

One Valley, Three Hands: The Bilateral Negotiations of the Deatnu Agreement and Its Impact on Sami People's Rights

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Abstract

The salmon stocks of the Deatnu River, in the core area of Sápmi, the traditional lands of the Sami people, have been designated as critically endangered. In November 2011, Norway and Finland agreed to renegotiate the agreement that regulates salmon fishing in the Deatnu River. This article explores the safeguards under international human rights law that are available to the Sami people in the Deatnu Valley in connection with this renegotiation process. Since the Sami people are recognized as an indigenous people in both countries, the negotiations touch upon several core issues of indigenous peoples' rights, amongst these: the principle of self-determination, the principle of non-discrimination, and indigenous issues related to international border regulations. The article shows that the ongoing negotiations' structure and preparations, to all appearances, have violated the rights of the Sami people. Consequently, risking a dissemination of further violations of Sami people's rights—both, in regards to the negotiation process, and in what may be the new Deatnu Agreement.

Keywords: *Deatnu; Finland; indigenous peoples; international border areas; international human rights; international negotiations; Norway; Sami; salmon*

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1. Introduction¹

1.1. Background, goals, and structure of paper

In November 2011, Norway and Finland agreed to renegotiate the Deatnu Agreement² on salmon fishing in the Deatnu River, one of the world's most important rivers for Atlantic salmon. The Deatnu River is 360 km long, marks the international border between Norway and Finland, and runs through the core area of Sápmi, the traditional lands of the Sami people.³ The aim of the negotiations is to renew and update the regulations pertaining to salmon fishing.⁴ The average total annual haul in the Deatnu River is a massive 160 tons, but like many other rivers, catches can vary significantly from season to season.⁵ This makes assessing the Deatnu

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salmon stocks challenging. Nonetheless, an effort between fisheries experts and local fisheries expert premised on an amalgam of scientific methods and traditional Sami knowledge has led to a designation of the stocks as critically endangered.⁶ As a result, government officials and politicians have sought a renewal of the regulations in order to save the Deatnu salmon stocks. The negotiations have been ongoing since June 2012, but the parties have not been able to reach agreement within the original time frame, a situation which has met with criticism.⁷ In November 2014, the negotiating parties announced that their conclusions can be expected before the end of 2016.⁸

The Sami society in the Deatnu Valley is highly engaged in the regulations that impact salmon fishing in the Deatnu River, and the renegotiation of the Deatnu Agreement is no exception.⁹ This involvement has not only shown the Sami people's special relationship with and common interest in salmon fishing, but has also revealed conflicts between different sectors of society and areas of the river.

The international border between Norway and Finland lies in the middle of the Sami community in the Deatnu Valley. Since the Sami are an *indigenous people*,¹² the negotiations on salmon fishing in the Deatnu River touch upon several core issues of indigenous peoples' rights. Firstly, a study of these negotiations may reveal how international indigenous peoples' rights can be implemented on a national level, and thus shed light not only on best practices, but also on possible implementation gaps regarding indigenous peoples' rights in other countries.

Secondly, the negotiations may, in many ways, work as a litmus test for indigenous rights in international negotiations. The negotiations are between two countries where one, Norway, has ratified the *International Labour Convention number 169 on Indigenous and Tribal Peoples*¹³ (ILO 169), and the other, Finland, although expected to, has yet to ratify it. A study of international negotiations between two such states may also reveal the interplay between international law and domestic law, as well as how indigenous peoples' customary laws impact such negotiations.

Thirdly, it is also interesting to see how Sami communities and their representative institutions have been able to influence negotiations between the two nation states. Considering the role of the Sami people in the bilateral negotiations is equally as important as considering the impact of the nation states on the Sami people.

These issues touch upon three main variables in socio-legal research: indigenous peoples' customs (i.e. the Sami), international indigenous peoples' rights, and negotiations between states on issues concerning indigenous peoples' living in these states.¹⁴

In this article, the goal is to explore if and how safeguards under international law protect the interests of the Sami population and its culture in the Deatnu Valley in connection with the renegotiation of the Deatnu Agreement.

The article begins with a brief overview of how international human rights relate to indigenous peoples. The next section provides a general overview of the historical context and current situation in the Deatnu Valley.¹⁰ The article also includes a summary of the provisions of international law that protect the Sami population in the Deatnu Valley, and how they work.¹¹ In regards to the negotiation process, the issue of self-determination is particularly relevant. Therefore, the article examines

how international law protects Sami self-determination in connection with the negotiation process. In its conclusion, the article establishes how provisions of international human rights law have already been violated in the negotiation process, and identifies those rights that may be in the red zone.

2. Context of the study

2.1. International human rights law and indigenous peoples

In the wake of the atrocious crimes against humanity in the World Wars, international human rights have strengthened their position. With the creation of the UN, international law went from a state-centric view to an increasingly more humanistic approach, through the enactment of fundamental international legal instruments, such as the *International Covenant on Civil and Political Rights*¹⁵ (ICCPR), *International Covenant on Economic, Social and Cultural Rights*¹⁶ (ICESCR), *International Convention on the Elimination of All Forms of Racial Discrimination*¹⁷ (ICERD). As an international instrument on indigenous peoples' rights, ILO 169 is of special importance, in addition to the *United Nations Declaration on the Rights of Indigenous Peoples*¹⁸ (UNDRIP), and the *Outcome document from the World Conference on indigenous peoples in 2014*.¹⁹

Since its establishment, the UN has set a high standard for equality and human dignity. By having a system that holds a firm focus on persistently striving for the advancement of international human rights, with solid support from human rights movements, the UN has been able to create effective mechanisms for increasing the statuses of declarations and ratified international treaties protecting international human rights.

In the progress of international human rights, the cultural aspect of minority rights have increasingly attained support and strengthened their position. The international community recognised, that individual rights alone do not fully address the needs of minority groups within the nation state model. This has been especially important for indigenous peoples, many of whom have historically been in a long-term, disadvantaged political position. In authoritarian states as well as in liberal democracies, the rights of indigenous peoples have not been sufficiently protected by the universal standards set for humanity.

International instruments that are meant to elaborate on the universal standards as they apply to indigenous peoples, such as the UNDRIP and ILO 169, have gained recognition in the international community since their adoption. Provisions and norms relevant to indigenous peoples in widely ratified conventions, such as Article 1 and 27 in ICCPR and the non-discrimination norm running through ICERD, are also increasingly applied as safeguards to protect the rights of indigenous peoples. Increasingly, indigenous peoples' rights are taken into consideration in customary international law.²⁰

International norms for the protection of indigenous peoples' cultures and livelihoods, as well as human rights norms in general, are more important in

national law today. This is visible in not only in the increased incorporation of the provisions in ILO 169 in national legislation, but also through an emphasis on indigenous rights in the legal processes and legal interpretations of national law. Recently, however, Norway and Finland have been criticised by many UN human rights experts, for lacking the will to implement norms for the protection of the Sami people.²¹

2.2. Historical and contemporary facts in the Deatnu Valley

The Deatnu River is the lifeblood of the Deatnu Valley. Since time immemorial, the river has been a vital resource for the local population. It has, for instance, served as a major means of transportation, but more importantly, it has served as a crucial food resource. For the Sami people, as well as many other indigenous peoples,²² nature is sacred, and harvesting food resources entails special care and respect. Indeed, this mind-set contrasts with the widespread idea of the “tragedy of the commons”,²³ which claims that “free” resources, and “unrestricted” access will inevitably lead to a major ecological breakdown. A configurative rule that seems to have been widely recognized in the Deatnu Valley,²⁴ as well as other areas in Sápmi,²⁵ has been that “you don’t take more than necessary”. Individuals or families who broke these rules were in social discrepancy and risked being ostracized from their respective communities.

The first written sources about fishing in the Deatnu River show that it was the Sami people alone who practised fishing and had the right to fish the river. As late as 1601, the Sami people considered themselves to have exclusive fishing rights in the Deatnu River, and demanded payment from others who wished to fish.²⁶ Indeed, these collective and exclusive fishing rights were at that point in history recognized, and even protected by Norwegian law.²⁷ According to historians and other social scientists, fisheries management in the Deatnu River, is thus, in principle, understood as falling under the jurisdiction of the Sami communities in the Deatnu Valley.

For more than a hundred years, adventurers have been drawn to the salmon fishing opportunities offered by the Deatnu River. In the early 19th century, “salmon lords” from Europe, especially from the British upper class, began to find their way to the Deatnu River.²⁸ In modern times, outside interest has increased immensely. From the sight of a few foreign anglers to queues of anglers alongside the river, fishing tourists now account for a large proportion of the total salmon haul. According to statistics, between 1972 and 2011 fishing tourists accounted for 25% of the average total haul. In recent years, fishing tourists from Finland have accounted for close to 30% of the total haul.²⁹ A direct result of this has been the displacement of local fishers from their traditional fishing grounds, especially on the Finnish side.³⁰

This brief description highlights the importance of salmon fishing for the Sami culture in the Deatnu Valley. In addition to the harvest of other natural resources and small-scale agriculture, salmon fishing has always been a vital source of livelihood for the Sami people in the Deatnu Valley. Because salmon has traditionally been more valuable than other resources available to the Sami people, especially in the 20th century

when trading became more important, and salmon became an important part of their income.³¹ This came to a sudden end when salmon fish farming was introduced.³²

Today, salmon fishing is still a vital part of Sami food traditions and culture. This is evident in the local media.³³ If you question a local Sami about salmon fishing, you will probably be told that life without salmon fishing is unimaginable. For Sami traditionalists, much of the summer season is spent fishing, but even modern people take part in the activity in one way or the other. Most people in the Deatnu Valley consider wild salmon fishing to be more sustainable than fish farming, and a tradition and resource that can secure the future for their children and coming generations.

Another important factor to consider is the centrality of society of Deatnu Valley to the Sami people. Like peoples in general, the Sami is not a homogenous group. The Sami people can, very briefly be divided in three traditional groups: the *Reindeer Herding Sami*; the *Sea Sami*; and the *Valley Sami*, to whom the Deatnu Valley is crucial. Because of its importance to the Valley Sami way of living, the Deatnu Valley should be considered as fundamental to Sami culture as a whole.³⁴

Furthermore, the Deatnu Valley has three municipalities: Deatnu and Kárášjohka on the Norwegian side and Ohcejohka on the Finnish side. All three municipalities are a part of the Sami areas in each country.³⁵ The total population in this area is about 7 000, with a clear Sami majority.³⁶ The Sami people are recognized as indigenous in both countries.³⁷

2.3. Political cleavages in the Deatnu Valley

The local communities in the Deatnu Valley, who previously exploited the resources on both sides of the river, have naturally been greatly affected by a border that divides them into two different nation states.³⁸ Norway and Finland cooperate on the Nordic level, but in regard to other Nordic countries, they are very different in their history and cultural identity. They are, however, similar in two very relevant forms. Both are unitary in their form of government and historically characterized by centralized policies with less focus on local interests. Both followed assimilation policies designed to absorb the Sami inhabitants into the dominant culture.³⁹ Today, with decisions made in far south capitals, on each side of the Nordic mainland – although still very much connected by the common culture – the Sami populations in Norway and Finland are now living under, and adapting to two different conditions and national frameworks of Norway and Finland respectively. In this way, Norway and Finland, of course, diverge the local Sami people's interests, with the international border as the dividing line. The international border is thus a potential internal Sami political cleavage, and not only an international cleavage between Norway and Finland.

As mentioned above, tourism has been an integral part of salmon fishing in the Deatnu River for a long time. Sami locals have earned a living as guides and in modern times as owners of small-scale tourism activities. Tourism is therefore accepted as a relevant factor, despite conflicts over levels of tourism and how earnings should be divided between different stakeholders. In Finland, the Deatnu River is the only important Atlantic salmon river, while in Norway there are many, some of which are

more popular among anglers than the Deatnu River. Interests regarding the tourist industry causes an imbalance between the two states but also in the Sami society. This is potentially the most difficult hindrance to reaching agreement on regulations for a common salmon fishing regime.⁴⁰

Another political cleavage is found between fishers of the different sections of the river. Typically, salmon fishers in the upper course prefer increased restrictions in the lower course to ensure that more salmon reach their sections of the river. As the lower course of the river is solely on the Norwegian side, it seems reasonable that the two countries have different interests regarding this matter.

As a side note, it must be mentioned that in the sea fjords, the Sea Sami population still practice traditional pound net fishing.⁴¹ This constitutes a complication for the renegotiation of the Deatnu Agreement, because the total allowable catch of the Deatnu salmon must be balanced with the pound net catches of the Sea Sami.

Among the different traditional Sami fishing methods applied in the Deatnu Valley, net fishing is fishing method with the longest historical roots. Net fishing is also the most effective fishing method, and because of this, this fishing method is unpopular among recreational angler tourists. In fact, the recreational anglers interests have been supported in the Norwegian public, by opinion leaders who argue that net fishing in the Deatnu River should be strongly regulated or even forbidden for the sake of recreational angling.⁴² The main picture today, as seen in the statistics referred to above above, is that the total number amount of net fishers has declined in recent years, and the recreational anglers' part of the total haul has increased. The traditions are also being influenced by a the new and controversial way of angling, catch and release, which is claimed to oppose with the traditional way of salmon fishing.⁴³

2.4. Existing under different states—different fishing rights and management regimes

Different states implies different legislation. Fishing rights are consequently based and formed differently. In Norway, the Deatnu River Fishing Administration, called *Deanucazadaga Guolástushálddáhus* (DG), manages the fish stocks and fishing on the Norwegian side of the Deatnu River. DG was recently established as one of the important follow-ups to the Finnmark Act,⁴⁴ after consultations between the Norwegian authorities and the Sami Parliament of Norway. The board of DG consists of the Kárášjohka and Deatnu municipalities – through which the Deatnu River flows – together with the local net fishers and anglers, with the fishers occupying a majority on the board.⁴⁵

Before the establishment of DG, the question of whether the local population of Deatnu Valley has angling rights was not settled. On the one hand, you had historians and legal researchers who argued in favour of the population in the Deatnu Valley, underlining that the local population, in all likelihood, had the right to angling. While the authorities, on the other hand, claimed the opposite.⁴⁶ The local farmers, have for a much longer time been recognized as the fishing rights holders, that is, with the traditional Sami net fishing.⁴⁷

While Norway has established a local fishing administrative body, fisheries management in the Deatnu River in Finland is run by *Metsähallitus*,⁴⁸ a national state-owned enterprise, comparable to the national state-owned enterprise in Norway called *Statskog*.⁴⁹ The net fishers' rights in Finland are managed in much the same way as in Norway. The biggest difference, however, is that angling rights are based on land ownership along the Deatnu River. This, combined with policies that heavily prioritize fishing for the tourist industry, makes the dislocation of local anglers a more serious issue on the Finnish side of the Deatnu River.

Another important difference that affects fishing conditions today is that Norway has, and Finland has not ratified ILO 169. By being party to ILO 169, Norway is legally bound to safeguards that enhance the protection of indigenous' people's rights. Nevertheless, even though Finland is due to ratify ILO 169; it is possible to argue that Finland, through customary international law, is also legally bound to act in accordance with ILO 169. This will be elaborated on later in this article.

2.5. Other negotiation challenges

As pointed out above, there are multiple challenges that need to be addressed in the renegotiation of the Deatnu Agreement. The current agreement⁵⁰ came into force in 1990, and Norway and Finland agree that the agreement needs to be adapted to national and international principles and guidelines for salmon management. The Government of Norway has emphasised that the main purpose of these discussions will be to ensure that fishing in the Deatnu River is *sustainable*, at all times.⁵¹ Although the concepts associated with *sustainability* – such as *sustainable development* and *sustainable ways of living* – were originally in favour of indigenous peoples' ways of living,⁵² they are today applied as standards everywhere and by everyone, arguably as empty clichés. It is therefore likely that the negotiating parties will therefore meet challenges with conflicting interpretations of *sustainable fishing*. The state development agents and Sami representatives may not agree on the extent local or traditional knowledge ought to be stressed in calculating sustainable regulations.

Still, the main challenge in the negotiations is, probably, to find a balance between the interests of local fishers and fishing tourists. The current agreement states that it is up to the regional authorities, independent of stipulations in the Regulation, to regulate fishing in the Deatnu River for people living outside the Deatnu Valley. In reality, the regional authorities have been unwilling to regulate fishing tourism – for instance by making fishing licenses in the best sections of the river more expensive – an option that Article 7 makes possible. Moreover, according to Article 7 in the current agreement, and Article 5 in the Deatnu River Act,⁵³ the local fishing administration, DG, does not have the mandate to do so in border sections of the river.

3. International human rights law and salmon fishing in the Deatnu River

3.1. Safeguards under international individual human rights and the monitoring mechanisms

Safeguards that have special relevance for the protection of the Sami population in the Deatnu Valley, are found in Article 27 of ICCPR. The Article is within the rubric

of individual human rights, but with its cultural dimension, it also comprises collective rights. Article 27 affirms, in universal terms, that “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture . . .”.

An important part of the ICCPR regime, is the Human Rights Committee, whose purpose is to monitor state conduct in relation to treaty norms.⁵⁴ In addition to evaluating periodic reports, the Committee publishes interpretive statements about particular treaty norms, in order to prevent states from interpreting the convention in any way that suits them. The Committee’s interpretation of Article 27 states that “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting . . .”. It further states that “[t]he enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”⁵⁵

Article 27 of the ICCPR is hence one of the most important international norms for the protection of indigenous peoples’ rights, to the extent that it also encompasses the right to land resources. Although it is of a rather general character, it anchors the protection of indigenous peoples in one of the most recognized international human rights treaties that has been adopted.

The Committee’s interpretation means that the Sami population in the Deatnu Valley cannot be denied the right to harvest salmon in the Deatnu River, as long as this is considered part of their right to enjoy their culture. As described earlier in this text, the Sami people in the Deatnu Valley have fished for salmon in the river from time immemorial. This custom has deep historical roots, and has thus thoroughly shaped and become a fundamental part of Sami culture in the Deatnu Valley.

The Human Rights Committee has previously stated that Sami cultural practices in Finland are protected under ICCPR Article 27. However, in *Länsman and others v. Finland*,⁵⁶ the Committee stated not in favour of Länsmann and others. Nevertheless, the Committee did emphasize that in cases where the impact is so substantial that it effectively denies the Sami the right to enjoy their cultural rights, this constitutes a violation of Article 27.

Since both Norway and Finland have incorporated the ICCPR into domestic law, and since the Sami people are recognized as indigenous people,⁵⁷ the Sami populations on each side of the international border in the Deatnu Valley have the right to harvest salmon in the Deatnu River in accordance with Article 27 of ICCPR. Therefore, according to the Committee’s interpretation of how ICCPR Article 27 relates to indigenous issues, salmon fishing should not be regulated to the extent that it threatens the existence of the local Sami culture. As mentioned above, statistics show that fishing tourists account for 25% of the total haul. It must be reasonable to regard ICCPR Article 27 as legitimizing greater restrictions on the total haul allowed tourists, if this would help the recovery of salmon stocks in the Deatnu River. The balance between regulations on fishing tourism on the one hand, and the Sami

population on the other, could, for instance, be determined by a mechanism that prioritizes the interests of the Sami population in the Deatnu Valley over the interests of fishing tourists. A solution to this problem may also be provided by other norms, or in an interaction of ICCPR Article 27 with other norms. For instance, the Sami population could be given the right to decide themselves what the relation between salmon fishing by tourists and the Sami population should be.

Net fishing methods are heavily regulated, and only two of them are still widely used. One of them, *buoddun*,⁵⁸ the ancient Sami method of fishing with weirs, is only allowed between 10 June and 10 August.⁵⁹ The other one, *golgadit*, a traditional form of drift net, is even more regulated, and only allowed for three and a half weeks in the early summer.⁶⁰ Both fishing methods are only allowed three days a week. The question is whether further regulation will make the fishing so ineffective and expensive that people no longer find it interesting. If so, further regulation may in reality be considered as a hindrance to traditional fishing methods, and therefore in violation of Article 27. For many net fishers, angling is no alternative, especially since they would have to compete with a huge amount of tourist anglers.

Norway and Finland have both ratified ICERD. The commission that monitors ICERD (CERD) has also highlighted the rights of indigenous peoples under the convention. Although it has not focused on any particular Article of ICERD, CERD considers issues concerning indigenous peoples to be of special relevance to the non-discrimination norm running through the convention.⁶¹ According to the practice of CERD, states shall therefore pay special attention to indigenous peoples' rights to lands, territories and resources. In General Recommendation No. 23, CERD states the following:

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.⁶²

If the regulations on salmon fishing set forth in the new agreement between Norway and Finland are too strict, Norway and Finland could be held responsible for violating ICERD. Elsewhere in Norway, for instance in connection with the Áltá River, it is accepted that fishing rights holders, through the local authorities, are freer to regulate the balance between fishing rights holders and fishing tourists.⁶³ If the new agreement does not support such local practices, it must be reasonable to see this as discrimination against the Sami, and it may constitute a violation of ICERD.

3.2. Safeguards under international collective human rights: ILO 169

As a special convention on indigenous people's rights, ILO 169 is of particular relevance. In comparison with ICCPR and ICERD, ILO 169 addresses indigenous rights in more detail and in specific contexts. Moreover, ILO 169, to a far greater

extent, addresses and recognizes the material rights of indigenous peoples, and includes provisions related to land and natural resources.

Although there is an ongoing ratification process underway in Finland, ILO 169 has only been ratified by Norway. This situation may at first, appear significantly challenging in the negotiations. However, at a closer look, it seems clear that the Norwegian negotiating party will demand that the standards of ILO 169 must be part of the framework of the negotiations. A treaty between Norway and Finland that is not based on Sami rights in accordance with ILO 169, will not be acceptable to Sami stakeholders, and must therefore also be unacceptable to the Norwegian negotiating parties, due to Norway's international obligations.

Norms that are directly related to the Sami population in the Deatnu Valley and salmon fishing in the Deatnu River, are Articles 8, 14 (1) and 15 of the convention.⁶⁴ Article 8 reads:

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.
3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

It is clear, that according to Article 8, regulations on salmon fishing in the Deatnu River must respect and recognize the customs of the Sami population. Among the different traditional Sami fishing methods applied in the Deatnu Valley, net fishing is under the most extensive regulation. Restricted to 24 days, net fishing must be considered to be highly protected by Article 8 (1).

Article 14 (1) states the following:

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Through the adoption of Finnmark Act,⁶⁵ the Norwegian state has accepted that land rights, including fishing, hunting and other uses of traditional resources in Finnmark do not belong to the state, but to the local people represented by the regional body FeFo.⁶⁶ This includes salmon fishing rights in the northern sections of the Deatnu River – from Deanunjálbmi (the river mouth) to the international border in Njuorggán – which solely belongs to the Norway. In this section of the river, the government has already taken steps to transfer ownership to the Sami population

living in this area. This ought to mean that fishing rights in the common areas of the Deatnu Valley should be protected in the same way.

Regarding fisheries management, ILO 169, Article 15 (1) states the following:

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

In addition, fisheries management is also protected by ILO 169, Article 7, which states:

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

Moreover, ILO 169, Article 32 states that:

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

The current Deatnu Agreement, which is in the process of being renegotiated, clearly states that regulatory authority lies with the regional authorities of both states.⁶⁷ This undisputedly excludes the Sami population in the Deatnu Valley from taking part in the decision-making process regarding the extent to which fishing tourists are allowed to harvest salmon in the Deatnu River. Nevertheless, the latest amendment to the Deatnu River Act states in Article 3, that ILO 169 takes precedence. It follows that the Norwegian state must, in the present negotiations, commit to *no* further exclusion of the Sami population from fisheries management.

3.3. Safeguards subject to customary international law

Another category of norms where indigenous peoples' rights also are found, is in customary international law. Although not legally binding for states in the same way as ICCPR and ILO 169, UNDRIP may be understood to embody or reflect customary international law.⁶⁸ This means that over time, in its influence on international law, UNDRIP can change status – from “soft” law to “hard” law.⁶⁹ UNDRIP as customary international law is a controversial topic in international law, but nevertheless important.

Naturally, norms that are similar in several human rights instruments create a basis for claiming that such norms reflect customary international law. This is the case

with ILO 169 and UNDRIP, where, for instance, the Inter-American Commission on Human Rights, which is the monitoring body of the human rights situation in the Organization of American States, has claimed that ILO 169 and UNDRIP, indeed, reflect norms of customary international law:

“In the course of recent years, the jurisprudence of the Inter-American human rights system has contributed to developing the minimum contents of indigenous peoples’ right to communal property over their lands, territories and natural resources, based on the provisions of the American Convention and the American Declaration, interpreted in light of the provisions of the International Labour Organization (ILO) Convention No. 169, the United Nations Declaration of the Rights of Indigenous Peoples, the Draft American Declaration of the Rights of Indigenous Peoples and other relevant sources, all of which compose a coherent *corpus iuris* that defines the obligations of OAS Member States with regard to the protection of indigenous property rights.”⁷⁰

The Commission also refers to the decision by the Supreme Court in Belize in the *Cal et Al* case⁷¹ and the Inter-American Courts for Human Rights (IACHR) decision in the *Awas Tingni* case, which also refer to ILO 169, regardless of ratification, and to UNDRIP as legal sources.⁷²

Both Finland and Norway voted in favour of UNDRIP. Norway played a noteworthy role in the preparatory process of UNDRIP, which entails an obligation to honour the Declaration. In addition, both Norway and Finland ensured their commitment to UNDRIP when they voted in favour of what would become the outcome document of the WCIP.⁷³ This, too, is certainly not without obligation, which has also been pointed out by the Norwegian government.⁷⁴

Despite its status as a UN declaration, there are signs that UNDRIP is, in fact, turning into hard law. Hence, it is reasonable to consider ILO 169 and UNDRIP as customary international laws protecting the Sami population in the Deatnu Valley in the renegotiation of the Deatnu Agreement.

As shown above, the Sami population in the Deatnu Valley has owned, lived, and used lands, territories, and resources in the Deatnu Valley since time immemorial. These lands, territories, and resources – including the Deatnu River – have been an essential food source for the Sami population of the Deatnu Valley. Moreover, they have formed the language, knowledge, livelihoods, and values of the Sami population in this area. Their ancestral roots are deeply embedded in the area. With respect to the relationship between the Sami population in the Deatnu Valley and salmon fishing in the Deatnu River – as it is today and has been throughout the history –, Finland and Norway, are in all likelihood, obliged to adhere to the provisions of ILO 169 and UNDRIP.

In addition to the provisions of ILO 169 presented above, several of the provisions in UNDRIP protect the Sami population in the Deatnu Valley, in particular, the principle of *free, prior and informed consent* (FPIC), which runs through the declaration.⁷⁵ This is especially relevant to the issue of self-determination discussed in next section.

In terms of provisions with specific relevance to the Deatnu Agreement negotiations, Article 26 of UNDRIP must be taken into consideration. Article 26 states that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

It follows that an agreement between Norway and Finland is obligated to recognize that the Sami population in the Deatnu Valley, has the right to the lands, territories and resources in the Deatnu Valley, including the Deatnu River and the salmon in it. The question of how to regulate the relationship between local fishers and fishing tourists is consequently a matter for the Sami population in the Deatnu Valley exclusively to decide.

3.4. The negotiations and the safeguards protecting the Sami people's right to self-determination

One of the most fundamental human rights is the principle of self-determination. The right to self-determination is the configurative principle behind the human rights instruments.⁷⁶ The right to self-determination is affirmed in the UN Charter, and other major legal instruments, and is widely recognized as a principle of customary international law. The right to self-determination is stated in ICCPR Article 1: “[a]ll peoples have the right to self-determination” and to “freely determine their political status and freely pursue their economic, social and cultural development”. The issue for indigenous peoples is that states have neglected to consider how self-determination should relate to indigenous peoples. However, the Human Rights Committee has emphasized that Article 1 applies to all peoples, including indigenous peoples, and is fully applicable without relating it to secession.⁷⁷ Moreover, as seen in several provisions of UNDRIP, the principle of FPIC promotes and clarifies the content of the principle of self-determination of indigenous peoples. For indigenous people, it is particularly relevant in matters of lands, territories and resources.⁷⁸ Indeed, this is precisely what the negotiations on the Deatnu Agreement are about: new regulations on salmon fishing in the Deatnu River.

In addition to ILO 169 Article 32, UNDRIP Article 36 extends the safeguard for the protection of indigenous peoples in cross-border areas. It is formulated in more explicit and binding language:

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

It is reasonable to presume, that because the Deatnu River is in the Sami core area, the agreement will indeed display how important the influence of Sami interests, and the issue of Sami self-determination is in Norway and Finland.

What then should provide the framework for the negotiation process between Norway and Finland on the regulation of salmon fishing in the Deatnu River, if the right to self-determination of the Sami people is to be protected?

The negotiations are ongoing and confidential. Not much can be said about the negotiation process, other than how the delegations are structured and that the parties seek to reach a new agreement on the regulations for salmon fishing in the Deatnu River. When Norway and Finland agreed to renegotiate the Deatnu Agreement, both states announced that their delegations would include representatives from the Sami people. In other words, there are two delegations, the Norwegian and Finnish, and where both nation states have included Sami representatives from each respective side of the border.

According to the Human Rights Committee's interpretation of the ICCPR Article 27, Norway and Finland are obliged to take positive measures to ensure effective participation of the Sami population in decisions that affect salmon fishing. In this regard, the right to non-discrimination must be seen in relation to Sami people's right to self-determination.

As described above, the Sami population in the Deatnu Valley already suffer from the effects of the international border that divides the communities. Therefore, it is especially relevant to take positive and effective measures with the free, prior, and informed consent of the Sami people, to prevent a violation of the Sami people's right to self-determination.⁷⁹

Salmon-fishing regulations are a hot topic in the Deatnu Valley, and the local culture is highly dependent on salmon fishing. This not only implies that the national representatives are obligated to consider the rights of the Sami population in the Deatnu Valley, but also that the Sami representatives are provided the capacity to fulfil their role as representatives for the position of the Sami people.

4. Prospects for violations of international human rights law and preventive measures

Political cleavages are important and sensitive fact of in human societies. Political cleavages within indigenous communities are not often addressed in discussions on state conduct in relation to indigenous issues. Although there are many examples of state conduct that have inflamed the political cleavages within indigenous communities and made devastating damage on the collective feelings of indigenous communities, political cleavages within indigenous communities have traditionally not been addressed in discussions on state conduct in relation to indigenous issues. As explained above, political cleavages exist in the Deatnu Valley community as well.

Despite the fact that the political cleavages in the Deatnu Valley come across clearly in the media, in DG matters, and in historical sources, it seems that the political cleavages in the Deatnu Valley and their implications have not been given the focus they deserve in the negotiation process between Norway and Finland.

A question that arises is whether the new agreement will inflame the political cleavages to an extent that will have a negative effect to the cultural foundation of the Sami population of the Deatnu Valley. Although the Sami Parliaments thus far have not shown any sign of displeasure in the negotiation process, the Sami population from the Deatnu Valley is divided into two delegations, the Finnish and the Norwegian. Inclusion in the respective delegations is indeed better than exclusion from the whole negotiation process. However, safeguards under international human rights law extend much further. The right to self-determination and to freely choose a political status in the negotiation process is not merely about having the right to differ from the position of the representatives of the national authorities, it must also consist of an internal decision-making process. In this regard, it must be understood, that if the Sami representatives are not provided the opportunity to have their own Sami delegation and own Sami decision-making process, and instead divided between two national delegations without their consent, this may certainly be in violation with ILO 169 Article 32 and UNDRIP Article 36.

When DG was in the process of developing regulations for salmon fishing, an intense public debate was initiated.⁸⁰ Such comprehensive public discussions, where all relevant political cleavages meet, may certainly be considered as an elemental part of a customary Sami decision-making process. A Sami decision-making process in regard to the renegotiations of the Deatnu Agreement should thus be based on comprehensive public discussions in the Sami society in the Deatnu Valley as such, before a final agreement is made. Such a process plays different roles; *inter alia*, (1) the prevention of negative effects on the collective feeling of the Sami society in the Deatnu Valley, (2) compensate, to a certain extent, for the negative effects of existing in different states, and also (3) forming a common position of the Sami people,

In the negotiation process, the Sami parties – the Sami Parliament of Norway, and the Sami Parliament of Finland – have not been given the opportunity to have such a process in advance of the negotiations between the two states. The negotiations then have violated the right to self-determination of the Sami people, one of the most relevant norms in the process of making new regulations. Insofar as this is a violation; resolving this is in fact, dependent on restarting the entire negotiation process.

An internal Sami decision-making process for the renegotiations of the Deatnu Agreement could take place, for instance, in the Sami Parliamentarian Council,⁸¹ which is the Sami decision-making body for matters affecting the Sami people across state borders. The Council's operativeness is nevertheless limited. An optional and temporary solution, may be to give the Sami Parliaments and the local communities

the mandate to negotiate common fishing regulations. The agreement could provide the basis for the states' final ratification and approval of the new agreement. A similar approach was used in the negotiations on the cross-border reindeer herding convention between Norway and Sweden.⁸²

International human rights norms are under the rubric of international law. It is, however, the case that international and domestic laws interact with and influence one another. This is especially true in instances where international conventions have been incorporated and given priority in advance of domestic law. Both Norway and Finland have incorporated ICCPR and ICERD, which comprise the indigenous rights dealt with in this article. A violation of these conventions is not only a violation of international law, but also a violation of Norwegian and Finnish law. The general character of Article 27 of ICCPR and the principle of non-discrimination in ICERD has, nevertheless, left states leeway to interpret the norms as they wish, in spite of the general comments from the respective monitoring bodies. To prevent violations to these norms with regards to the Sami people, a solution may be to give legal priority to international human rights instruments that include more specific indigenous peoples' rights – ILO 169 and UNDRIP as such – in Finnish and Norwegian domestic law. This is especially relevant in Finland and Norway, where the practise of giving legal priority to international human rights instruments already exists.⁸³

5. Concluding remarks

This article has shown that safeguards established under international law are applicable to and do protect the rights of the Sami population in the Deatnu Valley in the renegotiation of the Deatnu Agreement on the regulation of salmon fishing in the Deatnu River. This conclusion is based on the historical and contemporary situation of the Sami people and culture in the Deatnu Valley. Not only can safeguards under international law protect the Sami population from oppressive regulations in the forthcoming agreement, they also offer protection from an oppressive negotiation process. If implemented fully, international law allows for a negotiation framework that regards the Sami people as *one* people – with all the political and cultural complexities that entail. Although both Norway and Finland have legally recognised the Sami people as an indigenous people, the countries have not been successful in implementing all provisions of international law in the ongoing negotiation process.

To summarize, this article has shown that Norway and Finland may already have violated provisions of international law, and that more are in danger of being violated – both during the negotiations and in the resulting agreement. More specifically, if the new regulations continue to promote – or even strengthen – fishing tourists' interests at the expense of the local fishing rights holders, this will be in violation of the cultural rights in ICCPR Article 27, as well as the principle of non-discrimination in ICERD. Secondly, if the new agreement does not secure a fishery

management system in which the rights holders participate and are the owners of, this may violate the right to participate in and own resource management, stated in ILO 169 Article 15, and UNDRIP Article 26. Thirdly, as suggested in the article's title, there are three hands in these negotiations. If the Sami participation as a *people* is impeded in the negotiations, and instead reduced to being part of the Norwegian and Finnish people, this violates the right to cooperate and exist across borders, as stated in ILO 169 Article 32, and UNDRIP Article 36. This also violates the right to self-determination – which is widely recognized as a principle of customary international law – because such rights cannot be restricted to only a part of a community or a part of the Sami people. The article also raises questions about the lack of an internal Sami decision-making process, as one people, in advance of the negotiation process. An internal Sami decision-making process, cannot be understood as anything but an essential part of the Sami people's right to self-determination in negotiations of such significance to the Sami culture. This implies that protecting this right, and preventing what may become a dissemination of Sami people's rights violations, may entail restarting the entire negotiation process.

In general, one of the moral arguments of the framework of international human rights norms for indigenous peoples is to remedy the historical and global experience of unjust treatment of indigenous peoples. Another argument is to prevent failures in political decision-making deriving from cultural gaps between states and indigenous peoples. As mentioned above, Finland and Norway have seemingly violated international law when it comes to the negotiation process. However, the new agreement between Norway and Finland is yet to come. If the agreement is in accordance with the human rights norms in international law that protect the Sami people, the new agreement may set an example of best practise in implementing many indigenous rights. For the Finnish state, it is an opportunity to earn valuable knowledge and experience for the ongoing ratification process of ILO 169. For the Norwegian state, it is an excellent opportunity to build on what was started with the local fishing administration, DG. Above all, it represents an opportunity to form positive relationships between each state and the Sami people, which all parties will mutually benefit from in the future.

NOTES

1. Thanks to Associate Professor Ande Somby and Professor Øyvind Ravna for the encouragement to develop this paper, and for their valuable input. I would also like to give my thanks to Liss-Ellen Ramstad, Advisor to the Sami Parliament of Norway, for elaborating on the position of the Sami Parliament of Norway in regards to Sami fishing rights in the Deatnu River. Additionally, I would like to give my thanks to the peer reviews for positive and very useful feedback. Finally, I want to extend my gratitude to Maria Ulrika Askheimer, and other good friends for proofreading and apt comments.
2. Norwegian Government, Royal Decree, 24 February 1989, *Overenskomsten mellom Kongeriket Norge og Republikken Finland om felles forskrifter om fisket i Tanaelvas fiskeområde* [The

- Agreement between the Kingdom of Norway and the Republic of Finland on the joint regulation of fishing in the Deatnu River].
3. Border river regulations are common issues in many indigenous areas. A case worth mentioning is the Amur River (between China and Russia, in the area of the Amur people).
 4. See Norwegian Government, Royal Decree, 20 February 2012, *Reforhandling av avtale mellom Norge og Finland om laksefisket mv. i Tanavassdraget – oppnevning av forhandlingsdelegasjon* [Renegotiation on the agreement between Norway and Finland on salmon fishing etc. in the Deatnu Watercourse – nomination of negotiation delegation]. <https://www.regjeringen.no/nb/dokumenter/reforhandling-av-avtale-mellom-norge-og-/id679182/> (accessed February 9, 2015).
 5. See Figure 1, Statistics, Deatnu River fishing administration website. <http://tanafisk.no/en/statistikk/fangststatistikk> (accessed February 9, 2015).
 6. See Report by NINA. *Deanucázádaga luossamáddodagat* [‘The Salmon Stocks in Deatnu Watercourse’], Norwegian Environment Agency, 2014, 26–28.
 7. See Skriftlig spørsmål fra Helga Pedersen (A) til klima- og miljøministeren *Stortinget document no. 15:950 (2013–2014)*, (16 June 2014). <https://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=60196> (accessed December 19, 2014).
 8. See Oppsummering av fellesmøte og åpne laksemøter i Karasjok og Tana [Summary of a Joint Meeting and Meetings about Salmon Held in KaraSjohka and Deatnu]. Deatnu River fishing administration website. <http://tanafisk.no/oppsummering-av-fellesmote-og-apne-laksemoter-karasjok-og-tana/3335> (accessed February 9, 2015).
 9. See Fraråder lokalbegrensning [A Local Representative Comments on How the Regulations Should Promote Traditional Fishing]. NRK. (5 December 2011 PM 1:24). http://www.nrk.no/kanal/nrk_sapmi/1.7903020 (accessed December 19, 2014).
 10. The history of fishing in the Deatnu Valley and local Sami fishing traditions have been the focus of numerous academic studies as well as articles in the popular press. The historical information and current facts and figures in this article have been obtained from these sources. See especially Expert Report by Pedersen, Steinar. *Tradisjonell kunnskap og laks. Noen momenter* [Traditional Knowledge and Salmon], Report to the committee to assist in the consultation process related to the regulation of fisheries for anadromous salmon fishing 2011.
 11. The studies and reviews on how international norms apply to indigenous peoples that this paper is based on, are mainly those undertaken by former Special Rapporteur on the rights of indigenous peoples, Professor James Anaya. See generally Anaya, S. James. *Indigenous Peoples in International Law*. 2nd ed. New York: Oxford University Press, 2004; and Anaya, S. James. *International Human Rights and Indigenous Peoples*. New York: Aspen, 2009.
 12. This paper uses the term *indigenous people* as defined by the former United Nations Special Rapporteur on the Rights of Indigenous Peoples, José Martínez Cobo, known as the “Cobo-definition” from 1972. See UN Doc. E/CN.4/Sub.2/1986/7.
 13. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, I.L.O. No. 169, United Nations Treaty Series (U.N.T.S.), 1650.
 14. Especially as regulated in ILO 169 Article 32 and UNDRIP Article 36. See UNDRIP *infra* note 18.
 15. International Covenant on Civil and Political Rights, *opened for signing* Dec. 16, 1966 (entered into force Mar. 23, 1976) U.N.T.S., 999.
 16. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, U.N.T.S., 993.
 17. International Convention on the Elimination of All Forms of Racial Discrimination *opened for signature* Dec. 21, 1965 (entered into force Jan. 4, 1969), U.N.T.S., 660.

18. Universal Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).
19. Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, G.A. Res 69/2, U.N. Doc. A/RES/69/2 (Sept. 25, 2014).
20. See Anaya, *International Human Rights and Indigenous Peoples*, 49–72.
21. See Report of the Special Rapporteur on the rights of indigenous peoples, Anaya, James. The situation of the Sami people in the Sa'pmi region of Norway, Sweden and Finland 2011, A/HRC/18/35/Add.2. Section IV, *Areas of concern*, 10–17.
22. See Jull, Peter. “The Politics of Sustainable Development: Reconciliation in Indigenous Hinterlands”. In *Indigenous Peoples: Resource Management and Global Rights*, eds. Svein Jentoft, et al., 21–45. Eburon Delft, Delft, 2003.
23. Hardin, Garrett. “Tragedy of the Commons”. *Science* 162 (1968): 1243–8.
24. See Pedersen 2011 Section 17.6.
25. See Bjørklund, Ivar. “Når ressursene blir allmenningen – samisk ressursfovaltning mot det 21. århundre” [When Resources Become Part of the Commons – Sami Resource Management Towards the 21st Century]. In *Norsk ressursforvaltning og samiske rettighetsforhold*, ed. Ivar Bjørklund, 15–28. Oslo: Ad Notam Gyldendal, 2006; and Bjørklund, Ivar. “Sami Reindeer Pastoralism as an Indigenous Resource Management System in Northern Norway—A Contribution to the Common Property Debate” *Development and Change* 21, no. 1 (1990): 75–86.
26. See Norwegian Official Report (NOU) 1997: 4. *Naturgrunnlaget for samisk kultur*. Section 5.5.2.2.2; Tønnesen, Sverre, *Retten til jorden i Finnmark* [The Right to Land in Finnmark]. 2nd ed. Oslo: Universitetsforlaget, 1979, 38; and Pedersen, Steinar. *Laksen, allmuen og staten* [The salmon, the commons and the state]. *Diedut* 2 (1986): 7.
27. See NOU, *Naturgrunnlaget for samisk kultur*, Section 5.5.2.2.2.
28. See generally Solbakk, Aage. “The Salmon Lords” take over Deatnu/The Tana River. Deatnu: Čálliid Lágádus, 2011.
29. See *supra* note 5.
30. See NOU, *Naturgrunnlaget for samisk kultur*, 431.
31. See Multi-purpose Plan of Municipality of Anár, Deatnu, Kárášjohka and Ohcejohka: Flerbruksplan for Tanavassdraget 2007–2016 [Multi-Purpose Plan for the Deatnu Watercourse 2007–2016]. Municipalities of Anár, Deatnu, 2007, 5.
32. See Report by NINA: *Holdninger til fisketurisme i Tanadalen* [Attitudes to Fishing Tourism in the Deatnu Valley]. Report to Deatnu and Ohcejohka municipalities 2001. NINA, Deatnu, 27.
33. See *Supra* note 9; and Ságat, article, (May 2, 2012). <http://www.sagat.no/sak&article=31677> (accessed December 19, 2014).
34. See generally Solbakk, Aage. *ČáhcegátteSamiid kultuvra: mas deattuhuvvo Deanucázádat* [The Culture of the Valley Sami: With a Focus on the Deatnu Watercourse]. Deatnu: Čálliid Lágádus, 2007.
35. The Sami areas in Finland are called “Sami Homeland”, and in Norway they are called “Sami Administrative Region”.
36. See Report by Nordlándá Dutkam: *Samisk språkunderekelse 2012* [The Sami Language Survey 2012]. On behalf of the Sami Parliament in Norway 2012, 146.
37. In Norway by the ratification of ILO 169, and in Finland by Finnish constitution. See Proposition to the Storting no. 102 (1989–1990); and Finnish Constitution, *Article 17*.
38. The border was established in 1751 between the then state unions of Denmark/Norway and Sweden/Finland. This boundary treaty had provisions to ensure Sami interests across the border. When Finland became a Grand Duchy under Russia in 1809, unsuccessful attempts were made to renegotiate the border Agreement between Finland (Russia) and Norway (Sweden). were subsequently tried renegotiated. This was without success, after which

- the border was closed in 1852 and all common resource management was forbidden. The actual fishing agreement is necessary to make common management possible.
39. See generally Lehtola, Veli-pekka. “The Sami Siida and the Nordic states from the Middle Ages to the beginning of the 1900s” in Karppi, Kristina and Johan Eriksson eds. *Conflict and Cooperation in the North*, Umeå: Kulturgräns Norr. 2000, 183–94; and Minde, Henry. “Assimilation of the Sami – Implementation and Consequences”. *Acta Borealia* 2 (2003): 121–46.
 40. See *supra* note 30.
 41. See generally Report by Sami University college and Sámi ealáhus- ja guorahallanguovddáš: *Sjølaksefiske i Finnmark i historisk perspektiv* [Sea Salmon Fishing in Finnmark with a Historical Perspective]. On behalf of Finnmark Commission, 2010.
 42. See Stopp garnfiske i Tana [Stop Net Fishing in Deatnu]. NRK Nordnytt, (April 27, 2009, 1:09 PM). <http://www.nrk.no/nordnytt/--stopp-garnfisket-i-tana-1.6583884> (accessed December 19, 2014).
 43. See Editor of Ditt fiske. Catch and Release – hvorfor er det så kontroversielt? [Why Is Catch and Release Controversial?]. <http://dittfiske.no/?id=16413> (accessed December 19, 2014).
 44. The Finnmark Act states that the local population living in the Deatnu Valley have distinct fishing rights based on legislation, immemorial usage and local practice. The Act does not however provide detailed purviews on the Deatnu fisheries management, but this issue was later resolved by appointing a committee, which proposed local management through DG.
 45. See Deatnu River Statutory Regulation, *Article 6*.
 46. See NOU, *Naturgrunnlaget for samisk kultur*, Section 5.5.2.3.3.
 47. See The Deatnu River Act, 23.6.1888, *Article 5*.
 48. Metsähallitus is a state enterprise that administers more than 12 million hectares of state-owned land and water areas. Metsähallitus has the mandate to manage and use these areas in a way that benefits Finnish society to the greatest extent possible. See more www.metsa.fi (accessed December 19, 2014).
 49. See more About Statskog. <http://www.statskog.no/en> (accessed December 19, 2014).
 50. See *supra* note 2.
 51. See *supra* note 4.
 52. See Jull, “The Politics of Sustainable Development”, 21.
 53. See *supra* note 45 and 47.
 54. See Anaya, *International Human Rights and Indigenous Peoples*, 186.
 55. Human Rights Committee. *General Comment 23: The Rights of Minorities (art. 27)* U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (1994).
 56. See Human Rights Committee Fifty-second session: Länsman et al. v. Finland, Communication No. 511/1992 U.N. Doc. CCPR/C/52/D/511/1992 (1994).
 57. See *supra* note 37.
 58. See further Tana river, The Traditional Way of Fishing in the River Tana. <http://tanafisk.no/en> (accessed December 18, 2014).
 59. See Norwegian Deatnu River Statutory Regulation, *Chapter III*.
 60. *Ibid.*
 61. See Anaya, *International Human Rights and Indigenous Peoples*, 194.
 62. Committee on the Elimination of Racial Discrimination, General Recommendation XXIII: Indigenous Peoples, U.N. Doc. CERD/C/51.Misc. 13/Rev.4 (Aug. 18, 1997).
 63. See The Salmon and Freshwater Fishing Act, *Article 16, Article 17, and Article 27*.
 64. See also “Note of interest 2” from Sámediggi to Ministry of Environment, 10/2727 – 15, during consultations with the Ministry in 2010.
 65. See The Finnmark Act, *Article 5 and Article 6, Chapter 5*.

66. FeFo owns and administrates the land and natural resources in 96 % of the area of Finnmark County. FeFo is managed by a Board of Directors comprising six members. Three of these directors are appointed by the Sami Parliament of Norway and three by the Finnmark County Council. See more on FeFo web page. <http://www.fefo.no/en/Sider/AboutFeFo.aspx> (accessed December 19, 2014).
67. See *supra* note 45.
68. See Royo, Luis Rodriguez-Piñero. “Where Appropriate’: Monitoring/Implementing of Indigenous Peoples’ Rights Under the Declaration”. In *Making the Declaration Work – The United Nations Declaration on Indigenous Issues*, ed. Claire Charters, et al., 315–6. Copenhagen: IWGIA, 2009; and Anaya, *International Human Rights and Indigenous Peoples*, 80.
69. Anaya, *International Human Rights and Indigenous Peoples*, 79.
70. INTER-AM. COMM’N ON HUM. RTS., INDIGENOUS AND TRIBAL PEOPLES’ RIGHTS OVER THEIR ANCESTRAL LANDS AND NATURAL RESOURCES: NORMS AND JURISPRUDENCE OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM 74 (2009). <http://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf> (accessed December 19, 2014).
71. See Aurelio Cal, et al. v. Attorney General of Belize, Belize S. Ct. Judgement of 18 October 2007.
72. See IACHR, Arguments before the Inter-American Court of Human Rights in the case of the Awas Tingni community v. Nicaragua. Cited in: I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, par. 140(d).
73. See *supra* note 19.
74. See Verdenskonferansen for urfolk vedtar et ambisiøst sluttokument [The World Conference on Indigenous Peoples Adopts an Ambitious Outcome Document]. Ministry of Foreign Affairs. https://www.regjeringen.no/nb/aktuelt/konferanse-urfolk/id2001925/?regj_oss=10 (accessed December 19, 2014).
75. See UNDRIP Article 10, Article 11 (2), Article 19, Article 28 (1), Article 29 (2), and Article 32 (2).
76. See Anaya, *Indigenous Peoples in International Law*, 99.
77. *Ibid.*, 112.
78. See *supra* note 75.
79. See Case Study by Henriksen, John B. *Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169: Case Study 7*. On behalf of the Programme to Promote ILO Convention No. 169. 2008, 65–7.
80. See Vil kaste egne styremedlemmer ut av TF [DG board members are tried dismissed of their own]. http://www.nrk.no/kanal/nrk_sapmi/1.8121655 (accessed December 19, 2014); - Betaler ikke for hva som helst [- Be Critical about What You Pay For]. http://www.nrk.no/kanal/nrk_sapmi/1.7559921 (accessed December 19, 2014); and TF får kritikk av sine egne [DG Is Criticised by Their Own]. <http://www.nrk.no/sapmi/tanafiskeforvaltning-far-kritikk-1.7607441> (accessed December 19, 2014).
81. Sami Parliaments in Finland, Sweden and Norway have created a cooperative body, the Sami Parliamentarian Council. The Council is an institutionalized cooperation between the Sami parliaments in matters affecting the Sami people in several states or Saami as one nation. See <http://www.sametinget.no/Internasjonalt-arbeid/Samisk-samarbeid> (accessed December 19, 2014).
82. See Report of 21 March 2014, Working group for the Norwegian-Swedish reindeer herding convention. <http://www.sametinget.no/Naeringer/Reindrift/Samarbeid-og-rettighetsavklarling> (accessed December 19, 2014).

83. Despite incorporating many international human rights treaties, Finland and Norway has not incorporated the instruments with indigenous peoples' rights. Norway has argued that ILO 169 was omitted from the incorporations in the same degree as other international human rights treaties because it does not deal with general human rights, only special conventions providing protection to limited groups. This argument is significantly weakened considering that conventions concerning women and children have been incorporated. In Norway this incorporation is in the Human Rights Act of 1999, in Finland in the Constitution. *See* Norwegian Human Rights Act of 1999; and Finnish Constitution, *Article 23*.