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## The Nordic Sámediggis and the Limits of Indigenous Self-Determination

Ulf Mörkenstam • Eva Josefsen • Ragnhild Nilsson



Laila S. Vars  
(Red.)

# **The Nordic Sámediggiis and the Limits of Indigenous Self-Determination**

## **Authors:**

Eva Josefsen, Senior lecturer, Center for Sami Studies,  
UiT the Arctic University of Tromsø

Ulf Mörkenstam, Associate professor, Department of Political Science,  
Stockholm University

Ragnhild Nilsson, PhD-candidate, Department of Political Science,  
Stockholm University

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Guovdageaidnu / Kautokeino  
Eva Josefsen, Ulf Mörkenstam and Ragnhild Nilsson

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Editorial office adress:

Gáldu, Hånnoluohka 45, NO-9520 Guovdageaidnu/Kautokeino, Norway

Phone: +47 78 44 84 00

E-mail: [galdu@galdu.no](mailto:galdu@galdu.no)

[www.galdu.no](http://www.galdu.no)

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## Preface

In this issue of the Gáldu čála journal on the rights of indigenous peoples, we have invited Ulf Mörkenstam, Eva Josefsen and Ragnhild Nilsson to write an article on the Sami Parliaments as bodies for exercising the right of indigenous peoples to self-determination. The article is based on research projects that the authors have participated in or continue to take part in, including the findings from the Formas-funded election study project: *“The Sámi Parliaments as Representative Bodies: A Comparative Study of the Elections in Sweden and Norway 2013”*. The Sami Parliaments of Finland, Norway and Sweden are often highlighted as good examples internationally of how indigenous peoples’ right of self-determination can be achieved within democratic states. The authors undertake a comparison of the Sami Parliaments, and cast a critical glance on how these popularly elected bodies function and in particular which limitations these bodies have in the exercise of Sami self-determination and self-government.

Gáldu has chosen to launch this journal during the 15th session of the UN Permanent Forum on Indigenous Peoples Issues, as one of the main topics of this meeting is precisely how to strengthen the participation of indigenous peoples in the UN system. The Sami Parliaments are key players in the global cooperation between indigenous peoples, but there continue to be restrictions in the UN system that complicate the efforts of indigenous peoples to be heard in processes that are of great importance to them and their communities. In line with the recommendations of the final document from the World Conference on Indigenous Peoples - 2014, the UN Secretary General has initiated consultations with UN member states and the indigenous peoples of the world on how to strengthen the representation of indigenous peoples in the UN system. An Inter-Agency Support Group (IASG) has been established to assist the UN Permanent Forum on Indigenous Issues in their endeavour to ensure implementation of international standards with respect to the rights of indigenous peoples, in particular the standards and targets of the 2007 UN Declaration on the Rights of Indigenous Peoples. In 2015 the IASG completed an overarching action plan where Point 6 states the following concerning the participation of representatives and institutions of indigenous peoples’ in the UN system:

*“Although the participation of indigenous peoples’ representatives and institu-*

*tions in meetings of relevant UN bodies is a matter that the General Assembly will continue to consider, the UN system can take concrete and practical steps towards increased full and effective participation in processes that affect them. This can include consultative mechanisms, funds, and tools for seeking free, prior and informed consent and other means for facilitating full and effective participation of indigenous peoples including indigenous women, Elders, persons with disabilities as well as indigenous children and youth.”*

<http://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2015/11/System-wide-action-plan.pdf>

The final document of the World Conference on Indigenous Peoples also acknowledges that a considerable amount of work remains in the effort to ensure the implementation of the UN Declaration on the Rights of Indigenous Peoples at national and local levels. Among other things it assumes that indigenous peoples are included in the work to implement the objectives of the declaration. This article takes a critical look at the Sami elected bodies, the Sami Parliaments, and points to the significant differences between the Sami Parliaments both organizationally and politically. Not least, the article offers an insight into something that could constitute a challenge when working to arrange a joint Nordic Saami Convention, particularly given the different organisation of the Sami Parliaments. It is to be hoped that the article will be of use to other indigenous peoples, for researchers and students, politicians and decision-makers.

Laila Susanne Vars  
Editor-in-Chief

## Abstract

From an international perspective, the popularly elected *Sámediggis* (Sámi Parliaments), established more than two decades ago in the Nordic countries of Finland, Norway and Sweden, represent unique institutional arrangements to enhance and safeguard indigenous peoples' right to self-determination. In this article the authors compare the legal basis, status, authority and mandate of the Sámi people's representative institutions, as well as the actual influence and autonomy of the *Sámediggis* in relation to the national political institutions in the respective country.

The comparison reveals several differences between the institutions and brings to the fore three problems manifesting different ways in which nation-states may delimit indigenous peoples' right to self-determination: 1) how a popularly elected indigenous parliament that successfully gains political autonomy and influence through participation in national politics and institutions always run the risk of being set aside by the State on matters of conflict (Norway); 2) how the historical legacy of a divide and rule government policy may justify a continued paternalistic state politics by perpetuating power relations within the indigenous community (Sweden); and 3) how conflicts between an indigenous people and the State in which they live concerning the right to define the people may delimit the right to self-determination and further conflicts between groups claiming indigenous status (Finland).

The authors argue in their concluding remarks that these kinds of indigenous institutions may be a way to increase political autonomy and influence, and ultimately a relational form of self-determination within already existing state boundaries. There are, however, several obstacles for the *Sámediggis* of today to safeguarding Sámi self-determination, including the colonial past, the formal status granted the parliament, and the national policy and implementation of international law. Moreover, the different ways in which the states have handled these obstacles lead the authors to ask if the *Sámediggis* might best be understood as three distinct ways of institutionalising non-territorial indigenous self-determination; rather than as a unified Nordic model.

## Introduction<sup>1</sup>

When the UN *Declaration on the Rights of Indigenous Peoples* (UNDRIP) was adopted in 2007 it was mainly the result of indigenous peoples' political struggle and mobilisation stretching over decades on a local, national and international level (see e.g., Anaya 2009; Brysk 2000; Minde 2003). No doubt the third article of the UNDRIP—a replication of the first paragraph of the two principal human rights covenants from 1966, the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESC)—is paramount in this context, since it states that “[i]ndigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (Art. 3). It is the will of the indigenous peoples that ought to determine their political status and their economic, cultural and social development. The right to self-determination has, however, commonly been interpreted in terms of a right to internal autonomy, something made explicit in the subsequent fourth article of the UNDRIP: “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs [...]”. Indigenous peoples have a right to self-determination like all other peoples, but their right is limited to that of internal self-governance. The UNDRIP thus explicitly holds within it two positions: firstly that indigenous peoples have a right to self-determination equal to any other people, and secondly that this right is limited to self-determination within an already existing state. These two positions are also found in the debate on indigenous self-determination.

The main argument in support of a delimited right to self-determination has been by reference to the actual will of indigenous peoples, i.e. indigenous peoples do not strive for independence or secession and they don't seek self-determination or sovereignty for themselves in a classical way. Rather, “indigenous peoples themselves have overwhelmingly expressed their preference for constitutional reform within existing States”, as Erica-Irene Daes (1993, 9-10) argues, due to their “small size, limited resources, and vulnerability” (see also, e.g., Quane 2011; Stavenhagen 2011; Young 2005). Independence is thus not seen as a viable option for indigenous peoples in political practice, since “the situation

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<sup>1</sup> The article is written under the auspices of three projects: “The Sámi Parliaments as representative bodies: A Comparative Study of the Elections in Sweden and Norway 2013” (funded by the Swedish Research Council FORMAS), “The 2013 Norwegian Sámi Parliament Election Study” (funded by the Norwegian *Sámediggi*) and “Globalisation and New Political Rights. The Challenges of the Rights to Inclusion, Self-Determination and Secession” (financed by the Swedish Research Council, *Vetenskapsrådet*)



or context in which indigenous peoples find themselves means that exercise of self-government for indigenous peoples will have to be within existing states” (Moore 2003, 104).

This is, however, a contested claim, since indigenous representatives have repeatedly stated that there could not be “any distinction between ‘indigenous’ peoples and ‘peoples’ generally [...]. Some governments have even suggested formulating ‘a special indigenous version of the right to self-determination’. We cannot accept such an approach because it would be a discriminatory application of international law”, as argued by the former President of the Swedish Sámi Parliament (*Sámediggi* in Northern Sámi), Lars-Anders Baer (2005, 229-230). To condition indigenous self-determination would be to deny indigenous peoples a right already accorded to other peoples, and thus to perpetuate a hierarchical societal order in which one people may continue to dominate the other(s) (see e.g., Buchanan 2004; Xanthaki 2007). Moreover, this delimited understanding seems to be in conflict with the fact that indigenous peoples in many parts of the world at no time ceded their sovereignty (Alfred 1999).

A delimited right to self-determination is also justified from a more statist or “realist” perspective, which could be summarised by using the words of Hurst Hannum (2006, 75) a year before the UNDRIP was adopted: “there is no hope that an international body such as the UN [...] would adopt an instrument that would legitimize secession”. That “is a brute political fact” (Levy 2008, 69). The statements made by indigenous representatives “that the right to self-determination does not necessarily imply a right of a separate sovereign existence” (Anaya 2009, 60) was also crucial in the preparatory work of the UNDRIP, and this limited understanding of indigenous self-determination was decisive in the process leading to its adoption (Henriksen 2008; Wiessner 2008).<sup>2</sup>

This understanding of indigenous self-determination is also well in accordance with the development of state practices to meet the right claims of indigenous peoples (although most states have not developed any practice at all, or even recognised the rights of the indigenous peoples living within their territories). Several different forms of institutional arrangements for internal autonomy can be discerned. Regional or local self-governance within a well-defined territory of an already existing nation-state, i.e. intra-state autonomy, may be an option where an indigenous people constitutes a majority within a geographically

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<sup>2</sup> The exclusion of a right to secession is also made explicit in the closing article of the UNDRIP, which states that “[n]othing in this Declaration may be interpreted as [...] authorizing or encouraging any action which would dismember or impair, totally, or in part, the territorial integrity or political unity of sovereign and independent States” (Art. 46).

concentrated area. Such a development is, for instance, discernible in Canada when the federal government created a third territory, Nunavut in 1999, to grant Inuit control over health and social services, education, economic development, tourism and resource exploitation (Penikett and Goldenberg 2013).

Most often, however, indigenous peoples constitute a minority on their traditional land, living interspersed among other people. In these cases, systems for non-territorial autonomy to ensure political representation of indigenous peoples will be more attractive solutions, such as reserved seats in the national parliament or the establishment of separate institutions (see e.g., Robbins 2015). The solution in Aotearoa/New Zealand is an example of the former, where Maori have had dedicated seats in the House of Representatives since 1876 (Xanthaki and O’Sullivan 2009). Greenland, with a majority Inuit population, are a territorially self-governing entity within the Danish State, and in addition Greenland have dedicated seats in the Danish Parliament (see e.g., Alfredsson 2004). The development in Greenland in the last decade is of specific interest in this context, since Denmark through the Greenland Self-Government Act from 2009 recognises the people of Greenland as having the right to self-determination in accordance with international law, and the Act contains explicit provisions for a right to independence. If supported by the people of Greenland in a referendum, negotiations with the Danish State on the establishment of a sovereign state ought to commence (see e.g., Hartig Danielsen 2013).

Another way to ensure political representation of indigenous peoples has been to create separate institutions to ensure non-territorial autonomy. This was the common response from the Nordic states in their establishments of *Sámediggi*s in 1989 (Norway), 1993 (Sweden) and 1995 (Finland) (see e.g., Josefsen, Mörkenstam and Saglie 2015).<sup>3</sup> The non-territorial approach is strongly linked to the fact that the Sámi are in a minority within the traditional settlement area of the Sámi, Sápmi, covering the northern parts of Norway, Sweden, Finland and the Kola Peninsula of Russia, and they constitute a majority only in specific parts of this area. Through the course of history, the Sámi have been divided between these four nation-states, and ever since the nineteenth century, the Sámi have become increasingly enclosed into separate national arenas. The *Sámediggi*s are intended to represent the Sámi people in each of the Nordic countries—the idea of establishing a parliament is still a point of contention among the

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<sup>3</sup> The first popularly elected Sámi Parliament in the Nordic countries was established in Finland as early as 1973 (called the Sámi Delegation) but with a different mandate and legal status than the parliament of today (see e.g., Müller-Wille 1979).

Sámi in Russia (Berg-Nordlie 2015)—and not the Sámi people living in all four countries, or within the whole of Sápmi. From an international perspective, the *Sámediggis* are of interest as they are often referred to as important models “for indigenous self-governance and participation in decision-making that could inspire the development of similar institutions elsewhere in the world” (UN 2011, Art. 37), to use the words of James Anaya, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (see also, e.g., Hocking 2005).

In this article, our aim is twofold: first, to describe and compare the three *Sámediggis*, with a focus both on their legal and formal position within the national political system in the respective country, and on their representative systems. Previous research has shown that these factors affect the actual influence and autonomy of the *Sámediggis* (see e.g., Josefsen 2007; Josefsen, Mörkenstam and Saglie 2015; Robbins 2011, 2015). Taking this descriptive part as our starting-point, the second aim is to critically analyse the *Sámediggis*’ capacity to actually safeguard the Sámi right to self-determination. We will do this by identifying three distinct problems in implementing indigenous self-determination: 1) how a popularly elected indigenous parliament that successfully gains political autonomy and influence through participation in national politics and institutions always runs the risk of being set aside on matters of conflict with the nation-state (Norway); 2) how the historical legacy of a divide and rule government policy may justify continued paternalistic state politics by perpetuating power relations within the indigenous community (Sweden); and 3) how conflicts between an indigenous people and the state in which they live on the right to define the people may delimit the right to self-determination and further conflicts between groups claiming indigenous status (Finland). Our more general research questions are two: Should the Nordic *Sámediggis* serve as a model for indigenous self-determination in an international perspective? And what are the main obstacles to Sámi self-determination in the three countries?

### **The Nordic *Sámediggis*: so similar, so different**

The development of the *Sámediggis* could be understood as a form of policy diffusion from one country to another, in this case first from Finland to Norway and Sweden, and then from Norway to Sweden and back to Finland (see e.g., Eriksson 1997). The Sámi Delegation (*Saamelaisvaltuuskunta*), established in Finland as early as 1973, was important for the initial development in the two

other countries, since there already existed one form of popularly elected institution for Sámi representation. One of the Swedish State's main arguments for establishing "a Swedish Sámi representative body" was, for instance, the fact that "such a body already exists in Finland [...]" (SOU 1989:41, 150).<sup>4</sup> Finland had as early as 1949 appointed a State Committee on Lapp Affairs,<sup>5</sup> and its work resulted in recommendations of a new legislative framework to protect and develop the economic and cultural position of the Sámi as a distinct ethnic minority. Although nothing came out of the committee's proposal, a second State Committee was appointed in 1971 resulting in the establishment of the Sámi Delegation (Müller-Wille 1979; Sillanpää 1994). It was primarily created as an advisory body to the Finnish Government, created by a Cabinet Decree. Its legal status was as a committee with the mandate "to oversee the rights of the Sami population and to make recommendations to the Finnish authorities" (Sillanpää 1994, 114). Thus, it had no decision-making power. Its purpose was to promote the economic, social and cultural conditions of the Sámi on certain specified matters, for instance on environmental protection, reindeer herding, exploitation of natural resources and the use of water resources in the Sámi homeland, and it should introduce a Sámi curriculum for education (Müller-Wille 1979).

Although the Sámi Delegation could serve as a model for both Norway and Sweden, the political development in the 1980's—starting with the appointment of Sámi Rights Commissions in 1980 and 1982 respectively, on which both state representatives and Sámi organisations participated—was, however, caused by two different courses of events on a national level (Josefsen, Mörkenstam and Saglie 2015). In Norway, the conflict around the damming of the Alta/Kautokeino River in the 1970s and early 1980s put Sámi rights on the national political agenda in an unprecedented way. According to the initial plans, the dam would flood a Sámi village and huge land areas, with consequences especially for reindeer grazing. Opposition escalated into massive acts of civil disobedience, and these actions made headlines all over the world. The official Norwegian policy of human rights abroad was set in stark contrast to the lack of rights for its own indigenous people at home (Semb 2001). The national and international focus on this issue more or less forced the Norwegian government

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<sup>4</sup> SOU is an abbreviation of Statens Offentliga Utredningar, Swedish Government Official Reports.

<sup>5</sup> The term "lapp" is originally a Finnish term historically used by others to refer to the Sámi. The term is not recognised by the Sámi, since it was (and still is) often used in a derogatory way by non-Sámi. It was gradually abandoned in official government documents during the 1960s and 70s.

into dialogue with Sámi representatives, and after the conflict the Sámi came out stronger than before, something that had a great impact on their influence on the work of the Rights Commission.

In the Swedish national context, it was the Supreme Court ruling in the Taxed Mountain Case that forced the government to initiate a Sámi Rights Commission (Lantto and Mörkenstam 2015). The Taxed Mountain Case was initiated by *Sámiid Riikkasearvi* (*Svenska Samernas Riksförbund*, SSR/the National Union of the Swedish Sámi) in 1966, when some Sámi communities and individual Sámi in the county of Jämtland sued the Swedish State and claimed ownership of the reindeer grazing areas in the Taxed Mountains (Skattefjällen). Although in 1981 the Supreme Court decided in favour of the State as the rightful owner of the property in dispute, the court's ruling was also interpreted in terms of a strengthened legal position on the part of reindeer herders. The Swedish State, therefore, appointed a Sámi Rights Commission in 1982 to further investigate the rights of the reindeer herders and how they could be guaranteed in legislation. In contrast to Norway, however, the Sámi had lost their legal process against the State. Swedish politicians and parties had not been compelled to confront their own policies, leaving the Swedish Sámi in a weaker position when they started work in the Sámi Rights Commission in comparison to the Norwegian Sámi (see e.g., Josefsen, Mörkenstam and Saglie 2015).

The development in Finland differed significantly from the other two countries, since the Sámi already had a popularly elected representative body, the Sámi Delegation, as mentioned above. In 1990 the Advisory Council on Sámi Affairs presented a legislative proposal on a Sámi Act that would restore the rights of the Sámi to land and water and to create conditions for the Sámi to develop their culture, language, and social and economic situation. In this proposal, it was further recommended that these long-term objectives should be realised by strengthening the position of the Sámi Delegation. The proposal was harshly criticised and no legislation strengthening Sámi rights followed, but in 1995 the Finnish national parliament, the *Eduskunta*, enacted the Finnish Act on the Sámi Parliament (Act 974/1995), in which the Sámi representative body—now called the *Sámediggi*—got a similar institutional design as the parliaments already established in Norway and Sweden (Sillanpää 2002).

In this latter development, then, the Norwegian Sámi Rights Commission was continuously ahead in presenting its results and in initiating various legislative changes. The short time lag between the work of the commissions did not allow for anything to be learnt from the Norwegian policy choices in Finland

and Sweden. However, the mere fact that Norway established a *Sámediggi* put political pressure on the other two countries, although in different ways: Sweden had to create a completely new institution in order not to put the Swedish Sámi in a worse off position than its neighbouring countries; in Finland it was about re-shaping an already existing institution with a weak legal position and limited mandate. The development in the Nordic countries can thus be understood as a process of emulation “whereby policies diffuse because of their normative and socially constructed properties instead of their objective characteristics” (Gilardi 2012, 22). The policy change in one country (Norway) influenced the decisions made later on in the other countries in a way that could best be described as mimicking (see e.g., Schaltegger and Küttel 2002): Sweden and Finland copied the Norwegian original idea, it was a “blueprint strategy” (Eriksson 1997, 163).

Although the Norwegian idea of a popularly elected representative body was copied in both Finland and Sweden, the three *Sámediggis* differ in many aspects: in their legal bases, formal position and in their mandate, as well as in their systems of representation.

#### *The legal bases of the Sámediggis*

International law and the legal status of the Sámi as an indigenous people were the explicit foundations for the establishment of a *Sámediggi* in all three countries. The Sámi had both nationally and in an extended Nordic cooperation after WWII—especially in and through the establishment of a Nordic Sámi Council (today the Sámi Council, a non-governmental organisation made up of Sámi member organisations from Finland, Norway, Russia and Sweden), with the first two conferences held in 1953 and 1956—emphasised that the Sámi are one people divided by the borders of four nation-states. This early mobilisation on a Nordic level also led to an increased international engagement and the Sámi Council participated actively in the establishment of the World Council of Indigenous Peoples as well as in international debate and in organisations like the International Work Group for Indigenous Affairs (see e.g., Heininen 2002; Robbins 2011). In spite of the argument emphasised in the international arena that the Sámi are one people, the Sámi and the *Sámediggis* have different legal standing in the three Nordic countries.

If we compare the constitutional recognition of the Sámi as a people, all three countries have recognised a specific status of the Sámi in their constitutions but in different ways. The strongest form of recognition is to be found in the Constitution of Finland, in which the Sámi have been explicitly recognised as

an indigenous people since 1999: “The Sami, as an indigenous people [...] have the right to maintain and develop their own language and culture”, and in “their native region, the Sami have linguistic and cultural self-government, as provided by an Act” (Constitution of Finland, Act 731/1999, Ch. 2, Art. 17, Ch. 11, Art. 121). In Norway the constitution was amended in 1988 with a paragraph stating that the “authorities of the state shall create conditions enabling the Sami people to preserve and develop its language, culture and way of life” (Constitution of Norway, Ch. E, Art 108). In Sweden the Sámi were recognised constitutionally much later, in 2010, when it was stated in the Instrument of Government that the “opportunities of the Sámi people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted” (SFS 2010:1408, Ch. 1, Art. 2).<sup>6</sup>

The legal bases of the *Sámediggis* differ as well, as is easily illustrated by comparing the legislative mandate of the parliaments. In the first paragraph of the Finnish Act on the Sámi Parliament the status of the Sámi as an indigenous people is emphasised: “The Sámi, as an indigenous people, have linguistic and cultural autonomy in the Sámi homeland as provided for in this Act and in other legislation” (Act 974/1995, Ch.1, Art. 1). In the first section of the Norwegian Sámi Act (in which chapter two includes provisions regarding the Sámi Parliament), it is stated that the Act should “enable the Sami people in Norway to safeguard and develop their language, culture and way of life” (Act of 12 June 1987 No. 56, §1-1). The first paragraph in the Swedish Act differs significantly: “[in] this Act provisions are made for a special government agency – the Sámi Parliament [...]” (SFS 1992:1433, §1).

Both the Norwegian and Finnish Acts give the *Sámediggis* a broader scope of responsibilities in comparison with the Swedish Act. In Norway, the *Sámediggi* have a responsibility regarding “any matter that in the view of the Sámi Parliament particularly affects the Sámi people” (Act of 12 June 1987 No. 56, §2-1). In Finland, the task for the *Sámediggi* “is to look after the Sámi language and culture, as well as to take care of matters relating to their status as an indigenous people” (Act 974/1995, Ch.5, Art. 1). This is in sharp contrast to the Swedish Act, which states that the *Sámediggi*’s main function is to “monitor issues related to Sámi culture in Sweden” (SFS 1992:1433, §1). Furthermore, the Finnish Act states that “[t]he authorities shall negotiate with the Sámi Parliament in all far-reaching and important measures which may directly and in a specific way

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<sup>6</sup> SFS is an abbreviation of *Svensk författningssamling*, the Swedish Code of Statutes

affect the status of the Sámi as an indigenous people” (Act 974/1995, Ch. 9, Art. 1). In the Norwegian Sámi Act the role of the *Sámediggi* as a consultative body is formulated somewhat more weakly: other administrative authorities “ought to grant the Sámi Parliament the possibility to comment before decisions made on issues within the Sámi Parliament’s mandate” (Act of 12 June 1987 No. 56, §2-2). Government agencies should thus ask the *Sámediggi* to give a statement on matters concerning Sámi affairs. In the Swedish legislation, however, there is no similar formulation.

If we only look into the legal bases of the *Sámediggis*, the Sámi in Finland seem to “have the strongest statutory rights” (Josefsen 2010, 8). However, these formal rights have not been institutionalised in political practice. The Swedish parliament is clearly the weakest in terms of formal rights, and its legal position as a government agency is made explicit in the Sámi Parliament Act. The establishment of the Swedish *Sámediggi* was explicitly explained and justified as a way of guaranteeing the Sámi people cultural autonomy without simultaneously creating a body for political self-determination. The *Sámediggi* was thus constructed as a government agency with special expertise in reindeer husbandry issues (Lawrence and Mörkenstam 2016). The dual role as both representative body and administrative authority is, however, not unique to the Swedish *Sámediggi*, but the balance between these two functions differs radically. In the establishment of both the Finnish and Norwegian parliaments, the emphasis was on the parliaments’ functions as advisory bodies. The Norwegian or Finnish Government has no formal right to rule over the *Sámediggi*, and can, for instance, not force administrative tasks on to the *Sámediggi*, only delegate tasks after approval by the elected representatives. In Norway the relationship with the Norwegian authorities has involved a dynamic process where the *Sámediggi* has gradually assumed a stronger and more independent position (Josefsen 2011). This stands in stark contrast to the position of the *Sámediggi* in Sweden. The formal subordination of the Swedish *Sámediggi* can be exemplified by the decision of the Swedish Government in 2007 to transfer new administrative tasks with regard to reindeer husbandry from other government agencies to the *Sámediggi*, despite explicit opposition from a unanimous plenary (Lawrence & Mörkenstam 2016).

The differences in legal status—in both theory and practice—is also amplified by the huge difference in resources granted the *Sámediggis* in the three countries. The *Sámediggis* have similar compositions and consist of three distinct parts: a popularly elected plenary, a board and a secretariat. In Norway



the plenary consists of 39 elected members of parliament (MP) and approximately 150 employees work in the secretariat. The total 2016 budget of the parliament is nearly 46 million Euro (Sametinget 2015). Since 1999 government funding has been through block grants, leaving the decision on how to allocate funds within the set budget to the parliament itself (KRD 2000). In practice, however, the room for new priorities and the economic leeway is not extensive due to previous *Sámediggi* decisions, which tie up larger parts of the budget. In contrast, the Swedish *Sámediggi* consists of 31 elected MPs and around 52 full-time staff members work in its secretariat. In 2015, the budget amounted to around 21 million Euro. The funding is clearly tied to the parliament's tasks as a government agency, manifested in the fact that most of the grants, approximately 14 million Euro, were earmarked for transfer payments and compensations, like predator compensation for reindeer herders (Sametinget 2016). The corresponding figures in Finland are 21 MPs and about 40 employees in the secretariat, and the lowest total budget of all three parliaments: the State grants the *Sámediggi* around 6.6 million Euro ([www.samediggi.fi](http://www.samediggi.fi)).

Another major legal difference between the countries is that in 1990 Norway, in contrast to both Sweden and Finland, was the first country in the world to ratify the 1989 ILO *Convention 169 on Indigenous and Tribal Peoples in Independent Countries* (C169). This does not only entail a stronger recognition of the historical rights to land, water and other natural resources as an indigenous people, but the convention also provides, as Patrick Thornberry (2002, 9) argues, a “platform from which to argue”, as “indigenous groups are not—compared to States—securely positioned in the pantheon of international institutions.” In Norway the development has also followed a path in the direction of strengthening the political influence and autonomy of the *Sámediggi*, and two key reforms have been implemented, in which C169 has been of great importance for the process as well as the substance. The first is the Finnmark Act from 2005, relating to the management of natural resources in the traditional Sámi settlement area of Finnmark County “for the benefit of the residents of the county and particularly as a basis for Sámi culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life” (Act of 17 June 2005 No. 85: §a). One of the reasons behind this new legislation was that the Norwegian State could no longer with certainty claim ownership to land and water in Finnmark due to the legal development both domestically and in international law. The land previously owned by the State was thus transferred to the Finnmark Estate, a new local owner where the *Sámediggi* and the Finnmark County Council appoints

three members each to the board. To address the central issue of land and water rights within Finnmark, the law mandated the establishment of a commission to investigate, identify and protect land and water rights in Finnmark, as well as it established a Land Court in order to resolve any disputes arising from the commission's investigations (see e.g., Broderstad 2008; Hernes 2008; Josefsen 2008).

The ratification of C169 was thus an important part of a wider Norwegian recognition of the historical Sámi rights to land, water, and natural resources in their capacity of being an indigenous people. No similar recognition exists in Finland or Sweden. Another important difference concerning rights to land, water and natural resources is the specific right to herd reindeer, i.e. a monopoly on reindeer herding granted to Norwegian and Swedish Sámi. In Finland the right to herd reindeer is granted to anyone, no matter what their ethnic origin, living in the traditional reindeer grazing area; “in fact, more non-Saami than Saami in Finland practice reindeer husbandry” (Sillanpää, 2002, 91).

The second major Norwegian reform carried out in full compliance with C169 involves the consultative arrangements institutionalised by a formal agreement between the State and the Norwegian *Sámediggi*, which guarantees the Sámi participation in decision-making processes in all matters that may affect Sámi interests (KRD 2005, Art. 1-8; See also e.g., Broderstad and Hernes 2008). The agreement thus gave the *Sámediggi* a better opportunity to influence national policy than before (FAD 2011). There are, however, many challenges in effectuating the agreement, and there have been several cases where agreement has been reached but where ministries have changed the outcome afterwards (see e.g., *Sámediggi* 2006).

So far, we have seen some important differences in the legal bases of the *Sámediggis*, and it is obvious that the translation of *Sámediggi* into the English word ‘parliament’ may be quite misleading, since none of the parliaments have any legislative power. However, to understand the potential of the parliaments as models for indigenous self-determination, we will briefly compare them as representative bodies.

#### *The Sámediggis as representative bodies of the Sámi people*

The *Sámediggis* are the representative body of the Sámi people in Finland, Norway and Sweden respectively. As such, a collective public Sámi will and Sámi interests ought to be articulated in and through elections on a national level. The electoral systems vary between the countries, however, as well as

the system for representation. For instance, in both Finland and Sweden the entire country comprises a single constituency, whereas the elections in Norway take place in seven multi-member constituencies, affecting the geographical representation differently in each country. Another difference is to be found in how the people ought to be represented: through candidates belonging to political parties (Norway), through casting a vote directly on a person with a private candidacy (Finland), or through a party system where personal votes have a considerable impact (Sweden). There are several other differences in the electoral system, but here we will focus on one; the electoral roll and how to define a person with the right to vote.

In the creation of the *Sámediggis*, one of the most important questions was how to define the persons with a right to vote. This was not something particular for the *Sámediggis*, indigenous rights usually presume a basic delimitation of whom to include in the people, and the nation-states' criteria applied to designating particular individuals as "indigenous" often come into conflict with indigenous peoples' own definition (see e.g., Corntassel 2003; Gover 2010). In the case of the Sámi in Sweden, there has been no registration of Sámi ethnicity in national censuses or other official registers after WWII. In Norway there was a census in 1970 when Sámi ethnicity was registered in specific districts in the three northernmost counties of Nordland, Troms and Finnmark, but it could not have served as a basis for an electoral roll (Aubert 1978). The establishment of the *Sámediggis* thus created a need for some kind of new ethnic demarcation in both countries. In Finland, however, in 1962 "a separate census of the Sami was carried out leading to the Sami Registry and the inclusion of the Sami as an ethnic group [...] in the national census since 1970" (Müller-Wille 1979, 66). This "census" was conducted through demographic research, a "questionnaire survey" and interviews, conducted by the Sámi Council (Lehtola 2005). Based on who had confirmed that at least one of his/her grandparents had spoken Sami as their first language, the data was used to put together a voter registry for a test election to the Sámi Delegation in 1972 (Joonas 2012). Following this test, the data was established as the foundation for the electoral roll to the Sámi Delegation, as well as for its institutional successor, the *Sámediggi*. Moreover, the same data also formed the basis for the definition of a Sámi Homeland in Finland, today consisting of Enontekiö, Enare and Utsjoki municipalities in addition to a reindeer herding area in the municipality of Sodankylä.

In both Norway and Sweden the newly developed criteria defining the right to register in the Sámi electoral roll (with a right to vote and to be eligible) were

enacted in legislation by the national parliaments after consultations with the Sámi. In both countries, the electoral rolls are founded on similar principles: all Sámi above the age of 18 can register as voters, if they fulfil two criteria. First, there is a criterion on self-declared identity: to register a person must declare that they regard themselves as Sámi. Second, there is an objective language-based criterion: the applicant or one of their parents or grandparents (after a legislative amendment in Norway in 1997, it is sufficient with one great-grandparent), must have used Sámi as a home language. Alternatively, one of the parents must be (or have been) registered on the electoral roll (see e.g., Josefsen, Mörkenstam and Saglie 2015). In Finland the criteria are different through the addition of one more objective criterion. The right to register is granted to a person “who considers himself a Sámi, provided: (1) That he himself or at least one of his parents or grandparents has learnt Sámi as his first language; or (2) That he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or (3) That at least one of his parents has or could have been registered as an elector for an election to the Sámi Delegation or the Sámi Parliament” (Act 974/1995, Ch.1, Art. 3).

In Sweden and in Norway the electoral rolls are systems for voter registration, not official registers of the Sámi population. The enrolment is voluntary, and Sámi may choose not to register, for instance, if they simply do not care about politics, or dislike the *Sámediggi*, but many Sámi also see electoral registration primarily as a way of expressing their Sámi identity (Bergh and Saglie 2011; Dahlberg and Mörkenstam 2016a). In Finland, however, the electoral roll is claimed to be seen rather as a register that gives an enrolled person a formal Sámi status (Joonas 2015). Ever since the inauguration of the *Sámediggi* the enrolment criteria have been one of the most controversial issues within the Sámi community, between Sámi and people who claim to be Sámi, and in relation to the Finnish State (see e.g., Aikio and Åhrén 2014; T. Joonas 2013; Junka-Aikio 2016; Sarivaara, Uusiautti and Määttä 2013). We return to this debate in Finland below. In the other two countries the criteria have not caused too much debate, although back in 1989 one Sámi organisation in Sweden, *Landsförbundet Svenska Samer* (LSS/The Swedish Sámi National Union), criticised the legislative proposal from the Sámi Rights Commission as too narrow. The organisation wanted to add a criterion—that their origin is Sámi—due to the fact that the Swedish assimilation policy at the end of the nineteenth century had bereft many Sámi of their language and thus the language related three-generation criterion was not sufficient (Fjellström et al 2016; Lantto and Mörkenstam 2016).

To sum up this descriptive part, our comparison shows that the three *Sámediggis* are different in many vital respects despite the similarities between the Nordic countries and the obvious policy diffusion. Although the Finnish *Sámediggi* seems to have the strongest legal foundation and the widest mandate, it is in practice the weakest followed by the Swedish (see e.g., Robbins 2011, 2015). The Norwegian *Sámediggi* is without doubt the most powerful, and since its inauguration it has continuously increased its autonomy and influence, for instance, as manifested in the Finnmark Act and the formal consultative arrangement with the Norwegian State, supported by the early Norwegian ratification on C169 (see e.g., Josefsen, Mörkenstam and Saglie 2015). The difference in political capacity based on the status and legal bases of the *Sámediggis* is further exacerbated by the disparities in financial resources. In terms of the system of representation, the *Sámediggis* have their specific characteristics as well, especially the criteria for defining Sámi with the right to register in the electoral roll.

In the following, we will take this descriptive comparison as our starting-point in defining three problems facing the different *Sámediggis* delimiting their recognised right to self-determination. These problems are, however, not unique to the Sámi; rather, they are problems indigenous peoples are facing all over the world in their struggle for self-determination. The Nordic countries' common answer to live up to Sámi right claims—the *Sámediggis*—just brings these problems to the fore.

### **“Breaking-in”: between political autonomy and the risk of being set aside**

When the Norwegian king formally inaugurated the *Sámediggi* in 1989, it was generally regarded as a confirmation from the State that the parliament was an authoritative voice on Sámi issues. The support from the royal family also enhanced the *Sámediggi's* legitimacy among those Sámi who feared that this new representative body was going to promote Sámi radicalism and separatism; rather, it has turned out to be the opposite. The *Sámediggi* in Norway has from the start prioritised its relationship with the State, not with the aim of separating from the State, but to make the State accountable for the consequences of its policy regarding the Sámi (Josefsen 2014; Magga 2014; Nystø 2014). For more than a hundred years the State had been seeking to erase Sámi culture and belonging (see e.g., Minde 2005; Pedersen 1999), and even though the policy changed radically after WWII, the consequences were still very much present

in 1989. The Sámi languages, culture and way of life was virtually inviable in general areas in society; in media, schools, local and regional politics, health services, *et cetera*.

During its first term of office the main objective of the *Sámediggi* was to ensure that economic subsidy schemes were transferred from other ministries to the new institution. This strategy was, however, gradually de-emphasised when it materialised that the government did not just hand over its general responsibility for Sámi initiatives along with the necessary economic resources, but that the *Sámediggi* also ran the risk of becoming an administrative body for the government. Instead, the parliament focused its efforts on implementing Sámi rights into laws and formal regulations making the State responsible for including Sámi aspects in all corners of public initiatives and responsibilities. This also involved making sure that the *Sámediggi's* tasks were defined by the Norwegian parliament, the *Storting*, instead of the government (Broderstad 2008). In parallel to this, the *Sámediggi* worked to increase the state-transferred budgets in order to take on the adopted administrative tasks and to bring about economic leeway. This line of politics aimed at developing a model of self-determination within the state borders based on dialogue and cooperation, where there was a “shared” responsibility for strengthening Sámi culture (Josefsen 2014). But is this really a form of indigenous self-determination and, if so, what does this form of self-determination actually imply? What features does the *Sámediggi's* approach towards the state steering system have, and what kind of advantages and disadvantages might this involve? To answer these questions, we will start with the dispute between a Norwegian minister and the *Sámediggi* in 1994 over a mining company prospecting for minerals.

Although the Sámi Act clearly states that the *Sámediggi* is free to raise any issue that is regarded relevant for the Sámi people, the first significant test of the parliament's autonomy came in 1994, five years after its establishment. The mining company Rio Tinto Zink started prospecting for minerals in a traditional Sámi settlement area near the community of Karasjok and on land where Sámi land rights had not been clarified. The *Sámediggi* had not been informed in advance of this prospecting project. The President of the *Sámediggi*, Ole Henrik Magga—along with a national television crew—entered the prospecting site, where he gave a statement expressing the fact that the Sámi had not granted the company any right to start prospecting and he demanded an immediate stop to all activities (Brantenberg 1995). This symbolic action was broadcasted nationally and resulted in the Minister of Municipal Affairs declaring that the

President of the *Sámediggi* had acted illegally, stating that he had no authority to make such demands. The President's response was: "If I, as the *Sámediggi* President, am to be prohibited from responding to such things as what is now happening in Karasjok, it is simply sensational. If so, the *Sámediggi* might just as well be shutdown" (Magga, in Nordlys 1994). In the aftermath, the Minister acknowledged the *Sámediggi* and its representatives the right to express disagreement with the government and did admit that the political process of not involving the *Sámediggi* had been poor (Norwegian Parliament 1994). This statement made it clear that it was the *Sámediggi* itself who defined and decided upon its own policy and action, not the government. Furthermore, in spite of not having any official authority on the matter, the *Sámediggi's* action and use of symbolic power resulted in a complete shutdown of the prospecting by the mining company. The parliament's role as a representative voice for the Sámi people was elucidated, and its autonomy was demonstrated irrespective of the Norwegian government's position.

Another important example of the *Sámediggi's* strategy was the signing of the consultation agreement, mentioned above, between the government and the *Sámediggi* in 2005. It was a result of a two-year consultation period between the Norwegian Parliament Justice Committee and the *Sámediggi* on the Finnmark Act. The Finnmark Act is an act in a long row of acts, for instance, regarding education, language, health, traditional industry, cultural heritage and Sámi culture in general, in which different Sámi rights are included and set out in paragraphs (Broderstad 2008; Josefsen 2014). These are not specific Sámi acts, but acts in which Sámi rights are included, either on a general level and in the objectives, or in a more detailed manner. It is then up to the public administration to concretise the content of the legal aims, and in this context the consultation agreement secures the *Sámediggi* a formal platform to participate in such processes.

In addition, the *Sámediggi* has also gained new tasks in management rights. The passing of the Planning and Building Act is an example here. The Norwegian planning authorities are responsible for informing and including other administrative bodies in their work, including the *Sámediggi*. This is especially significant in terms of local planning in municipalities where Sámi culture must now be included in all planning (Broderstad and Josefsen 2016). Like other administrative authorities, the *Sámediggi* can forward formal objections if the local planning does not consider Sámi interests. When it comes to implementing legal rights in general on the regional and local level, the *Sámediggi* has

initiated agreements with all the county authorities covering the area where the Sámi traditionally have lived, as well as with the City Council of Oslo (the capital of Norway) and the City Council of Tromsø, and are aiming at entering more agreements locally.

These brief examples illustrate what has been called a “breaking-in” approach, characterised by a political leadership in the *Sámediggi* insisting on political autonomy, and at the same time prioritising the translation of Sámi rights into Norwegian law and entering into cooperation agreements with other public authorities (Josefsen 2014). It is definitely the opposite of a “breaking-out” policy, which has the aim of having self-determination through territorial self-rule. A “breaking-in” approach is thus a way of understanding how Sámi self-determination can come into being without it being delimited to a specific Sámi territory.

For this approach to be successful, however, a premise is that it is met by a plural integration approach from the State (Josefsen 2014). Since 1989, Sámi politics has grown to become a more natural part of the Norwegian society in general, especially in the northern part of the country (Selle et al 2015). Sámi representatives participate in many different arenas both internationally, nationally, regionally and locally, seeking to influence Norwegian decision-makers in politics, bureaucracy, industry and academia. This form of self-determination can be interpreted in terms of relational autonomy, i.e. to have the freedom, legitimacy and resources to participate on an equal basis with other public authorities on all levels, challenging and debating the majority-minority position (see e.g., Keating 2012; Kingsbury 2001). Sometimes there is an expressed frustration of being seen but not heard, on other occasions Sámi representatives contribute to the agenda setting.

Another major precondition for genuine dialogue and consultation is that knowledge and understanding of the Sámi people must increase in Norwegian society in order to combat the myths and prejudices prevalent among political and administrative decision-makers. Such a development has also been discernible in recent decades since the Sámi have become publicly visible, not least due to the work of the *Sámediggi* and Sámi politicians. However, the politicians and Sámi issues are most visible on a daily basis the further north you go in Norway (Skogerbø, Josefsen and Vestli 2015). This development has resulted in a sense of pride among the Sámi, overcoming the historical suppression and devaluation of the Sámi languages, culture and way of life inflicting a sense of shame about being Sámi. Dialogue and increased knowledge and understanding of the plural Sámi way of living remove the need for exotifying oneself in the eyes of



others. Instead of essentialising Sámi culture, where only the most spectacular and alien parts are highlighted, participation in defining the public Sámi image may prevent an objectification of Sámi culture (Josefsen 2014). The concrete content of the Norwegian State's Sámi policy can thereby target the actual needs of the Sámi as defined by and among themselves. The steady increase in the number of Sámi registering in the electoral roll—from 5,505 in 1989 to 15,356 in 2015—could be interpreted as an indication that the *Sámediggi* is seen as the prime vehicle for this development.

However, politics is about power relations and the Norwegian government will always hold the strongest hand within this form of self-determination, clearly exemplified by the long dispute with the *Sámediggi* over the handling of Sámi fishing rights (Pedersen 2014). In 1990, Norway introduced a vessel quota system in sea fisheries; a system that would privatise fishing rights and systematically exclude Sámi fishers, since they were small-scale, part-time and seasonal. In 2008, there seemed to be a “light at the end of the tunnel” when the government appointed a coastal fishing committee, which after thorough investigation and documentation confirmed the historical existence of Sámi fisheries alongside other small-scale fisheries in the fiords and on the coast; historical rights and indigenous human rights were thus present. The committee also forwarded proposals in terms of a new legal framework and management regime (Ministry of Trade, Industry and Fisheries 2008). Despite the documentation and consultations with the *Sámediggi*, however, “the government stands firm on the issue of historic, indigenous rights pertaining to fishery: in the government's view there are none” (Jentoft 2011, 104). The government thus refused the idea that the Sea Sámi and their fisheries have protection under indigenous human rights, or any foundation in immemorial usage (Pedersen 2014).

The question regarding Sámi fishery rights is an example of how the Norwegian authorities may choose to unilaterally disregard any dialogue with the *Sámediggi* representatives and any systematically gathered knowledge on Sámi rights. This dependence on the government is reinforced by the fact that the budget is not a part of the consultation agreement, which means that the government's budget bill is passed onto the *Storting* without previous consultations with the *Sámediggi* about their needs. In comparison to the state budget as a whole, the budget for Sámi issues and initiatives has not had any real growth over the last few years (Fjellheim 2016). The lack of full economic independence means that the *Sámediggi* in Norway do not enjoy full political autonomy (Selle et al 2015; Selle and Falck 2015).

An important external variable affecting the on-going work of the *Sámediggi* and Sámi politicians is—like in all democracies—the shifting political majority in the national parliament. With a change in the majority situation within the *Storting*, it is not necessarily the case that all political majorities will respect or support the agreements already established. There are indications that may point in such a direction in Norway. The present government consists of two parties, of which one, *Fremskrittspartiet* (the Progress Party), has a party programme stating that they want to shut down the *Sámediggi*.

The development in Norwegian Sámi politics in the last few years, with what seems to be a regress on indigenous rights (or at least a *status quo*), leaves us with two questions: is this a passing phenomenon, or a more permanent position of the Norwegian government, and why would this political change occur at this time? We will conclude this part by developing a few possible answers to the latter question. One hypothesis is that Norway as a rich oil producing country is no longer dependent on an international reputation as a human rights defender and promoter. If so, the need to uphold an indigenous people's human rights at home will therefore be less important. Another possible explanation is an argument based on national economics: there are strong interest groups lobbying for their economic interests in traditional Sámi areas. A state upholding indigenous peoples' human rights to natural resources would imply that the Sámi would have a right to *not* be excluded in terms of property rights to natural resources based on customary and immemorial usage (Macpherson 1977, in Jentoft 2011). The status of indigenous may come into conflict with other powerful interests in exploiting natural resources.

One might, however, also turn to the *Sámediggi* itself. Contemporary politics might indicate that the *Sámediggi's* political competence has weakened over recent years. However, the level of political activity and initiatives, the number of experienced politicians in combination with a large and educated administration, do not seem to support that explanation; on the contrary. It might be that the *Sámediggi* is too skilled and powerful, and may have gained too much influence and autonomy in the eyes of the dominant Norwegian society. Its success in influencing regional and local policies may have created a counter reaction in the Norwegian political parties—nationally, regionally and locally—and they are now trying to restore their earlier power position.

These are all possible explanations that should be investigated further in terms of understanding what forces are in play when the implementation of indigenous rights faces well-established structures of power distribution.

## **Divide and rule: the legislative construction of different categories of Sámi**

In comparison to the Norwegian *Sámediggi* there is no doubt that the development in Sweden is less promising, if we analyse the *Sámediggi*'s autonomy and political influence in contemporary politics. The early institutional choice in Sweden to establish a government agency rather than a representative body seems to have had a decisive affect. The formal position of the Swedish *Sámediggi* as a government agency clearly hampers its work, and creates a potential and often real conflict between safeguarding the interests of the Sámi people on the one hand, and the interests of the Swedish government on the other (Josefsen, Mörkenstam and Saglie 2015). The dual roles run the risk of hollowing the legitimacy of the parliament both in relation to its own constituency (see e.g., Holmberg 2016; Nilsson and Möller 2016) and in relation to the State (Lawrence and Mörkenstam 2016). Moreover, the construction of the *Sámediggi* primarily as a government agency with administrative tasks has been reinforced since its inauguration, even after the government in 2006 for the first time recognised the Sámi people as a people with a right to self-determination in accordance with international law.

The Swedish State's reluctance to increase the autonomy and influence of the *Sámediggi* is also supported by the common description of the daily work in the parliament in terms of its political turmoil and instability. In Swedish media this instability is most often described as caused by persistent conflicts between the political parties and an unwillingness to compromise, or as effects of personal antagonisms between the elected members of the *Sámediggi* (Mörkenstam, Gottardis and Roth, 2012). The conflict ridden parliament has also been topical in Sámi society, and in an electoral study conducted in conjunction with the *Sámediggi* election in 2013 it was one of the main reasons not to vote according to the non-voting respondents (the main reason for 11 percent) (Dahlberg and Mörkenstam 2016a). Moreover, in interviews on how the parties organise their nomination of candidates before the election, some of the representatives mentioned "the turbulent length of office", 2009-2013, as a reason for why the parties had a hard time finding willing candidates for the upcoming election (Fjellström 2016). In a series of interviews with all MPs conducted in 2014, many of the respondents described the internal conflicts as hampering the work of the parliament, especially its capacity to challenge the state policy. Often neglected in these discussions is the fact that many of the conflicts and the main political cleavage within the *Sámediggi* originate from Swedish Sámi policy

and its historical legacy. Swedish politics could in this perspective be seen as a classical strategy of “divide and rule” often used by colonial powers. This tactic usually “involved fomenting divisions among subjugated groups by sowing mutual mistrust” (Posner, Spear and Vermeule 2010, 451). In this part we will discuss this Swedish politics of “divide and rule”, and how it has partitioned Sámi society and still affects Sámi politics and the *Sámediggi*.

The historical legacy of the Swedish “divide and rule” politics was described in the 1960s by the Sámi leader Israel Ruong as a “category-split” of the Sámi people (see e.g., Ruong 1982, 187-188). Its origin is to be found in the Swedish State’s ambition to order Sámi politics into a coherent legal framework for the first time in the second half of the nineteenth century. In this context, two ideas were taken for granted: the Sámi did not have any right to self-determination, and they had no ownership rights to land, water and other natural resources, although such claims were frequently raised by the Sámi (see e.g., Korpijaako-Labba, 1994; Lantto and Mörkenstam 2016). These ideas were further supported by ideas of an alleged racial and cultural superiority of Swedes and Swedish culture (a similar hierarchical ideology justified the state policy in Norway as well). Hence, Swedish Sámi politics had neither ownership rights nor self-determination in focus in this initial stage; instead, the main task for the government was to regulate the relation between different livelihoods, reindeer herding and farming. The former customary rights of the Sámi, the rights attached to reindeer herding, were to be succeeded by special legislation. The first Reindeer Grazing Act from 1886 granted the Sámi an exclusive right to herd reindeer in Sweden (a similar right was granted to the Sámi in Norway but not in Finland, as mentioned earlier); a right that included a right to hunt, to fish and to forestry on Crown land (i.e. on land perceived as owned by the Swedish State). These rights did not originate in ownership rights as mentioned above, they were perceived as “privileges” granted to the Sámi by the Swedish State (see e.g., Cramér 2000; Mörkenstam 1999).

In the discussions on the first Reindeer Grazing Act and its successors (from 1898 and 1928), three founding pillars of the “divide and rule” politics were established, although not as an effect of long-term strategic or intentional politics, it was rather an effect of decisions made while trying to solve political issues on a day-to-day basis. First, only reindeer herding was defined as a traditional Sámi livelihood; second, only Sámi rights attached to reindeer herding were recognised in legislation; and, third, to be able to practise the right to herd reindeer you had to be a member of a reindeer herding community (see e.g., Lantto and

Mörkenstam 2016). Sámi occupied in other traditional livelihoods, like hunting or fishing, and other potential rights based on immemorial use were in this way excluded from the confined system of Sámi rights. Swedish politics was thus from the very beginning both narrow in scope (only rights attached to reindeer herding were recognised) and excluding (only reindeer herders and members of a reindeer herding community could actually make use of these rights). In this way, Sámi society was divided into two categories, each with different relations to Sámi rights. The legislation had “become a sharp knife” cutting “through Sami groups, and separates those who belong together and should form a social unity” (Ruoung, quoted in Lantto and Mörkenstam 2015, 144).

The differentiation of the Sámi into two categories was also followed by a dual state Sámi policy of both segregation and assimilation, which further reinforced the division of the Sámi. The segregation policy was directed towards the reindeer herding Sámi with the explicit objective of restraining them from getting too close to Swedish society and “civilisation” with its alleged detrimental effects on reindeer herding. Sámi in other livelihoods, however, were to be assimilated as quickly as possible and ought thus not to have any other rights than those held by Swedish citizens in general (Mörkenstam 1999). This assimilation policy, which gradually became more active during the first half of the twentieth century, forced many Sámi to give up their traditional way of life, and many lost their language. After WWII, Swedish politics slowly changed when race biology and cultural superiority became impossible as explicit justificatory arguments, and the dual policy towards the Sámi was replaced by an active assimilation policy directed towards the reindeer herders with the objective of rationalising the reindeer industry and integrating them into the welfare state (Lantto and Mörkenstam 2016).

The Sámi political mobilisation grew stronger after WWII with the establishment of the first national Sámi organisation, *SSR* in 1950. *SSR* criticised Swedish politics for being too narrow in focus and too excluding (Lantto and Mörkenstam 2015). One tangible result of this critique was the way the State came to justify its policy: the political objective was in the 1960s for the first time defined in terms of being protection of the cultural and linguistic Sámi minority. From this perspective, demands for an expanded and more inclusive system of rights ought to have had a reasonable chance of affecting legislation, but no major political changes were made. Instead, the State used the cultural importance of reindeer herding for a policy which led to *status quo*. Reindeer herding was, it was argued, “a prerequisite for the preservation of Sámi culture”

(Prop. 1971:51, 112), since culture and language were considered to be upheld by the reindeer herders. The only rights needed were thus the rights already granted to the Sámi in order to protect the reindeer industry. The narrow view of Sámi rights was reified. In a similar vein, a more inclusive legislation was rejected as well: the larger the number of right-holders, “the harder it will be to use them [the Sámi rights] in a rational way, and the less they are worth for its proper purpose, which is to constitute support for the reindeer industry” (SOU 1968:16, 92).

With the establishment of *SSR* the political mobilisation gradually grew stronger and *SSR* managed to create national solidarity among the Sámi, a solidarity that was further strengthened by a parallel organisation on a Nordic and international level (Lantto and Mörkenstam 2015). However, since its establishment *SSR* had its firmest base in the reindeer herding communities and in spite of the ambition to represent all Sámi—not least manifested in the work of Ruong—reindeer herding maintained its central position on their political agenda (see e.g., Sjölin 2002). With the broader political mobilisation among the Sámi after WWII, the heterogeneity among the Sámi, i.e. the category-split, became more evident. *SSR* kept its dominant position in the political mobilisation but it came to be challenged by other Sámi organisations mainly representing the category of Sámi excluded from the system of rights. In 1980 these different organisations joined together and formed the *LSS* (see e.g., Lantto and Mörkenstam 2016). Hence, a century after the nascence of the Swedish “divide and rule” politics, the Sámi political mobilisation was organised around the division originally created by the State.

The conflictual Swedish *Sámediggi* must be understood in this perspective. Many of the results from an election study conducted in connection with the election in 2013 confirms that the category-split still constitutes the main political cleavage within the Sámi electorate, and is decisive for voting behaviour as well as the party structure. A factor analysis of different political issues on the political agenda in the electoral campaign in 2013 showed, for instance, that the opinions of the electorate could be sorted into two main dimensions: self-determination and the standing and influence of the reindeer herding communities including the right to hunt and fish attached to reindeer herding (Nilsson, Mörkenstam and Svensson 2016). The first dimension, self-determination, basically illustrated a cleavage between the Sámi and the Swedish State; the electorate was united in the opinion that the *Sámediggi* ought to have greater influence and autonomy on issues of importance in Sámi society. However, the other dimension concerned

an internal cleavage and showed a deeply divided electorate. At one end of the spectrum were voters from three parties, who held the firm opinion that the power of the reindeer herding communities ought to be reduced, and that all Sámi no matter what their livelihood ought to have the same right to fish and hunt. At the other end of the spectrum we found voters from two parties, who favoured the expansion of the power and influence of the reindeer herding communities, and they were less in favour of the idea of extending the right to hunt and fish to all Sámi (Nilsson, Mörkenstam and Svensson 2016). Moreover, when the electorate's opinions on specific political issues were analysed, distinct differences could be discerned among the voters of the different parties, which all followed a similar pattern. Three political issues had a high explanatory value for the probability of voting for a specific party: whether Sweden ought to ratify C169, whether non-members of the reindeer herding communities ought to have the same rights as members to hunt and fish, and whether the reindeer herding communities ought to have a greater influence (Dahlberg and Mörkenstam 2016b). Again, the “divide and rule” politics underlies this political cleavage.

The category-split could be interpreted in terms of creating an interest-based Sámi politics, similar to the class voting that has dominated the political landscape in Western Europe over the last century, and especially the party structure in the Nordic countries and in Sweden (see e.g., Lipset and Rokkan 1967; Oscarsson and Holmberg 2011). However, the dual political practice of segregation and assimilation following the category-split has affected Sámi politics in a more profound way.<sup>7</sup> In elections to the Swedish *Sámediggi*, classical theories in political science to explain voter behaviour, like socio-economic factors, have no explanatory value at all. Instead, there are other factors specific to *Sámediggi* elections that explain voting behaviour: knowledge of the Sámi languages and social integration in Sámi society. Both these factors are at least partially an effect of the category-split and the dual policy of segregation and assimilation.<sup>8</sup> These factors had a direct impact on voter participation (Dahlberg and Mörkenstam 2016a), and an analysis of the composition of voters in the parties represented in the *Sámediggi* showed that knowledge of the Sámi language

<sup>7</sup> It has, for instance, without doubt had a severe impact on the electoral roll. The harsh assimilation policy around 1900 obviously delimits the possibilities for an unknown number of Sámi that fulfil the subjective criterion—the self-declared Sámi identity—to register on the electoral roll (if the language was lost in third generation).

<sup>8</sup> Social integration was measured as an index consisting of five questions that were asked to the electorate in a survey in connection with the *Sámediggi* election in 2013: the respondent's sense of solidarity with Sápmi and sense of solidarity with their locality, whether the respondent's social fellowship mostly consisted of Sámi or not, whether most of the respondent's friends were registered on the Sámi electoral roll or not, and whether the respondent's growth was in a Sámi environment or not.

together with social integration in Sámi society were the particular factors that could best predict voters' behaviour (Dahlberg and Mörkenstam 2016b).

The consequences of this policy can also be seen when we analyse the levels of trust among the electorate, both in institutions and in people in general, i.e. interpersonal trust. The Sámi electorate have in general a slightly lower level of interpersonal trust than the majority population in Sweden, but the differences within the Sámi electorate are distinct. Home district, occupation, knowledge of any of the Sámi languages and level of social integration within Sámi society affects the level of interpersonal trust: it is lower for voters living within the traditional Sámi settlement area, who are self-employed, have a high level of knowledge in Sámi and a high level of social integration. In addition to this picture, only 16 percent of the electorate claim to have a high level of trust in the *Sámediggi*. Compared with the majority population the Sámi electorate also has a slightly lower level of trust in national institutions such as the government, the *Riksdag*, and the police. If we link this slightly lower level of institutional trust with the results indicating lower level of interpersonal trust in general—particularly among persons that have a high level of social integration in the Sami society and those that are self-employed—a picture of marginalisation and distrust towards the majority society emerges (Nilsson and Möller 2016). These results are somewhat different from the studies presented in Norway where there are no signs of a political marginalisation of the Sámi; rather they are seen as tightly integrated in the Norwegian political system (see e.g., Selle et al. 2015).

The low level of institutional trust in the *Sámediggi* (16 percent) among the voters can at least partly be explained by the fact that the parliament lacks formal decision-making on most political matters of importance within Sámi society, like the right to land and natural resources within Sápmi. In the election study from 2013 a majority of the electorate (not dependent on the voters having a low or high level of trust in the *Sámediggi*) wants to see an increase of the *Sámediggi's* influence on these matters. The conclusion is thus that the distrust towards and the low confidence in the *Sámediggi* is about institutional powerlessness and frustration: the *Sámediggi* has neither the formal position nor the political decision-making power on matters that are important to the voters (Nilsson and Möller 2016).

To conclude this part we will emphasise three problems elucidated by our analysis, which may have a severe impact on the development of indigenous self-determination in contemporary societies. First, the Swedish “divide and rule” politics has partitioned the Sámi and cemented political cleavages,



which is clearly shown in the political behaviour of the electorate and in the *Sámediggi's* party structure. This cleavage also affects the power relations within the Sámi society, something that became evident in the political debate surrounding two of the most important legal cases, in which the courts' rulings confirmed Sámi reindeer herding rights: the Nordmaling case in 2011, and the Gírjas case in 2016. In the Nordmaling case, three reindeer herding communities were granted rights to use private land for reindeer grazing, which was affirmed by the decision of the Swedish Supreme Court. The court thereby affirmed that Sámi reindeer herding communities have property rights in the form of usufructuary rights over land areas traditionally used, but which they today share with the majority population (Åhrén 2016; Allard 2015). In the ongoing Gírjas case, the District Court of Gällivare ruled that the Sámi reindeer herding community of Gírjas alone has the right to hunt and fish on their traditional lands; rights the Swedish State claims to belong to the State as being the rightful owner of these lands (Gällivare Tingsrätt 2016). In both these cases the decisions caused political discussions among the politicians within the *Sámediggi* as to whether this can be seen as success for Sámi rights in general, or if it just consolidated the rights of the Sámi reindeer herders, leaving the non-reindeer herding Sámi with no rights at all (see e.g., Sveriges Radio 2016).

This example leads us to the second problem: if there are profound cleavages within an indigenous people, it may make it hard or even impossible to articulate demands and right claims through their representative body in a unified voice. In Sweden, one of the government's main arguments for the establishment of a parliament was formulated in terms of having "a uniform Sámi outlook", that could "contribute to a uniform [State] Sámi policy" (SOU 1989:41, 150, 149), leaving a divided Sámi people with less political leverage in negotiations with the State. Third, these historically constructed cleavages and absence of "a uniform outlook" tend to support a continued paternalistic world-view even in a more democratic setting. When, for instance, right claims are put forward on issues where an indigenous people is deeply divided, the State often takes on the position as "neutral arbitrator", by referring to the indigenous people's internal strife and the role of the State as "impartial umpire" in trying to sort out these internal conflicts. Political *status quo* tends to be the default answer, while the blame is on the indigenous people itself and not on the state policy that initially caused and still maintains the cleavage/s.

Without recognising the historical legacy of the "divide and rule" politics—and its consequences—it is hard to challenge the contemporary domination

and oppression of indigenous peoples, even when there exists an indigenous popularly elected representative body.

## The right to define the people

Compared to the legal framework in Norway and Sweden, the Sámi in Finland have the strongest legal protection, as mentioned above, but these formal rights have only been transformed into political action to a very limited extent. In accordance with this discrepancy between the legal system and its practice, the Finnish *Sámediggi* seems to have the weakest position of the three *Sámediggis* (see e.g., Josefsen 2007; Robbins 2015). This weak position has, for instance, manifested itself on several occasions when the Finnish Supreme Administrative Court has overruled decisions made by the *Sámediggi* on applications to register on the Sámi electoral roll. The State thus made interventions in the *Sámediggi*'s right to define the people, stated in the UNDRIP (Art. 33) as follows: “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. [...] Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures”. The conflictual and controversial discussion in Finland on the right to register on the electoral roll, as well as the criteria for doing so, is however, not only a conflict between the Sámi and the Finnish State, it has also brought to the fore another topical question: “who are the Saami who should decide who is a Saami?”, as Hugh Beach (2007, 2) poses it in the Swedish context. The criteria for registering on the electoral roll has thus led to a conflict “between the Sámi political establishment, the State of Finland and locals with various ethnic backgrounds” (Valkonen, Valkonen and Koivurova 2016).

There are four factors that make this issue so conflictual in Finland in comparison to Norway and Sweden, where there have been few conflicts regarding the criteria for registering on the Sámi electoral roll so far. An election study carried out in conjunction with the *Sámediggi* elections in Norway and Sweden 2013—in which the respondents were all already registered on the electoral roll—showed that a majority in both countries were satisfied with the criteria (66 percent in Norway and 54 percent in Sweden). Nonetheless, 25 percent in Norway and 34 percent in Sweden wanted to extend the criteria for enrolment, and 9 percent in Norway and 12 percent in Sweden wanted to narrow it (Pettersen 2015).

The first factor is the actual difference in the criteria for registering, as discussed earlier. In all three countries a subjective criterion on self-declared identity is used together with an objective language criterion, but in Finland another objective criterion is used as well: that “he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp”. This criterion makes the formal right to register considerably more inclusive than in the other two countries. Second, the origin of the electoral roll in Finland, where a questionnaire survey in a demographic research project in 1962 laid the foundation, can be questioned both with regards to the geographical research area and who was interviewed and who was left out. In both Norway and Sweden the electoral register was constructed anew. Third, in Norway and Sweden the electoral roll has so far mainly been perceived as important for the right to vote, not as an official register of the Sámi population. This is in contrast to Finland, where the electoral roll has been claimed both to provide “exact information [...] on the demographic and socio-economic changes among the Sami in Finland” (Müller-Wille 1979, 66), and to be of utmost importance for the “the Finnish Sami subjectivity” since Sámi subjectivity “is strongly connected with the right to vote in the elections of the Sami Parliament and is, therefore, the basis of Sami rights as indigenous people” (Joonas 2015, 155). This third factor is closely intertwined with the fourth: in Finland discussions on the electoral roll has been closely related to the debate on ratification of C169—especially the right to land—but also the on-going work on a Nordic Sámi Convention (see e.g., Aikio and Åhrén 2013; J. Joonas 2015; T. Joonas 2015). The conflict on the Sámi register in Finland may therefore be explained both in terms of economic and political strategies, for persons not yet enrolled on the voting register, but also as a struggle to be recognised as Sámi (Sarivaara, Uusiautti and Määttä 2013).

Before the establishment of the *Sámediggi*, during the Sámi Delegation period, the voting register had not grown significantly, but prior to the 1999 *Sámediggi* election—the second election in Finland—1,128 applications were filed for registration.<sup>9</sup> The *Sámediggi*'s electoral board rejected most of these registrations, 656 of which appealed the decision to the Finnish Supreme Administrative Court (after having been rejected also by the first instance of appeal, the governmental body of the *Sámediggi*), who reviewed the decision of the parliament.

<sup>9</sup> In contrast to the election rolls in Norway (from 5,505 in 1989 to 15,356 in 2015) and Sweden (from 5,390 in 1993 to 8,322 in 2013), the election roll has not grown significantly between elections. In 2003 there were 5,155 registered voters, in 2007 5,317 voters and in 2011 5,483 voters.

The court rejected all but seven of these (T. Joonas 2012). However, in 2011 the Supreme Administrative Court overruled the *Sámediggi's* decision not to accept four applicant individuals onto the electoral roll. “The court decided that four of the appellants should be added to the register. Three of them were accepted on the basis of the language criteria, even though they did not speak the Sami language. Their forefathers had been marked as Lapps in the land and taxation register of 1825” (T. Joonas 2015, 168).<sup>10</sup> In 2015, 182 persons appealed the *Sámediggi* rejection of their applications to register on the electoral roll, and 93 were accepted by the Supreme Administrative Court, thus overruling the decision of the *Sámediggi*. One person was accepted on the register on the basis of having one ancestor in a register as far back as 1739. The court stated that the “petitioner, who regarded themselves as Sámi and according to a certificate issued by an archival authority was descendant to a person who in the land book for 1739 had been recorded as belonging to the lapps, and in a credible way had investigated their Sámi family background, and their strong private as well as professional involvement in the Sámi language and Sami culture, would from an overall assessment be considered a Sámi in the manner provided for in § 3 of the Sami Parliament Act” (HFD 2015, 145).<sup>11</sup>

Already in 2011, the Supreme Administrative Court’s ruling had caused protests from the non-governmental Sámi Council, asking the Finnish government in an undated letter for an amendment of the Sámi Parliament Act on the criteria to register on the electoral roll (Sami Council, undated). In the statement, the Sámi Council argued that a person’s identity cannot be anchored back to a single ancestor registered as “lapp” hundreds of years ago. The Sámi Council also argued, with reference to the Supreme Administrative Court’s decision, that a mere claim from a person that they fulfilled the language criterion was not enough to say that that was actually the case; certain objective sources verifying language proficiency should be presented (Sami Council, undated).

The *Sámediggi* has continuously worked to change the criteria for registering on the electoral roll, and in 2015 the Finnish parliament put the question on its agenda. The proposed new definition, which was to replace the former on descent from persons registered on the “lapp register”, was that “he or she has acquired Sámi culture through their family and has upheld the connection with this culture and is a descendant to a person that has been registered as lapp

<sup>10</sup> “In the cases of 1999 the Court refused to look back any further than 1875”, according to Tanja Joonas (2015, 168).

<sup>11</sup> HFD is an abbreviation of Högsta Förvaltningsdomstolen, the Supreme Administrative Court.

in a Government document measured for taxation or population registration” (Regeringen 2014a). Moreover, in the proposal there was also an emphasis on the right of the *Sámediggi* to handle all applications of registration and deregistration on the electoral roll. The *Sámediggi* was in favour of the proposed changes. The national parliament voted, however, against changing the criterion, with the result that the criterion from 1995 remains intact in spite of fierce opposition from the *Sámediggi*.

The conflict thus mainly evolved around the objective criterion that does not exist in Norway or Sweden. Neither the *Sámediggi* in Finland nor the Sámi Council considered the criterion based on descent from someone registered in the former land, taxation or population register from several hundred years ago to be a legitimate one for registering on the electoral roll, as it is not based on the Sámi conception of themselves as an ethnic and indigenous group. Nor has the *Sámediggi* approved the rulings of the court; rather it has stressed the self-determination of the Sámi and the definition of a Sámi as based on the traditional kinship-based system.<sup>12</sup> The criteria for registering in the electoral roll are, however, not only part of a conflict between the *Sámediggi* and the Finnish state, as mentioned earlier. The debate on the electoral roll must also be understood as part of the debate on a Finnish ratification of C169. For persons not in the electoral roll it might be regarded as a wise strategy to pursue a goal of being registered to be able to benefit from these rights (see, e.g., Aikio and Åhréns 2014; J. Joonas 2013; T. Joonas 2012; Lehtola 2015; Nyysönen 2015; Pietikäinen 2003; Sarivaara, Uusiautti and Määttä 2013). The high number of applicants turned down by both the *Sámediggi* and the Supreme Administrative Court indicates that non-Sámi try to register on the electoral roll, and that the enrollment criteria might be wide enough for non-Sámi to register.

In the debate, these considerations support one interpretation of who the new applicants are. According to, for instance, Scott Forest (2006, 235), they are part of a resistance movement<sup>13</sup> “who reject the idea of special Sami rights and demands equal land and political rights [...] based on land ownership records and traditional livelihoods”. These applicants are descendants to both Sámi and Finns who today are assimilated into the Finnish majority. Forest regards their applications to the electoral roll as a direct result of the wider criterion to register on the electoral roll introduced in 1995. The movement emerged artic-

<sup>12</sup> The *Sámediggi* has appealed the court decisions in 2015 to the UN Human Rights Committee (Sveriges Radio 2015) <http://sverigesradio.se/sida/artikel.aspx?programid=2327&artikel=6270894>.

<sup>13</sup> The Association of Lapp Culture and Traditions

ulating an indigenous identity based on links to ancestors listed in the former “Lapp register”.

Although in agreement with this view on the origin of some of the applicants, the “Lapps”, as a group of non-Sámi who strongly oppose the Sámi, scholars identify yet another group of applicants, namely what they call the non-status Sámi (see e.g., Sarivaara, Uusiautti and Määttä 2013; Sarivaara, Maata and Uusiautti 2013). The non-status Sámi are described as living within Sámi society, they speak Sámi and work within Sámi society, but have not been enrolled in the electoral roll. The applications to register on the electoral roll need thus not have anything to do with land rights; rather they might be understood as a struggle for recognition on the part of individual Sámi. These applications might therefore challenge a strict application of the criteria for other reasons than strategical. From their perspective the *Sámediggi* are discriminating against a part of the Sámi people, and upholds the role as gatekeeper for the electoral roll in a way that may violate the international instruments established to protect indigenous people. Moreover, it may even reify the State’s assimilation policy by not recognising them as Sámi.

It has been claimed that the dominating idea in the debate on indigenous rights—and explicitly stated in the UNDRIP, as we saw above—is that the “question of ‘who is indigenous?’ is best answered by indigenous communities themselves” (Corntassel 2003, 75). In the UNDRIP, however, there is also an article included on individual rights stating that: “Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right” (Art. 9). International law has thus not accepted the argument that individual human rights always have precedence over indigenous peoples’ collective human rights but the two sets of rights ought to be balanced against one another. This does not mean that that all sorts of cultural practices within indigenous societies have to be accepted; rather a conflict between a collective and an individual right ought to be determined on a case-by-case basis which allows indigenous peoples to take responsibility for their own cultures (Åhrén 2016). Moreover, [n]on-discrimination principles identify prohibited grounds of exclusion” as Kirsty Gover argues (2014, 207), “but do not usually provide a positive theory of permissible grounds and there is a danger that the application of unmodified non-discrimination law to Indigenous communities could progressively divest them of their means of self-constitution”.

To conclude this part, the Finnish case brings to the fore the challenges following a public recognition of identity, however, these are not just challenges the State have to face but also the *Sámediggi*. It illustrates the ever present boundary problem in both democratic theory and practice on the right to define the people, and how that could be done in a democratic way (see e.g., Näsström 2007). The right for an indigenous people to define membership is no different; it may always run the risk of excluding individuals and thereby be discriminating in character.

Furthermore, the Finnish case also highlights the problematic aspects of linking legal Sámi rights on an individual level directly to a register that was established for democratic voting, which leads us to the initial issue on the right to decide on the electoral roll, and the conflict between the *Sámediggi* and the Finnish State. When passing the Sámi Parliament Act in 1995, the State did establish a Sámi democratic body, and did lay down in law that it should have cultural autonomy within the Sámi homeland. The *Sámediggi* in Finland is, according to the sections on autonomy and negotiations in the Sámi Parliament Act, a self-determining body in the sense of internal or institutional self-determination. Indigenous institutional self-determination is a premise for developing self-determination in relation to states (Young 2007), whether manifested as a territorial or a non-territorial self-determination (Keating 2012). From this perspective, one could expect that decisions regarding the basis of the Sámi democracy, the electoral roll, would be solely under the management of the *Sámediggi*.

The protection of individual human rights is, however, also of immense importance and the potential conflict between indigenous peoples' collective human rights and individual human rights is a problem facing many indigenous peoples around the world. To hand over appeals on the right to register on the electoral roll (or on membership issues in general) to institutions of the nation-state, like the Finnish Supreme Administrative Court, does not seem to be a viable solution in order to enhance indigenous self-determination. Indigenous institutions of appeal beyond the decision-making body on membership (in this case the *Sámediggi*) might be one way of balancing between a collective and an individual right like, for instance, a common Nordic Sámi institution open for appeals from individuals in all three countries.

## Concluding remarks

This article confirms previous research with its findings that the actual differences between the Nordic *Sámediggis* are quite extensive in spite of the similar institutional construction, and the fact that they are established within nation-states that resemble each other politically in many ways (see e.g., Hocking 2005; Josefsen 2007; Robbins 2011, 2015). From this perspective, the *Sámediggis* ought maybe to be analysed as three distinct ways of institutionalising non-territorial indigenous self-determination, rather than as a unified Nordic model. The nation-states policies—both historically and contemporary—seem to be too divergent to allow for an analysis of the *Sámediggis* as part of one model, and too many factors affect the actual self-determination of the parliaments. Here we have discussed, for instance, the actual legal base of the parliaments and its implementation in political practice, and how the nation-state's historical legacy and the colonial past is handled in contemporary politics. Other factors are the representative body's economic independence of the State (non-existing in the case of all three *Sámediggis*, although the Norwegian has the best financial situation), and how international law is interpreted and implemented on a national level. However, the Norwegian case also shows the importance of the strategy chosen by an indigenous representative body—within the set legal parameters—in order to challenge state policy and to enhance influence and autonomy, i.e. to advance a relational form of self-determination.

Our comparison also shows that it is obvious that the *Sámediggis* striving for increased Sámi self-determination meet resistance from the states and the majority societies, even though the resistance is expressed differently and is shown at very different levels within the three countries. The Finnish legal framework recognises the Sámi as an indigenous people in the Constitution, and the Sámi Parliament Act established an independent and autonomous *Sámediggi* with a right to negotiate on matters of importance to the Sámi. In reality, however, the Finnish State holds a strong position, shown, for instance, when the *Sámediggi's* decisions on one of the most decisive issues—the right to define the people and criteria for defining membership—have on several occasions been overruled by the State, demonstrating the apparent limits to the Sámi right to self-determination. In Sweden, the *Sámediggi's* subordination to the national government was built into its construction as a government agency with no decision-making power on the most salient issues within Sámi society. The political strategy of divide and rule that the Swedish State has replicated



over the past 130 years has positioned the Sámi voters as well as the political parties within the *Sámediggi* around the conflict of who has the right to use traditional Sámi lands and recourses. This positioning is shown in voting behaviour, party structure as well as in policy dimensions within the *Sámediggi*. At the same time, the Swedish State uses this political cleavage within Sámi society as an argument for not increasing Sámi self-determination, causing frustration and very low levels of trust among the voters for their own elected representative body. These effects of state policy expressed in Sweden within the *Sámediggi*, is in Finland expressed “outside” the *Sámediggi* in the conflict on the right to register on the electoral roll.

The Norwegian *Sámediggi* shows that a more powerful indigenous parliament might also be regarded as a threat to others who might feel disempowered. The examples are few, but still there is a question of whether or not we can see a change in the Norwegian authorities’ approach to Sámi rights towards a more dismissive attitude. This raises the question of whether in contemporary Norwegian politics we are once again witnessing how an indigenous people’s right to self-determination is delimited: so far, but no further.

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## Ulf Mörkenstam

Ulf Mörkenstam is Associate Professor at the Department of Political Science, Stockholm University. He has written extensively on indigenous peoples' right to self-determination with a specific focus on the Sámi people in Sweden. He is currently principal investigator in two different projects on indigenous rights and popular sovereignty: *The Sámi Parliaments as Representative Bodies: A Comparative Study of the Elections in Sweden and Norway 2013* and *Who are "We, the People"? Sovereignty in National Constitutions and the Challenge of Indigenous Peoples*.



## Eva Josefsen

Eva Josefsen, Ph.D, is a political scientist. She is working at UiT the Arctic University of Norway as a coordinator for the master program Governance and Entrepreneurship in Northern and Indigenous areas. This is a joint master between the UiT and the University of Saskatchewan, Canada. Her research interest is on indigenous and Sámi politics with a special focus on Norway, where she has examined the conditions for Sami Self-determination when Sami democracy represented by the Sámediggi meets with the Norwegian authorities on all levels. She is also part of the ongoing research project on Sámediggi elections in Norway and Sweden.



## Ragnhild Nilsson

Ragnhild Nilsson is PhD Candidate at the Department of Political Science, Stockholm University. The purpose of her dissertation project is to analyze, on the basis on the Sámi's own definitions of self-determination and representation, how the Sámediggi in Sweden expresses self-determination and examine the consequences for the Sámi people of a forced form of representation. She is also part of the ongoing project *The Sámi Parliaments as Representative Bodies: A Comparative Study of the Elections in Sweden and Norway 2013*.





Hánnoluohkká 45, N-9520 Guovdageaidnu-Kautokeino, Norway - (+47) 78 44 84 00 - [galdu@galdu.no](mailto:galdu@galdu.no)