights issues, whether it be in Northern Europe, or North America are highly political topics, and public opinion has been swayed by both key historical evidence and political ideology. But, in the case of the Sámi, the state of Finland has signed the United Nations Declaration on the Rights of Indigenous Peoples in 2007, which specifically outlines the rights the Sámi people should have. In signing this declaration, despite the non-binding nature, Finland has made a statement that Sámi rights to land and resources exist in Finland. Thus, to a certain extent, debate can be removed from the topic, since in the case of the Sámi in Finland, there is no longer a question of *if* these rights need to be recognized, but *how* this recognition will take place.

2.3.2 Case Study Methodology

The data garnered from the aforementioned semi-structured interviews, is being grounded in this research project within a version of what is commonly termed as case study methodology; a research methodological approach in which one or a few instances are studied in depth (Snow and Trom, 2002). Having roots in the Chicago school of empirical based sociology, the case study approach utilizes various combinations of qualitative methods, and, according to Mabry (2008), is a method used in order to get a deeper understanding of a certain instance or phenomenon. Robert E. Stake (2000) points out that a case study is not a methodological choice per se, but rather a choice of what is to be studied; no matter what methodological approach is used, whether it be analytically, holistically or by mixed methods, the concentration is on the case. A case study focuses empirically and analytically on singular instances of some phenomenon, rather than multiple instances (Snow and Trom, 2002). While a case can be either simple or complex, it must be specific rather than general (Stake, 2000).

Moreover, a case study is "both a process of inquiry about the case and the product of that inquiry" (Stake, 2000:436). In using case study methodology in the social sciences, one is scrutinizing not only the demographic statistics, but going beyond and taking into consideration the experiences and perceptions of the participants (Mabry, 2008:215). As with most qualitative methods, to do this one must go beyond the countable aspects and trends and into reasoning behind the answers to the questions of why and how (Mabry, 2008). Snow and Trom (2002) further stress that case study methodology is characterized by three main criteria: an empirical and analytical focus on

either a particular theoretical concept or process, or a social event that is interesting in its own right; the generation of a holistic, that is, a detailed, rich, thick elaboration of the phenomenon being investigated; and the use and triangulation of multiple, in this case qualitative, research methods (149-150). The main strength of a case study is the specificity of it and the deep, rich understanding that is the result, rather than a knowledge of topics that are more general in nature. The case is specific, unique, bounded to a system and its behaviour is patterned (Stake, 2000:436).

The type of case study can depend upon what the purpose of conducting the study is, and whether the study focuses on a particular case or a comparison of multiple cases within the same phenomena (Stake, 2000; Snow and Trom, 2002:160). According to Stake (2000) there are three main types of cases: an *intrinsic* case study, an *instrumental* case study and a *collective* case study (Ibid.:437). An *intrinsic* case study involves the researcher wanting to have a better understanding from start to finish, about this one specific case. The case in itself is the interest; not generalizations, not theory building; the study is undertaken due to interest in the particular case (Ibid.). The details of the intrinsic case are the primary objective.

In contrast, an *instrumental* case study is one in which the researcher chooses a case in order to provide insight into a larger issue or draw generalizations (Stake, 2000:437). The case plays a secondary role, facilitating the understanding of a larger issue, while remaining the object of in-depth investigation. The choice of case is taken to increase understanding of the secondary interest (Stake, 2000:437). The third type of case study is a *collective* case study, which is interested in jointly studying several cases in order to study a population, phenomenon or to determine a general condition (Stake, 2000:437). An example of this type would be the study of several indigenous peoples from different countries or continents, to develop a grand theory on indigenous rights.

It is worthy to note that not all cases fit neatly into these three categories, as quite often the line between an intrinsic and an instrumental case study is difficult to find, since a highly detailed case study that appears intrinsic, could have been undertaken due to broader themes that it later attempts to answer, thus rendering it an instrumental one (Stake 2000:438). In this project, the events surrounding the Nellim case are studied at an in-depth level, in order to shed light on the issue of land rights for the Sámi in Finland, but to a lesser extent at a macro level; considering indigenous rights in general. This combination of intrinsic and instrumental is the type of case study approach used in this thesis.

2.3.3 Generalizability

The notion of generalizability refers to the extent to which the findings can be applied beyond the specific site, instance, population, time or case being studied (Mabry, 2008). As noted by Snow and Trom (2002), "the relationship between the case study and generalizability is contingent on the kind of generalizability at issue and the type of case study." In this case study, as is often a characteristic of case study methods, the primary objective includes "designing the study to optimize understanding of the case, rather than the generalization beyond." (Stake, 2000:436) This is not to say that generalizations are not done within case study research. Case studies are often organized around issues or thematic lines, which can be both specific and more general and in the process of being answered, shed further light on and deepen the understanding of the case – both the specific case and the larger issue (Stake, 2000:440).

This case study does not strive for wide-ranging generalizations. Rather, this study analyzes interviews that will give a snap-shot into the perceptions towards Sámi indigenous rights, as held by various interests living within the Sámi community or working within the Sápmi region of Lapland. The interview data will reveal what is important to certain Sámi people and certain Sámi activists for indigenous rights. While one cannot project the findings onto the entire population per se, one can deduct that certain views on Sámi indigenous rights can be generalized as being represented by these interview subjects.

2.3.4 Interviews[35]

I conducted the interviews for this study between December 2007 and December 2010, on four separate research trips, in Rovaniemi, Inari, Nellim and Helsinki, Finland. Fourteen interviews were conducted, with what can be described as a cross section of interests in the Nellim case and Sámi land rights in general, employing sampling techniques that can be described as *purposeful* sampling and *snowball* sampling. Purposeful sampling involves selecting research participants who are central to the case (Silverman, 2000; Stake, 2000), while *snowball* sampling involves being informed by respondents as to who else would be good or willing to speak with about the issue

[35] A brief description of the interview data and list of interviewees (by position), can be found in Appendix 2.

(Snow and Trom, 2002:155). This type of localized knowledge can be incredibly useful when attempting as an outsider to gain not only access, but credibility with people who are key figures within the issue being studied.

With regard to language, there are both positive aspects and limitations to only speaking English at the level required for conducting empirical research. All the interviews conducted were in English, and linguistic skills shaped the selection of interviewees both in terms of who was willing to be interviewed and who was approached in the first place. However, most of the respondents spoke English well and if they were not comfortable conducting the interview in English, would direct me to someone who was, meaning that the linguistic gap was rarely a prohibiting issue. It is also possible that being a non-Finn and non-Sámi worked to my advantage in terms of access to alternate perspectives, which may have not been as so forthcoming if I had a vested interest in the matter.

2.3.5 Triangulation, Validity and Reliability

Since this was a case study, 68 press releases[36] were analyzed as secondary data, which also helped with triangulation. Data triangulation involves collecting different forms of data from different sources or entities, which then allows one to check to see the degree to which each source confirms or disconfirms the others' details, thus helping to ascertain the accuracy of each (Silverman 2005; Mabry, 2008:222). Researcher triangulation was also briefly utilized for this study when collaborating for an interview with a representative from the Finnish Association of Nature Conservation (FANC), since myself and another researcher were studying a similar topic; this was not employed to a great extent but it did allow for greater access to research participants.

In the course of social research, it is important to have both valid conclusions and reliable methods. Validity is referred to here as the extent to which the study measures the social phenomenon that it refers to (Silverman, 2005). Moreover, what is important to bear in mind during research is the "accuracy of data and the reasonableness and warrantedness of data-based interpretations," in addition to how well the inferences are adequate and appropriate (Mabry, 2008:221). To address the issue of validity, Silverman suggests a number of strategies, including, among others, those of

[36] A brief description of the press releases data can be found in Appendix 3.

triangulation, respondent validation and using appropriate tabulations (Silverman, 2005:177-178).

According to Silverman, reliability can be defined as the "degree of consistency with which instances are assigned to the same category by different observers or by the same observer on different occasions." (Silverman, 2005:188) Simply put, the ability for someone else to replicate the study and have the same findings is central to the issue (O'Reilly, 2005). But, as noted by O'Reilly (2005), demands for replicability "rely on naive realist assumptions that there is a single external reality that can be known irrespective of how we come to know it" (227). As Mabry (2008) points out, notions of reliability and generalizability are foremost rooted in quantitative methods (222). So while it is possible to generalize through case study research, replication is not the primary goal, particularly if it were to detract from the details of the case.

2.3.6 Ethical Considerations

As noted in the British Sociological Association's (BSA) statement of ethical practice, sociologists, in carrying out their work in a variety of settings, inevitably face ethical and in some cases, legal dilemmas surrounding the competing obligations associated with their research (BSA, 2002:1). Questions to consider include what sort of disclosure is given to the respondents prior to their participation? How are participants approached to participate in the research? Are steps taken to avoid social harm being unintentionally inflicted on the participants? What sort of consent is afforded to the research participants? What happens to the data or the results? Is the privacy of the respondents respected by offering anonymity or confidentiality? Answers to these questions have long been open to debate within academic circles.

Informed consent or the amount of information that is disclosed to the potential participants as well as how they are approached in the first place can, depending on the research design, be a difficult issue to negotiate. It is a central feature of social science research that prior to making a decision of whether or not to participate in the research, the potential research participant is fully informed that they are being researched, what the nature of the research is about, and that they have the right to withdraw from the process at any time (Oliver, 2003; Ryen, 2001; Silverman, 2000; BSA, 2002).

However, when making recordings, it is not only enough to acquire informed consent from your participants: you must also give assurances as to how the data may be used (Silverman, 2000). During the interview, permission was asked to use a digital

voice recorder and the participants were informed that the data would be transcribed and used as part of the master's level thesis research, while the tapes and transcripts would be archived digitally. Interview participants were reminded of their right to end the interview or turn off the tape recorder at any time, and a follow up email was given describing any quotes that would be ideal to be used. The point of informed consent is "to ensure the peace of mind and fair treatment of those who help us with our research" (Oliver, 2003:46).

The question of anonymity and confidentiality was also central, since as Oliver points out, "it is important that researchers are explicit about all the elements of the confidentiality process," as well as the ramifications and meaning behind such promises of confidentiality and anonymity (Oliver, 2003:83). Considering the relatively small size of the northern communities in Finland being studied, the chances that someone would be able to determine an altered name was quite high. Each person was given the choice of being anonymous as well as the opportunity to choose to not have a certain quote appear in the thesis. Potential harm is further counteracted by the fact that many of these people have given countless interviews in the past, and the majority of people know what each person's opinions on the issues. Overall, the central aspect connected to ethical considerations within the social sciences is to ensure the safety, piece of mind and wellbeing of those who give up their time to assist with our research (Oliver, 2003).

2.3.7 Discourse Analytical Framework: Coding Strategy

The interview transcripts were coded thematically, according to themes in order to form a basis for the analysis, using a two part coding strategy developed by Strauss and Corbin (1990). The first layer of coding was applied on a general level, which Strauss and Corbin (1990) note represents a form of *Open Coding*, before progressing to a deeper level of coding known as *Axial Coding*. Within this framework, open coding refers to the process of breaking down the texts or data, while examining, comparing, contextualizing and categorizing data at a level with no or few pre-conceptions (Strauss and Corbin, 1990). Themes, ideas, points of interest and arguments were coded at an open level, meaning that a wide range of codes was developed.

The next level of coding applied can be called *Axial Coding*. As Strauss and Corbin (1990) iterate, axial coding consists of making connections between the categories initially identified in open coding. These connections are created between the categories and sub-categories, in order to define larger main categories (Strauss and

Corbin, 1990). At this axial level of coding, I coded categories as adapted from the work of Boltanski and Thevenot (1999) in their theory of justifications, and Luhtakallio and Yla-Anttila in their method of Public Justifications Analysis[37] which involves analyzing the different justifications used by the different actors or interests in a dispute (cf. Luhtakallio 2010).

The categories within the case study can become grounded or analyzed at a deeper level by using this form of justification theory, as applied to the empirical material. As defined by Boltanski and Thevenot (1999) and built upon by Thevenot, Moody and Lafaye (2000), there are six main categories or modes of justifications that these interviews have been coded with: domestic, inspirational, renown, civic, industrial, and market. However, a seventh order, green, has been added to these categories by Thevenot, Moody and Lafaye (2000) in their case study analyses of French and American environmental disputes. As a short explanation, the code *domestic* refers to justifications that draw upon a hierarchy of trust centered on personal dependencies, kinship, respect for tradition, face to face relationships and relationships with authority (Boltanski and Thevenot, 1999:370). *Inspirational* codes encapsulate notions of asceticism, emotions, holiness, creativity, imagination and a general state that is independent of recognition by others (Ibid.). The code *renown* stems from the principle of honour, but is typified with criteria that include other people's recognition, fame, success, and the ability to convince others (Ibid.:371). *Civic* incorporates the convergence of human wills, solidarity, collective organizations and the common good (Ibid.). The *civic* code represents an opposite to the personal dependencies associated with *domestic* and the opinions of the *renown* codes. *Industrial* refers to efficiency, productivity and organizational qualities, while *market* includes "arguments basing a harmonious polity on the market," namely, the ability to buy and sell, to be opportunistic when presented with such, competition, being detached from personal links, and emotionally rational. Finally, *green* is a code for justifications that were based upon environmental values and protection (Thevenot, Moody and Lafaye, 2000; Luhtakallio, 2010). All seven were found within the interviews as justifications for various actions throughout the forestry conflict.

[37] Public Justifications Analysis (PJA) is itself an approach based upon the application of the method of Political Claims Analysis (PCA) to Boltanski and Thevenot's theory of justifications (cf. Koopmans and Staham, 1999; cited within Luhtakallio, 2010). However, PCA was not appropriate for this study as it deals with larger samples in a more quantitative approach (Ibid.).

Before going further with the codes, the terminology being used must be explained; namely an operationalized definition of the terms *claim*, *claim-maker* and *justification*. In this study, as found in Luhtakallio's dissertation, *claim* refers to an opinion, demand, accusation, or as found often in the interviews, a reconstruction of a side to the dispute (Luhtakallio, 2010:184). A *claim-maker* refers to a person or a group who made a claim and stood by it, presenting an argument to validate the claim. *Justification* refers to the argument or collection of arguments that formed the claim, and notably, why the claim-makers thought they were entitled to make the claim (Luhtakallio, 2010). As also noted by Thevenot, Moody and Lafaye (2000), justifications can also encapsulate claims, position statements or critical denunciations of opposing views within a public dispute. The term *argument*, on the other hand, is problematic on its own, as it does not fully articulate the extent of a justification; the physical environment of the conflict, the non-human objects and other circumstances, in addition to the claim-makers and the adversaries, can also add to the reasoning behind a justification (Luhtakallio, 2010). Meanwhile, *compromises* have also been used with Justification Analysis by Boltanski and Thevenot (1999), but have not been utilized in this study since an uneasy alliances between different justifications has not been the central focus.

However, claims-makers would often jump from one justification to another, in order to back up their position from an additional angle (Luhtakallio, 2010). These *combinations* were used, which would combine two or more justification worlds, in order to reinforce the strength of the argument from a different point of view. Combinations are not similar to the above mentioned compromises, since the worlds do not penetrate each other and instead back up one claim, just from a different point of view (Ibid.). Meanwhile claims makers also referred to *denunciations*, in which they would attempt to discredit one world, in order to justify their position (Ibid.). For example, an inspirational claim would denounce the industrial justification, stating that both the power and sensitivity of nature could not be measured using general scientific terms.

This justifications analysis will be looked at in depth within chapter four as applied to selected quotations of the research participants. First, however, it is useful to review the facts of the Nellim case, since the presentation will allow for a more rooted understanding of the context surrounding the actions and justifications within the case.

Chapter 3 – Analysis Part One: The Nellim Case

It was in August of 2006 when three brothers, Eero, Kalevi and Veijo Paadar, living in the village of Nellim, in North-East Finland, filed a claim against the Finnish state. The argument was that the state organization responsible for forestry management, Metsähallitus, was cutting old growth forests that were used by these and other reindeer herders in the Nellim area, as pastures for their reindeer. The complaint is centered on the scarcity of winter food for the reindeer; the premise being that this scarcity is heightened by the logging of the older trees by Metsähallitus. In the winter time, when the twigs, leaves and mushrooms that reindeer eat have disappeared and the snow has began to get deep, the reindeer relies on digging in the snow to reach the moss or lichen that is normally available on the forest floor (Greenpeace Report, 2004). But, during the later winter months and into spring, when the snow is deep and has crusted on top, the reindeer find it hard to dig down to access the ground lichen, and therefore must survive on either the lichen that hangs and falls from the branches of trees, or supplementary food fed by the reindeer herders. The key point is that the hanging lichen only grows significantly on the old-growth forests; the same forests that are of higher value for Metsähallitus to cut and process for lumber (Mustajoki et al, 2011). Meanwhile, due to extensive logging that took place in the 1950s and 1960s, 40% of the forest land is under 80 years old, and therefore less productive if extracted, while 50% is over 140 years of age (Ibid.). Notably, it is the over-200 years old category that is the most abundant, represented at 29% of the available forestland (Sivho et al., 2006 cited by Mustajoki et al., 2011). This means there is great pressure to harvest the older trees in the Sámi domicile area, for the simple reason that these comprise the vast majority of available commercial forests. Therefore, this dispute is based upon the conflicting interests of these two main parties: these 140-250 year old, 'old-growth' forests are of value for the reindeer and reindeer herders and at the same time a lucrative source of revenue for Metsähallitus.

The Paadar brothers' case has become commonly known as the 'Nellim Case,' seeing as it has been the Nellim portion of the Ivalo Reindeer Herding Cooperative that has been heavily logged. The case has been used as an example of the situation facing the reindeer herders since it personifies the overall struggle between reindeer herding

and Metsähallitus in the Sámi domicile area. The timeline for this Nellim Case can be split into five roughly outlined sections:

1) *Initial lawsuits* – Historical background, initial conflicts, court cases and initial negotiations with Metsähallitus, 1990-2000;
2) *Negotiations* – Continued negotiations, now including environmental non-governmental organizations, and visits from the international media, 2000-2004;
3) *Catastrophe* – Rival protest camps, escalating local conflict and increased media attention, 2005;
4) *Litigation* – Initiation of lawsuits, appeals to the UN Human Rights Committee 2005 - 2006; Moratoriums and easing of tensions, 2006-2007;
5) *Settlements* – Initial lawsuit outcomes, settlement negotiations, final agreements 2007-2010.

3.1 Initial Lawsuits

The Nellim Case was a result of tensions and conflicts that had arisen since the early 1990s when many of the 13 reindeer herding cooperatives (RHCs) in the Sámi domicile area had begun to experience frustrations with regards to Metsähallitus logging their winter pastures used by reindeer (Lawrence and Raitio, 2006). This initial discontent led to a civil suit in 1993 against Metsähallitus by four herders from the Muotkatunturi herding cooperative (Raitio, 2008:166). The Court of Appeal found that while the logging harmed the reindeer herding, the harm was not deemed substantial enough to be an unreasonable level. Upon appeal the Supreme Court of Finland upheld the previous verdict and the case was lost for the reindeer herders. In the second Länsmann case,[38] in 1995 the herders appealed to the UN Human Rights Committee (UNHRC) who ruled in 1996 that the logging was not substantial enough to be deemed a violation of Article 27, or Sámi cultural rights to herd reindeer (Hossain, 2008).

In 1994 there was another court case against Metsähallitus, when two herders from the Sallivaara RHC (see map 4) filed a suit against logging and road building in two areas: the Mirhaminmaa and Kariselkä forests (Raitio, 2008). The District Court of Lapland initially implemented a moratorium on logging these areas, and in their ruling in 1996, found that logging could continue in Mirhaminmaa, but was prohibited in Kariselkä, since there would be a long term decrease in the lichen reserves at the Kariselkä area (HRC Communication No. 779/1997). Despite the decision being

[38] Jouni E. Länsmann et al. v Finland, 1996, HRC Communication No. 671/1995.

overturned at the Rovaniemi Court of Appeal, this was the first time a Finnish court had ruled against logging based on the cultural rights of the Sámi (Raitio, 2008). Once again, the case progressed to the UN Human Rights Committee, but the committee ruled that the damage caused was not enough to be considered a failure by Finland to safeguard the Sámi right to exercise their cultural rights via the practice of reindeer herding (HRC Communication No. 779/1997).

3.2 Negotiations

Under these conditions, Metsähallitus decided it needed a new strategy for the planning of forestry development in the late 1990s. There are 13 reindeer herding cooperatives that fall within the Sámi domicile area, and these are administratively split by Metsähallitus between two administrative sections: 1) the Upper Lapland administrative area contains those RHCs within the Inari, Enontekiö and Utsjoki municipalities; and 2) the Forest Lapland administrative area, which contains the Lappi RHC – the only RHC within Forest Lapland which is part of the Sámi domicile area; the most southern end of Sápmi. Metsähallitus began to develop six Landscape Ecological Plans that covered the state owned forestry areas of the Inari municipality. A Regional Director from Metsähallitus, Kii Korhonen, pointed out that there are overall governing principles that Metsähallitus must abide by, according to law. These goals and requirements that must be met and managed in the nature areas by Metsähallitus, stem from recreation, biodiversity, reindeer herding, Sámi culture, and providing jobs in remote areas (Personal Interview with Kii Korhonen, 8 December 2010). The problem materializes when considering that these can be and often are, competing aims, which included most prominently in the Nellim case, the attempt to provide jobs in remote northern areas, in both the logging and reindeer husbandry industries, with protection of the Sámi culture, as particularly represented in reindeer herding.

Since 1977, Metsähallitus had held bi-annual consultative meetings with the reindeer herding cooperatives to discuss the co-existence of the two livelihoods. The harvest plans were also discussed with the specific RHC that would be affected, while voluntary Municipal Cooperation Groups had been established to give multiple local stakeholders an opportunity to give input into the management of state lands (Raitio, 2008). During this planning process, Metsähallitus also established Stakeholder Working Groups who met several times during the process, both to convey their concerns while also visiting the affected areas. These groups were comprised of the

affected reindeer herding cooperative, the municipality of Inari, the Sámi parliament, local nature conservation associations, hunting associations, tourism representatives and regional forest authorities (Ibid.).

Through the meetings of these Stakeholder Working Groups, the Muotkatunturi reindeer herding cooperative (RHC), Hammastunturi RHC and the Nellim herding group from the Ivalo RHC voiced concerns over planned forestry activities that were set to infringe upon the old-growth areas (Raitio, 2008). Old-growth forests were prevalent within these three RHCs and at risk of being logged by Metsähallitus, who were initially willing to temporarily exclude the old-growth areas for the Muotkatunturi RHC and Nellim areas from the plans for the annual harvest. However in the case of the Hammastunturi RHC, Metsähallitus were unable to leave out the disputed old-growth areas, maintaining that their commitments regarding the planned annual cut had to be met, and these same areas needed to be included. The problem for both reindeer herding cooperatives was that Metsähallitus was able to dictate the terms of the agenda: the RHCs could affect the timing and order of the forestry operations, but not the question of whether they should be happening in the first place (Personal Interview Petri Mattus 13 May 2009; see also Raitio, 2008). The RHCs wanted the process of negotiations to be a dialogue involving equal sides, but what they received was a lack of negotiation: a foregone conclusion in favour of Metsähallitus (HS, 3 November 2000).

The reindeer herding cooperatives expanded their cooperation, when during the year 2000, they developed a closer coordination of their activities by creating an alliance that included environmental non-governmental organizations (ENGOs) such as Greenpeace and the Finnish Nature League, who organized field trips for international journalists, to visit Inari, which were jointly hosted with the reindeer herders (Raitio, 2008). This cooperation between the ENGOs and reindeer herders was possible since the areas of high value to the reindeer herders were the same as for the ENGOs: the old growth forests which different species of wildlife and fauna thrive within (Greenpeace and Nature League, 2001). While the field trips for national and international media was appreciated by the reindeer herders, other interests such as the lumber jacks and those working in the forestry sector, were less thrilled and protested outside the hotel windows where the journalists were staying (Raitio, 2008). This event and other subsequent ones led to a heated debate within the local and regional media (Ibid.).

Also in the year 2000, Metsähallitus had begun to draft the first Natural Resource Plan for the Northern Lapland administrative area that the Sámi domicile

region is a part of, due to the disputes associated with the previous set of six Landscape Ecological Plans. The goal was to determine acceptable levels of timber harvesting, taking into consideration different activities, and ensuring that the conditions for reindeer husbandry and Sámi culture would be secured. Once again, working groups comprising a total of 50 different stakeholder organizations were established and feedback request letters were also sent to all households within the Northern Lapland administrative area (Raitio, 2008). Separate working groups were organized for each municipality and included interests from forestry groups, the Sámi parliament, reindeer herding, nature conservation, tourism, hunting, fishing, municipalities, government authorities, researchers and village interests (Raitio, 2008).

Due to negative feedback from a variety of stakeholders, resulting from the Natural Resource Plan, from 2000-2002 further negotiations took place that included six of the RHCs, Metsähallitus, and the environmental non-governmental organizations (ENGOs) Greenpeace, FANC, WWF Finland and the Finnish Nature League, discussing which areas to protect from further logging in the natural resource plan (Lawrence and Raitio, 2006). With the assistance of the ENGOs, the reindeer herders were able to use a series of maps to pinpoint the most important winter grazing lands to protect (see maps 5 and 6) (Metsähallitus, 14 May 2003). Despite the cooperation, the outcome of the consultations and planning with Metsähallitus was a stalemate; the plans were not finalized as the two sides could not agree on the scope of forestry (Raitio, 2008).

The next step of the cooperation with the ENGOs was to take the complaint to the Finnish Government. In spring of 2002, the Hammastunturi, Muotkatunturi, Muddusjärvi and Paatsjoki RHCs, along with the Nellim group of the Ivalo RHC drafted a joint complaint to the Ministry of Justice, Ministry of Agriculture and Forestry, and the Ministry of the Environment, outlining their concerns with the continued logging (RHC Letter, 21 March 2002). A delegation of these RHCs visited the ministries and argued that the forestry should be stopped immediately (Greenpeace Report, 2005).

As a result of the appeal, an arbitrator was appointed to study the issue and give proposals for the resolution (Greenpeace Report, 2005). However, despite the proposals garnering support from the Ministry of the Environment and the Finnish Fisheries and Game Research Institute and the Finnish Forest Research Institute, Metsähallitus was opposed, so the RHCs and Metsähallitus could not come to an agreement and a negotiated blanket settlement from this dialogue could not be reached (Raitio, 2008).

In 2003, Metsähallitus was assigned the task of developing the new Natural Resource Plan, and invited the reindeer herders and ENGOs to participate. However, the RHCs requested that the areas they marked on the maps as crucial to reindeer herding be set aside from forestry (Raitio, 2008). Metsähallitus refused to agree to a temporary moratorium in logging during the negotiations, so these ended in February 2004 (Greenpeace Report, 2005).

3.3 Catastrophe

In March and April 2005, after the breakdown in negotiations in the forestry planning dialogue, the issue erupted onto the international scene when the ENGO Greenpeace established a 'Forest Rescue Station' in Nellim,[39] to draw international media coverage to the plight of the reindeer herding cooperatives, as personified by the Paadar brothers. The ENGO protesters, primarily from Greenpeace and FANC, placed signs in the forest which stated in Finnish, English and North Sámi "No logging – Reindeer forest area," while also reporting the daily occurrences on a website, distributing press releases and by giving interviews and tours to various media (GP Press Release, 2 March 2005; Raitio, 2008). At the same time, the ENGOs were able to coordinate a campaign strategy to pressurize the Finnish government and politicize the issue. The Sámi Council was able to also place pressure on companies such as Stora Enso that bought the wood, who relied upon good rankings on ethical indices such as the Dow Jones Sustainability Index and the FTSE4Good (Lawrence and Raitio, 2006). The media attention and international pressure being applied towards Metsähallitus, Stora Enso and the Finnish Government, led the Metsähallitus to suspend all active logging in the disputed region with a temporary moratorium in March (Metsähallitus, 24 March 2005).

However, despite the moratorium, the conflict escalated as protests by the reindeer herders and environmental organizations were counteracted by standoffs and a rival information camp instituted by the forestry workers. In an act of protest, an 'Anti-Terror Info Center' was created by the forestry workers of Nellim and the surrounding areas and located within 200 metres of the Greenpeace camp (Raitio, 2008; Finnish Forestry Association, 15 April 2005). As seen in a documentary film by Hannu Hyvönen titled *The Last Yoik in Saami Forests?*, the aim of the 'Anti Terror Info Center' was to persuade the Greenpeace protesters and reindeer herders to stop their protest and leave

[39] However the initial Forest Rescue Station was within the Muotkatunturi RHC.

the area. Ironically, this goal was carried out by terrorizing the Greenpeace camp throughout the night: the protestors were made aware in no uncertain terms that they were not welcome, through the use of loud horns, sirens, snowmobiles, music, drinking, and acts of threatening and intimidating behaviour[40] (HS, 2 March 2008). The normally close-knit local towns and villages of Inari, Ivalo and Nellim, in particular, were divided according to loyalties, with petitions of support circulating, and physical intimidation and other threats permeating throughout the time of the protest camps (Interview Jarmo Pyykko, December 2010). There was a great deal of tension between the sides and little constructive dialogue at this time.

The protests and tensions soon subsided as both the campsites were on state land, managed by Metsähallitus. The anti-terror camp had permission from Metsähallitus to operate while the Greenpeace camp did not, which led Metsähallitus to deem the Greenpeace camp illegal and seek a court injunction and police investigation that would lead to their eviction (Raitio, 2008). With pressure mounting from parties located across the spectrum of politics in the Finnish Parliament, asking what the government would do about the illegal Greenpeace camp, the Ministry of Agriculture and Forestry indicated that the court decision would be necessary for eviction (Ibid.). Before the court decision was made, the Greenpeace camp was removed and both camps were closed by April 24th, 2005 (Finnish Forestry Association, 25 April 2005).

The moratorium was short lived as in June 2005, Metsähallitus signalled their intention to resume the logging in the disputed areas in both Upper Lapland and Forest Lapland (see maps 5 and 6). This action was, according to Metsähallitus, part of their plans since the moratorium was put in place, and while a negotiated agreement was not reached with all the affected RHCs, the resumption was necessary in order to meet their felling goal of 135,000 cubic meters (Metsähallitus, 10 June 2005). Despite reports from FANC to the contrary, Metsähallitus went on to announce an agreement that protected 100,000 hectares of land in the Forest Lapland area, as part of a negotiated settlement with FANC and the World Wildlife Fund (WWF) (Metsähallitus, 13 June 2005). FANC countered the claim by stating that Metsähallitus had acted unilaterally, that the ENGOs were not informed of the ending of the talks and that they were extremely disappointed with Metsähallitus (FANC Press Release, 13 June 2005). Citing economic necessity in

[40] Video footage of the confrontations can be found in the documentary film titled 'Last Yoik in Saami Forests' by Hannu Hyvönen, 2006; also see April 16, 2005 ENGO web-log entry at <http://weblog.greenpeace.org/forestrescue/archives/2005/04/terror.html>

terms of employment and legitimacy in a negotiated plan with the environmental organizations, in August 2005 Metsähallitus once again began to log the old-growth forest in the Nellim area (Metsähallitus, 24 August 2005).

3.4 Litigation

It was under these circumstances in October 2005 that Metsähallitus began to once again log areas close to the village of Nellim within the Ivalo RHC, despite the opposition from the Nellim group reindeer herders and FANC, who argued that the logging was also a violation of the Finnish Nature Conservation Act; meaning the Ministry for the Environment was allowing Metsähallitus to break the law (FANC, 26 October 2005). This logging was in an area that was known to be of higher value to the Nellim based reindeer herders since it was the winter grazing grounds, and within the autumn round-up fences, where the reindeer were gathered for round-up and slaughter (HS, 9 November 2005). This timing of the logging was also considered to be in poor taste due to the increase in the already high psychological distress experienced by the reindeer during the roundup and slaughter process (Ibid.).

In response to the resumed logging, the Paadar brothers launched their intention to file a court case at the District Court of Lapland. The case was based upon the argument that the activities of Metsähallitus were significantly weakening the profitability of traditional Sámi reindeer herding in the Nellim area of the Inari municipality (Metsähallitus, 24 August 2009). According to Finnish law and, specifically the Reindeer Herding Act, if the claim was proved to be true, then Metsähallitus would be operating within a breach of law and would render the forestry work illegal (Finnish Forestry Association, 24 August 2009). The availability of winter pastures in the future was the key issue at stake for the Paadar brothers as they argued that "continued logging[s] would ruin the free reindeer herding on common pastures in Nellim" (Ibid.). Thus, the Paadar brothers requested a judgement that would forbid logging on winter pastures in Nellim, a request to which Metsähallitus argued was groundless and unfounded (Ibid.).

In association with the lawsuit was the key provision of an urgent petition to halt the logging while the court deliberated on the case; the argument being that without this order, there would be no point to even filing the petition as the trees would be cut before the case was heard (Raitio, 2008). The court ordered a temporary act to stop the logging, but the long term petition to stop the logging during the case was subject to a

hearing at which Metsähallitus could deliver their case, after which the court would decide upon the amount of a security deposit that the claimant would have to post, which is generally used to dissuade frivolous civil claims (Finnish Forestry Association, 8 November, 2005). After hearing Metsähallitus' arguments, the court authority decided on a one million euro security (Ibid.; Raitio, 2008:179). The Paadar brothers were unable to pay the security, which meant that the temporary halt to the logging would be removed as of November 11th, 2005 (Finnish Forestry Association, 8 November, 2005; Metsähallitus, 2 November 2005).

Meanwhile, in response to the renewed, more purposeful logging, Greenpeace distributed a press release that accused Stora Enso of purchasing wood from ancient forests, while accusing Finland of breaking their own conservation laws with regard to the protection of endangered species (Greenpeace, 7 November 2005). At the same time, Greenpeace undertook demonstrations by blockading the Finnlines' freight ship Antares that was carrying pulp and paper materials to Lubeck, Germany, from the harbour of Kemi, Finland (HS, 8 November, 2005). Two days later a further 40 protesters greeted the freight ship in Lubeck, Germany (HS, 11 November 2005).

In response to these accusations, there was a range of press releases disseminated, notably by the Minister of Agriculture and Forestry, Metsähallitus, the Forestry Experts' Association of Lapland (METO), The Wood and Allied Workers' Union of Lapland, the Trade Association of Finnish Forestry and Earth Moving Contractors, along with a statement of opinion by the Municipality of Inari. The Minister of Agriculture and Forestry, Juha Korkeaoja was adamant that Finland and Metsähallitus had not committed any judicial violations, while all the actions were in compliance 'fully with the rules and regulations of a democratic society' (Min. of Agriculture and Forestry, 7 November 2005). Metsähallitus underlined that they obey and respect Finnish laws and International agreements and that in Finland, 'state forestry is generally considered to be a forerunner in environmental issues' (Metsähallitus, 7 November 2005). Meanwhile, the other organizations went to great efforts to argue that Greenpeace and the other ENGOs did not represent the people of the Inari province, while branding the campaign as a 'reckless war against forestry' (METO and WAW Union, 7 November 2005). The statement of opinion by the Municipality of Inari blamed the external interests of Greenpeace for the forestry conflict, demanded they discontinue their actions, while arguing that the survival of the local culture in Inari

depended on the employment garnered from the original planned level of logging, and giving their full support to Stora Enso (Inari Municipality, 8 November, 2005).

Due to the logging operations now taking place unhindered, the situation had become dire for the Paadar brothers; since the logging of the old growth areas could not be 'undone' in the future, and the security needed for a court case was prohibitive, domestic options to halt the destruction of the winter pastures were effectively exhausted. Thus, on November 10th, 2005 the Paadar brothers made a further complaint to the United Nations Human Rights Committee (UNHRC), stating that their rights as Sámi people, particularly their cultural rights as reindeer herders, were being infringed upon by the Finnish state through both the actions of Metsähallitus and a lack of willingness to consider the Sámi people's interests in matters occurring on their traditional lands. The claim to the UN again asked that the UNHRC would request from Finland an interim measure of protection to halt the logging while the court case was developed. Despite the normal procedure of exhausting domestic legal options prior to hearing a case at the UNHRC, the committee made a decision in favour of the Paadar brother's appeal and on November 14th, 2005 recommended that Finland would stop the logging in the disputed areas (HS, 17 November 2005). Meanwhile, it took two days before the Finnish Ministry for Foreign Affairs ordered the logging to cease within the twelve stands that had been designated for logging in the Nellim group area of the Ivalo RHC (Ministry for Foreign Affairs, 16 November 2005). The UNHRC extended the recommendation to cease logging in August 2006 at the time when the Paadar brothers filed the formal suit to the Lapland District Court.

In 2008 the District Court of Lapland in Sodankylä dismissed the 2006 court case of the Paadar brothers. In response, the brothers appealed to the Rovaniemi Court of Appeal, at which in autumn 2009 there was to be a hearing. However, before the hearing began, Metsähallitus and the Paadar brothers came to an agreement, the terms of which meant dropping all claims against Metsähallitus, and thus avoided the hearing (Finnish Forestry Association, 24 August 2009).

3.5 Settlements

The agreement of August 2009 signalled the end of the conflict in Nellim and sees a total of 16,000 of the 27,000 hectares of commercial forest in Nellim (see map 5) protected with an agreement that will last 20 years (Finnish Forestry Association, 24 August 2009). The settlement stipulates that for at least 20 years, Metsähallitus will

refrain from logging in almost 90% of the old-growth areas; areas where no previous logging operations have been carried out (Metsähallitus, 24 August 2009). As a result of the agreement the Paadar brothers withdrew their case from the Rovaniemi Court of Appeal in addition to terminating the petition to the United Nations Human Rights Committee.

In addition to this settlement, there were two other agreements that followed. On October 27th, 2009, there was a settlement in the Forest Lapland area (Map 6), while almost a year later, on December 12th, 2010, there was a settlement in the remaining reindeer herding cooperatives in the Inari municipality (Map 5).

The October 2009 agreement was for eight identified old growth or high value to the reindeer areas in the Sámi domicile portion of the *Lappi* RHC, which falls within the Forest Lapland administrative unit of Metsähallitus. Geographically speaking, the Lappi cooperative is the only RHC that is still part of Sápmi, but does not fall within the municipalities of Inari, Enontekiö or Utsjoki. Therefore this RHC is part of the Forest Lapland administrative area and had a separate negotiation process with Metsähallitus. The agreement, as negotiated by Metsähallitus, FANC and other ENGOs, reindeer herders and representatives from the Sámi parliament and the forest industry, meant that the sections of the forest in the most natural state would be permanently excluded from forestry (Metsähallitus, 27 October 2009). Of the 44,300 hectares of forest covered in the agreement, 6600 hectares will remain available for normal forestry, 2700 hectares for restricted forestry and 35,000 were excluded from all forestry practices (Ibid.).

In the December 2010 agreement, the Muotkatunturi, Muddusjärvi, Hammastunturi and Paatsjoki reindeer herding cooperatives (see map 5) came to a negotiated agreement with Metsähallitus within the Upper Lapland administrative area. Considered a continuation from the Nellim settlement, this agreement similarly contained a 20 year moratorium on logging, protecting the specific sites that were identified as important reindeer grazing areas that the reindeer herders use. The agreement protected roughly 80,000 hectares out of the 107,000 hectares of the conflict forests outlined by the maps, and mostly considered old growth forests, either permanently or for twenty years (Greenpeace, 10 December 2010). Reactionary statements from both Metsähallitus, the reindeer herders and politicians emphasized satisfaction with the degree of certainty that could now be experienced, vis-à-vis the respected professions involved in the dispute (cf. Metsähallitus, 27 October 2009; Greenpeace, 10 December 2010).

Chapter 4 – Analysis Part Two: Justifications Analysis

Following from the facts of the case and overall background to the conflict, we now switch to the analysis of the empirical material. In this chapter, the method of Public Justifications Analysis (PJA) is applied to the seven justifications as outlined by Boltanski and Thevenot (1999). A selection of quotations from the different actors are analyzed according to the PJA, and organized within each of the five sections upon the moral justifications the actors use. Structurally, the analysis of this chapter is broken down into five sections, which are structured in a roughly linear fashion, starting with the roots of the conflict and Sámi culture and ending with a discussion of the macro-level political ramifications of the conflict. The next section reviews the different actors' viewpoints on the negotiations, which coincided with the start of Greenpeace's involvement in 2002, before progressing to the final settlements that were reached in 2010, and ending with a discussion of the importance of the Nellim case and the settlement agreements for indigenous rights in Finland, vis-à-vis the Finnish government responses to claims of the Sámi.

4.1 – Reindeer Herding and Sámi Culture

Within this first section, the justification that was most used by the actors was *domestic*; referring to justifications that are centered upon a respect for tradition, historical connotations and a hierarchy of trust centered on personal dependencies and kinship. This result serves to support the notion that the practice of reindeer herding holds a central position within Sámi culture and traditions. Moreover, the *civic* justification also appears within many of the claims on the side of the reindeer herders, as the rights of the Sámi, and of reindeer herding, were stressed.[41]

While the traditional livelihoods of the Sámi, including the practice of reindeer herding, hunting, fishing, gathering, handicrafts and small scale agriculture, are practiced by both Sámi and non-Sámi within Sápmi and further within Lapland, these practices are still considered the material foundations of Sámi culture (Raitio, 2008). The importance of the natural environment for these activities cannot be underestimated.

[41] This connection was used throughout the sections, and is covered in more detail in the final chapter.

Tarja Arttijeff, a local healthcare employee living in Nellim, mentions the sensitive nature discourse, when stating that

> *The nature here is so sensitive, because we are so north, that it is not good to log the whole area of trees. And the reindeer herding is very old Sámi work, and it's not only work, but culture, also. It is a way of living. It is not only about "I'm doing the reindeer work" but it is a whole way of life. (TA)*

Tarja uses the justifications of *inspiration* and *domestic*, when claiming that the old reindeer herding and Sámi culture were at risk from the logging. Inspiration shows up with the reference to the sensitivity of the northern area, and not disturbing the overall ecosystem, in general terms. Meanwhile the domestic aspects are evident as TA refers to the way of living and culture that has been around through history, with an aspect that is more than just a working day.

Arttijeff uses a combination of the justifications of inspiration and domestic to articulate her claim that the role of reindeer herding is more than just a profession. Arttijeff draws upon aspects of history, tradition, Sámi culture, and the aesthetical aspects of a struggle between an innocent lifestyle being threatened to the point of extinction, by an external industry that does not have the same close relationship with the land. TA also denounces the industrial claim that the logging is necessary for local employment; a generally positive thing for the community. Arttijeff claims that the land is too sensitive and important for that sort of work to take place, and that it is unsustainable, due to the importance for other local residents.

This side taking was an important part of the conflict. Certain people were on one side, with others on another. And, as the conflict escalated, there were people who were on the side of the reindeer herders, who did not appreciate the tactics and attention brought to the area by the ENGO activists. Arttijeff appears to lean upon rhetoric used by the reindeer herders and ENGOs who framed the conflict as unhindered industry and development against a noble, modest traditional way of life. The inspiration and domestic codes indicate the tradition and history that were used as part of that side's arguments.

Former Sámi Parliament President Pekka Aikio then proceeds to discuss how the reindeer herding in Finland has changed with the establishment of the reindeer herding cooperatives and the district (paliskunta) borders:

> *In Finland, there is a different way. Reindeer can, it's not allowed that reindeer cross over the paliskunta borders. And the paliskuntas have been formed on stationary farming patterns. In Finland they say that officially*

> *reindeer herding is agriculture. I have struggled all my life against these authorities and everyone who tries to keep reindeer herding as agriculture, but legally, it's official legislation – I cannot do anything to suspend the legislation. The legislation does not know the Sámi migratory nomadic way of reindeer herding. It's simply not written like that. (PA)*

In this claim he laments the technical classification of reindeer herding as stationary farming. The *domestic* justification appears when discussing the traditional migratory nature of reindeer herding, while the *civic* code applies to the legality and legislative classification of reindeer herding as agriculture. Meanwhile the *industrial* code falls within the claim when referring to the paliskunta borders.

The combination of three codes serves to strengthen Aikio's argument. Here, the history and tradition of reindeer herding (*domestic*) is being threatened by the regulations and classification by the state (*civic*), which uses arbitrary borders (*industrial*) to keep the method standardized and under state control. Aikio denounces the claim by the state that reindeer herding is an agricultural practice that needs to be kept within boundaries, by arguing that the practice is a migratory one, which is built into the reindeer herding lifestyle of traditional movement between summer and winter pastures. This argument hints at Aikio's larger scale suspicions that the state would like nothing more than for reindeer to be kept on small scale farms, in smaller numbers: an argument that Aikio indicates would be an attack on the Sámi lifestyle and Sámi claims for land rights.

As with any industry, there have been changes within reindeer herding throughout time, as those who practiced it adapted to demands of modernization. While reindeer herders would have previously used skiis to travel to and roundup their reindeer, they now use all-terrain vehicles (ATVs), snowmobiles and at times even helicopters. When discussing these differences and changes in reindeer herding that have occurred throughout history, Pekka Aikio focuses on the change in the amount of time spent in the forest, with the reindeer:

> *That was an obligation – it was mandatory, according to the reindeer herding law until the end of the 1980s, but the new law in 1990 has dropped this duty away. So today there is no obligation to shepherd the reindeer. It says before that the reindeer must be gathered, transported and separated every year, and after the separation, they must be shepherded. Shepherding means that man keeps an eye on them for a daily basis that they stay where they should be staying, that the man leads them to other places, and keeps them from villages and the roads. That was previously in the law. But Finland wanted this changed. So it is also one piece taken away from the nomadic Sámi system. (PA)*

Civic and domestic justification codes can be found here, as aspects of legality (*civic*) and traditional practices within reindeer herding (*domestic*) are prevalent. The change in the requirements for herding is central to this combination, which is used to claim that there has been a change from a shepherding necessity, to one in which staying with the herds at all times is no longer mandatory. This change, according to PA, is to the detriment of the nomadic system used by the Sámi reindeer herders, in that it is another step towards the eradication of Sámi rights associated with reindeer herding, and therefore Sámi land rights in general.

There is a denunciation in that the obligation to shepherd the reindeer has been removed, in the name of efficiency, which means that the reindeer don't need to be followed constantly, and thus the reindeer herder lifestyle is no longer a requirement to be a reindeer herder. The domestic claim, centered on the history and tradition of reindeer herding, denounces the market claim for efficiency, which leads to the threatening of Sámi land rights.

Aikio also leans upon the Sámi rights rhetoric (civic) in arguing that reindeer herding rights are more important in the Sámi areas, than logging. The argument is centered upon the idea that reindeer herding has sustained the Sámi for many years, while forestry has only been a relatively recent phenomenon, on a large scale since the end of World War II. While, later in this section, Kii Korhonen of Metsähallitus argues that forestry has also taken place since the 1800s, the point however is that it is not a question of 'which came first', but a question of which is most important for the indigenous people living within indigenous territory.

Keeping with the discussion of structural changes being projected onto reindeer herding, Jarmo Pyykko noted that he has criticized the previous research that was done on the grazing grounds, which indicate what the maximum permitted numbers of reindeer are allowed in one specific area, and the RHC in general. His criticisms include how:

> *The researchers are so far from the livelihood and are so far away from the actual grazing grounds. They are using satellite images, they are using computers, they are using all this stuff that they have in their office, but they are not going to the actual ground. For example, when they made an estimation – the system works in a way that scientists estimate the amount of the quality and the amount of the grazing grounds, which actually in practice means the amount of lichen, and then the political decision about the highest amount of reindeer is based on this amount of lichen. And these estimates are made by the scientists. Which sounds rather good in a way, I mean it's impartial, objective.*

> *But in practice they left out the whole grazing system. So actually what they did was that when they wanted to study the winter grazing grounds, they were doing this research on summer grazing grounds, and the other way around. So they didn't consider where the animals are at all and of course the lichen in the summer areas are in very bad condition because the reindeer have been stepping on it. But the situation is totally different on those winter grazing grounds. And because they ignored this circulation system, they really made some bad evaluations. (JP)*

The claim is that the researchers, whose decisions affect the reindeer herders and how many reindeer are permitted in any one area in one year, made poor decisions in what time of year to measure the lichen levels. Since the critique is based on the research design and subsequent scientific findings, the justification for Pyykko's argument is *industrial*. However it is further enhanced using the *domestic* justification, forming a combination, since the traditional grazing rotation system is referred to in the argument. This *domestic* justification also denounces the *industrial* justification of the claim that the reindeer have been destroying the lichen areas, by stressing that the traditional migratory system of herding was not taken into account prior to measuring the lichen levels. Thus, on the one hand the scientific analysis is critiqued, using a combination of industrial and domestic codes, while the opposite argument, also using an industrial justification, is denounced using the traditional practices of the domestic one.[42]

The two claims are centered on the maximum number of reindeer in any given area. If the lichen levels are too low, the argument would be that there are too many reindeer and the number should be decreased. A reduction in reindeer would normally equate to a reduction in a reindeer herder's salary, since the herd would decrease in value. Less reindeer overall could be offset by an increase in the price of reindeer meat, however this type of scarcity would be unlikely due to the relatively low price and limited production capacity already in place (cf. Saarni and Nieminen, 2011). Simply put, in an already delicately balanced industry, those reindeer herders who are forced to reduce their herd would suffer economically. Therefore it is easy to see why the reindeer herders would be against any reduction in the numbers of their reindeer, especially considering how precarious their lifestyle is already. When combining this, understandable, knee jerk reaction with both a general suspicion towards officials operating out of Helsinki knowing enough about the systems of reindeer herding to be

[42] A report by Kumpula et al. (2008) supports Pyykkko's criticism of the methods and findings of the report in question.

able to formulate valid terms for their practice, and a deeper suspicion towards government officials and a hidden agenda to change the reindeer herding on public lands to a stationary farming practice within private property, one can understand how the herders have good reason to question any perceivable flaws in the scientific procedures that affect their livelihoods.

Pekka Aikio then follows up on the link between the structural adjustments and the threat towards the Sámi and land rights of the Sámi. In this thread PA stressed the importance of the reindeer for land rights, and thus for the cultural and economic survival of the Sámi:

> *The reindeer is the animal which has all the time for under decades and centuries and millennia perhaps, carried, maintained, the Sámi rights, for the reindeer herders rights on the land. Because, where we still have this migratory system, it is so obvious that everybody who sees that, understands that reindeer herding must be using marginal areas between arctic and sub-arctic. (PA)*

The claim is that in reindeer herding, the Sámi use a migratory system, which depends on the areas between the sub arctic and arctic. Justifications fall within the argument that access to the appropriate conditions in winter and in summer, is of primary importance. By focusing on Sámi land rights and the traditional migratory system, the codes are *civic* and *domestic*, respectively. This combination of codes is quite typical when discussing the practices of reindeer herding and Sámi culture: the culture of the Sámi is rooted within the natural resources and access to these traditional sources of food and materials, namely reindeer, fishing and hunting.

The point is, however, that the reindeer is the central symbol of Sámi land rights today. The Sámi traditionally practice reindeer herding, so even if non-Sámi now also practice reindeer herding, due to the Sámi being indigenous peoples, the state of Finland has an obligation to provide protection for this traditional indigenous practice, so that it is maintained for future generations.

The land rights are also related to economic aspects of reindeer herding. Land is valuable, and it is important to note that the economic costs taken on by reindeer herders are not restricted to decreased herd sizes. When asked about feeding the reindeer when there is less lichen, local Sámi reindeer herder Petri Mattus (from near the town of Inari) states that the logging contributes to many problems, ranging from increased costs in feed, to decreased value in the animal, since less food available leads to a decrease in size of the reindeer, to environmental damage since the areas in which food is available

and which the reindeer gravitate towards is smaller and thus more concentrated with a larger number of reindeer. In regards to the lichen growing on the older trees, Petri argues that

> *That's just the problem because the government is logging those trees. Once the forest is gone – once it has been logged – the earth dries and the lichen dies, which means that areas where the reindeer can get the food become smaller (in size). The lichen growing on trees is a kind of emergency food for the reindeer: in harsh winters when the snow is too hard for the reindeer to dig or get too, they eat the lichen from the trees. If the trees (and the lichen growing on them) are also gone – the reindeer lack also this food. Then we have to start feeding the reindeer more, and that costs money and that's a problem.*
>
> *So, you have an area where the reindeer have been your whole life, and they get their food themselves, but now the government comes and logs the trees and the area where the reindeer get their food gets smaller. Then of course in that area the reindeer eat everything that they can find, so the land gets damaged – it's not so good anymore, and you must start to extra feed the reindeer in the winter time. (PM)*

The claim is that logging causes a disruption to the system, with costs borne by the reindeer herders and the environment. The *green*, *domestic* and *market* justifications are used in the claim, with the green in the argument that the increased logging leads to a decrease in areas that the reindeer can get food, which forces the same amount of reindeer into a smaller area, which in turn damages the pasture and the lichen that grows there, also meaning that less food is available. Meanwhile, the market justification is that the reindeer herders must pay more money for the additional feed that must be provided for the reindeer, as well as more trips on the snowmobile or ATV to haul the feed to where the reindeer are, and since there is less lichen due to logging of older trees, the size of the animal gets smaller, meaning that the reindeer herder gets a lower price when it comes to slaughtering the animal. All these factors result in financial losses for the reindeer herders and environmental losses for the winter pastures; the latter of which then equates to a lowering in the number of permitted reindeer, again harming the reindeer herders financially.

In this passage there is also the combination of *domestic* and *inspirational* justifications, which appears with the reference to the old ways of reindeer herding: that the reindeer have been in a place for generations and are now being threatened by logging. This combination hints at the emotional values intrinsic within a traditional way of life that is now being threatened by (perceived) outsiders with no connection to the area or lifestyle.

In addition to the lichen that is lost due to forestry practices, there are a number of other forms of damage that occur. It is not only the tree harvesting, but also the soil scarification, road construction and other activities that lead lichen grounds to deteriorate and increase the amount of supplemental feeding necessary by the reindeer herders (Raitio, 2008:83). It is important to keep in mind that all the forests are important in the winter time for the reindeer to feed on the lichen – not just the older forests.

4.2 – Roots of Conflict

As noted in the previous chapter, the Nellim case was one part of a larger conflict between reindeer herding and forestry that had progressively intensified since the early 1990s. The most prevalent justifications found in this section are those of *industrial*, *green* and *civic*. The industrial code was used most often by a number of actors and reflects that many based their arguments in technical or scientific discourses of reindeer herding and forestry.

The conflict, to Pekka Aikio, stems from the current forestry practices, and the damage caused for the reindeer herding pastures. When asked about the roots of the conflict and the importance of all forests, Aikio replied that:

> *This phenomenon is one background in the forest, in the conflict between forestry, because, forestry destroys forests, takes forests, and takes timber away, so the lichen ground, the hanging lichen disappears. It simply is taken away. And then the big machines they also destroy the ground lichen areas. So it is not possible to use these areas as winter, for instance as winter pastures if they are completely destroyed. (PA)*

The point he is stressing here is that the forestry destroys both the lichen that grows on the ground as well as the hanging lichen that grows in old-growth forests. So when any forests are cut, there is less space for the reindeer to live in. The justifications are *green* since the environmental concerns are central to the claim, but the *industrial* code is also present, since the use of winter pastures, as a technical necessity with reindeer herding, is touched on.

The industrial code is also used to denounce claims that reindeer herding can coexist in forests that have been heavily logged. The denouncing aspect falls under the point that the rotating system of summer and winter pastures, which helps preserve the quality of the lichen grounds, does not work when vast winter areas (the forests) are reduced or destroyed by the machinery used by the forestry companies. The efficiency

and technical nature of the migratory system is used as a way to counter the claim that the reindeer can coexist in a heavily logged area.

As noted, the levels of lichen, both hanging from older trees, and growing on the ground, also has a financial impact on reindeer herding, since when there is plenty of lichen for the reindeer, there is no need for the herders to provide expensive supplementary feed for the reindeer. This feeding costs money both in terms of buying the feed and transportation costs, to bring the feed to the herd, which means that the lichen is an integral part of the reindeer herding. When asked whether the older or old-growth forests are more important in comparison to the second growth or younger forests, Tarja Arttijeff argued that

> *Yes the older trees are very important; and then after logging, there are very many little trees, and waste and…after logging trees there are many branches, and "rest of tree" – the rest of the grasses, branches, and everything that is in little pieces. But the problem is then because in this kind of system, underneath this gathered debris is the jäkälä (lichen) and the jäkälä can't grow, and the reindeer can't eat or take the jäkälä because there is so much waste on the ground, that they can't get to it. That is the point. (TA)*

The claim is that in a logged area, the waste from the logging means that the reindeer cannot access the ground lichen in a recently logged area, and then over time the ground lichen does not grow, due to the leftover materials such as churned up ground, broken branches and twigs that result from many logging practices that involve heavy machinery. Since it is difficult to get to the ground lichen, this means that the reindeer cannot survive as well in a logged area, whether it is old growth or not. The justifications include *industrial* and *green*: *industrial* due to the scientific growth behaviour and rates of lichen, and *green* due to the aesthetic and environmentally harmful aspects of the logging practices employed.

One point of contention within the land use conflict is over the use of the term '*old growth forests*.' If one type of forest is inherently different from other types of forest, it is important to know how this *old growth forest* is more important or more valuable than a secondary growth or previously logged forest. This point can be found during the interview with Kii Korhonen at Metsähallitus, when I asked her about how the plans to protect the old growth forests were devised, the answer was first of difficulty in recognizing the term old-growth, because:

> *Especially in Inari, where there are loggings, already in the 1800s, the logs were taken to the [Arctic Ocean]...the Norwegians had the huge sawmills*

> *and things like that there. So there are areas that have been logged long ago. But, if we really start looking for it...the areas we decided to set aside, most of them had no evidence of earlier loggings and we had a mutual understanding of this with the reindeer cooperatives. And we had a mutual understanding that the other areas had evidence of earlier loggings. But anyhow, most of the stands we decided to leave were that we considered areas with no earlier loggings and we haven't been doing loggings there, so you could say old growth. But there are areas where some early loggings were made by Norwegian and Finnish companies and during World War II also by German troops. The valuable old growth forests in the Sámi area had been protected earlier – more than 60% of the forests there are protected earlier in several protection programs. These forests we now set aside, did not always fulfill the criteria of old growth protection, but as there were not remarkable signs of earlier loggings they could be called as "old growth." (KK)*

Here there are two points to consider: that of how to define the term *old-growth forests*, as well as whether these exist in the contested areas of upper lapland and forest lapland. Korhonen uses a combination of *domestic* and *industrial* codes in the references to history and science to support the claim that there was some earlier logging that took place, and that the entire area could not be considered old-growth since some of the trees did not fit the criteria for old-growth protection. This is an interesting combination in that a hard-form of science is combined with historical, social science, in order to add strength to the claim.

There are several inter-related points to consider when looking at this claim, namely: the criteria for old-growth forests, the means of logging and extracting the wood and the historical account in relation to forestry. First, Korhonen points out that throughout the region's history there has been logging done – by Norwegians, by Finnish settlers and by Germans troops during World War II. This point is not contested, but an idea to consider is that forests that were logged in the 1800s, as Korhonen notes that the Norwegians were inclined to do, then these areas, despite having previous logging, would now be over 200 years old and would be once again considered 'old-growth.' There are differences of opinion over the definition of what is and what is not to be considered an old-growth forest. In this case, the different parties obviously have different opinions on the matter, which is reflected in their opinions over which areas are most important for reindeer. Thirdly, the methods of extraction have changed since the 1940s.

When mentioning the mutual understanding with the reindeer herding cooperatives, in addition to the valuable old growth areas that were earlier protected areas, the civic justification also appears. Korhonen is stating that, with Metsähallitus

acting on behalf of a democratic state, these agreements have been made in the past and that cooperation has been fruitful before. The Greenpeace representative I interviewed (GP) may argue that Metsähallitus is trying to say that they have already done enough, and would point to the numbers as being misleading, when you consider that a high percentage of the protected areas from previous agreements, does not contain forests.

The following quote shows that while the bare statistics tell one story, that 60% of the total land area and 40% of the forests in the Sámi domicile area are protected, but the reality was that many of the old growth forests were not protected, while second growth was (Raitio, 2008:82) and the less forested lands that the reindeer did not use. Moreover,

> *Their main argument was that already 40% or so of the forests up there in the Sámi home region was protected, so logically as they argued, there couldn't be any reason for adding any protected areas…well even though they have always had the same attitude towards forest protection even in the very south of Finland where the percentages were 1 or 2… it was quite clear that the mindset we had from the administration and in the industry was that there is no need to do anything. (GP)*

The claim here is that the statistics are skewed to look better than in reality. Greenpeace is making this claim, using *Industrial* and *Domestic* justifications for it. The industrial justification lies in the 40% claim and science, behind the decision making of Metsähallitus, while the domestic justification falls within the reference to the attitude of the culture at the administrative level, one in which 1% or 2% is enough protection; a perspective that differs to that of Greenpeace.

Thus, the lichen levels were central to the claim by the Paadar Brothers. To the question of logging and decrease in suitable pastures and lichen for reindeer feeding, the direct argument as to why the Paadar Brothers wanted to stop the logging, Korhonen stressed that:

> *In the Paadar Brother's court case, it was said that all our logging, in their opinion, prevented the reindeer to feed the ground lichen, and then of course the logging of the older trees which have the tree lichen. Our argument in the case was that we have lots of evidence that these loggings do not disturb the reindeer for ground lichen at all, in other places…but it's very complicated and lots of research on these issues has been done. (KK)*

Korhonen uses an argument that is based upon scientific research (*industrial*) that has been conducted, on the amount of lichen that is in certain areas, as part of the claim that logging does not harm reindeer grazing areas. This is in direct contradiction to what the Paadar Brothers, the reindeer herders, the ENGOs and their supporters have claimed.

This scientific claim uses the industrial justification in order to come across as scientific and conscious of the limits of the environment. This claim argues evidence or facts that support their position, legitimized through science, while making a claim towards sustainability, that the logging does not harm other activities such as reindeer herding. In contrast to the arguments by the reindeer herders and ENGOs, Korhonen's argument is strengthened by keeping away from the emotional references to historical practices and the innocence of times gone by. While denouncing the argument that the logging harms the lichen, Kii Korhonen also focusses on the ground lichen, and does not mention the tree lichen, which grows only on the older trees (old growth); a possibly noteworthy omission.

However, one must bear in mind that the roots of the conflict were not found in a Sámi vs non-Sámi dichotomy. Sámi reindeer herder Petri Mattus highlights the complexity of the issue when pointing out that there are also Sámi who work in the forestry industry:

> *Some of them were and there are, (Sámi) people who make a living from logging. So of course they want to save their job and…but I think the reindeer herder has been in this area for 100s and 100s of years, and violent logging done with heavy machinery has been here 40 years or so ago. So, there is the reindeer herding law that says the government cannot use the land in such a way that it causes damage to reindeer herding. But they don't act according to the law because the considerable damage is caused. (PM)*

This claim uses a combination of the justifications from the *domestic* and *civic* categories. The domestic justification is apparent since the history and tradition of reindeer herding is contrasted with the relatively short history of logging in the region. The short history is even shorter when considering the change in technology and subsequent increase in damage done to the area by faster, more cost effective and higher yielding methods, such as clear cut logging, which is far greater than for example selective logging (Raitio, 2008:83). Mattus then appears to make a reference to the subjective concept of 'significant harm,' that is found within the Reindeer Husbandry Act, when stressing that Metsähallitus does not act according to the law, which is a civic justification.

> *They broke the law – the government has broken the law. Because they are logging too much. (PM)*

Again, the *civic* justification is apparent when referring to the Reindeer Husbandry Act and how Finland has not adhered to the provisions surrounding significant harm when

conducting forestry operations in a reindeer herding area, and notably the Sámi domicile area.

Despite there being Sámi people on both sides of the conflict, the core of the dispute, according to Pekka Aikio, can be summed up as a struggle between the Sámi and the state over land rights, to which the practice of reindeer herding is the central component. He states that

> *In this case, the reindeer herding is the core issue when we are looking at the land rights or when we are looking at the conflict of Sámi against forestry. (PA)*

The claim here is that reindeer herding is at the center of and represents the foundation of Sámi land rights and the dispute with Metsähallitus. This justification (*civic*) looks at the rights of the Sámi reindeer herders against the right of the state to conduct forestry operations. In this context, the conflict between the reindeer herders and Metsähallitus and the forestry workers is the local level disagreement, but the greater struggle is over land rights for the Sámi within the state of Finland. In this claim, Aikio equates the reindeer herding with the existence of the Sámi people. While out of the overall number of reindeer herders, the number of Sámi is a minority[43] the majority of reindeer herders within the Sámi domicile area are thought to be Sámi (Raitio). However, it this conflict is not limited to Sámi against forestry, but Sámi against the state of Finland, who, according to the international agreements and domestic laws such as the reindeer herding act, are supposed to recognize Sámi rights to land.

The link between reindeer herding and the Sámi, is also a central part of the Paadar claim at the UNHRC, with the indigenous aspect being the reason why the HRC directed Finland to stop logging in the disputed areas in November 2005 (HS, 17 November, 2005). Pekka Aikio goes further on this link between the land and reindeer herding for the Sámi. In this quote Aikio notes that the reindeer herding is the link to the land rights for the Sámi:

> *But the reindeer herding, in my opinion, also in this country still carries, and reindeer itself carries the right, the Sámi rights, the herders' right to the land. In that meaning that international conventions and international organizations can protect it and defend it. (PA)*

The claim is that the land rights of the Sámi are most visibly found in the practice of reindeer herding, and should be protected through international agreements, even if

[43] There are no official Finnish census statistics based on Sámi ethnicity and occupation.

doing so is not the most popular decision politically in Finland. The justification code is *civic*, since the justification centers within the Sámi or indigenous people's rights discourse. Having said that, the evidence indicates that Finland has agreed to the ILO Convention 169, though not ratified it; agreed to the Nordic Sámi Convention, though not adopted it; and signed the non-binding UN Declaration on the Rights of Indigenous Peoples, but, at least until the three agreements with the reindeer herders were settled, and partly due to the complaint to the HRC citing article 27 of the UN CCPR, Finland had not committed itself to the provisions of the declaration in a substantial manner. It appears that, until Finland signs either the Nordic Sámi convention, or ratifies the ILO Convention 169, the Sámi will either have to rely on a friendly political atmosphere, or reindeer herding as a symbol of Sámi culture, and thus protection via article 27.

4.3 "Significant Harm"

In relation to the negotiation process with Metsähallitus an important point was raised by reindeer herder Petri Mattus, of the provision in the Reindeer Herding Act of 'Significant Harm.' This notion was an integral part to the Nellim case, as well as the negotiation process. In this section covering the negotiations, the primary justification used by the Metsähallitus perspective is the combination of *civic* and *industrial*. This is due to the negotiation process (civic) and the focus on the goal of efficiency (industrial). However, on the side of the reindeer herders, codes of civic and renown are found most often in this section, due to the presence of ENGOs such as Greenpeace and FANC (renown) within the context of negotiations (civic). Thus, the conflict appears to be framed by Metsähallitus as that of efficiency and democracy vs the presence of an international ENGO.

To illustrate, Kii Korhonen from Metsähallitus pointed out that the reindeer herders cooperatives and Metsähallitus were used to negotiating on where and to what extent the logging would take place, in an effort to reduce or avoid any level of significant harm to the reindeer pastures. However, as Greenpeace, FANC and the other ENGOs became involved in the campaign, Korhonen also noted that the attitude of cooperation changed between the reindeer herders and Metsähallitus:

> *The Greenpeace international campaign started in 2003. I had met some of the Greenpeace activists in Quebec, at a world forest conference in the autumn of 2002, and they told me then that they had decided now to change their international forest campaign from British Columbia to northern Finland. And then at the same time they started pressuring these reindeer*

> *herders so that they would start these arguments. Before the Greenpeace involvement we had negotiated on every issue with the local reindeer cooperatives; not always agreeing, but many logging sites were postponed due to the disagreements. But when Greenpeace was involved, the reindeer herders would not take part in any negotiations anymore. (KK)*

The claim being made is that the Greenpeace activists informed Korhonen that the campaign would begin, and by starting the campaign, the negotiations with the reindeer herders, which had previously been straight forward for Metsähallitus, became much more difficult. The introduction of an ENGO such as Greenpeace, due to its past exploits, adds an element of international fame (*renown*) to the case, that had prior to be absent to the negotiating and consultation process (*civic*). This appears to be a tactic employed by the ENGOs in order to bring the situation towards a point in which the environmental concerns of both the ENGOs and the reindeer herders, to stop logging the old-growth forests, were addressed by Metsähallitus. In 2005 this lack of progress in negotiating led to Greenpeace, the ENGOs and reindeer herders setting up the Forest Rescue Centre and inviting the international journalists to witness the conflict that had become visual, rather than theoretical at this point.

Another key point of the negotiations and the Paadar court case is the notion of 'significant harm' that is found within the Reindeer Herding Act. Specifically how much external activity can be absorbed by reindeer herding, before it begins to significantly harm the practice? Here Korhonen acknowledges that fact, by mentioning that in

> *The Sámi area and some more areas, we are not allowed to manage the state forests so that it would cause significant damage to reindeer herding. And that is why we have a problem, in determining 'what is significant?' It's often difficult to define so we decided to make an agreement with the reindeer herders association which defines the methods that we can use and what are the things that we have to negotiate, beforehand. And in the Sámi area it is even more complicated. (KK)*

The claim being made is that the definition of 'significant' damage needs to be negotiated, because depending on one's perspective, they will define it in a different way. The argument is based upon *industrial* and *civic* justifications, since the negotiations should, at least in theory, lead to agreements that include sound parameters of where and how the logging would take place, meaning that both logging and reindeer herding could continue, with the emphasis on efficiency (*industrial* code). The civic aspect falls within the negotiations and how the rights of the Sámi and the reindeer herders are supposed to be taken into consideration by the state. This process of

negotiating where the line of significance is drawn, falls within the civic world of justifications.

However, the negotiation process did not progress well for either side. In both administrative areas[44], the reindeer herders and ENGOs outlined on specific maps, the areas that they did not want to be logged, and Metsähallitus was supposed to discuss and negotiate with the reindeer herders, the areas that were going to be logged, but these discussions did not lead to the efficient agreements that were first envisioned. Levels of logging and subsequent environmental damage that were acceptable and not 'significant' for Metsähallitus, turned out to not be acceptable to the reindeer herders and ENGOs, which is why the negotiations were drawn out for so long, and why different tactics (including inviting journalists to witness the conflict over the Forest Rescue Centre) were eventually introduced by the reindeer herders and ENGOs.

There are a number of Finnish acts that were supposed to guide the negotiations between Metsähallitus and the reindeer herders. In the following quote, Greenpeace refers to the obligation of Metsähallitus to negotiate with the reindeer herders prior to starting logging activities:

> *There were certain areas that we and the reindeer herders wanted to protect, and Metsähallitus always just proceeded with the logging. They had the obligation that was written – there were many different acts or laws, and of course there still are, like the reindeer herding act, the Finnish constitution and many others, which say that the governments must negotiate with the reindeer herders about land use in the Sámi homeland area, and the other forms of land use must not cause 'significant harm' for reindeer herding. (GP)*

In this claim, that Metsähallitus proceeded with logging even in areas that ENGOs and the RHCs wanted to protect, *civic* justifications come into play. GP refers to laws such as the reindeer herding act and the Finnish constitution, which in theory are supposed to protect reindeer herding and Sámi rights to their traditional practices. The key point is again highlighted: the significant harm threshold, which is difficult to determine. GP indicates that Metsähallitus would simply proceed with logging, while listening to the reindeer herders and ENGOs, but claims that Metsähallitus would simply continue to log.

[44] Ie, in both the Upper Lapland area and in the Forest Lapland area (see maps 4, 5 and 6). These were separate negotiations taking place.

Kii Korhonen was keen to emphasize the efficiency of the meetings with the reindeer herders, prior to the EGNOs becoming involved. Korhonen elaborates on the planning process by noting that Metsähallitus were used to the manner in which the negotiations would proceed, by stating that:

> *Every time, before we started logging, we would send our plans to be negotiated with the local reindeer herding cooperative, so they always get so say if there is something not to their liking, and if so and if possible, we would change the plans accordingly. We always try to change the plans to find an agreement, but of course we cannot guarantee to fulfill all the wishes. And then it is often very small things, like if we change the road, 100m this way, so that's not where their reindeer go…so they are easy things, usually. We would then send the papers to the reindeer herders association before the logging. (KK)*

Here the claim is that the negotiations are normally, or had been in practice a fairly straight forward process. Once more, the *civic* justification falls within this analysis, since the focus is on the rights of the reindeer herders, and how they are being negotiated. However, Korhonen does not focus on how there is an underlying assumption on the part of Metsähallitus that the reindeer herders should agree that the planned logging operations would even take place at all. It could be that a change in the attitude of the reindeer herders towards this assumption, is where the conflict stems from.

Hinting at instances of distrust between the reindeer herders and Metsähallitus, Jarmo Pyykko also indicated that present day colonial attitudes still exist between the state and the Sámi; attitudes that stem from the notion that the Sámi are unable to handle their own affairs (cf. Helander, 1998). For Jarmo Pyykko, one reason why the reindeer herders had negotiated in a supposedly, from the perspective of Metsähallitus, fruitful and efficient manner prior to the ENGO's campaign is because:

> *They [reindeer herders] were looked down upon in a way. As un-able people and even as people who don't have their own thoughts, who can be manipulated. In the beginning when we started to talk about this possibility to have a court case, the herders had this… apprehension towards Metsähallitus, that if they hadn't approved the logging plans made, they could have been sued. So they didn't know about all their rights – they actually had the totally opposite image. (JP)*

This history of compliance can be framed within the size of Metsähallitus. It has been noted that Metsähallitus is so large it is considered a state within a state, as particularly in less populated areas, Metsähallitus is responsible for managing any state land, both in terms of resource extraction as well as conservation and the management of national

parks and recreation areas (Heikkilä 2006; Lawrence, 2007; Raitio, 2008). The claim is that the reindeer herders agreed with Metsähallitus due to a lack of awareness in what their options or even their role could be in the negotiations (*civic* justification), when the proposed decisions made by Metsähallitus were not to their liking. This also highlights the power relationship between the reindeer herders and Metsähallitus, with Metsähallitus using their considerable size and influence in a form of coercion.

Metsähallitus was used to deciding almost unilaterally over which areas and the amounts of logging that would take place. After all, they were given goals to meet by the Ministry of Agriculture and were expected to meet these goals; therefore the negotiations with the reindeer herders on the *amount* of logging were likely not flexible. When describing the parameters of the negotiation process, GP highlighted the control held by Metsähallitus:

> *The problem was that it was never defined carefully, not in the legislation or anywhere else, so the government always thought that this obligation is fulfilled when they just offer negotiations or when they offer talks, and they talk but they didn't really usually change the logging plans at least not significantly. So the way how the reindeer herders always described the situation was that they…the options were similar to getting the death sentence – that we can choose if we want to be shot, or hanged or poisoned. And those are the options they give us and the end result, they felt, was always the same: the forests were more or less logged in a way that was planned. (GP)*

Here the justifications are *civic* and *industrial* for a claim that the negotiation process was merely symbolic in nature and that Metsähallitus assumed that their obligation was limited to only offering negotiations, or discussing slight changes to their original plans and yields. The justification is *civic* in that negotiations and talks were being conducted between the government department and the ENGOs and RHCs. The justification could be deemed *industrial*, but only since from the perspective of Metsähallitus, they fulfilled their obligations of offering negotiations, and still managed to cut the majority of the areas that they wanted to; a scenario that reflects upon aspects of efficiency and productivity in that the work was still completed, and their goals still attained. However, this relationship again hints at the power dynamic that took place within the negotiation process. According to GP, Metsähallitus set out to enter the negotiations from a position of strength in that they were able to, up to this point, use their position of the state to their advantage in limiting the options available to the reindeer herders. By immediately limiting the options available to the reindeer herders, Metsähallitus, representing the government, representing the law, could appear to be quite persuasive.

After the breakdown in the negotiations and while the logging had begun to continue within the disputed areas, the coalition of reindeer herders and ENGOs introduced a different phase of their campaign. The Forest Rescue Station was introduced by Greenpeace, as part of their international campaign to protect 'ancient forests' (Greenpeace, 2 March 2005; Raitio, 2008:176). It was introduced since

> *We had reached a point, or we had reached a situation in the campaign which had started 3 years earlier in 2002, that we had to introduce some 'other' measures. Or to put it simply, we needed more attention, from abroad. And that was the concept of getting it. So we wanted to visualize the conflict and make it more international to have some kind of a set-up which would attract interest. (GP)*

In this quote, the claim is that the campaign had stagnated, in that the measures used thus far in the negotiations process had not had the desired effect and progress from the reindeer herders' and ENGOs' perspective had stalled. At this point in time, despite the coalition indicating the high-risk areas that they wanted to be protected on maps, Metsähallitus was continuing to log within these areas. Thus, in order to draw more international attention to the conflict, the reindeer herders and ENGOs intensified their efforts, by bringing in more Greenpeace activists, to a specific site and setting up the Forest Rescue Station, to which they invited journalists from abroad to visit and witness why the campaign was ongoing. To do this, Greenpeace brought in activists from around the world and invited their contacts in the international press to come to Nellim. The justification is *renown*, since Greenpeace is well known as a global environmental NGO, whose tactics have can sometimes be considered radical and, particularly in the case of campaigns at sea targeting whaling operations, dangerous; meaning that an invitation to witness a Greenpeace campaign can be appealing for a journalist to write a story about. The international (and Finnish) activists arrived, set up the information camp and began to mark out sections of the forest that were considered old-growth or high valued areas for the reindeer herders. This heightened campaign in turn brought in the journalists to report on and give international exposure to the conflict.

This *renown* justification is also used to denounce the *civic* justification. The reason for using these different measures, rather than negotiating, is because the negotiation route was not working. The negotiations (civic) were not progressing quickly enough for the coalition, and the formal process was no longer perceived to be an effective format to advance the coalition's interests; hence the change in tactics away from diplomacy, towards a public campaign (renown).

The increased tensions found within such a small community were felt by many, particularly those living in Nellim, and those living in the surrounding areas who were explicitly involved. When asked about the atmosphere in Nellim at the time, in her opinion Tarja Arttijeff stated that

> *It was quite, quite sad to see those people who were fighting, because I knew that I'm right, because I don't want all these forests being logged down and destroying this area and this old culture also. So I was looking into the future, and what happens then if every tree is destroyed in these areas and there is no reindeer and it is only some mineral mines and something that doesn't belong here. (TA)*

Her claim is that it was upsetting to see a small community fighting with one another, but that it was necessary because the logging would destroy the trees, and then the area's natural and historic culture. When she refers to the future, she draws upon themes associated with the *inspirational* justification, while the historic cultural aspects indicate a *domestic* justification. However, these inspirational and domestic justifications could also be quantified in terms of future work in reindeer herding, in the form of a *market* justification. If reindeer herding decreased or if tourism was to be damaged by too much logging, there would be serious economic problems in Nellim and other small towns, that are dependent on tourism and reindeer herding for survival. The remote, perceivably 'untouched' natural beauty is one of the major draws for international tourists in the northern region, so if giant swaths of trees were gone, the area could theoretically be less appealing.

One has to bear in mind that this northern region has a much higher unemployment rate than in other parts of Finland. To lose any jobs, be they in tourism, forestry or reindeer herding, can be damaging, as there just aren't too many alternatives. Reindeer herding is one practice that, in addition to being a traditional occupation that evokes feelings in a Boasian sense of being the livelihood of the noble indigenous person, but it also provides employment in the northern region. If there was no reindeer herding, there would likely be at least a reduction in tourism, but the increased jobs in forestry or mining may not compensate.

For reindeer herder Petri Mattus, when the Forest Rescue Station was established and the general situation was heightened and more tense between those on the reindeer herding vs forestry sides, he indicated his work allowed him to avoid much of the confrontation. Petri noted, his general outlook was that

> *I continued my life as usual. It was winter which is a very busy time for me within the reindeer work – so there was no time to let it affect me mentally. My wife felt it occasionally – she was sad and heavy(-hearted) when people took things very personally. She was also a bit shocked when she learned that some companies (for example family business in tourism) got threatening letters because they had given minor financial support for nature conservation at some point in time (not for Greenpeace). We felt and (still) think that people should not take things personally but should discuss and solve different opinions with other means. (PM)*

Petri claims that the heightened tension affected people to different degrees, depending on one's occupation, and likely role in the conflict. Moreover, he also claims that differences of opinion should be solved using dialogue, rather than using intimidating, and unfair tactics, as was in the case of small companies who merely wanted to support nature conservation that was not necessarily tied to the forestry vs reindeer herding conflict. The codes are *inspirational* since dealing with attitudes and feelings, and *civic* due to the reference towards dialogue, calmness and reason to solve differences, rather than using emotionally fuelled threatening letters to intimidate those who disagree with you.

The Forest Rescue Station had the effect of bringing both domestic and international attention to the scene. This attention led to both a temporary stoppage in the logging and economic pressure, in that attention was placed upon the companies that were buying the wood from the disputed areas (Metsähallitus, 24 March 2005). However, while the logging was halted immediately, in the summer months, after further breakdowns in negotiations, it began again in the disputed areas. It was not until a complaint was filed with the Human Rights Committee was filed by the Paadar Brothers, that the logging in the disputed areas ceased.

For the reindeer herders and the ENGOs, the human rights element was a prominent part of the stratagem. The strategy of name-and-shame in the international arena seems to have come to fruition for the Paadar reindeer herders, since Korhonen of Metsähallitus points out that

> *For us it's of course, it's that the worst part of it was that we were accused of violating human rights issues, even though we knew that we are going to win this (in court)…but it would take seven years or something, and all the time we would be accused of human rights, so that is why we want to get the thing (settled). (KK)*

Here the claim is that Metsähallitus had won the first level of the court proceedings, and Korhonen indicates that they would likely have won the next level (appeal level), but

that the international pressure brought them to the negotiating table with the Paadar brothers. The justification found is *civic* since the claim is based within notations of human rights and the legal setting. The strategy of the reindeer herders and ENGOs appears to have worked, in that, regardless of the outcome, there would be this accusation of human rights abuses taking place in northern Finland throughout the years leading up to the trial – Metsähallitus and Finland's names would effectively be dragged through the mud and would be damaging for both Finland's international image as well as for Metsähallitus, if wood buyers would not buy wood products due to this accusation of human rights abuses.

Effectively, the agreement protected almost 90% of the areas the Paadar brothers claimed in the Nellim case, as well as in each of the other areas. To come to a negotiated settlement such as this, Metsähallitus must have found the cost-benefit analysis to be unfavourable to continue with litigation: the potential losses due to uncertainty for investors and a (more) tarnished image of Finland and Metsähallitus must have been greater than the decreased income from a relatively small area of northern Finland, when compared with the rest of the productive woodland areas.

4.4 Agreements

There were three agreements: first, the Nellim agreement from August 2009, then the Forrest Lapland agreement from October 2009, and finally the December 2010 agreement for the remaining RHCs within the Upper Lapland area (see maps 4, 5, 6). The primary justification used by the actors in this section is based on *market* and *civic* factors for the RHC and ENGOs, whereas on the side of Metsähallitus, once more the focus was on Greenpeace and their presence, which reflects the *renown* justification. The *civic* justification was used in a way that the coalition perspectives were confident of a legal victory had the negotiation not taken place, while the market was viewed as the tipping point to bring Metsähallitus to conclude a deal.

The economic forces can be found within the Greenpeace campaign tactics. Part of the strategy of Greenpeace was to target the buyers of the wood from the disputed areas, since allegations that a company is buying resources from an area in which alleged human rights abuses were taking place, do not facilitate a sustainable or socially responsible reputation and subsequently hinder the company's profits. As illustrated by their strategy to target the buyers of Finnish wood, according to GP it was the market forces that led to the halting of the logging:

> *Finally, as a result of our campaigning, the major wood buyers refused to buy wood from the mapped areas. It wasn't of course a categorical refusal of buying anything from the region but from those specifically mapped areas that we and the reindeer herders had defined on the maps. And so then in 2006 the state found itself in a situation that nobody was buying the wood. So, you cannot really log since you need…if they wanted to continue their business, they HAD to look for a solution. So, to put it very simply, it was the economics that forced them. (GP)*

In this case, the claim is that the logging stopped because the international companies stopped buying the wood that Metsähallitus extracted from the conflict areas, as specified by the maps provided by the RHCs and ENGOs. The justification for this claim is a *market* based one, since the negativity generated by the press coverage that focussed on both the Finnish state and buyers of the wood (Stora Enso and UPM Kymmene being the two largest), the protests, the letters written to the companies and general campaign, had turned into a financial reality for Metsähallitus (Lawrence, 2007). Many international companies pride themselves on providing services or products in a 'sustainable' manner, 'global responsibility' and using the most 'environmentally friendly' methods possible, so the negative advertising that accrues when news articles appear stating that the company is buying raw materials from an area in which there are claims of human rights abuses, contradicts the positive sounding company mission statements and has a potential to harm a company financially. When the wood buying companies decided not to buy wood sourced from the disputed areas, this aspect of business that 'the customer is always right' or goal to make sure your customer is happy, worked in favour of the RHCs, at least initially.

When considering the international reputation of companies, corporate and social responsibility has increased in importance. An example of how corporate and social responsibility affects businesses can be found within ethical indices such as the Dow Jones Sustainability Index, the FTSE4Good and Ethibel (cf. Lawrence, 2007). The pressure generated by market forces is echoed by Petri Mattus when discussing why the settlement came to fruition:

> *I think the settlement happened because Greenpeace was here. It might not have happened without Greenpeace and the pressure. (PM)*

The claim here is that the ENGO campaign and resulting global financial pressure (*market* justification) placed upon Metsähallitus and the Finnish government was the reason the moratorium was agreed on. The *market* justification appears in a combination

with the *renown* justification, since the presence and resources from having a Greenpeace campaign taking place in Finland, undoubtedly brought more attention to the situation and affected the market-based pressure. If nobody reported on the conflict in the international press, it is plausible that the international companies would not stop buying from the areas, either due to lack of knowledge of the conflict, or due to a cost-benefits analysis that indicates few from outside the area would know about what is happening to financially harm their profits, and therefore sides in favour of continued purchasing from the affected area.

As noted previously, there was however the litigation route that could be pursued. At the District Court level the Paadar brothers brought their case against Metsähallitus, arguing that the logging was significantly harming reindeer herding in the Nellim area of the Ivalo Reindeer Herding Cooperative. However, prior to going to the appeal court level, the situation changed for Metsähallitus, leading towards cooperation and negotiations with the Paadars. For Korhonen, this change in attitude was possibly since:

> *Greenpeace started getting tired of being in Finland, and I think that was part of it. The Paadar brothers agreed to start the negotiations to find solutions, because before that they wouldn't start negotiating with us. And then after we got the agreement with them, it kind of made it easier to start negotiating with the others. (KK)*

Korhonen points out that the Paadar brothers who were plaintiffs in the court cases in the district court level in Finland, decided they wanted to negotiate their claim rather than going another round in the courts, partly due to Greenpeace no longer wanting to focus on Inari, Finland anymore. The codes are *renown* due to the international attention brought to the situation by Greenpeace, and *civic* due to aspect of negotiations. The question as to whether Greenpeace was still willing to commit resources to the campaign is difficult to know: it is possible that there could have been an aspect of downsizing internally within the global Greenpeace organization, which then affected the availability of resources for the campaign in Finland. That being said, the Finland based activists from Greenpeace did not disappear, so there was still monitoring and reporting, with press releases updating the status of the disputed areas, well after the height of the conflict in 2005.

It is also possible that both sides feared the ramifications of losing the case in court. The change towards negotiations from both sides meant that neither side really wanted to go through a lengthy drawn out court process, for reasons associated with risk,

if they were to lose, not to mention the costs involved, win or lose. GP elaborates on the Paadar case in relation to the court ruling:

> *And also the Nellim case was maybe, out of all of these cooperatives, Nellim/Ivalo was the one that was already most badly logged already, so they already had a situation which was really bad compared to some others so it was quite a clear case, even though the Paadar brothers lost the first court case, in the local court; but this of course was to be expected – the local court hardly could for many reasons…no one could really trust their impartiality on the issue. (GP)*

GP claims here that the Paadar case was strong, but lost because the impartiality of the local court was suspicious. This is justified through the *civic* and *domestic* codes. It is *civic* due to the legal nature, analyzing the levels of harm endured by the reindeer herders in Nellim, in relation to the breadth of logging in the reindeer pastures. Meanwhile, the *domestic* justification appears in a form that denounces the *industrial* or efficiency argument, since the claim is centered on the possible impartiality of the local court, which is, in a sense being the opposite to an efficient, science based justification. Here the *civic* justification of a strong case is supported by the *domestic* code that denounces the impartiality of the court or the argument from the side of their opponents, that would be based on an *industrial*, or scientifically objective justification.

Impartiality was also brought into question with regard to the court cases. In a reference to the first verdict, from the District Court level, which went against the Paadar brothers, Jarmo Pyykko also claimed that the court was not a neutral party. Pyykko stressed that:

> *Yes, we lost because the local court was not impartial. So we were ready to go on further, but before that, Metsähallitus wanted to have negotiations. And then we made an agreement. So in one of these areas, the so-called Nellim area, there was an agreement. (JP)*

Interestingly, now both 'sides' have indicated that the other wanted to come back to the negotiation table. Here, Jarmo Pyykko claims that the Paadar brothers were willing to go further in their claim, to the appeal court level, but the negotiated agreement ended all lawsuits, while also stating that the court was impartial Once again, the justification being referred to here is *civic*, since the legal system and negotiations are prevalent in the claim and *domestic*, in that non-objective measures were supposedly used by the court in coming to their decision.

Despite the claims of impartiality, Greenpeace notes that the Paadar's had a strong case, and the backing of the ENGOs to go further within the litigation route. GP

claims that compared to previous lawsuits brought against Metsähallitus in the 1990s, in this instance,

> *We could really build a case, and I think that it started to move: Metsähallitus started to be afraid that they might lose the case – as we did also. I mean it wasn't clear for us, or for them, but both sides couldn't be sure what the end result would be, and then it was a safer choice for Metsähallitus to actually offer an agreement. (GP)*

Here is the crux of the reasoning behind why it appears that both sides wanted to resume negotiations: the uncertainty surrounding a decision achieved in court. Since the conflict had been going on for more than ten years now, both sides would reason that their arguments were strong enough to win. It appears the risks associated with losing were high enough for both sides to return to the negotiation table. The claim by GP is referring to the settlement offer for the Paadar case being a safer choice for Metsähallitus, and uses a combination of *civic* and *market* justifications to support the claim. GP refers to the *civic* justification due to the rights based arguments within the court case, and *market* as a reason for Metsähallitus to offer an agreement: the opinion of GP is that it would be cheaper for Metsähallitus to settle, rather than to lose the case. This *market* based claim is supported by the outcome of the negotiations, since the strength of the Paadar case led to almost 90% of the mapped high-risk area being protected: if the Paadar case was not very strong, they would likely not achieve such a percentage through negotiations. That being said, as noted previously by Kii Korhonen of Metsähallitus, there is also the length factor, during which the claim to the Human Rights Committee would still be in progress; a situation which serves to strengthen the Paadar position, from the realms of economics and human rights, if not from a legal perspective in the Finnish court room.

The length factor is possibly one of the reasons as to why the agreement came to fruition. The court case would have dragged on for a lengthy period, during which Metsähallitus, and the state of Finland would have continued to be accused of violating human rights norms, while there would be an air of uncertainty for investors in the region. Jarmo Pyykko stated that:

> *Of course one can say that this outcome now is the result of that campaigning. But there is also another point – if there was not this campaign, we would have gone with these court cases further and we really believe that we would have won that way also, because this is so crystal clear that the forestry is having a harsh impact on the reindeer herding and that the reindeer herding is the basis for this culture. But it would have taken many years more. (JP)*

The reference to the time that the next round of court cases would take runs through the *civic* justification of why the agreement was agreed. Again, the strength of the Paadar case was not limited to the courtroom; as a result of the campaign, companies were more weary of which areas the wood they purchased was sourced from, whereas the claim at the United Nations Human Rights Committee put political pressure on Finland. It could be that while the Paadar claim was not as strong from a strictly legal rule of law perspective, these other avenues of pressure worked in their favour and led Metsähallitus to attempt to avoid the trial.

Other reasons for why the agreements came to a pass and the logging within the identified at-risk areas was stopped range from political pressure, to financial pressure, in addition to the legal track. One key aspect from the legal perspective is that of the Reindeer Herding Act:

> *Maybe it was Greenpeace and the Sámi organizations who forced or managed to put Stora Enso in a position where they had to refuse to buy the wood. Or maybe they refused because they felt that it was the right thing to do, but for any reason, but that's where we were and now are. And of course there also was the legal track, because the Reindeer Herding Act was never really tested in the way how it says that the other forms of land use must not cause significant harm to reindeer herding. (GP)*

The claim here is that the Reindeer Herding Act was not tested through the judicial system. In terms of precedents, if the case had gone to higher levels of the Finnish legal system, the term 'significant harm' could have been defined, which would offer clarity for future disputes. It must, however, be stressed that both sides were confident of victory, had the case gone higher. The justification for the claim are *market* and *civic*; *market* since the financial aspects are stressed in the references to the largest buyer of the wood, no longer wanting to buy it, while *civic* since the negotiation and legal provisions are referred to.

In addition, Korhonen indicates that the Nellim case was the blueprint for the RHC claims, since when the Nellim case was agreed upon, it made the remaining claims easier to conclude. The Nellim case set a precedent, despite being outside the court process. This new willingness to cooperate is highlighted by Korhonen:

> *After we agreed with the Nellim case, also the other Sámi area cooperatives told us they are willing to negotiate with us, whereas earlier they weren't, they said they don't want to negotiate because we operate on their lands, or something like that. But then they said that they are also willing to negotiate and now we have. (KK)*

Korhonen claims that the other cooperatives were willing to negotiate (*civic*), after the Nellim case was settled, whereas before this happened, they were not. The reason for not negotiating is highlighted as because Metsähallitus was operating on Sámi lands, without an agreement with the reindeer herding cooperatives. This act of solidarity, and concerted organization can also be looked at as further pressure on Metsähallitus to come to an agreement in the Nellim case.

For the Sámi, the agreement protects one of their most important traditional practices for a substantial period of time. For former Sámi president Pekka Aikio, the longevity of the agreements is key since he foresees a change in general opinion towards logging. To Aikio, the recent settlement agreements between Metsähallitus and the reindeer herding cooperatives in 2009 and 2010 mean that:

> *Yes, it is a good step, because in 20 years time the world will change also. Metsähallitus will change. They have said, I know those people and they're very good people also working there, and they have said, this is such a big ship that we need time to turn its course. (PA)*

Green and *inspirational* codes can be found, since PA hints at global changes of opinion in favour of environmental protection (*green*) as well as his personal faith in the people working for Metsähallitus, whose personal views on an individual level, are not necessarily in line with the conflict based approach of the Finnish state. As noted by Korhonen earlier, it is not for Metsähallitus to determine who should have rights to the land and who should not: Metsähallitus acts according to the goals, targets and within the parameters directed by the Government of Finland, as the law and situation stands at any given time.

Arguably, interests on both sides are happy with both the length of the agreement and certainty that an agreement of such length brings. When asked to give his view on the settlement agreement, Jarmo Pyykko pointed out the aspects of sustainability and longevity, that

> *In this case where local communities are using this forest, in a sustainable way – I see it that way, that the reindeer herders are using these forests because they can go on with this kind of usage for the next hundreds of years, and maybe we wouldn't see any change in the forest. But forestry, when it comes, it is a few days, and then it is gone. And all other activities are gone as well, including tourism. So, the thing is that the, if you compare the sustainable local use and this one time usage, serving interests coming from the outside, it is rather easy to make a choice. (JP)*

This claim uses a combination of *domestic*, *market* and *green* justifications, in stating that the practice of reindeer herding is sustainable for the long term benefit of the local communities. The history and culture is apparent (*domestic*) in the argument, while the multiple usages of the forests is stressed, with tourism (*market*) as a major source of employment in the northern areas, when unemployment rates are higher than average (Regional Council of Lapland, 2011). But it is the sustainable (*green*) aspect that is most striking, in that when clear cut logging is done in an area, the reward is a onetime payment for the lumber while the options to use that area are drastically reduced to that of growing more trees or further development, but the other benefits and possibilities to use the forest, such as tourism and reindeer herding, are gone.

For the reindeer herders, both Sámi and non-Sámi, the agreement ensures their livelihood is secure from the threat of forestry, for twenty years. Petri Mattus, summarizing a reindeer herding perspective, stated that the importance of the agreement is straightforward to him, since:

> *It ensures that the most important winter pasture areas safe for the next 20 years. (PM)*

For reindeer herders in the Sámi domicile area, approximately 90% of the most important forests were now protected, meaning that reindeer herding could continue, without fear of the forests being cut down before any court case was ruled on by the courts. This claim draws upon the *inspirational* justification, in that future use of the traditional practice is ensured. Of course there are other threats to reindeer herding, such as mining and predator conservation (HS, 21 September 2011), but protection from that of forestry had been attained.

The three settlements are similar in that the key old growth forests are set aside from forestry operations for twenty years. Echoing the opinion towards a change of attitudes amongst the public, GP emphasized that the settlements and the twenty year moratorium would be successful in the long term:

> *We don't really think that after 20yrs, this kind of forestry will be practised more because it is simply not economically very profitable, at the moment. All of the logging that the Finnish government is doing in the Sámi homeland is, - it doesn't produce positives, it is sort of plus-minus. There is so little profit that all of the profit goes to the expenses. So they don't lose money, but they don't make money either. It is like an instrument that is feeding itself, but nothing else. And the amount of raw material that they are providing for the pulp mills and the paper mills: the closest ones are located in Kemi, which is first 350km to the Rovaniemi railway station, then a further 200km south to the pulp mill. Pulp isn't really that expensive*

> *anymore in this world. And in Finland we have still so much forest even in the south of Finland, which is growing considerably faster than up here. (GP)*

The claim is that the logging in the north is not very profit-inducing, while growing very slowly compared to the rest of Finland. The *market* justification is apparent when dealing with the economic reality of all the steps in the resource extraction of raw lumber from the Lapland region. The associated costs are so high, for a relatively low amount of wood, that long term, it might not be a viable option, compared with the more lucrative southern forests stands. The market justification is used to denounce the *domestic* claim that jobs are created in northern areas with forestry, by arguing that the forestry in the Sámi domicile area is not cost-efficient; not only in terms of making a profit, but in terms of what this older timber, that takes a longer time to grow than in more southern areas, is used for, namely pulp and paper production, rather than any value-added products such as furniture or housing materials. The denouncement is also apparent in the scientific or *industrial* claim about growth rates in Lapland vis-a-vis the more southern areas.

While not explicitly stated, it could easily be argued that the key point to the Paadar claim is the indigenous aspect. The Paadar brothers are Sámi who claim a traditional right to the lands in question. On a larger scale, the Sámi people of Finland, on the strength of being considered indigenous peoples both by themselves and the Finnish state, have a claim to the traditional Sámi lands, Sápmi (maps 1 and 3). The argument is that the forestry practices affect the Sámi in greater ways than the normal Finnish population since the Sámi culture is directly tied to the surrounding environment. This is not to say that your average non-Sámi person living in the northern climes' culture and way of life is not tied closely to the land and natural environment, but it does give the Sámi a legal argument in their struggle when it comes to land use decisions; an argument that your average Finn would likely not be able to utilize with a similar level of legitimacy or authority, particularly in the Sámi areas.

As noted in chapter 1, the issue of land ownership in the Sámi domicile area is a contentious one. There have been a number of studies undertaken, many of which have been criticized for In this vein, Pekka Aikio highlighted a 2006 study by the University of Oulu,[45] which did not result in findings favourable to the Sámi. He argued that

[45] See publications at the Finnish Ministry of Justice at <www.om.fi> (report is in Finnish).

> *They wrote that, according to Finnish legal history and legislation, nomadic people have not been able to gain land rights. That's the eternal struggle, and a very universal struggle between nomadic people and farmers. But it has been studied in Sweden and in Norway, where it has been clearly shown that the Sámi people could gain this right. (PA)*

Aikio is claiming that in Sweden and Norway, where the Sámi also exist, reindeer herding and land rights are rights belonging to the Sámi[46], whereas in Finland they are not exclusively recognized as such: in Finland, non-Sámi living within the reindeer domicile area, provided they have a right to an ear-mark, can also own reindeer (Reindeer Husbandry Act, 1990). The justification is based on *civic* arguments, since Aikio compares the different policies that govern the same, Sámi people, on different sides of imposed territorial borders.

4.5 Finland and the Sámi

Moving to the macro-level, this indigenous aspect appears to be an underlying reason for the agreements. The relationship between the Sámi and Finland has been a strained one, and due to the lack of recognition, in order to safeguard their rights the Sámi have thus far been in need of forms of external protection that international agreements such as the UN CCPR provide. The most prevalent justification was the *civic* one, which again is not really surprising given the topic of the section is on international legal instruments and the indigenous aspect of the Sámi.

The market was also used as a justification by Greenpeace. When discussing the international agreements, and the ILO 169, GP hinted that the international treaties and agreements are quite detached from the reality of the situated engagement. When asked about the UNDRIP, GP pointed out that

> *Despite the fact that Finland has undersigned…well we don't have the ILO 169, it's not ratified for Finland. Many of the other conventions are, but of that we have experienced another reality on the ground. (GP)*

Here GP claims that despite what is happening at the international level, in terms of the situation for the reindeer herders in Lapland, the reality is quite different. The justification is *civic*, in that the discussion is about rights of the Sámi within the ILO Convention 169 and the UNDRIP. GP indicates that the UNDRIP is effectively only a

[46] See Special Rappateur Report 2011.

symbolic affirmation of indigenous rights, since it does not appear to influence policy towards the Sámi people in a meaningful way.

In the opinion of GP, it was the market and industry that led to the agreements, despite Finland's reputation as a country that holds itself to the highest standards, vis-à-vis international law and human rights. Referencing both *civic* and *market* justifications when talking about the role of international agreements, GP clarifies the previous statement stating:

> *Of course they are important and of course everybody should understand them, and they should be respected and so on. But unfortunately, even in a civilized western democracy – a society like Finland – we had to use industry or the business angle to correct the situation, because without the forestry industry refusing to buy the wood from the Finnish state, I think they would have never entered any serious negotiations of these issues. (GP)*

The point being made is that while the negotiations were based upon rights (*civic*) of the indigenous Sámi people, and reindeer herders, it is the *market* that provided a result. Even in a country that prides itself on being tolerant, multicultural, liberal, democratic and a forerunner in terms of respect and adherence to human rights norms, it was the market that was instrumental in achieving what the politicians did not want to implement. Quite simply, at the political level, there was no consensus or will to make a decision in favour of the reindeer herders who were supported by the Sámi parliament.

Perhaps due to the conflicting findings of the various reports, political willingness to formerly recognize Sámi land rights has been slow to non-existant. Frustration was evident when Pekka Aikio discusses the political willingness of Finland to sign international conventions on indigenous rights, such as the Nordic Sámi Convention or ILO 169:

> *The Finnish government pulled back – no legislation will be tabled to the parliament on Sámi land rights. Because all the time they have been worried more about the local Finns' rights. They always say that there are local Finns, how about their rights? (PA)*

The reference here is to how the then Minister of Justice, Tuija Brax mentioned in January 2011 that Finland would not be ratifying ILO 169 prior to the spring elections (YLE, 21 January 2011). The claim here is that the legislation on land rights is delayed once more, with the delay being due to the rights of the non-Sámi living in the Sámi domicile area being of higher concern than the rights of the Sámi (*civic*). Finland has mentioned that the difficulty lies within allowing the Sámi to have certain rights, while

other non-Sámi who have lived in the domicile area and practiced the same lifestyles would not be entitled to these rights (Forrest, 2006; CERD, 2007).[47]

As noted earlier, when the definition of being Sámi was broadened under the Act of the Sámi Parliament in 1995, there was a rush of those who previously were not considered Sámi who attempted to register as Sámi and be eligible to vote in the Sámi parliament elections. There was even a group of those who were actually opposed to the Sámi having any group specific rights, who attempted to gain recognition as Sámi, though the Sámi parliament rejected these applications; a decision that was upheld by the Supreme Court of Finland (Pietikäinen 2001). These tensions are evident in the following quote by Kii Korhonen of Metsähallitus, who raises the question as to who is Sámi. One key point when discussing Sámi rights, particularly for those who are critical to the Sámi having special rights, is that of Sámi identity:

> *The problem is of who is accepted as Sámi and who is not. That is the big problem. The people living in the Sámi area have lots of rights on state lands, which people living in other areas do not, but they are for both Sámi and Finns or others who are living there and that's the problem. We have been, how do I say, we are kind of looking at it practically so that it is the decision of the Ministry of Justice, and we manage the land according to the situation that exists now. (KK)*

Korhonen highlights a potential difficulty with the issue. The claim is that it is difficult to give special rights to the Sámi (*civic*), if there are not equal rights for others who are living in the same areas (*domestic*). However, Korhonen indicates that Metsähallitus acts according to how they are instructed to, with the major decisions to be made by the Ministry of Justice.

As an example, in Canada, due to a 2004 Supreme Court of Canada ruling in favour of the Haida,[48] the different levels of government now must consult in a meaningful way with any indigenous group when planning any resource development project. When asked about how group specific rights of the Sámi as indigenous people should fall into the picture, Korhonen stated that

> *Sámi people could get more decision making power in the state use of state lands, but then the question is what to do with those people who can show that my parents were living here and their parents' parents since the 1500s?*

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[47] CERD/C/FIN/19, Government Periodic Report to the Committee on the Elimination of Racial Discrimination.

[48] See Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73.

> *And they have been living at this place since then. And they are not accepted as original (indigenous) people.*
>
> *Then there are the Sámi who are originating from Sweden and Norway, because in the 1860s and 90s, the border between Sweden and Finland and Norway was closed. Then lots of the Sámi from those sides moved to Finland and now they are indigenous people in Finland, and these other ones who have been living here, they are not! And these problems have caused the…I think that is the basic reason why this big issue has not been able to be decided on. (KK)*

The claim here is an interesting one, rooted in history and traditions (*domestic* justification) of Sámi people and the non-Sámi, who moved to the Sámi areas from the south. Korhonen is making a claim that the Sámi might not be entitled to control over Sámi lands, since they may have originated from the Norwegian or Swedish sides of the borders. However, if you look at Sápmi as one territory that has been split up by outside determinants, then does it really matter which side of an imposed borderline certain Sámi moved from? Particularly when considering the seasonal nature of the Sámi lifestyle that progressed from winter to summer areas, cutting across these borders (Heikkilä, 2006; Solbakk, 2006). This is perhaps a problem that could be solved with the proposed Sámi Convention.

Meanwhile, the problem of differentiated rights within the Sámi domicile area becomes even more complicated when considering intermarriage. This is a difficult point to tackle, and beyond the scope of this study. However, in a cursory manner, it could be looked at by taking into account the idea that to be considered Sámi is also to be self-identifying; if you do not identify yourself as Sámi, which means more than just living in the north and practicing reindeer herding, then why should you be included within the Sámi community? As a comparison, in the Canadian situation of membership in First Nation bands, the decision remains with the individual band to determine who is and who is not a member, which is normally in conjunction with biological heritage. Kymlicka points out that for indigenous peoples to have control over who is and who is not permitted to be a member is of utmost importance (2001).

The indigenous aspect of the case was key for the interjections made by the UNHRC to order the stoppages in logging, in addition to perspectives held by Pekka Aikio, and less so to Kii Korhonen. When asked about how the indigenous aspect affected the Nellim case and overall conflict, Jarmo Pyykko was quick to point out that:

> *Roughly, it is rather easy to say that reindeer herding in this area is an indigenous activity. But it is rather different to say that only the Sámi are*

> *practicing reindeer herding, and all the Sámi are thinking the same way. That is not true. But of course when you look at the newspapers, especially the foreign journalists, they want to see it in this way, but even though the international public wouldn't notice it, everybody here would. So that's why we said it cannot be done that way, and didn't put so much weight on this indigenous issue, as we did on the reindeer herding and forest nature. (JP)*

The claim here is that the old growth forestry dispute is between reindeer herders and Metsähallitus, and while the indigenous aspect of the Sámi people struggling against an oppressive state administrative body would market well, in terms of garnering international support for the campaign, the accuracy was not absolute. While the indigenous aspect is an important and strong part of the claim, for Jarmo Pyykko and the ENGOs and the reindeer herders, when considering that in addition to reindeer herding, the Sámi work for Metsähallitus and for the logging companies, and their livelihoods were being affected by the campaign, then one cannot state unequivocally that the Sámi are a unified social entity with one, united perspective. *Domestic*, *civic* and *renown* codes can be found within this claim, when discussing the traditional practices of reindeer herding (domestic), the appeal to the public and the international companies as part of the campaign (civic) and the participation of Greenpeace, perhaps one of the most well known ENGOs in the world (renown).

This chapter has used quotes from the various perspectives associated with the Nellim case and the greater forestry and reindeer herding conflict within the Sámi domicile area, to shed light on the complexity of the case and the conflict, by those who were involved first hand. As shown in the five sections, the justifications used by the actors for their various claims included civic, industrial, market and green, but with the civic justification appearing most often. This is not a surprise seeing as the conflict is based upon differing rights: either as the rights of reindeer herders vs those of forestry workers or, within the Sámi indigenous rights discourse. In the next chapter we will take the analysis to another level by tying the analyses and justifications as found within the empirical material, into the theoretical discussion from chapter two, while taking into consideration the research questions from chapter one.

Chapter 5 – Discussion and Conclusion

Bearing in mind the justifications analysis of the interviews as presented in the previous chapter, now we revisit the research questions as outlined in chapter one. In answering these questions, the empirical material can be organized into addressing three main themes, each of which reflects on the previous, and answers or adds to the theoretical discussion started by the research questions. The questions, as outlined in Chapter 1.1 include: 1) How did the conflict start? 2) What are the different interests, as represented within the land use conflict? 3) Why is it important that the conflict be solved? 4) Whose interests are being served by claims for Sámi rights? 5) How are policies towards the Sámi viewed vis-a-vis mainstream society? Questions are also asked as to the extent to which Sámi rights are protected via the practice of reindeer herding, given the logging of old-growth forests and considering the international agreements such as the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.

The first of the three themes indicates that economic recognition for the Sámi in Finland is less forthcoming than cultural and linguistic recognition. In addition, even the cultural and linguistic recognition that have been afforded to the Sámi, are drastically underfunded when comparing the levels of funding in both Sweden and Norway. While this remains the case, questions over both overt and covert forms of assimilation by the Finnish state will continue to be asked. Secondly, the material indicates that the power relationship between the Finnish state and the Sámi has been one-directional. Throughout Finnish history, the state has repeatedly imposed their will as opposed to accommodating legitimate historical claims of the Sámi. The Inari conflict, as personified by the Nellim case, is a prime example of this imposition of power still happening, with Metsähallitus being the dominant force dictating terms to the reindeer herders, just as has been done by the Finnish state over the Sámi. Finally, based on the materials analyzed in this study, due to the actions of the state, Finland appears to be a benign, symbolically multinational state, rather than a consequentialist one; thus their actions and policies only symbolically recognize the Sámi, and do not go far enough with regard to land rights. Despite the settlement agreements, it took external pressure from the companies that buy the wood, and from the UN Human Rights Council, for Metsähallitus and Finland to come to the agreements.

5.1 Economic Recognition

While not being the primary argument in the Nellim case, at the core of the dispute, is the first of the aforementioned themes: that Finland has not done enough for the Sámi in terms of economic recognition, that is, the question over land rights in connection with the state-owned land. The practice of reindeer herding, while not solely a Sámi activity in Finland as it is in Norway and Sweden, serves as a symbol that legitimizes the claim to land rights for the Sámi. The land rights claim for the Sámi is linked to reindeer herding and the decisions made by the UN Human Rights Committee in their judgements on Article 27 of the International Covenant on Civil and Political Rights (CCPR) back up this claim. Moreover, if there is no more reindeer herding, the Sámi would lose the opportunity to claim that their culture is being violated by various land use practices applied by the state – whether it be development for tourism, logging or mining. With the current situation, in which Finland has not ratified ILO 169, and has not made meaningful strides towards the recognition of Sámi rights to land, forms of external protection are crucial for Sámi land rights specifically, and the survival of the Sámi in a more general sense.

There is also an argument that the level of financial recognition allocated by Finland for aspects of language and cultural rights is also sub-standard. When one considers that the funding for Sámi cultural and linguistic protection lags behind what the Sámi in Norway and Sweden receive on a per capita basis, then even these so-called protected rights for the Sámi are at risk. According to Henriksen (2008), in 2007 the funding provided as a budget for the Sámi parliament in Finland was lower than the level of funding provided by the governments of both Sweden and Norway to their Sámi parliaments. This appears to be understandable, considering the difference in Sámi population in the three countries, Finland being the smallest. However, when compared as a per capita rate, the level of funding by Finland to the Sámi parliament in Finland works out to be less than half of what both Norway and Sweden spend, on a per capita basis[49]. This risk to language and culture loss is confounded when one considers that these funded programs, such as the language nests, only exist for those living in the Sámi domicile area (cf. Pietikäinen and Kelly-Holmes, 2011). Yet, as of 2011 more than 50% of the Sámi in Finland now live outside of Sápmi, and escalating the problem further is the notion that nearly 75% of Sámi children fewer than ten years of age live

[49] See chapter 1, section 1.4 for more detail.

outside of the Sámi homeland (Ministry of Justice Report, 2009:71). Considering that daycare in the Sámi languages is difficult to arrange due to a lack of qualified personnel even within Sápmi, and that no other education is offered in any of the Sámi languages outside these homeland municipalities, the threat to the Sámi languages in particular is quite real. While money alone is not the answer to the far reaching structural problems related to language and cultural issues, if the financial side was increased, at least on par with the levels in Norway and Sweden, an increase in availability of employment in the Sámi languages, via funding for programs to support language retention, for example, would potentially both assist in language retention while providing work for Sámi speaking people (to run the programs), and thus further reason to stay in the Sámi homeland; the latter of which would help with language retention in and of itself.

One option could be to offer financial incentives for civil servants to learn and provide services in the Sámi languages, seeing as a shortage of qualified Sámi speaking staff is the major obstacle in language retention (Ministry for Foreign Affairs, 2010:82). Financial bonuses or pay increases have been used in Canada, for example, as one measure of an overall strategy to increase the levels of bilingual employees in the federal government (Bilingualism, 2005). An increase in Sámi speaking civil servants would enable Sámi people, young and old, to receive care or service in their mother tongue, while maintaining the languages as those of daily use, rather than as only home-based languages. In addition, it would show Sámi young people in particular, but also non-Sámi who learn the languages in a language-nest program for example, that there are additional employment opportunities that value their unique linguistic abilities other than the more obvious avenues of reindeer herding, tourism or nature related employment, artistic design and handicrafts. From a technical perspective this would amount to rewarding higher levels of linguistic skills, as both Sámi and non-Sámi would be entitled to the incentives, while providing motivation for younger Sámi to keep their skills, and an opportunity to have employment in the more remote areas. By making a policy such as this one inclusionary of non-Sámi (research question 4), and importantly this would not only be limited to younger non-Sámi, the aforementioned branding and stigma[50] associated with speaking Sámi with public officials would decrease, thus also addressing that problem.

[50] See Chapter 1, section 1.4.

5.2 Power Relationship

In addition to funding problems at the level of the Sámi parliament, the empirical material points towards structural difficulties for the Sámi, as found within an uneven power relationship.

While one government arm, Metsähallitus, decides, as in the Nellim case, unilaterally, to log certain older forests that are important to the reindeer for winter pastures, another sector, the Ministry of Agriculture and Forestry determines both how many reindeer can exist in one area, as well as what financial targets Metsähallitus should reach for a given year. If there are less old forests, there is less space for the reindeer to feed on lichen in the winter time, and more reindeer are thus concentrated in a smaller area. Then, when the levels of lichen are analyzed, the findings may end up showing that the lichen is too damaged to sustain the previous number of reindeer, so the allowable number of reindeer in a certain cooperative should be reduced. A reduction in reindeer, whether it be via uncompensated losses to predators or by structurally self perpetuating reductions administered by differing government bodies, equates to a reduction in income, in an industry that is already not lucrative.

During their interviews both Pekka Aikio and Jarmo Pyykko noted that policies seem to be increasingly regulating reindeer herding, in the direction of stationary farming, rather than the current, open form of free-range herding. Predator conservation, when considering the risks to the reindeer and the penalties involved for not adhering to it, could be considered the most contentious policy at present (Nieminen, 2010; HS, 21 September 2011). Predator conservation of Wolves in particular, has become an issue that financially harms the reindeer herders;[51] the reindeer herders are compensated for any lost reindeer, but due to the difficulty in producing enough evidence that the reindeer has been killed, this has not been the outcome. The penalties for hunting a predatory animal such as a wolf without the requisite permit, are high enough to be a deterrent for most reindeer herders, meaning that their reindeer herds, and subsequent wealth, are decreased in size, often without compensation (Ibid.; Interview with Jarmo Pyykko).

With the financial aspects of reindeer herding continually increasing due to government policies, there is evidence that supports the view, as proffered by Pekka Aikio, of the 'silent' assimilation of the Sámi. Getting back to the points made by Lukes

[51] Historically a reindeer herder would protect the herd from predatory animals such as bears and wolves.

(2005) and Tilly (1991), it is the third dimension of power that holds the most credence with Lukes, and applies within this notion of silent assimilation, via structural administrative policies. It is this 3rd dimension, or 'Radical View' on power, which prevents people from having grievances, which forces them to accept their role in the natural order of things, "either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because they value it as divinely ordained and beneficial" (Lukes, 2005:28). Lukes (2005) also notes that this third dimension of power can occur in the absence of an actual, observable conflict, and in the case of the Sámi, this would apply to the idea of structural assimilation. With reindeer herding being such an important aspect of Sámi culture, identity, and a means of northern subsistence in terms of reindeer herding livelihood and tourism, any structural move made by the government, to change reindeer herding into a form of stationary farming, can be seen as an assault on the Sámi culture, Sámi rights to land, and the very existence of the Sámi.

This silent assimilation addresses question number 2), on what are the interests in the dispute. Aside from the obvious candidates such as the reindeer herders, the forestry industry, the Sámi, and those local people who depend on nature for their employment in the area, assimilation strategies also represent a covert interest. The interest is found within the state's possible ideal situation, which is in the view of Aikio, to move reindeer herding onto stationary farms. The fear then would be that the Sámi would not have legal recourse to external bodies such as the UN, if their culture was not dependent upon the open lands.

Question 5) on how are policies towards the Sámi viewed vis-a-vis mainstream society, is also found within this economic relationship. The three dimensional view of power is also prevalent in a situation where the majority accept the state's assertion of sovereignty without looking at historical evidence, and if the majority do not think of any other possible arrangement for the Sámi, outside of assimilation to the Finnish way of life. Lukes notes that "if power is to be effective, those subject to it must be rendered susceptible to its effects" (Lukes, 2005:91). If these scenarios are relatively plausible in Finland, and applicable to the case of the Sámi, then one could argue that the relationship between the majority and minorities such as the Sámi is constrained and manipulated by these oppressive power schematics, by this uneven power dichotomy.

This uneven power relationship is also apparent in the analysis of the justifications used by each side of the dispute. The justification used most often was

civic, at a rate of 34 instances from the combined interviews. This is due to each of the interests referring to either laws or the human rights discourse, in order to build and strengthen their arguments in order to appear to fall on the 'right' moral high ground, vis-à-vis the law, whether that be Finnish law or international human rights instruments. Both interests on the side of the reindeer herders and those on the side of Metsähallitus were adamant that their position was legally correct, and so made their arguments while standing behind this justification. The use of the civic justification was also apparent in the background materials; after the escalation of Greenpeace's campaign in November 2005, the Inari municipality issued a 'statement of opinion' referring to the importance of forestry for employment in the region, stating that

> *Greenpeace is attempting to stop Stora Enso's wood procurement in Lapland and is campaigning against the fellings in Inari carried out by Metsähallitus. These actions show irresponsibility and complete disregard for the rights of others (Inari Municipality, 8 November 2005).*

The second largest classification of justifications was those of domestic at 19, with the third highest being industrial at 14 occurrences. The domestic justification was most often used by the reindeer herders in referring to traditions of reindeer herding, and specifically the importance of traditional herding practices for Sámi culture. The domestic justification was often used in conjunction with laws or human rights, and the civic justification to strengthen the argument in the reindeer herders' favour:

> *The reindeer herder has been in this area for 100s and 100s of years, and violent logging done with heavy machinery has been here 40 years or so ago. So, there is the reindeer herding law that says the government cannot use the land in such a way that it causes damage to reindeer herding.(PM)*

This claim uses *domestic* and *civic* justifications to strengthen the argument. The claim is that the reindeer herding is damaged by modern logging practices, while the Reindeer Herding Act indicates that it should not be. Meanwhile, in addition to the legal justification against the logging, the history is mentioned in that logging is a relatively recent phenomenon, and particularly to the extent in which the damage is caused with modern practices. According to this claim, the history of the region (*domestic*) is with reindeer herding, and this history should be recognized with legal protection (*civic*) from the Reindeer Herding Act, though it is not.

The industrial justification was used by many of the interests, but particularly by Metsähallitus and Greenpeace, in order to use science to either support their own claim or to critique or denounce the claim of the other. Combinations of the industrial

and civic codes were also prevalent, seeing that a certain technical or scientific aspect was used as evidence to support the legal or human rights situation, as shown in this quote from Kii Korhonen of Metsähallitus:

> *[In] the Sámi area and some other areas, we are not allowed to manage the state forests so that it would cause significant damage to reindeer herding. And that is why we have a problem, in determining 'what is significant?' It's often difficult to define so we decided to make an agreement with the reindeer herders association which defines the methods that we can use and what are the things that we have to negotiate, beforehand. (KK)*

This quote uses the combination of the *industrial* code, in terms of the logic and efficiency or legitimacy of the process to determine what an acceptable definition of 'significant' would be, with the *civic* justification in terms of the legal parameters or limits that Metsähallitus must adhere to, as represented by the regulations in the Reindeer Herding Act. The data however, tells us that the negotiations were not always efficient, or in the eyes of the reindeer herders, legitimate when considering what exactly was open to negotiation.

The market and green justifications were surprisingly used sparingly – surprisingly due to the appearance that the conflict was settled due to market pressure on Metsähallitus; pressure that was made possible due to the Environmental NGO activities. The market justification was used most by Greenpeace, in reference to why they thought the agreements came to be:

> *In 2006 the state found itself in a situation that nobody was buying the wood…if they wanted to continue their business, they HAD to look for a solution…to put it very simply, it was the economics that forced them. (GP)*

In this example, the market justification was given as a reason to why Greenpeace thought Metsähallitus was willing to formulate an agreement with the reindeer herders. The key facet in conjunction with this quote is that Metsähallitus did not use any market justifications to explain their claims or arguments. This absence could have been an oversight, but Metsähallitus stressed that the agreement was negotiated due to the human rights charges levied against Finland and Metsähallitus. Indirectly, this would be an admission that the market did force their hand, in terms of the political pressure related to the potential for loss of investment due to the charges.

As a comparison, this political and economic pressure is similar to what has happened in British Columbia Canada, since the BC Liberal Party took office as the provincial government in 2001. The fiscally conservative party who were previously

against special rights being afforded to indigenous groups, decided that it would be better for the economic development of the province if the uncertainty surrounding land claims could be addressed in a timely manner. Since then, there have been 7 treaty agreements reached with Aboriginal groups in British Columbia.[52] In these cases it was the economic and political background that had the largest effect on the settling of claims with indigenous groups.

This comparison provides an albeit indirect answer to question 3) "Why is it important that the conflict be solved?" It would not only benefit the reindeer herders, as they would have certainty around their livelihood for the future, or the Sámi, who could view this as a triumph against the Finnish state who had been reluctant to recognize any land rights; this comparison indicates that solving the conflict quickly would also favour the state, in terms of certainty surrounding future development, and subsequent employment in a region of higher than average unemployment.[53]

Overall, the justifications analysis speaks to the nature of the power relationship that has been at play during the decades-long negotiations, conflict and settlement in the Nellim case and surrounding dispute areas. The power relationship in this case, as personified by Metsähallitus versus the reindeer herding coalition, or at the indigenous rights level of the Finnish State and the Sámi, has been consistently one-directional. The use of the civic justification and combination of civic-industrial or civic-domestic justifications indicate that a legal or rights-based approach was utilized by both sides, throughout the case. The state, however, has been in a position of power and authority, and has repeatedly imposed their will as opposed to accommodating legitimate historical claims of the Sámi, while using civic justifications to support their actions. The Nellim conflict is a prime example of a state imposing their will over an indigenous people. In this instance it was Metsähallitus asserting their power and control over the reindeer herders, just as has been done by the Finnish state over the Sámi, since the Land Parceling Act of 1925.

[52] See BC Treaty website at: www.bctreaty.net [accessed May 2012].

[53] That being said, the Sámi would still need to have some form of self-determination in the decision making process over development on their lands.

5.3 Symbolic Rhetoric

The third theme emerges since, based on the evidence, it can be argued that Finland represents a state that is symbolically multi-national. While Finland has traditionally received justifiable acclaim for its welfare state and social equality in, notably, the workplace, as well as lauded for having a high quality of life, Finland can still be criticized for not fulfilling its international obligations as outlined by the signed UN Declaration on the Rights of Indigenous Peoples (UNDRIP) or by ratifying in the ILO Convention 169. The Nellim case is a prime example of how Finland exhibits a symbolic form of multinationalism, that is, a state based on giving only basic levels of recognition to its nations or peoples within, rather than a consequentional or results based form of multinationalism, despite making proud claims to be the latter.

As noted by Caron and Laforest (2009), the dichotomy between a symbolic multinational state and a consequentialist multinational state can be determined by asking to what extent a nation's actions result in "concrete and practical implications to the recognition of minority nations within a larger state" (41). If the state exhibits merely constitutional or parliamentary affirmation of multinationalism and lacks the policies that would ensure the outcome to be favourable vis-a-vis multinationalism, then the state is symbolic. Moreover, if the state actually develops policies that lead to a outcome that includes equality, and having equal rights to nation building and political self-determination, then it is consequentialist (Ibid.).

To illustrate, Finland has signed the UNDRIP, yet done little toward the issues of self-determination or land rights found in, respectively, articles 3-4 and 26-32 of the declaration. Finland has promised to ratify the ILO Convention 169, yet still delays the decision to subsequent governments (YLE, 21 January 2011). The Finnish Constitution stipulates that the Sámi, as indigenous peoples, have the right to develop their own culture (along with the Roma and any other minority group). Meanwhile, the Reindeer Herding Act indicates that logging within the Sámi territory cannot result in meaningful harm for the reindeer herders; yet the clear-cut logging that had been proposed would have resulted in significantly harming the practice of reindeer herding, to the detriment of Sámi culture and possibly their long term existence. Notwithstanding the settlement agreements as negotiated in the Nellim case, it took external pressure from the buyers of the wood and from embarrassment bestowed upon Finland by the UN Human Rights Council for Metsähallitus and Finland to come to the agreements. Even if it is politically unfavourable for voters in the Northern constituencies, due to the indigenous

classification of the Sámi, there simply is not much room for debate. In terms of the power relationship vis-à-vis the special rights of the Sámi, the outcome should be apparent; the Sámi claim they are indigenous, the Finnish state recognizes that they are indigenous, therefore different rights as outlined by the ILO 169 and the signed UNDRIP, should be afforded to them.

Additionally, as indicated previously, while there is pride within Finland that the Sámi have a form of self-governance over language and cultural issues, Finland continues to provide less than half of the funding that Sweden and Norway provide on a per capita basis. Meanwhile, with many Sámi now living outside of the domicile area, the language and cultural protection programs are far less effective. When considering the financial benefits garnered from the resources extracted by the Finnish State in Sápmi, the Sámi deserve a superior outcome.

Arguably, therein lies the problem with the UNDRIP: in contrast with the ILO 169 convention, it is a non-binding instrument of law. Thus, states can sign the declaration in a practical sense, and use this signature as a tool to appease their citizens, and the United Nations regulatory bodies, of making progress in the realm of indigenous rights, without having to meet any of the requirements of the charter: in this case rendering the signing process a largely symbolic gesture. If one was to look at the declaration from a more critical viewpoint, another interpretation could be that the declaration is not taken seriously. It could easily be argued that this is the sole reason Finland signed onto the treaty, that their signing was merely a symbolic, political move to show as if they are making progress on the issue of the Sámi rights, without actually doing anything concrete. Unless this signing is backed up by meaningful action, it would appear this critical explanation is the more accurate one.

That being said, these forms of external protection are necessary for the Sámi, since they serve to "reduce the vulnerability to the economic or political power of the majority," leading to relations of equality and not dominance of one group over the other (Kymlicka, 2001:22-23). Simply put, these international instruments are what is needed to protect Sámi rights to their traditional practices and to the economic aspects related to land and resources. As noted by Lawrence (2009), linking claims of alleged human rights abuses to even a general international law, can increase the weight of the argument in favour of the Sámi, since the Nordic states in particular are not at ease with a 'politics of embarrassment' or 'politics of shame' (Lewis, 2002; Hobson et al, 2007 and Niezen, 2003, cited within Lawrence, 2009:19). Quite simply, claims of human

rights abuses by minority groups do not merge well with the international image of the Nordic states as bastions of human rights. Thus, despite its general natured appearance, Article 27 of the CCPR remains one of the strongest forms of protection for indigenous rights to culture and traditional activities (Lawrence, 2009; see also Hossain, 2008).

An interesting question is whether the Finnish government recognizes the rights of the Sámi people as legitimate and is merely dragging its heels before ratifying ILO 169, or if the state recognizes the Sámi claims as legitimate, and is not acting in a hope that the problem will simply disappear through time?[54] Whichever is the case, up until the agreements in 2009 and 2010 over the disputed reindeer herding areas, the forests were still being cut, with resources extracted, and thus Finland was receiving both the international prestige and benefits available from the existence of indigenous peoples within its borders (from tourism benefits to a seat on the UN Human Rights Council), with the revenue of the natural resources from the disputed Sámi territory. A cynical view would be that not acting and remaining a symbolic multinational state was in Finland's interests, due to the wealth acquired from these resources. The question to be asked is whether there is cause for optimism that Finland has recognized the benefits of adopting consequentialist multinational policies, or are these recent settlement agreements in the reindeer herding areas merely a result of external financial pressure from transnational corporations?

Therefore, in enquiring as to the extent to which Sámi rights are protected via the practice of reindeer herding, given the logging of old-growth forests and considering the international conventions such as the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, both the data and the actions and inactions of the Finnish state, indicate that reindeer herding is of the utmost importance. The Nellim case is an example of how Finland has been a symbolically multinational state, particularly when dealing with the Sámi. In the case of the Sámi in northern Finland, the findings of this study indicate that at the moment, the indigenous rights of the Sámi are recognized as far as such recognition benefits the Finnish state, and could in still be classified as a symbolic form of multinationalism, despite the recent settlement agreements.

[54] Also see Kuokkanen (2008) and Toivanen (forthcoming).

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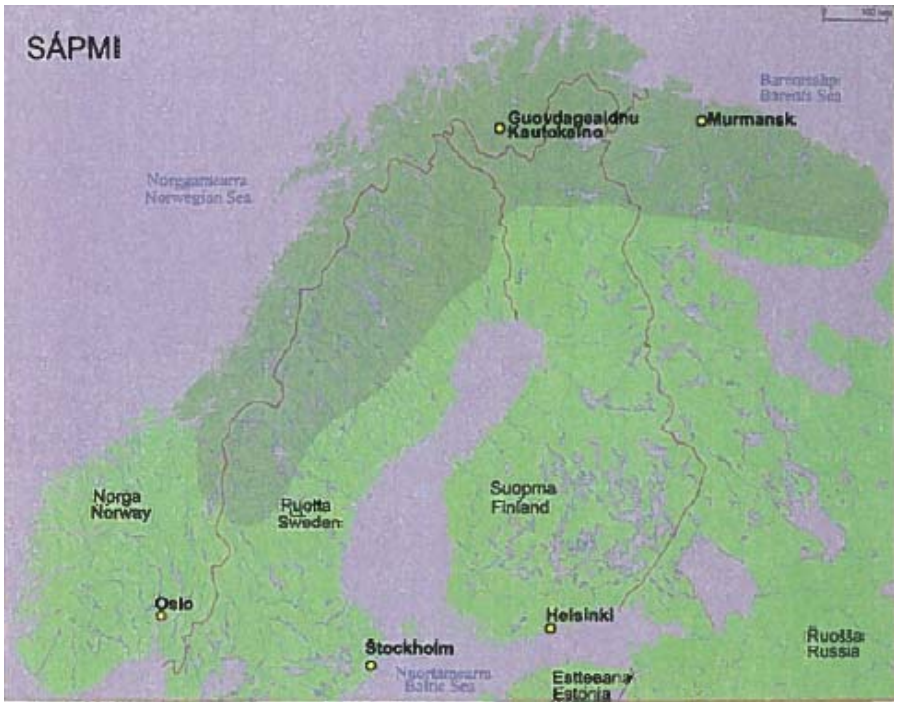
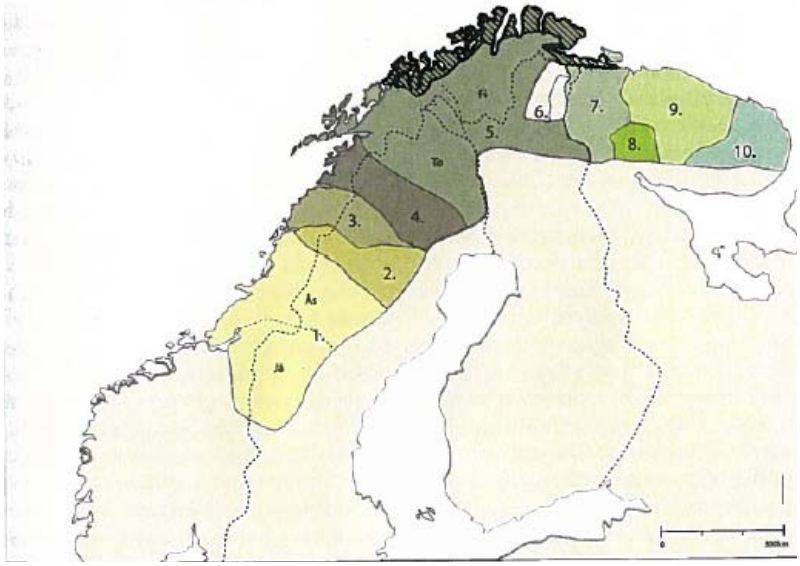
Appendix 1 - Maps

Map 1: Sápmi - the Sámi domicile area



Source: Kulonen et al., 2005: back cover insert

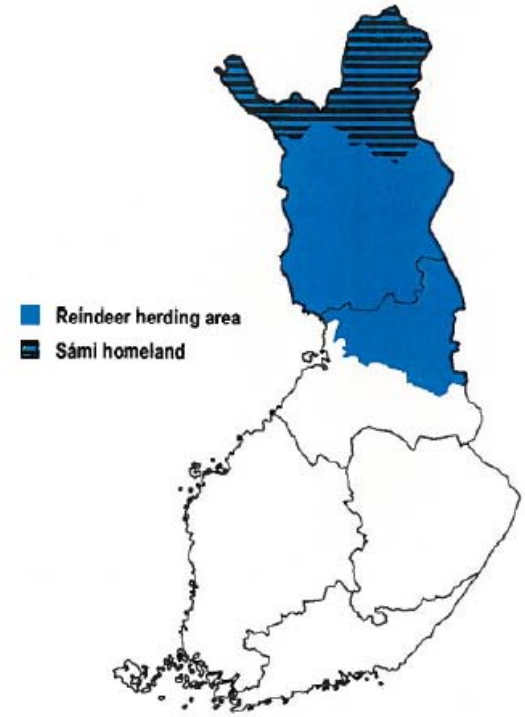
Map 2: Sámi Linguistic Groups



1. Lullisápmi (South Saami)
   - Jämtlándda- (Jämtland dialect)
   - Åselesápmi (Åsele dialect)
2. Ubmisápmi (Ume Saami)
3. Bitonsápmi (Pite Saami)
4. Julevsápmi (Lule Saami)
5. Davvisápmi (North Saami)
   - Durdnos -(Torneå)
   - Finnmárkku -(Finnmark) and
   - mearrasápmi (Maritime Saami) dialects
6. Anárašsápmi (Inari Saami)
7. Nuortalašsápmi (Skolt Saami)
8. Áhkkilsápmi (Akkala Saami)
9. Gielddasápmi (Kildin Saami)
10. Darjesápmi (Ter Saami)

Source: Kulonen et al., 2005: 177

Map 3: Reindeer herding area and Sámi domicile area within Finland



Source(s): Finnish Forestry Association; www.paliskunnat.fi; www.kunnat.net 2006

Map 4: Reindeer Herding Cooperatives within Sápmi



Reindeer herding co-operatives in Sami area that have demanded the protection of the most important grazing areas.

Reindeer herding co-operatives in Sami area, where there is minimal or no forestry by Metsähallitus

Southern part of the Ivalo reindeer herding co-operative, who have not joined in the other co-operatives in their demands.

1 Muotkatunturi reindeer herding co-operative

2 Muddusjärvi reindeer herding co-operative

3 Paatsjoki reindeer herding co-operative

4 Sallivaara reindeer herding co-operative

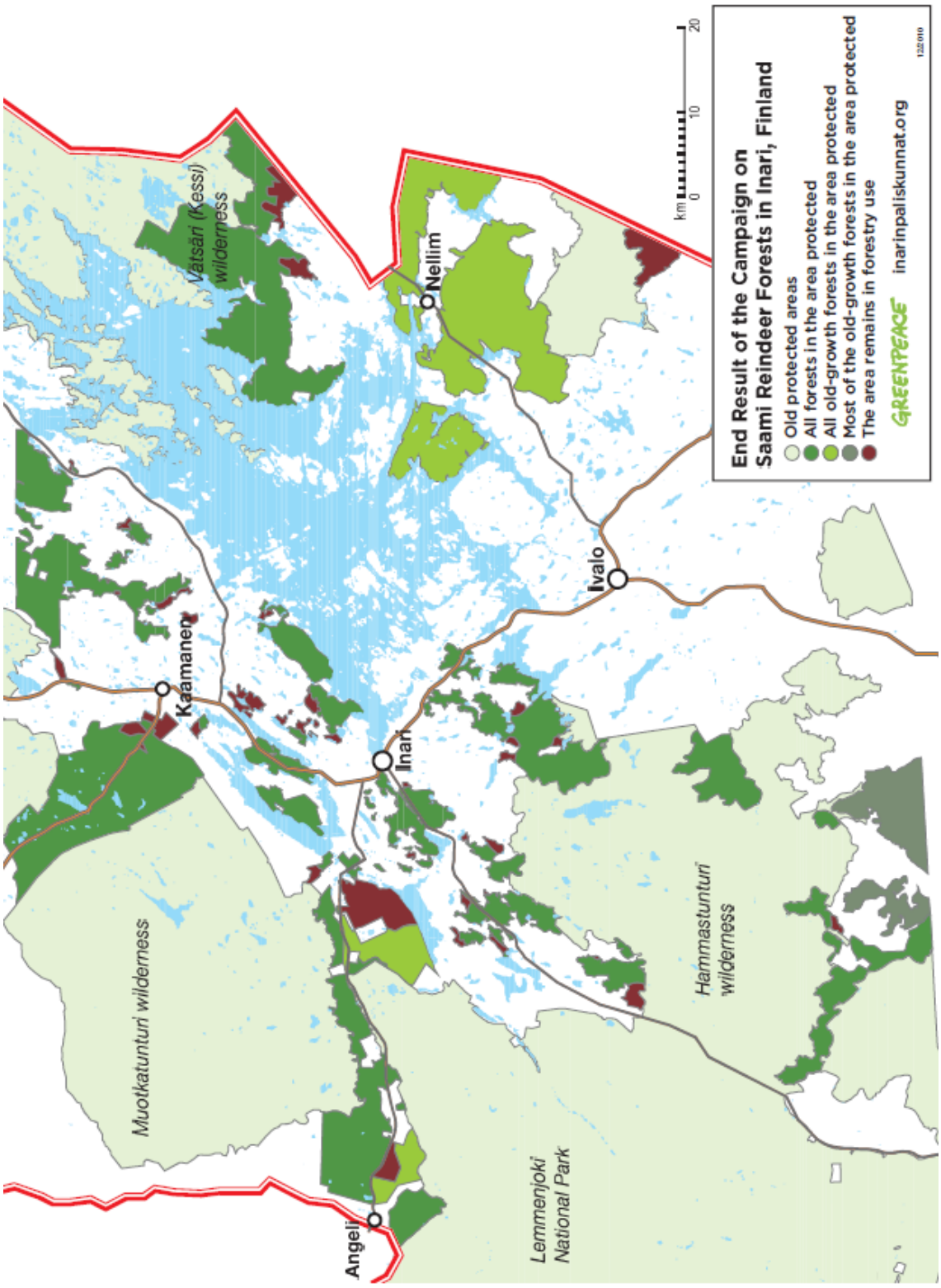
5 Hammastunturi reindeer herding co-operative

6 Nellim sub-group of Ivalo reindeer herding co-operative

7 Lappi reindeer herding co-operative

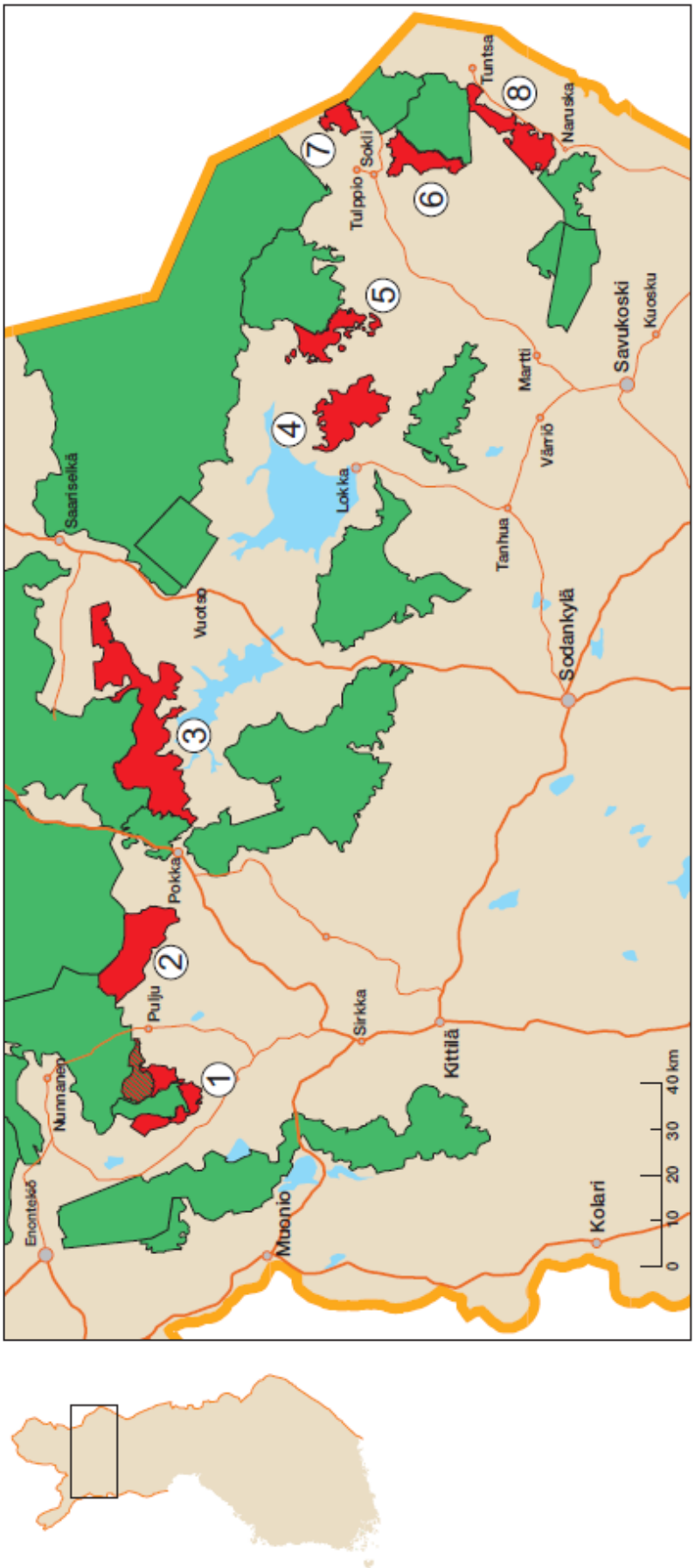
Source: Greenpeace

Map 5: Settlement agreement in Nellim and Upper Lapland



Source: Greenpeace

Map 6: Settlement agreement in Forest Lapland



Green: Already protected forests
Red: Identified forests for protection (containing old growth; rare species)
Source: www.forestinfo.fi/forestlapland

Appendix 2

The interviewees included: 1) three researchers from the Northern Institute for Environmental and Minority Law (NIEM) at the Arctic Centre for Research at the University of Lapland, specializing in human rights law related to indigenous peoples at the international level, property and environmental law at the domestic and Nordic levels, and a researcher whose focus is on the Sámi people as international actors within politics; 2) two researchers from the Finnish Forest Research Institute (METLA), one who was an expert on reindeer husbandry, the other on forestry practices associated with reindeer husbandry; 3) a then-current Sámi politician and reindeer herder from Enontekiö; 4) Pekka Aikio, a then-current Sámi politician (and former President) who could be considered an expert in land rights; 5) Kii Korhonen, Regional Director of the Finnish state administered forest management department Metsähallitus; 6) a representative of Greenpeace Finland who was involved in the case; 7) Petri Mattus, a local reindeer herder, living and working in the town of Inari; 8) Tarja Arttijeff, a local person living in Nellim and working in the surrounding area, and who has first hand knowledge of the case; 9) Jarmo Pyykko, a local person living near the town of Inari who acted as an advisor and consultant to the reindeer herders and a local liaison to Greenpeace and FANC; 10) a local reindeer herder in Nellim; 11) a person who worked with the Finnish Association for Nature Conservation (FANC).

Appendix 3

The materials used for triangulation included press releases from 2000 to 2010. Press releases included those by: Metsähallitus; the Finnish Ministry of Agriculture and Forestry; the Reindeer Herders' Association; the Sámi Parliament of Finland and Sámi Council; Greenpeace; the Finnish Association for Nature Conservation (FANC); the Inari Reindeer Herding Cooperative; wood buying company Stora Enso; the Wood and Allied Workers' Union of Finland; the Finnish Ministry of the Environment; the Finnish Ministry of Foreign Affairs; the Municipality of Inari; and the Head of the Forestry Contractors. In addition, articles and press releases from the Finnish Forestry Association and newspaper articles from Helsingin Sanomat International were analyzed.