The recognition of indigenous peoples’ rights in the context of area protection and management in the Arctic

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Introduction

1.1 Background and aim of the research

The issue of increased human activities in the context of area protection and management is of very high relevance, specifically with respect to the Arctic. Due to climate change, which continues to be widespread in the Arctic, and in some cases, dramatic,\(^1\) new prospects for economic development arise. Reduced sea ice, for example, is very likely to increase marine transport and access to resources.\(^2\)

At the same time, the region is faced with numerous environmental challenges like those of projected shifting of vegetation zones and wide-ranging impacts on animal species’ diversity, ranges, and distribution.\(^3\)

On the base of these developments, it is very likely that interests of maximum resource extraction and energy production conflict with those of keeping the environment pristine. In consequence, “an extension of natural reserves/wilderness parks both on land and at sea might need to be considered as the price for letting local populations and incomers enjoy more unrestrained development in the remaining areas.”\(^4\)

The Arctic is home to many indigenous peoples, including reindeer herders, hunters, fishermen and nomads. They all share one common feature: their dependency on a healthy environment to support their livelihoods and chosen ways of life.\(^5\)

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\(^1\) For the sea ice cover the Arctic Report Card 2009 summarizes the following: “One of the most dramatic signals of the general Arctic-wide warming trend in recent years is the continued significant reduction in the extent of the summer sea ice cover and the decrease in the amount of relatively older, thicker ice. The extent of the 2009 summer sea ice cover was the third lowest value of the satellite record (beginning in 1979) and >25% below the 1979–2000 average.” See D. Perovich, R. Kwok, W. Meier, S. Nghiem and J. Richter-Menge: “Sea Ice Cover”, Colorado, 19 October 2009, in: Arctic Report Card 2009, p. 9

\(^2\) Arctic Climate Impact Assessment (ACIA) (2004), Policy Document, issued by the Fourth Arctic Council Ministerial Meeting, Reykjavik, 24 November 2004, p. 3

\(^3\) Ibid., p. 3


icecap in Europe, spread out over northern Siberia and the Russian Far East, and crossed the Bering Strait some 4,000 years ago or more. Indigenous peoples are particularly impacted by climate change because of their cultural and physical dependence on the environment, and their frequent lack of access to the resources necessary to avoid the impacts of detrimental changes in their environment. In such a situation they might find themselves in the middle of those conflicting interests described above: on the one hand, defending their environment from external desirousness and from this point of view supporting the designation of certain areas as especially protected for their livelihoods, on the other hand, having an interest to participate in economic developments and to be engaged in the exploration of natural resources. Against this background, indigenous peoples' rights are of important significance in the context of area protection and management in the Arctic.

The rights of indigenous peoples on the one side, and area protection and management, on the other side, can be explored from many different perspectives. While much research exists in both contexts individually, only a very few authors deal with the interrelationship between them. Thus, the present thesis aims to combine both contexts by exploring the question to which extent indigenous peoples' rights are recognized in the context of area protection and management. Due to the specific relevance for the Arctic, particular, but not exclusive,

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6 Oran R, Young and Niels Einarsson (2004): “Introduction”, in: Arctic Human Development Report (AHDR), p. 22; According to Jared Diamond (1991): “The Third Chimpanzee: The Evolution and Future of the Human Animal”, these numbers might be different since people were able to cross the ice in North Canada and started to colonize America about 12,000 years ago.


8 Although this does not necessarily reflect the general interest of indigenous peoples of the Arctic, joint ventures with the industry to explore oil and gas resources might lie in the interests of certain groups of indigenous peoples such as is illustrated by the case of the community of Fort McKay First Nation who considers a joint venture with Oilsands in Northern Alberta, Western Canada, as the key to its economic development. See Clint Westmann: “Assessing the impacts of Oilsands development on indigenous peoples in Alberta, Canada”, in Mark Nuttall and Kathrin Wessendorf: “Arctic Oil and Gas Development”, publication by the International Working Group on Indigenous Affairs (IWGIA), 2-3/2006, p. 32.

9 The Arctic, as the totality of the areas north of the polar circle, has been chosen to contrast this region from other regions of the globe.
emphasis is placed on the Sami\textsuperscript{10} as one of the indigenous peoples living in that region. For them, the above-mentioned conflict presents itself often from two sides: on the one hand, the Sami regard the wilderness, which national environmental policy wishes to preserve, as their own back yard: it is not untouched nature, but a cultural landscape created through centuries of Sami stewardship.\textsuperscript{11} From that point of view, they might be in favour of specific conservation plans for their traditional lands. On the other hand, those Sami people who are not involved in traditional economic activities, such as reindeer herding for example, regard area conservation plans as a threat to their livelihood and do strongly support extension plans for the industry in which they are involved.\textsuperscript{12} Sami homelands, today, are distributed among the territories of Finland, Norway, Russia and Sweden. Taking this as a point of departure, the present study will focus on the efforts of those four states in implementing Sami rights into their national systems. Hereby, the different forms of governments – Finland, Norway and Sweden as unitary states and Russia as a federation – will be taken into consideration as far as possible. Moreover, area protection and management is viewed from a terrestrial point of view; marine protected areas are not a subject of this study.

The thesis aims to answer the following central research question:

\textit{To which extent are indigenous peoples’ rights implemented in the context of area protection and management in the Arctic?}

In order to answer this question, the following sub-questions will be addressed:

1. To what extent have indigenous peoples’ rights – and in particular those of the Sami people – been implemented both in the human rights and the

\textsuperscript{10}``The, Saami, or Lapps as others have called them, are the indigenous people of the Russian Kola Peninsula and northern Norway, Sweden and Finland. There is no reliable population census for the Saami people, and the matter of defining who is a Saami is problematical; nonetheless, according to current estimates, there are about 40,000 Saami in Norway, 17,000 in Sweden, 6,000 in Finland, and from 1,500 to 2,000 in Russia.” See Hugh Beach (2000): “The Saami”, in: Milton M. R. Freeman, (ed.): “Endangered Peoples of the Arctic” Westport, CT, USA: Greenwood Press, p. 223

\textsuperscript{11}Hugh Beach (2000), p. 238

environmental protection context?

2. How do both contexts (human rights and environmental protection) correspond with each other?
   a. Do indigenous peoples' rights receive more attention in the context of human rights than in the context of environmental protection or vice versa?
   b. Are there correlations and/or dependencies between the implementation of indigenous peoples’ right in the one context and the other?

3. How can the implementation of indigenous peoples' rights be strengthened in the context of area protection and management in the Arctic?

1.2 Structure of the thesis and method of the research

As an introduction, in the second chapter, the relationship between indigenous peoples and area protection is outlined in a historical and present context, pointing from an area of tension to a recent shift in paradigm. This discussion is based on the literature available on this subject.

Next, to create a foundation for a comparative approach, the indigenous peoples' rights most relevant in the context of area protection and management are identified and discussed (as a first step in this research; see chapter 3). This description is based on an evaluation of respective scholars' literature as well as of publications of relevant UN institutions. In view of the relevance for the subject of protected areas, the discussion focuses on the rights to self-determination; the right to lands, territories and resources and the right to full and effective participation as well as on the principle of free, prior and informed consent.

In a second step, the identified indigenous peoples' rights are outlined in the human rights context and in the environmental protection context. This discussion cannot be exhaustive: in view of the limited scope of this research, the study will focus, for each context, on one central international agreement:

- Human rights context: the International Covenant on Civil and Political Rights of 1966 (see chapter 4);
Environmental protection context: the Convention on Biological Diversity (CBD) of 1992 (see chapter 5);

It will be explored whether and to what extent the identified rights most relevant in the context of area protection and management are recognized by the relevant agreement and whether and how these rights have been developed within the framework of the agreement. This analysis is primary based on the texts of the conventions, instruments of respective bodies, established under the agreement (e.g., the Concluding Observations, Decisions and General Comments of the Human Rights Committee) and on the decisions adopted by the Conference of the Parties (COPs) under the CBD). As for the CBD, the 2004 Programme of work on protected areas receives special attention. The thesis will describe how specific goals and targets aiming at the enhancement of indigenous peoples’ rights have been developed under this programme and whether and to what extent they have been implemented in the four national systems.

In a third step, attention focuses on the question of whether and to what extent the relevant obligations under the selected agreements – corresponding to the identified indigenous peoples’ rights most relevant in the context of area protection and management – have been implemented by the four Arctic states. For this purpose, three different types of sources have been used:

- a specific questionnaire to explore the implementation status has been developed and distributed in an initial step (see Appendix 1). Responses have been received from Norway and Sweden (see Appendices 2 and 3);
- thematic and periodic national reports to both international agreements and
- corresponding literature dealing with the implementation of indigenous peoples' rights in the context of area protection and management and related problems.

The findings on these implementation efforts have been integrated in chapter 4 for the human rights context and in chapter 5 for the environmental protection context.

The outcome of the comparative research is included in chapter 6. In a first step, the implementation status of indigenous peoples’ rights in the human rights context and in the environmental protection context is compared among the four
Arctic states. This is followed by a second step, where the implementation status of one context is confronted with that of the other context. To conclude, chapter 6 analyses the recognition of indigenous peoples' rights by comparing the status of implementation in both contexts individually, and by contrasting the implementation status of one context with the other. With this chapter the central research question of this thesis receives an answer. The chapter is finished with the formulation of some recommendations on how to strengthen indigenous peoples' rights in the context of area protection.

The majority of sources has been examined until the end of November 2009. National and thematic reports have been accessed until the 31st of December 2009. As regards the human rights context it should be noted that the latest national reports to the Human Rights Committee and its corresponding Concluding Observations originate partly from 2006 and 2007. This is particular the case for Finland and Norway which might lead to the possibility that more recent or actual developments in those countries have not been considered in this study.

The comparative approach that has been taken in this study differs in its purpose and character from most other comparative studies. Most of them investigate domestic systems, which have been developed over a long period of time – influenced by social, cultural and legal factors – in order to find solutions for particular problems that are identified at a domestic level. In this thesis, however, obligations of two international agreements, corresponding to indigenous peoples' rights, are the starting point, not a particular domestic problem or the domestic system of a selected country. From this perspective, the present thesis follows more a “top-down” instead of a “bottom-up” approach, although several domestic examples are mentioned to illustrate deficiencies in a more general picture. This limitation applies in particular to the analytical part at the end of the thesis where recommendations can be made only at a rather abstract level. It was, however, necessary, from the author’s point of view, to follow such an abstract approach in order to obtain a general picture of the status of implementation of indigenous peoples' rights in the context of area protection and management. Additional research at the national level, aiming at deepening the analysis of particular
domestic problems and comparing them with other domestic systems in more detail, is certainly needed and has already been initiated.\textsuperscript{13}

1.3 Definitions

Before dealing with the questions outlined above, it is important to define three key terms: “area protection and management” (below, item a), “indigenous peoples” (item b) and “implementation” (item c). All of these are directly reflected by the topic of this thesis and of particular relevance to the conducted research. Since their meaning and interpretation can differ depending on the context in which these terms are used, the understanding in the framework of this thesis should be clarified first. This applies especially to the term of “indigenous peoples” for which no universally accepted legal definition exists and which is the subject of a controversial debate as far as the scope and the applicability of certain human rights are concerned.

\textit{a) Area Protection and Management}

For the purpose of this work, a broad concept of ‘area protection and management’ is applied.

The World Conservation Union (IUCN) defines a protected area as:

“A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values”\textsuperscript{14},

While this definition will serve as a point of departure, special emphasis is laid on the 'management-component' of area protection. Management in this context is not only

\textsuperscript{13} Anna Zachrisson from the University of Umeå, Sweden, mentioned in an e-mail to the author of 15 January 2010 that the launch of another project looking into indigenous peoples’ issues in relation to protected area management and establishment in Sweden, Norway and Finland is being considered.

\textsuperscript{14} Nigel Dudley (ed.) (2008): “Guidelines for Applying Protected Area Management Categories”, Gland, Switzerland: IUCN, p. 8
“assumes some active steps to conserve the natural (and possibly other) values for which the protected area was established”\textsuperscript{15}.

but also indicates that

“Administration of protected areas is a practical issue important for the effectiveness of the protective regime established”\textsuperscript{16}.

Moreover, the 'management-component' itself stands for the human implication of the term 'management' and illustrates the relationship of people to any kind of area protection, bridging the issue of area protection to the present topic of indigenous peoples.

\textbf{b) Indigenous Peoples}

The international community has not adopted a definition of indigenous peoples and the prevailing view today is that no formal universal definition is necessary for the recognition and protection of their rights.\textsuperscript{17} Although this might be the case in theory, a compact definition would have several advantages like helping “to clear out ersatz claimants, improve the goodwill of governments, give greater confidence to those defined as indigenous and improve precision in targeting programmes”.\textsuperscript{18}

Within the UN, a description formulated by the Special Rapporteur of the UN Sub-Commission for Human Rights, José Martinez Cobo (the so called Cobo\textsuperscript{-definition}), is used as a guiding principle when identifying indigenous peoples.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{15} Ibid., p. 8
\item \textsuperscript{17} United Nations Development Group: “Guidelines on Indigenous Peoples' Issues”, February 2008
\item \textsuperscript{18} Patrick Thornberry (2002): “Indigenous peoples and human rights”, Manchester: Manchester University Press, p. 57
\item \textsuperscript{19} John B. Henriksen (2006): “Oil and gas operations in Indigenous peoples lands and territories in the Arctic: A Human right perspective”, in: Rune S. Fjellheim and John B. Henriksen (eds.): “Oil and Gas Exploitation on Arctic Indigenous Peoples' Territories”, Galdun Cala, Journal of
\end{itemize}
According to this definition:

“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.”

As stressed by Cobo, ‘historical continuity’ consists in the continuation for an extended period reaching into the present of one or more of the following factors:

- Occupation of ancestral lands, or at least of part of them;
- Common ancestry with the original occupants of those lands;
- Culture in general, or in specific manifestations […];
- Language […];
- Residence in certain parts of the country, or in certain regions of the world;
- Other relevant factors”.

The role of the group in responding to individual acts of self-identification is stressed. Cobo insists that: „On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group)”.

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20 Study of the problem of discrimination against indigenous populations (UN Doc. E/CN.4/Sub.2/1986/7/Add.4, paragraph 379)
21 Study of the problem of discrimination against indigenous populations (UN Doc. E/CN.4/Sub.2/1986/7/Add.4, paragraph 380)
22 Study of the problem of discrimination against indigenous populations (UN Doc. E/CN.4/Sub.2/1986/7/Add.4, paragraph 381)
Furthermore, the International Labour Organization’s Convention No. 169 on Indigenous and Tribal Peoples (1989) contains a statement of coverage defining indigenous peoples and tribal peoples. Article 1 of the ILO Convention No. 169 defines the scope of application of the convention as follows:

“1. This Convention applies to:

a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special law or regulations.

b) 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 colonization 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.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term ‘peoples’ in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.”

As expressed by Henriksen, „the core elements that are important for the use of the term ‘indigenous peoples’ are (1) that there is another group than the indigenous people concerned which presently is the dominant group [power relationship] on traditional indigenous territories within an individual country or a geographical region/area; and (2) that the indigenous people concerned identifies itself as ‘indigenous’“.  

From the point of view of international organizations and legal experts, the UN Working Group on Indigenous Populations’ *Working paper on the concept of “indigenous people”*\(^\text{24}\) lists the following factors that have been considered relevant to the understanding of the concept of “indigenous”:

- Priority in time, with respect to the occupation and use of a specific territory;
- The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;
- Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.

As regards the Arctic, the *Arctic Human Development Report*\(^\text{25}\) emphasis in its definition the distress indigenous peoples have experienced in that region as well as the self-identification element by stating:

“Indigenous peoples are those peoples who were marginalized when the modern states were created and identify themselves as indigenous peoples. They are associated with specific territories to which they trace their histories. They exhibit one or more of the following characteristics:

- they speak a language that is different from that of the dominant group(s),
- they are being discriminated in the political system,
- they are being discriminated within the legal system,
- their cultures diverge from that of the remaining society,
- they often diverge from the mainstream society in their resource use by being hunters and gatherers, nomads, pastoralists, or swidden farmers,


they consider themselves and are considered by others as different from the rest of the population.”

And finally, Henriksen points out that “in the Arctic region the identification of indigenous peoples is widely decided through indigenous self-identification and processes leading to State recognition of their indigenous identity”.

**Are Indigenous Peoples to be regarded as ‘Peoples’?**

The most decisive and contended question in this issue is the question whether indigenous peoples are to be regarded as ‘peoples’ with the right to self-determination.

Similar to the term ‘indigenous peoples’, there is no comprehensive definition of the term ‘peoples’ in international law.

In the United Nations’ practice, however, the so-called ‘Kirby definition’ is widely used; a description developed specifically for the purpose of identifying the holders of the right to self-determination by the UNESCO International Meeting of Experts for the Elucidation of the Concepts of rights of Peoples in 1989. According to this description, also called after its principal drafter, Justice Michael Kirby, identifies a people as:

“1. A group of individual human beings who enjoy some or all of the following common features:

- a) Common historical tradition;
- b) Racial or ethnic identity;
- c) Cultural homogeneity;
- d) Linguistic unity;

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28 Ibid., p. 26 (including supra note no. 5)
e) Religious or ideological affinity;

f) Territorial connection;

g) Common economic life;

2. The group must be of a certain number which need not be large but which must be more than a mere association of individuals within a State;

3. The group as a whole must have the will to be identified as a people or the consciousness of being a people – allowing that group or some members of such groups, through sharing the foregoing characteristics, may not have that will or consciousness, and possibly,

4. The group must have institutions or other means of expressing its common characteristics and will for identity”29.

As expressed by Henriksen, „the main substantive difference between the definitions of ‘indigenous peoples‘ and ‘peoples‘ respectively is the power relationship element in the ‘indigenous peoples‘ criteria. In other words a group other than the indigenous peoples concerned is the dominant group within an individual country or a geographical region/area. The indigenous peoples concerned may be dominant in their traditional territory, but exercise a little influence or power, if any, in national politics, and in the State.”30

In state practice and legal theory, it is still disputed whether indigenous peoples enjoy the ‘full’ right of self-determination. Often a distinction is made between internal and external self-determination (as this will be described in more detail further below, when the right of self-determination is dealt with). At this point it should be emphasized that “the debate concerning indigenous peoples’ right to political self-determination is still characterised by fear among states that recognition of such a right will result in secession from established states.”31

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30 John B. Henriksen (2006), p. 27

31 Láilá Susanne Vars (2008): “Political Aspects of the Sami’s Right to Self-Determination”, in:
Thornberry, in this context, points out that ‘people’ suggests a group dimension to claims of right, and a possible question on self-determination, which many governments prefer to avoid. [...] Whether a government representative tempers an intervention by placing an ‘s’ after ‘people’ may be regarded by indigenous as a sign that the government is for (‘s’) or against (no ‘s’) indigenous rights. 32 Up to now, the question is still disputed by some Arctic States, as it is by many other States. 33

c) Implementation

Implementation, in general, “refers to all measures taken or instruments used – both at the international level and the domestic level – to fulfil the objectives of the international agreement”.34 For the purpose of this study, the term implementation, simultaneously used with incorporation, is used in a non-technical sense, covering e.g. the 'adoption' and the enactment of treaty specific legislation giving the provisions of a named treaty the status of domestic law.35

Implementation or incorporation of indigenous law, in particular, is differently conducted by states. Levi distinguishes three forms of state practice: incorporation within common law, customary law, and self-government36. While indigenous law incorporated within the common law is not quite recognized as law at all, but as a social situation which creates the kinds of facts which trigger the law of the wider

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32 Patrick Thornberry (2002), p. 41
33 John B. Henriksen (2006), p. 27
society, more status is given to indigenous law, when that is incorporated as a separate system of customary law, parallel (or at least not entirely subordinate) to common law; and indigenous law is accorded the greatest status when self-government forms the foundation of the recognition of indigenous law, which implies that indigenous peoples have at least in principle been recognized as sovereign nations.\footnote{37}

As regards indigenous peoples' rights to lands, territories and resources (LTR), which are of specific relevance in the context of area protection and management and which will be elaborated in more detail further below, it is important to mention, as stressed by Levy, that “Customary incorporation characteristically yields legal rights to use traditional lands as they have traditionally been used; that is, it generates usufruct rather than proprietary rights. Common law incorporation, on the other hand, characteristically generates stronger property rights in the form of collective freehold ownership; as far as the land of the state is concerned, indigenous people are free to use their land traditionally or otherwise and still retain it as their own land.”\footnote{38}

As regards state practice, it is finally important to stress from these theoretical considerations, that most states use elements of more than one mode of incorporation with different emphasises\footnote{39}; and that “customary incorporation often takes place through a state’s constitution rather than through judicial recognition of a parallel system of law”.\footnote{40}

When it comes to the Arctic, the four states of specific interest here also use different modes of incorporation. Norway, for example, takes a dualist approach in which ratification of an international convention does not automatically result in a change in domestic law; but where domestic rules will only change as a result of an enactment of the competent legislature.\footnote{41}

\footnotetext[37]{Ibid., pp. 297-298}
\footnotetext[38]{Ibid., p. 298}
\footnotetext[39]{Ibid., p. 298}
\footnotetext[40]{Ibid., p. 299}
\footnotetext[41]{See Ketil Fred Hansen and Nigel Bankes (2008): “Human rights and indigenous peoples in the Arctic: what are the implications for the oil and gas industry?”, in: Aslaug Mikkelsen and Oluf Langhelle (eds.): “Arctic oil and gas: sustainability at risk?”, London, New York: Routledge, p.}
Russia, on the other hand, takes a more 'monist' approach insofar as international customary law and international treaties to which Russia is a party are automatically a part of the domestic legal system and, in the event of a conflict between an international treaty and an ordinary domestic law, the treaty provision will prevail.\(^42\) Taking into account the federal structure of the Russian Federation\(^43\), one has further to consider that the legislative authority is divided between the federal jurisdiction and the currently 83 subjects of the federation\(^44\) and comprises areas of exclusive federal jurisdiction, joint or concurrent jurisdiction and residual jurisdiction lying with the subjects of the federation.\(^45\) Areas – like the protection of rights of national minorities; issues of possession, use and disposal of land, subsoil, water and other natural resources; delimitation of state property; protection of the environment and ensuring ecological safety; specially protected natural territories, protection of historical and cultural monuments; land, water, and forest legislation; legislation on subsoil and environmental protection and protection of traditional living habitat and of traditional way of life of small ethnic communities – lie in the joint jurisdiction of the Russian Federation and its subjects.\(^46\)

As regards the **constitutional protection of indigenous peoples' rights**, Finland, Norway and Russia each offer a certain degree of such protection:

**The Finnish Constitution**, as having the best statutory point of departure in respect to self-government\(^47\), contains a provision regarding the Sami’s right to self-government or autonomy, which states that: „*In their native region, the Sami have linguistic and cultural self-government, as provided by an Act*“\(^48\).

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\(^{292}\) reference to the Norwegian Constitution Article 26
\(^{42}\) Ibid., p. 293, with a reference to Article 15 of the Russian Constitution (1993)
\(^{45}\) Articles 71 – 73 of the Russian Constitution
\(^{46}\) Article 72 of the Russian Federation
\(^{47}\) Láilá Susanne Vars (2008), p. 69
\(^{48}\) Section 121, subsection 4 of the Finnish Constitution
The Constitution of Norway recognizes Sami rights to maintain and develop their language, culture and social life by stating: „It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life”\textsuperscript{49}.

Russia also has a provision in the Constitution that provides protection for indigenous peoples. It states: „The Russian Federation guarantees the rights of small indigenous peoples in accordance with the generally accepted principles and standards of international law and international treaties endorsed by the Russian Federation”\textsuperscript{50}.

Due to the federal structure of Russia it is important to stress, however, that the relevant region where Sami people live, the Murmansk region (also called Murmansk Oblast) has its own charter instead of a constitution.\textsuperscript{51} According to Article 21 of this Charter: the rights of national minorities living in the territory of the Murmansk region are guaranteed in accordance with the Constitution of Russia and federal laws; the authorities of Murmansk region contribute to the indigenous people of the Kola Peninsula - Sami - in the realization of their rights to preserve and develop their native language, national culture, traditions and customs; and in the historical Sami districts, representatives of other indigenous peoples of northern Russia have the rights to traditional use of environment and fisheries.\textsuperscript{52} Thus, Sami rights to language, culture, traditions and customs are specifically recognized at the regional level by the respective charter.

Finally, the Sami are recognised as indigenous peoples also in Sweden\textsuperscript{53}, although their status itself is not addressed in the Swedish Constitution.\textsuperscript{54} “However, a state report aimed at clarifying questions related to the future organisation of the Sami

\textsuperscript{49} Article 110 a of the Norwegian Constitution
\textsuperscript{50} Article 69 of the Russian Constitution
\textsuperscript{51} According to Article 5 (1) of the Russian Constitution, the Russian Federation consists of republics, territories, regions, cities of federal importance, an autonomous region and autonomous areas. While each republic (state) has its own constitution and legislation, territories, regions, cities of federal importance, autonomous regions and autonomous areas have its charter and legislation, Article 5 (2) of the Russian Constitution.
\textsuperscript{52} Article 21 of the Charter of the Murmansk region (УСТАВ МУРМАНСКОЙ ОБЛАСТИ) of 26 November 1997, as lastly amended on 14 June 2001 [translation by the author]
\textsuperscript{53} John B. Henriksen (2008), p. 8
\textsuperscript{54} Láilá Susanne Vars (2008), p. 69
Parliament has concluded that the question of special constitutional protection for the Sami should be reconsidered.\textsuperscript{55}

Chapter 2

Indigenous peoples and area protection

There are more than 370 million indigenous people in some 90 countries worldwide\textsuperscript{56}. They embody and nurture 80\% of the world's cultural and biological diversity, and occupy 20\% of the world's land surface.\textsuperscript{57} As regards the Arctic, depending on the definition of the boundaries to the region, it is home to some 4 million inhabitants. Roughly a third of this total population are indigenous peoples, spread over numerous communities around the Arctic\textsuperscript{58}. As a common trait, the indigenous proportion of different areas varies significantly, from the Inuit comprising 85\% of the population of Nunavut territory in Canada, to the Sami accounting for 2.5\% of the population in northern Scandinavia and the Kola Peninsula\textsuperscript{59}.

In contrast, on the basis of national returns, the United Nations Environment Programme’s World Conservation Monitoring Centre (UNEP-WCMC) has recently calculated that there are more than 102,000 protected areas throughout the world. Taken together, they cover more than 11.5\% of the terrestrial surface of the earth (though only 3.4\% of the entire surface, since there are relatively few marine protected areas).\textsuperscript{60} As regards the Arctic, almost 20\% of its land mass is judged to have protected area status in terms of IUCN categories.\textsuperscript{61}

\begin{itemize}
\item \textsuperscript{55} John B. Henriksen (2008), p. 8
\item \textsuperscript{58} Hugo Ahlenius (Editor-in-Chief), Katherine Johnsen, Christian Nelllemann (eds.) (2005), p. 14
\item \textsuperscript{59} Ibid., p. 14
\item \textsuperscript{60} Grazia Borrini-Feyerabend, Ashish Kothari and Gonzalo Oviedo (2004): “Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation”, Gland, Switzerland and Cambridge, UK: IUCN, p. 1
\item \textsuperscript{61} CAFF Habitat Conservation Report No. 11 (2004): “CPAN Country Update Report 2004”, November 2004, see Foreword of Kent Wohl, at that time Chair of the CAFF Working Group
\end{itemize}
Indigenous peoples and protected areas have much in common. As a matter of fact, “most protected areas in the world have people residing within them or dependent on them for their livelihoods, ...”.\(^{62}\) Additionally, “many of the areas that have been established as protected areas and many of those that are suitable for future addition to the protected area network are the homelands of indigenous peoples”.\(^{63}\) As regards the Arctic, it has to be stated that governments, when they began establishing protected areas in the region, often selected the same sites where indigenous peoples generally congregated because of their high biodiversity values and classified them as strict nature reserves or wildlife sanctuaries.\(^ {64}\) In this context, the question comes up what are the interests of indigenous peoples on the one hand, and those behind area protection and management on the other, and how they relate to each other.

### 2.1 Different perspectives – the exclusionary approach

First of all, indigenous people feel often irritated being confronted with western philosophy of 'conservation', or as expressed by Janis B. Alcorn: “... there is no direct translation for the word "conservation" in any non-European language. It is generally translated as "respecting Nature," "taking care of things," or "doing things right." Indigenous peoples [thus] often find the Western idea of "conservation" as something to be separated from the rest of their activities as strange.”\(^ {65}\)

Beside these irritations, the issue of nature protection for biodiversity and the material livelihoods of indigenous peoples are a **matter of tension**.

One reason for this, are the different philosophies/perspectives indigenous peoples and 'western societies' have on this matter. While indigenous relations to nature

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\(^{62}\) Grazia Borrini-Feyerabend, Ashish Kothari and Gonzalo Oviedo (2004), Introduction, p. xiv


\(^{64}\) CAFF Habitat Conservation Report No. 10 (2002): „Protected Areas of the Arctic: Conserving a Full Range of Values”, Ottawa, 2002, pp. 23, 24

are based on unity between use and protection, implying that human use is necessary for effective protection, western perspectives on area protection are characterized by a diverge between humankind and nature, or as expressed by Colchester: “The idea that humankind, or to be more accurate mankind, is apart from nature seems to be one that is deeply rooted in western civilization.”

**Indigenous world views** are characterized by their “holistic nature, which means that they cannot be easily compartmentalized into religious, economic, social, or other components”. This may also include a world view in subsistence, as contemporary illustrated by Gwich’in thinking:

“Subsistence, narrowly defined, means to survive. To the Gwich’in, it means far more. Besides our spiritual relationship with God, the Creator of all that is, subsistence is the essence of the Gwich’in Nation. It is how we are sustained physically. It serves to support us economically and spiritually and is a key to our sustainability as a people. We are fed by plants and animals of the water, air, and land. Wood provides warmth and housing and the raw materials for tools and transportation devices, such as boats, snowshoes, and toboggans [runnerless sleds widely used by Native Americans]. ... Gwich’in identity is a picture of integration with the land and resources. We see ourselves as an integral part of the diversity of the landscape. We believe that we would not be whole if we were separated from this land. We also believe that this land would not be whole without our presence. Our well-being is linked closely with our ability to live on and adapt with the land. Our family and land-based bonds are strengthened, restored, and invigorated as we continue our subsistence lifestyle.”

From this citation it becomes also clear that indigenous peoples value land, flora, and fauna not only “for their survival but, more significantly, incorporated an

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69 Craig L. Fleener, Gwich’in Council International in: Ibid., p. 58
intrinsic and spiritual value to nature. Nature was part of their cosmology and not something to be tamed.”

By contrast, **western perspectives** have to be seen in a colonial context where they were certainly affected by the thinking of early colonizers as described by Adams: “The idea that 'man' and nature were separate formed the world view of pioneers of imperial trade, and of the annexation of the tropics and the new worlds in Asia, the Americas and Australasia.” Moreover, “As the precursors of modern environmentalism took hold in the industrializing North towards the end of the 19th century, 'nature' came to be understood not purely as something distinct from society, but somehow in opposition to culture, the city and industry, to technology and human work. Nature was wild, unrestricted, magnificently unknown.”

The approach of excluding humankind from nature conservation was also taken when the first National Parks, the Yosemite State Park and the Yellowstone National Park, were established. In line with such an approach, Professor Bernard Grzimek, former president of the Frankfurt Zoological Society and director of the Frankfurt Zoo, who dominated conservation in the Serengeti like no one before, argued: “A National Park must remain a primordial wilderness to be effective. No men, not even native ones, should live inside its borders.”

Altogether, the exclusionary approach was widely established and as documented by Poirier and Ostergren “The literature demonstrates that native access to the resources of national parks throughout the world remains essentially prohibited.”

### 2.2 A shift in paradigm

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72 Ibid., p. 33

73 Marcus Colchester (2003), p. 3


75 Ibid., p. xvi; cited in: Marcus Colchester (2003), p. 3

With the intensification of human activities and the growing loss of biodiversity, on the one hand, and the increased awareness of indigenous peoples' rights in the international scenery, on the other hand, new relationships between indigenous peoples and stakeholders in area protection and management have emerged. Hence, to an increasing extent, the integration of indigenous peoples' rights into nature protection strategies has become a precondition for sustainability.

In this context, West and Brechin make an argument for bringing together protecting environmental integrity and biodiversity and, at the same time, protecting the rights of people who live in and around parks and reserves. In their view, “it is precisely the union of these two missions that is essential if both socioeconomic development and biological conservation are to become sustainable. Development for all people and all generations depends upon conservation. Likewise, the success of conservation itself depends upon how well its strategies serve people – especially those most directly affected by them, ...”  

In the same context, Cochran argues that “A new paradigm is emerging through which nature conservation and indigenous cultural survival are seen as intricately linked.” In a ground-breaking study by Stan Stevens, entitled ‘Conservation through Cultural Survival: Indigenous Peoples and Protected Areas’ a new alliance between indigenous peoples and conservationists is represented.

The study contains success stories about protected areas in which indigenous peoples not only continue to live but also are integrally involved in the management of regional natural resources and the protected areas themselves. As stated by Stevens: “Many indigenous peoples have contributed to maintaining biological diversity and ecosystems in their territories in two important ways; firstly, by leaving the natural resource base and biodiversity of their lands relatively intact, and secondly, by fighting outsiders' efforts to claim to their

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79 Stan Stevens (1997)
80 Ibid., p. 4
territory or economically exploit its natural resources.\textsuperscript{81} As further argued by Stevens, “Indigenous peoples can make significant contributions to the conservation of biodiversity in protected areas through their local knowledge, environmentally sensitive land use practices, and resource management – which are grounded in strongly held beliefs, values and conservation ethics and enforced through individual conscience, social pressure, and community-based resource management institutions- and commitments to defence of their territories and resources. At the same time, indigenous peoples can benefit in important ways from the establishment of new kinds of protected area partnerships in their homelands.”\textsuperscript{82}

Among others, he points out the following \textit{potential benefits to indigenous peoples from protected areas status} for their homelands:

- “a means to gain greater recognition of their legal status as distinct peoples or nations;
- a means to obtain legal recognition of their ownership of traditional private and communal lands, individual and community access to natural resources, and other control over their traditional territory;
- enhanced national and international visibility, including greater concern for their human rights and welfare, and about threats to their cultural survival and the environmental integrity of their homeland;
- increased national and international support for the defence of homelands against encroachments by non indigenous settlers and commercial interests;
- alternative avenues to development other than the commoditization of natural resources and labour that otherwise is common in once remote regions that become incorporated into the global economy;
- possible direct income from national governments for agreement to designate territory as a protected area;
- greater legal, logistical, and financial support for grass-roots conservation and development efforts;

\textsuperscript{81} Ibid., p. 2
\textsuperscript{82} Ibid., p. 265
control over access to sacred places, including the ability to declare them off-limits or to ban visitors during ceremonial activities;  
control over tourism development, including decisions about the nature and scale of tourism, access to tourist destinations, and the degree of outside entrepreneurial involvement;  
revenues from protected areas entrance fees and tourism operations licensing fees;  
preferential arrangements for employment in the protected area;  
employment and entrepreneurial opportunities from tourism development;  
rural development programs facilitated by the protected area itself or because of priority status for national and international development programs targeted at protected areas; and  
financial, political, and moral support for traditional conservation values, institutions, and leadership within indigenous communities”

Summarizing this new paradigm, it can be stated that “Indigenous peoples can make major contributions to environmental conservation and to protected area and management. At the same time, they often may find that protected areas for their lands can offer them substantial benefits without compromising their sovereignty, self-determination, cultural values, and conservation goals. The keys to this lie in the type of protected areas established, the specific kinds of protected area institutions and management practices that are implemented, sensitivity and good faith on all sides (and especially on the part of government and national and international NGO administrators, staff, and field personnel), and real recognition of indigenous peoples' land rights, customary tenure, resource management authority, and involvement in protected area planning and management.”

Due to this shift in paradigm, some progress has been made in recognizing ingenious peoples’ interests in the context of area protection and management. As observed by Poirier and Ostergren, who conducted a comparative research on

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83 Ibid, pp. 266, 267. Many of these possibilities, especially possibilities six and ten, have a chance to become realized only if indigenous peoples' rights to land and territories, as well as to the exploitation of resources become recognized by states. This matter will be discussed further below. However, at this point the relevance of the recognition of indigenous peoples’ rights in the context of area protection and management should be emphasized.

84 Ibid., p. 263
indigenous peoples’ rights in the context of protected area systems in Australia, the United States and Russia, “governments are recognizing indigenous peoples and passing more laws to protect their existence, resources, and traditional cultures. […] After several centuries of exploitation and eradication of indigenous populations, each of the three nations [Australia, the United States, and Russia] has approached protected area / indigenous peoples relationships in a manner unique to its domestic political environment. [...] The current trend in all three countries is moving toward recognition of the role humans have played in the natural landscape.”

However, further investigation is needed. Up to now, there is little research done on the interlinkages between indigenous peoples’ rights and the issue of area protection and management, especially from a legal point of view. Therefore, the following text will focus on the recognition (in the broader sense of implementation as stated above) of those rights in the environmental protection context, starting with an outline of the most important legal instruments in relation to area protection and management and looking how they are reflected and implemented in the human rights context.

Chapter 3

What are the most important indigenous peoples’ rights in relation to area protection and management?

In relation to area protection and management, indigenous peoples’ rights are of special importance. According to a ‘Briefing Note on Protected Areas and Indigenous Peoples’ Rights: ‘Applicable International Legal Obligations’ given by Fergus MacKay on behalf of the Forest Peoples Programme the following ‘international obligations’ are stressed in relation to protected areas: the obligation

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85 Robert Poirier and David Ostergren (2002), pp. 331-332
86 Fergus MacKay is a US-trained lawyer holding the degree of Doctor of Jurisprudence. He is an experienced human rights lawyer, specialising in the rights of Indigenous peoples in international law. He has practiced law in the United States and Canada, with an emphasis on Indigenous law. For five years, he was Legal Advisor to the World Council of Indigenous Peoples, based in Ottawa, Canada, and represented the WCIP at the United Nations, Organisation of American States and other international fora, as well as working on Indigenous issues in countries in the Americas, Asia and the Pacific.
to protect the right to self determination and the right to lands, territories and resources, to guarantee the principle of FPIC (which stands for ‘Free, Prior and Informed Consent’, and will be elaborated further below), to protect indigenous peoples against involuntary resettlement and to guarantee their right to restitution.\textsuperscript{87} As stated by MacKay at the end of his note, this emphasis “is not a comprehensive treatment of the issue and many more rights could be mentioned, particularly in relation to management regimes in protected areas”\textsuperscript{88}. Bearing that need for emphasis in mind, this study focuses mainly on the rights to self-determination and to land, territories and resources (LTR), both implying the procedural right to full and effective participation and the principle of free, prior and informed consent (FPIC), especially when it comes to lands and territories traditional owned by indigenous peoples.

Before exploring these rights and principles as a kind of measure and looking how they are recognized in the international human rights and environmental protection context, a brief overview of the main determinants and points of discussion of those rights will be given in the following.

3.1 Right to self-determination

First of all, there is no unanimously, generally accepted understanding of the right to self-determination. As already observed, “attempting to identify consistency in the application of self-determination is extraordinarily difficult. We must accept that in different situations self-determination has had different meanings”\textsuperscript{89}.

Historically regarded, the right to self-determination was for the first time proclaimed as a right of ‘all peoples’ by the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the UN General Assembly on 14 December 1960.\textsuperscript{90} At that time, “self-determination was viewed as a political claim, asserted to the ground of solidarity by all third world nations

\textsuperscript{87} Fergus MacKay (2000): Briefing Note: “Protected Areas and Indigenous Peoples' Rights: Applicable International Legal Obligations”, Forest Peoples Programme, pp. 1-2
\textsuperscript{88} Ibid., p. 3
\textsuperscript{90} Paragraph 2 of the UN General Assembly Resolution 1514
and supported by communist countries in order to expose the hypocrisy of Western world in its official discourse about equality and human rights.” 91. As indicated by the abstentions by all of the ten colonial powers, States were at that time far from agreeing on the existence of a true right of self-determination. 92

In 1966, the right to self-determination for all peoples was inserted in Article 1 of the two International Covenants on Human Rights93, followed by the UN Friendly Relations Declarations of 1970, where the principles of self-determination and equal rights of peoples were accepted by almost consensus among all the member states. 94

However, to date “most states have up until recently been reluctant to recognise the right to self-determination of indigenous peoples”95. This reluctance is mainly accompanied by governments’ concerns that recognizing a group’s right to self-determination may legitimate secession.96 At this point, it should be emphasised that there is disagreement as to whether international law establishes a positive right to secession in any manner at all.97 The right to secession “is only recognized in cases of military occupation and gross discrimination, including serious and repeated violations of human rights”98.

Furthermore, in theory, a distinction is often made between internal and external self-determination of the right to self-determination. Thereby, “… the internal aspect of the right to self-determination entails that a people shall have the right to make decisions in all matters relating to internal affairs which affect the way in

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92 Ibid., p. 1
93 On one of them, the International Covenant on Civil and Political Rights (ICCPR) will be looked at, when the respective human rights instrument will be explored in detail.
94 According to Christian Tomuschat: „Only South Africa raised objections against the right of resistance connected with the right of self-determination as well as against the paragraph which requires that a State possess a government representing the whole people“, see supra note 2 in Christian Tomuschat (1993), p. 2
95 Láilá Susanne Vars (2008), p. 63
96 Caroline E. Foster (2001), p. 145
98 Láilá Susanne Vars (2008), p. 74
which the people’s own societal life is developed and administered. This often includes all issues related to the economic, social and cultural aspects of society, such as the question of which social and health services are needed, which schools to have, the range of media available to the people, and how to develop these areas of society.” On the other hand, “The external dimension of the right to self-determination is, briefly put, the right for a people to determine its own relationship with the outside world.” However, the instruments adopted by the United Nations, establishing the right of self-determination, do not distinguish between its external and internal dimension; rather, this distinction has emerged by later invention of political talking and scholarly writing. As argued by Alfredsson, the addition of the internal aspect, intended to serve as a mere pacifier and as a way of avoiding external self-determination, might be misleading and may create false expectations because people are not going to get what they are bargaining for. Therefore, he pleads for a correct naming of the rights offered, instead of trying to advance their image by doubtful meaning.

Although the question whether indigenous peoples possess a right to self-determination is still disputed by states, the understanding of this right has doubtlessly developed through the practice of various UN bodies, the practice of the International Court of Justice (ICJ), by international law and other theory, as well as by pressure from indigenous peoples. In this context, the UN Declaration on the Rights of Indigenous Peoples should be emphasised as an important step in that direction. It states in its third article that

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99 Ibid., p. 65
100 Ibid., p. 65
102 Ibid., p. 53
103 Ibid., p. 54; Alfredsson argues in that way, because “the label 'internal self-determination' for autonomy and democracy does not in itself offer improvements while it can lead to disappointment. Political rights, political participation and autonomy certainly enhance equality for and dignity of indigenous peoples, but they fall short of granting the right of self-determination and the international law-makers are not willing to grant that right.”, see pp.53-54
“Indigenous peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.

Some scholars are going so far that this means “that the UN has now expressly recognized that indigenous peoples have the same right to self-determination as all other peoples.” Also the UN Development Group in its ‘Guidelines on Indigenous Peoples’ Issues’ from February 2008 states, with a reference to the Committee on the Elimination of Racial Discrimination’s General Recommendation Number 21, that “Indigenous peoples have the right to self-determination.” It further underlines that “the right to self-determination may be expressed through:

- Autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. In other cases, indigenous peoples seek the conditions for self-management.
- Respect for the principle of free, prior and informed consent. This principle implies that there is an absence of coercion, intimidation or manipulation, that consent has been sought sufficiently in advance of any authorization or commencement of activities, that respect is shown for time requirements of indigenous consultation/consensus processes and that full and understandable information on the likely impact is provided.
- Full and effective participation of indigenous peoples at every stage of any action that may affect them direct or indirectly. The participation of indigenous peoples may be through their traditional authorities or a representative organization. This participation may also take the form of co-management.

104 See, among others, Matthias Ahren and Láilá Susanne Vars in: John B. Henriksen (2008)
Consultation with the indigenous peoples concerned prior to any action that may affect them, direct or indirectly. Consultation ensures that their concerns and interests match the objectives of the activity or action that is planned.

– Formal recognition of indigenous peoples’ traditional institutions, internal justice and conflict-resolution systems, and ways of socio-political organization
– Recognition of the right of indigenous peoples to freely define and pursue their economic, social and cultural development.”

However, as stressed by Scott Forrest, a lack of shared understanding between key actors of what self-determination means and what constitutes an indigenous people remain, and thus the acceptance and internationalisation of indigenous self-determination at the international level seems to be unlikely in the very next future.

3.2 Rights to lands, territories and resources

As already mentioned, many protected areas worldwide are inhabited by indigenous peoples. These areas may encompass lands and territories traditionally owned by indigenous peoples. Therefore, their rights to lands, territories and resources play an essential role when a protected area is to be established in lands or territories that are traditionally owned or used by indigenous peoples.

Two aspects are important to emphasise when it comes to analysing indigenous peoples' rights to land, territories and resources.

First, we are again, similar to the striking differences between indigenous relations to nature and western perspectives on area protection, confronted with

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107 Ibid., p. 13
different perspectives. As expressed by E. Le Roy: “Whereas in civilian law rights of ownership are individual, cannot be forfeited or annulled and are absolute, exclusive and perpetual, in customary property law, land is non-movable property over which there are collective rights of ownership rendering it inalienable. Rights of ownership are temporary rights, limited and relative.”\textsuperscript{110} The collective component of ownership was addressed by the idea that “Land remained clan property for a long period. It was originally cultivated communally. Subsequently, cultivation and its fruits were temporarily divided between families.”\textsuperscript{111} In this historical context, group rights were not replaced by individual rights; instead, [...], there was coexistence between rights.”\textsuperscript{112} This means, in indigenous societies ownership existed in different forms in parallel: individually and collectively.

Furthermore, customary law of indigenous peoples is traditionally oral. It is expressed in various social practices of everyday life or through ideas underlying overall practices and activities. Customary rules are often activated in concrete situations without explanations or without references to existing 'laws'.\textsuperscript{113}

Secondly, indigenous peoples have a very special relationship to their land, territories and natural resources. As expressed by an Australian aboriginal person: “No English words are good enough to give a sense of the links between an Aboriginal group and its homeland. Our word 'home' ... does not match the Aboriginal word that may mean 'camp', 'hearth', 'country', 'everlasting home', 'totem place', 'life source', 'spirit centre', and much else. Our word 'land' is too spare and meagre. We can scarcely use it except with economic overtones unless we happen to be poets.”\textsuperscript{114}

This citation not only illustrates the strong relationship of indigenous peoples to their lands, but also indicates the different understanding of similar used terms

\textsuperscript{111} Ibid., p. 218
\textsuperscript{112} Ibid., pp. 218-219
like that of 'land'. For indigenous peoples, the relationship with the land and all the living things is often the core of their societies. In the view of José Martínez Cobo, it is essential to know and understand the deep and special relationship between indigenous peoples and their lands as basic to their existence as such and to all their beliefs, customs, traditions and culture. For indigenous peoples the land is not merely a possession and a means of production. Their land is not a commodity which can be acquired, but a material element to be enjoyed freely. As stressed by Henriksen: “It is difficult to separate the concept of indigenous peoples’ relationship with their lands, territories and natural resources from that of their cultural values and differences.”

Also in the UN context, this relationship is widely recognized, as for example, highlighted by José Antonio Ocampo, Under-Secretary-General for Economic and Social Affairs, in his opening statement to the Sixth Session of the Permanent Forum on Indigenous Issues on 14 May 2007, by stating that the United Nations had long recognized that indigenous peoples had a profound spiritual and material relationship with the land, on which they often depended both for their physical and cultural survival. Indigenous sacred sites, foundations of indigenous traditional knowledge, indigenous religions, languages and ways of life were all tied to land.

Both aspects have to be taken seriously into account in the context of area protection and management. MacKay points out that, as a rule, indigenous peoples' rights to land, territories and resources arise from their customary laws and tenure systems and are not dependent on national laws for their existence, and that this rule must be correctly applied to determine if a protected area in fact is within or affects a territory that is traditionally owned by indigenous peoples.

116 Study of the problem of discrimination against indigenous populations, UN document E/CN.4/Sub.2/1986/7/Add.4, paragraphs 196-197
117 John B. Henriksen (2006), p. 28
In practice, the application of this rule comes across with several problems. First of all, it is a question of incorporation of indigenous law into state law, since states, as stated above, use different practices. As pointed out by Levy, customary incorporation, on the one hand, characteristically yields legal rights to use traditional lands as they have traditionally been used; that is, it generates usufruct rather than proprietary rights; while common law incorporation, on the other hand, characteristically generates stronger property rights in the form of collective freehold ownership.\(^{120}\)

Moreover, Helander draws attention to a further phenomenon: She observes that “Sami customary law in contemporary society is influenced by historical contact with the surrounding states and their legal regimes and laws. This contact has created a situation in which conflicting interests emerge regarding the resources of the Sami area. Among the fjord Sami, there is a clear thought or re-created customary rule based on their unequal political situation and on their ecological knowledge, according to which they would like to manage their resources and areas. The status of the fjord Sami as a political minority has created a situation that has prompted an awareness of their unequal position. This inequity has imposed particular perception among them of the legal conceptions related to resource management.”\(^{121}\)

Finally, the problem of failed recognition of indigenous peoples' rights should be addressed in the context of land, territories and resources. Henriksen points out, although in the context of oil and gas activities, that the main difficulty is States' failure to recognize and respect indigenous peoples' use, occupancy and ownership of their traditional lands, territories and resources, and to accord them the necessary legal status and protection.\(^{122}\) Likewise, Orebech, in a case study on Sami fisheries customary law in Norway, states that, although at present local customary law fisheries have survived, they have not been recognized, and in practice Sami and small-scale fishermen are denied participation rights.\(^{123}\)

\(^{120}\) Jacob T. Levy (2000), p. 298


\(^{122}\) John B. Henriksen (2006), p. 29

\(^{123}\) David Callies, Peter Orebech and Hanne Petersen (2005): “Three case studies from Hawaii,
3.3 Right to Full and Effective Participation

Although a number of international and regional instruments require states to promote the right of the public to participation, few define it.\textsuperscript{124} Before considering the right to participation in the human rights and environmental protection context in more detail, a few general remarks should be stressed.

The Universal Declaration of Human Rights (UDHR)\textsuperscript{125}, according to its Article 21, paragraphs 1 and 2, protects the rights to take part in the government, directly or through freely chosen representatives, and that of equal access to the public service. It also comprises the right to vote, “even though more emphatically"\textsuperscript{126} by stating that the “will of the people shall be the basis of the authority of government” (Article 21 paragraph 3). The in freedoms of expression (Article 19), association (Article 20) and conscience (Article 18) contained the UDHR also imply, and facilitate, participation in politics and public policies.\textsuperscript{127}

Overarching these specific instances is the general right of self-determination\textsuperscript{128}. Although this is a collective right, every person is deemed under it to have certain political rights, particularly participation rights.\textsuperscript{129} As explicitly stated by the UN Development Group Guidelines on Indigenous Peoples Issues, already mentioned above, the right to self-determination may be also expressed “through full and effective participation of indigenous peoples at every stage of any action that may affect them direct or indirectly”\textsuperscript{130}. Moreover, full and effective participation of indigenous peoples in society on equal terms might be seen as “the core of the...
right to self-determination”.  

Apart from these implications, participation rights are not restricted to politics or administration. As the UDHR, Article 27, paragraph 1, further states:

“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”

However, criticism has been raised that the general principle of non-discrimination is not sufficient, as far as the exercise of political influence and participation is concerned. Although related to minorities, the respective demand for “special procedures, institutions and arrangements” in order to ensure effective participation likewise applies to indigenous peoples, since “indigenous peoples mostly comprise small minorities”.

In the context of area protection and management, IUCN/WCPA and WWF have recognized, among others, that “the rights of indigenous and other traditional peoples inhabiting protected areas must be respected by promoting and allowing full participation in co-management of resources”, and increasingly conservation policy places an emphasis on local participation in conservation measures (so called community-based conservation).

### 3.4 Principle of Free, Prior and Informed Consent (FPIC)

The principle of free, prior and informed consent has been recognized by a

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132 Yash Ghai (2003), p. 4

133 Ibid., p. 4


136 Anna Zachrisson (2009): “Commons Protected For or From the People: Co-Management in the Swedish Mountain Region?”, Department of Political Science, Research Report 2009:3, Umeå, Sweden: Print & Media, Umeå university, p. 11
number of intergovernmental organizations, international bodies, conventions and international human rights law; however, an internationally agreed definition or understanding is missing. 137
Nevertheless, “the FPIC is an established feature of international human rights norms and development policies pertaining to indigenous peoples” 138.

According to the indigenous peoples' understanding FPIC may be understood according to the following definitions:

“Free is defined as the absence of coercion and outside pressure, including monetary inducements (unless they are mutually agreed to as part of a settlement process), and “divide and conquer” tactics. It includes the absence of any threats or implied retaliation if the result of the decision is to say “no”.

Prior is defined as a process taking place with sufficient lead time to allow the information gathering and sharing process to take place, including translations into traditional languages and verbal dissemination as needed, according to the decision-making processes decided by the Indigenous Peoples in question. It must also take place without time pressure or time constraints. A plan or project must not begin before this process is fully completed and an agreement is reached.

Informed is defined as having all the relevant information available reflecting all views and positions. This includes the input of traditional elders, spiritual leaders, subsistence practitioners and traditional knowledge holders, with adequate time and resources to consider impartial and balanced information about potential risks and benefits, based on the “precautionary principle” regarding potential threats to health, environment or traditional means of subsistence.

Consent can be defined as the demonstration of clear and compelling agreement, using a mechanism to reach agreement which is in itself agreed to under the

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138 Ibid
principle of FPIC, in keeping with the decision-making structures and criteria of the Indigenous Peoples in question, including traditional consensus procedures. Agreements must be reached with the full and effective participation of the authorized leaders, representatives or decision-making institutions as decided by the Indigenous Peoples themselves.”

Most importantly, for indigenous peoples, the principle of FPIC “is a requirement, prerequisite and manifestation of the exercise of their fundamental right to self-determination”. It also recognizes the indigenous peoples' inherent and prior rights to their lands, territories and resources, respects their legitimate authority and requires processes that allow and support meaningful choices by indigenous peoples about their development path.

The principle of FPIC is especially relevant to area protection and management, since key areas of its application are, among others,

- “genetic resources and sacred sites,
- exploitation, development and use of natural resources,
- exploitation of biological resources for commercial purposes,
- displacement and relocation from protected areas and dams,
- new settlements in indigenous lands and territories, and
- developmental planning”.

In the past, practice, in particular that of extractive industries, was characterized by preponderant ignorance of the principle of FPIC. As noted by the UN Committee on Economic, Social and Cultural Rights “traditional lands of indigenous peoples have been reduced or occupied, without their consent, by timber, mining and oil companies, at the expense of the exercise of their culture

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140 Ibid., p. 2

141 Parshuram Tamang (2005)[without numbers of pages]

142 Ibid
and the equilibrium of the ecosystem”\textsuperscript{143}.

One further aspect of the principle of FPIC is important to emphasise at this point, namely that of the dependence of free prior and informed consent “on clear recognition and protection of indigenous peoples' rights, particularly to lands, territories and resources traditionally owned or otherwise occupied and used”\textsuperscript{144}. This is because of the specific nature of indigenous peoples’ property law, already mentioned above in the context of their rights to land, territories and resources. As observed by the Inter-American Commission on Human Rights (IACHR), “property rights of indigenous peoples are not defined exclusively by entitlements within a state's formal legal regime, but also include that indigenous communal property that arise from and is grounded in indigenous custom and tradition”\textsuperscript{145}. Due to this dependency of free prior and informed consent on clear recognition of indigenous peoples' rights, Colchester and MacKay rightly stress the importance of recognition by stating: “Without full recognition of indigenous peoples’ territorial rights, it [the principle of FPIC] will not provide the protection it is designed to provide.”\textsuperscript{146}.

\textbf{Chapter 4}

\textbf{Recognition of indigenous peoples' rights in the human rights context}

In the following, it will be explored how these rights of indigenous peoples, most important in relation to area protection and management, have emerged and are reflected in the international human rights context, using the example of the International Covenant on Civil and Political Rights (ICCPR). Beside this covenant, several other human rights instruments could be explored in order to get


\textsuperscript{145} Report No. 96/03, Maya Indigenous Communities and their Members (Case 12.053 (Belize)), 24 October 2003, para. 141 (footnotes omitted), cited by Colchester and MacKay (2004), p. 10

\textsuperscript{146} Marcus Colchester and Fergus MacKay (2004), p. 10
a more comprehensive picture of the recognition of indigenous peoples' rights in the context of area protection and management, in particular the ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, characterized as the most important legal recognition to date of the land and resource rights of indigenous peoples in international law\textsuperscript{147}, and the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007, as an instrument of obvious global significance\textsuperscript{148}. However, since the ICCPR is the only international human rights instrument binding each of the four states of interest here through their respective ratifications, emphasis will be drawn only on this specific treaty. After exploring the rights of indigenous peoples relevant in the context of area protection and management, an analysis of the national implementation of those rights in the four Arctic states will follow. In this connection, the account of national implementation will mainly focus on ICCPR-specific legislation in the relevant states as well as on the periodic state reports under Article 40 of the ICCPR to the Human Rights Committee, as the latter are also used as “a regular opportunity to draw attention to positive obligations not yet implemented or fully implemented by the state”\textsuperscript{149}.

4.1 International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights\textsuperscript{150} is a United Nations treaty based on the Universal Declaration of Human Rights, adopted on 16 December 1966 and entering into force on 23 March 1976. The Covenant contains two Optional Protocols. The first Optional Protocol, simultaneously adopted and entering into force with the ICCPR, establishes an individual complaint mechanism for the ICCPR whereby individuals or groups of individuals\textsuperscript{151} in member states can submit complaints, known as 'communications', to the Human Rights Committee (herein after: HRC). The HRC, established under Article 28 of


\textsuperscript{148} Ketil Fred Hansen and Nigel Bankes (2008), p. 291

\textsuperscript{149} Martin Scheinin (2000), p. 242


\textsuperscript{151} See Article 2 of the 1\textsuperscript{st} Optional Protocol to the ICCPR
the ICCPR, is the body authorized to observe state compliance with the rights set forth in the ICCPR. It examines state reports and addresses its concerns and recommendations to the State party in the form of Concluding Observations. The HRC is also authorized to reach and publish Decisions on the status of human rights violations alleged in the complaints. Furthermore, the HRC publishes its interpretation of the content of human rights provisions, in the form of General Comments on thematic issues. For arguing how the most relevant rights of indigenous peoples in relation to area protection and management are reflected in the ICCPR, all of the HRC’s instruments – Concluding Observation, Decisions and General Comments – will be referred to.

4.1.1 Right to self-determination

The right to self-determination, as a fundamental principle and a fundamental right under international law and as belonging to ‘all peoples’, is embodied in the ICCPR – similar to the correlative covenant, the International Covenant on Economic, Social and Cultural Rights – in Article 1, which states:

“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

152 Information: HRC “Monitoring Civil and Political Rights”, available at: http://www2.ohchr.org/english/bodies/hrc/
According to its *General Comment No. 12*, the HRC states that “the right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights”\(^{154}\).

Paragraph 1 of Article 1 of the ICCPR “proclaims the right to self-determination and its main dimensions: all peoples' right 'to freely determine their political status' (political dimension) and to pursue their 'economic, social and cultural development' (resource dimension).”\(^{155}\)

Paragraph 2 of Article 1 of the ICCPR is of specific relevance as regards area protection and management, since it “elaborates further the resource dimension of self-determination through proclaiming the right of all peoples to dispose of their natural wealth and resources. This clause and especially its last sentence according to which a people may not be deprived of its own means of subsistence has been relied in support of land rights by many groups that proclaim themselves as distinctive indigenous peoples in countries where other ethnic groups, typically of European descent, are in a dominant position.”\(^{156}\)

Paragraph 3 of Article 1 of the ICCPR relates to a further dimension of self-determination, namely the collective responsibility of States parties to promote the realization of self-determination elsewhere than within their own territory.\(^{157}\) This so-called ‘solidarity dimension’ is also illustrated by the *HRC General Comment No. 12* referring to the right of self-determination by stating that “Paragraph 3, [...] is particularly important in that it imposes specific obligations on States

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\(^{153}\) Article 1 of the ICCPR

\(^{154}\) CCPR General Comment No. 12: The right to self-determination of peoples (Article 1), Twenty-first session, 1984, paragraph 1


\(^{157}\) Ibid., p. 10
parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination.”

“The word ‘people’ is not defined in article 1 or elsewhere in the Covenant. Hence, the Covenant leaves room for different interpretations as to whether the whole population of a state party constitutes ‘a people’ in the meaning of article 1, or whether several distinct peoples exist in at least some of the States Parties to the Covenant.” With a reference to recent Concluding Observations on reports by countries with indigenous peoples, a growing number of authors sees therein a reflection of an understanding of the HRC that at least certain indigenous groups qualify as ‘peoples' under Article 1 of the ICCPR. At least, one could state, that through the Concluding Observations of the HRC, the interpretation of the right to self-determination has evolved, and its modes of expression have changed and adapted to new circumstances. However, the indigenous peoples' right to self-determination is still disputed (as stated above), and even if states in principle recognize this right, the gap between governmental rhetoric and the actual implementation of this right remains wide.

4.1.2 Rights to lands, territories and resources

Article 27 of the ICCPR states:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

158 CCPR General Comment No. 12: The right to self-determination of peoples (Article 1), Twenty-first session, 1984, paragraph 6 [emphasis added]
159 Martin Scheinin (2004), p. 10
161 John B. Henriksen (2006), p. 34
162 Ibid., p. 34
Although neither Article 1 nor Article 27 include any reference to 'indigenousness', much of the case law developed under Article 27 of the ICCPR has been related to claims by indigenous groups.\textsuperscript{163} This has been clarified as well by the HRC in its \textit{General Comment No. 23} by stating that Article 27 of the ICCPR also applies to “members of indigenous communities constituting a minority”.\textsuperscript{164} From this Comment it can be also assumed that, “in many if not all cases, indigenous peoples within a settler society will fall within the concept of a minority”\textsuperscript{165}.

Most importantly, Article 27 establishes \textit{protection for indigenous peoples’ rights to land, territories and resources} through its ‘cultural dimension’. While the text of Article 27 does not mention any rights to land, territories or natural resources explicitly, the HRC in its practice has given the Article a broad interpretation. So, for instance, it has stated in its \textit{General Comment 23}, already cited above, that the right of persons belonging to a minority to enjoy their own culture

\textit{“may consist in a way of life which is closely associated with territory and use of its resources”}\textsuperscript{166}.

Moreover, this broad understanding of the \textit{‘right to enjoy their own culture’} becomes in particular clear by a further paragraph in the same General Comment:

\textit{“With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples.” }\textsuperscript{167}

\textsuperscript{163} Martin Scheinin (2004), p. 4
\textsuperscript{164} HRC General Comment no. 23: The rights of minorities (Art. 27), UN document CCPR/C/21/Rev/Add.5, 8 April 1994, paragraph 3.2, available at: \url{http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7b12c2fb8bb21c12563ed004df111?OpenDocument}
\textsuperscript{165} Ketil Fred Hansen and Nigel Bankes (2008), p. 302
\textsuperscript{166} HRC General Comment no. 23: The rights of minorities (Art. 27), UN document CCPR/C/21/Rev/Add.5, 8 April 1994, paragraph 3.2
\textsuperscript{167} Ibid., paragraph 7
With a specific relevance to area protection related legislation, special attention should be drawn to the case Äärelä and Näkkäläjärvi v. Finland before the HRC.

In short, this case was submitted in December 1990 by three Sami persons alleging a violation of Article 27 due to logging and road building activities in areas used for reindeer herding. It was declared admissible in July 1991 under the name O. Sara v. Finland (Communication No. 431/1990). However, pursuant to Rule 93(4) of the HRC’s Rules of Procedure, Finland requested that the HRC review its decision on admissibility arguing, among others, that Article 27 had been incorporated into Finnish law, but had not be invoked before the courts by the authors. In March 1994, the HRC agreed and set aside its earlier finding of admissibility on the basis of failure to exhaust domestic remedies, namely failure to invoke and exhaust Article 27. The case was resubmitted to the HRC in November 1997 under the name Äärelä and Näkkäläjärvi v. Finland, after Finland’s Supreme Court had refused to review the decision of the Finland Court of Appeal ruling against the authors. Although the HRC, in its views in October 2001, declared that “it does not have sufficient information before it in order to be able to draw independent conclusions on the factual importance of the area to husbandry and the long-term impacts on the sustainability of husbandry, and the consequences under article 27 of the Covenant ... [and that it] ... is [therefore] unable to conclude that the logging of 92 hectares, in these circumstances, amounts to a failure on the part of the State party to properly protect the authors’ right to enjoy Sami culture, in violation of article 27 of the Covenant,” the case is of particular importance because of its implications on national legal instruments on area protection and management and their relevance to indigenous peoples' rights to culture under Article 27 ICCPR.

In its first decision on admissibility during its 42nd session in 1991, the HRC namely

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170 See paragraph 7.6 of CCPR-27, 779/1997 - Anni Äärelä and Mr. Jouni Näkkäläjärvi v. Finland
“observed that the continuation of road construction into it [the residual area] could be causally linked to the entry into force of the [Finnish] Wilderness Act [Act 42/1990\(^{171}\)]” and that for the purposes of admissibility “[…], the authors had sufficiently substantiated […] that this road construction could produce effects adverse to the enjoyment and practice of their rights under article 27.”\(^{172}\)

Thus, the HRC affirmed a causal link between the continuation of road construction and the entry into force of the Finnish Wilderness Act in 1991. Accordingly, it more or less followed the argumentation of the complainants “that the ratio legis of this Act is the notion and extension of State ownership to the wilderness areas of Finnish Lapland”\(^{173}\) instead of upgrading and enhancing the protection of the Sami culture as contended by the State party\(^{174}\). By using that argumentation, one could also induce that the HRC regards the establishment of so-called “environmental forestry areas” under the Wilderness Act – where logging activities are permitted – as a right of the competent state authority (in that case the Central Forestry Board, metsähallitus) to issue permits for logging activities that could finally interfere with Sami reindeer herding activities.

To conclude, the decision of admissibility indicates, firstly, that national legislation on area protection and management can be strongly connected with the exercise of indigenous peoples’ ways of life, and secondly, that exemption clauses contained in such national legislation and aiming at the permission of forestry and related activities could in principle interfere with indigenous peoples' rights to enjoy their own culture.

**4.1.3 The right to full and effective participation**

Still in relation to Article 27, the HRC has clarified in its *General Comment 23* that the protection of indigenous rights to land, territories and resources is strongly interlinked with the right of effective participation. Insofar it has stated that:

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\(^{171}\) On 16 November 1990, the Finnish Parliament passed bill 42/1990, called the Wilderness Act (erämaalaki), which entered into force on 1 February 1991.

\(^{172}\) See paragraph 5.4 of CCPR-27, 431/1990 - O. Sara et al. v. Finland

\(^{173}\) See paragraph 2.3 of CCPR-27, 431/1990 - O. Sara et al. v. Finland

\(^{174}\) See paragraph 4.5 of CCPR-27, 431/1990 - O. Sara et al. v. Finland
“The enjoyment of those rights [those under Article 27] may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”\textsuperscript{175}

This strong interrelationship has been further developed by the practice of the HRC in dealing with individual communications, as for example in the case Apirana Mahuika et al. v. New Zealand\textsuperscript{176}. There the HRC recalled its general comment on Article 27 and stated that

“especially in the case of indigenous peoples, the enjoyment of the right to one’s own culture may require positive legal measures of protection by a State party and measures to ensure the effective participation of members of minority communities in decisions which affect them. [...] In its case law under the Optional Protocol, the Committee has emphasised that the acceptability of measures that affect or interfere with the culturally significant economic activities of a minority depends on whether the members of the minority in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy.”\textsuperscript{177}

 Whereas Article 27 deals with participation in relation to land and resource rights, Article 25 of the ICCPR relates to \textit{participation in public affairs}. It is limited to citizens and does not presuppose a particular political tradition, but requires that governments are accountable.\textsuperscript{178} The HRC has elaborated this provision by stating that the:

“\textit{conduct of public affairs (...) is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”}\textsuperscript{179}

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\textsuperscript{175} HRC General Comment no. 23: The rights of minorities (Art. 27), UN document CCPR/C/21/Rev./Add.5, 8 April 1994, paragraph 7
\textsuperscript{176} CCPR/C/70/D/547/1993 - Apirana Mahuika et al. v. New Zealand, 15 November 2000
\textsuperscript{177} Ibid., paragraph 9.5
\textsuperscript{178} Patrick Thornberry (2002), p. 147
\textsuperscript{179} HRC General Comment no. 25: Participation in public affairs, voting rights and the right of
\end{flushright}
The limits of Article 25 for indigenous peoples were tested in the case *Mikmaq Tribal Society v Canada*, where the tribal society concerned claimed a violation of Article 25 because it was not invited to participate in a constitutional conference on the rights of Indians in Canada. The HRC observed that:

“Invariably, the conduct of public affairs affects the interests of large segments of the population or even the population as a whole, while in other instances it affects more directly interests of more specific groups of society. Although prior consultations (...) with the most interested groups may often be envisaged (...) Article 25 (a) of the Covenant cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of participation in public affairs.”

Thus, as pointed out by Thornberry, direct participation is not mandatory.

Criticism in a similar direction has been raised by Yash Ghai (already mentioned above), who stresses that “as far as the exercise of political influence and participation is concerned, the general principle of non-discrimination is not sufficient”. In his opinion, “participation covers many areas of life, and state and private sector organization, and involves a number of activities. These include taking part in national politics through participation in political parties, standing for elections and voting in them. Participation covers forms of enacting legislation, and may include vetoes by a group on specified matters. It encompasses other forms of influencing policies, through the media, lobbying, etc. It can cover mechanisms for consultation and negotiations.” He, therefore, further argues “in order to ensure effective participation, it is necessary that special procedures, institutions and arrangements be established through which members of minorities are able to make decisions, exercise legislative and
administrative powers, and develop their culture”\textsuperscript{185}.

### 4.1.4 Principle of Free, Prior and Informed Consent (FPIC)

Although the ICCPR does not refer explicitly to the principle of free, prior and informed consent (FPIC), neither in relation to peoples nor to minorities, the HRC however clarifies in its Concluding Observations to the fifth periodic report of the Government of Canada in April 2006 that States parties are obliged

“to seek the informed consent of indigenous peoples before adopting decisions affecting them”\textsuperscript{186}.

Although this observation of the HRC was actually related to the elimination of discrimination on the basis of religion in the funding of schools in Ontario, it is, however, also related to Article 27 (as this has been explicitly expressed by the HRC)\textsuperscript{187} and thus an recognized principle in the framework of the ICCPR.

To conclude this first part of chapter 4, it can be summarized that all of the identified indigenous peoples' rights and principles most relevant in the context of area protection and management are recognized by the ICCPR, either directly by its Articles 1, 25 and 27 or by the HRC General Comments and Concluding Observations.

### 4.2 Implementation of ICCPR indigenous peoples' rights in the context of area protection and management in national legislation

Basically, all of the four states of specific interest in this study have ratified the ICCPR\textsuperscript{188} and are parties to the 1\textsuperscript{st} Optional Protocol\textsuperscript{189}.

\textsuperscript{185} Ibid., p. 4
\textsuperscript{186} HRC Concluding Observations in relation to the fifth periodic report of Canada, UN Document CCPR/C/CAN/CO/5, 20 April 2006, paragraph 22
\textsuperscript{187} Ibid., paragraph 22
\textsuperscript{188} ICCPR: signed by Finland on 11 Oct 1967 and ratified on 19 Aug 1975; signed by Norway on 20 Mar 1968 and ratified on 13 Sep 1972; signed by the Russian Federation on 18 Mar 1968 and ratified on 16 Oct 1973; and signed by Sweden on 29 Sep 1967 and ratified on 6 Dec 1971. See the status of ratification at:
In the following it will be looked how they have implemented those rights and principles most relevant in the context of area protection and management into their national legal systems. This investigation is primarily based on the periodic national reports, to the submission of which parties to the ICCPR are obliged under Article 40 (1), and on the related Concluding Observations of the HRC, based on Article 40 (5) of the ICCPR.

4.2.1 Finland

In Finland, the ICCPR has been incorporated into domestic law through an act of Parliament\(^{190}\), the Act on the Sami Parliament\(^{191}\), adopted in 1995. According to Section 1, “The purpose of this Act is to guarantee the Sami as an indigenous people cultural autonomy in respect to their language and culture.” According to Section 5 of this Act, the Sami Parliament has the general power “to look after the Sami language and culture, as well as to take care of matters relating to their status as an indigenous people.”

Although the Sami in Finland, compared with Sweden and Norway, have the strongest statutory rights, from a practical point of view, these formal rights have not been converted into practical political action to any particular extent\(^{192}\). The most urgent questions concerning the Sami are the issues of their land and language rights as well as questions and concerns about the status of the Sami in general.\(^{193}\)

\(^{189}\) Finland signed the 1\(^{st}\) Optional Protocol on 11 Dec 1967 and ratified it on 19 Aug 1975; Norway signed and ratified the 1\(^{st}\) Optional Protocol the same date as the ICCPR; the Russian Federation acceded to the 1\(^{st}\) Optional Protocol on 1 Oct 1991, and Sweden signed and ratified it on the same date as the ICCPR. See the status of ratification at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en)

\(^{190}\) Martin Scheinin (2000), p. 230


The HRC has at different occasions expressed its concern in relation to the implementation of these rights. In its Concluding Observations/Comments in 2004, in particular in relation to Article 1 of the ICCPR, the HRC “regrets that it has not received a clear answer concerning the rights of the Sami as an indigenous people (Constitution, sect. 17, subsect. 3), in the light of Article 1 of the Covenant.”\(^{194}\)

**In relation to Article 27 of the ICCPR, the HRC** "reiterates its concern over the failure to settle the question of Sami rights to land ownership and the various public and private uses of land that affect the Sami's traditional means of subsistence - in particular reindeer breeding - thus endangering their traditional culture and way of life, and hence their identity."\(^{195}\)

A solution for this issue has been sought for years through legislation without success so far.\(^{196}\) In autumn 2005, the Ministry of Justice, together with the Sami Parliament, launched an initiative to draw up a government proposal aiming at a balanced legislative solution to the issue.\(^{197}\) In parallel, a study on land ownership conducted by the joint study group of the University of Oulu and the University of Lapland was completed in October 2006. This study went into the habitation and population history as well as land use and ownership in the former areas of Kemi Lapland and Tornio Lapland from the mid 18\(^{th}\) to the beginning of the 20\(^{th}\) century.\(^{198}\) However, due to the different bases of the land ownership study and that of the legislative proposal prepared by the Ministry of Justice (an university study vs. a governmental policy paper), the latter has come to the conclusion that

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\(^{194}\) HRC Concluding Observations in relation to the fifth periodic report of Finland; UN document CCPR/CO/82/FIN, 2 December 2004, paragraph 17

\(^{195}\) Ibid., paragraph 17

\(^{196}\) Replies by the Government of Finland to the List of Issues to be taken up in connection with the consideration of the fifth periodic report of Finland concerning the rights referred to in Articles 1-15 of the ICESCR (E/C.12/FIN/5); UN document: E/C.12/FIN/Q/5/Add.1, 11 April 2007, paragraph 21

\(^{197}\) Ibid., paragraphs 21-22; In this context, the task of the new Government to be formed after the Parliamentary elections of March 2007, was to make decisions on necessary measures to be taken to solve the Sámi land ownership issue. See paragraph 28

\(^{198}\) Ibid., paragraph 24
the new study results will not affect the processing of the legislative proposal.199

Although the sixth periodic report of Finland to the HRC is still outstanding200, in particular the land rights issue seems to be still unsolved. The Committee on the Elimination of Racial Discrimination (CERD)201, in particular, in its Concluding Observations from March 2009, expressed its concerns “about the limited progress achieved in resolving Sami rights issues”202, and observed in conclusion:

“The Committee draws once again the State party’s attention to General Recommendation No. 23 (1997) on the rights of indigenous peoples which, inter alia, calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources. The Committee renews its appeal to the State party to find an adequate settlement of the land dispute together with the Sami people and its recommendations that it adheres to ILO Convention No. 169 as soon as possible. It recommends that the State party take effective measures to ensure that the so-called study on land rights in Upper Lapland result in concrete action, including the adoption of new legislation, in consultation with the communities affected. The State party is also encouraged to continue negotiations with relevant Ministries and the Sami Parliament on the establishment of a new preparatory body in charge of reaching a solution for the land use right issue in the Sami Homeland.”

4.2.2 Norway

The ICCPR has been formally incorporated into Norwegian law through the Human Rights Act of 1999.203 With this act, Norway has also decided to give this

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199 Ibid., paragraph 28
200 According to the Reporting Status under the ICCPR, Finland’s sixth periodic report to the HRC has been indicated by the 1\textsuperscript{st} of November 2009; see: [http://www.untchr.ch/tbs/doc.nsf/New/hvVAll/SPRByCountry?OpenView&Start=1&Count=25\&Expand=61.2\#61.2](http://www.untchr.ch/tbs/doc.nsf/New/hvVAll/SPRByCountry?OpenView&Start=1&Count=25\&Expand=61.2\#61.2), accessed 08.02.2010
201 The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.
202 CERD Concluding Observations related to the seventeenth, eighteenth and nineteenth periodic reports of Finland; UN document: CERD/C/FIN/CO/19, 5 March 2009, paragraph 14
203 Section 2, subsection 3 of the Human Rights Act (1999), an unofficial translated version is
covenant formally precedence over internal Norwegian law\textsuperscript{204}, which means that in the event of conflict with other Norwegian law, the provisions of the ICCPR shall prevail over other Norwegian statutory provisions.\textsuperscript{205}

However, \textit{as far as Article 1 of the ICCPR is concerned}, the HRC raised concerns in relation to the fourth periodic report of Norway (1999), in which it emphasized the resource dimension of the right to self-determination: “As the Government and Parliament of Norway have addressed the situation of the Sami in the framework of the right to self-determination, the Committee expects Norway to report on the [indigenous] Sami people's right to self-determination under Article 1 of the Covenant, including paragraph 2 of that article.”\textsuperscript{206}

In its fifth periodic report, Norway (2004) referred to current “consultations with the Samiing [the Sami Parliament] with a view to reaching a common understanding on [the issue how to apply the concept of self-determination to the Sami people]. One of the topics that should be discussed is the establishment of procedures on how to consult the Samiing or, where appropriate, Sami interests in dealing with Sami issues.”\textsuperscript{207} As to the status of the Sami people, Norway stated that “The basis of the Government’s policies towards the Sami people is that the Norwegian State was originally established on the territory of two peoples: the Norwegians and the Sami. They both have the same right to maintain and develop their language and their culture. The aim of the Government’s policies is thus not to give the Sami a special position, but to reverse the negative effects of the previous policy of Norwegianising Sami culture.”\textsuperscript{208}

\begin{footnotesize}
\begin{itemize}
\item available at: \url{http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=NOR&p_classification=01.05&p_origin=SUBJECT}
\item See Section 3 of the Human Rights Act
\item Before the 1999 Human Rights Act had been introduced in Norway, Norwegian judiciary applied a presumption to the effect that domestic laws are assumed to comply with the international obligations of the state, and will thus strive to interpret domestic laws consistently with this understanding, see Ketil Fred Hansen and Nigel Bankes (2008), p. 293. However, as stated by Scheinin (2000), Norwegian Supreme Courts have also “shown their capability and willingness to give human rights treaty provisions priority in relation to domestic law”, even before formal incorporation took place. Martin Scheini (2000), p. 232
\item UN document: CCPR/C/79/Add. 112, 1 November 1999, paragraph 17, cited by John B. Henriksen (2006), p. 34
\item Norway’s fifth periodic report to the HRC, UN document CCPR/C/NOR/2004/5, 3 December 2004, paragraph 4
\item Ibid., paragraph 238
\end{itemize}
\end{footnotesize}
Thereupon, in January 2006 the HRC requested Norway to “provide further information on the outcome of the working group established to prepare a proposal on how to increase parliamentary decision-making power of the Sameting in areas affecting the Sami population in Norway”\textsuperscript{209}.

Norway replied to this request in March 2006 comprehensively by highlighting an agreement between the Minister of Local Government and Regional Development and the President of the Sameting of 11 May 2005 which sets out “Procedures for consultation between central government authorities and the Sameting”.\textsuperscript{210} According to the Norwegian reply, the agreement aimed “to:

- Ensure implementation of the Central Government’s obligations under international law to consult indigenous peoples.
- Facilitate agreement between government authorities and the Sameting whenever consideration is being given on issues concerning the implementation of legislation or measures that may directly affect Sami interests.
- Promote the development of a partnership perspective between central government authorities and the Sameting that strengthens Sami culture and society.
- Develop joint understanding of the situation and developmental needs of the Sami community.”\textsuperscript{211}

\textit{In relation to Article 27 of the ICCPR}, the HRC in its Concluding Observations on Norway’s fourth periodic report (1999) remained concerned “that while legislative reform work in the field of Sami land and resource rights is in progress,

\textsuperscript{209} HRC List of issues to be considered during the examination of the fifth periodic report of Norway, UN document CCPR/C/NOR/Q/5, 31 January 2006, paragraph 1


\textsuperscript{211} Replies by the Government of Norway to the List of Issues (CCPR/C/NOR/Q/5) to be considered in connection with examination of the fifth periodic report of Norway (CCPR/C/NOR/2004/5), UN document CCPR/C/NOR/Q/5/Add., 18 March 2006, paragraph 1

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traditional Sami means of livelihood, falling under article 27 of the Covenant, do not appear to enjoy full protection in relation to various forms of competing public and private uses of land. Lawsuits by private landowners leading to judicial prohibition of reindeer herding and high legal costs for the Sami are a particular concern in the absence of satisfactory legal aid.\textsuperscript{212}

In its fifth periodic report, Norway replied to this concern by referring to the then proposed Finnmark Act, relating to legal relations and management of land and natural resources in the county of Finnmark.\textsuperscript{213} Among others, the bill proposed the establishment of a new independent body to which shall be transferred the right of ownership of the land that currently lies with the State, called the “Finnmark Estate”.\textsuperscript{214} This body would be a legal entity independent from the central government, which would have no authority to instruct or control its activities.\textsuperscript{215} As regards established rights, Section 5 of the proposed Act would clarify that those rights shall be respected and that the Act would not interfere with such rights.\textsuperscript{216} Furthermore, the proposed Act would provide for joint management without making distinctions on the basis of ethnicity and with equal representation of indigenous peoples and the remainder of the population.\textsuperscript{217}

In a report, prepared on a request of the Standing Committee on Justice by two law professors at the University of Oslo, Professor Hans Petter Graver and Professor Geir Ulfstein, in 2003, the relationship between the proposed Finnmark Act and Articles 1 and 27 of the ICCPR has been explained as follows:

“Individuals and groups of individuals whose interests are affected must […] have rights as a party to cases where Finnmark Estate makes decisions on the management and utilisation of the Estate’s land. This follows from the International Covenant on Civil and Political Rights, Article 27.

“Apart from the requirement as to rights as a party, we have no significant objections to the law proposal with a basis in the International Covenant on Civil

\textsuperscript{212} HRC Concluding Observations to Norway's fourth periodic report; UN document: CCPR/C/79/Add. 112, 1 November 1999, paragraph 16
\textsuperscript{213} Norway's fifth periodic report to the HRC, UN document CCPR/C/NOR/2004/5, 3 December 2004, paragraph 251
\textsuperscript{214} Ibid., paragraph 252
\textsuperscript{215} Ibid., paragraph 253
\textsuperscript{216} Ibid., paragraph 254
\textsuperscript{217} Ibid., paragraph 255
However, the Norwegian Government did not concur with the study’s conclusions as regards Article 27 of the ICCPR, because in its opinion “It is not possible to see that Article 27 of the International Covenant on Civil and Political Rights provides further guidance on how the protection of land rights should be implemented. If the provision requires effective protection of individual rights necessary for maintenance of specific ways of life and the economic base, it is not possible to deduce specific requirements regarding the models to be selected for resolving issues concerning land rights.”

Here again, the modalities of implementation, from the point of view of the Norwegian government, are not covered by Article 27, and concretion and determination of land rights remain issues in the competency of the state.

The Finnmark Act was adopted on 17 June 2005.

Responding to criticism regarding this legislation, among others from the Norwegian Sami Parliament, the HRC requested Norway in relation to Article 27 of the ICCPR “to provide comments on the following alleged deficiencies of the Finnmark Act:

- Breach of the 1981 agreement between the Government and Sami organizations;
- Non-recognition of the Sami peoples’ right to land and resources as compared to the non-Sami population in the region;
- Expansion of the rights of non-Sami people to use Sami territory;
- Persistence of the right to expropriate land on Sami territory for public purposes without compensation;
- Absence of identification of areas where Sami have the right to ownership and possession in accordance with international law.”

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218 Ibid., paragraphs 262-263
219 Ibid., paragraph 264
221 HRC List of issues to be considered during the examination of the fifth periodic report of
Norway replied to this list of issues in March 2006 by commenting on all the questions addressed by the HRC previously.\textsuperscript{222} Among its statements, one should be emphasised because of its particular importance to area protection and management: In question (d) the HRC requested Norway to provide comments on the persistence of the right to expropriate land on Sami territory for public purposes without compensation.\textsuperscript{223} Norway replied as follows:

“Section 19 of the Act states that areas owned by the Finnmark Estate may be designated as national parks. Such a designation entails the prohibition of certain types of activity in the areas to which the decision applies. When deciding regulations for the use of the park, importance is attached to continued traditional use. Both the Finnmark Estate and those having usufructuary rights which are affected by the decision may claim compensation for their economic losses.”\textsuperscript{224}

Although a provision for compensation is thus covered by the Finnmark Act, problems might arise nevertheless, for example, if traditional use is 'discontinued', or when it comes to the definition of 'traditional use'. The same applies to the principal limitation of a possible compensation to 'economic' losses only.

Furthermore, criticism has been raised as regards the ‘neutrality’ of the Finnmark Act in its ”ethnically neutral way by offering protection to all traditional use rights based on prescription and immemorial usage”,\textsuperscript{225} and Sami representatives have pointed out that “the rights of use and ownership in Finnmark must still be
discussed and clarified further”\textsuperscript{226}.

the end, however, the Finnmark Act has to be seen as an important step “to give the population in Finnmark greater influence in the administration of the property in the county”\textsuperscript{227}, and it was accordingly welcomed by the HRC in its Concluding Observations of April 2006 as an act “in furtherance of articles 1 and 27 of the Covenant”\textsuperscript{228}.

\textbf{4.2.3 Russian Federation}

In distinction to Finland, Norway and Sweden, Russia follows a monist approach in which both international customary law and treaties to which Russia is a party are automatically a part of the legal system.\textsuperscript{229} This means that the ICCPR, and here in particular Articles 1 and 27 are automatically part of the Russian legal system and have – at least from a theoretical point of view – direct legal effects.

Moreover, in the last decade three federal laws\textsuperscript{230} were adopted constituting the legal framework concerning indigenous peoples\textsuperscript{231,232}:

The first law “\textit{On the Guarantees of the Rights of Numerically Small


\textsuperscript{227} Ibid

\textsuperscript{228} HRC Concluding Observations to Norways fifth periodic report, UN document: CCPR/C/NOR/CO/5, 25 April 2006, paragraph 5

\textsuperscript{229} Ketil Fred Hansen and Nigel Bankes (2008), p. 293

\textsuperscript{230} “Legislation at the federal and regional level is subject to the constitutional provisions of the Russian Federation.” see Eva Josefsen (2007), p. 13


\textsuperscript{232} In the Russian system, a distinction is made between the “numerically small peoples of the North, Siberia, and Far East” and the other indigenous groups living within the Russian Federation. The previous, namely sixty-five communities each comprising less than 50.000 persons, are subject to special legislation. See, among others, Xanthaki, Alexandra (2004): “Indigenous Rights in the Russian Federation: The Rights Case of Numerically Small Peoples of the Russian North, Siberia, and Far East”, Human Rights Quarterly, vol. 26, no. 1, p. 75. Against this background, the term “indigenous peoples” in the Russian context primarily focuses on \textit{numerically small indigenous peoples}, while this does not mean that other indigenous peoples living in the Russian Federation are not covered by relevant legislation.
Indigenous Peoples of the Russian Federation” (hereinafter: Indigenous Rights Law), adopted by President Yeltsin on 30 April 1999, proclaims indigenous rights in a very broad sense. The law, among other things, acknowledges both individual and collective rights, clarifies areas of indigenous participatory rights and of the right to self-determination.

In particular indigenous peoples, according to this law, have the right to

- “own and use, free of charge, various categories of land required for supporting their traditional economic systems and crafts, as well as common mineral resources in accordance with the procedure established by the federal legislation and legislation of subjects of the Russian Federation”,
- “receive from bodies of state power of the Russian Federation, bodies of state power of subjects of the Russian Federation, bodies of local-government, [...] material and financial resources required for [their] social, economic and cultural development [...], protection of their original habitats, traditional ways of life, economic systems and crafts”,
- “be compensated for damages sustained as a result of harmful effects of economic activities of organisations of any ownership status and individuals on [their] original habitats [...],”
- “create territorial public self-government bodies”, and to
- “set up voluntary communities [...] for the purposes of social, economic and cultural development [...], protecting their original habitats, traditional ways of life, economic systems and crafts”.

According to Article 13, “laws of subjects of the Russian Federation may set representation quotas for [indigenous peoples] within legislative (representative)"
bodies of subjects of the Russian Federation and representative bodies of local self-government”241.

In 2000, the law “On the General Principles of the Organisation of the Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation”242 was adopted. According to Article 1, this law regulates the legal formation and activity of local indigenous communities, referred to as obshchiny, created for the purposes of protecting their unique habitats, preserving and developing their traditional way of life, economic systems, crafts and culture243. Although it has more practical ramifications than the 1999 law, it is also not of great economic importance.244

The third law “On the Territories of Traditional Nature Use of the Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation”245, adopted in 2001, would have – if implemented - by far the greatest potential impact on indigenous peoples, since it is envisioned as being the main mechanism for protecting both the land itself from environmental degradation and indigenous people’s access to the land that they depend on.246 The primary goals of this law include the protection of the habitat and traditional lifestyles of minority peoples, the preservation and development of original indigenous culture and the conservation of biodiversity within territories of traditional nature use.247 Although implemented at the regional level, the law has never been implemented at the federal level.248

As demonstrated above, these recent legislative activities by the Russian Federation attest an increased state awareness of the rights of indigenous peoples,

241 Article 13 of the Indigenous Rights Law
242 “Ob obshikh printsipakh organizatsii obshin korennykh malochislennykh narodov Severa, Sibiri i Dal’nego Vostoka Rossiyskiy Federatsii”, signed by President Putin on 20 July 2000
243 Anna Degteva (2006), p. 36
244 Anna Degteva (2006), p. 36
245 “O territoriiakh traditsionnogo prirodopol’zovaniya korennykh malochislennykh narodov Severa, Sibiri i Dal’nego Vostoka Rossiyskoy Federatsii”, signed by President Putin on 7 May 2001
246 Anna Degteva (2006), p. 36
248 Anna Degteva (2002), p. 37
especially by the turn of the millennium.\textsuperscript{249} However, from a point of effectiveness, these laws have not yet had the expected positive impact on the lives of Russian indigenous peoples.\textsuperscript{250} The main problem in this context seems to be a significant lack of implementation. As noted by the Minority Rights Group International, “the lack of implementation at the practical level has limited the potential benefits to the numerically small peoples supposedly the beneficiaries of these laws. By 2004 no federal funding had been allocated for the realization of indigenous rights and federal laws had not been backed up by national, regional or local enforcement laws or mechanisms. The small peoples of Siberia, the North and the Far East continue to confront serious problems of discrimination, land use and ownership and environmental damage caused by the activities of Russian and multinational enterprises exploiting oil, timber, coal, mineral and gas reserves in the region.”\textsuperscript{251}

In the absence of any relevant statements in the last periodic reports of the Russian Federation in the framework of the ICCPR, the recent Concluding Observations of the Committee on the Elimination of Racial Discrimination in relation to the eighteenth and nineteenth periodic reports of the Russian Federation from August 2008\textsuperscript{252} shall be mentioned.

As regards positive measures ensuring indigenous peoples’ social, economic and cultural needs for development and protecting their traditional ways of live, expressively included in Article 8 paragraph 4 of the Indigenous Rights Law of 1999, the federal government launched a specific programme for the economic and social development of the small indigenous peoples until 2011.\textsuperscript{253} This programme, unfortunately, was developed by people with little experience of the


\textsuperscript{250} Ibid., p. 79


\textsuperscript{252} CERD Concluding Observations in relation to the eighteenth and nineteenth periodic reports of the Russian Federation; UN document CERD/C/RUS/CO/19, 20 August 2008

problems of the indigenous peoples of the North, Siberia and the Far East. Further weaknesses of the programme have been described as not targeting the development of indigenous peoples of the North but the areas in which they live, as well as the fact that federal funding, allocated by the programme, did not always reach indigenous peoples. CERD in its recent Concluding Observations expressed its concerns about the ineffective implementation of that programme and about the lack of information on its concrete results. Accordingly it recommended that Russia should further intensify its efforts to effectively implement the federal target programme for the economic and social development of small indigenous peoples.

As regards participatory rights of indigenous peoples, the Indigenous Rights Law of 1999 contained specific provisions for representation quotas for indigenous peoples within legislative regional and local bodies, already mentioned above. However, in practice, neither such a quota system, nor permanent seats for indigenous peoples evolved, and as stated by the Russian Association of Indigenous Peoples of the North (RAIPON), “there is an overwhelming absence of an indigenous “voice” in the main legislative bodies in all levels”. Moreover, in its recent Concluding Observations, the CERD noted with concern that none of the small indigenous peoples of Russia are represented in the State Duma of the Federal Assembly and that precisely those provisions envisaging quotas for indigenous peoples in the legislative bodies were abrogated in 2004. Accordingly, the committee recommended to introduce “guaranteed seats or mandatory quotas to ensure that the small indigenous peoples of the North, Siberia and the Russian Far East are represented in the legislative bodies, as well as in the executive branch and in public service, at the regional and federal levels,

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255 Ibid., p. 246
256 CERD Concluding Observations in relation to the eighteenth and nineteenth periodic reports of the Russian Federation; UN document CERD/C/RUS/CO/19, 20 August 2008, paragraph 15
257 Ibid., paragraph 15
258 Ibid., paragraph 15
259 Statement of Russian Association of Indigenous Peoples of the North (RAIPON) in the IV Arctic Parliamentarians Meeting, Rovaniemi, 28 August 2000, cited by Alexandra Xanthaki (2004), supra note 82, p. 86
260 CERD Concluding Observations in relation to the eighteenth and nineteenth periodic reports of the Russian Federation; UN document CERD/C/RUS/CO/19, 20 August 2008, paragraph 20
and ensure their effective participation in any decision-making processes affecting their rights and legitimate interests.”

In relation to indigenous peoples' rights to lands, territories and resources, the CERD in its recent Concluding Observations also noted a lacking implementation of the federal law “On the Territories of Traditional Nature Use of the Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation” and urged the Russian Federation to take effective measures to implement it. In this context the committee noted “with concern that recent changes to federal legislation regulating the use of land, forests and water bodies, in particular the revised Land (2001) and Forest (2006) Codes and the new Water Code, deprive indigenous peoples of their right to preferred, free and non-competitive access to land, fauna and biological as well as aquatic resources”.

The committee thus recommended to “reinsert the concept of free-of-charge use of land by indigenous peoples into the revised Land Code and the Law on Territories of Traditional Nature Use [...], and the concept of preferential, non-competitive access to natural resources into the Forest and Water Codes”. In the same context, it urged the Russian Federation to “seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licences to private companies for economic activities on territories traditionally occupied or used by those communities [as well as to] ensure that licensing agreements provide for adequate compensation of the affected communities”.

At the regional level of the Murmansk region, a law on “State Support for the Indigenous peoples of the North in the Murmansk region to pursue their traditional economic activities and traditional occupations” (hereinafter: Law 267)...

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261 Ibid., paragraph 20
262 Ibid., paragraph 24
263 Ibid., paragraph 24
264 Also contained in Article 8 (1) 1 of the Indigenous Rights Law of 1999, see supra note 233
265 Ibid., paragraph 24
266 Ibid., paragraph 24
267 "ЗАКОН, МУРМАНСКОЙ ОБЛАСТИ: О ГОСУДАРСТВЕННОЙ ПОДДЕРЖКЕ КОРЕННЫХ МАЛОЧИСЛЕННЫХ НАРОДОВ СЕВЕРА В МУРМАНСКОЙ ОБЛАСТИ, ОСУЩЕСТВЛЯЮЩИХ ТРАДИЦИОННЫЕ ВИДЫ ХОЗЯЙСТВЕННОЙ ДЕЯТЕЛЬНОСТИ И ТРАДИЦИОННЫЕ ПРОМЫСЛЫ, 24 June 2008, A Russian language version is available at: http://209.85.129.132/search?q=cache:X8hXMsOICkAJ:m injust.gov-
on State Support) has been adopted on 24 June 2008. This law, in particular, provides concrete measures of state support for indigenous peoples of the North in the Murmansk region (of whom the Sami are recognized to be a part). These measures include, among others, financial support to ensure maintenance of traditional economic activities; the establishment of territories of traditional nature of small peoples in the territory of the Murmansk region (in accordance with the federal law “On the Territories of Traditional Nature Use of the Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation” of 2001); and the organization of professional training of personnel for branches of traditional economic activities.268

Recently, a specific Council of Representatives of Indigenous Peoples of the North under the Government of the Murmansk region has been established on 11 February 2009.269 This Council, importantly, is a collegial advisory body to the Government of the Murmansk region created in order to protect the legitimate rights and interests of Indigenous Peoples of the North in the Murmansk region, i.e. the Sami.270 Its main objective is the involvement of Sami people in the preparation and adoption of regional state policy regarding the protection of native habitats and traditional lifestyles.271 The Council consists of representatives of the Sami communities and of representatives of the Government of the Murmansk region and the Public Chamber of the Murmansk region respectively.272 As an advisory body to the Murmansk Government, it has the authority to

- make decisions of advisory nature within its competency;
- take part in meetings of the officials of the executive bodies of state authority and local self-government of the Murmansk region, as well as in meetings of representatives of public associations, academic and other organizations (as agreed);

268 See Article 4 of that Law on State Support
270 Ibid., see paragraph 1.1 of the Decision [translation by the author]
271 Ibid., see paragraph 2.1 of the Decision [translation by the author]
272 Ibid., see paragraph 4.1 of the Decision [translation by the author]
send its members to participate in the executive bodies of state authority and local self-government of the Murmansk region, as well as in those of other organizations, including interregional and international ones, in their consideration of issues relating to the jurisdiction of the Board (as agreed);

send requests and appeals to state authorities, local governments and other organizations;

make formal applications, findings and comments on matters within its competency;

attend and speak at meetings of the Government of the Murmansk region in addressing issues affecting the rights and legitimate interests of the Sami;

make offers to the Government of the Murmansk region to prepare the meeting agenda regarding the inclusion of issues affecting the rights and legitimate interests of the Sami;

establish commissions and working groups dealing with topics belonging to the main directions of its activities;

invite specialists of various industries for consultation, examination and consideration of individual issues;

participate in the implementation of public control in the sphere of ensuring the legitimate rights and interests of the Sami, in accordance with federal law and the law of the Murmansk region;

make proposals to improve public control;

adopt internal documents regulating its work;

exercise other powers in accordance with the legislation on matters within its competency.\textsuperscript{273}

Finally, the establishment of a long-standing target programme on “Economic and Social Development of Indigenous Peoples of the North”\textsuperscript{274} in January 2009 should be mentioned in the context of efforts taken by the regional government of Murmansk in order to strengthen Sami rights. The programme, with an operating time from 2009 until 2013, aims according to its four sections to:

\textsuperscript{273} Ibid., see paragraph 3 of the Decision [translation by the author]

– develop reindeer herding, traditional industries and crafts of indigenous peoples (where 15.3 million roubles shall be provided from the regional budget);
– develop social infrastructure and health systems (1.6 million roubles of the regional budget);
– promote to the spiritual and national-cultural development of indigenous peoples, including the organization of folklore festivals etc. (29.6 million roubles of the regional budget);
– to promote ‘complex projects’, for example the drafting of a territory of traditional land of indigenous peoples of the North of the Murmansk region and the conducting of a sociological survey on “Social and economic problems of the representatives of small indigenous peoples living in the Murmansk region”.

All together, these measures are evidence for decisive efforts taken at the regional level to implement indigenous peoples’ rights, here in particular the Sami rights. This especially applies to the established Council of Representatives of Indigenous Peoples of the North under the Government of the Murmansk region that, although having an advisory competency only, is one of the very few indigenous representations to republican or regional governments existing in the Russian Federation.

4.2.4 Sweden

“In Sweden, the Saami’s status as an indigenous people has not yet been codified into law. In connection with Sweden’s ratification of the Council of Europe’s Framework Convention for the protection of National Minorities and the European Charter for Regional or Minority Languages, it was stated, however, that the Saami are an indigenous population.”

This position has, more or less, also been taken in Sweden’s sixth periodic report to the HRC of December 2007 by stating that the “Sami are recognised as an indigenous people and constitute a

275 Ibid
276 Eva Josefsen (2007), p. 11
recognised national minority”\textsuperscript{277}. However, due to the simultaneous classification as a national minority, the position of the Sami is not different from that of other minorities in Sweden, as this has been expressed in Sweden’s fifth periodic report to the HRC of November 2000: “As such they are like other national minorities – Swedish Finns, Tornedalers, Roma and Jews – protected by the Swedish Act on National Minorities, adopted in December 1999, which focuses on protecting national minorities and the historical regional and minority languages.\textsuperscript{278}

Accordingly, the Swedish Government’s position is not clear whether they recognize a Sami right to self-determination or not. This ambivalence has been also expressed in its sixth periodic report to the HRC by stating that in its view only those “indigenous peoples have the right to self-determination insofar as they constitute peoples within the meaning of common article 1 of the 1966 International Covenant on Civil and Political Rights and 1966 International Covenant on Economic, Social and Cultural Rights”\textsuperscript{279}. However, as stated above, the word ‘people’ is not defined in Article 1 or elsewhere in either Covenant. Thus the recognition of a Sami right to self-determination remains unclear.

The Sami Parliament in Sweden, first convened in 1993, is both an elected body and also a government agency with overarching responsibility to a living Sami culture.\textsuperscript{280} In this double-role, its activities are governed by the Swedish Parliament and Government and have to follow the spending authorisation issued annually by the Government.\textsuperscript{281} In this role as a “governmental administrative body”,\textsuperscript{282} its rights in respect of Sami self-determination are of rather limited nature.

\textbf{In relation to Articles 1, 25 and 27 of the ICCPR}, the HRC in its Concluding Observations related to the fifth periodic report of Sweden in 2002, expressed its

\textsuperscript{277} Sweden's sixth periodic report to the HRC, UN document CCPR/C/SWE/6, 5 December 2007, paragraph 6
\textsuperscript{278} Sweden's fifth periodic report to the HRC; UN document CCPR/C/SWE/2000/5, 17 November 2000, paragraph 130
\textsuperscript{279} Sweden's sixth periodic report to the HRC, UN document CCPR/C/SWE/6, 5 December 2007, paragraph 5
\textsuperscript{280} Láilá Susanne Vars (2008), p. 70
\textsuperscript{281} Ibid., p. 70
\textsuperscript{282} Eva Josefsen (2007), p. 11
concerns about “the limited extent to which the Sami Parliament can have a significant role in the decision-making process on issues affecting the traditional lands and economic activities of the indigenous Sami people, such as projects in the fields of hydroelectricity, mining and forestry, as well as the privatization of land (arts. 1, 25 and 27 of the Covenant)”\(^{283}\). Accordingly, it urged Sweden to “take steps to involve the Sami by giving them greater influence in decision-making affecting their natural environment and their means of subsistence.”\(^{284}\)

Although Sweden, in the meantime, took some efforts to enhance the competencies of the Sami Parliament by delegating some responsibilities for reindeer husbandry to the Sami Parliament\(^{285}\), the HRC, in its recent Concluding Observation related to the sixth periodic report of Sweden of April 2009, “remains concerned at the limited extent to which the Sami Parliament may participate in the decision-making process on issues affecting land and traditional activities of the Sami people”\(^{286}\). The HRC also noted “the limited progress achieved so far in respecting Sami rights as well as the restrictive terms of reference of the Boundary Commission and other inquiries tasked with the study of Sami rights (articles 1, 25, and 27 of the Covenant).”\(^{287}\) Therefore, the HRC urged Sweden again to “take further steps to involve the Sami in the decisions concerning the natural environment and necessary means of subsistence for the Sami people [...] [and to] ensure the fair and expeditious resolution of claims concerning land and resources made by the Sami people, by introducing appropriate legislation in consultation with the Sami communities.”\(^{288}\)

In the context of legal disputes (relating among others to Article 1 and 27 of the...
ICCPR), the HRC raised concerns about de facto discrimination against the Sami, since the burden of proof for land ownership has been placed wholly on Sami claimants. In the same context, the HRC noted an inadequate granting of legal aid to Sami villages, which are the only legal entities empowered to act as litigants in land disputes in respect of Sami lands and grazing rights. It, therefore, urged Sweden to “grant adequate legal aid to Sami villages in court disputes concerning land and grazing rights and introduce legislation providing for a flexible burden of proof in cases regarding Sami land and grazing rights, especially where other parties possess relevant information [...] [and encouraged it] to consider other means of settling land disputes, such as mediation.”

On the primary base of the Concluding Observations by the HRC, it can be concluded that all four Arctic states have implemented Articles 1, 25 and 27 of the ICCPR, even though not completely and with decisive lacks as regards to the rights of indigenous peoples most relevant in the context of area protection and management. This in particular applies to the Sami people’s right to self-determination, their right to lands, territories and resources and their right to full and effective participation in the decision-making processes relating to both contexts, issues of self-government as well as those affecting their traditional lands and economic activities.

Chapter 5

Recognition of indigenous peoples' rights in the environmental protection context

5.1 International conservation policy

Conventional approaches to area protection dominant over the past 100 to 150 years have tended to see people and nature as separate entities, often requiring the exclusion of human communities from areas of interest, prohibiting their use of
natural resources and seeing their concerns as incompatible with conservation.\textsuperscript{292} In the nineteenth and twentieth centuries, many protected areas were established on land and resources held in common property by communities, but perceived as terra nullius (land belonging to no one)\textsuperscript{293} when it came to asking permission, offering compensation and the like. The resident peoples were often expelled or severely restricted in terms of permissible uses of natural resources, often without compensation.\textsuperscript{294} In consequence, this led to the emergence of two hostile groups “terribly at odds with one another over the past century or more, violently so at times, mostly because of conflicting views of nature, radically different definitions of “wilderness” and profound misunderstanding of one another's science and culture”\textsuperscript{295}.

Within the international conservation movement, such an exclusionary approach has still been dominant until the 1970s.\textsuperscript{296} “According to the World Conservation Union (IUCN), a national park was narrowly defined as a large area:

\begin{quote}
1. where one or several ecosystems are not materially altered by human exploitation and occupation, where plant and animal species, geomorphological sites and habitats are of special scientific, educative and recreative interest or which contains a natural landscape of great beauty;

2. where the highest competent authority of the country has taken steps to prevent or eliminate as soon as possible exploitation or occupation of the whole area and to enforce effectively the aspect of ecological, geomorphological or aesthetic features that have led to its establishment.”\textsuperscript{297}
\end{quote}

\textsuperscript{292} Grazia Borrini-Feyerabend, Ashish Kothari and Gonzalo Oviedo (2004), Introduction, p. xiv
\textsuperscript{293} “To many Europeans lawyers of the eighteenth and nineteenth centuries, some indigenous peoples were so low in the scale of civilization and their forms of social organization and concepts of property so incomprehensible, so incommensurate with ’advanced’ models, that their lands were regarded as terra nullius.” see Patrick Thornberry (2002), p. 74
\textsuperscript{294} Grazia Borrini-Feyerabend, Ashish Kothari and Gonzalo Oviedo (2004), p. 7
\textsuperscript{296} Marcus Colchester (2003), p. 3
Attention to the rights of indigenous and local communities in protected area management is relatively recent and by far not comprehensive. Although a process of rethinking the approach to protected areas started among conservation organizations in the 1970s, the issue itself did not become a focus of conservationists’ concern until the 1990s.\(^{298}\)

Principle 22 of the *Rio Declaration of 1992*\(^{299}\) was a ground-breaking step in this direction by declaring that: “*Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.*”

Shortly before, the *Fourth Congress on National Parks and Protected Areas: Parks for Life*, which was held in Caracas from 10 - 21 February 1992, took stock of the fact that the majority of protected areas are owned, claimed or used by indigenous peoples and other local communities by urging that action be taken to revise the IUCN system of categories to allow local communities a greater say in protected area management and planning.\(^{300}\)

In 1994\(^{301}\), IUCN adopted a *revised set of categories of protected areas*, allowing “for a range of models of protected areas, according to the degree of human intervention, that ensure both indigenous and other traditional peoples' right and conservation objectives can be respected”\(^{302}\). Thus, the new category system overturned the notion that protected areas had to be established on public lands.

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\(^{298}\) Marcus Colchester (2003), p. 80


\(^{300}\) Marcus Colchester (2003), p. 80


and administered by State agencies, and opened the door to new models of protected areas owned and managed by a diversity of other actors – non-government agencies, private land owners, corporations, local communities and indigenous peoples.\(^{303}\) The 1994 category system also included a new category VI, which describes predominantly natural areas that are managed to protect their biodiversity in such a way as to provide a sustainable flow of products and services mainly for the local community.\(^{304}\)

In order to encourage more inclusive forms of conservation\(^{305}\), IUCN, in 1996, approved seven resolutions at its World Conservation Congress\(^{306}\) that refer to indigenous peoples and protected areas. “These resolutions *inter alia*:

- recognise the rights of indigenous peoples to their lands and territories, particularly in forests, in marine and coastal ecosystems, and in protected areas
- recognise their rights to manage their natural resources in protected areas either on their own or jointly with others
- endorse the principles enshrined in International Labour Organisation’s Convention 169, Agenda 21, the CBD and the Draft Declaration on the Rights of Indigenous Peoples
- urge member countries to adopt ILO Convention 169
- recognise the right of indigenous peoples to participate in decision-making related to the implementation of the CBD
- recognise the need for joint agreements with indigenous peoples for the management of Protected Areas and their right to effective participation and to be consulted in decisions related to natural resource management.”\(^{307}\)

At the same time, the World Wildlife Foundation (WWF) was working on a new

\(^{303}\) Marcus Colchester (2003), p. 80  
\(^{304}\) Bishop et al. (2004), p. 134  
\(^{305}\) Bishop et al. (2004), p. 138  
\(^{307}\) Marcus Colchester (2003), p. 81
policy on indigenous peoples and conservation, and since many of the issues that emerged from the work of WWF and IUCN were the same, the two organisations decided to work together on a common position through the development of ‘Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas’\textsuperscript{308}. The results of this work, published by the IUCN World Commission on Protected Areas (WCPA) and WWF in 1999\textsuperscript{309}, contain the following five key principles:

**Principle 1**

Indigenous and other traditional peoples have made significant contributions to the maintenance of many of the earth’s most fragile ecosystems, through their traditional sustainable resource use practices and their profound, culture-based respect for nature. Therefore, there should be no inherent conflict between the objectives of protected areas and the existence, within and around their borders, of indigenous and other traditional peoples practising sustainable use of natural resources; and they should be recognised as rightful, equal partners in the development and implementation of conservation strategies that affect their lands, territories, waters, coastal seas, and other resources, in particular the establishment and management of protected areas.

**Principle 2**

Full respect of the rights of indigenous and other traditional peoples to their lands, territories, waters, coastal seas, and other resources should be the foundation of agreements drawn up between conservation institutions, including protected area management agencies, and indigenous and other traditional peoples for the establishment and management of protected areas affecting those lands, territories, waters, coastal seas, and other resources. Simultaneously, such agreements should be based on the recognition by indigenous and other traditional peoples of their responsibility to conserve biodiversity and natural resources harboured in those protected areas.

\textsuperscript{308} Bishop et al. (2004), p. 138

Principle 3
The principles of decentralisation, democratisation, participation, transparency and accountability should be taken into account in all matters pertaining to the mutual interests of protected areas and indigenous and other traditional peoples.

Principle 4
Indigenous and other traditional peoples should be able to share fully and equitably in the benefits associated with protected areas, with due recognition to the rights of other legitimate stakeholders.

Principle 5
The rights of indigenous and other traditional peoples in connection with protected areas are often an international responsibility, since many of the lands, territories, waters, coastal seas, and other resources which they own, occupy or otherwise use, as well as many of the ecosystems in need of protection, cross national boundaries.

Importantly, in 2003, the Fifth IUCN World Parks Congress, which was held in Durban, South Africa, from 8 – 17 September, adopted the Durban Accord\textsuperscript{310} and the Durban Action Plan\textsuperscript{311}, which inter alia:

\begin{itemize}
  \item established a \textit{new paradigm} of protected areas according to which indigenous peoples' and local communities' rights are recognized, respected and upheld in the planning, establishment and management of protected areas;
  \item called for a halt to forced resettlement and involuntary sedentarization of indigenous peoples without their free, prior and informed consent;
  \item encouraged national reviews of innovative governance for protected areas; and
  \item called for the establishment by 2010 of participatory mechanisms for the restitution of indigenous peoples' lands that had been incorporated into protected areas without their free, prior and informed consent.
\end{itemize}

\textsuperscript{310} Available at: http://cmsdata.iucn.org/downloads/durbanaccorden.pdf
\textsuperscript{311} http://cmsdata.iucn.org/downloads/durbanactionen.pdf
The World Conservation Congress at its 4th Session in Barcelona, from 5-14 October 2008, called on governments to work with indigenous peoples' organizations to reform national legislation, policies and practices so that they contribute to the realization of the relevant parts of the Durban Accord. In this context, it also urged all governments to ensure that protected areas which affect or may affect indigenous peoples' lands, territories, natural and cultural resources are not established without indigenous peoples' free, prior and informed consent and to ensure due recognition of the rights of indigenous peoples in existing protected areas. The Congress explicitly endorsed the United Nations Declaration on the Rights of Indigenous Peoples and called on all IUCN members to endorse or adopt the UN Declaration, and to apply it in their relevant activities.

Along with these efforts of the international conservation community to address the rights of indigenous and traditional peoples in protected areas, “there remains a need to demonstrate these principles in practice”. As analysed by Marcus Colchester in 2003, “the new principles of conservation are not being widely applied in developing countries” and “a number of serious obstacles stand in the way of an effective recognition of indigenous peoples' rights in conservation practice”, which include among others:

- Entrenched discrimination in national societies’ attitudes towards indigenous peoples such that indigenous peoples’ ways of life are seen as backward, dirty or subhuman;
- absence of reform of government policies and laws regarding indigenous peoples;
- national laws and policies with respect to land which deny indigenous peoples’ rights to own and manage their lands;
- national conservation policies and laws still based on the old exclusionary

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313 Ibid
315 Bishop et al. (2004), p. 140
316 Marcus Colchester (2003), p. 84
317 Marcus Colchester (2003), p. 85
model of conservation;
- conservation agencies and NGOs lack appropriate training, staff and capacity to work with communities.\footnote{318}

A further obstacle, inherent in the practice of conservation organizations themselves, has been addressed by Nuccio Mazzullo. In an article of 2005, he describes the phenomena of conceptual discontinuity between human beings and nature in relation to environmental conservation, using the example of a Finnish branch of WWF.\footnote{319} During his fieldwork he interviewed a green activist from the South of Finland, who formerly worked as a Project Manager in a conservation project related to ancient forests in Russian Karelia, and who “realised that the politics internal to the WWF, in practice, did not consider people as a priority”\footnote{320}. The position of the WWF in relation to local population, in that case, was cited by the following statement: “it is realistic to conserve 1000 km² [of forest] but unrealistic to give local people any real say in how to use local resources”\footnote{321}.

In summary, international conservation organizations have undertaken a lot of efforts that help to recognize and safeguard indigenous peoples’ rights in relation to area protection and management; however, “there still remains a need to take this work further”\footnote{322}, which should also include to improve the implementation of their own principles, guidelines and other policies into practice.

5.2 Regional conservation policy - Area protection and management in the Arctic

Since 2004, almost 20% of the Arctic land mass haven been under protected area status, classified according to IUCN categories.\footnote{323} This is significantly greater than the global statistic which stood at that time at about 11.5\%\footnote{324}.

\footnote{318} Marcus Colchester (2003), pp. 85-86
\footnote{319} Nuccio Mazzullo (2005), pp. 388-406
\footnote{320} Nuccio Mazzullo (2005), p. 398
\footnote{321} Ibid., p. 398
\footnote{322} Bishop et al. (2004), p. 139
\footnote{323} CAFF Habitat Conservation Report No. 11 (2004): “CPAN Country Update Report 2004”, November 2004, see Foreword of Kent Wohl, at that time Chair of the CAFF Working Group, available at: \url{http://caff.arcticportal.org/document-library/habitat-reports}. Please \textit{note} that these numbers refer to terrestrial protected areas only, and that by including marine protected areas
From very early on, area protection and management in the Arctic have played an important role within the region’s cooperation. Already in 1991, the program for the Conservation of Arctic Flora and Fauna (CAFF) was established under the Arctic Environmental Protection Strategy (AEPS) 325. In this strategy, the Ministers of the eight Arctic states 326 declared the development of a network of protected areas - later called the Circumpolar Protected Area Network (CPAN) - as a guiding principle. 327 At the same time, the AEPS, prepared with the participation of Arctic indigenous peoples, recognized the special relationship of the indigenous peoples and local populations to the Arctic and their unique contribution to the protection of the Arctic environment. 328 Accordingly, the Arctic States’ ministers stressed that the development of a network of protected areas should be encouraged and promoted with due regard for the needs of indigenous peoples. 329 With the establishment of the Arctic Council in 1996 in Ottawa, Canada 330, the work of CAFF has been continued under its auspices.

The overall mandate of the CAFF Working Group 331 is to address the conservation of Arctic biodiversity, and communicate the findings to the

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325 The Arctic Environmental Protection Strategy (AEPS), also called The Rovaniemi Declaration, was adopted in Rovaniemi, Finland, 1991. It is available at the Arctic Council’s Website: [http://arctic-council.org/filearchive/Rovaniemi%20Declaration.pdf](http://arctic-council.org/filearchive/Rovaniemi%20Declaration.pdf)

326 Canada, Denmark, Finland, Iceland, Norway, Sweden, the Union of Soviet Socialist Republics and the United States of America

327 AEPS, 2.2 Principles viii)

328 Preface to the AEPS

329 AEPS, 2.2 Principles viii)

330 Declaration on the Establishment of the Arctic Council, The Ottawa Declaration, available at: [http://arctic-council.org/filearchive/Declaration%20on%20the%20Establishment%20of%20the%20ArcticCouncil-1..pdf](http://arctic-council.org/filearchive/Declaration%20on%20the%20Establishment%20of%20the%20ArcticCouncil-1..pdf)

331 While the Arctic Council itself was established in 1996, CAFF as a working group had been established before: An inaugural meeting of CAFF took place in Ottawa, Canada, in April 1992 where habitat conservation was included as a priority in CAFF’s work plan. A second meeting of CAFF followed in Fairbanks, Alaska, in May 1993. At this meeting, it was decided that Russia should prepare a working paper, “Plan for Developing a Network of Arctic protected Areas”. During the Ministerial Meeting in Nuuk, Greenland, in September 1993,
governments and residents of the Arctic, helping to promote practices which ensure sustainability of the Arctic's living resources. In the present study however, the mandate and work of CPAN, as an expert group within CAFF, is of special importance and will be brought into focus.

In 1996, a ‘Strategy and Action Plan’, also described as “the rationale for CPAN”, has been adopted. The main goal of the CPAN Strategy and Action Plan is:

“to facilitate implementation of initiatives to establish, within the context of an overall Arctic habitat conservation strategy, an adequate and well managed network of protected areas that has a high probability of maintaining the dynamic biological diversity of the Arctic region in perpetuity.”

To meet this goal, the following tasks have been judged as important in the Strategy and Action Plan:

- “identify gaps in existing and proposed protected areas;”
- “expand and create protected areas to fill the identified gaps;”
- “strengthen national mechanisms for creating and managing protected areas;”
- “integrate the needs of protected areas into national policies and planning frameworks;”
- “expand public and political support for protected areas;”

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CAFF as ‘the Working Group on the Conservation of Arctic Flora and Fauna’ has been officially recognized. The Nuuk Declaration, available at: [http://arctic-council.org/filearchive/The%20Nuuk%20Declaration.pdf](http://arctic-council.org/filearchive/The%20Nuuk%20Declaration.pdf)

See Arctic Council Webpage: [http://arctic-council.org/working_group/caff](http://arctic-council.org/working_group/caff)

The Circumpolar Protected Areas Network (CPAN) Group was established in 1998 to oversee and advance the CPAN program and to provide the CAFF Board with advice on needed actions; see CAFF’s Webpage: [http://caff.arcticportal.org/expert-groups/circumpolar-protected-area-network-cpan](http://caff.arcticportal.org/expert-groups/circumpolar-protected-area-network-cpan)


– improve the legal and institutional framework;
– provide adequate funding for protected areas; and
– monitor the state of protected areas.”

As regards indigenous peoples in the Arctic, the rationale of the CPAN Strategy and Action Plan recognizes that “the Arctic is home to a significant, and in some areas, growing population of indigenous people who rely, to a large extent, on the sustainable use of the living resources of the Arctic and to the maintenance of its ecological integrity.” Against this background, thus the rationale, it is also necessary that effective conservation measures “seek to accommodate the needs of indigenous and local peoples, without jeopardizing conservation goals”. In spite of these rather ‘derived’ considerations of indigenous peoples interests (derived in relation to conservation goals), the Action Plan, nevertheless, stresses “the involvement of local and indigenous people, and their needs, concerns, and knowledge in the identification, establishment and management of protected areas” as one action to be taken at the national level in order to meet the CPAN’s goal.

At the same time with the CPAN Strategy and Action Plan, specific ‘Principles and Guidelines’ were provided to facilitate a common regional approach to area protection among the eight Arctic countries and to selecting and designating important sites within the Arctic. Among others, they were designated to provide a common process to advance protected area establishment in the Arctic region, to foster coordination for use of protected areas as an important tool to conserve biological diversity, to promote international cooperation and coordination in site selection, designation and management and to share processes, criteria and strategies among member nations as a basis for enhancing and improving national efforts.

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337 Ibid., p. 18
338 Ibid., p. 11
339 Ibid., p. 12
340 Ibid., p. 20, see Action Item 7 out of 17 required actions at the national level
341 These ‘Principles and Guidelines’ have been published as CAFF Habitat Conservation Report No. 4, in March 1996. They are available at:
342 CAFF Habitat Conservation Report No. 4 (1996), p. 2
countries in the design and implementation of the Network and in the selection, establishment and management of sites, two with specific relevance to indigenous peoples should be emphasised:

“Principle 10:
In the design, planning and management of sites in CPAN, countries will cooperate with each other, with local communities, with indigenous peoples and, where feasible, with economic development interests.

Principle 12:
When selecting sites, particular attention will be paid to sites of special socioeconomic importance for Indigenous Peoples and, when selecting and designating any protected areas in the Arctic, indigenous Peoples Organizations who would be affected will be invited to participate.”

While the first principle primarily addresses the involvement of indigenous peoples in the designation, planning and management process of protected areas, the second recognizes particularly the specific way of life of many indigenous peoples and their close relationship to the land and the use of its resources. Thus, both principles correspond to a particular extent with Article 27 of the ICCPR (see above, chapter 4.1.2) by taking up the idea of protecting the indigenous peoples’ particular way of life associated with the use of land resources while ensuring their effective participation in respective decision-making processes.

During the following year, the Arctic states took significant efforts to implement the CPAN Strategy and Action Plan. For the first Progress Report of 1997, each of the eight Arctic countries responded in time on the progress it had made in implementing the seventeen action items required by the strategy. A general outline of this report was that “all the Arctic countries have confirmed that they have mechanisms in place to account for the interests and secure the involvement

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343 CAFF Habitat Conservation Report No. 4 (1996), pp. 4-5
of indigenous and local people in protected areas.\textsuperscript{345} With special regard to Action Item 7 – \textit{the involvement of local and indigenous people, and their needs, concerns, and knowledge in the identification, establishment and management of protected areas} – the four Arctic countries of specific interest here responded as follows:

**Finland** stated that the “Involvement of local and indigenous people and interests is secured e.g. through consultative and advisory committees for protected areas in the Northern Lapland District for Wilderness Management (an administrative body of the Finnish Forest and Park Service). Also, protected areas will be included in the comprehensive "regional land use management plans" covering several municipalities. These plans will guide the land use of the areas under state control. The Finnish Forest and Park Service prepares the plans with participation of co-operative bodies and residents representing different views and opinions. A Regional Land Use Management Plan for Eastern Lapland will be completed in 1997 and individual management plans for each wilderness area in Lapland will be completed by the year 2005. Participation and involvement of different interests groups is an essential part of this planning. In addition, there are two meetings yearly between the reindeer owners of northern Lapland and representatives of the Northern Lapland District for Wilderness Management.”\textsuperscript{346}

**Norway** responded that “A working group was established in autumn 1996 to develop guidelines for more appropriate involvement from local communities in management of protected areas [and that] a recommendation will be presented to the Ministry of Environment in June 1997.”\textsuperscript{347} This statement has been made without any further explication to which extent indigenous peoples are also covered by the terminus ‘local communities’. As regards Environmental Impact Assessment (EIA) for proposed protected areas, Norway replied that “Both indigenous (Sami) and other local peoples take part in assessments and negotiations related to new protected areas in the Arctic. This provides interested parties with an opportunity to express and promote their views and interests

\textsuperscript{345} CAFF Habitat Conservation Report No. 7 (1997), p. 25
\textsuperscript{346} Ibid., pp. 12-13
\textsuperscript{347} Ibid., p. 13
before new areas can be designated for protection, and before management regimes and regulations are approved for these areas.”

Russia highlighted that “indigenous people of the Arctic region are more and more interested and involved in the organisation and management of protected areas. Proposals for establishing zapovedniks (strict nature reserves) and federal zakazniks (special purpose reserves) are generally supported only when local or indigenous people do not have plans for using renewable natural resources of the proposed territory in the nearest future. During the designation of the Pechora River Delta Zapovednik, the interests of the indigenous Nenets people resulted in a decision to exclude traditional use areas, such as those used for reindeer grazing. Similarly, Bolshezemelsky, which was initially planned as a zapovednik, was changed to the less restrictive category of federal zakaznik.”

And Sweden finally stated that “Local and indigenous people are always involved when establishing and in managing protected areas.”

Although these statements are of a rather general nature, without identifying concrete mechanisms, procedures or institutional arrangements for the involvement of indigenous peoples in the identification, establishment and management of protected areas, they nevertheless document a first step of considering indigenous peoples interests in the context of area protection and management, officially taken by Arctic states.

Unfortunately, to date no further explicit progress report, up-dating the specific efforts Arctic states undertook in implementing the Action items of the CPAN Strategy and Action Plan, has been produced. Obvious reasons for that are not

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348 Ibid., p. 13
349 Ibid., p. 13
350 Ibid., p. 13
351 The absence of specific progress reports on the implementation of Action items of the CPAN Strategy and Action Plan does not mean that no more CPAN reports and/or publications on specific tasks of the Network’s Strategy and Action Plan have been conducted. In fact, in 2000, the CPAN expert group published a “GAP ANALYSIS IN SUPPORT OF CPAN: THE RUSSIAN ARCTIC” as CAFF Habitat Conservation Report No 9; and Canada produced a report entitled “Protection and Maintenance of Marine Ecosystems in the Circumpolar Arctic”, evolved to a compendium of ecologically important marine areas in 2002. See Timo Koivurova (2009), pp. 51-52
clearly recognizable. It is a fact, however, as identified by a recent article of Timo Koivurova\(^{352}\), that the dominance of CPAN as a priority of CAFF has changed with the Ministerial Meeting in Alta, Norway, in 1997, where the overarching document for the future work of CAFF was adopted, the Co-operative Strategy for the conservation of Biological diversity in the Arctic Region.\(^{353}\) Moreover, the changing of priorities within the CAFF Working Group, as well as the absent willingness of one of the Arctic countries to take up the chairmanship of CPAN resulted in a complete halt of CPAN in 2004\(^{354}\), and “for the present CPAN as an expert group remains dormant until agreement can be reached on how to move forward”\(^{355}\).

Despite this current dormancy of CPAN, however, remarkable efforts could be achieved as regards the recognition of indigenous peoples’ interests in the frame of area protection and management. Two CAFF Habitat Conservation Reports may illustrate these efforts:

First, *CAFF Habitat Report No. 10 “Protected Areas of the Arctic: Conserving a Full Range of Values”*\(^{356}\) issued in 2002. This report is of remarkable importance in the sense stated above since it explicitly points out that the full range of values intended to be protected through CPAN includes, among others, “indigenous cultures of the north”\(^{357}\). In this context, the report stresses that “Cultural and Heritage values can include the importance of protected areas in representing the characteristics that formed a society’s distinct character and the historical importance of a site in shaping a society or people; spiritual values attributed to a site are also included. [and that] Subsistence use values can include...”

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352 Timo Koivurova (2009), pp. 44-60
353 Ibid., p. 51. This strategy is available at: [http://web.arcticportal.org/uploads/C5/h-/C5h-0NyVWBn-tl5uRzQ0Hw/Co-operativeStrategy-for-the-Conservation-of-Biological-Diversity-in-the-Arctic-Region.pdf](http://web.arcticportal.org/uploads/C5/h-/C5h-0NyVWBn-tl5uRzQ0Hw/Co-operativeStrategy-for-the-Conservation-of-Biological-Diversity-in-the-Arctic-Region.pdf)
354 Ibid., p. 52
357 Ibid., p. 5

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the worth of a site as human habitation or providing human nourishment prior to western economic development or uses.\textsuperscript{358}

Furthermore, the report addresses very directly the conflict that has been seen for a long time between nature conservation and human habitation and use (also outlined above in chapter 2.1) by describing it as follows: “Often areas established to protect their “natural” values entailed prohibiting, regulating or restricting human uses deemed to conflict with the ecological and natural values for which the areas were established. This was not welcomed by those with the viewpoint that human-oriented values should be predominant, and over time, this led to the perception that “protected areas” were, in effect, islands set apart from the mainstream of human activity. Inevitably, conflicts ensued between the proponents of the two apparently opposing sets of values: those who considered “natural” values as primary and those who considered “human use” values predominant. Frequently, the differing perceptions were seen as incompatible, in competition, and mutually exclusive.”\textsuperscript{359} And the report states further that “More recently, there have been efforts to better accommodate the two visions and balance the two sets of interests. The challenge is to prevent the pendulum from swinging too far in any one direction or having any one group of values overly-dominate the other.”\textsuperscript{360}

For the Arctic countries, the report emphasises that they “have recognised the important historical, cultural and subsistence values of these sites to the traditional peoples of the Arctic and permit traditional uses to be carried out in these protected areas, regardless of the classification or management objective of the site.”\textsuperscript{361} In order to illustrate the recognition of these values as legitimate values for protected areas, the report represents examples where area protection is performed without restricting traditional nature use by the indigenous peoples\textsuperscript{362},

\textsuperscript{358} Ibid., p. 7
\textsuperscript{359} Ibid., p. 2
\textsuperscript{360} Ibid., p. 2
\textsuperscript{361} Ibid., p. 24
\textsuperscript{362} The Taimyr Peninsula, as one of Russia’s most intensely protected areas by means of a clusterapproach of three zapovedniks combined with other types of protected areas in Russia, is a traditional homeland of 5 groups of Russian indigenous peoples, the Dolgan, Nganssan, Nenets, Evenk and Ents. Key sites and features of Taimyr Peninsula are protected without restricting traditional nature use by the indigenous peoples. See CAFF Habitat Conservation
or where it is in the interest of indigenous peoples themselves to protect certain areass. As far as protecting indigenous cultural heritage and traditional values is concerned, one example of Northern Russia is presented, aiming at the identification and protection of sites with important spiritual values for Russia’s Arctic indigenous peoples. This project was a joint venture between the Russian association of Indigenous Peoples of the North (RAIPON), CAFF, the Arctic Council Indigenous peoples Secretariat (IPS) and the Danish Environmental Protection Agency (DEPA) and officially published as a CAFF Technical Report entitled: ‘The Conservation of Sacred Sites of Indigenous Peoples of the Arctic: A Case Study in Northern Russia’, in 2004. In the framework of CPAN, the latter report is the most comprehensive study investigating indigenous peoples' rights in the context of area protection and management in the Arctic.

Second, and finally, CPAN Country Updates Report, published in 2004, should be mentioned in relation to the recognition of indigenous peoples’ interests. Although this report, as stated above, is not a specific progress report on the efforts undertaken by Arctic states in implementing the Action items of the CPAN Strategy and Action Plan, it contains, at least, some information about activities of Permanent Participants relating to the CPAN mandate.

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363 Here the example of land claim settlement agreements in Canada where provisions for co-operative management of protected areas are contained. This would enable Canada’s northern aboriginal peoples to share in protecting the multiple values of the sites and to reap their benefits, including monetary benefits. See CAFF Habitat Conservation Report No. 10 (2002), p. 25

364 Ibid., p. 25


366 In relation to the limited research of the latter issue, the outcome of an International Expert Meeting on World Heritage and the Arctic, which took place from 30 November to 1 December 2007 in Narvik, Norway, is interesting to note. The meeting emphasized that “the region includes a number of unique and outstanding natural and cultural heritage places which require protection, improved management and international recognition due to their vulnerability.” See Report from the International Expert Meeting (June 2008): “World Heritage and the Arctic”, Norway: Nordic World Heritage Foundation and the UNESCO World Heritage Centre, p. 8

In this report, Finland mentions that the involvement of indigenous people and other local communities is secured through consultative and advisory committees for protected areas in the Northern Lapland District for Wilderness Management, and that the Urho Kekkonen National Park has its own committee based on the establishment act.\footnote{Ibid., p. 28} It further states that Regional Natural resource management Plans, where protected areas have been included, centrally aim at the safeguarding of indigenous Sami culture and traditional subsistence uses.\footnote{Ibid., p. 28}

Norway informs about the further development of environmental school and training programmes between regional Russian and Norwegian authorities in connection with the co-operative management in Pasvik Nature Reserve (Finnmark county) and Pasvik Zapovednik (Murmansk Oblast), as well as regards the ECORA project (Kolguev ode\textsubscript{1} Area in NAO).\footnote{Ibid., pp. 28-29} The ECORA project, a Global Environment Facility (GEF) sponsored project initiated by Conservation of Arctic Flora and Fauna (CAFF) Working Group of the Arctic Council and the Russian Federation, aims to conserve biodiversity and minimize habitat fragmentation in three selected model areas in the Russian Arctic, the Kolguev Island in Nenets Autonomous Okrug, the Lower Kolyma River Basin in Yakutia (Sakha Republic), and the Beringovsky District in Chukotka Autonomous Okrug.\footnote{See for further information the new ECORA website, available at: http://www.grida.no/ecora/} Importantly, ENCORA explicitly aims at the support of the livelihoods of indigenous and local peoples, while introducing different forms of co-management in the selected model areas, for instance.\footnote{Ibid}

As regards Russia, the report informs about two legislative acts at the regional level that take the rights and interests of indigenous peoples into consideration. The first is a Decree About the statement of standard regulations in national nature parks (Aan Aivlgy), resource reserve (Erkeevi sirder), nature monuments (Aiylg\textsubscript{y} menelere), adopted in 1997, which not only guarantees the conservation of biodiversity and landscape diversity but also promotes conservation of
traditional nature use, habitat and way of life of indigenous peoples.\textsuperscript{373} The second is a law about nature protected areas in the Yamalo-Nenets Autonomous Okrug, also issued in 1997, which regulates the organization, protection, and use of nature-protected areas in Yamalo-Nenets Autonomous Okrug and ensures the rights and interests of indigenous people at the NPA territories.\textsuperscript{374}

Without any further specification, \textbf{Sweden} reports about a project, initiated by the Swedish Environmental Protection Agency, aiming at the involvement of landowners, local people, and people that use the land for different purposes (e.g., hunting, fishing or reindeer herding.)\textsuperscript{375} The project focuses on all Sweden. In the World Heritage Site Laponia, for example, including four national parks and two nature reserves, the management plan is developed in co-operation between the environmental authorities, the municipalities, the locals and the Sami villages.\textsuperscript{376}

Although the priorities of CAFF have changed over the years\textsuperscript{377}, including a suspension of the CPAN expert group under CAFF, CAFF has decisively contributed to the progress of work on protected areas in the Arctic, and in particular to the stressing and further developing of the issue of indigenous peoples’ rights in the context of area protection and management. The contribution of the CPAN expert group to the CAFF work has been evaluated in the last CAFF Progress Report to the Arctic Council Ministerial Meeting in April 2009 as follows: “CPAN has been an expert working group within CAFF since 1996. It had a very active and productive start however it has faced many challenges in the intervening years and it has proved difficult to find solutions on how CPAN should move forward. During its recent board meetings it was recognized that CAFF has a heavy workload and must prioritize its activities. However, in recognizing the importance of the issues CPAN addresses for achieving CAFFs mission it was realized that some of the issues CPAN deals with are reflected in other CAFF projects and activities. For example this can be seen

\begin{itemize}
\item \textsuperscript{373} CAFF Habitat Conservation Report 11 (2004), p. 9
\item \textsuperscript{374} Ibid., p. 9
\item \textsuperscript{375} Ibid., p. 29
\item \textsuperscript{376} Ibid., p. 29
\item \textsuperscript{377} Timo Koivurova, in his articles, summarizes these changes as changes “from cooperation on administrative/political issues to a focus on scientific cooperation in biological diversity in the Arctic”, see Timo Koivurova (2009), p. 49
\end{itemize}
in the Arctic Biodiversity Assessments 2010 Arctic Highlights Report which includes a protected areas indicator as developed by CAFF’s cornerstone programme the CBMP. Canada will also lead a project in CAFFs new 2009 – 2011 Work Plan to update the circumpolar map of protected areas.”

Even the latter activities substantiate that ongoing activities of the CAFF Working Group also cover specific efforts on Arctic protected areas. A further example, mentioned by the Executive Secretary, Tom Barry, is the establishment of a new expert group on monitoring of protected areas within the framework of the Circumpolar Biodiversity Monitoring Programme (CBMP) which has launched by CAFF in 2009 and which includes both country representatives and indigenous peoples' representatives of the permanent participants within the Arctic Council.

However, it is questionable whether the current prioritized projects of CAFF, i.e. the Circumpolar Biodiversity Monitoring Programme (CBMP) and the Arctic Biodiversity Assessment (ABA), as mentioned above, can be seen as a continuation of the strategic contributions on protected areas in the Circumpolar North made by the CPAN expert group. Although they certainly deal with some aspects of the work on protected areas, they do not cover the same extent of efforts, in particular in relation to the further development and implementation of the CPAN Strategy and Action Plan. Another factor is relevant to these considerations on revitalizing the work on protected areas under CAFF: “Work under the CBD in particular seems to compete with the work within the Arctic Council on protected areas.”

In the following, it will be elaborated what exactly the Programme of work on protected areas under the CBD contains, what concrete reporting obligations result from that programme and how, at least, the four Arctic states of specific interest in this study have responded in respect of those obligations. Of particular interest in this context is the involvement of indigenous peoples in the process of establishing and managing protected areas.

379 Personal correspondence with the Executive Secretary of the CAFF Working Group, Tom Barry, of 4 February 2010
380 Timo Koivurova (2009), p. 58; Koivurova refers to the statement of civil servants involved in the work of CAFF, who questioned the necessity of mapping and gentle persuasion work carried out under CPAN when on the other side all countries need to report regularly on their protected areas to the CBD protected area working group.
5. 3 The Convention on Biological Diversity (1992)

Before addressing the Convention on Biological Diversity (CBD) in more detail, it should be mentioned that several other treaty based instruments could be explored in order to get a more comprehensive picture of the recognition of indigenous peoples' rights in the context of area protection and management, so for instance the Ramsar Convention on Wetlands, adopted 1971, and aiming at “the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world”\(^{381}\), as well as the UNESCO World Heritage Convention, adopted 1972, with a special relevance to area protection through its protection of “natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty”\(^{382}\). Area protection under the CBD, however, is of particular importance to indigenous peoples, since “their traditional lands and waters overwhelmingly contain the greatest remaining reserves of biodiversity”\(^{383}\). Therefore, the present study will deal only with this convention.

5.3.1 Indigenous peoples related provisions and programmes of work

The Convention on Biological Diversity (CBD), adopted at the 1992 Rio Earth Summit, is dedicated to promoting sustainable development\(^{384}\). The CBD establishes three main goals: (1) the conservation of biological diversity; (2) the sustainable use of its components; and, (3) the fair and equitable sharing of the benefits arising from the use of genetic resources.\(^{385}\)

The CBD recognizes the dependency of indigenous and local communities on

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\(^{381}\) See the RAMSAR Convention and its mission at: [http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-36-53_4000_0](http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-36-53_4000_0)

\(^{382}\) See Article 2 of the Convention Concerning the Protection of the World Cultural and Natural Heritage; available at: [http://whc.unesco.org/en/conventiontext](http://whc.unesco.org/en/conventiontext)


\(^{384}\) The Convention on Biological Diversity (CBD) is available at: [http://www.cbd.int/convention/](http://www.cbd.int/convention/); as of 13 August 2009, Iraq became the 192nd Party to the CBD.

\(^{385}\) Article 1 of the CBD
biological diversity and the unique role of indigenous and local communities in conserving life on Earth. This recognition is enshrined in the preamble of the Convention and in its provisions, in particular in Article 8 (j) of the CBD. Under that provision, Contracting Parties are committed to:

“respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”;

“promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices”; and that they

“encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”.

In relation to area protection and management, the CBD regulates in its provisions of Article 8 (a) to (e) the establishment of protected areas systems in order to conserve biological biodiversity by stating that “Each Contracting Party shall, as far as possible and as appropriate:

a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;

b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;

c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;

According to the preamble, the CBD has been agreed by: “Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components, ...”
d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;...

Under Article 8(j) as well as under the provisions of Article 8 (a) to (e), special working groups were established, followed by the adoption of respective programmes of work. Because of its overall relevance to the work of the CBD, considerations relating to the traditional knowledge of indigenous and local communities, regulated in Article 8 (j), are also being incorporated in all the programmes of work under the Convention, and thus also in the Programme of work on protected areas. In order to explore the recognition of indigenous peoples' rights in the specific context of area protection and management, the focus in the following will be drawn on the Programme of work on protected areas (which does not exclude some specific references to protected areas in sections relating to other programmes of work, in particular under the programme of work for Article 8 (j) and related provisions).

5.3.2 The Programme of work on protected areas and its relation to indigenous peoples

The Programme of work on protected areas, adopted at the seventh meeting of the Conference of Parties (COP) in 2004, has the overall objective “of the establishment and maintenance by 2010 for terrestrial and by 2012 for marine areas of comprehensive, effectively managed, and ecologically representative...”

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387 A Working Group on Article 8(j) and related provisions was established in 1998 by the fourth meeting of the Conference of the Parties (COP). At its fifth meeting in 2000, the COP adopted a respective programme of work to implement the commitments of Article 8 (j) of the Convention and to enhance the role and involvement of indigenous and local communities in the achievement of the objectives of the convention. Significant work has been accomplished as part of that programme, so for instance the adoption of the Akwé: Kon Guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place or which are likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, adopted by the COP Decision VII/16 in 2004. For further information about the Working Group on Article 8(j) and related provisions, see CBD-website under: http://www.cbd.int/convention/wg8j.shtml

388 Ibid

389 Decision VII/28 (2004); available at: http://www.cbd.int/decision/cop/?id=7765
national and regional systems of protected areas that collectively, inter alia through a global network, contribute to achieving the three objectives of the Convention and the 2010 target to significantly reduce the current rate of biodiversity loss. With regard to indigenous peoples, the programme recalls the obligations of Parties towards indigenous and local communities in accordance with Article 8(j) and related provisions and notes that the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations. The programme of work consists of four interlinked elements intended to be mutually reinforcing and cross-cutting in their implementation.

With specific regard to the relation between indigenous peoples’ rights and area protection and management, two goals under programme element 2 should be emphasised: first, the goal to promote equity and benefit-sharing, and second, the goal to enhance and secure involvement of indigenous and local communities and relevant stakeholders. The first goal contains the target to “establish by 2008 mechanisms for the equitable sharing of both costs and benefits arising from the establishment and management of protected areas.” In order to achieve that target, Parties are urged, among others, to:

- assess the economic and socio-cultural costs, benefits and impacts arising from the establishment and maintenance of protected areas, particularly for indigenous and local communities, and adjust policies to avoid and mitigate negative impacts, and where appropriate compensate costs and equitably share benefits in accordance with the national legislation;

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390 Decision VII/28 (2004), paragraph 18
391 Ibid., paragraph 22
392 Ibid., paragraph 7 of the Annex to Decision VII/28 (2004). These four elements are: (1) Direct actions for planning, selecting, establishing, strengthening, and managing, protected area systems and sites; (2) Governance, participation, equity and benefit sharing; (3) Enabling activities; and (4) Standards, assessment, and monitoring
393 Ibid., see programme element 2: “Governance, Participation, Equity and Benefit sharing” of the Programme of work on Protected Areas
394 Ibid., see target under goal 2.1
recognize and promote a broad set of protected area governance types related to their potential for achieving biodiversity conservation goals in accordance with the Convention, which may include areas conserved by indigenous and local communities and private nature reserves. The promotion of these areas should be by legal and/or policy, financial and community mechanisms;

– establish policies and institutional mechanisms with full participation of indigenous and local communities, to facilitate the legal recognition and effective management of indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of indigenous and local communities; and

– engage indigenous and local communities and relevant stakeholders in participatory planning and governance, recalling the principles of the ecosystem approach.\(^{395}\)

The second goal emphasised here explicitly states the target of “full and effective participation by 2008, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new, protected areas”\(^{396}\). In order to achieve that goal, the following activities of Parties are suggested:

– carrying out participatory national reviews of the status, needs and context-specific mechanisms for involving stakeholders, ensuring gender and social equity, in protected areas policy and management, at the level of national policy, protected area systems and individual sites;

– implementing specific plans and initiatives to effectively involve indigenous and local communities, with respect for their rights consistent with national legislation and applicable international obligations, and

\(^{395}\) Ibid., see programme element 2, goal 2.1, paragraphs 2.1.1. - 2.1.3.; 2.1.5.

\(^{396}\) Ibid., see target under goal 2.2 [emphasis added]
stakeholders at all levels of protected areas planning, establishment, governance and management, with particular emphasis on identifying and removing barriers preventing adequate participation;

- supporting participatory assessment exercises among stakeholders to identify and harness the wealth of knowledge, skills, resources and institutions of importance for conservation that are available in society;

- promoting an enabling environment (legislation, policies, capacities, and resources) for the involvement of indigenous and local communities and relevant stakeholders in decision making, and the development of their capacities and opportunities to establish and manage protected areas, including community-conserved and private protected areas; and

- ensuring that any resettlement of indigenous communities as a consequence of the establishment or management of protected areas will only take place with their prior informed consent that may be given according to national legislation and applicable international obligations.397

Furthermore, the involvement of indigenous and local communities as part of site-based planning has been stressed under programme element 1, goal 1.4, which aims to substantially improve site-based protected area planning and management.398 Under the same programme element, goal 1.5 399, sustainable customary resource use of indigenous and local communities shall be taken into account when it comes to developing policies, improving governance, ensuring enforcement of urgent measures that can halt the illegal exploitation of resources from protected areas, and strengthening international and regional cooperation to eliminate illegal trade in such resources.400 It is also worth mentioning a progressive item: under programme element 3, goal 3.5, which aims to strengthen communication, education and public awareness, mechanisms for constructive dialogue and exchange of information and experiences among protected area

397 Ibid., programme element 2, goal. 2.2, paragraphs 2.2.1-2.2.5
398 Ibid., programme element 1, goal 1.4, paragraph 1.4.1
399 Ibid., goal 1.5 under programme element 1 aims to prevent and mitigate negative impacts of key threats to protected areas
400 Ibid., programme element 1, goal 1.5, paragraph 1.5.6
managers and indigenous and local communities and their organizations should be
developed by Parties to the CBD. While financial, technical and other resources
to support the needs of development countries and countries with economies in
transition have been particularly stressed in the programme of work, no explicit
reference to the financial needs of indigenous and local communities in that
context has been made. This gap raises doubts towards facility of and real
chances for implementation of the ambitious plans and goals formulated in the
programme.

As a consequence, the COP at its eighth meeting in 2006 recognized in its
Decision VIII/24 (relating to protected areas and the respective programme of
work) as a priority “the need for adequate technical, institutional and financial
capacities for the implementation of the programme”

In its ‘Options for
mobilizing financial resources for the implementation of the programme of
work by developing countries, in particular the least developed and small island
developing States and countries with economies in transition”, it invites
Parties to:

- assess, document and communicate the socio-economic values of
protected-area systems, focusing in particular on the critical contribution
to poverty alleviation and achievement of the Millennium Development
Goals (MDGs), including specific evaluations of the impacts of the
existing variety of funding mechanisms and protected area programmes
on indigenous and local communities; and
- consider a number of options, as appropriate, in designing financial plans
for the system of protected areas; these include, inter alia, the option of
funding mechanisms to support indigenous and local communities
conserved areas.

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401 Ibid., programme element 3, goal 3.5, paragraph 3.5.4
402 Financial sustainability of protected areas and national and regional systems of protected areas
is formulated as goal 3.4 under programme element 3
403 Decision VIII/24 (2006); available at: http://www.cbd.int/decision/cop/?id=7765
404 Decision VIII/24 (2006)
405 Ibid., paragraphs 18 (c) and (f) (vii)
It also invites international and regional development banks to ensure coherence among their respective institutional policies, and improve guidelines related to biodiversity conservation and/or sustainable use in investment projects that affect sustainability of protected areas, by stressing the full and effective participation and prior informed consent of indigenous and local communities.\footnote{Ibid., paragraph 21} It furthermore invites the 'Global Environment Facility' to review and revise, as appropriate, its protected areas’ policies in relation to indigenous and local communities; and to support community conserved areas, ensuring the immediate, full and effective participation of indigenous peoples and local communities in the development of relevant activities.\footnote{Ibid., paragraph 22 (d) and (e)}

Under the heading of 'Further development of tool kits for the identification, designation, management, monitoring and evaluation of national and regional systems of protected areas’\footnote{Ibid.}. Decision VIII/24 urges Parties, other Governments, funding and other relevant organizations, among others, to provide adequate financial resources and other support for the development of tool kits according to identified gaps and demand, including for tool kits at the local level, in local languages, and those developed or used by indigenous and local communities; as well as for workshops to focus on the use and further development of available tool kits, in particular in relation to co-managed protected areas and community-conserved areas, and to ensure the full and effective participation of indigenous and local communities in this activity.\footnote{Ibid., paragraphs 32-33}

Although an 'invitation to consideration', all the more as it is only recommended 'as appropriate' has to be regarded as rather weak language, Decision VIII/24 can be seen as a first step to recognize the specific needs of indigenous peoples for financial and other support in relation to the designation and management of protected areas under the CBD. The particular reference to 'local languages and those developed or used by indigenous peoples' shows that the Parties to the convention became aware of particular needs of indigenous peoples, much more specifically than in previous decisions. However, in the broader context of

\footnote{Ibid., paragraph 21}  
\footnote{Ibid., paragraph 22 (d) and (e)}  
\footnote{Ibid}  
\footnote{Ibid., paragraphs 32-33}
implementing the challenging targets laid down by the programme of work, the outcome of the 2006 decision on protected areas for indigenous peoples and the recognition of their rights are rather limited.

At its ninth meeting in 2008, the COP focussed on the review of implementation of the programme of work and on options of mobilizing adequately and timely financial resources for the implementation of the programme, laid down in Decision IX/18\(^{410}\).

While reviewing the implementation of the programme of work, the meeting recognized firstly “that the limited availability of information continues to be a major shortcoming for the purpose of review”\(^{411}\). Against this background, it invited Parties to give special attention to the implementation of programme element 2 of the programme of work, which contains the two goals of promoting equity and benefit-sharing and of enhancing and securing the involvement of indigenous and local communities and relevant stakeholders (emphasised above)\(^{412}\). In the same context, the meeting encouraged Parties to establish, as appropriate, multisectoral advisory committees which may consist of representatives from, \textit{inter alia}, indigenous and local communities, and to develop and facilitate the exchange and use of appropriate tools adapted, where appropriate and necessary, to local conditions including traditional natural resource management practices of indigenous and local communities and translate them into required languages\(^{413}\). It further invited Parties to

- improve and, where necessary, diversify and strengthen protected-area governance types, including recognizing and taking into account, where appropriate, indigenous, local and other community-based organizations;
- recognize the contribution of, where appropriate, co-managed protected areas, private protected areas and indigenous and local community

\(^{410}\) Decision IX/18 (2008); divided in part A: “Review of implementation of the Programme of work on protected areas” and part B: “Options for mobilizing, as a matter of urgency, through different mechanisms adequate and timely financial resources for the implementation of the programme of work”; available at: \url{http://www.cbd.int/decision/cop/?id=7765}

\(^{411}\) Decision IX/18 (2008), part A, paragraph 1

\(^{412}\) Ibid., part A, paragraph 4 (c)

\(^{413}\) Ibid., part A, paragraph 5 (b) and (c)
conserved areas within the national protected area system through acknowledgement in national legislation or other effective means;

– establish effective processes for the full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, in the governance of protected areas, consistent with national law and applicable international obligations; and

– further develop and implement measures for the equitable sharing of both costs and benefits arising from the establishment and management of protected areas.\textsuperscript{414}

Finally, in the context of reviewing the implementation of the programme of work, the meeting encouraged Parties to ensure that benefits arising from the establishment and management of protected areas are fairly and equitably shared in accordance with national legislations and circumstances, and do so with the full and effective participation of indigenous and local communities and where applicable taking into account indigenous and local communities’ own management systems and customary use.\textsuperscript{415}

In considering options for mobilizing adequate and timely financial resources for the implementation of the programme of work, the COP expressed its concerns “that insufficient financial resources continues to be one of the main obstacles to the implementation of the programme of the work”\textsuperscript{416} and recognized “the urgency of mobilizing adequate financial resources for the implementation of the programme of work by all Parties”\textsuperscript{417}. In this context, it invited Parties, inter alia, to:

– further explore with full and effective participation of indigenous and local communities, and other relevant stakeholders and strengthened cross-sectoral linkages, as appropriate, the concept of payments for ecosystem services in accordance with applicable international law, taking into

\textsuperscript{414} Ibid., part A, paragraph 6 (a) - (b), and (d) - (e)

\textsuperscript{415} Ibid., part A, paragraph 19

\textsuperscript{416} Ibid., part B: “Options for mobilizing, as a matter of urgency, through different mechanisms adequate and timely financial resources for the implementation of the programme of work” [emphasis added]

\textsuperscript{417} Ibid
account the fair and equitable sharing of both costs and benefits of management of protected areas with indigenous and local communities; and to

– promote the valuation of ecosystem goods and services provided by protected areas, especially the socio-economic costs and benefits to indigenous and local communities and other relevant stakeholders, to achieve a better integration of conservation and development processes.418

By reiterating the need to provide financial support and urging Parties to undertake a review of their national implementation of the programme of work, COP IX decided to continue the monitoring of the implementation of the programme of work.419 For the forthcoming tenth meeting of the COP, which will be held in 2010, it remains to be seen to which extent major obstacles like those of limited information and insufficient financial resources could be managed to overcome in the meantime, and which particular emphasis was and will be drawn on the rights of indigenous peoples in the context of area protection and management.

5.4 Implementation of CBD obligations in relation to indigenous peoples' rights in the context of area protection and management in national legislation and policies

According to Article 26 of the CBD, each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention. These reports can assist the Conference of the Parties to consider the lessons learned by Parties in the implementation of the Convention, identify gaps in capacity for policy research and analysis at the national, regional and global levels, including technical and financial requirements, and to formulate appropriate requests and guidance to Parties and to its subsidiary bodies420, and

418 Ibid., part B, paragraph 3 (a) and (d)
419 Ibid., part A, paragraph 25 (a)
420 See CBD website about national reporting at: http://www.cbd.int/reports/intro.shtml
thus serve as an appropriate mechanism to measure the degree of state party implementation.

In assessing the status of national implementation, in principle, three types of reports are available to consider:

a) thematic reports (submitted in 2003/2004),
b) the third national reports (submitted between 2005 and 2007) and
c) the fourth national reports (submitted in 2009).

As to the assessment in more detail, however, all of them have advantages and disadvantages:

a) Although thematic reports on protected areas have the advantage to be specifically related to area protection and management, their dates of submission, with one exception, lie before the date on which the Programme of work on protected areas with the emphasis on indigenous peoples (as pointed out above) was adopted.\(^{421}\)
b) The third national reports, submitted by Finland, Norway and Sweden in 2005, and by Russia in 2007, on a first view, seem to provide a valuable source to be assessed in more detail, since an uniform reporting form was used. Such an uniform format provides generally a good point of departure for comparative studies. On a closer view, however, it has to be noted, that none of the specific questions related to the Programme of work on protected areas (questions 36. – 44.) refers to indigenous peoples’ rights in general, and to programme element 2, target 2.1 and target 2.2, in particular. Instead, indigenous peoples’ rights are stressed under the respective questions related to the programme of work for Article 8(j) and related provisions (boxes XVIII. and XIX.; and questions 57. - 63.).
c) The fourth national reports, now submitted by all of the four Arctic

\(^{421}\) Finland, Norway and the Russian Federation submitted their thematic reports on protected areas in 2003, Sweden submitted it on 29 March 2004. In relation, the Programme of work on protected areas was adopted by COP VII held from 9 – 20 February 2004 in Kuala Lumpur, Malaysia.
states, do not use a uniform format. Insofar, it is more difficult to achieve comparability related to questions of specific concern. However, since they provide the most up-dated information to measures that have been taken for the implementation of CBD provisions in general, and of obligations relating to the Programme of work on protected areas in particular, they seem to provide the most appropriate resources for the present survey.

Therefore, the implementation of the obligations under the Programme of work on protected areas, particular those under programme element 2, targets 2.1 and 2.2, will be mainly assessed on the base of the fourth national reports of Finland, Norway, the Russian Federation and Sweden, but will also consider other sources relevant to measure national implementation.

5.4.1 Finland

5.4.1.1 The protected area system of Finland

At present, some 12 % of Finland’s total surface area is under protection, counting legally established protected areas. When other areas reserved for nature conservation programmes are also counted, including European Union Natura 2000 network sites, the total area under protection increases to 15 %.

Protected areas can be either on state-owned or privately-owned lands. Most protected areas are situated on state land. State-owned protected areas are managed by the Natural Heritage Services (NHS) of Metsähallitus, a State-owned enterprise which administers State-owned forests and water areas. The activities of the NHS are under the guidance of the Ministry of the Environment.

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422 The Russian Federation submitted its report very recently, on 9 November 2009.
424 Ibid., p. 55
425 For further information see website of Metsähallitus, available at: http://www.metsa.fi, accessed on 01.11.2009
Protected areas are categorised as: national parks, strict nature reserves, mire reserves, protected herb-rich forests, protected old-growth forest areas, grey seal protection areas, other protected areas on state-owned land, protected areas on private land and wilderness areas.\footnote{CAFF Habitat Conservation Report No. 10 (2002), p. 33} Moreover, Finland has a Natura 2000 network in place to conserve important biotopes and species. For the most part the areas Finland has suggested as Natura 2000 areas are protected areas, wilderness areas and areas taking part in nature conservation programmes.\footnote{Website of Metsähallitus, see supra note 425}

It should be noted that the Finnish Sami Homeland, which means the areas of the municipalities Enontekiö, Inari, Utsjoki and parts of the municipality Sodankylä, all of them located in Lapland, is particularly affected by area protection and management since about 85% of the Finnish protected areas are located in Lapland.\footnote{See Section 4 of the Finnish Act on the Sami Parliament (974/1995)}


A national strategy and action plan for the conservation and sustainable use of biodiversity in Finland, accepted for the period 2006–2016, serves as the main instrument to implement the CBD Programme of work on protected areas.\footnote{Finland's Fourth National Report on the Implementation of the CBD (2009), Annex III / B: “Progress towards Targets of the Programme of work on Protected Areas (PoWPA)”, p. 121} Both the strategy and action plan focus on strategic planning and measures to achieve the overall CBD goals and targets.\footnote{Ibid., Annex III / B, p. 121} One major strategic objective is the improvement of the conservation and management of biodiversity by focusing on the quality (performance, effectiveness, efficiency and representativeness) of
Finland’s system of protected areas and the protection of species.\textsuperscript{433}

Furthermore, several national conservation programmes in addition to Natura 2000 obligations are in place; so for example the conservation programme on national parks and strict Nature reserves, the protected peatland areas conservation programme, the bird breeding protected areas conservation programme, or the herb-rich forest areas conservation programme. All these programmes are implemented to a different degree.\textsuperscript{434}

5.4.1.2 Implementation of the CBD Programme of work on protected areas

According to Finland's Fourth National Report, submitted in June 2009\textsuperscript{435}, the goals and targets of the Programme of work on protected areas are fully incorporated in Finland’s objectives regarding the national network of protected areas and its management.\textsuperscript{436} They are based on three main pillars: the European Union Natura 2000 network, the national strategy and action plan for the conservation and sustainable use of biodiversity 2006-2016 and the national goal setting by NHS.\textsuperscript{437}

In relation to goal 2.1 to promote equity and benefit sharing, in general, and its implications to indigenous peoples, in particular, the report mentions, among others, the Finnish Wilderness Act\textsuperscript{438} as a legal instrument that aims “at improving possibilities for traditional uses of nature”\textsuperscript{439}. According to Section 1, the main goals of the Wilderness Act are: (1) to preserve the wilderness character of the areas, (2) to protect Sami culture and traditional subsistence use of the areas, and (3) to enhance possibilities for diversified use of nature. However, as stated in chapter 4.1.2, the historical genesis of the Wilderness Act has been not

\textsuperscript{433} Ibid., Annex III / B, pp. 124-125
\textsuperscript{434} Ibid., Annex III / B, pp. 122 ff.
\textsuperscript{436} Ibid., Annex III / B: “Progress towards Targets of the Programme of work on Protected Areas (PoWPA)”, p. 121
\textsuperscript{437} Ibid., Annex III / B, p. 121
\textsuperscript{438} Act on Wilderness Reserves (62/1991), entered into force on 1 February 1991
\textsuperscript{439} Finland's Fourth National Report on the Implementation of the CBD (2009), Annex III / B, p. 139
uncontroversial and as evidenced by *HRC Communication 431/1990 O. Sara et. al. v. Finland*\(^{440}\), Sami representatives claimed that, according to Section 3, the ratio legis of the Wilderness Act is a notion and extension of State ownership to the wilderness areas of Finnish Lapland instead of upgrading and enhancing the protection of the Sami culture as contended by the State party.\(^{441}\) This controversy is insofar of relevance as Sami representatives even do not see the Wilderness Act as an instrument that supports their traditional way of life, but, in the opposite, as one that diminishes their rights by giving the Central Forestry Board extensive power to authorize full-scale logging activities.\(^{442}\)

Furthermore, the report stresses a new compensation scheme for reindeer owners for the economic loss caused by protected predators, which covers the value of each reindeer killed by strictly protected large carnivores such as the brown bear (*Ursus arctos*), wolf (*Canis lupus*), wolverine (*Gulo gulo*) and lynx (*Lynx lynx*).\(^{443}\) Although not directly related to the establishment of protected areas, a current revision of the scheme has become necessary as the populations of large carnivores have increased due to the protection measures required under the Directive on the conservation of natural habitats and of wild fauna and flora (92/43/EEC, the Habitats Directive), resulting in more frequent damage to reindeer.\(^{444}\) Due to increased compensation paid outs for losses, the previous compensation scheme, where the compensation amounted to double the actual value of a reindeer, has been replaced by a new scheme, which came into force on 1 December 2009.\(^{445}\) The new scheme includes a decrease of compensation to 1.5 times the market value of the reindeer, and any pay-out is subject to the condition that the total losses of an applicant in a calendar year exceed 170 €.\(^{446}\)

As regards *goal 2.2 to enhance and secure involvement of indigenous and local communities, and relevant stakeholders*, the report provides, first of all, some examples of *legal obligations* to improve the level of involvement. Among others,

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\(^{440}\) CCPR-27, 431/1990 - O. Sara et al. v. Finland

\(^{441}\) Ibid., see paragraphs 2.3 and 4.5

\(^{442}\) Ibid., paragraph 2.4


\(^{444}\) Ibid., Annex III / B, p. 141

\(^{445}\) Ibid., Annex III / B, p. 141

\(^{446}\) Ibid., Annex III / B, p. 141
it refers to the *Act on the Sami Parliament*, which requires that the authorities shall negotiate with the Sami Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sami as an indigenous people and which concern, inter alia, the management, use, leasing and assignment of state lands, conservation areas and wilderness areas.\(^\text{447}\)

Furthermore, the report refers to the *Act on Metsähallitus*, where it is stated that the management, use and protection of natural resources shall be adjusted to fulfilling the obligations laid down in the *Reindeer Husbandry Act*.\(^\text{448}\) In this Act, the main concern in regard to protected areas is the 'consulting obligation' contained in Section 53. According to that provision, in all planning measures concerning State land that will have a substantial effect on the practice of reindeer herding, the State authorities must consult the representatives of the reindeer herding co-operative in question.

In relation to these legal obligations providing for the participation of indigenous peoples in decision-making in the context of area protection and management, the following should be noted:

Although, on a first view, section 9 paragraph 1 of the Act on the Sami Parliament seems to provide a strong obligation for negotiating with the Sami Parliament, one has to take into consideration the whole section. Paragraph 2, firstly, specifies the term 'negotiate' by stating that “In order to fulfil its obligation to negotiate, the relevant authority shall provide the Sami Parliament with the opportunity to be heard and discuss matters.” Thus, the obligation to negotiate becomes weakened by being reduced to 'hearing' and 'discussing', instead of voting or other decisive rights. Moreover, sentence 2 of paragraph 2 adds a further weakness to the participatory rights of Sami people, by stating that a “Failure to use this opportunity in no way prevents the authority from proceeding in the matter”.

Furthermore, it should be noted that Section 4, paragraph 2 of the Act on Metsähallitus, although containing a general social obligation to adjust the management, use and protection of natural resources governed by the Metsähallitus in order to ensure the conditions for Sami people to practice their

\(^{447}\) Section 9, paragraph 1 (2) of the Act on the Sami Parliament (1995)  
\(^{448}\) Section 4, paragraph 2 of the Act on Metsähallitus (2004)
culture, no specification has been made what is meant by ‘adjusting’, except in the case of Sami reindeer herding, where an obligation for consultation is laid down in Section 53 of the Reindeer Husbandry Act (see above). The lack of further regulation and specification of the term ‘adjusting’ evidently weakens Sami people’ rights of participation in that process. Moreover, the only explicit ‘consulting’ obligation, contained in Section 53 of the Reindeer Husbandry Act, refers to reindeer herding activities. This is problematic insofar, as in Finland also other people than Sami can engage in reindeer herding, and thus the consulting obligation does not aim at protecting participatory rights of Sami primarily, but participatory rights of anybody who is engaged in reindeer herding.

In addressing goal 2.2 of the Programme of work on protected areas, the report furthermore emphasizes different instruments and actions taken to enhance and secure involvement of indigenous and local communities, and relevant stakeholders. Among others, it refers to a governance strategy taken for the Kvarken Archipelago, where co-management elements between all relevant stakeholders are included. It stresses the translation of relevant material into Sami language as an obligation for the Metsähallitus Natural Heritage Services. When one compares this obligation to translation with the translation services of Metsähallitus Natural Heritage Services for the linguistic minority of Swedish-speaking Finns, especially the provision of a comprehensive up-to-date web service on protected areas in Finland which is fully translated to Swedish, but only partly to Sami languages, it is striking that the translation obligations and services are more comprehensive for the Swedish-speaking Finns than for the Finnish Sami. Certainly, there are more Swedish-speaking Finns than Sami in

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451 Ibid., Annex III / B, p. 142
452 The Swedish-speaking Finns amount to almost 300,000 people (5.6 % of the total population), the majority of which resides in the coastal areas of southern and western Finland. Around 12,000 (4 %) live in unilingual Finnish municipalities in other parts of the country. The Åland Islands are a unilingual Swedish self-governing province outside the west coast of Finland, and the home of around 26,000 people. See at: http://www.kaapeli.fi/~fti/en/index.html
Finland\textsuperscript{453} (c. 300,000 vis-à-vis c. 6,000 to 7,000), and according to Section 17 of the Finnish Constitution, Swedish is a national language in Finland, while the “Sami, as an indigenous people, [...] have the right to maintain and develop their own language and culture”\textsuperscript{454} like other minority groups in Finland. And although specific provisions on the right of the Sami to use their own language before the courts and other public authorities, as well as the duty of authorities to enforce and promote the linguistic rights of the Sami are laid down in a specific Act\textsuperscript{455}, in practice concerns are raised that “some municipalities (local governments) do not accept the fact that the Sami people are guaranteed the use of their own language and the exercise of their own culture with arrangements that do not apply to the rest of the population”\textsuperscript{456}.

In the following, the report refers to the establishment of special protected area cooperation groups representing both the management authority and relevant stakeholders, the practice of co-management of private protected areas and the development of official cooperation agreements between the Reindeer Herder's Association, the Island Committee and other important stakeholders, partners and sectors to guarantee that the management of protected areas is participatory.\textsuperscript{457} As a whole, the report points out that the Metsähallitus NHS management planning process is based on a participatory approach, laid down in new guidelines on the NHS management planning of 2009.\textsuperscript{458} According to these guidelines, the NHS management planning process should be a “well structured, guided and documented process involving all relevant stakeholders varying from bilateral and multilateral negotiations to public events open for discussions”\textsuperscript{459}. However, in another report on the “Participatory Processes in Finnish Forest

\textsuperscript{453} Depending on how 'Sami' is defined, the Sami population numbers between 60,000 and 100,000, of whom 6,000-7,000 live in Finland. Sami is spoken by no more than half of the Sami population. See the Research Institute for languages of Finland at: \url{http://www.kotus.fi/?l=en&s=207}

\textsuperscript{454} Section 17 of the Constitution of Finland

\textsuperscript{455} Unofficial translation of the Ministry of Justice, Finland: Language Act (423/2003), available at: \url{http://www.om.fi/20802.htm}


\textsuperscript{458} Ibid., Annex III / B, p. 142

\textsuperscript{459} Ibid., Annex III / B, p. 129
Conservation"\textsuperscript{460} of 2006, the Ministry of Agriculture and Forestry mentions evident problems in reconciling forestry and reindeer husbandry in Northern Finnish Lapland, which have also to do with the Metsähallitus planning process. A natural resources planning process for Northern Finnish Lapland, encompassing all operations of the Metsähallitus in the area, was launched in 1999 and finalised with a compromise in 2000.\textsuperscript{461} Neither the reindeer herding cooperatives of Northern Finnish Lapland, nor the Sami Parliament gave the plan their full approval by stating that “the allowable cut defined in the natural resources plan did not safeguard the prerequisites of reindeer herding, [and] the natural resources plan for Northern Finnish Lapland [would] completely ignore land ownership issues.”\textsuperscript{462} In summary, the report concluded that the planning processes and other measures of Metsähallitus did not produce the desired result in the reconciliation of forestry and reindeer husbandry in Northern Finnish Lapland\textsuperscript{463}, and saw the solution of Sami land rights as one necessary action to be taken in the next future.\textsuperscript{464} Against this background, the recent settlement of a dispute between the Sami reindeer herding Paadar brothers and the Metsähallitus over the traditional reindeer grazing lands in the Nellim area, on 24 August 2004, represents a historic and groundbreaking agreement in respect to Sami land rights.\textsuperscript{465}

Under the heading of 'obstacles, needs and future priorities', the report self-critically points out that “the co-management approach including decision-making mechanisms and management planning and practices needs close re-evaluation in terms of involving local and indigenous communities and other stakeholders in practice.”\textsuperscript{466} Although in principle tools and the practices of the Metsähallitus NHS, as described above, would be in place, “there could be more focus on how to find a way to develop measures for co-management of PAs [protected areas] as

\textsuperscript{460} Ministry of Agriculture and Forestry: Participatory Processes in Finnish Forest Conservation, 2006, electronically available at: http://wwwb.mmm.fi/tiedotelitiit/Participatory_processes.pdf
\textsuperscript{461} Ibid., p. 40
\textsuperscript{462} Ibid., p. 40
\textsuperscript{463} Ibid., p. 42
\textsuperscript{464} Ibid., p. 43; In this relation the report also refers to the Lapland land rights study from a joint research team of the Universities of Oulu and Lapland, aiming at clarifying Sami land rights issues on the basis of archival sources, already mentioned above chapter 4.2.1.
\textsuperscript{466} Press release of the Sami Council (24 August 2009), p. 143
it is seen from wider perspective.\textsuperscript{467} When it comes to co-management, often defined as “the sharing of power and responsibility between the government and local resource users,”\textsuperscript{468} it should be stressed that efficiency and effectiveness of co-management models decisively depend on the degree to which decision making power is transferred.\textsuperscript{469}

Finally, the report observes that the creation of common guidelines or of a policy 'may not be feasible' due to the broad variety of social, cultural, economic and ethnical circumstances from the south to the north of the country.\textsuperscript{470} This is insofar true as the engagement of Sami people in forestry and reindeer herding, but also the engagement of Finns and Sami in reindeer, herding differ widely and create a broad diversity as described by Nuccio Mazzullo: “Those Sámi people who own allotments of forest but do not practise reindeer herding as a relevant source of income, share the view of most Finnish residents that these plans [those of Natura 2000] represent a threat to their livelihood. However, as they are unable to claim that forestry is a traditional Sámi livelihood, they have to emphasise their Sáminess by asserting their inalienable rights to exploit natural resources within Lapland. On the other hand those Sámi who herd reindeer as a main or secondary source of livelihood recognise the danger that logging, mining and other industrial activities may damage the pastures and threaten the survival of the herd. Thus they see the creation of protected areas, in which only they should be allowed to operate [...], as a way to protect their herds, their traditional life-style, and hence, their Sáminess.”\textsuperscript{471} However, as pointed out by Mazzullo, solutions for these challenges might not be seen in a generalized approach, but have to “take into

\textsuperscript{467} Ibid., p. 143
\textsuperscript{469} See among others: Fikret Berkes, P. George and R. Preston (1991): “Co-management”, Alternatives, vol. 18, no. 2, pp. 12–18; Fikret Berkes (1994): “Co-Management: Bridging the two solitudes”, Northern Perspectives (Ottawa: Canadian Arctic Resources Committee), vol. 22, no. 2-3, pp. 18-20; Campbell furthermore states that “co-management implies that each participant at the negotiation table has equal rights of participation. That is, each participant brings to the process an enforceable position, ideally established in law and policy, which can then be formally institutionalized in the co-management process.” Tracy Campbell (1996):“Co-management of Aboriginal Resources”, Information North, vol. 22, no.1 (March 1996), Arctic Institute of North America, pp. 6-7
\textsuperscript{470} Finland’s Fourth National Report on the Implementation of the CBD (2009), Annex III / B, p. 143
\textsuperscript{471} Nuccio Mazzullo (2005), p. 397
account the diversity of local views” using a much more “holistic” approach.\textsuperscript{472}

5.4.2 Norway

5.4.2.1 The protected area system of Norway

Currently, protected areas in Norway cover almost 15\% of the mainland.\textsuperscript{473} A large proportion of this consists of mountainous areas, while a number of other habitats, such as coastal and marine habitats, are not yet adequately represented.\textsuperscript{474} A special situation applies to Svalbard, where, over all, at present 65\% of the area are protected, together with about 75\% of the territorial waters within the 12 nautical-mile territorial limit.\textsuperscript{475}

Norway’s protected areas are legally governed by the Nature Conservation Act of 1970, last amended in 1995, the Svalbard Environmental Protection Act, which entered into force on 1 July 2002, and the Culture Heritage Act of 1878, last amended in 2000. A new Nature Diversity Act, adopted on 19 June 2009 and having entered into force on 1 July 2009\textsuperscript{476}, provides rules for the sustainable use and protection of the natural environment.\textsuperscript{477} As regards protected areas, the new Act will enhance protection efforts and ensure greater consistency as well as clarity for landowners and local communities involved by establishing, among other things, clear goals for protected areas, obligatory management plans for large protected areas and increased funding for management.\textsuperscript{478} It also introduces a special category for marine protected areas and substantially improved compensation provisions for landowners and stakeholders in protected areas.\textsuperscript{479}

\begin{itemize}
\item \textsuperscript{472} Nuccio Mazzullo (2005), p. 403
\item \textsuperscript{473} Norwegian Directorate for Nature Management (2009):“State of Environment Norway”, available at: http://www.environment.no/Topics/Biological-diversity/Protected-areas/
\item \textsuperscript{474} Ibid
\item \textsuperscript{475} Ibid
\item \textsuperscript{476} The Norwegian language version of this act is available at: http://www.regjeringen.no/dok/lover_regler/lover/naturmangfoldloven.html?id=570549
\item \textsuperscript{478} Ibid
\item \textsuperscript{479} Ibid
\end{itemize}
According to the Nature Conservation Act, the protected area system of Norway consists of the following categories: national parks, protected landscapes, nature reserves, natural monuments and areas of particular importance for plants and animals. The main agencies in this system are the Ministry of the Environment, the Directorate for Nature Management, county governors, including Svalbard, and local municipal authorities. In addition, a specific Act relating to the right to environmental information and public participation in decision-making processes relating to the environment as of 9 May 2003 aims to ensure public access to environmental information and thus make it easier for individuals to contribute to the protection of the environment, to protect themselves against injury to health and environmental damage, and to influence public and private decision-makers in environmental matters. It comprises, among others, administrative decisions and measures, including individual decisions, agreements, legislation, plans, strategies and programmes, as well as related analyses, calculations and other assumptions used in environmental decision-making. Norway’s current conservation plans are planned to be implemented by 2010. They will then comprise a 15% protection level for mountain habitats, and a better selection of fjord and coastal areas. They will also give greater support to the protection of forested areas as well as to coastal and lowland areas. The latter aim will be achieved by implementing county protection plans for mires,

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483 See paragraph 1, Purpose of the Act

484 At the same time, this Act can also been seen as the implementation of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), adopted on 25th June and entered into force on 30 October 2001, that has been ratified by Norway on 2 May 2003. Apart from Norway, also Finland and Sweden are Parties to the Convention, the Russian Federation is not. The Aarhus Convention grants the public in general, thus also the indigenous peoples in the respective contracting party, rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice. It is also forging a new process for public participation in the negotiation and implementation of international agreements. See for further information: [http://www.unece.org/env/pp/](http://www.unece.org/env/pp/)

485 Paragraph 2 Definition of environmental information, b), subsection four

wetlands, deciduous broad-leaved forests, rich deciduous forests and important coastal sites for seabirds.\textsuperscript{487} The implementation of Norway's protection plans will also contribute to the Norwegian goal attainment with regard to CBD’s Programme of work on protected areas.\textsuperscript{488} A system for following up and monitoring of protected areas on the basis of concrete conservation goals for protected areas, established for the period 2007 – 2011, shall help to collect and communicate necessary knowledge on biological diversity for a better management of protected areas.\textsuperscript{489}

5.4.2.2 Implementation of the CBD Programme of work on protected areas

Norway submitted its Fourth National Report on the implementation of the CBD in April 2009.\textsuperscript{490} Different from the respective report of Finland, for example, the Norwegian report does not refer explicitly to the specific programmes of work established under the CBD. Therefore, no particular reference to the Programme of work on protected areas has been made in the report itself. Instead the report refers generally to the Norwegian Biodiversity Strategy and Action Plan (NBSAP), a framework consisting of three Parliamentary reports – Parliamentary Report 42 (2000 – 2001): Biological Diversity – Sectoral Responsibilities and Integration (the NBSAP in an actual sense), Parliamentary Report 21 (2004-2005): The Government’s Environmental Policy, and Parliamentary Report 26 (2006 – 2007): The Environmental State of the Nation.\textsuperscript{491} The NBSAP is highlighted as the basis for a new management system of biodiversity and a common platform for sectoral measures by comprising key aspects such as the development of a Nature Diversity Law, establishing a National Programme for Survey and Monitoring, sector integration through coordination of government measures (including legislation and economic incentives), and the establishment of a Norwegian Biodiversity Information Centre.\textsuperscript{492}

\textsuperscript{487} Ibid
\textsuperscript{488} Norway’s Fourth National Report on the Implementation of the CBD (2009), p. 69
\textsuperscript{489} Ibid., p. 69
\textsuperscript{490} Norway’s Fourth National Report on the Implementation of the CBD (2009) is available under the CBD website at: \url{http://www.cbd.int/doc/world/no/no-nr-04-en.pdf}
\textsuperscript{491} Norway’s Fourth National Report on the Implementation of the CBD (2009), p. 48
\textsuperscript{492} Ibid., p. 87
As to the progress that has been made towards the CBD 2010 target and the strategic plan, the Norwegian report states, among other items, that recent developments in the Norwegian Sami policy are highly relevant for the implementation of the CBD. To illustrate this relevance, the report refers to the Finnmark Act of 2005 (already mentioned above in chapter 4.2.2), which established the Finnmark estate to be jointly governed by the Sami Parliament and the Finnmark County Council, and to the Procedures for Consultation between the State Authorities and the Sami Parliament of 2005 (also already mentioned above in chapter 4.2.2).

Although not explicitly mentioned, the report refers to certain goals of the CBD Programme of work on protected areas, specifically dedicated to the rights of Sami people: As regards participatory rights of indigenous people – programme element 2, goal 2.2 – the report stresses the fact that these procedures for consultation were used in the preparation of the new Nature Management Act of 2009. This was also highlighted by State Secretary Raimo Valle in his address to the UN Permanent Forum on Indigenous Issues on 21 May 2009, where he confirmed that “several consultations were held between the Sami Parliament and the Government concerning the Nature Diversity Act. Both the Government and the Sami Parliament were satisfied with the process and the result. During the consultation process, the Sami Parliament got acceptance for many of their claims. In a plenary session in November 2008 the Sámi Parliament endorsed the Act.” In this context, he also emphasized that the new Nature Diversity Act would be highly relevant to the benefit sharing of genetic resources and to the usage of Sami traditional knowledge. As pointed out by Valle: “The Act states that the exploitation of genetic material from animals, plants and microorganisms

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493 Ibid., p. 87, see paragraph 13
494 Ibid., p. 87
495 In distinction to the Press Release of 03.04.2009, where the new act is called “Nature Diversity Act”, Norway’s Fourth National Report uses the terminology of “Nature Management Act” as this new Act had been announced before.
shall benefit the environment and human beings both in a national and an international perspective. An appropriate distribution of the benefits by the use of genetic material must be emphasized in a way that indigenous and local communities’ interests are taken care of. The Act provides the possibility to draft regulations requiring permits for access to Norwegian genetic resources, rules on benefit-sharing, and information on the use of traditional knowledge."\(^{498}\)

Thus the new Nature Diversity Act, and in particular the consultation process between state authorities and the Sami Parliament which led to a common solution\(^{499}\), is also very much relevant to achieve the targets of **goal 2.1 of programme element 2** of the Programme of work on protected areas, namely to **promote equity and benefit-sharing** with indigenous peoples in the context of area protection and management.

Apart from the fourth Norwegian report, one aspect of further relevance to the implementation of the CBD Programme of work on protected areas, and in particular to participatory rights of Sami people in the context of area protection and management, should be stressed:

In addition to the ‘Procedures for Consultation’, agreed between the government and the Sami Parliament in May 2005\(^{500}\), the Ministry of the Environment and the Sami Parliament agreed on 31 January 2007 on specific ‘Guidelines for consultations in relation to area protection’\(^{501}\) (hereinafter: Guidelines for Consultations). These guidelines are to ensure that the consultations in connection with any proposal for nature protection in Sami areas shall be conducted in good faith and with the goal of achieving agreement between the state authorities and the Sami Parliament.\(^{502}\) Furthermore, these guidelines contain specific procedures for the consultation process, such as specific time frames and regulations on the

\(^{498}\) Ibid

\(^{499}\) At least in this case; there are other cases, where an agreement between state authorities and the Sami Parliament could not be reached, as for example the consultation process concerning a new Mineral Act.

\(^{500}\) See supra note 210


\(^{502}\) See section 1 of the Guidelines for Consultations
composition of planning and management boards.\textsuperscript{503}

Since the ‘Procedures for Consultations’ and the respective guidelines specifically related to the establishment and management of protected areas are of a rather new date, there are not many practical experiences of their implementation documented. However, Jan Åge Riseth, in an article of 2006, explores the reasons of existing confrontations between Sami reindeer herders and relevant state authorities using the example of the establishment of two new National Parks, the Blåfjella-Skjækerfjella and Lierne National Park, both situated in the heartland of the Indigenous reindeer managing areas of South Sámi.\textsuperscript{504} The creation of National Parks, Riseth points out, transfers jurisdiction from local domain control to central domain control, while giving priority to nature protection over traditional uses.\textsuperscript{505} This tendency impedes the ability of Sámi to interact with their non-Sámi neighbours and to achieve outcomes which are mutually beneficial, which keep the migration paths open, and which protect summer pastures and winter forests.\textsuperscript{506} A survey of Sámi experience with national parks showed the total national park area within Norwegian Sapmi [Sami homeland] has increased three and a half times – at New Year 2007, 18 of 29 national parks on the Norwegian mainland were established within current Sapmi.\textsuperscript{507} This expansional process has been accompanied by strong local concerns and the objections of the Sámi Parliament, and cumulated in boycotts as in the cases of Blåfjella-Skjækerfjella and Lierne national parks.\textsuperscript{508} Riseth concludes that communication has broken down between Sámi and the environmental sector, and that a multi-level solution is needed to resolve conflicts between different uses within the park, to restore Sámi confidence in the potential of national parks, and to enable Norway as a nation to participate with integrity in the international community.\textsuperscript{509}

As demonstrated by this example, there is a deficiency between the Norwegian

\begin{itemize}
\item \textsuperscript{503} See sections 5 and 6 of the Guidelines for Consultations
\item \textsuperscript{504} Jan Åge Riseth (2007), pp. 177-185
\item \textsuperscript{505} Ibid., p. 180
\item \textsuperscript{506} Ibid., p. 180
\item \textsuperscript{507} Ibid., p. 180
\item \textsuperscript{508} Ibid., p. 181
\item \textsuperscript{509} Ibid., p. 181
\end{itemize}
government’s efforts in international environmental and human rights law and the incorporation of respective achievements into domestic policies of area protection and management. Although it follows a systematic approach, the development of biodiversity protection in general, and that of area protection and management in particular, lacks the specific recognition of indigenous peoples' rights in this area. As stressed by Riseth, “it is symptomatic that the Nature Biodiversity Committee provided a short overview of the situation, but avoided any proposals on Sámi management models”510.

A recent problem, observed in relation to the involvement of Sami people in the designation process of new protected areas, is that of significant pressure by the Norwegian government to speed up ongoing protection processes.511 This, in consequence, undermines to a considerable extent the original intentions of greater participation of Sami people in the area protection process. It becomes all the more contradictory, if one considers the government’s argument that the speeding up of designation processes would be necessary to achieve the CBD 2010 targets512; the same targets that also aim at enhancing and securing the involvement of indigenous and local communities and relevant stakeholders in the management of existing and the establishment of new protected areas.

5.4.3 Russian Federation

5.4.3.1 The protected area system of the Russian Federation

“The Russian Federation comprises one sixth of the world's land area and contains an enormous diversity of ecosystems on a vast scale. These include one fifth of the world's forests as well as its deepest and oldest lake (Baikal), which holds over 20% of the world's fresh water. Russia's eight biogeographic zones encompass 54 distinct ecological zones, each containing unique associations of species.”513

511 Personal e-mail correspondence with Jan Åge Riseth as of 29 January and 3 February 2010
512 Ibid
Throughout the 1990s, Russia’s protected area system underwent a marked expansion. Ten strict nature reserves (zapovedniks) and eight national parks were added. This brought the system to 99 zapovedniks (8 in the Arctic) and 33 national parks (1 in the Arctic) as of 2002.\textsuperscript{514} At present, natural ecosystems of Russia and their biological diversity are conserved in around 15,000 specially protected areas of various statuses that occupy more than 10% of the country’s area.\textsuperscript{515} They include 101 strict nature reserves and 40 national parks.\textsuperscript{516}

The Russian protected area system distinguishes between the following categories: (a) state nature zapovedniks (strict nature reserves) including “biosphere” zapovedniks; (b) national parks; (c) nature parks; (d) state nature zakazniks (special purpose reserves); (e) natural monuments; (f) dendrological parks and botanical gardens and (g) places of recreational/health-giving value and resorts.\textsuperscript{517}

The primary legal base for Russia’s protected area system is the federal law ”On specially protected nature territories” (1995)\textsuperscript{518}, which defines “specially protected nature territories” as “land parcels, water surfaces, and air space above them, where ecosystems and objects of unique environmental, scientific, cultural, aesthetic, recreational and health-giving value are located, which, by the authority of governmental organs have been completely or partially removed from agricultural or industrial use, and for which a regime of special protection has been established”\textsuperscript{519}. Article 5 of this law contains a specific provision on participatory rights whereby natural and legal persons have the right to assist governments in implementing the activities of planning, designating and

\begin{footnotesize}
\textsuperscript{514} CAFF Habitat Conservation Report No. 10 (2002), p. 38; As of 2004 these numbers have been increased to 100 zapovedniks and 35 national parks; see in detail: W.B. Stepanzyk and M. L. Krejndlyn (2004): “ГОСУДАРСТВЕННЫЕ ПРИРОДНЫЕ ЗАПОВЕДНИКИ И НАЦИОНАЛЬНЫЕ ПАРКИ РОССИИ: УГРОЗЫ, НЕУДАЧИ, УПУЩЕННЫЕ ВОЗМОЖНОСТИ ”, Greenpeace Russia, Moskow, p. 5: “На сегодняшний день в России существуют 100 государственных природных заповедников общей площадью 33,5 млн га (свыше 1,57% площади России) и 35 национальных парков площадью 7 млн га (0,41% площади России). 95 заповедников и все национальные парки находятся в системе Министерства природных ресурсов Российской Федерации.”

\textsuperscript{515} Russia’s Fourth National Report on the Implementation of the CBD (2009), p. 18

\textsuperscript{516} Ibid., p. 18

\textsuperscript{517} CAFF Technical Report No. 11 (2004), Chapter 3, p. 3

\textsuperscript{518} “Об особо охраняемых природных территориях” (14.03.1995 Г. N 33-ФЗ)

\textsuperscript{519} CAFF Technical Report No. 11 (2004), Chapter 3, p. 3
\end{footnotesize}
managing of specially protected areas. Further legal instruments, contributing to the protection and management of areas, are the federal acts “On the animal world” (1995), which protects and regulates the use of wildlife, the “Land Code of the Russian Federation” (2001) and the Russian Federation’s “Water Code” and “Forest Code”, both revised in 2006. On 10th of January 2002, a new federal act “On environmental protection” came into force, which replaced a previous act on environmental protection which had still been adopted by the former Union of Soviet Socialist Republics. Importantly, the new act stipulates that natural ecosystems, natural landscapes and nature complexes not yet subjected to anthropogenic pressure are the first priorities for conservation; it includes also, among others, places where small indigenous peoples live and work as conservation priorities. On the other hand, the act weakens the regional and local protection and management of areas because it fails to determine the competent authorities for environmental protection in municipal and local administrations.

As regards indigenous peoples’ rights and their recognition in the context of area protection and management, CAFF Technical Report 11: “The Conservation Value of Sacred Sites of Indigenous Peoples of the Arctic: A Case Study in Northern Russia” provides valuable information about the compatibility of indigenous peoples’ sacred sites of Northern Russia and the existing protected area system. According to this report, the categories of national parks and nature parks can be used to establish legal protection for indigenous peoples' sacred sites. Also within state nature zakazniki, where indigenous groups inhabit territories, the use of natural resources can be permitted if these are such that they

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520 See Article 5 of the law 'On specially protected nature territories’ of 1995 [translation by the author]
522 CAFF Habitat Conservation Report No. 10 (2002), p. 38
523 "ЗЕМЕЛЬНЫЙ КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ" (25.10.2001 Г. N 136-ФЗ)
524 "ВОДНЫЙ КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ" (03.06.2006 г. N 74-ФЗ), AND
525 "ЛЕСНОЙ КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ" (04.12.2006 Г. N 200-ФЗ)
527 Ibid.
529 Ibid., Chapter 3, p. 3
provide for preservation of their traditional environment and way of life, while zapovedniki forbid any type of human use except for scientific research.\textsuperscript{530} The report points out that protected areas remain a major protection tool for sacred sites management, while stressing the importance of determining an appropriate protected area categorization and zoning design in order to appropriately reconcile customary rights, sacred site protection needs and biodiversity protection.\textsuperscript{531}

5.4.3.2 Implementation of the CBD Programme of work on protected areas

The Russian Federation submitted its Fourth National Report on the implementation of the CBD just recently in November 2009.\textsuperscript{532} Similar to the Norwegian one, this report does not refer specifically to the obligations established by the Programme of work on protected areas, in particular to programme element 2. Conforming to the guidelines for the fourth national reports, the report informs about the implementation of the National Biodiversity Conservation Strategy and Action Plan (since their adoption in 2001), the Strategy Action Plan of the convention itself as well as about strategic goals and objectives that are planned to be addressed by 2010.\textsuperscript{533} In a separate Annex, the achievements of goals, targets and indicators for assessing the progress towards the conservation of biodiversity by 2010 are represented.\textsuperscript{534} In this context, referring to target 9.2 – protection of indigenous and local communities’ rights over their traditional knowledge, innovations and practices, including the right of sharing benefits – the report lists the following achievements, deficiencies and future needs:

- the existing regulatory and legal framework at the federal level requires the improvement of protecting indigenous peoples’ and local community rights;
- there are no economic and institutional mechanisms to use the existing rights of indigenous peoples and local communities to equitable benefit

\textsuperscript{530} Ibid., Chapter 3, p. 3
\textsuperscript{531} Ibid., Chapter 3, p. 3
\textsuperscript{534} Ibid., Annex 2, pp. 168 ff.
sharing in connection with biodiversity;

- positive examples could be achieved in the framework of projects conducted by the Russian Association of Indigenous Peoples of the North (RAIPON).\(^{535}\)

Although not directly referring to indigenous peoples’ rights, the report summarizes the following menaces to biodiversity conservation that potentially also imply consequences for indigenous peoples’ interests:

- the paces of establishing the federal specially protected areas system do not correspond to those of economic development of new lands;
- there is a tendency towards a decrease of funding of national programmes and projects on biodiversity conservation at the national level, leading to a decrease of funding amounts for the federal targeted programmes of environmental direction, scientific researches, development of territorial protection etc.;
- there is lacking interaction between the state environmental authorities and ecological non-governmental organizations.\(^{536}\)

According to these threats, the report educes, inter alia, the following trends and tendencies which also might have effects on indigenous peoples’ rights and interests:

- in the field of formation of the legislative base for biodiversity conservation: reduction of efficiency of environmental legislation and enforcement in the field of biodiversity conservation and sustainable use;
- in the field of the state environmental management: reduction in number of officers of executive authorities, which carry out the state control;
- in the field of development of territorial protection of nature: deceleration of pace of development of the specially protected areas network development.\(^{537}\)

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\(^{535}\) Ibid., p. 173 [unofficial translation by the author]

\(^{536}\) Ibid., pp. 17, 18

\(^{537}\) Ibid., p. 18
In Chapter 4: ‘Conclusions on the results of the target at 2010, and the Strategic Plan’\textsuperscript{538}, the report mentions, in reference to the law “On the Territories of Traditional Nature Use of the Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation” of 2001 (see chapter 4.2.3 above), the approval of a "\textit{Concept of Sustainable Development of Indigenous Peoples North, Siberia and Far East of Russia} in 2009".\textsuperscript{539} This concept is a system of modern views, principles and priorities for the activities of federal organs of state power, bodies of state authority of Russia and local authorities in the field of sustainable development of numerically small peoples of the North, and aims at uniting the efforts of government bodies and local authorities with civil society, including associations of the Northern indigenous peoples, to address issues of sustainable development of these peoples.\textsuperscript{540} Sustainable development of Northern indigenous peoples involves strengthening their socio-economic potential, conservation of native habitats, traditional lifestyles and cultural values on the basis of the target state support and the mobilization of domestic resources of the peoples in the interests of present and future generations.\textsuperscript{541}

Furthermore, the report stresses positive examples of creating specific ‘\textit{territories of traditional nature management}’ (\textit{TTP}) for the use of indigenous peoples in those territories, a process that already had been launched in 1990, particularly in the Murmansk region, the Nenets, Yamalo-Nenets, Khanty-Mansi and the Chukotka Autonomous Area, the Krasnoyarsk, Khabarovsk and Primorsky regions, but also in other regions of Russia.\textsuperscript{542}

In spite of these positive efforts as regards the consideration and protection of

\textsuperscript{538} Ibid., pp. 150 ff. [unofficial translation by the author]
\textsuperscript{539} Ibid., p. 155; The "\textit{Concept of Sustainable Development of Indigenous Peoples North, Siberia and Far East of Russia}” was approved by the Federal Government on 4\textsuperscript{th} of February 2009, see press release of the Ministry of Regional Development (14.02.2009), available at: \url{http://www.minregion.ru/Workitems/NewsItem.aspx?NewsID=1117}
\textsuperscript{540} The "\textit{Concept of Sustainable Development of Indigenous Peoples North, Siberia and Far East of Russia}”, Introduction, a Russian version of the Conception is available at: \url{http://www.government.ru/gov/results/6580/}
\textsuperscript{541} Ibid
indigenous peoples’ rights in the context of biodiversity conservation, the report, however, stresses significant deficiencies in relation to their implementation. The federal law “On the Territories of Traditional Nature Use of the Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation” of 2001, for example, does not provide any mechanisms and/or rules to implement these rights of indigenous peoples; for example no mechanisms are provided to create such territories, or no rules are contained that regulate specifically rights of possession and disposal. Due to these deficiencies, no such territory has been established to date at the federal level; a fact that must be regarded as “one of the most painful for indigenous peoples.”

Furthermore, the report states that most of those territories designated for traditional nature management, TTPs, have been established on the basis of regional legislation. Positive experiences could be reported from the Murmansk region Association of the Kola Sami (TTP with Lovozero), Nenets Autonomous District (TTP about Kolguev), Taimyr (TTP "Popigaj”, family clans Dolgans).

All in all, the greatest problem in relation to preserving the rights and interests of indigenous peoples in the context of biodiversity conservation and management seems to be a wanting and deficient implementation of directly applicable international treaty based law as well of existing federal laws concerning indigenous peoples in the Russian Federation. Apart from that, the Fourth

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Ibid., p. 155


Ibid., statement made by the Deputy Minister of Regional Development of Russia, Maxim Travnik


By personal inquest concerning the Murmansk region, only one example could be identified indicating Sami involvement in nature management planning, dating from October 2005: http://www.biodiversity.ru/publications/kolsk/archive/n13-14.html (in Russian language only)

Ibid; further reference to a webpage of an Organization of Indigenous Peoples for Indigenous Russia: http://www.indigenous.ru/modules.php?name = Content & pa = showpage & pid = 111

Deficiencies of implementation are also reported in the context of required Environmental Impact Assessments (EIA) within the framework of the establishment of national parks: “Conflicts also exist between the creation of national parks and the indigenous use of natural resources. Independent environmental impact assessments are required to protect subsistence areas from human activity. Standards developed in international fora, such as the UN working group on indigenous peoples need to be implemented at the national, regional and local level.”
National Report of the Russian Federation on the implementation of CBD obligations contains hardly any information on indigenous peoples and their involvement in biodiversity conservation in general, and in area protection and management in particular. Another indicator for such a resume is lastly the fact that, according to the list of organisations, institutions and experts who contributed to the report, none of these are directly or indirectly involved or associated with any indigenous organizations existing in the Russian Federation (as RAIPON for example).550

At the region level of the Murmansk region, the law “On specially protected areas of the Murmansk region” of 2007551 regulates the planning, establishment and management of specially protected areas in the Murmansk region in order to preserve the unique and typical natural complexes and objects, sights of natural formations, flora and fauna, their genetic stock, in order to study the natural processes in the biosphere and to monitor changes in its state, as well as to promote the environmental, historical and cultural education of the population.552 Similar to the federal law ‘On specially protected nature territories’, the regional law contains a specific provision that provides a right to natural and legal persons to assist governments in area protection processes. Neither at this place nor elsewhere in the law specific reference has been made to indigenous peoples.

Furthermore, there are barely any indications of concrete measures to involve indigenous peoples in processes of area protection and management. The only evidence that could be identified by the author, was a project in the Lovozero district (part of the Murmansk region) that aimed at the participation of indigenous and local communities in managing natural resources.553 This project, conducted in 2005, has been initiated due to acute conflicts of interests between

551 The law on “Особо охраняемые природные территории Мурманской области” was adopted on 21 June 2007.
552 See preface to the law in preceding supra note [translation by the author]
553 See information provided by the Kola Biodiversity Conservation Centre: “Civil Society in the Lovozero district”, available at: http://www.biodiversity.ru/publications/kolsk/archive/n13-14.html#top
traditional use of indigenous peoples living at the Kola Peninsula (Sami, Nenets and Komi-Izhems) and increased development of industry and tourism in the region.\textsuperscript{554} Representatives of the social organization of the Sami of Murmansk region, the Association of Kola Sami, the Sami community, the Administration Lovozero district, the Biodiversity Conservation Centre (Moscow), the Kola Biodiversity Conservation Centre and the National Cultural Centre participated in the project.\textsuperscript{555} Furthermore, in 2008, the Kola Biodiversity Conservation Centre issued a report on "Problems of nature and conservation of natural and cultural heritage"\textsuperscript{556}. This report particularly refers to the project just mentioned. It addresses present problems arising from increased human pressure on ecosystems and accompanied by significant negative impacts on indigenous peoples’ habitats.\textsuperscript{557} It calls decisively for the improvement of management measures by establishing institutions of civil society in the process of area protection and management, including a system of co-management.\textsuperscript{558}

5.4.4 Sweden

5.4.4.1 The protected area system of Sweden

In 2002, Sweden had 4701 protected areas in IUCN Categories I. – IV., covering over 40,000 km\(^2\).\textsuperscript{559} According to the basic legal framework, the Swedish Environmental Code (SEC) of 1998\textsuperscript{560}, the protected areas are classified as: national parks (Chapter 7, Sections 2 and 3 SEC), nature reserves (Chapter 7, Sections 4 – 8 SEC), culture reserves (Chapter 7, Section 9 SEC), natural monuments (Chapter 7, Section 10 SEC), habitat protection areas (Chapter 7, Section 11 SEC), landscape protection areas (Chapter 7, Section 12 SEC), and areas of natural beauty (Chapter 7, Section 13 SEC).

\textsuperscript{554} Ibid
\textsuperscript{555} Ibid
\textsuperscript{557} Ibid., Preface, p. 5 [translation by the author]
\textsuperscript{558} Ibid., pp. 5-6
\textsuperscript{559} CAFF Habitat Conservation Report No. 10 (2002), p. 39
\textsuperscript{560} The Swedish Environmental Code was adopted in 1998 and entered into force 1 January 1999. The Environmental Code is a major and fundamental piece of legislation, containing 33 chapters with almost 500 sections, while more detailed provisions are laid down in ordinances made by the Government. According to Chapter 1, Section 1, nature and biodiversity protection belong to the objectives and areas of application of the Environmental Code. For further information on Sweden’s environmental legislation see: \url{http://www.sweden.gov.se/sb/d/3704/a/21606}

According to the Swedish Ministry of the Environment, the same fundamental values that form the basis for the formulation of Sweden's environmental quality objectives are also the foundation of the nation's nature conservation policy: human health, biodiversity and the natural environment, the cultural environment and cultural heritage assets, the long-term production capacity of the ecosystem and good natural resources management. In the official Government's opinion, nature conservation policy is about life and about bringing nature conservation close to people. In this framework, biodiversity protection has been given a prominent place during the past decade, aiming at the conservation of species and ensuring that the utilization of biological resources takes place in a sustainable way.

Sweden, as an EU member state, is also participating in the EU Natura 2000 network for the protection of environments of value to nature conservation. As of January 2007, almost 4,000 areas in Sweden have been selected for the Natura

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563 Ibid

564 Ibid
2000 network, whereas around 60% of them already have protection status as nature reserves or national parks.\textsuperscript{565}

Sweden has ratified the Aarhus Convention on 20 May 2005.\textsuperscript{566} At the same time, it has lodged two reservations; one in relation to Article 9.1 with regard to access to a review procedure before a court of law of decisions taken by the Parliament, the Government and Ministers on issues involving the release of official documents, and the second in relation to Article 9.2 with regard to access by environmental organisations to a review procedure before a court of law concerning such decisions on local plans that require environmental impact assessments.\textsuperscript{567} As regards the latter, it has declared its ambition to shortly comply with Article 9.2 in its entirety.\textsuperscript{568}

At the domestic level, the Administrative Procedure Act of 1986\textsuperscript{569}, states in Section 4 that “each authority shall provide information, guidance, advice and similar assistance to all persons concerning matters falling within the scope of its functions”. As regards to environmental issues in general, and to area protection in particular, Section 25 of Chapter 7 of the Environmental Code states that private interests shall also be taken into account and that restrictions on the rights of private individuals to use land or water under safeguard clauses must not be more stringent than is necessary in order to achieve the purpose of the protection.\textsuperscript{570} There are no specific legal provisions as regards indigenous peoples in the framework of area protection and management, although the CAFF Habitat Report of 2002 stresses that “local and indigenous people also participate in the establishment and management of protected areas”\textsuperscript{571}.

\textsuperscript{565} Ibid
\textsuperscript{566} See also webpage of the Swedish Environmental Protection Agency (supra note 561)
\textsuperscript{567} Ibid
\textsuperscript{568} Ibid
\textsuperscript{569} The 1986 Administrative Procedure Act in a translated version as of 5 July 2007 is available at: http://www.sweden.gov.se/sb/d/574/a/64892
\textsuperscript{570} Swedish Environmental Code, see supra note 560
\textsuperscript{571} CAFF Habitat Conservation Report No. 10 (2002), p. 39; On the question “Which forms of cooperation with indigenous peoples exist as regards the administration of protected areas?”, in the framework of the distributed questionnaire, the Swedish CAFF National Contact Point responded: “This is under discussion. A policy is to improve local participation and involve local people regardless if they are indigenous or not.” See Appendix 3 of the thesis.
5.4.4.2 Implementation of the CBD Programme of work on protected areas

Sweden’s Fourth National Report on the implementation of the CBD, submitted in April 2009\textsuperscript{572}, contains a specific progress report towards targets of the Programme of work on protected areas\textsuperscript{573}. The progress report is an updated version of a preliminary report on the implementation of the CBD Programme of work on protected areas in reply to the CBD Secretariat notification 2006-080, compiled by the Swedish Environmental Agency and submitted by the Ministry for Sustainable Development in November 2006.\textsuperscript{574}

As regards \textit{programme element 2, goal 2.1. – to promote equitable sharing} of both costs and benefits arising from the establishment and management of protected areas – the report does not refer specifically to indigenous peoples; in particular, no specific assessment is made relating to economic and socio-cultural costs, benefits and impacts arising from the establishment and maintenance of protected areas for indigenous and local communities, or to specific area governance types, such as areas conserved by indigenous and local communities. Instead, the report emphasises the equal treatment of all citizens according to Sweden’s constitution, and thus the regard of all citizens as ultimate stakeholders.\textsuperscript{575} However, a recent shift is stressed by referring to a Government’s Communication to Parliament on Nature Conservation of 2002, that “emphasises the importance of more active involvement from local stakeholders in conservation activities”.\textsuperscript{576}

In relation to \textit{goal 2.2. of programme element 2 – full and effective participation by 2008}, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new, protected


\textsuperscript{573} Sweden's Fourth National Report on the Implementation of the CBD (2009), Appendix III. B. Progress towards targets of the Programme of work on protected areas, pp. 116-119

\textsuperscript{574} Ibid., p. 116

\textsuperscript{575} Ibid., p. 118

\textsuperscript{576} Ibid., p. 118
areas – again, the report does not make any specific reference to indigenous peoples. It rather focuses on the importance of local participation in general, while highlighting the initiative of specific capacity building programmes in local participation for authorities during 2007 – 2008 and strategies for local participation in the administration of nature resources.\(^\text{577}\)

Apart from the specific progress report towards targets of the Programme of work on protected areas, the National Report refers only in a few places to indigenous peoples and their involvement in area protection and management. In relation to traditional knowledge, for instance, the report stresses, that “the involvement of local communities in policy making and implementation of conservation activities is an important goal for the Swedish Environmental Conservation Agency, and the guidance on the establishment of nature reserves provided by the agency to local authorities includes considerations of the participation of local stakeholders”\(^\text{578}\). However, in the next sentence the report points out that “the Sámi Parliament requests a full and effective use of local and traditional knowledge in the actual management processes of conservation and use of biological resources”\(^\text{579}\). This statement indicates that there is a controversy relating to the degree and extent of local and indigenous peoples' participation, and that from the Sámi Parliament’s point of view “full and effective participation” in management processes of conservation is not fully realized in Sweden's conservation practice.

The lack of involvement of local and indigenous peoples is also documented in literature. As stated in a recent article by Anna Zachrisson, conservation practice in Sweden is still a traditional, hierarchic business run by central and county authorities, and becomes increasingly contested by people living close to the relevant areas, including indigenous Sami reindeer herders whose economic activities are located within protected areas.\(^\text{580}\) The underlying survey of this article comes clearly to the result that the majority of Swedes, about 65 %,

\(^{577}\) Ibid. In relation to the latter, the report stresses that the number of decisions on nature reserves taken by municipalities has increased during the last years, from only 3% ten years ago, to about 7% today.


\(^{579}\) Ibid., p. 83

strongly supports self- and co-management solutions\(^{581}\) and would thus like to see more diverse actors to be involved in the management of protected areas; whereas state management, as the still present general rule, is preferred only by a minority of 18\%.\(^ {582}\)

Finally, the Swedish report not only indicates deficiencies as regards the involvement of local and indigenous communities in conservation practice, but also in relation to recognition and protection of their rights and practices in law. In that relation, the report mentions that “Non-governmental organisations representing local communities that base their activities on traditional use of biological resources have pointed out that there are still many customary rights and practices that are not recognised and protected in Swedish law. They feel that existing regulations often are incompatible with traditional use, and there should be a mechanism in place for granting exemptions to recognised traditional practices.”\(^ {583}\) This statement correlates directly with the limited influence of the Sami Parliament in decision-making as far as decisions affecting their natural environment and their means of subsistence are concerned, noted by the HRC in its Concluding Observations related to the fifth and sixth periodic reports of Sweden in 2002 and 2009 in relation to Article 27 of the ICCPR.\(^ {584}\)

Chapter 6

Conclusion

6.1 Analysis of the implementation of indigenous peoples' rights

6.1.1 Human Rights context

\(^{581}\) In the article of Zachrisson (2008), self-management in the Swedish context includes management at the municipal and sub-municipal level (specifically, municipalities, Sami communities, if any, and within local populations), while co-management of protected areas is about the role of the municipalities, mean that the Swedish Environmental Protection Agency and/or county administrative boards would share power with municipalities and/or local users (and potentially also other actors such as research institutions). See Anna Zachrisson (2008), p. 156

\(^{582}\) Anna Zachrisson (2008), p. 158

\(^{583}\) Ibid., p. 158 [emphasis added]

\(^{584}\) See supra notes 283 and 286
All of the examined countries have incorporated indigenous peoples’ rights by specific measures aiming to achieve the objectives of Articles 1, 25 and 27 of the ICCPR. However, the extent to which incorporation took place differs widely. Furthermore, deficiencies exist as regards the implementation of existing legal measures and policies. These deficiencies vary from country to country. Main problems exist in relation to the recognition of the Sami right to self-determination and their rights to lands, territories and resources.

Although in comparison to Norway, Russia and Sweden, the Sami in Finland have the strongest statutory rights from the legislative point of view (according to the 1995 Act on the Sami Parliament), from the practical point of view their rights are of rather weak nature. The question whether they enjoy the rights as an indigenous people, in the light of Article 1 of the ICCPR, has not been clarified yet. Likewise, the question of Sami rights to land ownership and uses of land could not be resolved until now, although several initiatives to achieve a solution have been conducted.

**Norway**, the country with the most intensive efforts to address the issues of Sami rights to self-determination and land rights, has still to struggle with deficiencies on both these counts. The ‘2005 Procedures for Consultations between State authorities and the Sami Parliament’\(^{585}\) are an important step towards the application of the concept of self-determination to the Sami people, although they do not cover all aspects of that concept. As far as the Finnmark Act of 2005\(^{586}\), certainly an ambitious work in the right direction, is concerned, the issue of Sami rights to land use and ownership has still to be discussed and clarified further.

In the **Russian Federation**, the main problems in relation to indigenous peoples’ rights at the federal level cumulate around a significant lack of implementation. Despite an increased state awareness of the rights of indigenous peoples during the last decade, decisive federal laws concerning indigenous peoples' rights of the North, Siberia and the Far East lack mechanisms to implement existing rules at

\(^{585}\) See supra note 210  
\(^{586}\) See supra note 220
the national, regional and local level. In parallel, there is often a lack of accompanying funding of federal laws or, even in the case where such a funding at the federal level is in place, it not always reaches the intended recipients. Further deficiencies as regards indigenous peoples’ rights consist of a lacking representation of these peoples within legislative bodies, or in other words, “there is an overwhelming absence of an indigenous “voice” in the main legislative bodies in all levels”.

In the context of indigenous peoples' rights to land, territories and resources, questions relating to the involvement of indigenous peoples in the relevant procedures, to the application of the principle of free, prior and informed consent (FPIC), as well as to adequate compensation have to be addressed. At the **regional level** of the Murmansk region, ambitious laws and policy measures to strengthen in particular Sami rights to maintain their traditional way of life and to be involved in regional state policy have been adopted quite recently. It remains to be seen whether and to which extent these measures and instruments will be implemented adequately in practice during the next years.

In **Sweden**, the status of the Sami as an indigenous people has not been codified into law and the recognition of their right to self-determination remains unclear. The current status of the Sami parliament as a “governmental administrative body” diminishes the Sami right to self-determination. One consequence of this is the limited extent to which the Sami Parliament may participate in the decision-making process on issues affecting land and traditional activities of the Sami people. Thus, the status of the Sami people in Sweden in general, and that of their parliament in particular remain important issues that have to be discussed further.

### 6.1.2 Environmental Protection context

While the protected area systems of the four countries of specific interest within this study differ slightly, these countries’ efforts in respect of the CBD Programme of work on protected areas vary to a larger extent. This is particularly obvious in respect of programme element 2, goals 2.1 (to promote equity and

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587 See supra note 259  
588 Eva Josefsen (2007), p.11; see supra note 282
benefit sharing in the context of the establishment and management of protected areas) and 2.2 (to enhance and secure involvement of indigenous and local communities and relevant stakeholders in the management of existing and the establishment of new protected areas). Overall, it has to be stated that the national thematic and periodic reports analysed here contain little if any concrete information about the national efforts undertaken to achieve the goals mentioned under the specific CBD programme of work. From the sparse information however, it can be concluded that

- efforts to promote equity and benefit sharing in the context of the establishment and management of protected areas are still less than those to enhance indigenous peoples' participatory rights (at least in the context of this Programme of work on protected areas);
- often conflicts exist between Sami representatives and state authorities as regards the participation of Sami people in the planning, designation and management of protected areas;
- those conflicts cannot be solved in a mutual stakeholders’ interest without solving primary questions of Sami rights to self-determination and land, territories and resources.

Taking additional information related to these issues (apart from the reports) into consideration, it can be further observed that

- international treaty obligations, like those of Articles 1 and 27 of the ICCPR, are not being properly implemented at the national, regional and local levels;
- no *systematic* strategies and policies are visible to ensure indigenous peoples' participation in the planning, designation and management of protected areas;
- Sami issues are often addressed in the same context and to the same extent as those of any other stakeholders; and that participatory provisions do not aim to protect Sami rights specifically.

As regards the individual Arctic states, the following conclusions can be drawn:
In Finland, legal provisions concerning Sami involvement in the decision making processes in area protection related processes are generally in place. However, deficiencies exist as regards the concrete extent of participatory rights; for example, weaker categories such as “hearing” or “discussing” are used instead of “voting” or other more decisive rights. Furthermore, specification of participatory rights is lacking, for example, as far as the exact meaning of the phrase “adjusting the management, use and protection of natural resources” is concerned. In relation to “consulting”-obligations, for instance under the Reindeer Husbandry Act, no distinction is made between Sami and non-Sami reindeer herders, and thus such participatory provisions do not aim to protect Sami rights specifically. Since Sami people in Finland are also involved in other economic activities (this might also apply to Sami people in the other countries), such as logging for example, the development of provisions aiming specifically at Sami participatory rights seems to be difficult.

Although not directly mentioned in the Norwegian Fourth National Report on the implementation of CBD obligations (because no specific reference is made to the CBD special Programme of work on protected areas in this report), the Norwegian government has taken significant steps to strengthen Sami participatory rights through respective area protection related legislation. In accordance with the 'Procedures for Consultation between central government authorities and the Sami Parliament' of 2005, the Ministry of Environment and the Sami Parliament agreed in January 2007 on specific 'Guidelines for consultation in relation to area protection' which aim at ensuring that the consultations in connection with any proposal for nature protection in Sami areas shall be conducted in good faith and with the goal of achieving an agreement between state authorities and the Sami Parliament. These guidelines can be considered as an important step to recognize Sami participatory rights in the context of nature protection and management. However, due to extensive governmental pressure on the regional

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589 As already mentioned in Chapter 5.4.1.2, the consulting obligation of Section 53 of the Reindeer Husbandry Act refers to the “reindeer herding co-operative in question”, but since in Finland, different to Norway and Sweden, also other people than Sami people can be engaged in reindeer herding, this provisions is not addressed to Sami reindeer herders in particular.

590 See supra note 210

591 See supra notes 501-503
and local level to speed up ongoing protection processes at present, these well-meant intentions become increasingly undermined.

Similar to the Norwegian one, the Fourth National Report of Russia does not refer explicitly to the CBD specific Programme of work on protected areas. It mentions, however, at the federal level, to certain steps taken by the Russian Federation to strengthen indigenous peoples' rights in the context of biodiversity protection. Among others, it refers to the law 'On the Territories of Traditional Nature Use of the Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation' as well as to the approval of a 'Concept of Sustainable Development of Indigenous Peoples of the North, Siberia and Far East of Russia' adopted by the federal government in February 2009. This concept aims at uniting the efforts of government bodies and local authorities to address the issues of sustainable development of indigenous peoples of the North. However, apart from some positive examples at the level of certain federal subjects, to date no single territory of traditional nature use, as aimed by the law 'On the Territories of Traditional Nature Use of the Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation' has been established at the federal level. At the regional level of the Murmansk region, there are barely any indications of concrete measures to involve indigenous peoples in processes of area protection and management; apart from one project in the Lovozero district, conducted in 2005.

Although Sweden's Fourth National Report contains a specific progress report towards the CBD specific Programme of work on protected areas, it does not refer explicitly to indigenous/Sami rights. Instead it addresses participatory rights of relevant stakeholders in designation and management processes in general while emphasising the equal treatment of all citizens from a constitutional point of view. Thus, the involvement of Sami in the context of area protection and management, at least within the framework of Sweden's Fourth National Report, does not seem to play a primary role of attention in the government's perspective. Moreover, a minor statement in the context of traditional knowledge indicates that controversies exist between state authorities and the Sami Parliament as regards the degree and the extent of local and indigenous peoples' participation. A lack of
local and indigenous peoples' involvement is also confirmed by relevant literature which characterizes Sweden's conservation practice as a still traditional, hierarchical business run by central and county authorities.

6.2 Correlations between the implementation of indigenous peoples' rights in the one context and the other

In general, it has to be stated that the increased awareness of participatory rights of indigenous peoples in processes of area protection and management in the international environmental protection context has been promoted by intensified efforts in the international human rights context. Moreover, with the shift in paradigm – to regard human use as compatible with nature conservation and not as inconsistently – the recognition of indigenous peoples' rights in the context of area protection and management has been increased importantly.

Correlating the results of both contexts in particular, the following conclusions can be drawn:

- indigenous peoples’ rights to self-determination; to lands, territories and resources; and to full and effective participation as well as the principle of free, prior and informed consent (FPIC) are generally stronger recognized and further developed in the respective national human rights context than in the national environmental protection context;

- the implementation of indigenous peoples’ rights in the national human rights context correlates strongly with that in the national environmental protection context;

- implementation problems in the environmental protection context cannot be solved without solving primary questions of indigenous peoples’ rights to self-determination and lands, territories and resources;

- the stronger indigenous peoples’ rights have been recognized in the human rights context at the national level, the better these peoples’ participatory rights are being implemented by national legislative measures and policy instruments.
Comparing the results of implementation in the international environmental protection context with the efforts taken by the Arctic states in the framework of regional conservation policy, here the work of the CPAN expert group under the CAFF Working Group of the Arctic Council, it has to be stated that

- international instruments to strengthen the efforts of state parties to better implement their obligations relating to indigenous peoples rights in the context of area protection and management cannot substitute regional instruments. For example, the efforts of Arctic states under the CPAN Strategy and Action Plan are not substituted by the those relating to the targets of programme element 2 of the CBD Programme of work on protected areas;
- regional approaches to strengthen indigenous peoples’ rights in the context of area protection and management are often more detailed and concrete than international approaches because of their better suitability to accommodate specific regional characteristics; such as traditional ways of life like reindeer herding, hunting and fishing; the dependency on a specific environment, e.g. on grazing lands, in the case of reindeer herding; or the specific impacts of climate change on the conditions of subsistence, for instance, sea ice conditions or permafrost.

6.3 Recommendations

On the basis of the analysis conducted here of the recognition of indigenous peoples’ rights both in the human rights and in the environmental protection context, and of the subsequent comparison of the results in either context, the following recommendations can be derived:

- efforts should be taken to promote equity and benefit sharing in the context of the establishment and management of protected areas;
- further efforts should be also taken to strengthen participatory rights of indigenous peoples in relation to the planning, establishment and management of protected areas, including the systematic development of such areas;
– **systematic strategies** to ensure indigenous peoples' rights of full and effective participation in the context of area protection and management should be developed; such strategies should also include systematic mechanisms for co-management schemes based on a common understanding of power sharing;

– since Sami, as indigenous people, enjoy **specific rights** particularly dedicated to indigenous peoples, these rights should be **specifically addressed** in the process of developing area protection related legislation;

– in cases of conflicts between different stakeholders interests, solutions should be sought for more **holistic approaches** rather than generalized ones, bearing in mind the broad variety of social, cultural, economic and ethnical background of indigenous peoples;

– in the settlement of conflicts within the framework of area protection and management, **primary questions** of indigenous peoples’ rights to self-determination and lands, territories and resources have also to be addressed;

– **political measures** aiming at the implementation of indigenous peoples’ rights in the human right context should be **better coordinated** with those planned or taken in the environmental protection context;

– in the context of planning, designating and managing protected areas, indigenous and local communities should be strengthened by providing them with **appropriate authorization and competencies** (decentralization of power);

– **regional approaches** that aim specifically at the recognition of indigenous peoples’ rights in the context of area protection and management while considering specific regional characteristics should be strengthened;

– the **strategic work of the CPAN Strategy and Action Plan** should be revitalized, either by a resumption of the work of the CPAN expert group within CAFF (provided the Arctic states have the political will to do so) or by other specific means and priorities under the CAFF Working Group.

These recommendations are, of course, neither exclusive nor do they cover all aspects of a comprehensive recognition of indigenous peoples’ rights in the context of area protection and management. However, and this is the hope of the
author, they might provide some impulses for individuals and institutions who are engaged in area protection processes in the Arctic to correlate this issue with indigenous peoples’ interests and to improve, by taking such a twofold approach, the recognition of indigenous peoples’ rights in the context of area protection and management.
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This survey is subject to a master thesis that will be conducted by Antje Neumann in the frame of a Polar Law Master Programme at the University of Akureyri, Iceland, started in August 2008. The master thesis will be carried out by supervision of Dr. Kees Bastmeijjer from the University of Tilburg, the Netherlands, and in close consultation with Tom Barry, the Executive Secretary of the Arctic Council Working Group on Conservation of Arctic Flora and Fauna, CAFF, located in Akureyri, Iceland.

The master thesis aims, firstly, to provide a general overview of national legislation of the eight Arctic states as regards to area protection and management. Laying down the definition of a protected area adopted by IUCN1 - “an area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means” - two components will be addressed: on the one hand, the protection of areas for different values, and on the other hand, the management of these areas. Secondly, the master thesis will investigate by which means and to which extend indigenous peoples are involved in area protection and management. Both steps will be conducted as judicial research from a legal point of view.

Since no comprehensive overview of national legislation on area protection and management of the eight Arctic states so far exists, this questionnaire serves as a first step in order to provide necessary data. In this early stage, it is kept intentionally general for comparative reasons. Based on the outcome of the survey, certain aspects of the involvement of indigenous people in area protection and management will be studied in more detail. Thus, the outcome of the research will be importantly influenced by information provided in response to this questionnaire.

Please, send any returns, comments and questions related to this questionnaire to Antje Neumann at: ha080002@unak.is. Many thanks in advance!

A. Questions relating to the regulation of area protection and management at the national/federal (provided a federal structure exists) level

I. By which key legislation is area protection and management regulated at the national/federal (provided a federal structure exists) level?

- alternatives:
  - act of parliament
  - regulation
  - other alternatives

1 Available at: http://www.unep-wcmc.org/protected_areas/categories/index.html
Appendix 1

Please, provide the title of the relevant legislation and a link for its availability. If a link is not available, it would be kind to have it as an attached document.

II. Which guidelines and/or other sources for area protection and management exist at the national/federal (provided a federal structure exists) level?

- alternatives:
  - guidelines
  - codes of conduct
  - handbooks
  - other alternatives

Please, provide the title of the relevant guidelines and/or other sources and a link for their availability. If a link won’t be available, it would be kind to have those guidelines as an attached document.

III. Which categories of area protection and management exist at the national/federal (provided a federal structure exists) level?

- alternatives*:
  - strict nature reserve
  - wilderness area
  - national park
  - natural monument
  - habitat / species management area
  - protected landscape / seascape
  - managed resource protected area
  - other alternatives (please, specify)

* Since the Circumpolar Protected Areas Network (CPAN) uses primarily the 1994 protected area category system of the International Union for Conservation of Nature (IUCN) to classify protected areas at the circumpolar level, those categories were taken here as possible alternatives. For further definition of those categories, please see at: http://www.unep-wcmc.org/protected_areas/categories/eng/index.html

IV. Which national/federal (provided a federal structure exists) ministries are competent for issuing relevant national/federal legislation?

- alternatives:
  - ministry of environment
  - foreign ministry
  - ministry for research and technology
  - other alternatives (please, specify)
Appendix 1

B. Questions relating to the regulation of area protection and management at the state (provided a federal structure exists), county and municipal level

V. Does legislation on area protection and management exist at the state (provided a federal structure exists), county and municipal level; and if so, by which kind of legislation is area protection and management regulated at the regional and communal level?

• alternatives:
  - state/county/municipal law
  - regulation (rules and administrative codes)
  - ordinance (statutes)
  - other alternatives

Please, provide some examples of the relevant legislation by title and links for their availability. If links won’t be available, it would be kind to have those examples as attached documents.

VI. Which categories of area protection and management exist at the state (provided a federal structure exists), county and municipal level?

• alternatives:
  - strict nature reserve
  - wilderness area
  - natural monument
  - habitat / species management area
  - protected landscape / seascape
  - managed resource protected area
  - other alternatives (please, specify)

VII. Which state (provided a federal structure exists), county and/or municipal authorities are competent for issuing and administrating relevant legislation?

• alternatives:
  - state government (e.g. ministries, agencies, etc.)
  - county government
  - municipality
  - other alternatives (please, specify)
Appendix 1

C. Questions relating to the cooperation with indigenous peoples as regards area protection and management

VIII. By which means is cooperation with indigenous peoples as regards area protection and management regulated? (This question includes also procedural aspects!)

- alternatives:
  - act of parliament
  - regulation
  - guidelines
  - other alternatives

Please, provide titles of relevant means (including procedural aspects) and links for their availability. If such links won’t be available, it would be kind to have them as attached documents.

IX. Which form of cooperation is required in the process of planning and designating protected areas?

- alternatives:
  - consultation in order to achieve agreement
  - taking opinions into consideration
  - general public hearing
  - other alternatives (please, specify)

X. Who is authorized to participate in the process of planning and designating protected areas?

- alternatives:
  - each individual of indigenous peoples
  - individuals of indigenous peoples 'concerned'**
  - indigenous peoples' organizations and associations
  - other alternatives (please, specify)

** The word 'concerned' should indicate any relationship of the individual to the area, as expressed by ownership, possession or other forms of relations.

XI. Which consequences result from a breach of relevant provisions providing rights of participation?

- alternatives:
  - none
Appendix 1

- the relevant designation would become not effective
- the relevant decision would be subject to appeal
- other alternatives (please, specify)

XII. Which forms of cooperation with indigenous peoples exist as regards to the administration of protected areas?

- alternatives:
  - shared administration (e.g. co-management of governmental and indigenous representatives)
  - other alternatives

Please, provide some examples of such forms of cooperation by appropriate links. If links won’t be available, it would be kind to have those examples as attached documents.
This survey is subject to a master thesis that will be conducted by Antje Neumann in the frame of a Polar Law Master Programme at the University of Akureyri, Iceland, started in August 2008. The master thesis will be carried out by supervision of Dr. Kees Bastmeijjer from the University of Tilburg, the Netherlands, and in close consultation with Tom Barry, the Executive Secretary of the Arctic Council Working Group on Conservation of Arctic Flora and Fauna, CAFF, located in Akureyri, Iceland.

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Since no comprehensive overview of national legislation on area protection and management of the eight Arctic states so far exists, this questionnaire serves as a first step in order to provide necessary data. In this early stage, it is kept intentionally general for comparative reasons. Based on the outcome of the survey, certain aspects of the involvement of indigenous people in area protection and management will be studied in more detail. Thus, the outcome of the research will be importantly influenced by information provided in response to this questionnaire.

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A. Questions relating to the regulation of area protection and management at the national/federal (provided a federal structure exists) level

1. By which *key legislation* is area protection and management regulated at the national/federal (provided a federal structure exists) level?

   - alternatives:
     - act of parliament
     - regulation
     - other alternatives

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\(^1\) Available at: [http://www.unep-wcmc.org/protected_areas/categories/index.html](http://www.unep-wcmc.org/protected_areas/categories/index.html)
Appendix 2

Please, provide the title of the relevant legislation and a link for its availability. If a link is not available, it would be kind to have it as an attached document.

Nature Management Act


II. Which guidelines and/or other sources for area protection and management exist at the national/federal (provided a federal structure exists) level?

- alternatives:
  - guidelines
  - codes of conduct
  - handbooks
  - other alternatives

Please, provide the title of the relevant guidelines and/or other sources and a link for their availability. If a link won’t be available, it would be kind to have those guidelines as an attached document.

DN handbook 17-2001 (revised 2008) Områdevern og forvaltning

http://www.dirnat.no/content.ap?thisId=500037176&language=0 (only Norwegian)

III. Which categories of area protection and management exist at the national/federal (provided a federal structure exists) level?

- alternatives*:
  - strict nature reserve
  - wilderness area
  - national park
  - natural monument
  - habitat / species management area
  - protected landscape / seascape
  - managed resource protected area
  - other alternatives (please, specify)

* Since the Circumpolar Protected Areas Network (CPAN) uses primarily the 1994 protected area category system of the International Union for Conservation of Nature (IUCN) to classify protected areas at the
Appendix 2

circumpolar level, those categories were taken here as possible alternatives. For further definition of those categories, please see at: http://www.unep-wcmc.org/protected_areas/categories/eng/index.html

IV. Which national/federal (provided a federal structure exists) ministries are competent for issuing relevant national/federal legislation?

- alternatives:
  - ministry of environment
  - foreign ministry
  - ministry for research and technology
  - other alternatives (please, specify)

B. Questions relating to the regulation of area protection and management at the state (provided a federal structure exists), county and municipal level

V. Does legislation on area protection and management exist at the state (provided a federal structure exists), county and municipal level; and if so, by which kind of legislation is area protection and management regulated at the regional and communal level?

- alternatives:
  - state/county/municipal law
  - regulation (rules and administrative codes)
  - ordinance (statutes)
  - other alternatives

Please, provide some examples of the relevant legislation by title and links for their availability. If links won’t be available, it would be kind to have those examples as attached documents.

Protected areas are established and managed due to state law.

VI. Which categories of area protection and management exist at the state (provided a federal structure exists), county and municipal level?

- alternatives:
  - strict nature reserve
  - wilderness area
  - natural monument
  - habitat / species management area
  - protected landscape / seascape
  - managed resource protected area
  - other alternatives (please, specify)
Protected areas are established and managed due to state law (see the answer to question A III)

VII. Which state (provided a federal structure exists), county and/or municipal authorities are competent for issuing and administrating relevant legislation?

- alternatives:
  - state government (e.g. ministries, agencies, etc.)
  - county government
  - municipality
  - other alternatives (please, specify)

Protected areas are established by the Government, and managed by the County Governors and some municipals)

C. Questions relating to the cooperation with indigenous peoples as regards area protection and management

VIII. By which means is cooperation with indigenous peoples as regards area protection and management regulated? (This question includes also procedural aspects!)

- alternatives:
  - act of parliament
  - regulation
  - guidelines
  - other alternatives

Please, provide titles of relevant means (including procedural aspects) and links for their availability. If such links won't be available, it would be kind to have them as attached documents.

Consultation agreement ("Konsultasjonsavtalen"):

IX. Which form of cooperation is required in the process of planning and designating protected areas?

- alternatives:
  - consultation in order to achieve agreement
  - taking opinions into consideration
  - general public hearing
  - other alternatives (please, specify)
Appendix 2

X. Who is authorized to participate in the process of planning and designating protected areas?

• alternatives:
  o each individual of indigenous peoples
  o individuals of indigenous peoples 'concerned'**
  o indigenous peoples' organizations and associations
  o other alternatives (please, specify)

** The word 'concerned' should indicate any relationship of the individual to the area, as expressed by ownership, possession or other forms of relations.

XI. Which consequences result from a breach of relevant provisions providing rights of participation?

• alternatives:
  o none
  o the relevant designation would become not effective
  o the relevant decision would be subject to appeal
  o other alternatives (please, specify)

XII. Which forms of cooperation with indigenous peoples exist as regards to the administration of protected areas?

• alternatives:
  o shared administration (e.g. co-management of governmental and indigenous representatives)
  o other alternatives

Please, provide some examples of such forms of cooperation by appropriate links. If links won’t be available, it would be kind to have those examples as attached documents. As members of Advisory boards for the management of large protected areas as National Parks.
Appendix 3

Questionnaire on Area Protection and Management in the Arctic and the Involvement of Indigenous Peoples

This survey is object to a master thesis that will be conducted by Antje Neumann in the frame of a Polar Law Master Programme at the University of Akureyri, Iceland, started in August 2008. The master thesis will be carried out by supervision of Dr. Kees Bastmeijjer from the University of Tilburg, the Netherlands, and in close consultation with Tom Barry, the Executive Secretary of the Arctic Council Working Group on Conservation of Arctic Flora and Fauna, CAFF, located in Akureyri, Iceland.

The master thesis aims, firstly, to provide a general overview of national legislation of the eight Arctic states as regards to area protection and management. Laying down the definition of a protected area adopted by IUCN\(^1\) - “an area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means” - two components will be addressed: on the one hand, the protection of areas for different values, and on the other hand, the management of these areas. Secondly, the master thesis will investigate by which means and to which extent indigenous peoples are involved in area protection and management. Both steps will be conducted as judicial research from a legal point of view.

Since no comprehensive overview of national legislation on area protection and management of the eight Arctic states so far exists, this questionnaire serves as a first step in order to provide necessary data. In this early stage, it is kept intentionally general for comparative reasons. Based on the outcome of the survey, certain aspects of the involvement of indigenous people in area protection and management will be studied in more detail. Thus, the outcome of the research will be importantly influenced by information provided in response to this questionnaire.

Please, send any returns, comments and questions related to this questionnaire to Antje Neumann at: ha080002@unak.is. Many thanks in advance!

A. Questions relating to the regulation of area protection and management at the national/federal (provided a federal structure exists) level

I. By which key legislation is area protection and management regulated at the national/federal (provided a federal structure exists) level?

- alternatives:
  - x act of parliament
  - o regulation
  - o other alternatives

\(^1\) Available at: http://www.unep-wcmc.org/protected_areas/categories/index.html
Appendix 3

Please, provide the title of the relevant legislation and a link for its availability. If a link is not available, it would be kind to have it as an attached document. The Environmental Code is copied below. Search: www.regeringen.se for more information on environmental legislation. Area protection is the main focus – management is regulated in management plans for the protection.

II. Which guidelines and/or other sources for area protection and management exist at the national / federal (provided a federal structure exists) level?

- alternatives:
  - guidelines
  - codes of conduct
  - handbooks
  - other alternatives

Please, provide the title of the relevant guidelines and/or other sources and a link for their availability. If a link won’t be available, it would be kind to have those guidelines as an attached document.

Värna vårda visa

III. Which categories of area protection and management exist at the national/federal (provided a federal structure exists) level?

- alternatives*:
  - strict nature reserve
  - wilderness area
  - national park
  - natural monument
  - habitat / species management area
  - protected landscape / seascape
  - managed resource protected area
  - other alternatives (please, specify)

There are of course also nature reserves other than strictly protected. Biotype protection of usually very small areas is an additional option. For more information check the Code Chapter 7 and 8.

* Since the Circumpolar Protected Areas Network (CPAN) uses primarily the 1994 protected area category system of the International Union for Conservation of Nature (IUCN) to classify protected areas at the circumpolar level, those categories were taken here as possible alternatives. For further definition of those categories, please see at: http://www.unep-wcmc.org/protected_areas/categories/eng/index.html

IV. Which national/federal (provided a federal structure exists) ministries are competent for issuing relevant national/federal legislation?

- alternatives:
B. Questions relating to the regulation of area protection and management at the state (provided a federal structure exists), county and municipal level

V. Does legislation on area protection and management exist at the state (provided a federal structure exists), county and municipal level; and if so, by which kind of legislation is area protection and management regulated at the regional and communal level?

• alternatives:
  o state-county-municipal law
  o regulation (rules and administrative codes)
  o ordinance (statutes)
  o other alternatives

Please, provide some examples of the relevant legislation by title and links for their availability. If links won’t be available, it would be kind to have those examples as attached documents.

Municipals can use the Environmental Code to create nature reserves.

VI. Which categories of area protection and management exist at the state (provided a federal structure exists), county and municipal level?

• alternatives:
  o strict nature reserve
  o wilderness area
  o natural monument
  o habitat/species management area
  o protected landscape/seascape
  o managed resource protected area
  o other alternatives (please, specify)

VII. Which state (provided a federal structure exists), county and/or municipal authorities are competent for issuing and administrating relevant legislation?

• alternatives:
  o state government (e.g. ministries, agencies, etc.)
C. Questions relating to the cooperation with indigenous peoples as regards area protection and management

VIII. By which means is cooperation with indigenous peoples as regards area protection and management regulated? (This question includes also procedural aspects!)

- alternatives:
  - act of parliament
  - regulation
  - guidelines
  - other alternatives

Please, provide titles of relevant means (including procedural aspects) and links for their availability. If such links won’t be available, it would be kind to have them as attached documents.

There is no specific law – general laws are valid.

IX. Which form of cooperation is required in the process of planning and designating protected areas?

- alternatives:
  - consultation in order to achieve agreement
  - taking opinions into consideration
  - general public hearing
  - other alternatives (please, specify)

With all stakeholders.

X. Who is authorized to participate in the process of planning and designating protected areas?

- alternatives:
  - each individual of indigenous peoples
  - individuals of indigenous peoples 'concerned'**
  - indigenous peoples’ organizations and associations
  - other alternatives (please, specify)

All individuals concerned and all organizations.
Appendix 3

**The word 'concerned' should indicate any relationship of the individual to the area, as expressed by ownership, possession or other forms of relations.

XI. Which consequences result from a breach of relevant provisions providing rights of participation?

- alternatives:
  - none
  - the relevant designation would become not effective
  - the relevant decision would be subject to appeal
  - other alternatives (please, specify)

  If it is impossible with strong resistance there will be no protection! Single individuals concerned might be overruled and compensated.

XII. Which forms of cooperation with indigenous peoples exist as regards to the administration of protected areas?

- alternatives:
  - shared administration (e.g. co-management of governmental and indigenous representatives)
  - other alternatives

  Please, provide some examples of such forms of cooperation by appropriate links. If links won’t be available, it would be kind to have those examples as attached documents.

  This is under discussion. A policy is to improve local participation and involve local people regardless if they are indigenous or not.