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Sámi Land Rights in Norway and Finland

A Comparative Analysis of Legal Transplantation
in the Context of Indigenous Land Rights

Comparative Legal Research OTMU3033
Bachelor's Thesis

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Abstract page

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This comparative legal research investigates the current state of Sámi land rights in Norway and Finland, exploring how historical usage of land as a cultural resource by the Sámi has led to differing legal recognitions today. Norway is noted for its progressive stance, having codified extensive land rights for the Sámi through legislative measures. Conversely, Finland has only recently advanced a government proposal aimed at enhancing the self-governing rights of the Sámi, spurred by international recommendations and pressure to update its legislation.

Through this comparative approach, the research aims to illuminate why Norway appears more effective in securing extensive land rights for the Sámi and to explore potential lessons that Finland might draw from Norway's policies. The analysis identifies key similarities and differences, providing insight into the factors that enable or hinder the progress of indigenous rights. Employing law in context -method, alongside scholarly insights on legal transplantation, this thesis analyses legislative documents and secondary sources to assess how Sámi land rights are addressed within Norwegian and Finnish legislation.

The findings indicate that Norway's robust legal framework effectively recognizes and enforces Sámi land rights through a co-ownership -based structure, enhancing the Sámi's autonomy. Since Finland's efforts lack the comprehensive legal recognition seen in Norway, adopting elements from the system set up through ratifying the ILO 169 convention and subsequently enacting the Finnmark Act could significantly enhance the protection of indigenous rights in Finland. This adaptation would bolster Finland 's reputation as a progressive nation committed to international human rights standards.

Key words: Sámi Law, Indigenous Law, Indigenous Rights, Land Rights, Legal Transplants

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Abstract page

ON-työ

Oppiaine: Comparative Legal Research
Tekijä: Helmi Ahdevainio
Otsikko: Saamelaisten maaoikeudet Norjassa ja Suomessa – oikeusvertaileva analyysi oikeudellisista siirrännäisistä alkuperäiskansojen maaoikeuksien kontekstissa
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Tässä oikeusvertailevassa tutkimuksessa tarkastellaan saamelaisten maaoikeuksien laajuutta Norjassa ja Suomessa. Tutkimus valottaa sitä, miten kaksi pohjoismaista oikeusjärjestelmää tunnustavat saamelaisten kulttuuriin perinteisesti liitetyn maankäytön osana saamelaisia koskevaa lainsäädäntöä. Norja on ottanut käyttöön laajoja lainsäädännöllisiä toimia saamelaisten maaoikeuksien tunnustamiseksi ja vahvistamiseksi, kun taas Suomessa on vasta äskettäin herätty edistämään maan ainoan virallisen alkuperäiskansan asemaa.

Tutkimuksen tavoitteena on analysoida, miksi Norja on saavuttanut parempia tuloksia saamelaisten maaoikeuksien turvaamisessa ja mitä Suomi voisi oppia Norjan toimintamalleista. Vertaileva analyysi tuo esiin keskeiset samankaltaisuudet ja eroavaisuudet sekä kartoittaa ne tekijät, jotka vaikuttavat alkuperäiskansojen oikeuksien edistämiseen niin positiivisesti kuin negatiivisesti. Tutkielma hyödyntää voimassa olevaa lainsäädäntöä ja kirjallisuuslähteitä selvittääkseen, kuinka vahvaa suojaa saamelaisten maaoikeuksille kussakin valtiossa annetaan. Law in context -metodi ja erinäiset oikeuskirjallisuudessa esitetyt teoriat oikeudellisista siirrännäisistä muodostavat teoreettisen viitekehyksen tarkastelulle.

Norjan johdonmukainen ja yhteisomistusmalliin pohjautuva saamelaislainsäädäntö – etenkin esimerkillinen Ruijan laki – tunnustaa tehokkaasti saamelaisten maaoikeudet tukien alkuperäiskansan perustuslakisääteistä autonomiaa. Norjaan verraten Suomen toimet saamelaisten oikeuksien edistämisessä ovat jääneet vähäisiksi. Ratifioimalla ILO 169 -sopimuksen Suomi voisi turvata saamelaisille huomattavasti laajemmat oikeudet, mukaan lukien maaoikeudet, sekä myös vahvistaa asemaansa edistyksellisenä hyvinvointivaltiona, joka noudattaa ja ennen kaikkea kunnioittaa kansainvälisiä ihmisoikeusvelvoitteita.

Asiasanat: saamelaisoikeus, alkuperäiskansaoikeus, alkuperäiskansojen oikeudet, maaoikeudet, oikeudelliset siirrännäiset, transplantaatit

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Appendices

Annex: Division of Work

This thesis is conducted based on the seminar paper “Immemorial Use as a Basis for Sámi Land Rights: A Comparative Analysis of the Current Legislation in Norway and Finland”. Throughout the research and writing process, both authors, Helmi Ahdevainio and Aino Koponen, contributed equally to each stage of the process. While individual tasks were undertaken, decisions were made jointly, ensuring comprehensive and thorough analysis. The selection of our original research paper topic emerged through mutual interest, and I decided to continue on with the idea of the paper and further examine the topic from another perspective. Throughout the whole of our research, both authors actively participated in a thorough literature review, as well as analysing existing legal frameworks, case law and socio-legal factors.

A notable aspect of our collaborative effort was the division of tasks related to the preparation of country reports. Aino Koponen took the lead in researching and composing the country report on Norway, while I focused on Finland’s country report. This division of work was crucial, since it allowed us to delve deeply into the specific legal landscapes of each country. This said, the final work is still a collaborative effort as comparative analysis, drafting, revision and editing was conducted in collaboration in all stages of the process.

Expanding upon the groundwork laid in the seminar work of Aino Koponen and myself, my thesis focuses on examining the concept of legal transplants in the context of our seminar work, focusing especially on the possibility of utilising the Norwegian Finnmark Act as a legal transplant. For this thesis, I have rephrased all the parts originally written by Koponen, but of course, much of the research behind these parts was still conducted by her. All in all, the final form of the thesis is made by me and there are no parts directly quoting Koponen’s text.

Appendix 1

Legal solutions governing Sámi land rights

1. Introduction

In this comparative legal research, the aim is to examine the current state of land rights of the Sámi people, who are indigenous to Norway, Finland, Sweden, and Russia. Traditionally, the Sámi have utilised the land and nature of their traditional living areas in multiple ways as part of their culture and livelihood. The formation of states in the areas of the Sámi's traditional and historical lands has subsequently led to variation in the legal status and the extent of indigenous rights guaranteed today across these four states.

The Sámi have forged a profound connection with nature, enabling them to sustain their culture and livelihood even through oppressive periods. It can be argued that indigenous people thrive off nature. Thus, when discussing indigenous rights, the element of land use simply cannot be overlooked, as land and nature are not mere resources but the very foundation of indigenous cultures, essential for their survival and ways of living.[1] Many international treaties governing indigenous rights emphasise the preservation of indigenous cultures, and as culture is deeply intertwined with nature in these communities, protecting the right to traditional lands becomes crucial for cultural preservation as well.[2] Hence, this research delves not only into the legislation directly governing Sámi land rights, but also the legislation addressing the preservation of Sámi culture.

Norway has long been regarded as progressive in its Sámi policy compared to other states with a Sámi population. This perception is partly attributed to Norway's early ratification of the International Labour Organization's *Indigenous and Tribal Peoples convention No. 169* (ILO 169), making it the first country in the world to do so in 1990.[3] This notable convention not only safeguards the cultural rights of indigenous peoples but also specifically addresses indigenous land use rights, compelling states to recognize the longstanding and traditional usage of land by indigenous communities as possession worth legal recognition.

In line with the spirit of the convection's meaning and purpose, Norway enacted the Finnmark Act in 2005, which codified the reality that had existed for centuries: Through prolonged use of land and water areas the Sámi have acquired rights to land in their traditional territories. The Finnmark Act solidified this long standing reality by granting the Norwegian Sámi

[1] Heinämäki et al. 2017, p. 24
[2] The recognition of the importance of land use to indigenous communities has been largely overlooked by national policy makers, who appear to believe that mere promises of cultural preservation are sufficient without implementing actual progress.
[3] Tirronen 2002

Parliament 96 % ownership of lands in Finnmark County, establishing a system of co-ownership.[4] By enacting this law, Norway set a significant and progressive precedent for other Nordic States with Sámi populations.[5]

Meanwhile, Finland has struggled to improve its outdated legislation governing Sámi rights.[6] The ratification process of the ILO 169 has already for decades hit the wall of political disagreements and unsettled debates of land use rights, especially from the perspective of property law. In November 2023, the Finnish government passed on a long-disputed government proposal to enhance the self-governing rights of the Sámi after receiving numerous recommendations and overall pressure from international monitoring bodies underscoring the urgency of addressing Sámi rights issues.[7]

While Sweden and Russia also host a substantial Sámi population, they have been excluded from this analysis. Primarily, Russia's divergence from Western human rights norms renders it less suitable for comparison. Furthermore, by narrowing the scope to Nordic countries, the analysis can offer more meaningful insights into the nuances of Sámi rights within a relatively homogenous socio-political landscape. Within the Nordic countries, the starkest differences in Sámi rights can be observed between Norway and Finland. Sweden and Norway demonstrate considerable similarity in their treatment of Sámi rights, with Norway generally more advanced in this regard. For these reasons this comparison is conducted between Norway and Finland. The marked disparity in approaches between Norway and Finland underscores the inherent interest and relevance of conducting a comparative analysis between the two countries.

This intriguing dynamic is one of the main reasons I haven chosen to investigate Norway's approach in this context – the objective is to discern the practices, challenges, and implications of ambitious legal reforms, like the Finnmark Act, on indigenous communities, with the aim of determining whether other countries with Sámi populations could derive benefits from Norway's actions. Against this backdrop, I argue that the Norwegian Finnmark Act holds potential as a legal transplant, prompting further exploration of the feasibility and

[4] Spitzer 2023, pp. 288-308
[5] Ravna 2021, p. 179
[6] The conversation around the definition of a Sámi person has collected a lot of criticism from both Sámi activists and scientific scholars alike. The common consensus is that the Finnish Sámi law is seriously outdated, not just when it comes to land rights, but also the field of Sámi rights in general as a whole.
[7] This government proposal, although interesting and significant for the Finnish Sámi, is not further discussed in this research, since it only comments on the definition of a Sámi person. The setting forth of this proposal can still be deemed a significant step towards enhancing Sámi rights as a whole.

potential outcomes of such transplantation. I will define the concept of legal transplantation in chapter two, in which I will also introduce the theoretical framework of the research and the relevant previous studies.

I am compelled to delve deeper into this subject for several reasons. Firstly, the evolution of the Sámi's legal rights presents a fascinating opportunity to examine the dynamic interplay between national, international, and traditional legal systems. The rise of such pluralism has gained prominence in recent decades as indigenous people have intensified their pursuit for broader rights and greater recognition by the states in which they inhabit. With a keen interest in understanding this interplay, my first and primary research question is posed: What is the current state of Sámi land rights in both Norway and Finland?

Secondly, the question of indigenous peoples' rights is not just a matter of legal interest, since studying these developments is also crucial for understanding the broader implications for human rights and social justice. Through legal research it is possible to promote and eventually even guarantee cultural preservation, environmental stewardship, and self-determination. As more nations struggle with the complexities of acknowledging and integrating Indigenous rights into their legal systems, the experiences of the Nordic states' approach to the Sámi can provide a valuable lesson, particularly relevant in an era in which national sovereignty, cultural identity, and minority rights are increasingly prominent on the international stage.

Lastly, the examination of legal transplants within this research's context is particularly fascinating to me, as I strongly believe that the Norwegian Finnmark Act stands as an exemplary and progressive model, even on a global scale. The eventual integration of this act into other countries' legal frameworks seems inevitable.[8] This leads to my secondary research question: Could the Finnmark act be transplanted into the Finnish legal system? In exploring this research question, one is also obliged to examine the disparities and similarities between the Finnish and Norwegian legal systems concerning indigenous rights and their receptivity to legal transplants. Additionally, the socio-legal conditions of the legal system to which the transplant would be introduced must be thoroughly scrutinised.[9]

[8] Truthfully, political will power also plays a significant role in this matter, since pursuing better rights for marginalised groups of a society may not always be the first priority in a politician's mind. Even though progress has been made, for example in Finland, still, the indigenous rights movement lacks the state's support.
[9] Husa 2018, p. 130

2. Methodology and Theoretical Framework

A legal comparatist – like any other scientific researcher – is obliged to justify separately the choices of methods, limitations, and scope of source material and other solutions related to conducting the research in order to maintain academic integrity.[10] Since meaningful methods depend on research interests and chosen research questions, the methods employed in comparative legal research may – and in fact should – vary according to the branch of science of a specific research.[11]

2.1. Methodological Choices of Theoretical Nature

This chapter outlines the methodological choices and the broader theoretical frameworks employed in this comparative analysis. The aim is to incorporate law in context -method as well as theories of legal transplantation to explore how the Finnmark Act would interact within different socio-legal environments as a legal transplant. In law in context -method, the emphasis is put on understanding legal norms within their broader social, historical, and cultural contexts. By applying this method, the thesis aims to uncover the societal and cultural underpinnings that shape legal recognition and administration of Sámi land rights in Norway and Finland.[12] Furthermore, Tuula Linna's insights into legal transplants form an essential part of the theoretical framework.

To complement the law in context -method, I will expand my focus to the legal rules and institutions addressing the nature and extent of Sámi land rights. This brings the approach close to the doctrinal study of law, which focuses on examining the normative content, validity, and scope of nations' positive law and how these legal norms must be – and are in actuality – interpreted in courts of law. Comparative approach and doctrinal study of law share the hermeneutic perspective, in which the researcher's focus is aimed at the interpretation of legal norms, the purposes of legislation as well as the institutional structures.[13]

When examining legal institutions in the compared countries, I aim to employ the structural approach to select the corresponding source material from national legal systems.[14] This

[10] Husa 2017, p. 1091
[11] Örücü 2006, pp. 442–454
[12] Twining 1997, pp. 36-62
[13] Husa 2015, pp. 33-34
[14] Husa 2015, pp. 127-129

approach is characterised by a detailed examination of the organisational components and operational mechanisms within legal systems, with the aim of elucidating the interplay between these elements. The source material includes relevant international law, national legislation, preparatory documents, and precedents of case law that reflect the policies and provide the context for administration of Sámi rights in relation to immemorial use in both countries. Legislative documents themselves are the primary sources of this research, and as secondary sources I use relevant legal study papers and textbooks. The collected source material is limited to the case law from the highest national courts. This limitative choice – primarily made due to the page limit of this thesis – should not however lead to false conclusions since the precedents of these institutions are of the highest legal value. By focusing on positive law and precedents, the aim is to identify similarities and differences of these two nations' legal approaches.[15] With this doctrinal approach, in which the evaluation of the broader context is crucial, the research can explain the observed similarities and differences more comprehensively and assess the feasibility of legal transplantation between the jurisdictions.

2.2. Legal Transplants as a Theory of Comparative Law

Examining the level of indigenous rights guaranteed in two countries with profoundly different approaches presents an opportunity to take the concept of legal transplants into the discussion. Norway's legal system, which is seemingly more accommodating towards harmonising state law with indigenous customary law in traditional Sámi regions, provides a basis for analysis of the possibility of transplantation that is a key element in uncovering the secondary research question of this thesis. In practice, my goal is to deepen the understanding of the scope and differences in Sámi land rights in both countries by identifying the reasons for their legal similarities and differences.[16] In reference to historical and political context, I will assess the processes and outcomes of legal transplants and their impact on indigenous rights, aiming to recommend more effective legislation to enhance the rights of the Sámi.

Tuula Linna's refined approach to legal transplants, emphasising a direct and deliberate transfer of specific legal elements, provides a practical framework for this study. Linna takes a differentiating stance in her article, while still recognizing the work of her predecessors, particularly Margit Cohn, who argued legal transplantation to be a process.[17] Linna has taken

[15] Bhat 2020, p. 289
[16] Linna 2010, pp. 846-847
[17] Cohn 2010, p. 593

Cohn's definition of a legal transplant,simplified it, and further adjusted it to the Finnish legal reality.[18] This will be discussed further in chapter four and five.

2.3. Tertium Comparationis

A key element in every comparative legal research is the comparative benchmark, *tertium comparationis*. The concept of a comparative benchmark is widely recognized and used in all fields of comparative science, since it gives meaning to the mutual characteristics of the comparants, therefore making the comparison possible and scientifically plausible. In short, *tertium comparationis* refers to a quality that is shared between the subjects under comparison.[19] Following this guideline, in my research I utilise two comparative benchmarks; a shared legal culture as well as a shared minority.

Since Norway and Finland both share the same indigenous minority, a similar response addressing the scope and legal status of indigenous rights is needed. Another shared benchmark paving the way for a fruitful comparative analysis is the shared legal family, Nordic legal family. Since the starting point to any good comparative research is finding subjects that are comparable to begin with, examining broader macro-constructs even if the analysis is about micro-comparison, may be a necessity. Shared broader aspects of legal culture speak volumes about the legal atmosphere of the comparants. Law does not exist in a vacuum, and this is why bringing macro-constructs into micro-comparison is not completely useless.[20]

As part of the Nordic legal family, Norway and Finland share a somewhat similar value base, alongside mutual ideas of the role of law and even common history to some extent. This should pave the way for a relatively easier – and truthfully a more meaningful – comparison. However, despite their similarities, the Nordic legal culture is further divided into two; the western group in which Norway belongs, and the eastern group, a part of which Finland and Sweden are.[21] It is important to note that the history of the Sámi rights in Finland is somewhat intertwined with its twin, Sweden, which it was a part of up until 1809. Many of the laws still in force in Finland stem from the era, in which Finland was still a part of Sweden (later referred to as *Sweden-Finland*).

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[18] Linna 2010, p. 837
[19] Tieteen termipankki 3.4.2024: Käännöstiede:tertium comparationis.
[20] Bhat 2020, pp. 291-291
[21] Husa 2015, pp. 228-229

The premise of Norway being seemingly more accepting towards harmonising state and indigenous legislation in the traditional regions of the Sámi creates an interesting basis for the comparison. Additionally, due to their similar legal culture and shared indigenous minority, the comparison between Finnish and Norwegian legislation offers an interesting point of view to see if there is something to be learned in Finland from the Norwegian way. The aim of the research is to improve my understanding of the scope of Sámi land rights in Finland and in Norway, as well as make comparisons to understand the reasons for the similarities and differences. The practical purpose of the study is that by gaining better understanding and finding "the better law", it should be more likely possible to make suggestions on how to improve legislation. This said, my interest lies within the idea of whether the Norwegian kind of development of indigenous legal norms could take place in Finland as well, and if so, under what conditions.

3. Country Reports

3.1. Historical context

Over the past decades, the field of indigenous law has seen rapid development globally. The perspective on the source of these rights has shifted from a colonialist view of State's positive law as a sole authority towards a more asymmetrical and pluralistic arrangement when managing the legal relations between indigenous people and the state.[22] Thus, the current Sámi law consists not only of the traditional customary law of their communities, but also of the national norms of the States as well as the relevant international conventions and bodies.[23] Whilst the traditional customs may lack the status of positive law in a State's legal system, the norms of international law demand them to be appropriately taken into consideration. Therefore, indigenous customary law can be seen of binding nature, gaining legal force through interpretation of the authorities.[24]

The history of Sámi rights in Finland and Norway exhibits few differences, reflecting a shared historical approach to Sámi governance. "The Lapp Codicil", a part of the border treaty between Norway-Denmark and Sweden-Finland, from 1751, was the first treaty regulating Sámi land use rights. The treaty guaranteed the Sámi the right to cross kingdom borders as part of practising reindeer herding on the basis of "old customs", thus recognizing the uniqueness of their traditional livelihood.[25] Legal recognition of the Sámi's right to exploit natural resources predates back to 1751, indicating a longstanding tradition of recognition and respect of the Sámi culture.[26]

The consensus among Sámi researchers is that the Sámi have been considered to have rights to their traditional lands in the past. However, it is important to recognize that these notions of ownership and possession have undergone significant changes over the centuries.[27] The concept of immemorial use, crucial in property law, examines whether extended use of property could historically constitute legal possession. The doctrine allows for the establishment of property rights – from ownership to usage rights – through prolonged use of

[22] Husa 2015, p. 252
[23] Husa 2015, p. 210
[24] Husa 2015, p. 111
[25] Niemivuo 2010, p. 73
[26] NOU 2007:13, p. 248 (Den nye sameretten)
[27] Joona 2019, p. 353

property. As a proprietary law principle, rights acquired through immemorial use enjoy strong protection under private law.

Despite historical acknowledgement of the Sámi's special rights to use land areas by both Norway and Finland[28] alike, these aforementioned rights were still lost from the mid-19th century on. Subsequent chapters will explore the historical context of the Sámi land rights in both countries, focusing on identifying and understanding the factors that may have contributed to or caused the disparities observed today. Employing the law in context -method, I strongly believe that legal norms and institutions cannot be fully comprehended in isolation from their broader societal, cultural and political influences. Consequently, examining broader influences is crucial for examination of legal transplants as well.

3.1.1. Norway

From the 19th century the Sámi were targets of strong and degrading assimilation policies, through which many lost the connection to their traditional culture and way of life. The prevailing legal interpretation of *immemorial use* at the time posited that the Sámi's nomadic lifestyle and extensive land use did not qualify them to establish property rights over land and natural resources. After the 2nd World War, a growing cultural movement began emphasising the importance of preservation of indigenous cultures and their rights. Central to this movement was the notion that the Sámi have always constituted a single nation transcending state borders.[29]

A remarkable turning point in Sámi activism was reached with the Alta hydroelectric project in 1968, which marked the rise of rigorous civil activism for Sámi cultural autonomy and rights. In the 1970's, ambitious academic research – notably Sverre Tønnesen's doctoral dissertation – challenged the previously biassed discipline of "lappology" and questioned the state's ownership of Sámi regions, especially in Tønnesen's case in the traditional region of Finnmark.[30]

Legal and societal discussions were sparked, and courts began to recognize Tønnesen's opinions on immemorial use as a valid basis for land rights. During this period, the doctrine of

[28] Here, the term Finland is used for clarity and coherence of the thesis, but in actuality it refers to the former kingdom of Sweden, a part of which Finland was during these times.
[29] Niemivuo 2010, p. 73
[30] Encyclopaedia of Saami culture. Lappologia (tutkimushistoriaa)

immemorial gained formal recognition.[31] A symbolic milestone was reached in 1997 when King Harald V acknowledged that Norway was founded on the territories of two nations, the Norwegians and the Sámi, and issued an official apology for the injustices perpetrated during the era of forced assimilation policies. This kind of recognition – even if merely symbolic – is yet to be seen in Finland. One may argue that Finnish society lacks the receptiveness to adopt ambitious legal reforms with the aim of enhancing indigenous rights. This is discussed more thoroughly in chapter four.

3.1.2. Finland

Given that much of Finnish history is intertwined with Sweden-Finland, I will examine Swedish legal history for insights. The consensus prevails that still in the 18th century the Sámi enjoyed special rights to use their lands. However, the nature of this possession differs from the current legal interpretations. One method of determining historical Sámi land ownership involves examining the Crown tax records. Research conducted by Juha Joona suggests that the Sámi did indeed pay taxes for their lands to the crown.[32] While tax payments do not directly equate to ownership, per se, Joona's further research findings strongly indicate that courts in Lapland recognized Sámi land use at least until the 18th century. Therefore, the Sámi posessed an exclusive right to exploit the land traditionally associated with Sámi villages.

The Swedish property law of Sweden-Finland, dating back to 1734, acknowledged the doctrine of immemorial use (*ylimuistoinen nautinta*).[33] This legal principle recognizes rights enjoyed uninterruptedly for so long that their origins are forgotten. Despite the removal of written provisions on immemorial use in the 1995 Property Act reform, the current Finnish legislation still recognizes this doctrine's validity to some extent.[34] In legal literature, it has been concluded that immemorial use requires, as a rule, uninterrupted control of the area in a perceptible and public way. Authorities have occasionally inferred the existence of immemorial-use-based rights from authority decisions, such as tax obligations.[35]

The *Sámi homeland,* among other traditional Sámi areas, have over time transitioned to state ownership. With the emergence of modern states, indigenous land rights were often

[31] Ravna 2010, pp. 204-205
[32] Joona 2019, pp. 341-347
[33] 1/1734
[34] Tuomisto https://tieteentermipankki.fi/wiki/Oikeustiede:nautintasuoja (read 18.2.2024)
[35] Honkanen 1985, p. 90

disregarded. This was evident in Finland as well, where the Swedish Crown began acquiring possession of Lapland lands in the 18th century, resultting in the Sámi losing their ancestral lands, which became perceived as crown-owned rather than hereditary. This led to drastic diminishing in granting land certificates and registrations of title to properties to the Sámi.[36]

3.2. International Legislation

The modern legal framework governing the rights of the Sámi in both Norway and Finland is primarily founded on international conventions and respective national legislations. Generally, legal instruments safeguarding indigenous rights emphasise the importance of recognizing and respecting indigenous populations' perspectives on the elements of their culture they deem essential and worth preserving.[37] Globally, the most significant legislative acts related to indigenous rights are the ILO convention 169 and the United Nations' UNDRIP convention of 2007, which, though not legally binding, is symbolically and declaratively significant.

3.2.1. Norway

In 1990, Norway distinguished itself as the first country globally to ratify the ILO 169 convention, a pivotal international treaty focusing on indigenous rights. Article 14 of this convention mandates the recognition of ownership and possession rights over lands traditionally occupied by indigenous communities – *"the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized*".[38] Initially, it was believed that by solely granting strong usage rights to land while maintaining state ownership was sufficient enough to fulfil the requirements of the convention. However, perceptions have shifted towards a more robust view on property rights, and today, legislation mandated by the convention is developed based on a large variety of different possession rights models.[39]

In 1999, Norway further integrated international human rights standards into its national legislation by adopting the national Human Rights Act with the purpose of reaching the demands of the International Covenant on Civil and Political Rights (ICCPR). Article 27 has been crucial for the Sámi, asserting that ethnic minorities shall not be denied the right to their

[36] Joona 2019, p. 281
[37] Heinämäki et al. 2017, p. 27
[38] ILO 169
[39] Tirronen 2002, pp. 47-48

culture. The Norwegian Supreme Court has subsequently affirmed that the Sámi are indeed protected under article 27.[40]

3.2.2. Finland

Similar to Norway, Finland is also a signatory to the ICCPR treaty. Article 27 has been employed in the highest courts to support Sámi land use rights since ratification in 1976, consequently imposing restrictions on non-Sámi users of *Sámi homeland* areas.[41] Over the course of the 21st century, the Constitutional Committee has consistently in its opinions compared the right to livelihood to the right to ownership, thus affirming the meaning and purpose of Article 27.

However, when comparing implementation of the international obligations one stark difference between the countries under comparison emerges. In contrast to Norway, Finland has not ratified the ILO 169 convention.[42] The potential ratification has sparked extensive debate over indigenous rights in Finland, and despite pressure from the Sámi Parliament and international bodies alike, the convention is yet to be ratified. The process towards ratifying this vital convention has been painfully slow; discussions on ratification began as early as 1990, with conclusions suggesting that it would necessitate extending greater rights to the Sámi than those currently provided under Finnish law.[43] To this day, it is debated whether ratification would markedly enhance Sámi rights, with many scholars arguing that the broadest protection for indigenous rights in Finland already stems from constitutional provisions.[44]

The Ministry of Justice in Finland released a compilation of opinions in which various authorities, including Sámi officials and legal scholars, argued the feasibility of ratifying the ILO 169.[45] These arguments highlighted that the current Finnish legislation does not meet the minimum requirements for indigenous rights protection as set out in the ILO 169, especially concerning Article 14. The Sámi parliament of Finland interpreted Article 14 as a justification for granting Sámi the rights to *Sámi homeland,* while the Treasury and Forest Departments of Finnish government took a differing stance by arguing that Article 14 does not in fact in any

[40] RT-1968-429, RT-1968-394
[41] KKO 2022:25
[42] https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102625
[43] HE 248/1994, p. 17
[44] Heinaïmäki et al. 2017, p. 48
[45] Ministry of Justice of Finland 40/2014

way pertain to Sámi land rights, and therefore with the ratification of ILO 169 any actual advantage for the Sámi would not be achieved.[46]

Although not ratified, and therefore not legally binding on Finland, the ILO 169 still holds some importance within the Finnish legal system, albeit less so than in Norway. This can be interpreted from the statements of the Constitutional Law Committee; despite the lack of official ratification, the convention's advisory effect should still prevent Finland from pursuing legislative actions that could obstruct future compliance with the ILO 169.[47]

Under international law, Norway and Finland have both committed to protecting biodiversity and the rights of indigenous peoples through the ratification of the Convention on Biological Diversity (CBD) in 1992.[48] For Finland, which has fewer international treaties explicitly recognizing Sámi rights, the CBD holds particular significance. The Convention, alongside its Akwé: Kon Voluntary Guidelines and the Nagoya Protocol, obliges Finland to preserve the Sámi people's connection to nature and minimise adverse effects on their communities.

Finland's non-ratification of the International Labour Organization (ILO) Convention No. 169 leaves it without a dedicated, binding framework to explicitly acknowledge Sámi rights to land and resources. In this void, the Convention on Biological Diversity (CBD) partially compensates by providing international recognition through its principles and supplementary guidelines. After questioning and concerns about the conventions' legal validity, the Environmental ministry of Finland has later clarified that the CBD conventions regulations are indeed applicable to the Sámi, ensuring that traditional knowledge is respected and adverse impacts on land use are minimised.[49]

Conversely, Norway's ratification of the ILO Convention establishes Sámi rights within its national legislation, reducing the country's dependence on the CBD. While Norway adheres to the CBD principles, its robust legal framework already provides comprehensive protection for Sámi land and cultural rights.

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[46] 40/2014, p.18
[47] Tirronen 2002, p. 114-115
[48] SopS 78/1994
[49] Heinämäki et al. 2017, p. 50-51

As the following section will explore, subsequent national laws in both countries have been shaped by these conventions to align with the expectations they establish. However, it is worth noting that international law takes precedence over national legislation, which should be interpreted in compliance with international law according to the presumption principle.[50]

3.3. National Legislation

While both countries have incorporated ICCPR guidelines into their national legislation, compared to Finland, Norway has made more significant legal advancements recognizing and enforcing Sámi rights, especially concerning land usage and natural resources of the Sámi ancestral areas. In contrast, Finland, while recognizing the Sámi's cultural rights in the constitution, falls short in terms of special legislation and case law affirming these rights robustly.

3.3.1. Norway

Since 1988, the Norwegian Constitution has recognized the Sámi as its official indigenous people, granting them a constitutional right to preserve and maintain their culture. Article 108 of the Constitution mandates that "the authorities of Norway shall create conditions enabling the Sámi people to preserve and develop its language, culture and way of life". This constitutional safeguard, designed after the ICCPR Article 27, requires interpretation by Norwegian authorities according to the evolving demand of international law.[51]

The Reindeer Husbandry Act of 2007, supporting ecologically and culturally sustainable reindeer husbandry practices, underscores Norway's commitment to enhancing Sámi rights. The Act requires adherence to international law principles concerning indigenous peoples, ensuring a high level of protection for these rights. It establishes that the Sámi have acquired the right to reindeer herding in designated grazing areas based on immemorial use, and this right is presumed unless proven otherwise. Any disputes or infringements involving these rights necessitate compensation according to expropriation law principles.

In this research, Norway recognizing Sámi's exclusive right to reindeer herding is mainly discussed because of its symbolical value. By recognizing the right to exclusively practise a

[50] Ravna 2020, p. 155
[51] NOU 2007:13, p. 191 (Den nye sameretten)

traditional Sámi livelihood, Norway takes a stance of respecting the core human rights of its indigenous nation, and thus further strengthens the level of protection already guaranteed in Norway's international obligations and the Constitution. This is not to be taken as granted, since for centuries indigenous people have had to fight and advocate for their rights.

Further emphasising Norway's commitment, the Finnmark Act of 2005 represents a critical advancement in resolving land and water rights disputes in Finnmark, the northernmost county where the Sámi have traditionally lived. This Act codifies the Sámi's rights based on immemorial use, facilitating the management of land and natural resources to support Sámi culture, reindeer husbandry, and the utilisation of uncultivated areas. It also ensures that new measures do not undermine previously established rights and also provides the local population with special fishing rights derived from immemorial use and local customs.

Finnmark Act is a consequence of Norway's effort to fulfil the requirements of ILO convention, as it states that the Act shall be applied in compliance with ILO 169 and other relevant provisions of international law concerning indigenous peoples. Before its entry into force, the Norwegian State held the sole ownership of the unceded and unsold land areas in Norway, including the vast majority of Sámi areas, with no obligation to grant or recognize usage rights to others beyond what was legally documented in statutes or contracts.[52] Norway thereafter transferred land ownership of such areas in Finnmark from the State to the established Finnmark Estate, a new entity representing the residents of Finnmark. It can be argued – and I, for one, strongly believe – that ratification of ILO 169 was the key element in initiating the process towards clarifying and recognizing usage and property rights based on immemorial use, thus significantly enhancing the state of indigenous rights. This ongoing process has been tested in The Supreme Court on multiple accounts since.

In fact, case law in Norway has been instrumental in articulating and enforcing the doctrine of immemorial use, as it remains mostly unwritten in statuary rules, but gaining force through court rulings. Noteworthy cases include the *Altevann* case (RT-1968-429), which recognized long-term land use by reindeer herder under property law, as well as the *Brekken* case (RT-1968-394), which extended these rights to include hunting and fishing. These cases mark a fundamental turning point for recent recognition of Sámi territorial rights in Norway.

[52] Ravna 2020, p. 144-145

Generally formed criteria for claim immemorial use rights require long-term use of a certain area, and this usage must have been sufficiently intensive, continuous, and exclusive to be able to constitute protected right. The doctrine was formed in the context to serve rights of agricultural society, and it has been noted that originally the criteria does not take into consideration the Sámi nomadic way of life and wide-ranging use of land, where gaps for continuous and sufficient use could prevent claims.[53] Courts' assessment is based on overall consideration.

More recent cases, such as the *Selbu* (RT-2001-769) and *Svartskogen* (RT-2001-1229) cases from 2001, have further clarified and expanded the legal recognition of Sámi's immemorial-use-based rights. These rulings underscore that user rights are not inferior to ownership rights but are equally protected under property law, reflecting a deeper understanding of the unique Sámi way of life and cultural aspects, as well as the challenges posed by their nomadic traditions.[54] The court emphasised the wide-ranging nature of reindeer pastures, basing judgement on overall assessment and lowering the threshold for establishing land use rights through immemorial use.

3.3.2. Finland

The Finnish Constitution recognizes the Sámi's status as indigenous people and guarantees them the right to maintain and develop their language, culture and traditional livelihoods. This provision mirrors a similar constitutional safeguard found in the Norwegian Constitution and reflects both nations' adherence to the ICCPR. However, when comparing broader national legislation, notable differences begin to emerge, with Finland offering significantly less protection for indigenous rights beyond these foundational constitutional promises.

Although the constitutional right to culture does not explicitly encompass land rights, it can be argued that the Sámi culture is inseparably linked to nature and land use, and therefore, the constitutional protection should extend all the way up to land rights.[55] This connection has been recognized by the Constitutional Law Committee of Finland, which has consistently and systematically argued that traditional Sámi culture, consisting of reindeer herding, fishing, and small-game hunting among others, inherently involves the element of land use.[56]

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[53] NOU 2007:13, pp. 192-193 (Den nye sameretten)
[54] RT-2001-769 p. 814
[55] See chapter 1.
[56] PeVL 1/2016 vp

However, Finland's reliance on specific legislation – or rather, lack thereof – to safeguards these rights marks a departure from Norway's approach.

The Finnish Constitution recognises *the Sámi homeland* (kotiseutualue) – a territory primarily covering the the municipalities of Inari, Enontekiö and Utsjoki – and grants the Sámi a degree of autonomous governance, codified in the Act on the Sámi Parliament. Still, the lands of *the Sámi homeland* remain under Finnish state ownership, and the Sámi's right to utilise land resources are further mandated and limited with special legislation.[57] Conversely to Norway, the right to practise reindeer husbandry in Finland is not a right exclusive to the Sámi as it is available to any local resident. This has further intensified the long-standing disputes over land use rights between the Sàmi and other local populations of Lapland.[58]

Furthermore, national law does contain certain provisions aimed at protecting the Sámi's cultural practices. By nature, they are negative, as they mandate authorities to withdraw from activities that could endanger the Sámi right to enjoy and preserve their culture. For instance, the Mining Act 50 § restricts the issuance of prospecting, mining, or gold planning permits if they significantly weaken the Sámi homelands's capacity to maintain traditional livelihoods or otherwise preserve and develop the Sámi culture.

Overall, the Sámi are granted few special rights, with the broadest protection derived from the constitution (17:3).[59] Researcher Juha Joona supports this view, taking it as far as arguing that no special rights are granted to the Sámi, as the practical impact of these further specialised legislation provisions is nearly non-existent – particularly when compared to the comprehensive protection offered by the Finnmark Act in Norway.[60] The Norwegian Supreme Court's recognition of the doctrine of immemorial use has enabled Norway to better safeguard these rights. This example could be followed in Finland, given that the doctrine of immemorial use still remains embedded in Finnish legislation, even if not explicitly codified.[61] This doctrine has been applied by the Finnish Supreme Court on a few occasions, but not in Sámi context.[62]

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[57] https://www.metsa.fi/maat-ja-vedet/alueiden-kayton-suunnittelu/toiminta-saamelaisten-kotiseutualueella/ (read 16.2.2024)
[58] Heinaïmäki et al. 2017, pp. 58-85
[59] Kylli 2007, p. 1
[60] Joona 2019, p. 349
[61] HE 264/2014
[62] KKO 2022:25, KKO 2003:130

4. Comparison – Examining the Primary Research Question

	International Law	Constitution	Further National Legislation	Case Law	Doctrine of Immemorial Use
Norway	ILO 169 UNDRIP ICCPR CBD	Provision safeguarding Sámi right to culture.	Co-management of land (Finnmark Act) Reindeer Herding exclusive right	Numerous Supreme Court cases strengthening Sàmi land rights.	Present in national legislation and revitalised through case law.
Finland	UNDRIP ICCPR CBD	Provision safeguarding Sámi right to culture.	Weakening Ban of Sámi Culture (Mining Act)	The Supreme Court has not used immemorial use in Sámi context.	Doctrine removed in new law, but still in force. Little practical relevance.

Appendix 1 Legal solutions governing Sámi land rights. Black colour means mutual recognition of countries, Green colour means that legal solution is only present in one of the countries.[63]

To define some key differences relevant to legal comparison, analysing Finland's and Norway's legislative approaches to Sámi land rights reveals a fundamental difference in the treatment of land ownership and governance. While Finland recognizes the cultural autonomy of the Sámi in its Constitution and claims to respect the self-determination of the Sámi by granting them the autonomous *Sámi homeland*, the lack of direct ownership and control over lands limits the effectiveness of this autonomy. The Finnish model, therefore, reflects a more symbolic recognition of Sámi rights as contrast to Norway's more practical approach.

Both Norway and Finland adhere to several international instruments – namely *the International Labour Organization Convention No. 169 (ILO 169), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Covenant on Civil and Political Rights (ICCPR),* and *the Convention on Biological Diversity (CBD)* – that underscore the commitment of both countries to safeguard the cultural rights of the Sámi people. However, the ratification of ILO 169 by Norway, which is absent in Finland, marks a significant divergence in their approach to recognizing indigenous rights at the international level. In Norway, the ratification of ILO 169 began – or rather strengthened – the process of recognizing indigenous rights and later catalysed further improvements on the national level, notably the Finnmark act. This compels one to wonder whether via ratifying the ILO 169,

[63] Ahdevainio – Koponen 2024

Finland could also begin its journey towards a more comprehensive Sámi legislation.[64] The social change that made ratification of ILO 169 possible in Norway began in the late 60's with emerging Sámi activism. So far similar social consensus has not manifested in Finland to make up for vigorous legal improvements.

When looking into the concept of immemorial use in Finland, the doctrine is an underlying part of Finnish legislation, deriving from the Swedish era. This is contradictory to Norway. During legal development, Finland has been strongly influenced by both Swedish and German legal traditions, which has then led to strong practice of legal positivism. The Finnish legal culture highlights the importance of written law[65], whereas in Norway, case law has a much stronger authority in developing legal realities. While being a civil law country, where statutory provisions are the main source of law, Norway's legislative tradition does highlight the fact that laws are drafted in more general terms and legal interpretation relies heavily on preparatory works and Supreme Court precedents.[66]

The conclusion that can be drawn from this is that the divergence in legal philosophy between these two nations may have influenced Finland prioritising written law in its Supreme Court judgements regarding the protections of Sámi rights. Finland has focused on international obligations and human rights, and thus opted not to base the level of protection on aspects of proprietary law. In Finland, the case law deems international law to be a seemingly more important legal source than customary law.

When considering the specific legislative frameworks, it is important to note how each country acknowledges Sámi rights within their national contexts. In Finland, the constitutional recognition of the Sámi as its indigenous peoples marks a significant acknowledgment of the Sámi's distinct cultural and social identity. This legislative framework – although mostly based on international obligations rather than national level special law like in Norway – aims to provide the Sámi with a degree of self-determination, particularly in matters related to their cultural and linguistic preservation.

However, a critical limitation within the Finnish approach is the ownership status of lands within the Sámi homeland. Despite the constitutional recognition and provisions for

[64] Although it is debated whether the ratification would in actuality lead to broader rights for the Sámi in Finland, the ratification is still deemed crucial. The ratification has been promoted alongside Sámi activists by the UN's Commission of Human Rights on multiple accounts (CCPR/C/FIN/CO/7)
[65] Raitio 2012, p. 4
[66] Advokatforeningen 2024

autonomy, the lands remain under the ownership of the Finnish State. This ownership status poses challenges to the full realisation of Sámi rights to land and resources, impacting their traditional livelihoods such as reindeer herding, fishing, and hunting. The Finnish government's control over land use and resource extraction activities often leads to conflicts with the Sámi communities' efforts to protect their traditional ways of life and sustain their cultural heritage. This also raises the question of if there even is such a thing as *Sámi self-determination* in Finland.

In contrast, Norway's approach to Sámi land rights illustrates a more comprehensive effort to address the issues of land ownership and governance. The Finnmark Act of 2005 stands as a landmark piece of legislation in this regard. It was enacted to resolve disputes over land and water rights in Finnmark, where the Sámi have traditionally practised their livelihoods. The Act facilitates the transfer of land ownership from the Norwegian State to the Finnmark Estate, a legal entity established to manage these lands on behalf of the residents of Finnmark, including the Sámi population. By transferring ownership to a body that includes Sámi representation, Norway has taken a significant step towards reconciling past injustices and empowering the Sámi community. This act not only enhances the Sámi's capacity to protect their cultural heritage but also sets a precedent for the recognition of indigenous land rights on a broader scale, and Norwegian Supreme Court has systematically strenghtened Sámi land rights by revitalising the doctrine of immemorial use. [67]

[67] Heinämäki et al.. 2017, pp. 509-513

5. Discussion: Enhancing Sámi Land Rights through Legal Transplantation

This chapter analyses the legal frameworks governing Sámi land rights in Norway and Finland, focusing on exploring the concept of legal transplants and the potential incorporation of the Norwegian Finnmark Act into Finnish legislation through the means of legal transplantation.

5.1. Legal Transplantation as a Theory of Comparative Law

The concept of a legal transplant, central to comparative law, has been the subject of academic discussion since legal scholar Alan Watson first introduced the term in 1974. He defined a legal transplant as the adoption of legal material – rules, principles, or institutions – from one legal system into another.[68] Many scholars have contributed to the discourse, refining Watson's original definition and further arguments. Notably, the concept of legal irritation was introduced in 1998 to complement the notion of legal transplantation.[69]

Building on Watson's view of transplantation as a process, Margit Cohn expanded the concept, arguing that legal transplantation is a multi-actor process influenced by globalisation and cross-border interactions.[70] Tuula Linna's more modern and simplified definition from 2010 emphasises the deliberate movement of a relatively limited legal material, noting that this process typically occurs voluntarily, although occasionally forced.[71] These varied perspectives provide a comprehensive lens through which to understand the potential transplantability of the Finnmark Act – a pioneering piece of Norwegian legislation providing Sámi communities with significant control and possession over land and natural resources.

Successful legal transplants require not only a conductive legal environment but also socio-political receptivity and cultural compatibility between the source and recipient jurisdictions. The process extends beyond mere legal adoption to encompass integration and functional adaptation within the new legal system.[72] This framework will guide the evaluation of the Finnmark Act's potential as a legal transplant to Finland, considering both the similarities in Nordic legal traditions and the particularities of Finnish Sámi rights jurisprudence.

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[68] Watson 1974
[69] Teubner 1998
[70] Cohn 2010, p. 586, 594
[71] Linna 2010, p. 837
[72] Linna 2010, pp. 835-841

5.2. The Finnmark Act as a Legal Transplant

The Finnmark Act, enabling the transfer of ownership of land in the northern Finnmark region from the Norwegian state to the Finnmark Estate, provides a robust legal framework that recognises and protects Sámi land rights in Norway. The adoption of this Act was possible because Norway had already ratified the ILO 169 -convention, and the country was generally more receptive to indigenous activism and rights advocacy than its Nordic neighbours, including Finland. Norway's socio-legal environment provided fertile ground for legislative reform, emphasising respect for indigenous culture.

Finland has been slower to become receptive to Sámi activism, with advocacy for civil rights only gaining prominence in the 21st century. While the Finnish Constitution recognizes Sámi cultural rights, there are significant gaps in effectively protecting these rights through specific legislation. Moreover, the recognition of the Sámi's traditional ownership of ancestral lands has not been adequately discussed. Finland has continuously emphasised state ownership of lands in the northern regions inhabited by the Sámi, creating structural differences that would necessitate substantial adjustments to accommodate the Finnmark Act within Finnish legal framework.

Leaning on Cohn's argument on legal transplantation being a process, one could argue that Finland is only now beginning its journey toward a more comprehensive legislative framework for recognizing indigenous rights. Recent political discussions have increasingly addressed the issue of defining who qualifies as a Sámi person, and Sámi communities have been heard – although, still, to an extent – in these deliberations. Although political willpower may be lacking, Finland could still reach a point where the adaptation of a system similar to the Finnmark Act can be possible.

5.3. The Possible Challenges of Transplanting the Finnmark Act

No legal transplant is adopted without resistance and challenges, and this is true also when considering the transplantation of the Finnmark Act. First, political resistance has been a notable obstacle in legal recognition of Sami rights already for decades. The most direct path toward adopting a system similar to the Finnmark Act involves ratifying the ILO 169. However, as discussed earlier, Finland's failure to ratify this convention demonstrates deep-seated resistance from political factions and private interests wary of expanding Sámi possession over land and natural resources.

Second, the Finnish legal system has traditionally emphasised state ownership of lands and thus, resistance from political entities and private interests who may view increased Sámi control over land resources as a threat to existing economic activities, such as mining and logging, may be expected. Therefore, adapting the Finnmark Act to Finnish law would require substantial adjustments to accommodate these foundational differences. Additionally, Finland's decentralised approach to indigenous rights governance may further complicate adopting a cohesive national framework similar to the Finnmark Act. Notwithstanding these challenges, I for one firmly believe that adopting elements of the Finnmark Act in Finland is not only feasible but necessary.

5.4. Conclusions and Recommendations on Transplantation

Adopting elements of the Finnmark Act in Finland would mark a crucial step in harmonising Finnish Sámi rights with international standards while acknowledging the unique cultural and historical identity of the Sámi people. By incorporating these legal reforms, Finland could establish a more inclusive and equitable framework for indigenous rights, ensuring that the Sámi have a meaningful input in managing their ancestral territories.

In my view, such legal transplantation would not only address long-standing inequities but also set a progressive precedent for other nations grappling with indigenous rights and land use issues. Although challenging, initiating this process should be a priority for Finland, a country renowned for it progressive and liberal politics. Adopting such measures would significantly bolster Finland's compliance with international indigenous rights standards and strengthen the Sámi's legal standing in land disputes.

Another meaningful factor in incorporating the Finnmark Act into the Finnish legal framework is international and regional cooperation. Being signatories to several international conventions and participants in regional organisations, both Norway and Finland are under external oversight and expectations regarding the protection of indigenous rights. In a modern, globalised world, adherence to international standards and demonstrating unity with neighbouring nations is vital for advocating civil rights. This collaborative strategy would reinforce cross-border dialogue about minority rights, thus helping in the preservation of indigenous cultural heritage, as well as in ensuring its sustainability.

6. Conclusions

In conclusion, this analysis reveals a stark contrast between Norway and Finland's approaches, when it comes to dealing with indigenous rights. Norway has managed through its robust legal system, exemplified by the early ratification of the ILO 169 and the enactment of the Finnmark Act, to effectively integrate Sámi land rights into its national law. Conversely, Finland lacks specific legislation for Sámi land rights and in fact, any Sámi-exclusive legislation.

The Norwegian legal system recognizes Sámi rights from a property law perspective, in which it acknowledges rights through the doctrine of immemorial use. This kind of arrangement has then resulted in protected user rights and co-ownership in the Sámi traditional areas. This analysis suggests that granting the Sámi protected user rights to their traditional lands – whether state-owned or communally governed – could find support from the doctrine of immemorial use in Finland as well. In protecting Sámi culture and land rights, courts and legislature have favoured deriving protection from general human rights and international law of indigenous protection. Conversely, Norway has more boldly taken property law principles into consideration in this context. Regardless of how land rights are justified, granting protected user rights is crucial for the Sámi to maintain their traditional culture. This perspective has been strongly reinforced by many scholars and the Ministry of Justice in Finland, thus advocating for Sámi rights.[73]

Addressing the primary research question, it is evident that Norway has achieved notable progress in securing land rights for the Sàmi, providing them with an ambitious co-ownership arrangement to bolster their autonomy in the Finnmark region. Finland, however, trails in this regard, with its fragmented and inefficient legal protections that do not translate into comprehensive framework of practical rights for the Sámi population

With these suggestions, Finland could not only strengthen the actual effect of Sámi cultural rights, but also take crucial steps towards creating ideal conditions for the eventual ratification of the ILO 169. The discourse surrounding the ratification has been marred by statements claiming that Finland's legal system is ill-equipped to meet the ILO 169's requirement. It is important to note that the ratification would not necessitate the provision of solid property

[73] Heinämäki et al. 2017, p. 513

rights to land for the Sámi, a minority in their traditional territories. Instead, the focus should be shifted towards establishing broader protected used rights for the Sámi in general.

As for the secondary research question on the feasibility of transplanting Norway's Finnmark Act into a part of the Finnish legal system through the means of legal transplantation, this analysis suggests that while it is theoretically achievable, doing so would necessitate significant modifications to the socio-political structures of Finland – a formidable obstacle to enacting similar comprehensive legislation is the resistance and opposition within the political spheres. This said, even if difficult, this should be a priority to Finland, as basic human rights are at stake.

All in all, one must conclude, that from this comparative legal analysis of the Finnish and Norwegian legislative frameworks regarding Sámi land rights, it is evident that the divergent approaches taken in the neighbouring countries highlight a broader discussion on the efficiency of legal structures when it comes to safeguarding indigenous rights and thus cultural preservation. While both Finland and Norway recognize the Sámi's distinct status and cultural heritage, the mechanisms through which such recognition is operationalized in terms of land and governance are drastically and inherently different – therefore have profound implications for Sámi self-determination.

This analysis illuminates the critical role of national legislation in the protection and recognition of indigenous rights. It underscores the need for legal reforms that go beyond symbolic acknowledgments, advocating for practical measures that ensure that indigenous communities have tangible control over their lands and resources. For the Sámi in Finland, a shift towards a legal framework that incorporates principles of immemorial use and grants meaningful land rights could significantly enhance their ability to preserve their culture and way of life. Such reforms would not only align Finland more closely with international standards on indigenous rights but would also foster a more equitable and just society, in which the rights and traditions of all citizens are respected and protected.