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Thora Martina Herrmann *Editors*

# Experiencing and Protecting Sacred Natural Sites of Sámi and other Indigenous Peoples

The Sacred Arctic

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Leena Heinämäki • Thora Martina Herrmann  
Editors

# Experiencing and Protecting Sacred Natural Sites of Sámi and other Indigenous Peoples

The Sacred Arctic

 Springer

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# Chapter 1

## Experiencing and Safeguarding the Sacred in the Arctic: Sacred Natural Sites, Cultural Landscapes and Indigenous Peoples' Rights

Thora Martina Herrmann and Leena Heinämäki

Culturally and spiritually important landscapes across the Arctic region express this interconnectedness of Indigenous Peoples (IPs) with the natural and spiritual environment, and their preservation has been, and continues to be, essential to IPs' identity and livelihoods. It is a common place to say that the lands are regarded as sacred by many traditional worldviews of indigenous peoples. However, these living landscapes contain also particular individual sites, or Sacred Natural Sites (SNSs), which are associated with strong spiritual, or cultural intangible values of the natural elements. As Schama (1995: 6–7) has noted: “Landscapes are culture, before they are nature; constructs of the imagination projected onto wood, water and rock”. Consequently, culturally and spiritually important landscapes and the SNSs they encompass are at the interface between nature and culture, tangible and intangible values, biological and cultural diversity, and embody a closely woven net of connectedness between culture and nature and people's identity (Rössler 2006).

In many Arctic indigenous societies, SNSs are embedded in spirituality, cultural practices and belief systems, and respect for and access restrictions to them have often led to well-conserved areas within otherwise degraded Arctic environments. As such SNSs play an important role for nature protection. Landscape-based protected areas would not exist without the profound cultural and spiritual values assigned to them by the societies that inhabit these areas and who often continue

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to shape them through unique land-use systems (Mallarach 2008). Culturally and spiritually important landscapes have complex spatial-temporal dynamics as these landscapes are gradually evolving and adapting to the continuous changes occurring within the environment, culture and society (Ohnesorge et al. 2013). The cosmological and mythological associations of sacred places, characterize many cultural landscapes of importance to IPs in the Arctic (Oviedo and Jeanrenaud 2007). SNSs exist in nearly all ecosystems across the world (e.g., waterfalls, rocks, mountains, rivers, lakes, or forests). SNSs may be the abode of gods, spirits or ancestors. As a part of a larger cultural landscape, these sites can be integral parts of indigenous cultural identity and can play a key role in indigenous lifestyles. As maintained by Schaaf, one of the most salient forms of culture-based conservation has been the identification and protection of SNSs, which often protect key ecosystems (Schaaf 2008). In the Arctic, these ancient sites are often the homes of fragile biodiversity and endangered animals and plants species, some of which depend entirely on these landscapes for their survival (Verschuuren et al. 2010). They have functions similar to those of protected areas (Dudley et al. 2000). Because of the spiritual values assigned to these sites, restrictions on access and use often apply, such as spatial or temporal bans, or closing access to a particular species in certain areas or during certain periods (generally grouped under the term taboo) (Borrini-Feyerabend et al. 2010). With these management tools based on customary rules of access, use, protection and restoration, human disturbance is reduced or prevented (Colding and Folke 2001). Many SNSs thus remain in a natural or near-natural state. In other areas, the influence of man is more important, but still allows for maintaining biocultural diversity.

A subset of the intangible cultural and spiritual values associated with Arctic SNSs is related to indigenous knowledge (IK). IK systems provide a key window for viewing at close range how the natural environment shapes human cultural expression and vice-versa (Drew and Henne 2006; Nakashima and Roué 2002). Such knowledge is often closely linked, on one hand, to spiritual beliefs, ritual observances, local language, and on the other hand, to resource appropriation and management practices, variation and distribution of natural species (Berkes 2008). IPs generally view this knowledge as emanating from a *spiritual* base (Posey 1999). Posey (2002: 4) states that: “Thus, knowledge of the environment depends not only on the relationship between humans and Nature, but also between the visible world and the invisible spirit world. [ . . . ] the unseen is as much a part of reality as that which is seen/the spiritual is as much a part of reality as the material”. Cultural and spiritual knowledge and values are at the core of the ethics and practices of a number of indigenous custodians of SNSs across the Arctic region.

The resilience of Arctic communities, their ability to cope with and adapt in sustainable ways to future changes is linked with their historical memory and traditional knowledge about such changes. Indigenous SNSs and their cultural heritage are crucial for the preservation and application of this historical and environmental knowledge. Hence, the safeguarding and transmission of knowledge linked with SNSs serves Arctic communities abilities to cope with present and future changes and impacts of new economic development (i.e. tourism, extractive

industries). It can enhance communities' ability to protect their cultural heritage, engage in multiethnic dialogue, and develop culture sensitive education and a legal system that integrates indigenous customary laws. In the face of growing industry, tourism development, and influx of outside communities in the Arctic, interaction among various stakeholders and competition over resources grows. Oral traditions and knowledge associated with the cultural heritage of SNSs preserve means of mediation, justice, and well being that are crucial for the ability to cope with environmental challenges.

Despite growing recognition, across the Arctic and Northern regions, it becomes increasingly difficult for indigenous communities as custodians to protect their SNSs, as these ancient areas are increasingly at risk from rising development activities and social change. Examples of threats are: tourism; extractive industries (e.g., mining, oil and gas); industrial forestry; infrastructure development (e.g., roads, dams) (Klubnikin et al. 2000); large-scale agriculture; urbanisation; inappropriate archaeological research; memorialisation by national museums; and secularisation. Some SNSs are included within official State protected areas, and communities have lost access to and rights over them. Frequently, policies and management practices are not aligned with traditional management structures based on indigenous customary laws (Ross 2005). As most threats impact on both, cultural/spiritual and biological values, they reduce the resilience of these socio-ecological systems, and the interconnectedness of humans and natural systems that is characteristic of them.

Many SNSs are only known by community members, and it is very important to respect this privacy. Some of them are legally recognized as a world heritage. Until recently little had been done to promote the international agenda on the protection of these holistic and living places but the increased attention for the contribution of IPs' SNSs to effective environmental conservation in the Arctic has stimulated renewed interest in them as a vehicle for biocultural diversity conservation. In 1992, the UNESCO World Heritage Convention (UNESCO 1972), became the first international legal instrument to recognize and protect cultural landscapes as a specific category additionally to the natural landscapes (Rössler 2003). The International Union for Conservation of Nature (IUCN's) Vth World Congress on Protected Areas (Durban 2003) highlighted sacred natural sites and issued relevant recommendations, which have been followed by a number of policy actions. One of them is *The Delos Initiative for the Protection of Sacred Natural Sites in Technologically Developed Countries* (IUCN). The CBD started to recognize the importance of SNSs when it issued the Akwé:Kon Voluntary Guidelines for Impact Assessment in Sacred Sites in 2004. The CBD Programme of Work on Protected Areas also offers opportunities for action to protect these ancient sites and the living landscapes. Yet, despite the increasing acknowledgment of SNSs, many of them are still largely unused for supporting these living landscapes in the Arctic region, and legal protection here is still often insufficient or even absent. In all cases, it is crucial that all discussion and planning concerning these sites involve IPs. Recognition of these SNSs can be also used as a cultural revitalization and educational process.

Against this background, in September 2013, nearly 80 sacred site guardians of indigenous communities, Indigenous Peoples' organizations, scientists, policy makers and members of civil society gathered together in the capital of Finnish Lapland, Rovaniemi, as well as in Pyhäntunturi, a sacred mountain of the ancient Forest Sámi people. The reason for this gathering was the first international, multidisciplinary conference on Arctic Sacred Sites "*Protecting the Sacred: Recognition of Sacred Sites of Indigenous Peoples for Sustaining Nature and Culture in Northern and Arctic Regions*". The aim of our event was to increase the voice of SNSs custodians and enhance a dialogue between communities, scientists and decision-makers to assure that social, cultural and spiritual in addition to biological diversity are taken into account in law, policy and field action related to sustainable development in the North.

The Conference was co-organised by the Northern Institute for Environmental and Minority Law (NIEM) at the Arctic Centre of the University of Lapland, the Université de Montréal (Canada), and the University of the Arctic/Thematic Network on Arctic Law. Over three days, participants discussed themes dealing with multiple meanings of the SNSs, including questions related to identity, ethnicity and transmission of the culture. The conference raised up discussions concerning nature-culture interlinkages, ecosystem conservation and socio-ecological resilience. Additionally, the legal recognition of the Sacred Sites was an important part of the discourse, since an objective of the Conference was to develop strategies towards more effective protection and management of the SNSs in the Arctic region, taking into account IPs own practices and customary laws. A great number of chapters of this volume focus on the legal aspects of the protection of the SNSs. The Conference succeeded to create a platform to establish a holistic, multidisciplinary approach to tackle multiple issues of the SNS's in the North and to raise broader public awareness of the challenges and threats faced by Sacred Sites and their custodians. The Conference participants established the *Statement and Recommendations on: "Recognizing and Safeguarding Sacred Sites of Indigenous Peoples in Northern and Arctic Regions"* that will be analysed in the conclusions of this volume.

The Chapters comprised in this volume are written by keynotes and other experts of our Conference. *The Sacred Arctic* brings together 20 authors from various disciplines (e.g., anthropology, ethnology, law, geography, history and archeology) and institutions (academia, NGOs, IPOs). The book adopts a multidisciplinary socio-ecological approach with contributions from different perspectives and worldviews, from various geographical scales and governance levels. Contributions are cross-regional and based on case studies in 5 Arctic States (Finland, Norway, Sweden, Russia and Canada). Our volume is divided into 2 parts and contains a total of 11 Chapters. Although this book has a general focus on Arctic and Northern regions, a special emphasis in this volume, inspired by the Conference, is dedicated to the Sámi people and most of the chapters are case studies related to Sámi rights, sacred sites and customary laws. It should be noted, however, that international law applies to all indigenous peoples and therefore some of the legal parts are necessarily general and not geographically oriented. Yet, a connection to Sámi and other Arctic and Northern indigenous peoples are established in all the legal chapters as well.

The Sámi people traditionally inhabit a territory known as Sápmi, which traverses the northern parts of Norway, Sweden, Finland and the Russian Kola peninsula. Although the Sámi are divided by the formal boundaries of the four States, they continue to exist as one people and are united by cultural and linguistic ties and a common identity. Their traditional livelihoods include particularly reindeer herding, fishing and hunting. The Nordic countries, Finland, Norway and Sweden are currently negotiating a Nordic Sámi Convention that recognizes Sámi as one indigenous people with the right to self-determination. The final document is expected to be ready by the end of 2016. There are around 50,000—70,000 Sámi in Norway, 15,000—20,000 in Sweden, 10,000 in Finland and 2000 in Russia. A great number of Sámi live outside traditional homeland areas.

Part 1 of *The Sacred Arctic* focuses on the legal mechanisms for the established or potential instruments that can be used for the protection of the SNSs. All five legal chapters discuss either international or national instruments, linking human rights and environmental law, as well as indigenous peoples' customary laws to the recognition and protection of the SNSs of Arctic and Northern Indigenous Peoples. Although several of the chapters refer to some extent to same instruments, each of the chapter discusses them from their specific angle. All the chapters include a coherent whole, although, at the same time, are interconnected with other chapters in a way or another.

Based on examples from Finland and Canada, Newman, Ruozzi and Kirchner (Chap. 2) examine the prospects for protection of sacred natural sites under existing human rights instruments and what different readings may be necessary to offer appropriate protection of SNSs. The authors argue that the protection of SNSs sits uneasily in the traditional legal approaches to human rights instruments and requires different readings of freedom of religion and/or land rights that are more responsive to the collective nature of a sacred natural site. They first illustrate and analyze the case law of the Inter-American Court of Human Rights regarding Indigenous Peoples, in order to underline the close link existing between the right to land as codified by the Court and the right to preserve Sacred Sites. They next consider the European Convention on Human Rights and whether the freedom of religion under Article 9 ECHR allows for access to Sacred Sites that are not owned by the person who wishes to access them for religious purposes.

Chapter 3, by Rode, examines harmful investments and protection of SNSs, by putting the focus on the realisation of Indigenous collective rights in the Northern and Arctic Regions. The chapter explores the potentials and limits with regards to the realisation of indigenous peoples rights in the Arctic and circumpolar North in relation to harmful investments, particularly the attempts of aligning nature conservation and the principles of protecting indigenous peoples' rights provided by the UNDRIP are analysed in the context of the implementation of the Convention Concerning the Protection of the World Cultural and Natural Heritage – commonly referred to as the UNESCO World Heritage Convention. Rode argues for a more participatory implementation of the World Heritage Convention in the light of the indigenous peoples' established rights to self-determination and free, prior and informed consent.

The legal-philosophical chapter by Bunikowski and Dillon, in Chap. 4, discusses the legal pluralistic approach in the protection of indigenous cultural heritage, dwelling from the theories and participatory models of the cultural ecology. The authors call for a novel model of the right of indigenous people to their own autonomous law based on culture, social morality, history and tradition, as a new tool of a more effective protection of their cultural heritage and SNSs. The case studies include the Sámi people of northern Europe and the situation regarding the Nisga'a people in Canada where a different model of legal pluralism has been enacted.

Heinämäki and Xanthaki (Chap. 5) call for recognition/consideration of Indigenous Peoples' customary laws and systems for the protection of SNSs, with a special emphasis on Sámi people. They analyze article 34 UNDRIP by using general human rights standards, minority standards and indigenous standards of international law, and take a look at the human rights jurisprudence that has recognized indigenous customary laws. The chapter discusses and analyses the customary law of the Sámi People in Finland, particularly in relation to the SNSs.

Chapter 6, by Ojanlatva and Neumann, with a case study from Finnish Sápmi (home land area), investigate by which legal means Sámi SNSs are protected nowadays in Finland and discuss related problems on the basis of the Finnish Antiquities Act (295/1963). In doing so, they provide an overview of the existing domestic legal instruments for protecting Sámi SNSs, and elaborate whether and to what extent Sámi SNSs are specifically recognized in the respective legal context. Their Chapter discusses the practical implementation of the legal protection of Sámi SNSs under the Antiquities Act. Today, there are around 40 known Sámi SNSs, considered as "fixed relics" under this Act. As maintained by this chapter, many challenges exist related to their protection.

Part 2 of *The Sacred Arctic* focuses case studies and puts an emphasis on the intangible cultural heritage connected to SNSs of Arctic Indigenous Peoples and the issues of identity, ethnicity, and transmission of culture linked to SNSs. Thus, Myrvoll's (Chap. 7) main focus is on how narratives and practices in connection to sacred mountains are challenged by the consequences of the former Norwegianization politics. In Troms County, which counts over 20 Sámi sacred mountains, the extensive change from Sámi to Norwegian language in daily life, applies for names of sacred mountains as well, and hence many of the place names changed, and the majority of the mountains have Norwegian names today with no association to sacredness. Myrvoll asks key questions: What do we know about religious beliefs and practices connected to these sacred mountains? How have perceptions and practices changed up through time, due to the religious change and Norwegianization politics?

Similarly, Näkkäläjärvi and Kauppala (Chap. 8) explain the current aims of the Sámi Parliaments of Norway, Sweden and especially Finland in the preservation of the SNSs, including those in the areas not more inhabited by the Sámi. The authors highlight the immense role SNSs play in the question of linking the Sámi civilization from the past through the present to the future in Finnish Sápmi. Even though due to Christianity and Sámi SNSs have a thin relationship with the present, most

of them however continue to exist today. The emotional feeling of affinity of the Sámi with these sites remains strong. As the taboos created by classic Christianity are weakening and the values of nature and human-nature relationship growing, it would be logical to expect, according to the authors, that these phenomenon should strengthen in the future.

The following Chap. 9, by Joy, focuses on the vandalism of SNSs, with an example of rock paintings, due to the growth of the tourist industry and expansion of urban areas in central and southern parts of Finland. Through an analysis of photographic material as well as correspondence with the National Museum of Antiquities in Helsinki, which oversees heritage management in Finland, Joy reveals that recorded vandalism and the on-going vulnerability of many sites is linked to inadequate structures and policies aimed at protecting the sacred areas.

In Chap. 10, Dudeck, Rud', Havelka, Terebikhin and Melyutina unite anthropological analysis of practices around indigenous SNSs in the Russian subarctic zone. Three ethnographic case studies - the Kenozero National Park (Arkhangelsk Region), SNSs of the Forest Nenets and SNSs of the Eastern Khanty of Western Siberia - provide an analysis of the present day situation of and processes going on around sacred places of indigenous peoples leading a seminomadic or sedentary lifestyle in often multiethnic regions in the subarctic zone.

Based on the diverse chapters presented in this book, and by intertwining them with the overall approach presented in our introduction, the concluding Chap. 11 provides concrete strategies for supporting Sacred Sites in the Arctic, in form of the *Statement and Recommendations on: "Recognizing and Safeguarding Sacred Sites of Indigenous Peoples in Northern and Arctic Regions"* which participants of our conference elaborated.

Through the diverse contributions, this volume aims to offer the right balance between locally, regionally and internationally focused and thematic chapters. All authors make a compelling case for a "biocultural" approach being central to the conservation of and the continuation of cultural practices and belief systems. The case studies presented in the volume shed light on this approach — as a way to a more effective policy and action in the biocultural diversity sector. The contributions provide evidence of today's urgent need to better understand the deep and meaningful interlinkages between nature and cultures, and to stimulate considered respectful and effective action in SNSs recognition and protection in the Arctic and Northern Regions, and their transmission to future generations.

Adopting a multi-disciplinary and multi-scale approach, this volume *Experiencing and Protecting Sacred Sites of Sámi and other Indigenous Peoples: The Sacred Arctic* is addressed to academia, including environmental and social scientists, law and policymakers and indigenous communities, including NGOs and IPOs. We hope that conservation professionals will also benefit from the case studies on how to integrate the cultural and spiritual values of the natural world into conservation strategies in a way that is adequate to the well-being of indigenous communities in the Arctic. As such, we like this book to be a contribution towards a more equitable and effective conservation of biocultural diversity and sustainability and to safeguarding and transmitting the rich Arctic heritage to future generations.

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**Part I**  
**Recognition of Sacred Sites of Arctic**  
**Indigenous Peoples in Customary Rights,**  
**International and National Law,**  
**Institutions, Policy and Protocols**



# Chapter 2

## Legal Protection of Sacred Natural Sites Within Human Rights Jurisprudence: Sápmi and Beyond

Dwight Newman, Elisa Ruozi, and Stefan Kirchner

### 2.1 Introduction

The Arctic is home to dozens of indigenous peoples. (Heinämäki 2010: 64) Many indigenous peoples of the circumpolar North share similar experiences of colonialization and oppression. For many generations, indigenous peoples have suffered violations of fundamental rights, including freedom of religion. Eradication of indigenous religions has been a tool used by the state in attempts to create ethnically, culturally and religiously homogenous states. While this can include the destruction or theft of indigenous religious artifacts, an issue which can be addressed by law, a particular aspect of indigenous religiosity still appears to be less easily covered by existing legal norms: in many indigenous religions, sacred natural sites play an important, and often crucial, role.

As they might not be easily identifiable as sacred sites by non-indigenous outsiders, indigenous claims to protection of sacred natural sites can be more difficult than claims for protection for non-natural religious sites, such as buildings.

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In addition, the loss of land title in colonial legal systems has added a layer of complication to the protection of indigenous sacred natural sites which provides a significant challenge when it comes to their protection: loss of land ownership means that many sacred natural sites are no longer the legally recognized property of indigenous peoples.

Against this backdrop, we investigate the possibilities, which exist under different regional human rights regimes to protect indigenous peoples' interests in sacred natural sites. As international law regarding the protection of indigenous rights has greatly benefitted from cross-pollination in the sense that regional decisions have gained prominence also beyond the geographical area of the deciding bodies, the norms investigated were global in nature. In order to get a full picture of the rights of indigenous peoples in the Arctic, it is necessary to look beyond the norms applicable specifically in the Arctic region.

The rights of Indigenous peoples are protected by a number of international legal instruments including the International Labor Organization's Convention No. 169, the UN Declaration on the Rights of Indigenous Peoples and the International Covenant on Civil and Political Rights. Indigenous rights are at risk of being overlooked when sacred sites are subject to the decisions of public authorities. Respect for Indigenous rights requires State authorities to take into account all applicable legal rules, including obligations which do not expressly refer to Indigenous peoples. These include regional human rights instruments. In this chapter, we will look at the ways in which regional human rights instruments in Europe and the Americas might be used to protect the sacred sites of Indigenous peoples.

## **2.2 Regional Human Rights Documents**

### ***2.2.1 The Inter-American Human Rights System***

Although the American Convention on Human Rights does not explicitly mention sacred natural sites, they play a remarkable role in the Inter-American Court of Human Rights' (IACtHR) Indigenous land rights jurisprudence. The IACtHR has long been a trailblazer in the recognition of indigenous rights at the regional level, and its case law has provided substantial contributions to the development of indigenous rights in general.

The existence of sacred sites and their importance for a given community are relevant to the definition of Indigenous or tribal rights as formulated by the IACtHR. The Court's jurisprudence makes clear that groups need not be indigenous to the territory they currently inhabit in order to exercise the rights guaranteed by the Convention; it is the case, for example, of descendants of Africans originally brought over in the Americas during colonial times. Indigenous rights in this sense apply to tribal and indigenous peoples. In addition to its history and long ties to the land, it is a group's special way of living, along with its unique economic and social organization, including its special relationship with the land, which makes

it socially, economically and culturally distinct. (Saramaka: para. 86) This distinct status forms the basis of the State's duty to afford special protection to a given group. (ibid.) Indigenous peoples maintain "cultural, intangible and spiritual ties" (Sarayaku: para. 149) with the ancestral territories they have traditionally used and occupied. Their land and its associated natural resources are a part of their social, ancestral and spiritual essence, not only due to the presence of sacred sites but also by reason of the intrinsic sacred value of the territory itself. (Saramaka: para. 82) The existence of, and access to, sacred sites is therefore relevant to the extent that it forms a part of an Indigenous people's relationship with the land. In this aspect, the situation of the indigenous peoples of the Americas is not substantially different from the situation of the Sámi or of other Arctic indigenous communities.

This idea of a close connection between the people and the land is confirmed by the case concerning the Moiwana community in Surinam. Although the Moiwana are not indigenous to the land they inhabit, the Court emphasized the fact that community members live "in strict adherence to N'djuka custom" which involves a close connection to their ancestral lands and to the sacred sites found there. (Moiwana: para. 132) One expert witness explained during the proceedings: "N'djuka, like other indigenous and tribal peoples, have a profound and all-encompassing relationship to their ancestral lands. They are inextricably tied to these lands and the sacred sites that are found there and their forced displacement has severed these fundamental ties." (ibid.)

In the *Awás Tingni* case in Nicaragua, an anthropologist testifying underlined that the sacred places relevant to the community consisted of both the cemeteries which members visit when they go hunting, as well as sacred hills (Awás Tingni:23). According to this expert, hunting "is, to a certain point, a spiritual act." (ibid.)

The presence of sacred sites not only is used by the Court in order to identify the community concerned - and, in particular, as a founding element of its relationship with the land - but also constitutes a relevant element of the right to property Indigenous peoples claim in relation to the same land.

Firstly, the sacred value of places is inextricably linked to the collective understanding of the concepts of property and possession. (On the notion of property as contained in the American Convention on Human Rights see Pasqualucci 2006: 296) Land possession and use are not centered on the individual but on the group (Saramaka: para. 89) and spiritual beliefs linked to land and sites are an essential part of the group's identity. As stated by the Court, "[i]gnoring the specific forms of the right to the use and enjoyment of property based on the *culture, practices, customs and beliefs*<sup>1</sup> of each people, would [ . . . ] render protection under Article 21 of the Convention illusory for millions of people". (Sawhoyamaxa: para. 120).

Secondly, the presence of sacred sites is considered evidence of the link that exists between an Indigenous people and the land they are claiming by the Court. According to the Court's jurisprudence, the enjoyment of the right to ancestral land has, as its prerequisite, the demonstration of the link existing between the land and

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<sup>1</sup>Emphasis added.

the community. Such a connection is based not only on the sacred value of land itself, but also on the presence of sacred sites (Saramaka: para. 82) and on the practice of cultural and traditional activities. (Sawhoyamaxa: para. 131).

This is the reason why the existence of sacred sites plays a particularly prominent role in the framework of establishing a violation of Article 21 of the American Convention, *i.e.* the right to property. According to the Court's jurisprudence, the right of Indigenous peoples to their ancestral lands needs to be recognized as full title; consequently, land claimed must be titled, delimited and demarcated in consultation with the populations concerned. (Saramaka:para. 115) The right to use and exploit natural resources which lie on and within the land is closely related to the right to land itself even though, in this respect, the precise scope of the community's rights is less clear. As explicitly admitted by the Court in *Saramaka*, notwithstanding the fact that natural resources fall under the protection offered by Article 21, the scope of this right "needs further elaboration." (ibid.:para. 120; Errico 2011: 335).

Damage to sacred sites was one of the grounds upon which the Saramaka people based its claim of violation of its property right, emphasizing that while the entire territory is scared, injury had been caused to specific sites of great cultural and spiritual relevance. (ibid.:127) In determining the damage suffered by the community due to the exploration undertaken by the CGC company, the representatives of the community alleged that at least "one site of special significance" for the Sarayaku peoples had been damaged. This place consists of a sacred forest and its trees, one of which was destroyed, leaving the shaman without the power to obtain a medicine to cure his children and relatives. (Sarayaku: para. 104) Moreover, landings by helicopters had destroyed part of a site of great significance to the community and ancestral cultural rites and ceremonies had been suspended due to the activities of the oil company; finally, the seismic line laid down by the company passed near sacred sites used for ceremonies initiating young people into adulthood. (ibid.: para. 105)

In addition, the representatives argued that Article 26 of the Convention, which protects economic, social and cultural rights, had been violated. In particular, they stated that the suspension of traditional practices and rites caused by exploration and exploitation activities has had a profound impact on the transmission of spiritual knowledge and the teaching of cultural traditions and rituals. (ibid.:para. 137) It is precisely this kind of impact that was recognized by the Court when it affirmed that the Sarayaku community was entitled to consultation. (ibid.:para. 174)

All these elements were brought together by the Court when it jointly analysed the violation of the rights to consultation and communal property with regard to the right to cultural identity:

Given the importance that sites of symbolic value have for the cultural identity of the Sarayaku People and their worldview, as a collective entity, several of the statements and expert opinions provided during the proceedings indicate the strong bond that exists between the elements of nature and culture, on the one hand, and each member of the People's sense of being, on the other. This also highlights the profound impact on the social and spiritual relationships that members of the community may have with the different elements of the natural world that surrounds them, when these are destroyed or harmed. (ibid.:para. 219)

On the basis of these elements, the Court found that there had been a violation of the duty to consult Indigenous peoples as a result of “the intervention in and destruction of their cultural heritage”, including the failure to preserve sacred sites. (ibid.:para. 220).

The *Saramaka* judgment contains some interesting insights about the procedural requirements applicable to sacred sites, in particular the obligation to carry out environmental and social impact assessments. The Court, while reaffirming the obligation to conform to international standards and best practices in carrying out ESIA's, made explicit reference to the *Akwé:Kon Guidelines* which relate to the impact of activities on sacred sites and traditionally occupied lands. (*Saramaka*:para. 41) According to the *Guidelines*, the possible impacts on sacred sites and associated ritual or ceremonial activities must be taken into account in assessing the scope of potential cultural impact. (*Akwé:Kon Guidelines* 2004: 27).

The disruption of the spiritual life of Indigenous groups is even more evident in cases where the community is displaced, and thus totally unable to access its sacred sites. As illustrated by the expert testimony in the *Xákmok Kásek* case, displacement also prevents Indigenous peoples from burying their relatives at chosen sites in addition to preventing them from returning to these places. Consequently, these burial sites become “in some way [...] less sacred”, which in turn implies that an affective, symbolic or spiritual relationship cannot be developed. (*Xákmok*: para. 177 et seq.)

The violation of the “right to burial” was given particular emphasis by Judge Cañado Trindade in his separate opinion in the *Moiwana* case. Since their displacement, the community has been unable to bury the remains of its members killed in the 1986 massacre carried out by the Suriname army. (*Moiwana*:para. 3) According to the opinion, the possibility of performing the funerary ceremonies and of giving a “proper burial” to their deceased was an integral part of the obligation, for the survivors, to seek justice for their dead, who understood it as a “cultural responsibility.” (*Xákmok*: para. 57) As underlined by the Judge, the “right to burial” is a part not only of the voluntary law of nations, (ibid.:para. 60) but also of international humanitarian law, (ibid.:para. 68) and depriving a community of the possibility of maintaining their connection to the dead is a violation of the “right to the project of after-life.” (ibid.:para. 68) Judge Trindade enumerates a category of “spiritual damage”: an aggravated form of moral damage which cannot be quantified or give rise to pecuniary reparations. (ibid.:para. 71) This opinion places remarkable stress on the importance of access to sacred sites as an indispensable condition necessary for the maintenance of the community’s inter-generational spiritual life and, in the specific case, to allow the survivors to discharge their responsibility towards the dead.

Finally, sacred sites have been taken into consideration by the Court in the context of the rights to life, personal integrity and personal liberty. In the *Sarayaku* case, these provisions of the American Convention were invoked by the representatives of the community in relation to the deposit and use of pentolite explosives by the CGC company. (*Sarayaku*:para. 101) The Court had previously made an order instructing the State to remove pentolite; (*Sarayaku* MP:31) however this order

had only partially been complied with when the Court rendered its decision on the merits. (Sarayaku:para. 246) In the judgment, the Court emphasized that the presence of pentolite had led to the community assembly's decision to restrict access to the affected area, despite the land's sacred character and importance as a hunting ground. (ibid.) The inability to access sacred places therefore acts as a factor which contributes to violations of the rights to life, personal integrity and personal liberty.

Notwithstanding the relevance attributed to sacred sites by the Court in the judgments analysed thus far, the same emphasis is not present in the context of provisions relating to reparations. It is the case, for example, of the *Sarayaku* judgment, where representatives requested, as a measure of restitution, to declare their entire territory as "Sacred Heritage Territory of Biodiversity and of the Ancestral Culture of the Kichwa Nationality", without the Court acceding to their request.

Sacred sites are equally considered in the context of reparation for non-pecuniary damage as was the case of the threat to the survival and cultural identity of the Sarayaku community. (ibid.:para. 230) In this context, the representatives cited the abandonment of their ancestral lands by sacred spirits, the damage caused to their worldview by the destruction of sacred places and trees of significant value to traditional medicine, and their inability to celebrate traditional festivals for a significant period of time. (ibid.:there fn. 367) If, on one side, the "the destruction of part of the forest and certain places of great symbolic value" is mentioned by the Court in the paragraphs relating to reparation, (ibid.:para. 322) the same is not true as regards the measures prescribed in the operative paragraphs, which include land restitution and consultation, without specifically addressing the access to sacred sites.

### ***2.2.2 The European Convention on Human Rights***

The European Convention on Human Rights (ECHR) was drafted without Indigenous peoples in mind but has nonetheless been applied to situations involving Indigenous peoples on a number of occasions. (Koivurova 2011: 1) In addition to the Sámi people of Northern Europe and the approximately thirty indigenous peoples of Russia, (Poelzer and Fondahl 1997) the European Convention on Human Rights also applies in French Guayana, which is an integral part of the French Republic, (Uimonen 2014: 150) and accordingly to the six Indigenous peoples there,<sup>2</sup> (Jiménez 2010) as well as to Greenland.

In particular the Sámi people face a major but often overlooked challenge when it comes to accessing their sacred sites. This section will address the issue of access to sacred sites as a human right with a focus on the Sámi people.

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<sup>2</sup>These are the Kali'na, Lokowo, Pajikweneh, Teko, Wayana and Wayapi.

Sámi sacred sites or *sieidi* range from sites used by, and only known to, an individual to major sites which have been used by the inhabitants of one or more villages (Pulkkinen 2005a: 390). Historically, the criminalization of the *sieidi* cult led to the official disuse of major sacred sites but it is thought that their use continues (Pulkkinen 2005a: 390).

The at times highly personal and hence secret nature of a *sieidi* can lead to situations where a person who wants to access his or her *sieidi* is unable to do so if, as is often the case in Sápmi,<sup>3</sup> the land is owned by others. For example in Norway's Finnmark province and in Finland's Lapland administrative area, large sections of the land are not privately owned but are owned or administered by either the State or public entities. While Indigenous peoples have land use rights, and are involved in decisions, which affect them through national Sámi parliaments in Norway, Sweden and Finland, they do not have a real veto power which could overrule the interests of the State.<sup>4</sup> Therefore access to a specific location is by no means legally guaranteed. In Finland, however, the everyman's right grants far-reaching rights of access to land to everybody, not just the indigenous population, including the right to make use of some natural resources. It includes the right to pick berries or camp, so long as they occur a certain distance from settlements. It might also allow an individual or a small group of people to access a specific location, but it would likely exclude larger groups or access to land near houses. As Sámi sacred sites are not necessarily identifiable as such to outsiders, this right might not allow an Indigenous person to access a *sieidi* if such access would not be covered by the everyman's right, for example if the *sieidi* is now located on privately owned property near a home, but it could on the other hand mean that outsiders have a right of access to land which Indigenous families consider sacred. The question is then if the European Convention on Human Rights, in particular the freedom of religion protected by Article 9 provides for a right to access such sites and a right to exclude others from such locations. The question then becomes whether the European Convention on Human Rights, particularly the Article 9 protection of the freedom of religion, can ground a right to access such sites and a right to exclude others from these locations.

Article 9 of the ECHR protects the *forum internum* – the internal aspect of one's religiosity – but not necessarily the entirety of the *forum externum* – the visible expressions of such faith. (C. v. UK:147) The question posed here is whether access to a location owned by somebody else for religious purposes amounts to a practice which is protected under Article 9 of the ECHR. This question, e.g. whether a practice is religiously required, cannot be determined by public authorities, either at the national or subnational level, or the European Court of Human Rights. Activities, which are merely idealistic, *i.e.* activities which are inspired by but not necessarily

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<sup>3</sup>Sápmi is the area currently recognized by states as the traditional home territory of the Sámi people, although present-day Sápmi is considerably smaller than the original Sámi homeland.

<sup>4</sup>Furthermore, despite the existence of some organisational structures, in Russia the Sámi people do not have a representative body, which could be compared in function and legitimacy to the national Sámi parliaments in Norway, Sweden and Finland.

required by the religion, are not covered by Article 9. With respect to land use, Article 9 does not even include the right “to have one’s ashes scattered on one’s own land.” (Reid:515) As a rule of thumb, worship (ibid.:516) “in a generally accepted form” (ibid.) will fall within the scope of Article 9. However, “in a generally accepted form” is a disclaimer that highlights the struggle those minority religions may face in attempting to find recognition by European human rights law. It is important to note that historically Indigenous forms of worship were not only not accepted but also persecuted and criminalized. A reconciliation of these competing rights and interests therefore becomes necessary.

Section 2 of Article 9 clarifies that the “[f]reedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”, including the right to peaceful enjoyment of one’s possessions. While the State cannot make human rights claims, the ownership of traditional Indigenous lands has often been transferred to corporations which could claim some human rights, particularly procedural rights and rights under Article 1 of Protocol 1 to the ECHR (ECHR-P1). Article 1 of Protocol 1 safeguards the peaceful enjoyment of one’s possessions. It does not guarantee unlimited usage rights. “Where ownership remains and some ability to exploit the property, a finding of *de facto* expropriation in the sense of deprivation is unlikely” (Reid 2007: 501), however in such cases there might still be a violation of the right to peaceful enjoyment of one’s possessions.

Even if an Indigenous person held title to the land at private law, the State could interfere and grant access rights to it. Sápmi is an important region to the extractive industry. Article 1 of Protocol 1 includes rules concerning expropriation but not regarding limitations for peaceful enjoyment. Furthermore, it might be possible for the State to control the use of property in the public interest, which might – or might not – include permitting others to worship. This type of decision, however, would have to be made on a case-by-case basis. It appears that limiting the right to peaceful enjoyment of one’s possessions is more difficult under the European Convention than limiting the right to express one’s religion because the former requires a public interest element while invoking the rights of others can be sufficient to limit public displays of faith.

It has become clear that the European Convention on Human Rights was not created with Indigenous peoples, and their special relationship to the natural environment, in mind. The Convention conceives freedom of religion as a human right. Its exercise involves something, which is done actively - believing, praying, acting in certain ways or refusing to act in others.

The ECHR fails to provide protection for the sacred,<sup>5</sup> (Pulkkinen 2005b: 32) or the sacredness of locations, if their sacredness is not evident. Praying in a specific

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<sup>5</sup>The Sámi languages use the words *áiligas* and *bassi* to refer to the sacred. The latter meaning “refer[s] to a more intimate, clan- or family-based kind of worship”, in particular in the context of a *sieidi*.



location might be protected but the location as such might not enjoy protection if it is not clear that it is a place of worship. This limits the possibility for Sámi families to restrict outside access to their sacred sites. For example under the aforementioned everyman's right, anyone could access a Sámi sacred site – potentially without any awareness of its importance to the local people. There are precedents for religious usage rights for state-owned areas elsewhere in Europe. After the invasion of Germany by the Napoleonic forces in the early nineteenth century, large parts of property owned by the Church were taken over by the authorities. To this day, there are still a number of church buildings in Germany, which as a result of this history are owned by the state and not by the religious community which uses the building (DBK 2003: 3) In these cases, the religious community in question has a usage right for religious purposes. (ibid.) Although the location of many Sámi sacred sites is publicly known, this model is not easily transferable to the Sámi sacred sites. The very personal, intimate relationship between the individual worshipper and the site, leads to an interest in preserving the secrecy of the location of such sacred sites in many instances. While a church building and the plot of land on which it is located are usually clearly defined in terms of their geographic location and space, it is fundamental to the essence of the Sámi sacred site that its location not be known to outsiders. Therefore, not having ownership of the land within the meaning of Article 1 of Protocol 1 to the ECHR is a greater disadvantage for Sámi families than it would be for other religious communities which could at least negotiate for usage rights with the State, when the State owned the property where a religious site was located. Essentially, in such cases both parties could simply use existing private law instruments to regulate the use consensually. This option is not available to the Sámi without revealing the locations of their sacred sites.

At the end of the day, in this case human rights law is not as sharp a sword as one might have hoped it to be from the perspective of indigenous groups. From the perspective of indigenous peoples such as the Sámi, the ECHR does not provide adequate protection for sacred sites. In this case it is the rights of others, which are a potential obstacle to the full realization of Indigenous rights, highlighting the need for further work in order to reconcile Indigenous interests with the rights of others.

### ***2.2.3 Shortcomings of Existing Approaches to Freedom of Religion***

The way in which the Sámi and other indigenous peoples relate to sacred natural sites is fundamentally different from the mainstream approach in international law, which is based on a localized understanding of religious practices which relates to man-made constructions, in particular buildings, such churches, synagogues, mosques, temples etc. But this is only part of the problem. From a legal perspective, the entire approach of modern human rights law can make for an uneasy fit when it comes to indigenous peoples:

Some of the difficulties in finding protections for Indigenous sacred sites stem from the larger framework of freedom of religion analysis within the Western legal tradition and the international human rights regime affected by it. The legal guarantee of freedom of religion developed out of a particular period in European history: the Peace of Westphalia and western European attempts to mitigate conflict between warring religious groups following the 100 Years' War. Freedom of religion has since become an essential human right protected in international instruments and national constitutions. (e.g., Fox 2008, analyzing the official treatment of religion in 175 states and noting only a small number not offering constitutional protection to religion.) Current human rights analysis, however, has largely interpreted freedom of religion as an individual right that protects personally-held beliefs recognized as religious beliefs and, to some degree, an individual's right to manifest those beliefs. This conception does not easily protect collective forms of spirituality or forms of spirituality differing from organized religions.

Benjamin Berger has argued that the Western human rights approach to freedom of religion has largely been based on liberal individualism, which raises problems even for dealing with religions that are inextricably intertwined with culture, including Judaism (Berger 2007: 310 et seq.)<sup>6</sup> The judicial struggle over analyzing harms against Judaism in relation to racial/ethnic discrimination or under freedom of religion analysis illustrates this point, as do questions that have gone before courts on Jewish membership rules (Swartz 2010: 229).

Scholars like Kuppe (2009: 61), Beaman (2002: 144), and van Niekerk (2007: 36 et seq., 40 et seq.) have rightly argued that the individualistic manner of framing religious freedoms combined with cultural biases in favour of dominant, traditional religions have led to judicial interpretations of freedom of religion that have been less helpful for non-majoritarian religions generally. The United States Supreme Court's well-known decision in *Lyng v. Northwest Indian Cemetery Protective Association* (Lyng) illustrates the point. The claimants attempted to use the Free Exercise clause to prevent forestry and road construction from being permitted through a traditional religious site within a forest. (ibid.:442 et seq.) The Court noted the "grave"(ibid.:451) impact on Indigenous religious practices, but it held that "whatever rights the Indians may have to the use of the area, [...] those rights do not divest the Government of its right to use what is, after all, its land", (ibid.:453) dismissing the Free Exercise claim.<sup>7</sup> (see ibid.:449) In a dissenting opinion, Brennan J. argued that Indigenous spirituality was conceptually different and that "the area of worship cannot be delineated from social, political, cultural, and other areas of Indian lifestyle." (ibid.:459 et seq.) He rejected the majority's holding that "government action that will virtually destroy a religion is nevertheless deemed not to 'burden' that religion." (ibid.:472) Kuppe analyzes the case as demonstrating that in the eyes of a Western court, a religion itself is not threatened if the existence of a sacred place is threatened. (Kuppe 2009: 62) While the overall existence of a

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<sup>6</sup>Although Berger is writing in a Canadian context, his claim is not necessarily restricted to Canada.

<sup>7</sup>This was based partly on a distinction between direct coercion and indirect interference.

religion which uses thousands of man-made (and hence reproducible) sites might not depend on the existence of a single site, the situation is different when it comes to indigenous sacred natural sites. A Sámi sacred natural site cannot be made. This is an issue which affects many indigenous peoples: the relationship, spiritual or otherwise, is between the people and the individual members of the people and specific locations. Sacred land cannot be exchanged for other land once it is lost. The sacrality of something which can be owned is an issue which is not easily grasped by the law.

In addition, the community-component of indigenous religiosity is not necessarily comparable to the Western approach to freedom of religion. While also used collectively, in most Western jurisdictions, religious freedom has typically taken the form of a freedom enjoyed by an individual believer. Canada, as just one example, has taken this tendency particularly far in recent years. In the *Amselem* case in 2004, (*Amselem*) the Supreme Court of Canada enunciated an approach to freedom of religion cases based solely on non-trivial interference with an individual's sincere belief that showed a nexus with religion, specifically avoiding any enquiry into the belief's actual connection with a religious group so as both to protect the individual who might differ from a group and also so as to minimize the courts' enquiries into private matters. This is not to say that there can never be protection of a religious group. However, often, the group's claim relies either upon assertion of the claims by individuals or assertion of a property-type interest. The latter possibility arose, for example, in the context of the claim of a Congregation of Jehovah's Witnesses against the city of Lafontaine, which also went before the Supreme Court of Canada in 2004. (*Congrégation*:48) The Court referred to the claim as an "individual" claim in relation to procedural fairness in zoning issues, even though it was clearly a claim by a religious community, and only property-type interests then protected the religious community.

The widespread adoption of proportionality analysis in various constitutional systems means that the assertion of an individual right is up against any justification that can be offered on the basis of more widespread societal considerations. The Supreme Court of Canada's more recent decision in *Hutterian Brethren* (Alberta) serves as an example of the point. In the case, certain groups of Hutterites with a particularly stringent interpretation of a prohibition on graven images held a sincere belief against having their photographs on their driving licences but the majority of the Supreme Court of Canada effectively put each individual believer's claim up against the security interest asserted by the State in having a uniform system of identification. The majority ignored the community-undermining effects of its decision not to require the accommodation. An individual asserting rights in relation to a sacred space will be in no better position against any broader societal use of the space., Furthermore, property rights that might protect the constructed sacred spaces of Western religious communities will often provide no protection in the context of sacred natural spaces, which are not supported by Lockean concepts of property.

The individualized focus present in freedom of religion analyses is evident in Article 18 of the International Covenant on Civil and Political Rights, which focuses very much on the dangers of coercion of the individual, albeit with a limited

reference to freedom to manifest religion “either individually or in community with others” (ICCPR). However, in the Indigenous context, the Declaration on the Rights of Indigenous Peoples has now seen the adoption of text that reacts to this tradition (UNDRIP).

In particular, it is worth comparing the text of Article 12 of the Declaration to traditional protections of religious freedom. The first component of Article 12, “the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies”, (ibid.) corresponds roughly to the traditional human rights conception codified by Article 18(1) of the International Covenant on Civil and Political Rights, whose central guarantee is “the right to freedom of thought, conscience and religion” and resulting “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”. (ICCPR) Article 12 of the UNDRIP differs even in the parallel portion of the text, which does not put the traditional emphasis on individual choice concerning religion and incorporates different idea of “spiritual and religious traditions, customs and ceremonies” in lieu of “conscience and religion”. (UNDRIP).

However, Article 12 of the UNDRIP goes farther than these smaller differences and actually goes on to add other key rights, including “the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains”, (ibid.) thus placing a specific emphasis on sacred sites and on burial sites in a manner that implicates specific territorial sites., This makes protection for Indigenous religion and spirituality intertwined with land and resource issues in a manner not typical of other religious freedom claims. The Declaration on the Rights of Indigenous peoples calls human rights jurisprudence to a new approach.

In noting this, we do not claim that all Indigenous spiritual traditions are inherently collectivistic. Indeed, as noted earlier, the use of some sacred natural sites is quite individualized. Our claim, rather, is that the UNDRIP recognizes religious and spiritual rights with a text differering from many historical human rights approaches both in having some more room for collective aspects and also in having greater room for inherent connections of religion and spirituality with land.

### 2.3 Emerging Models

Within Western legal traditions, there is an emergent possibility of constructing a different narrative of freedom of religion. Some of these possibilities make room for claims by religious communities themselves, and there are already traces of this possibility in some jurisprudence. In the context of the ECHR, the European Court of Human Rights’ decision in the 2002 case of the *Metropolitan Church of Bessarabia v Moldova* provides an example of the Court considering the religious claims of a community. The Court noted that: “the autonomous existence of

religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords". (Metropolitan:para. 118) Citing this case in an early 2015 labour rights decision, the Supreme Court of Canada has also now signaled its potential support for the collective rights of religious communities. (Ontario:para. 64) That recognition is not necessarily of organized religions but of communities of individuals engaged in religious or spiritual practices.

In New Zealand, as discussed by scholars like Adhar (2003: 632–33) there are court decisions showing a sincere attempt to respect traditional Maori relationships with the land, and one may note in particular the decision of the Environment Court in the *Beadle* or Northlands Prison case, (*Beadle*) in which the Court recognized a Maori "cultural and traditional relationship" with certain sites, such as two geothermal ponds, (*ibid.*:para. 462) and called on the government to show respect for that relationship in its approach to development in the region. Here, there is respect for a religious or spiritual connection with land.

Adopting a more collective approach and then looking to the kind of group interest at stake in different scenarios permits a more genuine engagement with the different sorts of conflicts that can arise in relation to sacred natural sites (e.g., Newman 2011). For example, scholarly writing on collective rights has suggested that it then becomes possible to consider the nature of the group interests at stake and identify a Native American spiritual interest as taking priority over the recreational interests of rock climbers in the same site. (*ibid.*) Matters are more complicated, though, where there are sincere spiritual interests on both sides, as would be the case if the rock climbers were replaced by sincere New Age spiritualists. Or, one confronts challenging scenarios, such as where Hopi artefacts are located in unexcavated sites on Navajo lands, with the Navajo arguing against excavation based on the sacredness of the lands but the Hopi seeking excavation to access their artefacts. (*ibid.*)

On these sorts of challenges, an approach with room for collective rights allows us to identify some challenging conflicts where they arise, leaving us to grapple it as best we can. This is not simple but it may well be preferable to trying to force some religious claim into an individualistic framework, such that they then lose almost automatically to the societal justifications thrown up against them. Writing on collective rights shows that recognizing collective rights need not interfere with individual rights, so long as the collective rights at issue meet requisite tests of serving the members of their communities and of showing mutual respect with other groups' equally mutually respectful rights claims. (cf. *ibid.*<sup>8</sup>).

The challenge of seeking protection for sacred natural sites becomes a sort of test question for analyses of religious freedom, one that traditional Western individualistic accounts struggle to deal with. The consequence has long been the

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<sup>8</sup>The Supreme Court of Canada has recently stated that "[r]ecognizing group or collective rights complements rather than undercuts individual rights" (Ontario:para. 65), although without offering a full theoretical explanation.

worse for sacred natural sites. Today, even in a secular age, there is an increasing recognition of what is being lost. Perhaps we can predict in the near future that this awareness will make things not so much the worse for sacred natural sites as so much the worse for incomplete Western accounts of freedom of religion. Accounts of freedom of religion falter if they do not make room for the sacred. Developing strands within freedom of religion analyses, combined with the real potential in the new text of the Declaration on the Rights of Indigenous Peoples, open new hope and possibilities for approaches to freedom of religion better suited to protection of sacred sites than in the past.

## 2.4 Conclusions

Regional human rights conventions have the benefit of usually being more accessible to local legal counsel than global instruments. However, when it comes to Indigenous sacred sites, regional human rights documents generally suffer from two major shortcomings: (i) they tend to overlook Indigenous peoples in part because they were drafted at a time when States sought to assimilate and integrate Indigenous peoples into dominant society; and (ii) the approach to freedom of religion and its relation to other rights is skewed towards forms of worship which are associated with settled rather than nomadic communities.

In this chapter, we have shown how Indigenous rights in relation to sacred sites have often sat uneasily in regional human rights instruments, notably the IACHR and the ECHR. The challenges stem from a broader Western approach to freedom of religion that made its way into the ICCPR as well, with freedom of religion being framed in quite individualistic ways. Developments in recent years, however, offer hope that law can begin to recognize the sacred and can protect sacred spaces more effectively than human rights law has in the past. It is the case, for example, of the IACHR jurisprudence, where protection of sacred sites made its way through the protection of the right to property of Indigenous communities. Through its jurisprudence, the Inter-American Court gave emphasis to the role sacred sites can have in shaping the relationship between the Indigenous peoples and their ancestral land, making it a relevant element for the assessment of the violation of the right to property but also for the protection Indigenous peoples' cultural identity.

In this context, the UNDRIP's reinterpretation of freedom of religion stands as an important moment, along with other moves toward more collective interpretations of freedom of religion.

The UNDRIP's article on religion and spirituality embraces a broader conception than Western-derived human rights approaches to religious freedom traditionally have. Implementation of the UNDRIP is one obvious recommendation, albeit one framed too generally to be meaningful. To be more specific, in this particular context, the UNDRIP's interpretation on freedom of religion must be infused into domestic and regional interpretations of freedom of religion in the context of claims concerning Indigenous sacred sites. If the UNDRIP does not directly

apply, and existing instruments have older descriptions of freedom of religion, their interpretation can nonetheless be updated. Between UNDRIP and gradually developing conceptions within domestic legal systems more generally, there is real hope for the law to develop so as to offer stronger protections to Indigenous sacred natural sites.

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# Chapter 3

## Harmful Investments and Protection of Sacred Spaces – Realisation of Indigenous Collective Rights in the Northern and Arctic Regions

Robert Rode

### 3.1 Introduction

The inextricable linkages between issues of sovereignty and sovereign rights in the Arctic and Inuit self-determination and other rights require states to accept the presence and role of Inuit as partners in the conduct of international relations in the Arctic. (ICC 2009, Art. 3.3)

This quote from the “Circumpolar Inuit Declaration on Sovereignty in the Arctic” adopted by the Inuit Circumpolar Council in 2009 underpins the growing awareness of Indigenous Peoples of promoting new partnerships that does not view indigenous rights to self-determination anymore as detached from shaping political relations and economic development. Disputes over ownership, use and conservation of their traditional lands and territories have been overshadowed for decades and centuries by the negative impact of energy development in the Arctic and circumpolar North. Particularly since the nineteenth century Indigenous communities in the Arctic like the Inuit in Greenland, Canada, Alaska, and Chukotka experienced long-lasting impacts on their livelihoods, well-being, cultures and languages as a result of the expansion of extractive industries and resource development in the circumpolar region.

Since the 1980s, the investment and development activities of extractive and infrastructure industries particularly in the circumpolar North received increased attention by organised civil society and the media due to questionable acquisition of indigenous territories and the destruction of their livelihoods. These issues have been brought to the attention of international organisations by indigenous rights activists, other civil society organisations, and researchers. Furthermore, these experiences have been at the heart of significant transformations in the UN human

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rights agenda, which is more and more aware of that the UN system as a whole needs to aim at strengthening indigenous peoples' right to self-determination. Since the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, however, the question of self-determination remains disputed amongst those who seek to bring the *Declaration* forward in terms of a new "remedial regime" (Anaya 2009: 190), which has been established on the grounds of historical and present day violations of indigenous peoples' right to self-determination, and those who see this instrument as a peril to the authority of formal boundaries of statehood. What is more, the opposition to the notion of indigenous peoples' right to self-determination brings misleadingly to the fore political conceptions that understand self-determination as exclusively intertwined with modern nation-statehood. James Anaya has aptly shown that this critique tends to a false impression of self-determination commonly conceived retrospectively in the process of decolonisation, which in turn was a reaction to the decay of European colonial rule during the first decades after World War II:

This framework of thinking obscures the human rights character of self-determination, and it is blind to the contemporary realities of a world that is simultaneously moving towards greater interconnectedness and decentralization, a world in which the formal boundaries of statehood do not altogether determine the ordering of communities and authority. [...] [This] linkage between self-determination and independent statehood is based on a misunderstanding of the normative grounds for the process that led to the decolonization of African and other territories in the 20th century. Invoking the principle of self-determination, the international community developed particular prescriptions to do away with government structures of a classical colonial type, prescriptions that, for most colonial territories, meant procedures resulting in independent statehood. (Anaya 2009: 189)

Against this background the complexities of harmful investments by extractive industries cannot be reduced to merely technical matters. Mark Nutall brings to our attention the significance of the Arctic region concerning energy development on a global scale in the contemporary world (Nutall 2010). Nutall shows that the persistent view of the Arctic and the circumpolar North as energy frontier still influences the images of and attitudes towards northern indigenous communities and their lands and territories. While the resolution of conflicts in the Arctic and circumpolar North is rather conceived in terms of negotiating with indigenous communities, this view disregards that the realisation of indigenous rights has only been achieved partially because of exclusive technical or utilitarian approaches to indigenous participatory demands. Deficient global institutional factors play an important role in the reproduction of harmful investments as the case of oilsands development in Alberta has shown. The responsibility for the realisation of indigenous rights and the protection of their sacred spaces therefore relies on effective social institutions in an era of global interdependencies, which can be understood as a transnational social field. Thus, for Anaya the *Declaration* embodies a shift towards the alignment of indigenous rights with the overall human rights agenda of the UN and its Member States:

By its very nature, the *Declaration on the Rights of Indigenous Peoples* is not itself legally binding, but it is nonetheless an extension of the commitment assumed by UN Member States [ . . . ] to promote and respect human rights under the United Nations Charter, customary international law, and various multilateral human rights treaties [ . . . ].

Whatever its precise legal significance, the *Declaration* embodies a common understanding about the rights of indigenous peoples on a global scale, upon a foundation of fundamental human rights, including right of equality, self-determination, property, and cultural integrity. (Anaya 2013: X)

This Chapter will explore the potentials and limits with regards to the realisation of indigenous peoples rights in the Arctic and circumpolar North. More specifically, the attempts of aligning nature conservation and the principles of protecting indigenous peoples' rights provided by the UNDRIP will be analysed in the context of the implementation of the Convention Concerning the Protection of the World Cultural and Natural Heritage – commonly referred to as the UNESCO World Heritage Convention. UNESCO as *the* specialised agency of the UN concerned with the promotion of cultural diversity and policies that aim at strengthening the role of culture in development process worldwide has welcomed the adoption of the UNDRIP and also emphasised the role of indigenous peoples in the implementation of its programmes and conventions.<sup>1</sup> However, UNESCO's role has also been criticised due to complaints by various organisations about human rights violations (IWGIA 2012: 5). These complaints and criticisms reflect, nonetheless, the growing concern amongst UNESCO and heritage professionals with human rights related practices in the World Heritage system. Stefan Disko has stressed the relationship between human rights-based approaches in the context of designating and managing World Heritage sites in the realization of indigenous peoples' rights:

The application of a human rights-based approach would help indigenous peoples living near World Heritage areas to exercise their right to maintain and develop their cultural heritage, traditional knowledge and cultural expressions, and their right to development in accordance with their own aspirations and needs. (Disko 2012: 18)

Disko's emphasis on human rights-based approaches in the context of the World Heritage system is particularly relevant regarding the realisation of indigenous rights since UNESCO understands its purpose as specialised agency within the UN system in connection with promoting peace and security via education, science and culture. Furthermore, article 1 of UNESCO's constitution (1945) highlights the critical obligation of the organisation to promote human rights. Against this backdrop, this study will seek to explore an analytical framework that explains how claims for human rights-based approaches change the World Heritage system as a result of complex interactions and entanglements between indigenous peoples and heritage professionals. Whereas the implementation of the UNDRIP in the context of the World Heritage system is still insufficient, World Heritage sites may

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<sup>1</sup>Message from Mr. Koichiro Matsuura, Director-General of UNESCO, on the occasion of the International Day of the World's Indigenous People, 9 August 2008: <[http://portal.unesco.org/culture/en/ev.php-URL\\_ID=37756&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=37756&URL_DO=DO_TOPIC&URL_SECTION=201.html)> [Accessed 30 January 2015].

play an important role to help indigenous communities to protect their lands and territories, and subsequently their cultural expressions from development pressures from extractive industry activities. What is more, the increased awareness of the importance of indigenous sacred spaces may broaden the scope of the World Heritage system as a whole. As analytical tool this study will employ world polity theory, because as a social theory it draws attention to the importance of “normative globalization” (Barthel-Bouchier 2012: 34), which does not reduce the understanding of globalisation as a social phenomenon to international politics or global trade. Particularly with regards to indigenous peoples’ rights in the context of the World Heritage system world polity theory may point to how global models of conservation, nature, and ‘indigeneity’ increasingly determine the capacities of local communities that also stimulate institutional transformations in the human rights regime.

### 3.2 The Transition Towards United Nations Standards

Research on human rights in social sciences increasingly intends to understand the dynamics of institutionalising them globally or internationally as a phenomenon of world society (Heintz et al. 2006). Expectations expressed by transnational civil society organisations influence increasingly the United Nations (UN) human rights discourse directed at nation-states, and this form of global interplay between activists, UN human rights observers and state representatives has triggered ‘inclusive’ processes of introducing new areas of interest and groups into the human rights discourse. Research in social sciences on human rights still lags behind these developments in terms of a theoretical systematisation. The case of indigenous peoples’ rights represents the challenges and variety of disciplinary positions to develop a distinctive theoretical and holistic perspective on human rights in social research. To a certain extent academic scholarship in this context appears to be confined by a rather state-centric perspective on the UN human rights discourse. However, recent developments in the area of indigenous rights manifest complex entanglements between indigenous communities, civil society, experts and the UN as a form of transnational political communication.

Through the adoption of the UNDRIP by the General Assembly (GA) in September 2007 a process of intensive negotiations between human rights experts and advocates, indigenous peoples’ representatives, and member states’ representatives was concluded after almost 25 years. The adoption of the *Declaration* reflects growing global normative ambitions by giving indigenous issues more relevance within the overarching framework of the UN human rights agenda, and by altering the political process in this field through communication. In order to acknowledge the importance of ethnic, religious, and cultural identifications of norms and the impact of the constantly growing number of civil society organisations in this field academic scholarship in social sciences accepts the notion that normative ambitions govern also global politics (Weiss et al. 2004: 130). As a result, the location of

politics cannot be understood anymore as a concept that emerges primarily within the context of the nation-state (Wendt 2011: 2). The emergence of the global indigenous movement and, more specifically, the process of the composition of the UNDRIP exemplifies how networks of non-state-actors increasingly influence the evolution of international human rights instruments and, more broadly, the role of norms and identity in international and transnational patterns of interaction and political communication. Rhiannon Morgan argues that through the increased availability of new information and communication technologies globalisation has created networking opportunities for indigenous peoples worldwide, and these new opportunities of exchanging information and views have facilitated to a large extent the emergence of a global indigenous movement (Morgan 2011: 63). Morgan also highlights the role of this new transnational social movement with regards to the shifting global attention to new articulations of the human rights discourse:

Indigenous rights claims challenge legal meanings that attribute rights to individuals rather than collectives, and are a dramatic example of the way in which new rights claims call into question long established understandings of the nature of rights [ . . . ]. (Morgan 2011: 70)

Morgan's perspective on the global indigenous movement also refutes the assertion shared by scholars of world polity theory that globalisation allows the formulation of human rights standards via the UN system in terms of the fundamental rights and freedoms of the individual (Meyer 2009). It is important to understand the impact of indigenous criticism on the human rights discourse in general, and more specifically on the instruments of the UN system. Therefore, academic scholarship needs to develop new perspectives on the realisation of indigenous peoples' rights that does not reduce political and normative contention to the dichotomy between indigenous peoples and the nation-state. World polity theory demonstrates in this specific field how globalisation has become an arena for interactions and entanglements for indigenous peoples, because transnational movements create new spaces of normative ambitions challenging the profound notion of sovereignty of the international system.

Despite considerable improvements regarding their social and cultural rights as well as livelihood indigenous peoples still remain amongst the most vulnerable communities in the world today due to the continuous experience of historical patterns of colonization and subsequent deprivation of their lands and territories (Barkan 2000: 165). In the post-World War II era indigenous peoples were regarded as hindrances to development and both, governments and international organisations, formulated policies aiming at the assimilation and integration of their communities into a national society. By providing indigenous leaders and community representatives with an arena for negotiations to regain the right to self-determination, the negotiation process of the UNDRIP and its subsequent adoption by the GA also aided to bridge the "paradigmatic gulf" (Morgan 2011: 2) between the "three generations of human rights" (Weiss et al. 2004: 141–147), mainly between the traditional liberal vision on human rights emphasising individual civil-political rights and the claims of collective cultural rights in terms of self-determination and autonomy for culturally defined groups. The objective of

the *Declaration* is to enact the rights of indigenous peoples, and to empower their communities by exercising more autonomy over any sort of project affecting their lands and territories, which is underpinned by the concept of free prior informed consent (FPIC) within the UNDRIP (Masaki 2009: 69). In this regard, article 32(1) states that “[i]ndigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources“ (UN 2007).

While the issue of protecting indigenous rights arose in international relations in the 1930s within the International Labour Organisation (ILO), the UNDRIP is regarded as the first international instrument that seeks to overcome the paternalistic and integrationist goals of previous international approaches to indigenous peoples’ rights. What is more, it is the only comprehensive collective human rights instrument that is recognised by the UN (Morgan 2011: 17). During the process of composing the draft of the UNDRIP states and indigenous peoples’ representatives were polarised over the right to self-determination starting with the objection by states’ delegates to the use of the term ‘peoples’ in the title of the document. Although the final document adopted by the GA in 2007 contains the right to self-determination in article 3, a provision in article 46(1) was introduced in response to those concerns that guarantees the territorial integrity of UN member states under the UN Charter.

### **3.3 The Realisation of Indigenous Rights in the World Heritage System**

Despite the constraints to the right to self-determination that were introduced into the final document the UNDRIP constitutes today a reference point to design and implement programmes and policies within the UN system in cooperation with and for indigenous peoples. The principal UN mechanisms specific to indigenous peoples have called on UNESCO and the World Heritage Committee to take action in order to revise the procedures of the Convention concerning the Protection of the World Cultural and Natural Heritage (1972) (IWGIA 2012: 5). Against this backdrop these UN bodies have called on the World Heritage Committee to take measures that ensure the effective participation of indigenous peoples in the nomination, protection and management of World Heritage Sites consistent with the UNDRIP and its key feature free, prior and informed consent (FPIC).

UNESCO’s World Heritage Committee’s Operational Guidelines as core instrument for the implementation of the World Heritage Convention, however, still do not include the indigenous FPIC in the nomination process despite the fact that 2007 the Committee added the strengthening of the role of communities in the implementation of the Convention to its Strategic Objectives, which were originally adopted through the Budapest Declaration in 2002 (Disko 2012: 24; Hales et al. 2013: 271). Furthermore, the issues deriving from the incorporation of FPIC remain

unresolved since it is up to the World Heritage Committee as intergovernmental body to determine to which extent indigenous peoples may engage in participatory processes and to agree on ‘procedures’ that ensure indigenous consent when parts of their lands and territories are affected by World Heritage nomination and management processes. As a result, a number of directives seek to give guidance on indigenous consent in the management of protected areas, and heritage experts have started to formulate recommendations in order to increase indigenous participation in World Heritage nomination and management procedures (Disko 2010, 2012; IWGIA 2012). It also reflects an increasingly dynamic debate on the understanding of FPIC in the context of the UN human rights discourse and shows how indigenous peoples’ representatives, human rights experts and various UN bodies attempt to address the uncertainties that are surrounding the meaning of this principle. In particular, the interaction between experts and indigenous representatives, human rights experts, heritage professionals and state representatives in the revision of the implementation of the World Heritage Convention demonstrates that the future development of FPIC in the aftermath of the declaration cannot be reduced to a “common practical understanding” (Barelli 2012: 2) of the principle and its major elements, but will rely on the constant social construction of human rights by non-state actors.

The lack of respecting indigenous peoples’ participatory rights, nevertheless, gave reason to continuous criticism of the nomination procedures of World Heritage sites. In fact, the calls for revision of the *Operational Guidelines* that regulate the implementation of the World Heritage Convention not only bring the demands for ensuring effective participation of indigenous communities to the fore, but they also contain general normative claims for cultural integrity expressed by indigenous peoples and heritage professionals (Disko 2012: 24). Jérémie Gilbert argues that the realisation of indigenous rights is obstructed when land rights are not recognised. What is more, Gilbert highlights that UN bodies have identified the connection between land rights and indigenous cultural heritage, because here heritage is inextricably connected with the cultural expressions in relation to the use of a particular territory (Gilbert 2014: 56). Following Gilbert’s argument, various UN and regional human rights bodies have put emphasis on this connection in commenting on different multilateral human rights treaties. For instance, in commenting on article 27 of the International Covenant on Civil and Political Rights (ICCPR) the Human Rights Committee (HRC) underlined already in 1994 that:

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. (UN Human Rights Committee 1994, para 7).

The comment by the HRC also affirms Morgan’s argument that the concern for indigenous peoples’ rights may contribute to overcome the paradigmatic gulf between the three generations of human rights. Furthermore, the realisation of indigenous rights at World Heritage sites may bear innovative conceptions for

furthering the understanding the underlying principles of protection, conservation and use of cultural and natural heritage, because for many indigenous communities their notion of heritage includes different dimensions of tangible and intangible cultural values. It is necessary to understand that for indigenous communities this holistic conception of heritage is based on conceiving the interrelationship between their cultural expressions and their lands and territories. Therefore, conservation strategies for World Heritage sites that are inhabited by indigenous communities should aim at accommodating these holistic views of heritage that do not distinguish anymore between absolute notions of cultural and natural heritage or tangible and intangible heritage. According to Bas Verschuuren, researchers and nature conservationists have increasingly developed analytical frameworks that consider the reciprocity of biological (e.g. number of species) and cultural diversity (e.g. number of languages, cultural practices) as to measuring biocultural diversity, which in turn might be applied in nature management and conservation strategies (Verschuuren 2010: 67). Following the idea of bridging the nature-culture-divide in conservation, biocultural conservation approaches may develop conservation of indigenous cultural heritage further. Here, indigenous Sacred Natural Sites (SNS) as a relatively new phenomenon of nature conservation reflects the growing global concern for indigenous heritage protection that incorporates indigenous peoples' holistic vision of their heritage, which is essential to their cultural integrity.

Cultural integrity of indigenous communities in the Arctic and circumpolar North today is threatened by extractive and energy industry activities. The case of the Wood Buffalo National Park situated in the north-central region of Canada may point to the relevance of the growing concern with indigenous peoples' rights in the World Heritage system. The park was inscribed in 1983 on the World Heritage list for its biological diversity and it contains one of the largest fresh water deltas, the Peace-Athabasca-Delta. Indigenous communities, scientists and environmentalists have observed the drying up of the delta over the last decades, which is partly the result of the W.A.C. Bennet Hydroelectric Dam constructed in 1968. Furthermore, indigenous communities in the area are exposed to the enormous ecological impacts of industrial development in the region that contaminate the wetlands (Nutall 2010: 170). Due to their hunting and fishing activities their livelihoods and, consequently, their cultural integrity are at high risk. Following Verschuuren's notion of biocultural conservation approaches and Disko's claims for a revision of the procedures and standards of the World Heritage system may facilitate the development of specific human rights indicators for sites such as the World Buffalo National Park (Disko 2012). The monitoring of such sites would then have to include effective participation of indigenous communities and the measuring of the impact of development projects on their cultural integrity. In this regard, the World Heritage Convention could help indigenous communities more in protecting their lands and territories, and their cultures and heritage.



### 3.4 Conclusion

As shown, through its adoption by the General Assembly in 2007 the UNDRIP has become a beacon of protecting indigenous peoples' rights to self-determination. UNESCO as the UN specialised agency concerned with the promotion of cultural diversity and the respective bodies of the World Heritage system have stepped up their efforts in protecting indigenous peoples' rights. Although the implementation of the principles determined by the UNDRIP is still lacking a consistent revision of the procedures regulating the World Heritage Convention, effective indigenous participation measures that promote the recognition to their lands and territories bear the potential of counterbalancing the severe impact of energy and industrial development in the Arctic and circumpolar North. However, the case of the Wood Buffalo National Park World Heritage Site in Canada rather points to the persisting constraints to the realisation of indigenous collective rights. Through the recognition of the right to their lands and territories World Heritage sites that are inhabited by indigenous communities could serve as a protected area by law that protects their cultural integrity, which is a central feature of indigenous heritage. The holistic understanding of their heritage that overcomes the inappropriate separation between cultural and natural heritage or tangible and intangible heritage could further the general understand of heritage as the example of biocultural approaches of conservation to indigenous SNS have demonstrated. Despite the lack of implementing the UNDRIP in the context World Heritage Convention this study has shown that world polity theory as analytical framework helps to understand how models and approaches to nature conservation, heritage and indigenous rights diffuse worldwide through complex interactions and entanglements between indigenous peoples, researchers, and heritage professionals. It is because the dissemination of these models are not confined anymore by global relations between nation-states, so that globalisation despite the severe impacts of industrial and energy development has created new networking opportunities for the promotion of indigenous peoples' rights. Opposition and obstacles to the realisation of indigenous rights thus have to face the increasing normative demands altering the human rights discourse in general, and incorporating human rights-based approaches into the implementation of specific international instruments that concern indigenous peoples' rights to self-determination. Nevertheless, research in this field has to close the gaps in understanding the scope of the interactions and entanglements between indigenous peoples, heritage professionals and academic scholarship.

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# Chapter 4

## Arguments from Cultural Ecology and Legal Pluralism for Recognising Indigenous Customary Law in the Arctic

Dawid Bunikowski and Patrick Dillon

### 4.1 Introduction

The topic of this book concerns protection of sacred sites in the Arctic. To recognise indigenous customary law means to support indigenous customary protection of such sacred sites. It also implies safeguarding cultural heritage in the Arctic. Both legal pluralism and cultural ecology help us understand indigenous customary laws in the Arctic and why we should recognise them. The aim of this chapter is to explain the relations between cultural ecology and legal pluralism in making a case for the recognition of indigenous customary law in the Arctic. It is not about human rights or international public law. It does not deal with any substantial law. However, the implications of the ideas presented here concern constitutional law, cultural autonomy, political autonomy, international law, and the concept of sovereignty. The ideas refer also to the problem of ethos as the basis of every law and society.

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The contribution is cross-disciplinary, integrating cultural-ecological, socio-logical-anthropological and philosophical-legal perspectives. At the conceptual level, cultural ecology aligns strongly with the case for indigenous customary law, i.e. that indigenous peoples should have the right to their own autonomous law based on customary behaviours associated with their culture, social morality, tradition and the ways in which they protect sacred sites. The most important problem in implementing the thesis in practice concerns the fundamental ideas of ‘equality’ and ‘justice’: “It is not equal to treat some groups better (in terms of the law) than others, but it is justified to make it an excuse for some important historical reasons” (Bunikowski 2014a: 76, 84). This is where legal pluralism enters the argument.

In this chapter we set out frameworks for cultural ecology and legal pluralism which are seen as complementary at a theoretical level and which together provide a basis for making a case for indigenous customary law. The case is made primarily in the context of the Sámi<sup>1</sup> people of northern Europe but reference is made to the situation regarding the Nisga’a people in Canada where a different model of legal pluralism has been enacted.

## 4.2 A Cultural Ecological Framework

The standard view of cultural ecology is that it integrates biological and cultural processes in the study of adaptations of humans to their environment, where environment is taken in the broadest sense to include its psychological and social elements as well as the physical.<sup>2</sup> Put another way, cultural ecology is concerned with the reciprocal interactions between the behaviour of people and the environments they inhabit.

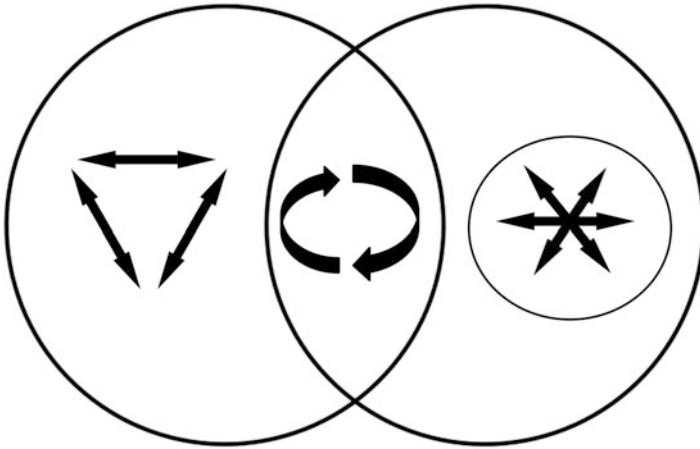
The standard interpretation has been developed by Dillon to encompass how people engage with their surroundings both ‘formally’, within local, national and

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<sup>1</sup>We use Sámi throughout the text except when we cite original documents of the United Nations, the Finnish Government, some indigenous declarations and some scholars where, variously, Sámi and Sámi are used.

<sup>2</sup>The term cultural ecology is attributed to anthropologist Julian Steward, see Steward 1955.

transnational legislative and organisational structures, and ‘informally’ through their day-to-day activities (see, for example: Dillon 2008: 105–118, 2015: 630–643). Dillon represents his interpretation diagrammatically (Fig. 4.1) as follows.



**Fig. 4.1** The cultural ecological dynamic I

The three intersecting lines forming a star shape in the right hand side of the diagram represent formal interactions and transactions between people and their environments. Enclosing the star within a circle signifies that the interactions and transactions take place within a given ‘context’. Behaving within a context is a ‘relational’ process<sup>3</sup>; i.e. it is informed by previous experiences and accumulated knowledge. Relationally dependent behaviour enables distinctions to be made between one situation and another.

But something else is happening as individuals interact with their environment. In addition to the relational context, unique, personal contexts are simultaneously created. These additional contexts are a property of the uniqueness of individual moments; they are literally constructed out of the ways in which individuals engage with the affordances of their environment as they exist at that time: the individual, the environment and the context all co-construct each other. This is called a ‘co-constitutional’<sup>4</sup> process to distinguish it from the relational process. The three lines

<sup>3</sup>Relational, derived from: (i) ‘relation’ meaning belonging to or characterised by; and (ii) ‘relative’ meaning compared to.

<sup>4</sup>Co-constitutional, derived from ‘constitute’ meaning the whole made from its contributing parts where all of the parts are actively involved in the process. In its cultural ecological use the word works well enough in English, but in some languages it has no equivalent meaning. In the arguments used in this paper, care must be taken not to confuse the cultural ecological use of [co-]constitutional with the word ‘constitutional’ as it is commonly used in law, i.e. as a decree, ordinance, or regulation usually emanating from a higher authority. In cultural ecological terms, a regulation emanating from a higher authority would be ‘relational’; a co-constitutional regulation would be one originating from the people as a whole.

forming a triangle in the left hand side of the symbol represent the co-constitutional process: individual, environment and context co-constituting each other. As soon as co-constitutional interactions occur they immediately interact with relational constructs, in other words people immediately start to rationalise and conceptualise what they are doing. By definition, the co-constitutional exists only 'in the moment'; it is fleeting, but its influence can be profound. Creativity, improvisation, ingenuity, insight, etc. typically occur 'in the moment' or in the 'flow'. So too, many of the decisions that indigenous people have to make as they negotiate sometimes hostile environments and derive a living from them.

In Fig. 4.1, the interrelationships between relational and co-constitutional contexts are shown by enclosing the symbols for each process in circles and then overlapping the circles. But the relationship is more than one of overlap. The relational and the co-constitutional are continually re-structuring each other in ways that are themselves relational and co-constitutional! This is the magic of how people interact with their environments, the reciprocal relationship between spontaneity and rationality. It may even be a defining characteristic of what it is to be human. In Fig. 4.1, reciprocity is represented by two mutually referring arrows placed in the intersection of the two circles. The diagram can now be labelled as in Fig. 4.2:

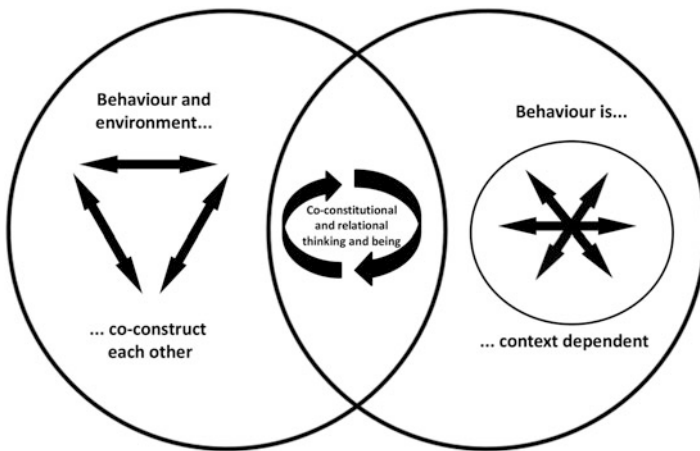


Fig. 4.2 The cultural ecological dynamic II

Within a given social group or community, the collective and cumulative decisions that people make in the moment as they go about their daily activities often become associated with certain places. Over time these places may accrue some collective significance or special meaning. Through such processes everyday activities interweave with accumulated knowledge: stories are told, traditions develop. The stories and traditions are more than just narratives and routine

practices; they embody collective understanding and create social cohesion. Thus every human situation is a cultural ecology, representing in the broadest sense transactions between the behaviour of individuals and the environments they inhabit. Social dynamics, customary ways of doing things, institutional structures, land-use systems are all cultural ecologies. And it follows that cultural ecologies can be modelled at scales ranging from the very local to the global where the models interface respectively with frameworks from environmental psychology, cultural anthropology and human geography.

### 4.3 Legal Pluralism

The phenomenon of legal pluralism is described by Griffiths (1986), Tamanaha (2008, 1993), de Sousa (1987), F. von Benda-Beckmann (2002), and Bunikowski and Dobrzeński (2009), and others (e.g. K. von Benda-Beckmann 2002; Galanter 1981; Teubner 1991–1992, who like de Sousa is sceptical towards independent legal orders that have no interconnections; Vanderlinden 1989; Macdonald 1998; but also some “old” positions are interesting in this context: Dickinson 1929a, b) as a situation in which there are at least two normative systems in the same social sphere, and there is no rule of recognition (in Hart’s sense; see: Hart 1961: 92–96) about which rule is more important and which rule to choose and apply (Bunikowski 2014a: 77). The theory of legal pluralism describes some tensions between laws: e.g. between state and unofficial laws, or between international law and domestic orders, and proposes models for resolving the tensions. Examples of such tensions are widespread (e.g. in Africa, North America, Latin America, Australia etc.) (Bunikowski 2014a: 77). Research in legal pluralism also analyses models of existence. Customary laws are recognised in the models.

In the case of legal pluralism, all rules that can be taken into consideration in a given case are *legitimate*, they are ‘equally’ important. Legitimacy may come from a legal system; more typically it is vested in traditions, long-standing customs, beliefs, or religion. In the words of the Italian philosopher of law Francesco Viola, legal pluralism is not “plurality *in the order*” but “*of the orders*”. Legal orders “compete and concur”, says Viola, in the regulation of a course of action or actions concerning social relations of the same kind. Legal pluralism is not about different normative mechanisms, which are applicable to the situation within the same legal system. In *one* order, all problems can be resolved following some hierarchy of sources of law, rules of precedence and rules of interpretation. In a *plurality* of orders, such a solution does not exist because it *must not* exist (Viola 2007: 109). Plurality throws up tensions between state-international, local-state, customary-state, religious-state, moral-state, professional-state laws etc. In a given case how should the rules concerning it be interpreted? Whose interests should take precedence?

The picture presented in textbooks for law students from the US to Europe is that there is only state law in a given country and that this is equal for everybody. Such a dogmatic theoretical position has arisen from twentieth century scholars subscribing to legal positivism. The ‘legal worlds’ that are a part of social life and in which we live are more complicated, with laws coming from different sources. Some examples: the laws of international sports associations (FIFA, UEFA), often run contrary to state laws and, paradoxically, in the name of ‘internal independence’, they do not recognise a state jurisdiction over domestic branches of the organisations. The same is true of the law of the churches and the codes of ethics of some professional associations, and of universities, employees, companies etc. But the concern here is with indigenous customary law where social or political pressures often determine what rule takes precedence, not the state laws.

#### 4.4 A Model Based on Cultural Ecology and Legal Pluralism

“All law begins with custom. Anthropologists know this...”, says David J. Bederman (2010: 3). This observation was made in the context of ‘primitive law’ and ‘preliterate culture’. Interestingly, Bederman distinguishes ‘binding customs’ and “mere habits of a group (or subgroup) in a particular society” (Bederman 2010: 4). The customary laws of indigenous peoples may have developed over centuries of adaptation through a continuous interplay between in the moment behaviours and established ways of doing things, as explained earlier in the section on cultural ecology. They are the basis of social order (which may also be called “ethos”) and may or may not be consistent with state law. Customs, religious beliefs, traditions, rules, social morality are often better regulators of human behaviour than state law. The laws of indigenous people are part of their cosmologies: like a circle, a customary rule comes from a tradition based on common long-standing beliefs and understandings of the world and of the universe. Karl Llewellyn observed that the Cheyenne of North America developed a well organised legal system in their community which enhanced their survival (Llewellyn 1940: 1400). He uses the concept *general ruling on the community*.

Experience teaches that customary laws are inseparable from indigenous peoples. They always produce customary laws that are oral, spoken, unwritten.<sup>5</sup> To destroy

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<sup>5</sup>Compare: Malinowski 1959: 10 (and n.). Bronislaw Malinowski, anthropologist/ethnographer, came to the idea that every society, irrespective of its stage of development in terms of achievements in science and technology, has its own rules of conduct that are developed in historical and real processes of relations between members of the group concerned. This is a customary law, and the legitimacy of such law is very strong because behind it is a long-standing custom, tradition, religion, way of life, each of which is sacred. Every society respects values like marriage and family, but in different ways. According to Malinowski, law as a tool is universal, but its forms are peculiar in many cultures. For Malinowski: (1) it is not true that indigenous societies have no law at all; and (2) it is not possible to describe their legal systems by using Western concepts and methodologies. For him, law as a phenomenon is also about mutual relationships between persons with duties and obligations based on the principle *do ut des*. This idea sheds light also on Western



this idiosyncratic link is to destroy indigenous cultural heritage. There is something intrinsic in the relations between customary behaviour and indigenous peoples that produce such laws. Unwritten legal rules in indigenous communities are as legitimate as written rules in state controlled communities. Indigenous customary rules are inseparable from cosmology, way of life, morality, beliefs, and traditions. The difference between law and other norms is that law always implies both respect and the possibility of enforcement or exclusion by a community.

Indigenous customary laws, like the cultural ecological relations outlined earlier, are based on the principle of reciprocity: a constellation of mutual relationships, obligations and duties among people in a given community. This is what Malinowski called the principle *do ut des*.<sup>6</sup> It is important that customary laws are consistent with indigenous people's psychologies and mentalities and their social and individual values because the laws are a result of adaptation to the environment, to cultural, biological, physical, and geographical circumstances. Western law does not fit well with indigenous cosmology, because: (1) it comes from another culture, from 'outside'; (2) it is not based on indigenous understandings of the laws of nature; and (3) it is enforced by institutional state systems sometimes supported by violence.

A general model for customary law can be proposed<sup>7</sup>:

For non-indigenous people – state law (and international law as a part of the domestic order) – state courts and jurisdiction.

For indigenous people – indigenous/customary laws – indigenous courts and jurisdiction.

For conflicts between indigenous and non-indigenous – crown court(s).

The status of the indigenous would be double and *complementary*:

State status – a formal citizenship, but with an opt-out if an individual does not wish *by a declaration* to have such rights and duties.

Indigenous status – traditional and customary rights and duties following from membership or belonging to a given indigenous community/group.

The social spheres in which the indigenous and non-indigenous jurisdictions do not overlap are:

- Traditional way of life (e.g. nomadicism),
- Natural resources management (land rights, hunting grounds, fishing waters),

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concepts of law. Afterwards, the notion of legal pluralism moved from anthropology to the science of law. Ideas about indigenous customary laws were also developed by other scholars such as the anthropologist Claude Lévi-Strauss (especially, in Lévi-Strauss 1948a, b).

<sup>6</sup>See the previous footnote. In Latin: I give that you may give; I give [you] that you may give [me].

<sup>7</sup>In building the model, we have taken into consideration different experiences of co-existence of state law and customary laws in many regions of the world such as from Latin or North America, Africa, Asia, Pacific, the Caribbean region. We have analysed many particular systems, and been inspired by many authors: Guillet 1998; Besson 1999; de Sousa Santos 2006; Ray and van Rouveroy van Nieuwaal 1996; E. Soon-Tay 1984; Dundes Renteln and Dundes 1994; Minattur 1994: 539–567; Westermarck 1994: 572–573; Care and Zorn 2001; Ardito 1997; van Cott 2000; Ahrén 2004; Svensson 2002; Osherenko 2001: 695; Fournier 2006; Shadid and van Koningsveld 2005; Jok Madut Jok 2007; Johnson 2003; Meredith 2005; de Waal 2005. We also analysed ideas of legal pluralism in international law, for which the following are important: MacCormick 1993; Kennedy 2007; Sur 1997; Perez 2003; Schaefer 2006; Falk Moore 1973.

- Property rights (private and public rights),
- Status of indigenous peoples (rights and duties),
- Public infrastructure,
- Education,
- Internal security,
- Indigenous welfare,
- Courts,
- Provision of common goods like water, energy, electricity,
- Fiscal policy,
- External security,
- Foreign affairs.

(Some spheres – especially the last four are *external* and should belong to the state; the rest should be in the hands of the indigenous community).

The problem of retaining the ‘state’ welfare system in indigenous areas is too complicated to be addressed in this chapter. As a constitutional principle, it is not easily changed. But if the model above was implemented, then it would be possible to change the constitutional principle. Thereafter, a new order of indigenous welfare based on customary rules of cooperation, solidarity, organization, loyalty, and friendship would be possible, and the state system would be modified accordingly.

In this model it is assumed that indigenous people are able to define criteria that must be met if an individual is to be recognised as a member of the community.<sup>8</sup> However, this is nothing new. Differences in ethnic or state status are visible in every society: there are always citizens and non-citizens, members and non-members of a given state as well as of churches and other communities.

There would be separate courts and jurisdictions for indigenous and non-indigenous citizens of the same state, and a special court to resolve conflicts that may arise between representatives of the two different groups of citizens (a crown court).

In this model also, there is a meeting of cultures: in one city or village an individual might meet people who belong to different jurisdictions, who must apply to different courts, have different rights and duties, speak different languages (or even if speaking the same language have different legal status), go to different schools etc. Some of the people could go to state courts: e.g. high courts, Supreme Court, constitutional courts of international organisations. Some of the people, e.g. the indigenous, might not use these courts because their problems would be resolved in their community. This is real political-cultural autonomy and legal pluralism that respects multiculturalism, cultural diversity and indigeness.

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<sup>8</sup>The problem of jurisdiction (criminal and civil) over e.g. non-indigenous people, was also well put by Jacob Levi (Levi 2008, especially pp342–360). See also chapter 11, paragraph 19 of the Final Agreement: “Nisga’a Government will consult with individuals who are ordinarily resident within Nisga’a Lands and who are not Nisga’a citizens about Nisga’a Government decisions that directly and significantly affect them”.

The right to cross state borders would be integral to realising a traditional nomadic way of life in indigenous areas.<sup>9</sup> Indigenous customary law is a wide category: in some areas of the world, it is concerned much more with family matters (like in Latin America or Africa), but in other regions, the most important areas regulated by customary law concern natural resources management (like in Canada or Lapland), so the problems are relative to the regions and social spheres in which they occur.

The following example makes some analogies with this model: It is known that in a given society, there are both state and church or religious rules with many associated legal orders and choices e.g. marriage, where for example in Northern Europe some people choose Orthodox ceremonies, others choose Protestant ceremonies. People are members of many *legal* orders, moving from one to another. There is no drama or trauma in such moves, even if some tensions appear, and sometimes some orders are contravened. ‘Punishment’ in such cases is more *moral* than strictly legal. Anthropologically or sociologically, exclusion seems to be based more on matters of conscience and social stigmatisation in non-state legal orders than on conventional ‘criminal’ legal measures known from the state system. Such a structure respects diversity and plurality.

In this model, it is assumed that indigenous communities in their home territories may develop indigenous customary laws through their own legislation following its own customary forms. How might this work in practice?

## 4.5 The Case of the Sámi

In Finland, Sámi customary laws, which often concern matters of individual and social welfare, should be treated as part of Sámi culture and tradition. Many of the laws are based on rules concerning hunting lands, fishing waters, reindeer grazing and husbandry and are organised in *siidas*, (villages) (see more in articles by Ahrén, for instance, Ahrén 2004). Sámi right to land is still based on customary law, but this often conflicts with state law which determines policies on, for example, mineral extraction, oil, gas and energy (Bunikowski 2014a: 80, where there is a short classification of the conflicts between the two laws.). The philosophy of Sámi people respects interconnections between nature and human enterprise as a spiritual entity which is the basis of a traditional way of life founded on human solidarity

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<sup>9</sup>Compare: Ahrén 2004:111: “Non-Sámi societies should review all their legislation and eliminate unnecessary clashes with Sámi customary law. The proposed revision of the Norwegian Reindeer Herding Act, recognizing that the reindeer herding district and unit system conflicts with the Sámi customary *siida* system, can be viewed as a positive example in this regard. Similarly, present national borders disrupt Sámi customary land distribution law. The relevant countries should be able to open up their borders because it should be irrelevant to the non-Sámi peoples which reindeer graze certain part of Sápmi”.

and cooperation (for the detail see: Kulonen et al. 2005; Pennanen and Näkkäläjärvi 2003; Mustonen and Syrjämäki 2013). People are part of nature and must respect it, as reflected in gathering, fishing, hunting, and reindeer husbandry, and as implied in the dynamic of the cultural ecological framework, where day-to-day ways of engaging with the environment, of solving problems as they occur, interact with formalised understandings and established routines. Harmony between people and nature is as important as harmony between people in their communities and families.

Rules concerning hunting and fishing, reindeer grazing, living in the villages, forest or tundra, sacred sites, *sieidi* (shrines), divinities of nature, natural spirits and powers, are unwritten – they are both a philosophy of life and the law of custom. This way of life was compromised in the seventeenth to twentieth centuries when, in Fennoscandinavia, the Sámi system of rules and beliefs and the traditional way of life were brought under the jurisdiction of nation states which were founded on ideas of nationalism, development, colonialism, and progress, underpinned by official religions (especially Protestantism) and (nation) state ideology. The most significant processes through which indigenous culture was depreciated were the following: the closing of borders from the nineteenth century, the modern education system, language policies, revived Lutheran ethics, and property law regimes from the 19th and the twentieth centuries. These impositions destroyed a large part of traditional Sámi ways of life, knowledge, property rules, reindeer husbandry, and indigenous languages (Bunikowski 2014b: 21).

The Sámi did not recognise state borders or Western concepts of private ownership, citizenship, and education. Scandinavian states closed the borders in *Sapmi* (the part of Lapland associated with the Sámi), imposed geographical boundaries, and regulated traditional ways of natural resource management like reindeer husbandry. These impositions did not fit with Sámi cosmologies, so a form of legal pluralism developed: there were Sámi courts and Sámi officials for Sámi legal cases e.g. concerning lands for Sámi people, and there were also state courts and officials for the other people and other cases (two systems in one geographical sphere).

Mattias Ahrén,<sup>10</sup> the Norwegian Sámi scholar, describes how Sámi courts worked in the 17th and eighteenth centuries. There were also state laws for non-Sámi. The Sámi courts were for the Sámi people personally and applied Sámi law only. The state courts applied state laws. The state system was ‘higher’ and acted like an umbrella over the Sámi system of jurisdiction. If somebody was not satisfied with a verdict in the Sámi court, he could appeal to the state court. Alternatively, he could go directly to the state court and initiate a judicial procedure. This kind of legal pluralism favoured the state system (Ahrén 2004: 76–80).

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<sup>10</sup>See also: Ahrén 2004: 83–92, where there is an analysis of the implementation of such theories on cultural hierarchy in the practice of law and legislation since the beginning of the 19th century to the 20th century in Fennoscandia (or Fennoscandinavia).

Ahrén may even appreciate the Sámi customary laws of the seventeenth and eighteenth centuries, but he seems sceptical towards the idea of legal pluralism nowadays. He claims that full self-determination is better and more consistent with the Sámi way of life and traditions.<sup>11</sup> In this narrative, the Sámi should follow their own law and way of life, being recognised as a people, and their customary law would be recognised as a law at least equal to state law.

The thesis put forward in this chapter is that ideas of legal pluralism from the eighteenth century should be revisited, taking an inspiration from the Lapp Codicil of 1751<sup>12</sup> and enforcing the draft of the Nordic Sámi Convention. This would involve looking at the implications of granting Sámi people land rights and political (as well as cultural) autonomy. Public law (i.e. concerning land, natural resources) might be replaced by new rules coming from the old customary laws, and then new public rules recognising Sámi authorities in the management of natural resources. However, for many politicians and scholars this sounds like a new, unrealistic, paradigm.

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<sup>11</sup>See also: Ahrén 2004: 107, and especially in his ‘recommendations’, Ahrén 2004: 107–112. He highlights also: “Regardless of all the obstacles raised by the non-Sámi societies, the Sámi people continue to aspire to live in accordance with their own customary laws, to the greatest extent possible. However, in addition to all the impediments outlined above, it is onerous for the Sámi people to live in legal pluralism, torn between obeying non-Sámi laws and their own perception of right and wrong. The present order puts the existence of the Sámi people’s culture – including their customary law – in danger. There is an urgent need for remedies.”, and then: “In order to adequately address the conflict between the Sámi and non-Sámi legal systems, the non-Sámi societies must: (1) recognize the Sámi people as a people, equal in dignity and rights to their neighboring peoples, which in turn implies that the Sámi legal system is equal in value to the non-Sámi legal systems; (2) fully acknowledge that the Sámi people’s way of life might indeed give rise to legal rights to their traditional land, waters, and natural resources; (3) recognize the particularities of the Sámi traditional livelihoods in conflicts between the Sámi and non-Sámi societies as to use of land; and (4) harmonize their legislation with the corresponding Sámi customary laws in instances when there is no real need for conflict.” (Ahrén 2004: 107).

<sup>12</sup>*First Codicil and Supplement to the Frontier Treaty between the Kingdoms of Norway and Sweden concerning the Lapps (done on 21st September/2nd October 1751)*. See: this short analysis of the historic act: Bunikowski 2014b: 24, footnote 49, where one reads that: “In fact, the treaty was passed to regulate “the customary transfrontier movements of the Lapps” as well as jurisdiction “over the foreign Lapps” during the movement period and tax problems related to that (the preamble). Thus, it was about state taxation (art. 1–7), Sami mixed marriages (art. 8), free movement and crossing borders by the Lapps in Scandinavia. (art. 9–21), limited indigenous jurisdiction (art. 22–30; art. 22: “disputes occurring between Lapps from the same side” in the transfrontier movement to be resolved the Lapp lensman). However, it recognized also customary laws on nomadic style”.

Finland did and does not recognise customary law (except *jokamiehenoikeus*<sup>13</sup>) and indigenous self-determination. There is still a problem with Sámi land rights which is an unresolved human rights problem. In the concluding observations on the sixth periodic report of Finland, Human Rights Committee, 22 August 2013 (on International Covenant on Civil and Political Rights), it is clearly stated in point 16 that<sup>14</sup>:

... the Sami people lack participation and decision-making powers over matters of fundamental importance to their culture and way of life, including rights to land and resources. The Committee also notes that there may be insufficient understanding or accommodation of the Sami lifestyle by public authorities and that there is a lack of legal clarity on the use of land in areas traditionally inhabited by the Sami people (arts. 1, 26 and 27). The State party should advance the implementation of the rights of the Sami by strengthening the decision-making powers of Sami representative institutions, such as the Sami parliament. The State party should increase its efforts to revise its legislation to fully guarantee the rights of the Sami people in their traditional land, ensuring respect for the right of Sami communities to engage in free, prior and informed participation in policy and development processes that affect them. The State party should also take appropriate measures to facilitate, to the extent possible, education in their own language for all Sami children in the territory of the State party.

It is still true that: “The recognition of the Sami people to administer hunting grounds and fishing waters remains unclear. The Sami are not lords in their own country. About half of the Sami population in Finland have moved outside Lapland due to unemployment and the lack of opportunities” (Bunikowski 2014b: 22–23).

In the Finnish government’s response to one of the UN bodies, it states:

The Government stresses that the legislation contains specific requirements for the mentioned areas, inter alia, in Section 2 (2) of the Reindeer Husbandry Act that are specifically intended for reindeer herding. The land in these areas may not be used in a manner that may significantly hinder reindeer herding. On the other hand, the Finnish legislation does not require a permission or prior consent from the Sámi for logging. (7). In its recommendation

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<sup>13</sup>Briefly, this is the freedom to roam. Literally, it means ‘everyman’s right’. It comes from Medieval customary laws in the Nordic countries. The right was the case also in Finland. According to this right, everyone may walk, ski, and cycle in the countryside, as well as swim, row, sail, fish in the inland waters and the sea (or walk on the frozen lakes etc). It is forbidden to harm the natural environment and the landowner. Thus, the right concerns both the use of public and private lands. One may camp but not in the garden of the landowner and only a reasonable distance from his home. Also picking mushrooms, berries, and mineral samples is allowed. Disturbing breeding birds or reindeer is illegal. The freedom became the constitutional right to some extent (but section 20 of the Constitution of 1999 concerns “the right to a healthy environment”). Some lawyers say that it is the general public’s right to access certain public or privately owned land for recreation and exercise (however, there are some reasonable limits of the use of this right, like private nuisance) or just the right of public access to the wilderness or the right to roam. However, some restrictions of the right are obvious: for instance, prohibitions of cutting down trees, crossing plantations in the summer, or, in some seasons in Lapland, picking species like cloudberries. Only the government has the right to restrict the freedom to roam. Strict natural reserves in Finnish Lapland are good examples of the restrictions, too.

<sup>14</sup>See: *Concluding observations on the sixth periodic report of Finland, Human Rights Committee, 22 August 2013 (on International Covenant on Civil and Political Rights)*.

No. 11, the Committee has stated that the State party, when revising the Act on the Sámi Parliament, should enhance the decision-making powers of the Sámi Parliament with regard to the cultural autonomy of Sámi, including rights relating to the use of land and resources in areas traditionally inhabited by them. In this regard the Ministry of Agriculture and Forestry notes that the cultural autonomy that the Constitution of Finland guarantees the Sámi people in itself does not constitute a competence for the Sámi Parliament to utilise natural resources, whether in state or private ownership, within the Sámi Homeland. However, the Mining Act (621/2011) contains provisions on obstacles to granting permits in the Sámi Homeland, in the Skolt area and in special reindeer herding areas.<sup>15</sup>

The Sámi representative claimed that: “While the statutory status of the Sámi is satisfactory in Finland, the law is not adequately enforced”.<sup>16</sup> It seems that the same problem concerns recognition of the Sámi people to administer hunting grounds and fishing waters. To create autonomy for four thousand Sámi who live in Finnish Lapland sounds untenable to contemporary thinkers (Bunikowski 2014b: 23).

On the other hand, in the *Declaration from the First Sami Parliamentary Conference, Jokkmokk, 24 February 2005*, in the preamble *expressis verbis* the Sámi declaimed:

Establishing that the Nordic states, through the Lapp Codicil of 1751, have recognized the Sami as a people entitled to their own future, without regard to the national boundaries that were then drawn. This was accomplished by protecting the right of the Sami to use land and water, and extensive internal self-government schemes. These principles closely resemble modern international law.

Timo Koivurova called The Nordic Sámi Convention (2005): “an innovative possibility to grow beyond the state-centred paradigm in international relations in a realistic way” (Koivurova 2008: 279). The Convention is often also unofficially titled the second Lapp Codicil (the Lapp Codicil was of 1751). However, it is only a draft. All the provisions on indigenous self-determination, recognition of customary laws and political power of the Sámi in indigenous areas are in the paper (Bunikowski 2014b: 24).<sup>17</sup> Is there any chance for greater reform in practice?

So far in this section, the focus has been on the theoretical and practical relations between legal pluralism, Sámi customary laws, and their lands and natural sacred sites. The arguments can be developed further.

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<sup>15</sup>See: *Concluding observations on the 20th to 22nd periodic reports of Finland adopted by the Committee on the Elimination of Racial Discrimination at its 81st session in 2012. Information provided by the Government of Finland on its follow-up to the recommendations contained in paragraphs 12, 13 and 16, 30 August 2013*. Point 5 in Chapter “The right of the Sámi to their traditional lands”.

<sup>16</sup>See: *Statement by Finnish Sámi Parliament on the Realization of Sámi People’s Right to Self-determination in Finland Presented by the President of the Sámi Parliament of Finland Juvvá Lemet, Mr. Klemetti Näkkäljärvi*, where it is said in the context of Sámi cultural autonomy that “While the statutory status of the Sámi is satisfactory in Finland, the law is not adequately enforced”. In reality this means a lack of cultural autonomy.

<sup>17</sup>See Bunikowski’s critique of the open texture character of the terms used in the Convention draft and of many possibilities of interpretations of this eventually binding legal act.

Dealing first with the theoretical arguments: a legal-theoretical and legal-philosophical approach focuses on the concept of legal pluralism and its significance for the recognition of customary laws in the practical life of indigenous peoples, the subject of both the anthropology of law and the practice of law, and compatible with cultural ecological theorising. In many cases in courts the tensions between state law and customary law are noticed, e.g. even in Scandinavia, in the jurisprudence of the Supreme Court of Sweden – in the *Skattefjall* case of 1981.<sup>18</sup> There are good case histories from Canada and the US in the field of recognition of indigenous customary law. The theoretical analysis also concerns international, constitutional, and legal matters, and real recognition of indigenous rights. Since legal pluralism is a wide concept, it is necessary to use only examples concerning conflicts or co-existence of customary laws of indigenous peoples and state law.

Now, the analysis turns to practicalities (customary law – recognition of sacred sites, etc): Sámi traditional (customary) laws related to e.g. *sieidi* (especially rocks, mountains, springs, land formations as well as human-made features such as labyrinths or petroglyphs but also impressive fells or islands; see Pennanen 2003: 156), worships, offerings.<sup>19</sup> Focusing on the practicalities raises some general questions concerning a legal-anthropological and legal-historical analysis of laws and a legal-political analysis of recognition of indigenous peoples' land rights.

Important *sieidi* are on Ukonsaari Island, and some fells on Lake Seitajärvi, or near Lake Somasjärvi where there are some traditions and practices based on the old Sámi religion. These traditions are deeply rooted in cosmology and 'philosophy' or 'just beliefs'. The Sámi "have always worshipped nature . . . their existence and well-being or misery were determined by natural conditions" (Pennanen 2003: 156). In many places, "offerings were made to enhance fishing and the hunting of wild reindeer, to protect reindeer herds, and to bring good weather" (Porsanger 2003: 154). People lived through the power of the natural spirits. The aim of the offerings was to "maintain the internal relationship between nature and the people or communities by seeking mutual benefit" (Porsanger 2003: 154). The offerings included many wishes or things. The knowledge about how to ask and make offerings in the right way was important so that the *sieidi* could serve the people in return. To make the offering, Sámi had to kneel down before the divine or spiritual power and to recite a prayer. The prayer consisted of a wish. A promise in the wish was supposed to be kept for something given by the power. Thus, *sieidi* should be smeared e.g. with reindeer tallow or fish oil, or would even be given

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<sup>18</sup>Also called the "Taxed Mountains case". In 1981, the Swedish Supreme Court confirmed Sámi usufructuary right to land for reindeer husbandry. In this case, the clue was the claim to Sámi traditional territory but the indigenous party had no basis that would be proper and evidential for the claim for ownership. However, the usufructuary right was afforded as well and the Sámi could acquire title to land by a long-standing practice of using the land for traditional indigenous economic and cultural activities. In spite of this case, Sweden did not pass any law on Sámi rights to land. This precedent taken straight from the court has been a dead letter.

<sup>19</sup>See Bunikowski (2014a: 77–78) about the importance of the problem of recognition and protection of customary rules concerning *sieidi*.



jewellery (Pennanen 2003: 156). Traditional rules or rituals concerning the offerings were recognised as eternal natural law or customary law. Sámi law in this field was coherent with customs, natural religion, beliefs. It was like the circle of laws, rules, rituals, traditions, beliefs. Cosmology cannot be separated from law here.

When talking about practicalities in terms of legal challenges, there is a huge legal and moral Sámi claim, and the unresolved human rights problem, of the recognition of land rights of Sámi people in the context of protection of natural sacred sites. Protection of these sites is a specific and almost unmentionable topic in both international (at European level; in international treaties) and national law (the Finnish law, still criticised by the Sámi). Nowadays, the problem is not only how to recognise Sámi customary laws concerning natural sacred sites but much more how to protect natural sacred sites understood as both spiritual and physical entities in terms of the state or official law. The sacred natural sites are a part of Sámi tradition and heritage, and need legal protection against depreciation and, in some cases, destruction. Finding ways to respect tradition is a profound moral question and research problem in the North. There is also a philosophical argument that natural sacred sites in Finnish Lapland and in Sámi areas in Northern Europe should be both governed and protected by the Sámi themselves because this principle comes from their customary law and these places are recognised as culturally and spiritually important for the Sámi and their cosmology (i.e. for how they see the structure of the universe and how they pay tribute to nature).

Nowadays the feeling of injustice seems strong among Sámi. ‘Restrained’ appreciation of their culture has been visible since the 1970s and 1980s in the Nordic region, after more than 200 years of cultural suppression. Many wrongs, especially in educational systems and in the means to learn their own languages, have been addressed. However, the truth is that the chronicle of injustice, and the courage of indigenous people in the face of this injustice, still possess an unsettling power and generates both moral and legal claims to governance of their traditionally lands.

What can be learnt from other indigenous situations elsewhere in the Arctic?

## 4.6 The Case of the Canadian First Nations Nisga’a

Canada is by no means a world leader in the way it treats its indigenous peoples (see: *Multiculturalism Policy in Contemporary Democracies*. Queen’s University, Kingston. Canada (available as “Multiculturalism Policy Index”). There are some critical opinions about Canadian indigenous policy, especially coming from indigenous peoples like the Innu and scholars from Ottawa or Montreal.<sup>20</sup> However, it seems that the position of many Canadian First Nations, among them, Nisga’a,

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<sup>20</sup>This is the impression of one of us (DB) from his meetings with Canadian scholars and indigenous groups at anthropological congresses in Rovaniemi in 2013, Manchester in 2013, and Tallinn in 2014.

is relatively good in comparison with the Sámi in the Nordic region.<sup>21</sup> Nisga'a have a democratic and accountable self-government (see: chapters 2, 3 and 11 of The Nisga'a Final Agreement). Their agreement with the Canadian government is one of the latest on self-government and land claims, which is why it is so advanced. Nisga'a have their own government, jurisdiction, constitution, laws, citizens, corporations, self-government in their villages, other authorities like police, and natural resources management, and much more political and legal power than the Sámi (see: chapter 12 of The Nisga'a Final Agreement).

Here are some of the crucial articles of the law that underpin the Nisga'a situation: The Nisga'a Final Agreement is a treaty and a land claims agreement in terms of Canadian constitutional law (paragraph 1, Chapter 2 "General provisions"). The Agreement is binding in the light of the sources of law in Canada (paragraph 2, Chapter 2). The Treaty defines the Nisga'a Nation: "'Nisga'a Nation' means the collectivity of those aboriginal people who share the language, culture, and laws of the Nisga'a Indians of the Nass Area, and their descendants" (Chapter 1 "Definitions"). Of the fundamental importance is paragraph 7 in Chapter 2: "Nisga'a citizens have the right to practice the Nisga'a culture and to use the Nisga'a language, in a manner consistent with this Agreement". According to the Nisga'a Treaty, "the Nisga'a Nation owns Nisga'a Lands in fee simple, being the largest estate known in law. This estate is not subject to any condition, proviso, restriction, exception, or reservation set out in the Land Act or any comparable limitation under any federal or provincial law. No estate or interest in Nisga'a Lands can be expropriated except as permitted by, and in accordance with, this Agreement" (Chapter 3 "Lands", paragraph 3). In fact, it equals the right to land and self-determination. There are concrete provisions in mineral resources management: The provision of paragraph 19 in Chapter 3 states that "For greater certainty, in accordance with paragraph 3, on the effective date the Nisga'a Nation owns all

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<sup>21</sup>See: *Multiculturalism Policy in Contemporary Democracies*. Queen's University, Kingston, Canada. Compare the legislation and jurisprudence in Scandinavia: sections 17 and 121 of *Finland's Constitution of 1999*; article 2 of *The Instrument of Government of 1974* in Sweden; art. 110a of *Norway's Constitution of 1814* (amended in 1987); and in Russia: art. 69 of *the Russian Constitution of 1993*, and art. 21 of *Code of the Murmansk Oblast of 1997*. The basic act in Finland is *Act on the Sámi Parliament (974/1995)*, especially sections 1, 4, 5, 9, supported by *Sámi Language Act (1086/2003)*, especially section 2. Also lower acts are important: the *Reindeer Husbandry Act (848/1990)*, and the *Reindeer Husbandry Decree (883/1990)*. Also see, *The Mining Act (621/2011)*, sec. 50 (Section 50 – *Obstacles to granting of a permit in the Sámi Homeland, the Skolt area, or a special reindeer herding area*); *The Water Act of 1961*. See also: *The First Codicil of 1751* (Treaty between Sweden and Norway on the Lapps). Here are also important cases: "*The Taxed Mountains case*" of 1981 (Sweden), and *The Könkämä and 38 other Sámi villages against Sweden case of 1996 (EHCR)*. Look at the Latin American experience as well: *The Constitution of Peru of 1993* (art. 149, recognition of indigenous self-determination and customary laws) and *The Peruvian Criminal Code* (art. 15, excuses in criminal responsibility for Indians, except conflicts with human rights), or at the Islamic experience: *The Constitution of the Islamic Republic of Afghanistan, (Ratified), 26 January, 2004* (unofficial English translation) and *The Interim National Constitution of the Republic of the Sudan 2005* (art. 20.2 – personal law – *zakat*).

mineral resources on or under Nisga'a Lands". Thus, the Nisga'a are the lords of natural resources like natural minerals. Consequently, according to paragraph 20 (Chapter 3), "Nisga'a Lisims Government has the exclusive authority to determine, collect, and administer any fees, rents, royalties, or other charges in respect of mineral resources on or under Nisga'a Lands". However, British Columbia owns the subterranean lands within Nisga'a Lands (paragraph 22, Chapter 3).

Tom G. Svensson states that a big discourse about customary law is coming and it is not possible to avoid it when talking about the relationship between indigenous peoples and the state. Svensson notes: "Finally, the Nisga'a Treaty is the first agreement attained which clearly defines rights to environmental resources and rights to self-government, including its level of real power", and then: "It is still an open question what, more concretely, the Sámi rights process will bring about. A limited power base is attached to the Sámi Parliament, and its actual level of power depends to a great extent on the outcome of the legislation based on rights to land and water". Svensson admits that "... we can predict that the customary law discourse will continue as a dynamic cultural force", noting that: "Customary law discourse is only one of several elements contributing to this ultimate process of nation building" (Svensson 2002: 35).

Although the way the claims of more than 600 First Nations Canadian indigenous ("aboriginal", as the Constitution says) peoples went through was not easy and included many cases in courts<sup>22</sup> and a lot of federal legislation acts<sup>23</sup> or federal

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<sup>22</sup>Like in the jurisprudence of The Supreme Court of Canada: *Calder v. British Columbia* (1973, recognition of land rights), *Delgamuukw v. British Columbia* (1997, recognition of land rights), *R. v. Sparrow* (1990, upholding historic treaties), *R. v. McPherson* (1994, non-application of provincial laws to Aboriginal persons if they are in conflict with the historic rights treaties), *R. v. Van der Peet* (1996, recognition of cultural rights), *R. v. Sioui* (1990, recognition of cultural rights but it was limited by e.g. a British Columbia court ruled in *Thomas v. Norris* (1992): limits to the 1860 treaty rights; religious practices not to be used as defence against assault), *Haida Nation v. British Columbia (Minister of Forests)* of 2004 (a duty to consult; guarantees of representation and consultation). In *Casimel v. Insurance Corp. of British Columbia* (1994), a British Columbia Court of Appeal recognized customary laws in an insurance law case. An Alberta Court of Queen's Bench in the case of *Manychief v. Poffenroth* (1995) recognized customary marriages. In *Cheechoo v. R.* (1981) the Ontario District Court recognized a right to trapping.

<sup>23</sup>The recognition or many of the indigenous rights was visible in such legal acts as *The Royal Proclamation of 1763*, section 91.24 of *the Constitution Act, 1867*, *the Manitoba Act, 1870*, subsection 35 (1) of *the Constitution Act, 1982* (Recognition of existing aboriginal and treaty rights; Land claims agreements; Aboriginal and treaty rights are guaranteed equally to both sexes; Commitment to participation in constitutional conference), *the Indian Act* (of 1876), *the Metis Settlements Act of Alberta* (1990), *the British Columbia Adoption Act of 1996*, s.s. 46 (1) and 46 (2), *the Northwest Territories Aboriginal Custom Adoption Recognition Act of 1994*, *the Employment Equity Act* in 1985 (subsequently amended in 1995), and land claims agreements with the government such as: *the James Bay and Northern Quebec Agreement* (1975), *the Inuvialuit Final Agreement (The Western Arctic Claim Settlement)* (1984), *the Labrador Inuit Land Claims Agreement-In-Principle* (2005), and *the Nunavut Land Claims Agreement Act* (1993), and self-government agreements with the government: *Sechelt Indian Band Self-Government Act* (1986), *the Westbank First Nation Self-Government Agreement* (2004); *the James Bay and Northern Quebec Agreement* (1975), one of the last ones is the *Nisga'a Final Agreement Act* (1999). By

programs, or policies,<sup>24</sup> nowadays it seems that Canada did much more than Nordic countries to recognise “distinctive culture” (the phrase from *R. v. Sparrow*).<sup>25</sup> However, indigenous self-government has been a matter of policy; it is not a constitutional principle in Canada (see: *Multiculturalism Policy in Contemporary Democracies. Queen’s University, Kingston. Canada; the category: Indigenous peoples-Canada*).

To conceptualise better how the Canadian model or policy works in practice, it is enough to focus only on the example of natural sacred sites and how they are recognised, protected, and managed in the Nisga’a indigenous areas (lands). Chapter 1 (“Definitions”) of the Nisga’a Final Agreement defines ‘heritage sites’ as including ‘archaeological, burial, historical, and sacred sites’. In paragraph 36 (‘Protection of Heritage Sites’) of chapter 17 (‘Cultural Artifacts and Heritage’) it states that Nisga’a Government “will develop processes to manage heritage sites on Nisga’a Lands in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites” (by using management tools from paragraph 38). Also British Columbia as a state is obliged to do the same (paragraph 37, exactly to ‘develop and continue’) until the Nisga’a Government establishes the processes referred to in paragraph 36. This state is also to designate as provincial heritage sites the sites of the cultural and historic significance outside Nisga’a Lands (chapter 3 “Lands”, paragraphs 95–97 “Heritage Sites and Key Geographic Features”). However, the Nisga’a agreed that these sites may have importance also for persons and groups other than the Nisga’a Nation. All these provisions must be understood in the context of delegation of power and decentralisation as well as cultural ecological processes of adaptation to the today’s situation or legal-pluralistic processes of recognition of diversity and differences. To sum up, it is the Nisga’a who are responsible for the management of heritage sites, including sacred sites. The First Nation knows better how to protect their sacred sites from doubtful outcomes arising from the interests of tourism and natural resources companies. This process of giving the Canadian aboriginals their

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2010, the federal government settled 24 self-government and comprehensive land claim areas with Aboriginal/indigenous people of Canada. Two of the deals were stand-alone self-government. See also: *Multiculturalism Policy in Contemporary Democracies. Queen’s University, Kingston. Canada*.

<sup>24</sup>*The 1998 Government of Canada Agenda for Action with First Nations* (self-government rights); the Government of Canada *Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult*; but also other documents made by the Government of Canada: *the Aboriginal Skills and Employment Partnership* as well as *the Aboriginal Skills and Employment Training Strategy*. See also: *Multiculturalism Policy in Contemporary Democracies. Queen’s University, Kingston. Canada*.

<sup>25</sup>However, for some pragmatic and ideological reasons, both Canada and Finland did not ratify the ILO Convention no. 169 (i.e. named Indigenous and Tribal Peoples Convention, 1989) that concerns recognition of rights of tribes and indigenous peoples. The role of this Convention is however a little exaggerated, as it is possible to recognize the right to self-determination (or narrowly, self-government) in other ways also.

traditional and customary rights *back* might be seen as a reasonable policy carried out by the Canadian government. This has not always been the case; it took a long time to change the official policy.

## 4.7 Conclusions

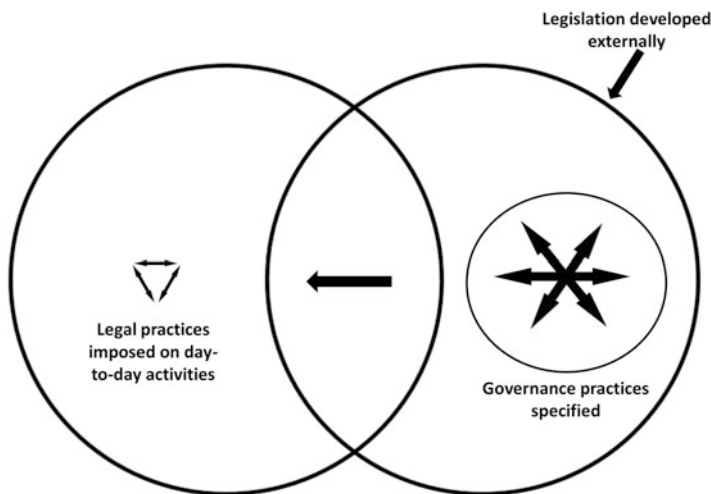
It is the action of a mature democracy to give indigenous people the means to rule and govern on their own, on behalf of their own communities, on the grounds of their own laws. The argument is about a wider political autonomy or, in a broad sense, the notion of ‘independence’: independence understood not in terms of international public law but real autonomy in small communities of people. The world is constantly changing through globalisation, the advent of new technologies, and new styles of living. Nevertheless, legal pluralism is a good response and a means to retaining diversity inside contemporary societies and to guarantee a diversity of laws within a given society and around the world. It was Grotius in the seventeenth century who recognised the right of the people to live according to their natural laws if the laws recognised the minimum of what is universally good and bad (Bunikowski 2014b: 22).

Unfortunately, many lawyers cannot change their dogmas, paradigms and ways of thinking. They have closed their minds around categories of legal positivism and nation states. Returning to pluralistic ‘Medieval’ legal orders, with the collision of rules and special ‘crown’ institutions (courts), is beyond their thinking. But nowadays in Latin America many things concerning the rights of indigenous peoples have changed for the better – there is legal pluralism, with indigenous law systems in practice. Legal pluralism and customary laws of indigenous peoples are marching together. *Diversity in unity* and *unity in diversity* is the slogan of the European Union. Diversity means respect for cultural differences. Unity means something common, crucial in our human nature. Paradoxically, the activities of the nation states in the nineteenth and twentieth centuries, in fighting for their own independence and freedom, imposed the ideas and ideals of Enlightenment, progress, development, and Protestantism on indigenous cultures and depreciated their customary laws. The diversity of laws in the European North was compromised in the name of some slogans about law being equal for everybody and about one nation or one language.

Can this situation be changed? It is a rhetorical question. The pluralistic Medieval legal order is like a pattern, but what is required is to highlight *expressis verbis* on the need for new legal and political forms to establish legal pluralism and to recognise indigenous customary laws. Natural sacred sites such as *sieidi* in Finnish Lapland are a good example of how things might be regulated by Sámi customary law.

The model proposed in this chapter is an example of thinking in categories of legal pluralism and cultural ecology. This dogma is new. In concluding, the diagrams symbolising cultural ecology (Figs. 4.1 and 4.2) from earlier in the chapter can be revised and updated to take account of the arguments made for legal pluralism and its implications for customary law. The cultural ecological argument runs thus:

The western, industrialised notion of the nation state privileges relational thinking and relational ways of being and thus privileges systematically defined organisational and legal structures. These structures attempt to reduce uncertainty and ‘fix’ the cultural ecological dynamic in favour of the relational in the name of stability. Legislation is developed externally to the cultural ecological system to which it will be applied. Legislative practices and laws are specified and take precedence over the co-constitutional day-to-day concerns of the people (which have reduced status in the overall framework, signified by the reduced size of the co-constitutional symbol in the left hand circle in Fig. 4.3).



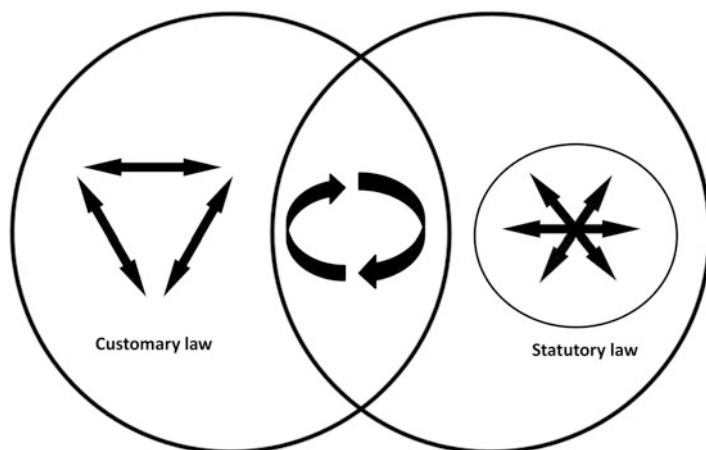
**Fig. 4.3** A cultural ecology dominated by relational forms of legislation, governance and law

But this centralised, relational control dilutes the imperative of addressing the particularities of locality, of the ‘in the moment’ experiences of individuals. In some environments adaptability, dealing with situations as they arise, is as important as stability. As Juha Pentikäinen (1998: 120) observes:

... the Fourth World of (Arctic) indigenous peoples [...] represents a symbiotic relationship between the environment, ways of life, religion and language, cemented through harsh living conditions where cultural, religious and economic activity focuses on survival.

Individuals and groups, no matter how defined, represent different configurations of the relational and the co-constitutional, different configurations between people

and the resources of their environment, where ‘resources’ denotes not just material potential but also individual and collective beliefs, skills, and capabilities. There is a constantly adapting dynamic between co-constitutional and relational ways of being. To be truly adaptive, and by definition democratic, the cultural ecology needs to reflect a functional balance between the interests of the state, represented through statutory law, and the localised necessities of indigenous people, represented through customary law (Fig. 4.4).



**Fig. 4.4** A cultural ecology that recognises customary law in adaptive interaction with statutory law

Now, combining Figs. 4.2 and 4.4, reveals a diagrammatic representation of a composite model of legal pluralism within a cultural ecology (Fig. 4.5).

Here legal pluralism is seen as the co-existence of statutory, legal (i.e. ‘relational’) contexts derived from the application of externally derived legislation, alongside the localised contexts of customary law generated through the co-constitutional processes of people living and working within the particularities of their environment. As was explained earlier, the dynamic between the two contexts is complex; they influence each other in ways that are themselves relational and co-constitutional. Thus day-to-day activities that give rise to practices that are functionally adaptive eventually become ‘established’, i.e. they become ‘customary’ ways of doing things and thus take on some ‘relational’ qualities, i.e. ‘we do it this way rather than that way’. And if state law is to ‘work’ it has to be applied in ways that are sensitive to local conditions, i.e. it has to be co-constituted with local beliefs and practices.

Dillon and Bayliss have worked with indigenous people in Northern Europe and Mongolia and have used cultural ecology to frame semi-nomadic lifestyles (Dillon et al. 2013: 97–110; Bayliss and Dillon 2010: 7–21; Dillon et al. 2008: 18–31).

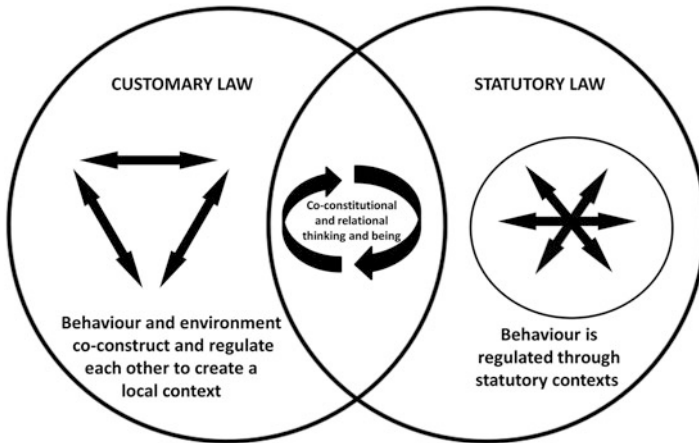


Fig. 4.5 Legal pluralism within a cultural ecology

In an earlier paper, they illustrated the framework with the commentary of Mikkel Nils Sara who was brought up as a reindeer herder within the traditional reindeer Sámi *siida*. It is evident from the way Mikkel Nils Sara explains his lifestyle – knowledge not just of the reindeer, but of the landscape he migrates through, of the intricacies of the family relationships of the people he meets on the way, of how to cooperate and exchange services with non-Sámi people, “all the ecological and social matters that were relevant to his utterances and conduct” (Sara 2002: 23–27). This is a lifestyle dependent on, and enriched by, customary law, a dynamic between the co-constitutional and the relational, a particular relationship between ‘being in the moment’ and social and ecological regularities. It recognises and acknowledges the bigger picture but at the same time seeks an accommodation that reflects a temporally dependent dynamic between site, location, place and space, or, as Tero Mustonen observes, “... an appreciation of the continuity of cultural routines that constitute the indigenous practices of ethical and spiritual co-being between humans and natural systems” (Mustonen and Lehtinen 2013: 39–95). This is adaptive rather than categorised culture.

Recognition of indigenous customary law in the Arctic seems reasonable in terms of adaptations of its people and their culture to the environment they inhabit. Law in this proper sense is part of the cultural ecology, inseparable from it. Cultural ecology and legal pluralism support both moral and legal claims concerning recognition of customary land rights and land management whilst avoiding romanticising about indigenous lifestyles. To take seriously customary law and legal pluralism, is to ask questions about a range of state institutions, from social welfare and education to fiscal policy, as was noted earlier in the chapter.

By empowering people locally, cultural ecology and legal pluralism also support the notion of ‘judicial activism’, of people engaging in decisions about how resources are used so that the resources can serve the common good locally rather



than enriching already rich and often distant corporations (von Uexkull 2014: 14–16; see also Mustonen 2013: 6–91). Exploring the possibilities of cultural ecology and legal pluralism thus opens up a wider debate about localisation in a globalised world, of how democratic processes might be meaningfully devolved so that people have a stake in the policies and laws which govern their lives.

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 Go to the link: Indigenous peoples-Canada.

# Chapter 5

## Indigenous Peoples' Customary Laws, Sámi People and Sacred Sites

Leena Heinämäki and Alexandra Xanthaki

### 5.1 Introduction

Although recognized both in the ILO Convention No169<sup>1</sup> and in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP),<sup>2</sup> the right of indigenous peoples to maintain their customary laws and systems continues to be a rather unexplored issue in legal literature. Until recently, customary laws of indigenous peoples have mainly been explored by social anthropologists (e.g., Bennet 2006), while largely legal experts still mainly focused on written and codified 'positive' law (however, see Weisbrot 1981: 3–4). The recognition of such laws though is really important for indigenous peoples. Embedded in the culture and values of indigenous communities, indigenous customary laws are an intrinsic and central part of their way of life and their identity. They define rights and responsibilities relating to key aspects

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<sup>1</sup>International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, adopted 27 June 1989, entered into force 5 September 1991, 28 ILM (1989) 1382.

<sup>2</sup>The United Nations Declaration on the Rights of Indigenous Peoples, 7 September 2007, Sixty-first Session, A/61/L.67.

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of their cultures and world views, and guide indigenous communities on a wide range of issues; from the conduct of spiritual life, to land, and to use of and access to resources. Maintaining customary laws can be crucial for the maintenance of the cultural heritage and knowledge systems of indigenous peoples. Indigenous communities all around the world have steadily argued that any legal regime for the protection of their knowledge must be grounded in their own customary laws and practices.

Indeed, the term ‘customary law’ has often been used as a generic term to refer to indigenous peoples’ legal regimes, frequently seen as deriving from their customs and traditions. However, not all indigenous laws have customary roots. As Borrows argues, indigenous law may also be ‘positivist, deliberative, or based on the theories of divine or natural law (Borrows 2010: 12). Therefore, the perception that views ‘customary law’ as the sole indigenous legal source does not accurately describe some contemporary indigenous legal regimes, as the latter often incorporate elements also drawn from non-indigenous sources (Tobin and Taylor 2009: 7). Borrows rightly pushes forward a wider definition of ‘indigenous law’ that includes a full range of laws that make up indigenous peoples’ own legal regimes (Borrows 2010). Still, one cannot deny that customary law is a vital part of all indigenous legal regimes, providing both the flexibility and continuity through which sacred teachings, traditional practices and the knowledge drawn from the nature observation, may be applied and enforced in community governance and traditional resource management systems (Tobin 2014: 7).

This chapter will argue that current international law has recognized the importance of indigenous customary laws in general and in specific, their importance in protecting indigenous sacred sites; however, more reflection must take place on the difficult and controversial issues relating to indigenous customary laws. The paper will first map out the existing international legal context for the protection of indigenous peoples’ customary laws, and reveal the link that is made in current human rights instruments between customary laws and indigenous sacred sites. The paper will then use the case of Sámi customary laws on natural sacred sites to identify central issues that need to be taken into account in the conservation of the indigenous sacred sites and the environment. The debate on the possible conflicts between indigenous customary laws and non-indigenous values has mainly focused on individual rights in the past (Xanthaki 2011: 413–433; also Quano 2013: 675). Due to the emphasis on conservation in other chapters of this volume, this chapter will not engage directly with the conservation issue as such, despite referring to some instruments that serve the conservation purpose.

## **5.2 Recognition of Indigenous Peoples’ Customary Law in International Law**

Scholars in the field of legal pluralism have continuously investigated the relations between customary law and state law and debated the impact of transnational law (e.g., Grillo et al. 2009; Berman 2009; Tuori 2011: 9). Lon Fuller back in 1969



argued that the primary form of any law is customary, as law is grounded on particular practices and is used to negotiate human interaction with them (Fuller 1969: 14; as discussed in Webber 2009: 581, 54). Webber discusses in his work elements of customary law 'that have been lost from view' in our understanding of State legal systems (Webber, at 581). Currently, discussions on customary laws are focused around the co-existence of religious laws together with state laws, (Turner 2011: 317; Shah 2013) while discussions around indigenous customary law have taken place outside the remit of international law, explored mainly at the domestic level (Fremont 2009: 1; Tuori 2010; Twining 1963: 3).

However, although practice in domestic legal systems worldwide has accepted sub-national juridical systems, international law has not followed. Today, there is no binding obligation of States to respect the right of sub-national groups to their customary laws and systems. Such a recognition must be seen within the general context of decolonization. As a 2014 Report of the UN Permanent Forum on Indigenous Issues has noted, 'discovery' has been used as a justification framework to dehumanize, exploit, enslave and subjugate indigenous peoples and to dispossess them of their most basic rights, including their laws, spirituality, worldviews and governance (UN Economic and Social Council, Permanent Forum on Indigenous Issues 2014, articles 26–28, 32 and 40, E/C.19/2014/3 para 3). Decolonization processes must be devised in conjunction with the indigenous peoples concerned and must be compatible with their perspectives and approaches. Such processes must be fair, impartial, open and transparent, and be consistent with the UN Declaration and other international human rights standards (ibid., para 34). Where desired by indigenous peoples, constitutional space must be ensured for indigenous peoples' sovereignty, jurisdiction as well as laws (Ibid., para 35). Current international human rights law is indeed undergoing such a gradual process. There is a notable shift from a traditional individualistic focus to one that embraces the notion of collective rights and recognizes indigenous peoples as 'peoples' entitled to self-determination. Indigenous self-determination as recognized in the UNDRIP includes indigenous rights to their customary laws.

The recognition of indigenous customary laws is being materialized in a gradual manner. ILO Convention No 107, the first international convention adopted in 1957 for the protection of indigenous populations, is quite limited in its protection of indigenous laws. Article 4.2 ILO No 107 maintains that 'due account shall be taken of the cultural and religious values and of the forms of social control existing among these populations' and article 7.1 maintains that in 'regard shall be had to their customary laws' and article 7.2 allows indigenous peoples to 'retain their own customs and institutions' but only where these are not incompatible with the national legal system or the objectives of integration programmes. Therefore, the convention puts *ex facie* national law above indigenous customary law. In addition, article 8 ILO No 107 proclaims that 'to the extent consistent with the interests of the national community and with the national legal system', the methods of social control and the indigenous customs in regard to penal matters are to be respected. In other words, although articles 7 and 8 recognise indigenous customary laws,

the language used and its qualifications act as a double sword. The requirement of compatibility of indigenous customs and institutions with non-indigenous ones does not stand well in today's vision of indigenous rights. Although the convention is now closed for ratification, it is still in force to 18 states, some with significant indigenous populations. However, its provisions must be interpreted within the spirit of ILO No 169, the UN Declaration and current general international law standards. Hence, the ILO Convention No 107 should not be quickly discarded, as it still offers protection of indigenous cultural rights. For example, recently, the CEARC asked Iraq to provide information about measures that take indigenous customary laws and their methods of social control into account, (CEARC 2012 No. 107),<sup>3</sup> while El Salvador was asked to provide more information about the effect of the Cultural Development Policy on the cultural heritage of indigenous peoples (CEARC 2011 No. 107).<sup>4</sup>

ILO Convention 169, adopted in 1989, is more forthcoming in the protection of indigenous customary laws and upholds the substantive right of indigenous peoples to retain their own customs and institutions (ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, article 8).<sup>5</sup> A number of articles embody respect for indigenous customary laws and indigenous peoples' traditional institutions. Article 2(1) ensures that states must take action to promote the full realisation of indigenous cultural rights 'with respect for their social and cultural identity, their customs and traditions and their institutions'. The Convention asks States to take special measures to 'safeguard' the cultures of indigenous peoples (art. 4). The 'social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected' according to article 5 of the ILO Convention No. 169 and 'due account shall be taken of the nature of the problems which face them both as groups and as individuals'. More specifically, the convention requires the 'integrity of the values, practices and institutions' of indigenous peoples 'shall be respected' (5b). Article 8 of the ILO Convention No. 169 requires States to give due regard to the customs or customary laws of indigenous peoples, when applying national laws and regulations. The ILO has explained that the criteria of article 8(1) are cumulative, in other words indigenous customs can be restricted only when incompatible *both* with the national legislation and the international human rights standards. (ILO, *Indigenous and Tribal Peoples Rights in Practice, A Guide to ILO Convention No. 169*, International Labour Standards Department, 2009, p. 82).<sup>6</sup> Article 9 asks for respect of the indigenous methods that deal with offenses and customs with respect to penal

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<sup>3</sup>Direct Request (CEARC)- adopted 2012, published 102d ILC session (2013), Indigenous and Tribal Populations Convention, 1957 (No. 107)- Iraq.

<sup>4</sup>Direct Request (CEARC)- adopted 2011, published 101d ILC session (2012), Indigenous and Tribal Populations Convention, 1957 (No. 107)- El Salvador.

<sup>5</sup>ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, article 8.

<sup>6</sup>ILO, *Indigenous and Tribal Peoples Rights in Practice, A Guide to ILO Convention No. 169*, (International Labour Standards Department 2009), p. 82.

matters. The ILO monitoring mechanisms have discussed on several occasions the obligations that derive from the above provisions, especially related to customary laws and sanctions. In 2012, the CEARC asked Fiji to indicate areas where there is 'an interaction between customary law and written law of the country and how the judiciary has dealt with cases of such nature, by providing copies of court decisions' (CEARC 2012 No 169).<sup>7</sup>

Nevertheless, indigenous communities have been disappointed that the convention does not view indigenous cultural rights under the framework of self-determination, something that the UNDRIP does. Indeed, the Declaration, adopted in 2007 recognises indigenous peoples their right to preserve their legal institutions. According to article 5 UNDRIP, indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions without being excluded from the decision-making on the state level. The Declaration views indigenous peoples' participation in a dual way, both as a right to develop their own institutions as well as their right to participate in the political life of the State in the matters pertaining to them. This article embodies the right to self-determination. Further, Article 34 of the Declaration sets forth indigenous peoples' right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs (ibid. article 34). Article 34 UNDRIP also makes it clear that only incompatibility with international human rights will justify disrespect of indigenous customs, procedures and juridical systems. Although article 34 includes the limiting clause 'in the cases where they exist' regarding juridical systems and customs, the inclusion of such a provision is a major success for indigenous peoples. This became especially evident during the elaboration of the UNDRIP, where States were reluctant to accept the use of the phrase 'indigenous laws' and 'indigenous juridical systems'. This was partly because of the wide belief that law is at the core of the state mechanism; an idea that does not fully conform to the realities of current legal systems. For example, in the interpretative statements delivered after the adoption of the Declaration, Australia objected to the position of indigenous customary law above the national law. The Australian delegate stated:

Customary law is not law in the sense that modern democracies use the term; it is based on culture and traditions. It should not override national laws and should not be used selectively to permit the exercise of practices by certain indigenous communities that would be unacceptable in the rest of the community. (UN Doc. A/61/PV.107, p. 12)

This statement deviates from current standards of international law, as the 'processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations and international law' (UN Commission on Human Rights Res. 2005/55 (2005b),

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<sup>7</sup>Direct Request (CEARC)- adopted 2012, published 102d ILC session (2013), C169- Indigenous and Tribal Peoples Convention, 1989 (No. 169) Fiji.

preamble. See also: UN Doc. E/CN.4/2005/WG.15/CRP.3 2005a).<sup>8</sup> As confirmed by the International Court of Justice, ‘the fundamental principle of international law [is] that it prevails over domestic law’ (*Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, [1988] para. 57). In this respect, making the rights recognised by the Declaration subject to national law would not make sense.

The recognition of indigenous customary laws has a direct impact to the protection of indigenous sacred sites. Sacred sites are often situated on the lands traditionally occupied by indigenous peoples and are often found in the middle of fierce disagreements and claims. Customary laws play an important role in recognizing and resolving indigenous sacred sites. Article 26 UNDRIP recognizes the right of indigenous peoples to the legal recognition and protection to indigenous peoples’ 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 (ibid. article 26). In addition, the UNDRIP sets out several provisions that relate to the protection of indigenous sacred sites; out of these, its general embrace of the cultural heritage (see, particularly article 31) on one hand, and the recognition of the sacred sites and related spiritual practices, on the other, are far-reaching.

In addition to land rights, the protection of sacred sites also falls within Article 11 UNDRIP which guarantees the right of indigenous peoples to practice and revitalize their cultural traditions and customs, including the right to maintain, protect and develop the past, present and future manifestations of their culture, such as archaeological and historical sites and ceremonies. According to this provision, States shall provide redress “through effective mechanisms”, which may include restitution, in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs. Additionally, article 12 affirms the right of indigenous peoples to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies and the right to maintain, protect, and have access in privacy to their religious and cultural sites. Taken together, these rights offer numerous opportunities to promote, and indeed require, recognition and compliance with their customary laws and practices (Tobin 2014: 46).

The need for consultation with indigenous peoples is essential to the protection of indigenous sacred sites and falls within the indigenous rights to consultation in matters that affect them. Indeed, indigenous rights to consultation in good faith, free, prior and informed consent, and participation of indigenous peoples in decision-making processes, are recognized both in the ILO 169 and the UNDRIP. Such requirements may lead to the discussion of indigenous laws in the processes of the

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<sup>8</sup>See also Urgent Need to Improve the U.N. Standard-Setting Process and Importance of Criteria of ‘Consistent with International Law and its Progressive Development’ UN Doc. E/CN.4/2005/WG.15/CRP.3 (2005a).

human rights monitoring bodies. A notable regional body that has linked repeatedly the strong requirement of indigenous consultation and/or consent to the recognition of their customary laws is the Inter-American human rights machinery: both the Inter-American Human Rights Commission and Court have explicitly recognized indigenous customs and customary law within the context of their protected human rights, related, for instance, to property and culture.<sup>9</sup> In addition to the case law concerning marriage customs (*Aloeboetoe et al. v Suriname (Reparations)*1993), the Inter-American human rights system has referred to the customary law in several cases when discussing the land rights of indigenous peoples. In the famous case of *Awás Tingni v. Nicaragua (Case of the Mayagna (Sumo) Community of Awás Tingni v. the Republic of Nicaragua 2001)*, the Court held that the indigenous community's right to property must prevent the Nicaraguan Government from unilaterally exploiting community natural resources. Before the Court's judgement, the Commission had found that in order to fulfill its obligations under the American Convention on Human Rights, Nicaragua was required to "officially delimit, demarcate, and title the lands belonging to the Awás Tingni Community within a maximum period of 15 months, with the full participation of, and considering the customary law, values, usage, and customs of the Community."(Ibid. Para 164. See, the analysis in Page 2004: 16–20).

Another well-known case that articulates in detail the requirement of consultation and free, prior and informed consent of indigenous peoples is the logging and mining 2009 case of *Saramaka people vs. Suriname (Saramaka People v. Suriname, 2007, No. 172)*. The Court's judgement explicitly relies on the provisions of UNDRIP and links indigenous consultation and free, prior and informed consent to the customary laws of indigenous peoples. In a similar manner to the Awás Tingni and other cases, the Court ruled that the State must grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through effective and fully informed consultations with the Saramaka people (Para5 of the Decision). The Court further demanded that until the delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people (Ibid.). Furthermore, the Court demanded that the Saramaka people are granted a legal recognition of their collective juridical capacity, so that their right to communal property is ensured, as well as their collective access to justice in accordance with their communal system, customary laws, and traditions (Para 6 of the Decision).

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<sup>9</sup>Also African Commission on Human and Peoples Rights has stated that free, prior and informed consent has to be applied in conjunction with the custom and traditions of indigenous peoples. See, *Endorois v. Kenya 2009*.

Attention to the indigenous customary laws has also started emerging in the biodiversity protection regime.<sup>10</sup> The Convention of Biological Diversity is the primary international legal instrument protecting and addressing traditional knowledge as a fundamental tool for conservation and sustainable use of biological diversity. This Convention is of great importance when protecting sacred sites, since governments are obliged to respect, preserve and maintain customary knowledge, innovations and customary practices of indigenous peoples. As existing international intangible property regimes do not adequately protect the indigenous traditional knowledge, *sui generis* solutions have emerged (COP 10 X/41). The Convention of Parties for CBD has noted that *sui generis* systems for the protection of the knowledge, innovations and practices of indigenous and local communities, should be developed taking into account customary laws, practices and community protocols with the effective participation and approval and involvement of those indigenous and local communities (ibid. para 2). These non-legally binding arrangements tend to allow space for the recognition of indigenous values, customs and customary laws. Partly, this is because from the outset, indigenous peoples have been widely represented for instance in the treaty negotiations leading to the establishment of Ad Hoc Open-ended Intersessional Working Group on Article 8(j) in 1998.<sup>11</sup> A notable achievement of the working group on Article 8(j) has been the adoption of the (2004) *The Akwé: Kon Voluntary Guidelines for the conduct of cultural, environmental and social impact assessments*, guidelines that will likely have an impact on indigenous sacred sites as well as on lands and waters traditionally occupied or used by indigenous and local communities (Akwé:Kon Guidelines were adopted in the seventh COP, 9.–20.2.2004).

A sensitive issue with respect to indigenous sacred sites is the disclosure of indigenous secret knowledge. What is the position of international law regarding sacred sites and cultural artifacts that indigenous peoples wish to guard as private, known only to the indigenous community? The Akwé:kon guidelines emphasise that the proponents of developments should respect the cultural sensitivities and needs of indigenous and local communities for privacy. This is crucial especially when it comes to important rituals and ceremonies such as those associated with death and burial (ibid. para 33).

The guidelines clearly indicate that any impact assessment on sacred sites shall be done in accordance with indigenous peoples' customs and customary laws. To achieve this end, the guidelines suggest creating protocols that do not reveal sacred or secret knowledge, but instead set up rules for the authorities and proponents

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<sup>10</sup> Additionally, it is developing in the World Bank and the World Intellectual Property Organization regimes that, due to limited space, we do not explore in this chapter.

<sup>11</sup> The Working group consists of parties and observers of indigenous peoples 'embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity with participation to the widest possible extent in its deliberations in accordance with the rules of procedure'. Decision IV/9: Implementation of Article 8(j) and related provisions. Available at <http://www.cbd.int/decision/cop/?id=7132> [last accessed in November 2014].

of developments that deal with such knowledge according to indigenous peoples' customs. The Akwé:kon guidelines provide that protocols should be followed with regard to the disclosure of secret and/or sacred knowledge, including those that may involve public hearings and judicial processes in the courts (*ibid.* para 30). In the event of the disclosure of secret and or sacred knowledge, prior informed consent and proper protection measures should be ensured (*ibid.* para 29). In the case of disagreements, the disputes should be settled in accordance with customary laws.

The adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (to the CBD)<sup>12</sup> expanded further the biodiversity regime relevant to indigenous sacred sites. The Nagoya Protocol strengthens the protection of indigenous cultural heritage by recognizing the interrelationship between genetic resources and traditional knowledge, and their inseparable nature for indigenous communities (Preambular paragraphs. For an analysis of the Nagoya Protocol, see generally, Kamau et al. 2010). According to the Protocol, States have to consider communities' customary laws, community protocols and procedures with respect to traditional knowledge associated with genetic resources (*ibid.* Article 12). Jonas et al. highlight that, as a result of the Protocol, The 92 States Parties are explicitly required to recognize community systems of governance and, thus legal pluralism (Jonas et al. 2010: 52). This sounds very promising, but one has also to consider the dilution of such obligations set in article 12 by the inclusion of the clause "in accordance with domestic law". A positive interpretation would be that in cases where states have already recognized the legal value of customary laws of indigenous communities, the Protocol requires states to take them into account with respect to traditional knowledge related to genetic resources.

In concluding, current international law is gradually recognizing the importance that the recognition and application of customary laws has in the protection and management of sacred sites of indigenous peoples, as customary laws preserve culturally sensitive, and sometimes even secret, practices and ways of governing and using such landscapes.

### 5.3 Arctic Indigenous Peoples' Natural Sacred Sites and Customary Law

Across the Arctic regions of Russia and Northern Fennoscandia indigenous peoples have striking similarities in their cosmologies, which include notions of animism, shamanism, and most importantly, 'obligations to gift the animating forces of the

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<sup>12</sup>After 6 years of negotiation, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD was adopted at the tenth meeting of the Conference of the Parties on 29 October 2010, in Nagoya, Japan, <http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf> (accessed March 13, 2014).

landscape with material offerings and the sacrifice of domestic animals' (Jordan 2010). These underlying cosmologies are particularly manifested in places that are considered by indigenous communities as sacred (Pentikäinen 1995: 118).

For Arctic indigenous peoples, the land is considered sacred without being the subject of worshipping as such. For the Sámi, the indigenous peoples living in Norway, Finland, Sweden and Russia, the sacredness of nature has appeared in various ways (Äikäs 2011: 17–18). The sacred sites can be divided into offering sites called *sieidis* that are usually peculiar stones or carved trees; other sacred sites including mountains, springs and special lakes called *sáivu*; and sacred spots inside the houses called *boaššu* (Äikäs 2011: 18, 34; Pentikäinen 1995: 118).<sup>13</sup> The difference among them is that the *sieidis* were given gifts by indigenous communities on a regular basis, whereas other sites were respected otherwise. It should be noted however that it was not solely the actual *sieidi* that was considered sacred, but also the whole surrounding mountain, island and landscape where the offering place was situated (Itkonen 1948: 310). Sometimes the division between different types of sacred sites seems artificial, since the Sámi do not always make a clear distinction between sacred and non-sacred; the sacred sites make sense only as a part of a larger landscape (e.g. Äikäs 2011: 33–34; Itkonen 1948: 310; Paulaharju 1932: 8). The existence of sacred sites is reflected also in Sámi place names referring either to the old Sámi deities or sacredness.

The Sámi scholar Rauna Kuokkanen has suggested that the use of *sieidis* was grounded on the notion of reciprocal gift giving rather than on sacrificing, something which resembles the practices and holistic worldviews of other indigenous peoples worldwide (Kuokkanen 2007: 34–35). The connection with the gods, ancestors and cosmos was maintained and secured through sacred sites, which can be considered as a hub between different worlds. Thus, the function of the sacred sites has not only been securing the continuity of livelihoods but also keeping the balance with the surrounding environment. In sacred sites, practical, historical and mythical dimensions of landscape become intertwined as they are closely connected to everyday life: usually sites are situated along moving routes or nearby camp places, villages and fishing lakes (Magga 2007: 13).

Jordan contends in a rather similar vein that the nature of gift offering among Russian Arctic indigenous peoples is also reciprocal and conditional (Jordan 2010: 30). For them, sacred sites reflect the intimate connections that indigenous peoples have built with landscapes over the centuries. In Russia, the reindeer herding peoples continue to follow in their ancestors' footsteps and undertake sacrifices and offerings at sacred sites and burial grounds located along key reindeer migration routes (CAFF 2004). The integration of subsistence and ritual forms indicates, according to Jordan, that:

[i]t is the focal nature of sacred places that brings the cosmological and economic dimensions of existence together: acts of gifting and sacrifice form a key axis of reciprocal communication that extends outwards into the wider subsistence economy of hunting and

<sup>13</sup>It is worth noting that indigenous cosmologies resemble rather a cognitive map or way of understanding the world rather than a coherent religious system.



herding, and express some of the complex ways in which human persons must act and move in a landscape dominated by relational responsibilities to both people, spirits and ancestors. (Jordan 2010: 34)

Sacred sites have thus had their own place and function in Arctic indigenous peoples' cosmologies, worldviews and landscapes. However, due to the long history of christianisation, which dates as far back as to the sixteenth century, there are only fragments left of old Sámi cosmology; accordingly, the use of sacred sites has been diminished or even discontinued. In Russia, some indigenous communities have managed to maintain their active customary use and management of sacred sites beyond the Soviet era, mostly due to the long distances to the administrative centers (Haakanen and Jordan 2010: 163). In spite of these regional differences and gaps between generations, sacred sites, coupled with indigenous customary laws regulating the use of them, are still an integral part of Arctic indigenous peoples' cultural heritage and spirituality.

### *5.3.1 Sámi Customary Law Related to Sacred Sites*

The definition of what exactly customary laws are is important in guiding the specific customs that will be used in justice systems. In a paper in 2013 on glossary of relevant terms, WIPO used Black's Law Dictionary which defines "customary law" as law "consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws" (UN Doc. WIPO/GRTKF/IC/25/INF/7 2013, pp. 8–9).

Customary law can be defined as 'body of customs, norms and associated practices, which have been developed or adopted by Indigenous or local communities, whether maintained in an oral or written format, to regulate their activities' (Tobin 2014: 10). Indigenous peoples have had their own legal orders and customary laws to govern the use of lands, territories and natural resources and to regulate both their internal and external relationships.

As no systematic description about Sámi customary law related to sacred sites exists, there are some basic tenets identifiable that pertain to sacred sites, too (for the nature of Sámi customary law in general, see Helander 2004a). Sámi customary law can be characterised as unwritten, dynamic, variable and place-based set of rules (Helander 2004b: 88). Customary laws vary, as each community has its own sets of rules, norms and regulations for conducting social behaviour and use of natural resources. Therefore, it would be erroneous to try to discover one common body of Sámi customary law that pertains to all Sámi communities (Åhrén 2004). As another Sámi scholar, Mattias Åhrén notes, 'customary law varies between regions depending on the different livelihoods, and even communities with the same livelihoods have developed different customs and traditions depending on

the environment in the area they inhabit' (ibid. 68). Since sacred sites have had multiple functions, the customs related to them are always bound to certain places and contexts.

In addition, one should be careful of the existing sources codifying Sami customs. Literature on sacred sites have been gathered mainly by non-Sámi priests and missionaries, who were then followed by anthropologists and ethnographers. Literature on Sámi customs is thus usually written by men so the women's role and position is usually undermined. It is also possibly influenced by the long period of christianisation policies, and is unlikely incomplete, due to the reluctance of Sámi to share knowledge about their sacred sites. Since the literature on *sieidis* is more abundant than that related to other sacred sites, this paper focuses in particular on customs related to the *sieidis* used for offering.<sup>14</sup>

Also, one should keep in mind that customary laws constitute a dynamic set of rules that are attuned to the environment where they are being implemented, evolving according to the circumstances and situations (Helander 2004b: 88) This evolutionary nature of customary laws has also affected the use of sacred sites (Mulk 2009). For example, *sieidis* could be abandoned when they did not 'give back' anymore, showing the dynamic and ever-changing nature of indigenous customs. Such customs are often translated into customary laws. The distinction between customs and customary laws is not always easy to draw. Making a distinction is not even as relevant for the indigenous peoples themselves as it is for legal scholars, lawyers, or judges. Having its roots in nature-based cosmologies and epistemologies, indigenous peoples' customary law does not easily fit with western notions of 'law' (Tobin 2014: 30). For the purpose of this paper, we have defined customs as actual practices, and customary law as 'consisting of customs that are accepted as legal requirements or obligatory rules of conduct' (Black's Law Dictionary). Integral for the birth and validity of customary law is thus continued customary practice and *opinio necessatis*, that is, a sense of obligation on the basis of which the people consider the custom to be binding on them without the need for reference to national or other temporal authorities (Tobin 2014: 10, 19). Therefore, we have identified some customs from the Finnish side of Sápmi to illustrate larger body of Sámi customary law. Such customs will be used to help us identify the central issues arising in the protection of sacred sites.

In their work, Frans Äimä, Samuli Paulaharju and T.I. Itkonen have invented and documented sacred sites in Finnish side of Sápmi. (Äimä 1903: 116; see also Manker 1953, which includes incomplete list of known sacred sites also from Finnish side). They describe some rituals and rules that regulated how these sites should be approached and who were allowed to do so. They show that *sieidis* were regarded so sacred that one had to keep quiet and crawl when approaching them. After having greased them with fish oil, hunters and fishermen would ask advice for hunting. Reindeer herders slaughtered reindeer or gave smaller parts of them

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<sup>14</sup>Cemeteries and burial sites have been also considered sacred but they are left intentionally beyond the scope of this paper due to the lack of earlier research on them.

to *sieidis*. The use and location of the sites depended on whether each *sieidi* was dedicated for fishing, hunting or reindeer herding. While fishing *sieidis* were located by the lakes and rivers, reindeer herders' sacred sites were often situated along the frequently used routes or nearby camp sites, but not in the midst of villages (Äikäs 2011). Paulaharju describes how gift offering was connected to the seasons: in the springtime herders would ask *sieidis* to secure the forthcoming calving and in the autumn they would thank for the past summer (Paulaharju 1932: 21–23). The gift offering was also regulated by customs. The reciprocal nature of the gift-giving custom is captured in a conception of the 'reindeer luck'. The reindeer luck, which is considered as a prerequisite for having large herds and succeeding in reindeer husbandry, was maintained by slaughtering a reindeer or giving smaller parts of reindeer such as antlers and bones to *sieidis* (Oskal 2000: 175–180). However, gift giving was only one part of maintaining reindeer luck, since one had also to show respect to nature and other people too. The concept of 'reindeer luck' reflects wider Sámi cosmology on nature, ancestors, reindeer and other people (ibid. 178). Respecting nature and maintaining the balance with the environment are common legal principles for other indigenous peoples too (Tobin 2014: 31).

On the basis of the existing literature, one can also conclude that there were separate sacred and offering sites for women and men associated with gender restrictions (Rydving 2006: 61, 103; Bäckman 1982: 147); similar restrictions are found among the Nenets. (see Haakanson and Jordan 2010). For instance, the interior of the hut was divided according to gender and also age (Rydving 1993: 145–149, Fossum 2006: 175–177). Furthermore, within Inari Sámi communities only men were allowed to approach the sacred *Äijh* island, while women had their own sacred sites specifically for female deities (Itkonen 1948: 310). In the earlier literature, details about the women's spirituality as well as their role in rituals is overshadowed by the descriptions related to the practices of men (Pentikäinen 1995: 154; Itkonen 1948: 132, Paulaharju 1932: 34; Äimä 1903; Bäckman 1982). This may not explicitly be nevertheless construed as an all-encompassing phenomenon or as an evidence of Sami women's inferior role in the Sami religion; instead it may be merely a consequence of the way information was gathered. It was mainly men who male missionaries and priests collected information from thus ignoring women's knowledge related to sacred sites (Rydving 2006: 103). Sámi women have most likely had their own practices and sacred sites reflected in the centrality of feminine deities of birth and child-bringing and in the places named after them (Bäckman 1982: 147). What these practices and customs have been is unfortunately uncertain. Among the other Arctic indigenous peoples, gender has also structured participation in gifting and sacrifice rituals at sacred sites (Vaté 2010: 151–153; Vitebsky and Wolfe 2001: 81–94). In addition to gendered rituals, sources also testify of families' common ceremonies, which were open to everyone in the family (Rydving 1993).

As noted by Rydving, it seems reasonable to assume that some sacred sites were better known than the others. Rydving has differentiated among three types of sacred sites depending of users: the first group includes sites that have been used by whole Sámi community; the second one is comprised of common and shared sacrificing places of multiple households; and the third category contains personal sites that

belonged to the families and individual (Rydving 1993: 97–98). Each family and household had traditionally their own sacred sites; those *sieidis* were considered to a certain extent a personal *sieidis*. The personal *sieidis* were kept in secret, and for that reason we cannot know for sure whether they are still in use. The *sieidis* widely known and shared by several households or families (Itkonen 1948: 312) were used collectively and can be viewed as a form of collective property of the Sámi living in a certain geographical region. It is also important to remember, that *sieidis* were always situated on the lands occupied and owned by certain families or households or in a borderline between several households or *siidas* (Rydving 1993). *Siidas* were traditional Sámi kinship and taxation units that organised daily work within a certain geographical area up until the nineteenth century. Like other indigenous legal regimes, Sámi perceptions of ownership does not always correspond to the western proprietary rights. Similarly, ownership of sacred sites was not regulated as strictly as western ownership regimes.

Even within Sámi communities, not everyone could freely use other people's or families' *sieidis*. There were various kinds of rules directed at others than the 'owners' of a *sieidi*. For outsiders, it was allowed to bypass a *sieidi* when moving with the reindeer, but not approach or use it without the permission of the owner. Since *sieidis* were given regularly gifts in order to secure the basis of hunting, fishing or reindeer herding, stealing the gifts from the *sieidi* was strictly prohibited. Destroying and violating sacred sites was also forbidden, but it seems that some sites have been destroyed by priests and in some incidences by Sámi themselves during the christianisation era. Due to the lack of effective judicial regulations on the matter, there have been no effective ways to punish wrong-doers other than social condemnation (Rydving 1993: 61). According to the beliefs, those who violating *sieidis* or customs would result in misfortune, or even death.

Even if some sacred sites were publicly known within Sámi communities, they were usually prohibited and hidden altogether from the outsiders including priests and researchers belonging to the settler society. Due to privacy regulations and christianisation, the Sámi are still reluctant to reveal their sacred sites to the outsiders. The privacy inherent in *sieidis* raises difficulties for museums and heritage scholars: if such sites are seen as part of the world culture, do they not form part of the right of everyone to such heritage? Therefore, access to such sites may be seen as part of the non-indigenous individuals' right to the cultural heritage of mankind. Although we argue that the owner of the specific cultural heritage should have the first say on who and when will have access to it, and our view is supported by the UNDRIP, there are voices, mainly in museology, that advocate for such heritage being collectively owned by humanity. Therefore, it becomes obvious that the indigenous and the non-indigenous worlds have different priorities that impact substantially on the direction of international human rights decisions relating to cultural heritage. More work needs to be done on this issue that goes beyond a generic recognition of indigenous cultural heritage in order to reveal and discuss these issues and reach clear directions.

The abovementioned customs sites embody respect towards nature, underline the cosmologies of the Arctic indigenous peoples, and most importantly, reflect the

underlying customary laws related to sacred sites. On the basis of those customs, one can conclude that the central part of Sámi customary law related to sacred sites concerns the regulation of privacy and ownership issues. In other words, according to Sámi customary law, sacred sites are regarded as belonging to the certain individuals, families and communities, and they are kept in secret in order to protect them from outside interference. The customary laws and obligations related to sacred sites tend to be informed by the aim to keep the balance with the nature, which is also an overarching principle in other indigenous legal orders (Tobin 2014). The source of those laws comes from the observations from nature and they are being transmitted in an oral form through traditional knowledge from generation to generation (about traditional knowledge in general, see Berkes 1999). On a larger scale, the function of customary laws tends to be sustaining the nature and natural resources for the coming generations. Sacred sites are nowadays more and more threatened by various kinds of encroachments including extractive industries and oil and gas developments (Xanthaki 2013: 315–350); and so are the cultures and livelihoods of Arctic indigenous peoples. Protection of sacred sites in accordance with indigenous peoples' customs and traditions is thus an important topic with current parameters.

It is not clear whether and to which extent the above-mentioned customary rules related to sacred sites are respected nowadays among the Sámi, since they are considered very sensitive issues to be discussed, not least due to the long history of Christianization. However, there is an abundance of information related to sacred sites which can be construed as evidence of the ongoing significance for the Sámi people (Kjellström 1987: 24–32). Even if only few of these abovementioned customs and traditions are still relevant among the Sámi today, they reflect the underlying Sámi customary law system that many times contradict with that of major society. Therefore, customs and customary laws need to be taken into account and respected in the protection of sacred sites. Again, the importance of getting knowledge regarding the importance of customary laws and the ways such information needs to be approached is an issue that needs further exploration in human rights law.

## 5.4 Concluding Remarks

Indigenous sacred sites are an integral part of cultural heritage of indigenous peoples and as such, they should be protected. The notion of sacred sites as collective property belonging to the families or communities stands in stark contrast to that of a private or state property. This chapter used the case of the Sami sacred sites to highlight the issues relating to customary laws. Our analysis of Sámi customary law related to sacred sites demonstrated that the central questions in the protection are related to ownership and privacy. It revealed that many of indigenous customary laws set rules that differ substantially from the non-indigenous understanding of concepts, such as property and heritage, and usages of for example nature

and sites. As Tobin has argued, the western indigenous property regimes fails to incorporate indigenous notions, such as property; hence, international guidelines and co-management activities are essential for the implementation of indigenous customary laws and consequently, the protection of indigenous cosmotheories and lifestyles (ibid. 152). This paper argued that international human rights law is gradually becoming an important partner in the recognition of indigenous customary laws. The UNDRIP has made a substantial contribution in this area, which was also strengthened by the *Akwé: Kon Voluntary Guidelines* and the *Nagoya Principles*.

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# Chapter 6

## Protecting the Sacred in the Finnish Sápmi: Settings and Challenges

Eija Ojanlatva and Antje Neumann

### 6.1 Introduction

As for many other indigenous peoples too, sacred sites mean for Sámi much more than just a description of a piece of land or a certain position of it in the landscape. They were part of their pre-Christian conception of the world, with a strong belief in the presence of ancestors and other spiritual beings. Although through Christian oppression and destruction of Sámi religion, including items and practices connected with Sámi religion, the traditional knowledge connected to a sacred site has been erased sometimes; in many cases, however, essential knowledge towards Sámi sacred places and burial sites, the myths and legends, as well as the tradition of healing and the existence of the sacred and sacrificial places themselves, including burial sites, is still alive (Schanche 1994, 122). Today, they are still of strong emotional significance for Sámi people in Finland (Mulik 1994, 130). Some Sámi still have the knowledge of old Sámi popular beliefs, some of them still practising as medicine-men (Ibid). Many Sámi are also familiar with the sacrificial places of their ancestors and know who or what family was using what sacrificial sites or places (Ibid). Thus, sacred sites play an important role for Sámi culture and their identity in our time.

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The right to cultural autonomy for the Sámi, as an indigenous people, is recognized by the Articles 17 (3) and 121 (4) of the Finnish Constitution. In accordance with this, several domestic legislations are in place in order to fill in and concretize this abstract constitutional right. However, western legal and management approaches – compartmental organized, passed on written theories and communicated almost in written form – differ widely from the Sámi concept of sacred sites. Because of these differences, many difficulties and problems result, evidenced by definition building, incompatibilities between Sámi worldviews and western approaches of law making, as well as by clashes between fundamental Sámi rights and current academic and administrative practices towards the protection and management of Sámi sacred sites.

Against this background, this article investigates the questions to what extent Sámi sacred sites are protected by Finnish domestic law and what challenges and problems exist in this regard. In doing so, the article, first, identifies some common characteristics of indigenous peoples' sacred sites in general, and of Sámi sacred sites in particular. Secondly, an overview of the existing domestic legal instruments for the protection and management of Sámi sacred sites is provided. This overview is organized by drawing attention on four legal frameworks: the constitutional context referring to general Sámi rights for protecting their sacred values; the cultural heritage legislative context, comprising Sámi sacred sites recognized as ancient monuments; the nature conservation context in relation to the recognition of Sámi sacred sites; and the landscape planning and land use legislation context. In a third part, the article addresses apparent problems relating to the scope and application of the Finnish Act on Antiquities and to the factual protection and management of Sámi sacred sites under the Register of Antiquities. Here, also very practical examples towards legislative shortcomings and incompatibilities in the case of protecting the sacred landscape of the Lake Äijihjärvi/Äijih, or the conflict between the Sámi right to maintain and develop their own culture, including the protection of relevant information against outsiders, and the right of access to cultural heritage under the Framework Convention on Cultural Heritage of the Council of Europe are elaborated. The article concludes with a summary of the discussed problems and outlines some recommendations to tackle them.

## **6.2 Finnish Legislation to Protect Sámi Sacred Sites**

### ***Sámi Sacred Sites – A Definition?***

Definition building is a clearly western approach. In indigenous worldviews, such an approach does not exist and is not necessary. Especially in terms of indigenous peoples' sacred sites it becomes apparent that perspectives on and perceptions of them vary widely, depending on individual cultural and social contexts and selected time horizons. Several authors underline the notion that “a sacred place is not simply

to describe a piece of land, or just locate it in a certain position in the landscape [but it rather] carries with it a whole range of rules and regulations regarding people's behaviour in relation to it, and implies a set of beliefs to do with the non-empirical world, often in relation to the spirits of the ancestors, as well as more remote and powerful gods or spirits" (Carmichael et al. 1994, 3). Moreover, the variety and complexity of what is understood as a 'sacred site' is stressed, accompanied by the notion of necessary limitations by languages, cultures, and even differentiations among indigenous peoples' individual tribes, subtribes or extended families (Hubert 1994, 9 ff.). However, for the purpose of this article and for delineating 'sacred sites' from other concepts, such as 'sacredness' for example, it might be appropriate to look, first, for a classification of the term within the international regulatory framework, and second, for common characterizations.

In terms of classification, sacred natural sites of indigenous peoples, in the context of international regulations, represent often a great variety of natural features including mountains, rivers, springs, rocks, hills, deserts, forests, groves, individual trees, coral reefs and coastal waters; as well as work of their ancestral communities such as petroglyphs and archaeological sites (Custodian Statement 2008). Under the International Union for Conservation of Nature (IUCN) regulatory framework, a broad and open understanding is laid down by defining them as "areas of land or water having special spiritual significance to peoples and communities" (Oviedo and Jeanrenaud 2007), implying that these areas are in some way holy, venerated or consecrated and so connected with religion or belief systems, or set aside for a spiritual purpose (Verschuuren et al. 2010, 2). The importance of indigenous peoples' sacred sites is also recognized in the context of biodiversity protection where specific guidelines – the Akwé:Kon Guidelines – under the Convention for Biological Diversity (CBD) were adopted in 2004 (Akwé:Kon Guidelines 2004). According to these guidelines the term of "sacred sites" for the purpose of these guidelines is described as "a site, object, structure, area or natural feature or area, held by national Governments or indigenous communities to be of particular importance in accordance with the customs of an indigenous or local community because of its religious and/or spiritual significance" (Akwé:Kon Guidelines 2004, Para 6 (e)). Moreover, in the human rights context of indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007) explicitly emphasizes that "Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains" (UNDRIP 2012, Article 12 (1)).

Despite these references to indigenous peoples' sacred sites within international regulations, also some common characteristics can be derived from literature:

First of all, there is the characteristic of connectivity to 'landscape'. Most sacred places are connected with, or are classified as 'natural' features of the 'landscape', such as mountain peaks, springs, rivers, woods and caves (Carmichael et al. 1994, 1). Based on this connotation, often a distinction is made between *naturally shaped* or unmodified geomorphological sites, such as rocks or trees, on the one hand, and

*modified places by human occupation*, comprising for example rock art, burials, stone arrangements, in situ artefacts assemblages, and the deposits associated with sequential human occupation, on the other (Ritchie 1994, 227, 228).

These characteristic features can be also identified in respect to Sámi sacred sites. They are mostly naturally shaped *land patterns*, such as fells, hills, capes, lakes or islands, *unmodified natural objects*, such as rocks, trees, boulders, small lakes or springs, or *human made or modified structures*, such as offering rings made of stones, wooden piles or erected stone structures (Carpelan 2003, 77, 78; Ojanlatva 2013, 42, 43). Sacrificial places are sometimes located on or near outstanding formations in the landscape, but sometimes they are not so clearly visible because they are not demarcated from the surrounding landscape. Some of the sacred sites are so called offering sites, *sieidis*. Offering sites are usually classified by a specific livelihood, such as reindeer hunting, fishing or reindeer herding, and some of the sites are mentioned to be good *sieidis* for everything.

A second common characteristic is the functionary aspect of indigenous peoples' sacred places. Since they often comprise a whole range of rules and regulations regarding people's behaviour, as mentioned already above, sacred sites may have also a specific function. In doing so, they serve, for example, as transformer sites, spirit residences, ceremonial areas, traditional landmarks, questing sites, legendary and mythological places, burial sites and traditional resource areas (Carmichael et al. 1994, 4, 5).

This functionary characteristic can be also seen in respect of Sámi sacred sites. Usually, Sámi sacred sites can be composed of a number of different features. However, their main common function is an 'offering' made on the site. This function reflects the relationship between the 'giver' and the 'receiver' wherein the receiver expects the gift, and the giver expects something in return. In the framework of this function, many kinds of offerings could be made: bits of foods, parts of animals, metal objects, tobacco, etc. Gifts could be given to the gods and to the deceased relatives living in the parallel existence (Broadbent 2010, 173–176). Many times the offering was associated with game, to ensure the fishing or hunting luck or to thank for the good pray. Offerings could also vary from small-scale, personal offerings to large-scale, collective offerings and from daily to seasonal offerings. It is important to understand that the Sámi religion is not uniform and that, thus, the rituals and features could differ from area to area.

### ***Legal Instruments Protecting Sámi Sacred Sites***

Depending on their multi-contextual nature, the legal recognition of indigenous peoples' sacred sites and related instruments for their protection may differ accordingly between individual domestic legal contexts. While in the Australian legal context, for example, indigenous peoples' sacred sites are covered by 'relics legislation', 'culture significance legislation' and 'general heritage legislation' (Ritchie 1994, 229, 230), in the United States, legal frameworks for the protection of indigenous

sacred sites include such domestic laws as the National Historic Preservation Act, the American Indian Religious Freedom Act, as well as relevant provisions of the United States Constitution (Miller 1998, 56).

In this article, referring to Finnish domestic legislation, legal instruments to protect Sámi sacred sites will be considered in the following types of domestic legal frameworks: First, in the constitutional context referring to general Sámi rights for protecting their sacred values; second, in the cultural heritage legislation, comprising Sámi sacred sites recognized as ancient monuments; third, in the nature conservation legislation, relating to the recognition of Sámi sacred sites in this context; and fourth, in the landscape planning and land use legislation relating to the landscapes *de facto* containing Sámi sacred places and sites.

### 6.2.1 *Constitutional Legislation*

The Finnish Constitution declares that the Sámi, as an indigenous people, have the right to maintain and develop their own culture, Section 17 (3) of the Constitution. This right is specifically endorsed in the Act on the Sámi Parliament where, according to the constitutional right of cultural self-governance, Section 121 (4) of the Constitution, the Sámi have “cultural autonomy in the Sámi homeland”, Section 1 (1) of the Act on the Sámi Parliament.<sup>1</sup> Thus, the protection of Sámi sacred sites as being part of Sámi culture is constitutional guaranteed and part of the cultural autonomy of the Sámi people. The latter law, furthermore affirms that authorities shall negotiate with the Sámi Parliament regarding “all far-reaching and important measures that directly or indirectly may affect the Sámi’s status as an indigenous people,” including matters relating to the management, use, leasing and assignment of state lands, conservation areas and wilderness areas, among other issues, Section 9 (1) (2) of the Act on the Sámi Parliament. Accordingly, all far-reaching and important measures concerning the management, use, leasing and assignment of ‘sacred sites’ as being part of state lands, conservation or wilderness areas have to be negotiated with the Sámi Parliament.

### 6.2.2 *Cultural Relics and Heritage Legislation*

Sámi sacred sites in Finland enjoy particular recognition under the Finnish Antiquities Act of 1963. According to this law, ‘ancient monuments’ – usually older than 100 years – are protected by law as antiquities pertaining to the past settlement

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<sup>1</sup>The Sámi homeland means, according to Section 4 (1) of the Act on the Sami Parliament (974/1995), the areas of the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the reindeer owners’ association of Lapland in Sodankylä.

and history of Finland, Section 1 (1) of the Antiquities Act. In Section 2 the law defines more concretely, what is usually understood as an ‘ancient monument’. Accordingly, they may comprise, among others, the following:

1. mounds of earth and stone, cairns, circles and other settings and structures of stones made in the past by man;
2. pre-Christian graves and cemeteries, including those without any visible signs on the surface of the ground;
3. stones and rock faces with inscriptions, illustrations or other drawings, paintings, ground markings, traces of grinding or hammering, and hunting pits made in the past;
4. sacrificial springs, trees and stones, other ancient places of worship, and ancient trial sites;
5. fixed natural objects associated with old traditions, tales or significant historic events (Antiquities Act 1963, Section 2 (1)–(4)).

While all of these subsections can become relevant for the protection of Sámi sacred sites, especially the two last provisions encompass Sámi sacred sites and places as framed and outlined above. With these provisions, the legal protection includes not only human-modified sacrificial places, sites or objects, but also natural-shaped ones, especially relevant in Sámi culture and tradition.

Responsible for the supervision and management of all ‘ancient monuments’ or fixed relics is, according to § 3 of the Antiquities Act, the National Board of Antiquities.<sup>2</sup> This board also hosts a register where all monuments are registered and publically accessible.<sup>3</sup> Moreover, the National Board of Antiquities concludes official agreements on archaeological and built cultural heritage with the relevant provincial museum. In 2011 for example, the Sámi museum Siida and the National Board of Antiquities concluded an agreement on archaeological cultural heritage and its management in the Sámi homestead area.

Nowadays, there are approximately 50 registered Sámi sacred sites, which are protected as ‘ancient monuments’ under the Antiquities Act. The majority of them are located in northernmost Lapland.

While the National Board of Antiquities and the contractual provincial museums are responsible for the supervision of the protection of the cultural heritage in Finland, Metsähallitus – a state-owned enterprise under the Finnish Ministry of the Environment and responsible for the management and use of state land – signs for the management of them. According to this competency, Metsähallitus is also responsible for the mapping and surveying of Sámi sacred sites potentially falling under the recognition of ‘ancient monuments’ under the Antiquities Act. In order

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<sup>2</sup>The National Board of Antiquities, operating under the Ministry of Education and Culture, is responsible for protecting environments with cultural history value, archaeological culture heritage and architectural heritage, and other cultural property. See its webpage at: [http://www.nba.fi/en/about\\_us](http://www.nba.fi/en/about_us) (accessed 17 May 2016).

<sup>3</sup>Access to the register, in Finnish language, at: <http://kulttuuriymparisto.nba.fi/netsovellus/rekisteriportaali/portti/default.aspx> (accessed 17 May 2016).

to apply common standards and best practices specific guidelines and instructions are in place for conducting respective surveys.<sup>4</sup> While some of the results of those surveys are publically available, most are not. All of data compiled by Metsähallitus are submitted to the National Board of Antiquities. Problems that especially arise from the acquisition of sensitive information regards Sámi sacred sites, the public accessibility of respective data and the responsibility for ensuring the protection of data are elaborated further below.

### 6.2.3 Nature Conservation Legislation

Also in the context of area protection, Sámi sacred sites are legally protected. This applies for sacred sites, which are affected by certain nature conservation measures, such as the designation of protected areas in one of the existing area protection categories for example.<sup>5</sup> In such cases, the Nature Conservation Act of 1996 states in Section 16 (1) that “[C]onditions for the maintenance and development of Sámi culture shall be secured in national parks and strict nature reserves located in Sámi homeland”. In doing so, all Sámi sacred sites, which are located within, and more widely interpreted, which are affected by the establishment and management of national parks or strict nature reserves in Sámi homeland have to be protected.

A further legal instrument in this context, that covers sacred sites of Sámi people, is the Act on Wilderness Reserves of 1991. Although reserves designated under this act do not formally account to protected areas, they, however, belong to the Finnish network of protected areas.<sup>6</sup> According to the purpose of this act, wilderness reserves are established to preserve the wilderness character of the areas, to safeguard Sámi culture and indigenous livelihoods and to develop the potential for diversified use of nature, Section 1. By including explicitly the Sámi culture and their livelihood, the act also covers the protection of their sacred sites and places as an intrinsic part of them.

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<sup>4</sup>„Suojelualueiden kulttuuriperintökohteiden inventointi –ohje“, last revised by Metsähallitus in 2013, not publically available.

<sup>5</sup>In Finland, protected areas are categorized as: national parks, strict nature reserves, mire reserves, protected herb-rich forests, protected old-growth forest areas, grey seal protection areas, other protected areas on state-owned land and protected areas on private land. Moreover, Finland has a Natura-2000-network in place to conserve important biotopes and species. These protected areas, established by statute, comprise ca. 17.000 km<sup>2</sup>. Moreover, the Finnish network of protected areas also includes areas which are part of nature conservation programmes (not yet established by statute), and which count in principle to be reserved as protected areas. Taking the latter areas also into account, the total protected area network comprises more than 71.000 km<sup>2</sup>. <http://www.metsa.fi/web/en/numberandsizeofprotectedareas> (accessed 23 May 2016).

<sup>6</sup>In this sense, wilderness reserves belong also to the “extended” network of protected areas in Finland. They are established in accordance to the Wilderness Act on state lands in Lapland. Currently, there are 12 wilderness areas combining an area of ca. 14.903 km<sup>2</sup>, <http://www.metsa.fi/web/en/wilderness-areas> (accessed 23 May 2016).

One, very relevant example of recognizing Sámi sacred sites in the context of wilderness reserves is the revision of the management plan for the Hammastunturi wilderness reserve, one of 12 wilderness reserves in northernmost Lapland.<sup>7</sup> For the revision process, it had been decided to pilot the application of specific guidelines under the Convention for Biological Diversity (CBD), the Akwé:Kon Guidelines. These guidelines generally aim at providing advice on the incorporation of cultural, environmental, including biodiversity-related, and social considerations of indigenous and local communities into new or existing impact-assessment procedures (Akwé:Kon Guidelines 2004, Para 2). In reference to indigenous peoples' sacred sites, they do not only include a specific definition of the term 'sacred site' (already referred above), but also accord special emphasis on sacred sites in the framework of Cultural Impact Assessments (CIAs) and related provisions contained in paragraphs 24–34. Two paragraphs, thereunder, address specifically: the importance of sacred sites with respect to the conservation and sustainable use of biological diversity (Akwé:Kon Guidelines 2004, Para 31); and possible consequences in cases where sacred sites are to be affected by a proposed development (Akwé:Kon Guidelines 2004, Para 32). Although in the given management area of the Hammastunturi wilderness reserve Sámi sacred places had not been inventoried (Metsähallitus 2013, 18), the testing case however has proved that adhering to the Akwé:Kon Guidelines during the planning process can provide concrete measures by which Sámi values associated with spiritually and cultural landscapes are recognized (Heinämäki et al. 2014, 224). Meanwhile, the Akwé:Kon Guidelines have also been applied to the preparation of the management plans of Urho Kekkonen national park and Käsivarsi wilderness reserve and, thus, further experiences towards the recognition of Sámi spiritual and cultural values in the management planning process could be made.

#### ***6.2.4 Landscape Planning and Land Use Legislation***

Moreover, Sámi sacred sites play an important role as regards landscape planning and land use. In this context, the Land Use and Building Act of 1999 provides for the protection of cultural values, although not referring to Sámi culture in particular (Land Use and Building Act 1999). This becomes expressed by the general objective according to that the act aims to “ensure that the use of land and water areas and building activities on them create preconditions for [among others] culturally sustainable development,” Section 1 (1). More specifically, the objective in land use

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<sup>7</sup>The Hammastunturi wilderness reserve area comprises ca. 184.000 hectares and spans the municipalities of Inari (90 %), Sodankylä (9 %) and Kittilä (1 %). It is situated almost entirely within the Sámi homeland, and used as reindeer pastureland of the Hammastunturi (53 %), Sallivaara (26 %), Ivalo (11 %), Lapland (9 %) and Kuivasalmi (1 %) reindeer herding cooperatives.



planning is to promote the “protection of the beauty . . . of cultural values” Section 5 (1) Nr.3;<sup>8</sup> and in the context of building guidance to promote “building based on approaches which [among others] create and maintain cultural values”, Section 12 Nr.2.

There are 156 areas in Finland that have been classified as nationally valuable landscapes, which were selected by a decision-in-principle by the Finnish Government in 1995 (Ministry of Environment 1995). These landscapes represent the cultural landscapes of Finnish country, and their value is based on culturally significant natural diversity, cultivated agricultural landscape and traditional architecture. According to the national land use objectives set in the Land Use and Building Act, valuable landscapes must be taken into account in land use planning, for example in the Regional Land Use Plans. The aim of designating landscape areas as valuable is to secure prominent and viable landscapes and to arouse public interest in landscape management. At the moment, the Ministry of the Environment is conducting an update inventory of the valuable landscape areas, and Cultural Environment Unit of Sámi museum Siida is updating the landscapes of Sámi homestead area. The Sámi sacred sites are naturally taken into account in the updating process.

Importantly from a procedural point of view, not only in this but also in other context of project planning, are the relevant regulations on impact assessments as integral parts of respective planning, allocation and license processes. The domestic Act on Environmental Impact Assessment Procedure of 1994 puts specific emphasis on cultural values by including “cultural heritage” in the scope of environmental impact assessments (Act on Environmental Impact Assessment Procedure 1994, Section 2 (1)), and by devoting “special consideration [. . .] to the location of the projects” what also comprises “landscapes of historical, cultural or archaeological significance”, Section 7 (2) (c). This procedural emphasis on cultural values is particularly recognized in the context of landscape planning where the respective legal obligation states “When a plan is drawn up, the environmental impact of implementing the plan, including socio-economic, social, cultural and other impacts, must be assessed to the necessary extent”, Section 9, second sentence of the Land Use and Building Act.<sup>9</sup> Thus, Sámi sacred sites, as being part of cultural values, have to be considered in the context landscape planning and land use, both, from a substantial as well as from a procedural point of view.

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<sup>8</sup>It should be noted, however, that the Finnish language text version of the Land Use and Building Act in Section 5 (1), Nr.3 is somehow weaker by using the expression: „edistää rakennetun ympäristön kauneutta ja kulttuuriarvojen vaalimista“, what means in English language translated: „to promote the appreciation of beauty of the built heritage and cultural values“.

<sup>9</sup>In practice, this implies that extra field surveys and researches might be required from the competent authority if the plan does not contain sufficient information about sacred sites in the planning area.

### 6.3 Problems and Challenges for Effective Legal Protection of Sámi Sacred Sites

The Sámi cultural environment consists of archaeological cultural heritage, built heritage, landscape, and traditional knowledge. Traditional knowledge, as understood in the United Nation's context is "a cumulative body of knowledge, know-how, practices and representations maintained and developed by peoples with extended histories of interaction with the natural environment. These sophisticated sets of understandings, interpretations and meanings are part and parcel of a cultural complex that encompasses language, naming and classification systems, resource use practices, ritual, spirituality and worldviews" (UNESCO/ICSU 2002). This also applies to Sámi traditional knowledge where it stands for an invisible, spiritual layer covering the landscape. It tells about the relevance, usage and appreciation of sites and areas, and it is present in stories, songs – joik, leu'dd or livđe – and in place names. Sámi sacred sites exist in broad quantity and quality in Finland; however, only around 50 of them are recognized and catalogued by the Register of Antiquities nowadays.

The offering rituals on the sites have in many cases finished decades or even centuries ago, because Christianity spread to the Finnish Sámi area already in 16–17th centuries (Kylli 2005, 14–20; Ojanlatva 2013, 164). Nevertheless, the 'old' and new religion co-existed side by side for long time, and the importance of the sacred sites for Sámi is still very strong. The sacred sites are part of the Sámi cultural heritage; they tell about Sámi livelihoods, traditions, and religion of ancestors and connect the generations. Present on the landscape, the sacred sites can be considered as one basis of Sámi identity.

The Sámi sacred sites of Finland have been documented by priests, explorers, researchers, mainly archaeologists, for decades. Because the Sámi sacred sites are mostly natural formations: mountains, lakes, springs, rocks, boulders, islands, etc., they are difficult to recognise without ethnographic, historical, linguistic, archaeological or oral sources. The strongest evidence is a present-day traditional knowledge which has been transferred from generation to generation telling that the place is sacred. Many times the sacred sites are mentioned in the historical or ethnographical source books. Sometimes the traditional knowledge of the sacred site has already been forgotten, and only the old Sámi place name hints towards the significance of the site. Accordingly, some of the sacred sites are considered sacred because traditional knowledge tells of their significance. These kinds of sites can be entire fells, such as three Áilegas in Utsjoki municipality, or islands, such as three Äijih in Inari municipality. Some of the sites are offering sites, *sieidis*, where the human influence can sometimes be found as offerings, mostly bones of offered animals. If the offering site situates on an island or fell, the island or the fell itself or the complete surrounding landscape is considered or interpreted as sacred.

Although fixed relics or sites of Sámi culture are mentioned as 'ancient monuments' under the Antiquities Act, they are, however, not otherwise specified thereunder. In order to recognise and determine Sámi sacred sites it is vital to

have expertise in Sámi culture and languages. Also, it is always vital to take into account Sámi participation and to respect the local indigenous knowledge when dealing with Sámi sacred sites. It is a key to understand and interpret the Sámi cultural landscape. Since most Sámi sacred sites under the Antiquities Act are interpreted and determined by archaeologists, it imposes a huge challenge to define the protective area around the site on field. Only a few of them have education in Sámi culture and archaeology. Thus, there is an immanent risk of misinterpretation and disregard of protection if the archaeologists, researches, and the protection making officials dealing with Sámi sacred sites lack expertizes mentioned above.

### ***6.3.1 In the Case of the Antiquities Act (295/1963)***

In Finland, all ancient monuments, including Sámi sacred sites, are automatically, without separate legal measures or any other legal procedures of designation, protected under the provisions of the Antiquities Act. According to Section 1, Sentence 1 of the act they are protected as “antiquities pertaining to the past settlement and history of Finland”. Sentence 2 prohibits to “excavate, cover, alter, damage or remove ancient monuments, or to disturb them in any other way”, except in the case of a permission stipulated under the act. Section 4, Paragraph 1 of the act specifies that ‘ancient monuments’ include the area of land necessary for the preservation of the remains in question and for providing sufficient space around them in view of their nature and significance, and the act determines such an area subsequently as a “protective area“, Section 4, Paragraph 2.

Although neither defined nor specified by the Act of Antiquities, in practice, the protective area, determined by an archaeologist, usually comprises a radius of 2–4 m around the ancient monument or site, measured from the visible constructions or findings of the site. Traditional archaeological education in universities still emphasizes that archaeologists have to provide strong and verified proof of human evidence – human-made constructions or objects – before they can define the place as a fixed relic. From this stringent academic rule, practical problems may arise if the sacred object or site is a natural-shaped one because the rule not only applies to human-modified objects or sites, but also to those of non-human modification, as defined by the Antiquities Act, for example, such as „fixed natural objects associated with old traditions, tales or significant historic events“, Section 2, Nr.9. In such cases, practitioners often face the problem of incompatibility between theoretical rules, they would have to obey, and the factual nature of their object of research.

Another problem arises in relation to the scope of protection. As mentioned above, most of the Sámi sacred sites do not have any boundaries nor are they demarcated. They are rather assimilated into surrounding landscape. Against this background, the question comes up: “What is the sufficient, necessary space for the preservation of the remains in question dealing with Sámi sacred sites?” One practical example of this problem became evident at the Inari municipality: Between

the Lake Inari and the Lake Äijihjävri situates the Äijih<sup>10</sup> Island where an offering site, *sieidi*, was found only a few years ago, in 2007. Even before, the localization of this *sieidi*, the place names as well as relevant source books and oral tradition proved that the Äijih Island is a sacred site. Moreover, there are already a few known Inari Sámi sacred sites called Äijih around the Inari Lake. The old Inari Sámi name of the Lake Äijihjävri is Pasemusjävri, which in Inari Sámi means the ‘Most Sacred Lake’ (Mattus 2010, 251). According to oral tradition wooden *sieidi* piles have existed on the small islands of Lake Äijihjävri.<sup>11</sup> On the northern shore of this lake situates also Äijih’s female companion, the Akku Fell,<sup>12</sup> which is also a sacred site. Because of all hereinabove, Äijih Island, Äijihjävri Lake and Akku Fell compose together “an Inari Sámi sacred trinity”, a uniform, vast sacred landscape. However, legal protection of this trinity appears highly problematic, especially because of its size of around 45 km<sup>2</sup>. Already during the planning process towards a general plan for the Lake Inari, discussions as regards the protection of the whole composition were completely denied.<sup>13</sup> Currently, only the surroundings of *sieidi* stone as well the highest point of the island is marked to the Register of Antiquities, and accordingly protected under the Act of Antiquities (an area of only 1 ha in contrast to the described sacred landscape of 45 km<sup>2</sup>).

The preceding issues reveal very clearly the shortcomings and inadequacies of the Antiquities Act to protect the Sámi sacred sites at their full scale. Apart of these limitations signed by domestic law, further deficiencies exist in respect of officials and representatives of competent authorities who have to deal with the protection of Sámi sacred sites in their administrative practice. Often, they lack an understanding of the concept of Sámi cultural environment as well as of Sámi traditional knowledge. In practice, these concepts are rarely acknowledged and recognized. The “invisible” or boundless Sámi sacred sites compose many times multi-layer, wide cultural landscapes with diversified meanings. Instead of marking these sites as spots or small protection areas on the map, respective laws should seek to better accommodate relevant Sámi concepts and, thus, provide for more compatible and appropriate tools to manage and protect them as needed.

### 6.3.2 *In the Case of the Register of Antiquities*

According to the Framework Convention on Cultural Heritage of the Council of Europe, every person has the right of access to the cultural heritage of his or her

<sup>10</sup>The Inari Sámi word ‘Äijih’ can be translated as grandfather, old man or god of thunder, and there are a few known Inari Sámi sacred sites called Äijih around the Inari Lake.

<sup>11</sup>Ilmari Mattus, unwritten notification. Holder of traditional Inari Sámi knowledge.

<sup>12</sup>The Inari Sámi word ‘Akku’ means old woman or grandmother.

<sup>13</sup>Observation of Eija Ojanlatva who took part in the planning process towards the Lake Inari in 2007–2008.

choice (Council of Europe 2005). Moreover, the convention explicitly encourages Parties to develop the use of digital technology to enhance access to cultural heritage (Ibid, Article 14). Correspondingly, the National Board of Antiquities in Finland has elaborated an own accessibility plan (Tapani and Edgren 2007), in which it states that the cultural heritage and information about it belong to all citizens. Accordingly, all prehistoric and historical sites, fixed relics as well as finding places are catalogued and publicly accessible by the Register of Antiquities. This also implies that all Sámi sacred sites, inventoried by the register, are displayed with their exact geographical location and a detailed description of the site. The register is hosted and maintained by the National Board of Antiquities, and completed by provincial agreement museums, such as Sámi museum Siida.<sup>14</sup>

Information of sacred sites is highly sensitive and culture-bound, and people are not willing to reveal it to outsiders. There are still many sacred sites which are known by Sámi society, but not added to the Register of Antiquities. Many locals think that information is maintained by them whom it belongs.<sup>15</sup> There is also actual fear that the site can be damaged or spoiled by outsiders, especially if the site is still in active use.<sup>16</sup>

According to the Finnish Constitution, the Sámi as an indigenous people have the right to maintain and develop their own culture what also includes the maintenance and development of their sacred sites (Constitution of Finland 1999, Section 17 (3)). However, in the public discourse there has been ongoing discussion whether certain parts of the sacred-sites-information, such as geographical parameter for example, should be hidden. One option, which has been discussed already for several years, is the transfer of the Register of Antiquities into a multi-layered database where a differentiation could be made between public accessible and non-accessible information. Opinions and national approaches on this issue vary widely. In Sweden, for example, the Swedish National Heritage Board maintains a database where the Sámi sacred sites have been catalogued and described by municipalities.<sup>17</sup> In contrast to the Finnish approach, however, the sacred sites themselves are not situated on the map application and thus not visible for visitors of the database. To sum up, there are various possibilities to organise access and accessibility of sacred sites as well as other sensitive sites, such as burials and cemeteries, in Finland. Before a solution will be determined, however, there are several fundamental concerns that should be discussed thoroughly and clarified before. One of them is the question: “Who dominates the information of sacred sites of database?”, and another: “Who will be the final users of the fully opening database with exact geographical information?” Both questions correlate strongly

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<sup>14</sup>Sámi museum Siida is a competent authority of archaeological cultural heritage in the Sámi homestead area according to the joint agreement made with National Board of Antiquities in 2011.

<sup>15</sup>Observations and records taken by Eija Ojanlatva during her field studies of many years.

<sup>16</sup>Ibid.

<sup>17</sup>Database at the website of the Swedish National Heritage Board, “Riksantikvarieämbetet”, in Swedish language, <http://www.fmis.raa.se/cocoon/fornsok/search.html> (accessed 23 May 2016).

with the right of public access to cultural heritage, on the one hand, and with the Sámi right for cultural self-determination, on the other.

Another problem in the context of public accessibility to Sámi sacred sites is the increasing numbers of tourists visiting such sites, and going along with this, a rising rate of misuse. Some sacred sites have been tourist attractions for decades, such as Äijih/Ukonsaari Island of the Lake Inari and Taatsi, a huge rock formation by Taatsijärvi Lake in the municipality Kittilä. These sites have information stands, and thousands of people visit Äijih every year, for instance. In both cases, tourism has eroded the site, exemplified by many paths and soil erosion. Äijih Island is especially heavily frequented by tourists; in summer by every day boat tours and in winter by snowmobile tours when the lake is frozen. Due to these pressures, Metsähallitus built stairs to climb to the top of Äijih Island around a decade ago. In addition, the Finnish Maritime Administration fixed the landing-stage of the island. During recent years, there has been discussion among Sámi, Sámi museum Siida and Metsähallitus about removing the stairs, because they have been made for tourists. But then also the landing-stage should be removed, because nothing can deny people to go ashore to the island. A particular further problem in this context is the usage of Sámi sacred sites by neopaganists, adherents of modern or contemporary paganism. Increasingly, they use these sites for their own purposes and rituals and, while doing so, disrespect Sámi sacred sites and leave unwanted marks there.

## 6.4 Conclusion

Sacred sites are still of significant importance for the Sámi people, their way of life, culture and identity. Although numerous domestic legal instruments in Finland are dealing with the maintenance and safeguarding of Sámi sacred sites – starting from the constitutional context to different procedural and substantial legal frameworks in matters of cultural heritage, nature and environmental protection, as well as landscape planning and land use – effective protection is lacking.

Fundamental differences exist between western legal concepts for protection and Sámi traditional approaches towards their sacred sites. Deriving problems become especially apparent under the application of respective laws and the use of individual instruments thereunder, as previously demonstrated in the cases of the Finnish Act of Antiquities and the Register of the same name. The recognition of Sámi sacred sites may fail if western academic approaches, requiring quantified data, collide with Sámi approaches towards natural-shaped sacred objects or sites. Similar problems may arise in relation to defining the scope of legal protection if, for example, legal requirements for determining physical and geographical borders in a certain distance to a site or object clash with the multi-dimensional and much more holistic Sámi concept of a sacred landscape. In the case of the Register of Antiquities, an ongoing discussion of the public accessibility of data concerning location and description of Sámi sacred sites is prevalent. Here, the right of access to the cultural heritage, ensured at the European as well as at the domestic level, contradicts often

with Sámi views on the sensitivity and intimacy of information related to their sacred sites. A particular problem in this regard is also the increasing number of tourists visiting sacred sites and places. The more information about such sites and places is displayed, the more they will be frequented by visitors; and this often comes along with increased erosion and damage. In addition, the construction of related infrastructure to guide tourists selectively is controversially discussed among Sámi and public stakeholders.

In respect of the discussed problems, increased knowledge and deeper understanding of the concept of Sámi sacred sites is urgently needed. This similarly applies to law and policy makers as well as users and applicants of respective laws and policies, such as academics, scientists, managers or representatives of competent authorities dealing with the protection and management of sacred sites. In this regard, effective recognition of related Sámi rights, their traditional knowledge and cultural environment as well as serious willingness to implement are essentially necessary. Moreover, effective and meaningful participation of Sámi people in discussions and decision-making, although in many cases theoretically ensured, in some cases already practised, should be an imperative precondition in relation to the protection and management of sacred sites.

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**Part II**  
**Intangible Cultural Heritage Connected**  
**to Sacred Sites of Arctic Indigenous**  
**Peoples**

# Chapter 7

## Gosa Bássi Várit Leat Jávkan? Where Have All The Sacred Mountains Gone?

Marit Myrvoll

### 7.1 Introduction

The title is inspired by Pete Seeger's lyrics,<sup>1</sup> about what is lost in life, and accordingly this Chapter is about a part of the tangible and intangible Sámi cultural heritage that is in many ways hard to trace today. I will focus on traditional Sámi sacred mountains in the northern part of Norway. The Sámi is an Indigenous People in four countries – Norway, Sweden, Finland and Russia. The belief in and perceptions about Sámi sacred mountains have their origin in the indigenous Sámi religion, and these mountains are considered a part of Sámi cultural heritage today. As such, they are protected by the Cultural Heritage Act of Norway (1978). The sacred mountains are high or low, some are solitary mountains while others are parts of wider mountain ranges. They have different names (Sáivu, Bássi, Áiles, Hálđi), depending on which Sámi language that is/has been spoken in the area where they are located. They are found in all parts of the traditional Sámi settlement area. The most important common features are the beliefs and traditions connected to them. The sacred mountains are not the only sacred sites in Sámi religion. Many places have been considered sacred and used for sacrificial purposes, such as special rocks,

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<sup>1</sup>Pete Seeger “Where Have All the Flowers Gone” <http://performingsongwriter.com/pete-seeger-flowers-gone/> (checked website Feb. 2015)

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huge or small, as well as rivers, glaciers, lakes and woods. There are many Sámi sacred sites, but the examination in this Chapter is limited to mountains.

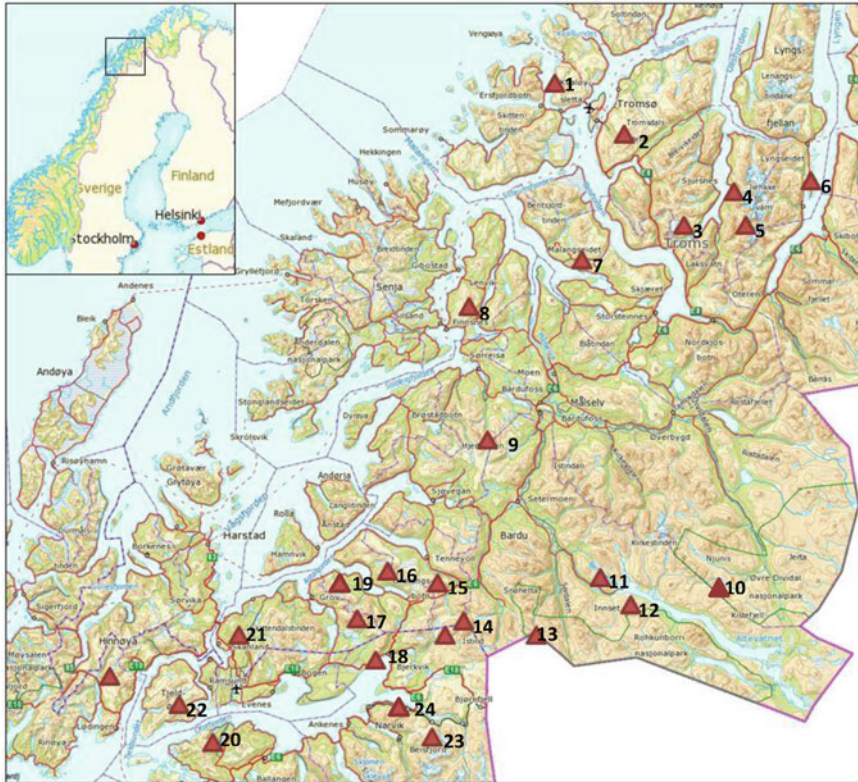
The main focus will be on how narratives and practices in connection to these mountains are objects to and challenged by the consequences of the religious change as well as the former Norwegianization politics. Even if the Sámi people already knew about and was in contact with Christianity before the Protestant Reformation, the religious change came about as a result of a huge missionary project led by the pietistic priest Thomas von Westen in the early eighteenth century. An active Norwegianization policy undertaken by the Norwegian government from medio nineteenth century until the 1960s resulted in loss of Sámi culture and language, and in some areas, the Sámi people were assimilated into the Norwegian population (Hansen and Olsen 2004; Minde 2005).

## 7.2 Location

The region examined covers coast and inland areas in Troms and Nordland Counties, on the Norwegian side of the traditional Sámi territory (see map). The main sources about the sacred mountains are old ethnographic documents and literature by Ernst Manker (1957) and Just Qvigstad (1926, 1935), as well as old and new maps over the area. In addition, some interviews have been conducted by the author.

The area chosen has been exposed to a harsh assimilation policy in the nineteenth and twentieth century, and a period of active Christian mission and growth of pietistic Christianity among Sámi (Minde 2000; Torp 1994). The change of religion was forced upon the Sámi people, while Norwegian legislation also contributed to a change in culture, language and world view.

Against this background, the main questions asked is whether narratives about beliefs and practices from the ancient Sámi religion have survived to this day, despite these changes, and whether the cultural heritage these sacred mountains represent, is still cherished and perhaps practised. Ortner's (1989) practice theory seems beneficiary to understand the change that has taken place. Ortner looks upon practice as a process mutually influenced by internal dynamics and external factors, and she emphasizes the importance of the social and cultural context for understanding practices. It is not sufficient to be familiar with current social structures, surroundings and the cultural context; the researcher should also examine the past.



- |   |   |
|---|---|
| 1. Sieidevárri (sa)                           | 14. Bassevárri/Harvesčohkka (sa) - Rivtind (no)               |
| 2. Sálašoavi (sa) – Tromsdalstinden (no)      | 15. Stuurra-čohkka (sa) - Spansdalstinden/Spansdalsaksla (no) |
| 3. Sieidi (sa)                                | 16. Čoarvečohkka (sa) - Ársteinhornet (no)                    |
| 4. Áilesvárri (sa)                            | 17. Bassečohkka (sa) - Sandtinden (no)                        |
| 5. Bassenállan (sa) /Nállan (sa)              | 18. Munter (no)   |
| 6. Sieidečohkka (sa) – Kvalvikhausen (no)     | 19. Girkoavi (sa) – Sula (no)                                 |
| 7. Stabba (sa) – Stabben (no)                 | 20. Goabrekčohkka (sa)-Snogroptinden (no)                     |
| 8. Bassečohkka (sa) - Kvittind (no)           | 21. (Hoanttas-)Čohkka (sa) - Stornipen (no)                   |
| 9. Bassečohkka (sa) - Hjertind (no)           | 22. Bassečohkka (sa) – Helligtinden (no)                      |
| 10. Namahisvárri (sa)                         | 23. Bassečohkka (sa) – Sealggačohkka (sa)                     |
| 11. Bassevárdo (sa) – Grønfjellet (no)        | 24. Áhkačohkka (sa) - Rombakstøtta (no)                       |
| 12. Noaidunvárri (sa)-Salvasskardfjellet (no) |   |
| 13. Vuoiddasčohkka (sa)                       |   |

Map over the traditional Sámi sacred mountains in this article (Norgeskart [www.norgeskart.no](http://www.norgeskart.no))

### 7.3 Sacred Mountains Worldwide

Sacred mountains are not only found in the Sámi area, they are located all over the world. Although religion, religious worldviews and practices are different, there is still a similarity that a place considered sacred is different from the surrounding countryside (Eliade 1997[1957]). At such sites, persons must adhere to strict rules of behavior and obey the taboos associated with the place. Lack of respect for rules can bring misfortune.

Uluru in the middle of Australia is probably the best-known sacred mountain in the world. Uluru is considered to be the dwelling place for the Rainbow Serpent, a central mythological figure in the Aboriginal dreamtime. All the way around Uluru there are sacred sites decorated with painted figures and dreamtime narratives. Another sacred mountain is Kailash (Tibetan: Kang Rinpoche) in Western Tibet, held sacred by both Buddhists and Hindus. Ólympos is the highest mountain in Greece and according to Greek mythology; it is the abode of the gods. Zeus and eleven other of the most central gods and goddesses live here. Sinai is a sacred mountain in the Middle East, known from the Old Testament in the Bible. It is where Moses received the stone tablets with the Ten Commandments. Mount Kenya (Swahili: Kirinyaga) is Africa's second highest mountain and is considered the realm of the god Ngai by the local Kikuyu people. The Navaho people in North America calls the area within four sacred mountains; Tsisnaasjini' (Mount Blanca in Colorado), Tsoodzil (Mount Taylor in New Mexico), Doko'oosliid (San Francisco Peaks in Arizona) and Dibé Nitsaa (Mount Hesperus in Colorado), for their home (see reference list).



Sieidi, a traditional sacred Sámi mountain (Photo: Marit Myrvoll 2006)

## 7.4 Sámi Religion

Beliefs and practices connected to sacred mountains are embedded in a religious worldview. Sámi religion, like other religions, gave an explanation and interpretation of man's place in this world. Its understanding of reality was probably just as complex and diverse as other peoples' religions (Myrvoll 1999: 36). Today's knowledge of Sámi religion comes primarily from sources recorded in the 1600s and 1700s. Public trial protocols from this period describe lawsuits against Sámi who are accused of practicing "idolatry" or witchcraft, and reflect the authorities' views on Sámi religion (Myrvoll 2010; Hagen 2012). Another type of source material are general descriptions of Sámi culture, including material and cultural conditions, such as housing, everyday life, industry and religion (Edbom 2003). The Christian missionaries' descriptions from the 1700s are also important sources. Missionary writings reflect Christian perceptions of Sámi religion. Sámi religious beliefs and practices were largely demonized and defeated (Mebius 2003: 41). Rydving (1993) points out that the most comprehensive knowledge about Sámi religion is found in sources about how Sámi men in the South Sámi area practiced their beliefs. In missionary narratives, there is little information on women's religious practices, while the noaidi, the Sámi shaman, is emphasized as central to religious rituals and practice. From that time, there are no written sources by Sámi about the Sámi religion.

Sámi religion divided cosmos into two parts; the visible reality and the invisible reality (Myrvoll 2010; Kalstad 1997). The invisible reality could be experienced at home, at sea or in the mountains; it encircled people in the same way as the visible reality. Different spiritual powers habituated specific areas: mountains, lakes, rivers, rocks, woods etc. (Kristiansen 2005: 6). Sámi religion had a multitude of gods and powers which humans had to know how to deal with. Peoples' relations to the visible and the invisible reality required competence and skills to master the various dimensions. Hansen and Olsen (2004) state that a division of existence into three different «spheres» or worlds was basic to Sámi religion: an upper (invisible) world, a middle (visible) world and an (invisible) underworld (Hansen and Olsen 2004: 340). Only the shaman (Sámi: noaidi), the spiritual master, had the competence and skills to move between the worlds (Mebius 2003). He<sup>2</sup> was the link between humans and the gods, and his drum was an instrument to make contact with other worlds (Bäckman 1987). When he drummed, he could change his state of consciousness and travel to the over- or underworld in the invisible dimension of cosmos. There he negotiated with the gods when needed, on behalf of individuals or the collective. The shaman could also travel to the sacred mountains. He had helping and protecting spirits that often had their abode in a sacred mountain.

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<sup>2</sup>Although I use "him" about the noaidi/shaman, there are also stories in the sources about female shamans, see Lilienskiöld 1998: 268–269, Læstadius 1997: 155–156, Qvigstad 1927: 440–441

The oldest written sources about Sámi sacred mountains are found in missionary reports about Sámi religion. The missionary Leem (1975 [1767]) reported from Varanger in the north-east part of Norway, while Randulf (Bäckman 1975) wrote about Sámi sacred mountains in the South Sámi settlement area in mid-Norway. Bäckman (1975) has written about Sámi perceptions of helping- and protecting spirits called *Sájva* in sacred mountains in the South-Sámi area. These spirits, that could belong to women as well as men, functioned as links between visible and invisible realities/landscapes. The most important spirits, like the *Sajva*-bird, the *Sajva*-male reindeer and the *Sajva*-fish, were first and foremost the shaman's (Rydving 2010: 121). Furthermore, Rydving says about the importance of the sacred mountains:

The landscape and its elements were loaded with meanings. [...] it would appear that the mountains inhabited by subterranean beings (such as the *saaivh* in the South Sámi area) were especially important in daily life. Together with the ancestors, who were believed to live on in a subterranean world, the *saaivh* were regarded as the most important of the invisible beings to whom the individual related (Rydving 2010: 123).

In Sámi religion, the belief was that dead relatives and spiritual beings inhabited certain mountains. Thus, they became a symbol for the death realm – or the other world – the invisible reality. According to records, not all of the sacred mountains have sacrificial sites, but they were none the less treated with respect.



Stabba (Norw: Stabben) (Photo: Marit Myrvoll 2010)

## 7.5 Names as Source to Sámi Sacred Mountains

The Christian mission and the assimilation policy had severe and often irretrievable consequences for survival of Sámi belief and religious practices. Eradication of Sámi place names from official maps was a part of policy of Norwegianization of Sámi landscapes.

In 1895 and 1905 respectively, the Norwegian authorities gave instructions for use of Sámi language in place names on maps (Sandøy 2011). The main rule was that the Norwegian name should be used, with the Sámi name added in brackets. If there was no difference between the Sámi name and the Norwegian translation, the Sámi name was not used on the map at all. If no appropriate translation of the Sámi name could be found, the Sámi name should be used without Norwegian translation, with a major exception: Sámi place names should not be included on maps if the place names were in use in both languages (Sámi and Norwegian). The instructions for use of Sámi language in place names on maps were made a few years before Norway left the union with Sweden, a nationalistic period, when it was important to highlight Norwegian history, culture and language. The Norwegian authorities wanted to establish a linguistically and culturally homogeneous nation state. Place names are important cultural heritage, correct names on maps and road-signs are therefore important (Sandøy 2011). This confirms the old saying that maps have colonized more effectively than weapons. Most fjords, valleys and mountains lost their Sámi names by the turn of the century (1800 AD → 1900 AD). According to Sommerseth (2012), this also meant a loss of information embedded in Sámi place names. Oral knowledge and narratives connected to the mountains disappeared as a result of renaming (Sommerseth 2012). In a record from 1723, the Christian missionary Thomas von Westen listed 24 Sámi sacred mountains in the Lyngen area alone (Qvigstad 1926).

Despite the renaming of landscape on Norwegian maps, most sacred mountains that we know of today, though, have kept their Sámi names and thus tell about religious belief. The names can consist of a sacred designated term and a landscape term (numbers refer to the location on the map), for instance

- (1) Sieidevárri – sacrificial site's mountain
- (3) Sieidi – sacrificial site
- (4) Áilesvárri – sacred mountain
- (5) Bassenállan – sacred high ridge/peak
- (10) Namahisvárri – mountain without a name (too sacred to be named)
- (12) Noaidunvárri – shaman's practice mountain
- (13) Vuoiddasčohkka – Grease mountain
- (22) Bassečohkka – sacred mountain/peak

Of 24 mountains shown on the map, seven have only Sámi names (no Norwegian names), all showing a religious connection. In addition, there are ten sacred mountains with sacred Sámi names. For some of these 17 Sámi sacred mountains, only the name tells about their sacredness. There are no recorded narratives about



the mountains, and it is hard to find orally transmitted narratives. Examples of mountains in this category are (1) Sieidevárri, (4) Áilesvárri, (8) Bassečohkka, (10) Namahisvárri and (11) Bassevárdo. There is a significant overlap between mountains without narratives and mountains not found on contemporary maps. This applies to both Sámi- and Norwegian-named mountains. Mountains that not are found on maps, are (1) Sieidevárri, (4) Áilesvárri, (18) Munter and (20) Goabrekčohkka. The sacred mountains that have kept their position on maps have perhaps been of greater significance to the practitioners, or perhaps the existing Sámi worldview became adjusted to the imposed new Christian worldview. In many cases, spiritual belief and supernatural experiences did not vanish even if it became prohibited to worship the Sámi gods (Myrvoll 2010). Eventually however, names and narratives about the sacred mountains were lost from the oral tradition, a significant loss of intangible Sámi cultural heritage.

Most Sámi sacred mountains in the examined region have a Norwegian name without any reference to religious beliefs or sacredness. For these mountains, only their Sámi name and the narrative about them can tell about the spiritual or intangible aspects of the mountain. The Norwegian population moving into Sámi territory did not relate to sacred sites of the Sámi, as they had a different religion and a different language. Norwegian was the authorities' language, inscription of Norwegian names as linguistic signs of landscape can be understood as a symbol of Norwegian occupancy. In addition, there are Sámi sacred mountains without a Sámi name showing sacredness: (2) Sálašoavi, (15) Storra-čohkka, (16) Čoarvečohkka and (21) Čohkka. The reason for this may have been to hide the proper name and function from the surrounding society. From the sixteenth and seventeenth century onward, the Sámi population knew very well that being caught while practicing their Sámi religion meant prosecution by the authorities.

In the examined region, there is only one Sámi sacred mountain that has a correct translation to Norwegian, showing sacredness: (22) Bassečohkka – Helligtinden – in English: the Sacred Mountain. This mountain will be touched upon when discussing narratives.

## 7.6 Narratives

Apart from names, also narratives give an account of the intangible values of a mountain, and an insight into how the invisible landscape/world is perceived (Rydving 2010; Myrvoll 2010). Of all those who have heard stories or narratives about the mythological and spiritual world of sacred mountains, there are only a few who have made their own experiences. Relations to these phenomena are therefore primarily the narratives about them. In this way, the invisible and intangible universe's existence becomes reality and gets its place within the overall worldview. The narratives are different explanatory systems that place a number of objective meanings in relation to each other (Berger and Luckmann 2000 [1966]: 104). Through narratives, the beliefs and perceptions of sacred mountains are arranged in relation to the rest of the content in the world. The narratives thus act as

cognitive structures that organize reality. This has consequences for the relationship to the sacred mountains. Because they exist, humans must be in relation to them, whether they want it or not. Moreover, since spiritual powers could potentially bring chaos into the human world if rules were not obeyed, everyone knew how to behave to secure themselves, their family and the community (Myrvoll 2010). The narratives about the sacred mountains work in the same way as much other orally communicated cultural knowledge; they maintain and confirm ideas about the world. The oral tradition is passed on in a social situation where both narrator and audience are present. Narratives about experiences, their cause and effect as well as explanations of why and where such experiences are imperative to happen, will usually be shared with family, relatives and community members. As Christianity took over, these narratives were told “back stage” where only trustworthy persons were allowed.



Bassečohkka (Norw: Helligtinden). The noaidi (shaman) shows himself with drum and hammer in the east wall at midsummer (Photo: Marit Myrvoll 2008)

There are narratives about sacred mountains in the entire traditional Sámi settlement area and they extend over a long time span. The narratives have many common features. At the same time, there are differences, because each sacred mountain has its local environment where narratives about practice and experiences are told; related to local landscape and people. The narratives often contain much knowledge of both the visible and invisible landscape, the local community and the people in this community. Experiences take place in a familiar landscape, and narratives may therefore have limited meaning for visitors to the region or persons without knowledge of the religious world view (Myrvoll 2010).

The majority (18) of the mountains are located in a landscape where other landscape features are also named sacred, for instance valleys, glaciers, rivers and lakes. All the 24 mountains may have been embedded in a sacred landscape, but there is no information about this in written sources and current maps. Qvigstad (1935) writes that in connection to (8) Bassečohkka (Norw: Kvittind) there is a sacred lake (Bassejávri) and from this lake a sacred stream (Bassejohka) runs. A local resource person contacted could tell that he had heard about a sacred

stream running from a lake up in the mountain. He knew that the lake is called *Helvetesvatnet* – Hell’s lake in English, and the stream is called *Tverrelva* – the Cross River. The lake’s shift of name from Sámi to Norwegian is not unusual. From being considered sacred in Sámi language, it got a demonizing name in Norwegian language. This may have happened during the process of Christianization of the Sámi people. It was imperative for the authorities and the church to demonstrate distance and aversion towards Sámi religion, or it could be that the local Sámi population did not want anyone else to visit these places.

Manker (1957) writes about the mountain (9) *Bassečohkka* (Norw: *Hjertind*) that it was the centre in a group of sacred landscape features such as *Bassejávri* (Sacred lake), *Bassevaggejohka* (Sacred lake’s stream) and *Bassevagge* (Sacred valley). The rules of behaviour were many, including a name-taboo, it was not allowed to mention the name of the sacred mountain (Prestbakmo 2007), and female taboo (Qvigstad 1926; Manker 1957); women were not allowed to climb the mountain. If they tried, they would be stuck (until death) in the mountain! A man wanted to test this and put a woman’s head-dress on, tied his shoes with female patterned shoe-ribbons and climbed the mountain. He was stuck for three days, and saved himself by undressing the head-dress and shoe-ribbons and throwing them away.

As with (9) *Bassečohkka* (Norw: *Hjertind*), most of the Sámi sacred mountains examined have written or oral transmitted narratives about episodes, behavior and/or taboos. Of 24 sacred mountains, 17 have some kind of narrative beyond the sacred name. One of the mountains (2) *Sálašoaivi* (Norw: *Tromsdalstinden*) became the center of discussion when Tromsø municipality applied to host the Winter Olympic Games 2018, and had a plan to build an alpine slope down the mountain. The Sámi Parliament in Norway protested and got the alpine slopeplans cancelled in 2004 by claiming that *Sálašoaivi* had always been a Sámi sacred mountain. Reindeer herder Ola Omma has told that every summer when his own and several other families came with their herd in the middle of June and reached the valley up to the mountain, they would greet the mountain (Sveen 2006). They took off their caps and some even fell on their knees and asked for good luck and good health in keeping their herd and livelihood. On their way back in the autumn, they once again saluted the mountain, often by waving their caps. The reindeer herd should always pause for three days under the mountain before moving on. Being there, they would walk under and around the mountain, but not too close and never on the mountain itself. Not a stone should be moved, the tranquility of the mountain should not be disturbed, it was not allowed to speak loud, swear or perform traditional songs or joiks. One had to behave with respect when staying close to a sacred mountain. If someone forgot to greet the mountain, things could go really bad. The reindeer owners’ families did not talk much about this, but they respected the mountain and kept the tradition within their families. They never told about this tradition to Norwegians, being afraid to lose the needed luck and happiness in the reindeer industry (Sveen 2006). This might be the reason why Qvigstad (1926, 1935) does not mention *Sálašoaivi* as a sacred mountain.

As mentioned earlier, in the examined region there is only one Sámi sacred mountain that has a correct translation of its Sámi name to Norwegian, showing

sacredness: (22) Bassečohkka – Helligtinden – in English: the Sacred mountain. The fact that it kept the original name through the process of shift from Sámi to Norwegian language tells us how sacred it must have been considered. The meaning and signification of the mountain has survived the harsh Norwegianization policy even if the name became Norwegian. On Dielasuolo, the island where Bassečohkka is located, there are also several sacrificial stone circles, one of them on a neighbouring mountain to Bassečohkka. There are also demonized landscape names like Trolltind (Ogre's mountain) and Trollvatn (Ogre's lake). The bear cult in Fennoscandia is connected to Sámi religion solely; the oldest known bear grave in Scandinavia is on Dielasuolo and dates from 220 AD to 325 AD, which gives an age of approx. 1700 years.



Every year in the middle of June the snow has melted so much from the mountain wall that one can spot a huge figure that looks like a drawing of a noaidi, a Sámi shaman, holding a drum and a hammer in his hands. The noaidi was the spiritual master in Sámi religion. He or she had several important abilities, tasks and responsibilities towards the local community they were a part of (Bäckman 1987). The noaidi was a healer, a fortune-teller and a ritual master/priest. He was the connection between people and gods/the spiritual world, and the drum was his most important tool when he wanted to get in contact with the gods. When beating the drum, he was able to get knowledge about the future or go into a changed state of consciousness to make contact with the spiritual world. No wonder that the noaidi became the number one target for missionaries and priests during the period of religious change from Sámi to Christian religion. They looked for religious experts like themselves and the noaidi fitted that description.

Being raised in this worldview, for sure made one aware of the invisible reality when passing a sacred mountain like Bassečohkka. The mountain could very well be dead persons' habitation when even the powerful noaidi showed himself every year in the mountain side. The distinction between the visible and the invisible reality was gone during a week or two. In the end of June, the figure does not show anymore. Considering the understanding of reality – at that time –, this must have been a significant spiritual experience. As with much of oral cultural heritage, the tradition about the noaidi in Bassečohkka became silent. Today the interest in Sámi cultural heritage is growing, people take an interest in cultural history – religious history included – and seeing the noaidi, they can recognize the view as an important part of Sámi culture.

From many places in the region there is a very good view to Bassečohkka and thus to the noaidi in the mountain's east wall. Sacrificial sites are often in connection with sacred mountains and there are several such sites registered, on the island, the neighbouring islands and on the mainland. Maybe some of these sites have been used just at the time of year when the noaidi showed himself in the mountain wall.

A narrative about a sacrificial site on a neighbouring mountain close to Bassečohkka is still being “nourished” by present day experiences. The narrative is about a circle-shaped sacrificial site built of stone on the mountain located north-west of Bassečohkka. Someone who is lucky enough to climb the mountain and see the site will, according to the tradition, never find it again. A person had described the sacrificial site to friends after a trip up to the mountain top. When he went up again to take a photo, he could not find the site – even if he searched everywhere. So even today the belief in not finding the site again is confirmed. In addition, the narrative tells that there is a treasure buried at the sacrificial site – and no one has ever found it. A reindeer owner who has been to this mountain many times searching for his reindeers, pointed out that the view to the east wall of Bassečohkka is excellent from that neighbouring mountain top (Myrvoll 2009).

There is also an excellent view to the east wall of Bassečohkka from the sacred mountain Čohkka/Hoanttas-Čohkka (21), towering above a Sámi village located on the mainland. On this mountain, there is also a sacrificial site. The tradition tells that the inhabitants of the village sacrificed reindeer meat to the most central god in Sámi religion on this mountain every midsummer, to gain a prosperous year. The sacrificial site's altar was constructed like a simple table where idols made of wood were placed. Not only sacrifices, but also bear ceremonies after successful hunting were arranged on the mountain. The villagers practised sacrificing until about 1850 when Sami pietistic Christians moved to the neighbouring village and from then on, they didn't dare to keep up the old practice. Maybe there has been a similar practice at the sacrificial site on Bassečohkka's neighbouring mountain, with sacrifices every year around midsummer when the noaidi is visible in the east wall? (Fimbul 1993; Myrvoll 2009).

Neither written nor oral sources can confirm whether the sacrificial practice around midsummer can be connected to the noaidi in Bassečohkka. On the other hand, it is very possible that the midsummer sacrificing can have a connection to the fact that the mighty noaidi showed himself to humans and became part of the visible material reality.

## 7.7 Lost or Living Cultural Heritage?

	Sámi name	Sámi sacred name	Sacred landscape	Narrative incl.name taboo	Female taboo	Source
1	Sieidevárri	•				Qvigstad (1926, 1935)
2	Sálašoaivi		•	•		Sveen (2006)
3	Sieidi	•	•			Qvigstad (1926, 1935)
4	Áilesvárri	•	•			Qvigstad (1926, 1935)/Resource person 2014
5	Bassenállan /Nállan	•	•	•		Qvigstad (1926, 1935)/Resource person 2014
6	Sieidečohkka	•	•	•		Qvigstad (1926, 1935)
7	Stabba		•	•		Qvigstad (1926, 1935)/Storm (1999)
8	Bassečohkka	•	•	•		Qvigstad (1935)/Resource person 2014
9	Bassečohkka	•	•	•	•	Qvigstad (1926, 1935)/Manker (1957) /Prestbakmo (2007)/Resource person 2014
10	Namahisvárri	•	•	•		Prestbakmo (2007)
11	Bassevardo	•	•	•		Qvigstad (1926, 1935)/Manker (1957)
12	Noaidonvárri	•				Qvigstad (1926, 1935)
13	Vuoiddasčohkka	•	•	•	•	Qvigstad (1926, 1935)/Manker (1957)
14	Bassevárri/ Harvesčohkka	•	•	•	•	Qvigstad (1926, 1935)/ Manker (1957)
15	Stuorračohkka		•	•		Qvigstad (1926, 1935)
16	Čoarvečohkka			•		Qvigstad (1926, 1935)/ Manker (1957)
17	Bassečohkka	•	•			Resource person 2014
18	Munter			•		Qvigstad (1926, 1935)/Manker (1957)
19	Girkoaiivi	•	•			Resource person
20	Goabrekčohkka			•		Qvigstad (1926, 1935)/Manker (1957) /Resource person 2014
21	(Hoanttas-) Čohkka			•	•	Fimbul (1993)/Myrvoll (2009)
22	Bassečohkka	•	•	•		Myrvoll (2009) Resource person
23	Bassečohkka	•	•			Qvigstad (1926, 1935) / Manker (1957)
24	Áhkačohkka	•	•	•		Myrvoll (2016)
	All	17	18	17	4	

As already mentioned, in Sámi religion the belief was that dead relatives and spiritual beings inhabited sacred mountains. Thus they became a symbol for the death realm, or the other world; the invisible reality. In this Chapter, only a few narratives about sacred mountains have been told. Most of the narratives connected to sacred mountains are very short, and one can mostly find them in written sources. To be part of a living cultural heritage, these narratives need to be told in social settings, and the Sámi names of the sacred mountains need to be used. From the table above, where just a small Sámi region has been examined and not all sacred mountains are even included, one can see that the sacred mountains have several common features. They have in one way or another belonged to the same spiritual universe of meaning when the belief still was practiced.

Sámi names and narratives about sacred mountains can be found in several written sources (cf. table above). When it comes to oral sources, the number is much lower. The religious change where Christianity was forced upon the Sámi people, and many of their sacred sites, mountains included, became demonized, made the “invisible” mountain disappear over generations. The Norwegianization politics contributed to the same process. Sacred mountains got Norwegian names and a perception of de-spiritualization of the mountain started.

In this way, many of the invisible landscapes have disappeared. So have the rules of behaviour and people’s respect for these rules. Climbing a mountain as part of an outdoor hike is very usual, whether the mountain is considered a traditional sacred one or not. One could say that the Sámi sacred mountains are part of an endangered cultural heritage. The visible, physical mountains still rise in the visible landscape, but in many places, the invisible, sacred mountains as well as the invisible landscape have disappeared. The connection between the visible and invisible reality is no longer functioning. The narratives have to be told to maintain and confirm ideas about the world, and to give continuity to the knowledge and perception of the invisible reality.

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# Chapter 8

## Sacred Sites of the Sámi – Linking Past, Present and Future

Klemetti Näkkäljärvi and Pekka Kauppala

### 8.1 Introduction

Sacred sites, their fate and sustainment are most important topics for the Sámi people and it is essential to analyze what should be done to preserve them against possible threats.

It is not our part to explain the concrete situation from a scientific viewpoint. However, we shall try to say something subjective about the significance of these sites, pertaining not only to their limited value as prehistorical or historical monuments, but we will also aim to demonstrate the current aims of Sámi politics in the Finnish Sámi Parliament (Sámediggi/Saamelaiskäräjät) as an example, which could be helpful for assessing the value of the sites.

One of the authors of the article, cultural anthropologist and linguist PhD Klemetti Näkkäljärvi is a Sámi and his community is a reindeer herding Sámi community in Jávrrrešduottar region, East-Enontekiö in North-Finland. He was born in a time when Sámi in Enontekiö had started to live in houses in villages and prior the introduction of snowmobiles to the nomadic reindeer herding. In his childhood nomadic reindeer herding culture was always present in everyday life of the Jávrrrešduottar Sámi community and although the motor vehicles were integrated

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as part of nomadic reindeer herding practice, the snowmobiles didn't as such changed or dominated the culture. Actually snowmobiles were just a tool in reindeer herding work. Second author of the article, Finnish historian and political scientist docent Pekka Kauppala has conducted fieldwork especially among minority people in Russia and also among Sámi people. In our article we will create descriptions of sacred places based on theories, research literature and our experiences.

Sacred places in Sámi culture refer to old Sámi world view, shamanism. Shamanism as a holistic world view is extinct due to Christianisation. Parts of shamanistic world view have still remained in Sámi Culture and literature. Sacred places are old places of worship, the *sieidies*. *Sieidies* were offered, inter alia, meat, antlers, bones and even jewellery to secure fishing, hunting or reindeer herding luck. *Siedies* are mostly a natural formation and they were a way to communicate with the underworld and the world above, with the Sámi Gods.

Sámi *sieidies* experiences are communal and personal. *Sieidies* have own significance for the practitioners of Sámi livelihoods, for the individual and for the whole naturally-bound community. Although Sámi don't worship *siedies* anymore, *siedies* are still importantas natural entities of Sámi culture that are still are integrated to own intra-cultural, ethnoecological environmental system with the help of landscape memory. For example, among reindeer communities in *Sápmi*, land of the Sámi people, *sieidies* are part of symbolic and cultural representation of the landscape. Ethnoecologically considering, the communities have created own ethnoecologic niches,<sup>1</sup> named natural places that are important for their own form of life, organised the nature and culture as ethnic cultural system and as local environmental system (Näkkäläjärvi 2013: 30–31; 62–66).

In Sámi nomadic reindeer herding community learning one's culture is contextual and a lifelong process that involves the whole community, consequently presence and involvement in everyday activities, following and teaching. This processes where culture is learned can be described as enculturation. Enculturation also involves the passing of sacred knowledge. The passing of work skill is part of enculturation process and starts from childhood. The process includes participation to the all stages of reindeer herding work, where a person learns by watching, education, listening and by doing him/herself reindeer herding work as a member of the community (Näkkäläjärvi 2013). The cultural landscape, it's meaning, place names and navigation are learned in enculturation process. The understanding, knowing and navigating in the landscape can be described with the concept *landscape memory* (Sharma 1995). Nomadic reindeer herders navigate in the landscape by remembering the places, their names, events and stories linked to the places and by identifying the natural formations. Places create engrams and

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<sup>1</sup>Ethnoecological niche is a term that refers to community's cultural, environmental and social environment. It consists of fundamental necessities that the communities need for survival, including cultural, economic, environmental and social factors.

elaborative benchmarks to the memory. Place names and knowledge of the places in different seasons contribute to the reindeer herding work. Landscape and places are identified by their functional, material, symbolic and lingual dimension. Place names, toponyms are not just words but are a metaphor that explains on the history, events, images, tales and folklore attached to the place. They are important for herding, culture or for the use of natural resources (Nora 1996: 1–23; Näkkäljärvi 2013: 43–44, 58–19).

There are sacred places above and below the surface in nomadic reindeer herding area and extensive regional sacred places (Pentikäinen 1995; Porsanger 2007). Sacred places and shamanistic worldview still live as part of Sámi Culture in tales, myths, songs, yoiks and place names. For example, the gnomes (*ulda* in North Sámi) are considered to be part of the spiritual world. There are references that still in the 1940s people believed in gnomes and their reindeer herds (Therman 1990), but none of even the older informants of Näkkäljärvi's fieldwork believed in the actual existence of the gnomes, the gnome stories were considered as a tool to educate and pass on cultural knowledge. It could be determined that the natural environment important for oneself is all sacred, but this doesn't imply that the nature should be worshipped or one should sacrifice to it. The sacredness of the place is manifested in the respect for the place and in living in harmony with the nature. It doesn't manifest itself in chaining of the nature or in violation of its sacredness.

## 8.2 The Sámi, Their Faiths and Traditional Culture

The Sámi are the biggest indigenous people of the European Arctic and the sole indigenous people in the whole European Union. Sámi populations live in Norway, Sweden, Finland and Russia. Reindeer herding forms the basis of their traditional culture in all four countries. Reindeer herding is relatively well-off and profitable, and seems to have a pretty good outlook in the future. Naturally, there are also serious problems and dangers. Other areas of the material culture of the Sámi, such as fishing and especially hunting, are in decline. However, the material part of the traditional Sámi culture is also, in comparison with the majority of aboriginal peoples of the North or even of the world, ever vital and vigorous.

The fate of the main languages of the Sámi, especially the northern Sámi language, also looks in general more or less secure, barring perhaps in Russia, even if the smaller Sámi languages have major problems in all four countries.

However, concerning the traditional spiritual culture, trends are to the contrary; the traditional shamanism of the Sámi is dead. Since the end of the nineteenth century, there has arisen not a single Sámi shaman within all four countries.<sup>2</sup> Some

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<sup>2</sup>Some self-named “new age” Sámi shamans exist, but neither is their faith grounded on the traditional philosophy and knowledge of the Sámi, nor are they recognized by their peoples as authentic shamans.

parts of the spiritual culture, such as giving offerings in sacred sites, have in a very limited quantity survived. However, in these cases it always occurs in private settings without any communality or publicity.

Christianity has become the real foundation of the modern spiritual culture of the Sámi. This Sámi Christianity means Lutheranism, except in orthodox Russia and certain parts of Finland. Lutheranism has, in principle, no sacred sites; only churches with their cemeteries<sup>3</sup> have some elements of sacredness. For Lutheranism, and especially its northern special form, Laestadianism, a profound manifestation of Pietism, a strong demand for exclusiveness is typical (Hepokoski 2002; Pentikäinen and Pulkkinen 2011).<sup>4</sup> Laestadianism was founded by Lars Levi Laestadius, a Swedish Sámi pastor, who was able to adapt Christianity and make it understandable for the Sámi. The double-faith typical to aboriginal peoples of Russia has scant possibilities to flourish in Scandinavia.

Even for Russian Sámi their double-faith is far less typical than in most of Russia in general. The attempts to Christianize the Sámi of the Kola Peninsula since the sixteenth century have been remarkably determined within a strongly militarized border region. The atheistic terror of Stalinism was in the same vein especially bloody and paranoid. Sacred or semi-sacred sites are rare also in the orthodox version of the Sámi culture. The monastery of Pečenga (finn. Petsamo, Sámi Peäccam), which began the christianization of Russian Sámi through the work of the holy missionary Trifon of Pečenga was decisively destroyed by the Finns under Swedish rule in 1589. After it's rebuilding in 1886 it was evacuated to central Finland after the decline of Finnish power in the region in the years 1920–1944 due to the Soviet army.

Let us consider however, that lake Lovozero (Lujavvr), is seen by Kola Sámi as a magic place. The largest part of the remaining Russian Sámi lives on the shores of this lake. The island of Kildin in the Barents Sea has been remembered as the burial place of the Kola Peninsula shamans, but it is today completely within the jurisdiction of the Russian navy with no access without special permission.

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<sup>3</sup>The most significant sacrificial church of the Sámi is the Pielpajärvi (saam. Piälppáájávri) church, built in 1760, in the Inari (saam. Aanaar) municipality in Finland. It is located on an ancient sacrificial place and it is located very near to one of the most holy places of the Sámi, the big rock island of Ukonsaari (Äijih) in the Inari Sea. See Äikäs et al. 2009; Äikäs 2012.

<sup>4</sup>Even if the only binding of Laestadius was to Finnish culture was his excellent knowledge of Finnish language, is he often seen as "one of the greatest Finns in the history". As movement has the Laestadianism however really the Finnish language as own "lingua franca", which leads the Laestadian Sámi to tender more towards the Finnish as Norwegian or Swedish culture. The uprising of Sámi Laestadian against Norwegian state power in 1852 played an important role in the national awakening of Sámi.

### 8.3 The Continuity of the Sámi Sacred Sites Until the Present

Most Sámi sacred sites of the past, especially those near or in settlements, have only a faint continuum with the present. Many, however, continue to exist. Man-made changes in nature have hitherto not been enormous, especially in Finland, where there has been close to no mining in the current Sámi territories. Some of the sacred sites have been destroyed by Christians, but their character as mostly natural phenomena has made that difficult and possibly, less desirable. Only few have been transformed into semi-sacred places of Christianity. Luckily, the founder of Laestadianism had some respect and understanding for the traditional religion and opposed its persecution.

However, before him, in the late seventeenth and early eighteenth centuries there have been in Scandinavia some undertakings to destroy as much as possible signs of Sámi “paganism”. In the Sámi regions of Danish-ruled Norway this was combined with massive witch-hunts, whose male victims were Sámi shamans. The mountain Dønen near Vardø (Várggát) was seen by witch-hunters as “Blocksberg”, a place of Satan, a meeting place of witches for debauchery and planning of anti-Christian actions.

But unluckily, in modern times, since twentieth century, the remoteness and Christian taboo-like feelings towards many sacred places led to them being destroyed. The creation of the Lokka basin in former Sámi lands in Finland in 1967 flooded, especially tragically without anyone really noticing, not only the river Mutenia, which is seen as holy in some old tales (Äikäs 2007: 223), but also the grave of the greatest known Sámi shaman in Finland, Akmeeli Antereus.<sup>5</sup> Even within Finnish culture, Akmeeli is known as Antero Vipunen, a wise giant sleeping

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<sup>5</sup>Akmeeli Antereus (finn. Ikämieli) lived in the eighteenth century. He is mentioned in many Finnish and Sámi legends and tales but regrettably there exists no scientific research on him. The most profound and authentic presentation seems to be: Paulaharju, Samuli: *Sompio, Luiron korpien vanhaa elämää* [Sompio. Wildernesses of Luirio of Yore]. WSOY, 4th ed., Porvoo – Helsinki – Juva 1980, p. 26–27. S. also the main work of Paulaharju to the sacred sites of the Sámi: Paulaharju, Samuli: *Seitoja ja seidan palvontaa* [The Sámi offering stones and their cult]. Suomalaisen Kirjallisuuden Seura, Helsinki 1932 (=Vähäisiä kirjelmiä 84); even though Paulaharju was neither scientist nor Sámi and there are many misunderstandings and errors in his works. It seems that in the independent Finland, since 1917, Akmeeli was strangely “forgotten” in the popularization of folk tales. However, would this romantic figure, which often magically fights the Russians invading the lands of his people, not been superficially optimal for the tendencies of these popularizations? This shows some analogies with the many lapses of memory concerning the Sámi in the nationalistic self-portrait of Finland. This might have been crucial for the fateful forgetting of the cultural value of the destroyed by basin Lokka-Sompio region in 1967.

under the earth, in the epic *Kalevala*. *Kalevala* tells us how its heroes visited the tomb of Akmeeli to get wisdom<sup>6</sup> –as had done many others until the construction of the basin.

The enormous feeling of spiritual loss brought on by the creation of the Lokka basin haunted civil servant Urpo Häyrinen at the end of autumn 1967, before the beginning of the construction works of the basin. Consciously or subconsciously, he pondered on the historical significance of the hill Kussuolinkivaara as an ancient site of a god of hunters (Äikäs 2007: 221; Paulaharju 1980: 24–25). He saw the end of the peat lands so:

Then broke the second half of September. Cold winds stripped the leaves from the trees and sped them through iced quagmires. One evening, a strange snow cloud drifted over Kussuolinkivaara and stayed there for a long time, exactly above the top of the hill. In the light of the setting sun, it seemed like smoke rising from the summit of the mountain, like an enormous sacrificial pyre of the hunters of ages past. Bit by bit it grew larger, and soon it enveloped the whole of Sompio<sup>7</sup> beneath its white shroud. Soon a tremendous snowstorm whipped up and darkened the land. In the following summer the great peat lands existed no more. (Häyrinen 1978: 124)

The Sompio peatlands have also inspired the author Alfred Emil Ingman, writing 1915 the first modern youth adventure novel in Finnish language, “*Rimpisuon usvatsats*” (And in the Distance Rises Mist) (Ingman 1915).<sup>8</sup> The young protagonists of the novel are finding in the tremendous bogs a peat island defended by wild beasts. After getting through the beasts the youngs expose a hidden ancient secret site of Sámi, whose last guardian shaman lays dead there since some years. This novel, possibly not by accident published before the independence of Finland, has given for many decades for its young readers an image of a rich cultural and spiritual tradition of the Sámi.<sup>9</sup>

However – we can see many impressive holy sites in the current and former Sámi territories of Finland, Scandinavia and Northwest Russia: mountains, fells, islands, stones etc. But we do not know, or know only vaguely, how most of them have gotten their status as sacred places or how the cults around them were organized. Very likely many sites have been forgotten, especially in former Sámi territory no longer recognizable because of the loss of oral tradition.

Current research sees Southern and Middle Finland as the ancient homeland of the Sámi. Researcher Francis Joy deducts this from the ancient rock paintings of

<sup>6</sup>The *Kalevala*, collected and redacted by Elias Lönnrot in 1831, consists of the oldest Finnish and Karelian epic poems, and forms a fundamental pillar of the self-consciousness of Finns and Karelians. The 17th poem of the *Kalevala* concerns Antero Vipunen.

<sup>7</sup>The land of and around these peats brings the name Sompio. The Sámi culture of Sompio died off in the beginnings of the twentieth century.

<sup>8</sup>The author (1860–1917) was a Lutheran pastor. It seems, that in his case, likewise in case of Laestadius, the Christian religion inspired respect for the traditional religion of Sámi.

<sup>9</sup>A new edition of “And in the Distance Rises Mist” was published in 2007. The coauthor Kauppala of given article had in the beginnings of 1970’er as a teenager found by accident the book in edition of the year 1955 in his familiar municipal library in South Finland and it formed his first impression of the Sámi spiritual culture.

Southern and Middle Finland, which he sees as sacred Sámi art. Joy also show cases of remarkable dangers and threats against these practically unprotected works of art (Joy, Chap. 9 in this book).

## 8.4 The Attitudes of the Sámi and Others Towards the Sacred Sites

To think, that the question of the Sámi sacred sites is only historical, would be logical, but erroneous. The emotional feeling of affinity of the Sámi towards these sites remains strong. Some historical knowledge of them has been preserved, and even if not, they are places capable of creating impressions of beauty, might or euphoria in their visitors. Even without any formalized cult, people are proud of these places, find them important for themselves and wish their preservation. Many who are neither local people nor Sámi share such feelings. Sometimes researchers find remains of modern offers in old forms such as coins or meals, but also in new forms such as pine-cones, bunches of sprigs etc. It seems that local Sámi as well as some tourists or other visitors will consciously honor these places or their spirits (Äikäs 2007; Manker 1957; Vorren and Eriksen 1993).

As the taboos created by classic Christianity are weakening and the values of nature, self-finding and such are growing, we think it would be logical to expect that these phenomena should strengthen in the future. Clearly this could lead to such development in Scandinavia, but likely also in Russia, as the basic values of common people are quite similar. The phenomena may not follow the models of the past, as shown by changes in the offerings given. However, the places in themselves seem capable of inspiring visitors to express this behaviour.

Klemetti Näkkäljärvi's own experience of sacred places is as follows: "In my home region there are some sacred places, either *sieidies* or natural places, that are well-known in public and in literature. In my community people have considered the sacred places pragmatically and I haven't observed any worship or visits to the sacred places in purpose for the sacrifice.<sup>10</sup> Publically known *sieidies* are located near settlement, for example Näkkälä *sieidies* near Näkkälä village. Near villages there are also place names that refer to sacred place, like *Saivojávri* (*Sáivo*-lake), that is located near my childhood village *Njunnás* or another *Sáivo*<sup>11</sup>-lake that is located near *Márggajohka* (*Márgga*-river) in *Vuottesjávri*-village. Some lakes have been considered as *Sáivo*-lakes in *Jávvrešduottar* area. Lake *Näkkeljávri* and lake

<sup>10</sup>I have heard in my childhood tales of the reindeer herds of gnomes (*ulda*), but they were also to the tellers only fairy tales and can be contrasted with modern tales of Santa Claus and elks.

<sup>11</sup>Also a form *Sáivá* is used.



*Bievrrašjávri* have been considered as *Sáivo*-lakes.<sup>12</sup> In Sámi mythology *Sáivo* is a fishy lake and often has two floors. They are pictured as vent lakes (*reahpenjávrrit*) and sacred. The fisher had to, inter alia, move carefully near these lakes and follow silence. In Sámi mythology *Sáivo* was a home of the Sámi or a paradise. Sámi ancestors have left from the *Sáivo* and returned to it after death.<sup>13</sup> *Sáivo* can be identified as symbolic dimension of landscape memory based on traditional Sámi worldview. Near the *Sáivos* in villages of *Vuottesjávri* and *Njunnás* are springs (*gáldus*) that provide fresh drinking water. Combined with the fishy *Sáivo*-lake concept this creates an association of pure, unchained cultural landscape that can be reached by people and is a refuge in everyday life.

A fjeld called *Dierpmesvárri* is located by the old migration route (*johttin geaidnu*) to the summer village in lake *Bievrrasjávri*. *Dierpmis* is a God of Thunder in old Sámi mythology. *Dierpmis* purifies the air from diseases and gives rain and life. *Dierpmis* is in fact the master of air and guardian of people and reindeer. The *Dierpmesvárri* mountain region is located in the pasture area of *Jávrrušduottar* reindeer herding community. It is still a central place in everyday reindeer herding work together with nearby fjeld *Jierstavárri*. The area between these fjelds is called 'the space between the fjelds'. It is a traditional reindeer mating area in autumn and calving area in springtime. Area is still in use. Ancient Sámi have probably named the place because of the mythological significance of the *Dierpmis*-word. They wanted to ensure the success of hunting and reindeer herding in this area by naming the place after *Dierpmis* – God. The name *Dierpmis* represents also the lingual dimension of landscape memory and Sámi culture. In Finnish the place is called *Termis-fjeld*, with has no semantic meaning in Finnish language. The ancient hunting pit systems and fireplaces from Näkkälä village to *Bievrrašjávri* summer village indicate that the area has also been a territory and a habitat of prehistoric hunters.<sup>14</sup> In this respect the toponym *Diermesvárri* also represents cultural continuum.

There are also *sieidies* that are well-known for the members of *Jávrrušduottar* community but not known in public. These *sieidies* are located far from villages. I have also learned the location of these *sieidies* that are not known in literature and I, like other members of the *Jávrrušduottar* community, will reveal the location of these *siedies* only to my family. It is a common code of conduct and common practice also among other Sámi communities. The members of the community don't want to reveal the *sieidies* to public. We also know that some of the offerings can be found easily from the *siedies*, but members of the community want the offerings to remain where they are. The members of the community want to respect the privacy and world view of previous generations. The *Jávrrušduottar* region is a reindeer pasture

<sup>12</sup>Therman 1990, 269.

<sup>13</sup>Pentikäinen 1995, 146–149.

<sup>14</sup>More on the prehistory and archaeological research on this area, see for example Halinen, P. 2005: Prehistoric Hunters of Northernmost Lapland: settlement patterns and subsistence strategies. *Iskos 14*. Dissertation, Finnish Antiquarian Society Vammala, pp. 36.

and the area is mostly uninhabited and from the outsider it looks like a natural environment. For the members of the community it is a cultural landscape filled with stories, tradition and history. The members of the reindeer herding community don't want the area to be easily reached by cars. The *sieidies* attract visitors and also some new religious movements, for example so call new-shamanism. The members of Jávrrēšduottar community don't want the reindeer routes and trails open for public traffic and want the area to remain as traditional. To keep the existence and location of these *sieidies* secret tells also on the environmental relationship of the community. They want to respect the ancient sacredness of the place but similarly to protect the cultural landscape of the region by protecting the area and pass the landscape to future generations in same condition as the previous generations have passed it on."

So or so, the fate of the long-term survival of the Sámi nation –and it is only just by a hairsbreadth that the slightly larger Finnish nation, likely also the Norwegian and Swedish nations, does not have to face these same problems. In the more and more complex and globalized techno-culture, its survival depends on the will and wishes of its members to represent something original, which is connected with its history. Because the Sámi do not have much written history, the sacred sites offer a special and well-suited opportunity to get an inspiration for this.

The material life in the Arctic within a more or less traditional context is very hard and may not be tempting, if one has alternatives. And to pursue a life in a complete techno-cultural environment it is also cheaper to prefer the South – one needs less energy for heating, and costs of living and transport costs are lower. So, to live as a conscious Sámi in the Arctic, the sacred sites are needed to give something glorifying, something which cannot be felt anywhere else. Thus they play an immense role in the question of linking the Sámi civilization from the past through the present to the future. The great amateur collector of ethnographic materials of all Finland, Samuli Paulaharju, may have felt that way in 1927, writing about Sámi lands in Finland:

Age-forgotten fells with their goatis and great gods are to men of the wild more real than the bizarre pastures and fields of the church. The old gods remain up there, ever still beckoning to their followers.

The great holy fells will remain true as long as the world stays on track and gods of Stone do not falter, as long as fishers' holy cairns do not disappear. The Parish no longer bows to them, but knows deep within what they are, and what they did.

But upon the exhilarating Lemmetkorsa upon Lemmetjoki, it said that some still honor these ancient places. And like in the old days, when the herds of those who went there increased, today too it is said those who go there will find themselves with more reindeer than before.

The Old Lord of Lapland is yet. (Paulaharju 1927: 313)

## 8.5 Current Dangers Against the Sacred Sites of the Sámi

In the current situation of quick changes in the global economy, we cannot look too far into the future hoping that the frameworks for preserving the sacred places remain good (Heinämäki 2014). Potential dangers for the sacred places in Sámi

lands are created mainly from the current mining industry boom in Scandinavia. The Finnish Sámi lands have until today had no mining, but the search for minerals is energetic there. And in Sweden the Sámi must even today concentrate all their powers to resist the enlargement of the mining sector, needing the solidarity of others.

We should also not forget that the most significant damages for the culture of Sámi are made in Russia. Through mining in the Kola Peninsula, including massive pollution caused by it and the militarization of practically all of its coastlines and much more, the Russian Sámi have lost the biggest parts of their territory used for traditional reindeer herding (Alleman 2013).<sup>15</sup> Through this, the Russian Sámi have lost their connection to the other Sámi and have become isolated. Today, the whole Sámi culture and language are nearing collapse in the Kola Peninsula (Černjakov 1998). Here the simple recognition of the sacred places is waiting its realization.

But in general, in order to create a framework for the preservation of the sacred Sámi sites, there is one matter of special importance; it would be very helpful, if all state-participants of the Barents region could ratify the ILO Convention 169 (Biaudet 2014). This treaty from 1989 concerns the rights of all indigenous peoples to maintain their traditional cultures and livelihoods. This Convention would make it illegal, without cooperation from the Sámi, to demolish any sacred sites in the current Sámi lands. Norway and Denmark have already ratified this treaty. Now, after 26 years of preparations, it would be time for the other Barents States to follow them. The treaty cannot solve all problems concerning sacred sites or mining etc. for the indigenous peoples, but is an absolutely essential groundwork to solve the issues.

The Article 13, para 1; Article 14, para 1 and 2; as well as Article 15, para 1 and 2 of the ILO convention 169 indirectly guarantee the preservation and defense of sacred sites of indigenous peoples (ILO 1989). However, the latest political developments can only disappoint us; Finnish and Swedish political elites are today clearly against the advancement of the ratification process of ILO Convention 169, and only if all other Scandinavian states would ratify the treaty, would Sweden with its vast mines within the Sámi lands feel its position uncomfortable. In Finland, the principal readiness of the political elite is much greater, but divided opinion is divided. The government of the years 2011–2015 had confirmed the ratification in its official governmental program. However, the ratification process continued too long; when the parliament of Finland was charged with ratification at the end of 2014 the erosion of the authority of the government was ever too clear, and the majority of the parliament was against it.

The new government of Finland since the elections of 2015 is composed of an alternative combination of parties. It is only logical, that after the fiasco of the ratification with the previous government composed of parties principally for the

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<sup>15</sup>Concerning the isolation of the Russian Sámi, the fact that practically all inhabitants, including Sámi, of the Pečenga region were evacuated to Finland in the year 1944 strengthened it.

ratification, the new government shows not even the slightest interest to try it again. And for the first time in decades, there is no reference to the Sámi issues at all in the governmental program.

***But all in all, the sacred Sámi sites have withstood harder times. In any case, they will also in the future give for Sámi and non-Sámi alike the tremendous feeling of unity of men, nature and other worlds. We hope that through our work we can preserve them from as many dangers as possible and in a condition as good as possible.***

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# Chapter 9

## External and Internal Factors the Desecration and Destruction of Pre-historic Rock Paintings in Finland?

Francis Joy

### 9.1 Introduction, Research Methods Used in the Analysis and Aims of the Research

The research findings presented below and aims of the chapter are the first of their kind in response to bringing to the attention of the readers, what has become an escalating problem of vandalism, which has been caused primarily by intentional and deliberate destruction of sacred sites in Finland. These sites, host prehistoric rock paintings, belonging to an ancient rock painting tradition, which has links with the Sámi of Lapland and their history, religion and cultural practices.<sup>1</sup>

The theories behind the assessment of the rock paintings in Finland are based on the understanding that the content of the prehistoric art is linked to shamanism, hunting magic, cosmology and Sámi and Finnish cultural history. In the assessment of rock painting damage, the task is not to make comparisons between the content of the research material, which is the artwork and images in the paintings. For this

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<sup>1</sup>The inspiration for this chapter is concerned with the desecration of rock paintings, and has emerged as a result of papers presented in two conferences in 2013 and 2014. The first presentation (2013) was in the international conference titled: 'Protecting the Sacred: Recognition of Sacred Sites of Indigenous Peoples for Sustaining Nature and Culture in Northern and Arctic Regions', held at The Arctic Center, University of Lapland, Rovaniemi and Hotel Pyhäunturi in Pyhä, Finland. The following presentation (2014) was during the second international conference in Inari Finland, Lapland at the Sámi Educational Institute; titled: Indigenous Rights-holder Workshop: 'Experiencing and Protecting Arctic Sacred Sites and Culturally Important Landscapes – Creating Partnerships with Mutual Respect'.

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reason, the methodology implemented for the analysis is a descriptive one rather than a comparative one, in order to demonstrate both the significance and extent of the problem of vandalism at the sacred sites presented through the photographic material in the paper. The method has been applied through the collection of data, which groups the photographic evidence together from each of the sites for assessment and evaluation, as well as a survey of the extent of the problem, compiled from the correspondence from Helena Taskinen at National Museum of Antiquities in Helsinki who is a senior archaeologist with the cultural environment protection unit at the National Board of Antiquities (Museovirasto) in Helsinki and Margaretha Ehrström from the Cultural Environment Protection Unit at the National Board of Antiquities in Helsinki. A combination of the photographic and textual data and data from the two participants provides the necessary observational method used for assessing the nature of the issues, which have been outlined in the research. Thereby, the extent of the problems are clearly defined through the analysis to the extent they do not influence the research in any way, but provides a convincing argument regarding the need for an enquiry as such, because new opportunities and insight into understanding the importance of cultural monuments as heritage can be examined from different perspectives.

It is likewise, beneficial here, to note how rock art vandalism is not only a problem in Finland. Therefore, there are other sources of comparative material in the Nordic countries, which has dealt with the topic of cultural heritage, vandalism and site management in relation to ancient monuments and land rights. For example, Norwegian scholar Gro Ween (2012: 3) has emphasized how through Nordic research “site protection represents new employment opportunities, both in the course of restoration and as part of heritage tourism. On the downside, people themselves may become an attraction. Protection often involves surrendering control; loss of self-determination and restrictions on lifestyles”. For the most part, and in relation to rock painting vandalism, and data on the subject is relatively unknown in Finland, as are policies and management strategies for halting further vandalism because there is a lack of literature on this topic. Therefore, I have suggested a list of sources, which are recommended for reading are detailed in the reference section at the end of the paper where damage and preservation of rock paintings in, for example, African and Australian cultures had been addressed. A discussion concerning the scope of these examples is not permitted here due to restraints.

One more important point in need of mention here is another source of legislation that is concerned the on-going problems associated with vandalism and un-clear legislation at sacred sites, is what is called: Everyman’s right in Finland: [which deals with guidelines pertaining to] Public Access to the Countryside: Rights and Responsibilities (2007).

What is everyman’s right? The age-old concept of everyman’s right gives everyone the basic right to roam freely in the countryside, without needing to obtain permission, no matter who owns or occupies the land. In the sparsely populated Nordic countries everyman’s right has evolved over centuries from a largely unwritten code of practice to become a fundamental unwritten legal right. Everyman’s right does not, however, cover activities which damage the environment or disturb others (The Finnish Ministry for the Environment 2007: 1).

Therefore, the document is another source of data used in the research and included herein for highlighting the ways legislation is implemented with regard to the protection of ancient monuments and access to sacred places.

The overall aim of the chapter is to provide insight into the scope of the vandalism and damage at seven rock painting sites in Finland, the locations of which are to follow, and are presented in detail below. From within the perimeters of the investigation, the author's intention to make visible what is currently unknown and the subject is a topic that has not been addressed in scientific research to date, and therefore an attempt is made herein to examine and make visible the damage inflicted at sacred sites in Finland, which host rock paintings.

Evidence of documented vandalism is presented through an examination of photographic material provided from cooperative work between the author and Finnish photographer Ismo Luukkonen. Luukkonen has photographed all of Finland's currently known rock painting sites and their content.

The photographic material provided by the Luukkonen shows how, and in the midst of cultural and social change caused by the expansion of the tourist industry, the appropriate level of protection at rock painting sites appears to be significantly inadequate and problematic. In other words, questions arise as to whether or not the future of rock paintings in Finland can be guaranteed by the National Board of Antiquities and subsequent policies and legislation against a tide of destruction that is without a doubt an escalating problem?

With the aforementioned in mind, the chapter has three main parts to it and is as follows. The first chapter which follows the introduction states the links between the rock paintings and drum symbolism as a way of emphasizing the links with Sámi history, traditional knowledge and cultural symbolism. In this way, the context of the paintings can be placed within the category of indigenous knowledge systems that as irreplaceable sources of information have become endangered. The second places the focus in the section which addresses current legislation in Finland with regard to The Antiquities Act (1963), which states the following:

All ancient monuments and sites in Finland are protected under the provisions of the Antiquities Act. The National Board of Antiquities who is responsible for maintaining and caring for the archaeological cultural heritage along with certain provincial museums in Finland. Stones and rock faces with inscriptions, illustrations and other drawings, paintings, ground markings, traces or grinding or hammering and hunting pits made in the past (1963: 25).

The presentation and discussion concerning rock painting damage and legislation is the central piece in the research because it emphasizes what seems like the ineffectiveness of current policies and site management, and how the cultural and environment protection unit is seriously challenged in the task of preserving rock painting sites in Finland.

The third part of the chapter focuses on examining the vandalism caused to the art through photographic evidence, thus demonstrating the level and extent of the damage caused at the sites presented within the chapter.



## 9.2 Chronology of Rock Paintings in Finland

Detailed information from within the field of archaeology by (Lahelma 2008a: 9) recalls how “most of the [rock painting] sites are found in the central and eastern parts of the country; especially on the shores of Lake Päijänne and Saimaa”. However, and since the discovery of the majority of the rock paintings in Finland from the 1960s up until the present time, emphasis has been mainly focused on areas below the Arctic Circle. But, and currently in Finnish Lapland, two rock painting have been identified that still need further investigation. These were according to (Lahelma 2008a: 206), discovered “in 1991 [in the municipality of] Enontekiö at the Näkkälän Seitakivi”, which is a sacrificial boulder that has been used by the Sámi.<sup>2</sup> A second location in Finnish Lapland is located at Kuerlinkat in Kolari. The site still lacks in depth archaeological survey, despite their being red markings, which have been found.<sup>3</sup>

Further information regarding the geographical locations and dating of rock painting sites by (Lahelma 2008b: 122–123), describes how:

Finnish rock art, which consists of paintings only, is typical on outcroppings of rock (usually granite or gneiss) that form vertical surfaces rising directly from a lake (Kivikäs 1995, 2000, 2005; Taskinen 2000; Lahelma 2005). Only a few paintings do not conform to this general pattern of location: in less than ten cases, paintings have been made on large boulders rather than cliffs, and a small number of sites are associated with flowing water rather than lakes.

Scholarly data compiled within the fields of archaeology, concerning the dating of the rock paintings in Finland is suggested as the following by (Lahelma 2008b: 123).

According to current understanding, the paintings of the large Lake Saimaa region date from approximately 5,000–1,500cal. BC (Jussila 1999; Seitsonen 2005a), and similar dating’s have been suggested for other areas as well (e.g. Seitsonen 2005b). This locates the paintings mainly within the period of the Subneolithic Comb Wares cultures, which practiced a hunting-gathering-fishing economy. However, the rock painting tradition appears to continue to the early part of the Early Metal Period (1,900 cal. BC – 300 cal. AD).<sup>4</sup>

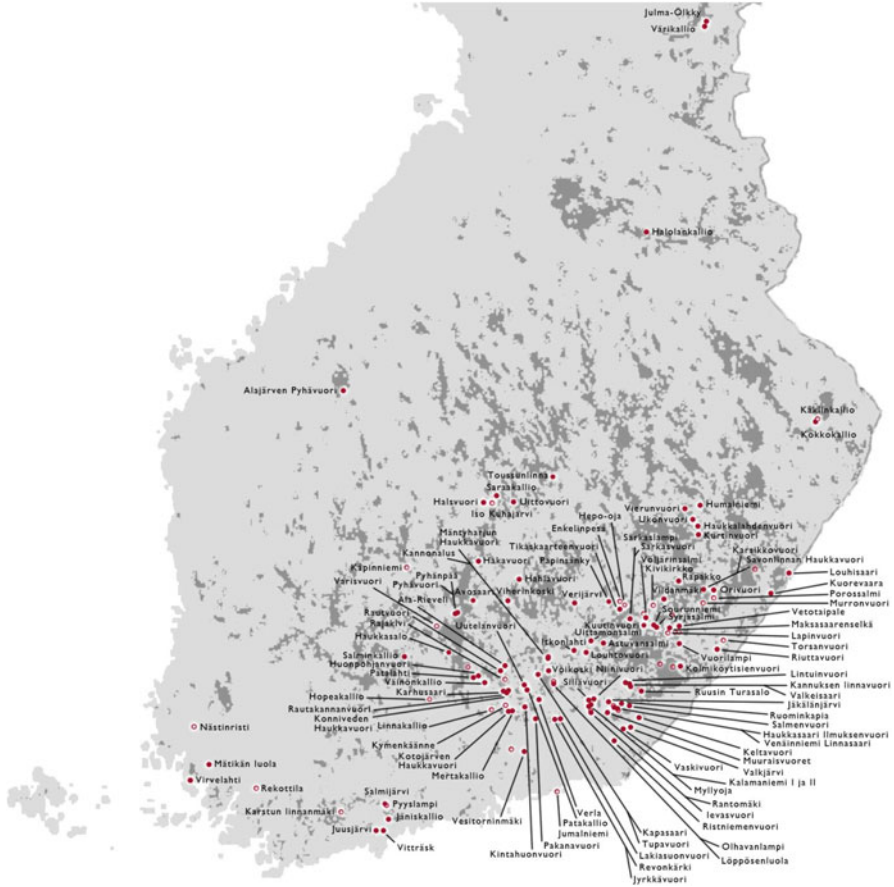
In terms of the numbers of rock paintings recorded through a recent assessment of sites in Finland is as follows according to (Luukkonen 1994–2016: 1) (Fig. 9.1).<sup>5</sup>

<sup>2</sup>The terms seitakivi has a counterpart in Sámi called Sieidi; both refer to a sacrificial or offering stone. These stones are regarded by the Sámi as cultural monuments and have similar value as a Church altar would have for a Christian person.

<sup>3</sup>see Luukkonen (1994–2016) <http://www.ismoluukkonen.net/kalliotaide/suomi/kue/kue.html>

<sup>4</sup>I have made extensive use of archaeologist Antti Lahelma’s material, because his work is the only up to date comprehensive data, concerning attitudes and interpretations and also theories and dating, written in English, concerning rock art research in Finland.

<sup>5</sup>I received this information from rock painting photographer and researcher Ismo Luukkonen via e-mail correspondence on February 23rd 2016. Cooperation work with Ismo Luukkonen has been vitally important for the research because the photographic material supplied by Luukkonen has been digitally retouched in order to help bring the images and scenes from the rock paintings out more clearly.



**Fig. 9.1** A current map of the areas where the rock paintings are located throughout Finland. The map has been used here with permission from Luukkonen

There are 98 prehistoric paintings with identifiable figures plus three cases that have figures, but that can be younger (=101). There are 19 prehistoric paintings without identifiable figures plus nine cases with controversial dating (=28). One figure been destroyed through vandalism as one site had an identifiable figure, but is not included above. This gives the number of prehistoric paintings is 118, plus twelve cases with controversial dating (=130). After all this, we still have 13 sites with red colour that can be man-made or natural. Thus the total number is somewhere between 118 and 143.

Rock paintings in Finland have been dated using the shoreline displacement chronology methods, but, and as archeologist, Antti Lahelma (2008a: 34) has pointed out:

the use of shore displacement method is rather straightforward along the coast of the Baltic sea, but only very few painting sites appear to have been located anywhere near the ancient coastline (cf. above). Fortunately, shore displacement also works on large lake systems of

the interior where paintings are located. [...] However, paintings that are accessible from a rock ledge or terrace – however narrow – cannot be securely dated using shore displacement chronology.

The most visible northeastern rock painting locations that are well known in Finland are the sites of Hossa at Värrikallio and Julma Ölkky, in northern Karelia. Yet, the rock-painting map only shows the areas south of the Arctic Circle and does not include the two locations in Lapland.

### 9.3 The Ambiguous Nature Concerning the Cultural Context of the Art

From my observations from undertaking fieldwork at different rock painting places, all locales can be classed as heritage sites. Two the strongest themes identified within the contents of the paintings are shamanism and cosmological landscapes that depict almost identical landscapes to those portrayed on the heads of Sámi noaidi divination drums from the seventeenth and eighteenth century, from Swedish and Norwegian Lapland.<sup>6</sup> To support these theories, and with regard to the context of the pictures in the rock paintings, according to Lahelma (2008a: 9) “the art can be confidently associated with shamanism of the kind still practiced by the Sámi of Northern Fennoscandia in the historical period”. However, variations in interpretation of the paintings are many, but there appear to be three common themes but according to Lahelma (2005: 32) they “[...] include hunting magic (Sarvas 1969), totemism (Autio 1995) and shamanism (e.g. Siikala 1981; Lahelma 2001, 2005), of these, shamanism is commonly favored today (e.g. Miettinen 2000 calls it a ‘canonical’ interpretation), even though alternative interpretations still persist alongside the shamanistic one.”

The directions scholarly discourse has taken for example, by Lahelma (2007) Siikala (1981) and Kare (2000) has linked the paintings with either the Finnish National Epic, or Mythology, the Kalevala, as well as Sámi shamanism. This is because visible in many of the artistic depictions are animals and reptiles such as snake and fish, reindeer and moose; as well as human figures, which are commonplace within both the Finnish and Sámi pre-Christian religions. It should also be noted, that alongside animal, and human figures, some of whom are dancing or engaged in shape-shifting or metamorphosis, there are also illustrations of boats, which might tend to signify modes of travelling in spiritual journeys, related to myths and cosmological events that have been used to symbolize modes of travel

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<sup>6</sup>The Sámi noaidi is often referred to in literature sources today, as a shaman figure who is a healer, diviner, sacrificial specialist, tradition bearer, who is endowed with magical powers. For further reading about some of the theories linking rock paintings in Finland with noaidi drum symbolism, see my article: [To All Our Relations: Evidence of Sámi Involvement in the Creation of Rock Paintings in Finland](#) (2013).

and experiences. However, and concerning some indication of a possible ethnic background to the paintings, as recalled by Lahelma (2008a: 52), “perhaps the single strongest argument that associates the art with shamanism of the kind practiced by the Sámi are scenes that depict falling, diving and shape-changing anthropomorphs. The falling humans are usually accompanied by an elk, a fish or a snake”.

Symbols such as boats, and figures resembling animal, human and spirits, appear to act as both collective and individual metaphors belonging to the Sámi oral tradition, which has its origins in prehistory, whereas, the Kalevala mythology is from the nineteenth century.

What is quite unique in terms of Sámi religion, is there are horned and triangular headed beings with have human-like physical characteristics that resembles traces, which are recognizable within Sámi cosmology from the seventeenth and eighteenth centuries, from Lapland. Taking into consideration that the locations of nearly all of the rock paintings sites in Finland are situated by water, provides evidence of mythical ties to the lower or underworlds, both of which feature in the Kalevala and Sámi cosmology.

There are numerous theories from within scholarly discourse that provide, additional support for theories that rock paintings in Finland may have originated from the ancestors of the culture we know as the Sámi. The first is that within the geographical landmass across Fennoscandia, there are hundreds of rock art sites, where there are symbols, figures and cosmological landscapes that are quite similar to those on the Sámi noaidi drums from Sweden and Norway.<sup>7</sup> Moreover, these early groups and their descendants have been, and still are to some extent, characterized by hunting, fishing trapping and reindeer hunting practices. Otherwise put, Sámi history and culture also extends from the northern provinces of Lapland down to central and southern Finland, Norway and Sweden.

To put it more simply, in Finland, linguistic research has made a point of stating how, and as described by Lahelma (2008b: 138), “historical sources mention “Lapps” still living in parts of Central and Eastern Finland in the sixteenth century AD (Itkonen 1948) and both oral tradition and occurrence of hundreds of Sámi place names in Southern and Central Finland strengthen the hypothesis that Sámi groups have populated Finnish rock art regions until fairly recently” (Aikio and Aikio 2003).<sup>8</sup> Furthermore, the rock paintings are also knowledge systems, which exhibit portraits of human evolution because, according to (Wilmot 2005: 16), they “[...] can at the very least help to locate the time and place where populations existed and for how long”.

Given the fact the rock painting symbols, figures and metaphors appear on the noaidi drums, also signifies ties with the Arctic (Norwegian, Swedish and Finnish

<sup>7</sup>According to Itkonen (1943–1944: 68), “71 drums”, that exist today, belong to Sámi culture. The drums have survived from within this period are currently the property of museums throughout Europe, for example in Sweden, France, Britain, Germany, Denmark and Italy (see Manker 1938).

<sup>8</sup>Note for the reader. There are different ways the term ‘Sámi’ is used depending on the language and area, for example there are variations amongst north: Sámi and South: Sami and Same, as well as the Swedish: Sámi. The areas where the Sámi people live across Fennoscandia are called Sápmi.

Lapland), demonstrates how the symbols have had vital importance as embedded forms of knowledge systems, because they have been transmitted across cultures and used on drums.

This has likewise, been emphasized by Finnish scholar Milton Nunez (1995: 123) who described the links between the two types of art in the following way.

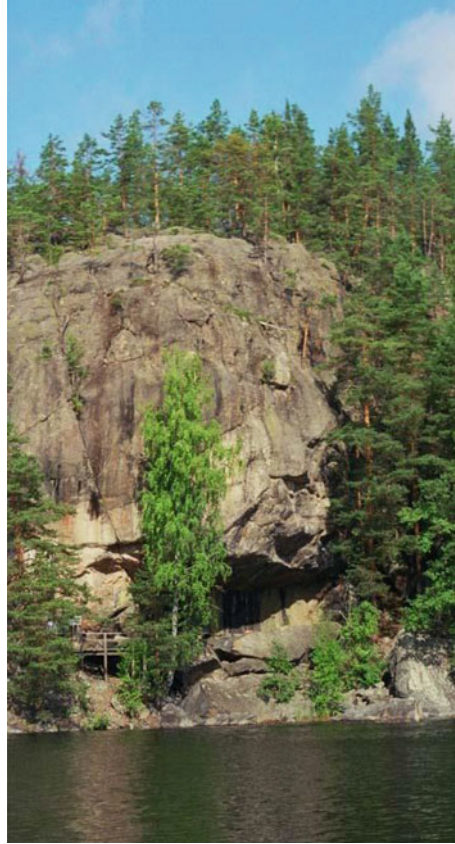
An interesting aspect of Finnish rock art is the possible connection with magico-religious traditions described in the 14th–19th century sources. There are similarities between the red ochre rock paintings and the red figures depicted on old Sámi shaman drums and, furthermore, the kinds of sites used for prehistoric paintings correspond to those chosen by the historical Sámi for their votive offerings

Through detailed examination of the symbolism on the drum heads, it is noticeable that through the artwork and within the last two thousand years a change in culture has occurred whereby “[...] the domestication of reindeer caused the settlements to be moved away from lakes, rivers and good hunting grounds to dry heaths in more moor-like areas” (Norberg and Fossum 2011: 215). This may explain the reason why the prevalence of reindeer are more significant on many drums from the seventeenth and eighteenth centuries, whereas the moose is the animal most commonly found within prehistoric rock paintings throughout Finland. Nevertheless, the recreation and transference of the symbols and figures from rock paintings onto noaidi drums also emphasizes the passing on of cultural values and the continuity and preservation of ancient traditions. One further point is how rock paintings have been made with red ochre, whereas, the decoration of drums was done by utilizing the red dye from the alder tree.

#### **9.4 Examples of Encounters with Rock Paintings in Finland and Their Locations**

There are three further rock paintings in Finland, namely the sites at Verla, Kouvola, Valkeasaari, Taipalsaari and Hossa, Värrikallio that are located on, or close to the heads of stone anthropomorphic and zoomorphic rocks and boulder formations, called Sieidi (Fig. 9.2). Typically, amongst the Sámi, Sieidi are designated as ‘living’ or ‘former’ sacred places, and are often located by rivers and lakes and along shorelines, migrating reindeer routes, but are also found on hills and in forests. In Sámi culture, boulders that resembled human and animal features, attracted the attention of the shaman for spiritual and sacrificial purposes, as noted above by Nunez (1995). One of the main reasons certain boulders were sacrificed to and worshipped, was because they were considered to contain inherent spiritual power, which could be utilized for example to create the necessary circumstances to hunt animals, provide fishing luck and for raising power as a means to creating out-of-body journeys and trance, as noted by (Lahelma 2008a: 9), “as demonstrated by the results of an excavation at the rock paintings of Valkeasaari [southern Finland], the

**Fig. 9.2** An example of a natural boulder formation at the sacred site of Astuvansalmi in the municipality of Ristiina, southeastern Finland, where the head and facial features of an anthropomorphic humanoid are visible in the rock. The rock paintings are located at the *left side* of the figures head (Photograph and copywrite: Francis Joy 2014)



painted cliffs themselves find a close parallel in the Sámi cult of the Sieidi, or sacred cliffs and boulders worshipped as expressing supernatural power”.

The illustrations of human and animal metamorphosis in relation to shamanism, hunting magic and cosmology are another dimension of the rock art, which informs us of the magical power and bonding between human beings and animals, which is expressed within Sámi society, as described by Finnish artist (Antero Kare 2000: 105), in relation to the “multi-leveled world”, who has often considered shape-shifters that have been painted dancing on the flat stone panels at rock painting locations, for example, as human persons wearing masks or furs. Kare has discussed this in relation to a dancing figure at the Hossa site, northern Karelia, who is considered by Kare (2000: 104) to be one of “the largest and the most important images of the composition are the dancing man dressed in fur coat and equipped with two oversized ears [...]”. Many cosmological landscapes illustrating Sieidi sacrificial places and boulders are painted on the heads of Sámi noaidi drums, which were in some cases dedicated to Sámi deities and spirits that took up residence in the boulders and who the noaidi made offerings to (see Manker 1938). In this sense,



**Fig. 9.3** An illustration from the painted panel at Juusjärvi (Photograph and copywrite: (Luukkonen1994–2016))

it is possible to gain some understanding of the holistic relationship with certain features on the landscapes (Fig. 9.3).

To give the reader some idea of the contents of various sites, this photograph depicts a kind of shamanistic séance with the portrait of a man lying prone in the water and a large pike to the left, which has its mouth open as if it is going to eat-swallow him. The specific nature of an illustration as such might be indicative of an initiation of a particular type, depicting an encounter between the shaman and his animal ally, who symbolically eats him before undertaking a journey below the water and into the spiritual world. Further evidence in the landscape indicating a shamanistic séance is consistent with the group of characters that are dancing, directly above, and who seem to have the features of both birds and reptiles; suggesting metamorphosis and trance, especially when looking at the structure of the legs, which appear to be almost reptile-like in their appearance.

## 9.5 Vandalism at Rock Painting Sites: The External and Internal Factors

The title of the paper asks the question: What are both the external and internal forces, which play a major role in the destruction of a number of prehistoric rock paintings in Finland? In order to be able to present the research material and data with reference to the question, which in turn help produce the results of this analysis effectively, there has to be a comprehensive assessment of the players and factors that are involved in vandalism and damage to the prehistoric rock paintings (as discussed above). I also wish to state how the analysis does not propose a solution or cure for the problems associated with damage and vandalism; that is for the authorities and Law Makers in Finland to decide. Instead, the aim is identify the underlying issues, which contribute to the these present circumstances, thereby, outlining the continuing threats that exist as a result of what has happened previously at the sites regarding vandalism and damage, which are discussed in the paper. Therefore, a discussion pertaining to the potential benefit and value of preserving the rock paintings for educational purposes, which would help to sustain and maintain the oldest forms of traditional knowledge illustrated within rock paintings and sacred sites and uses; one example from Niger, which is included in the Sahara which has produced some positive results.

Below, I have outlined a number of points and contexts, which are noted as being contributory to the on-going demise of rock paintings in Finland. These descriptions begin by placing emphasis on the overall problem, which I believe is characterised by the rapid development of the tourist industry as an economic enterprise, the growing consumption of rock painting locations and sacred-holy sites as business and leisure activities has recently provided the creation of adventure trails, entertainment for paint ball groups, safari adventures, pilgrimages and camping ventures. Otherwise, put by Vesterinen (2010: 5), “in cultural tourism, commodities and services are produced for local residents and outsiders with appreciation of regional and local resources and are offered on a business basis. The cultural tourism resources include all that has been created or molded by people”.

These activities help support local tourism companies, photographic projects and businesses, but also provide some level of insight into the vulnerability of sacred places in modern society with regard to mass and unmonitored tourism. As far as I know, the only two sacred sites in Finland where people are given guided tours are the Taatsi and Pakasaivo sacred places in western Lapland. Neither of these locations have rock paintings.

What is more, is at the rock painting locations of Astuvansalmi and Hossa, areas for camping and lighting fires are built on nature trails that pass within close distance to the paintings. Another reason why sacred sites where rock paintings are located draw many visitors each year is that the paintings offer rare and unique photographic and artistic material, which supports the growth and marketing of cultural tourism in Finland. It is also worth noting how some sites provide insight and experience into the worldwide growing interest in shamanism and ancient history to both



scholars and laypersons. Yet, it seems that the codes of conduct for implementing sustainable tourism and the development of sacred sites are chiefly characterised by signs, information leaflets, at some tourism offices such as Suomussalmi and Astuvansalmi, which are overall inadequate (see Chap. 6). Moreover, due to the promotion of rock painting sites as tourist attractions, many questions still remain unanswered concerning the present and future sustainability and perceived threats to all of the rock painting locations in Finland. It would not be unreasonable either, to state how both the threat and subsequent destruction of sacred sites has existed for some four hundred years, since the beginning of colonialism, by priests and missionaries. However, today, the on-going destruction lies within tourism, poor education and enormous demands concerning tourism management.

Equally as important points, which also need to be mentioned in relation to the external factors that contribute to vandalism, is sites that have been desecrated repeatedly are situated close to urban areas where there are no signs informing local persons what the paintings are, for example, at the locales of Pakanavuori, Kouvola, and Rautvuori, Heinola in southern Finland,. In general, the majority of the paintings however, are located in the wilderness away from towns and cities, and in some cases on islands that are situated in the center of lakes. Regardless, remote sites are also under threat and have been damaged due to fishing, camping (fire damage), shotgun blasts and rock climbing. Because of the remoteness of some rock paintings, it seems there has been a tendency at an unknown number of sites, such as the one at Haukkavuori, Mäntyharju, to not put any signs up, indicating, (a) what the paintings are and where they are located, and, (b) the appropriate codes of conduct at sites, and which also exemplify how the sites are protected by current legislation.

A notable list of internal factors recognized by the author in the research during visits to different rock painting locations, show how these appear to contribute to the destruction of rock painting sites in Finland and relate primarily to the internal handling of economic expansion by the tourist industry, which supports and encourages, development and tourism practices as it continues to grow. By contrast, this development far exceeds the implementation and execution of strategies for sustainable development, which serve to protect cultural heritage, as warranted by the authorities in Finland. By all accounts, it seems the latter is struggling to meet both the needs and demands of modern society due to a lack of resources as well as money and because of the remoteness of many of the paintings. Some sites are only accessible by boat in the summer for example at the Haukkavuori site, whilst others can also be reached on foot, by ski's and by snow mobile in the winter months when the ice sheets cover the lakes.

A study of the rock-painting map above (Fig. 9.1) provides some level of comprehension of the vastness of the areas where the paintings are located, and as such, it would take enormous internal resources to protect and monitor each site effectively. To help reinforce this investigation, I have also identified a further notable contributing factor to the internal issues, which contribute to the vulnerability of rock paintings. The level of adequate coordinated effort implemented through educational forums and projects to inform visitors to these ancient sanctuaries

regarding guidelines and procedures for maintaining the critical infrastructure of each site, is unknown. The reason is that in some cases, it is down to each municipality to provide information and protection at sites in their areas. How this information is distributed is likewise, unknown. In general, it is not clear where, when or how both groups and individuals to sites, received any kind of information that would illustrate the level of protection as authorized by Finnish Law, regarding the implementation of policies and structures, before unsupervised visits? This in itself seems to present an unclear and uncertain guarantee for the future of the rock paintings in Finland and their preservation. In general, this especially pertains to the bigger locations of Saraakallio, Hossa and Astuvansalmi that are now designated as major tourist attractions where groups of visitors can light fires, consume alcohol, camp go swimming and engage in rock climbing activities. As far as legislation and education is concerned regarding codes of conduct, visits to these sites are unmonitored, and are largely, based on trust that visitors will uphold the integrity of such ancient places without supervision.

## **9.6 Reports of Rock Painting Damage, Recorded by the National Board of Antiquities**

To help further clarify questions and gain additional understanding of some of the challenges and observations presented in the preservation of rock paintings, sacred sites and ancient culture, in relation to the nature of the vandalism which has occurred in Finland, two types of questions were directed to Taskinen at the The National Board of Antiquities who is responsible for the conservation, protection and preservation of ancient monuments in Finland. The first question was concerned with gaining access to the policies and current legislation (Antiquities Act 1963) which protect the rock paintings in Finland as ancient monuments. The reason for the question was an attempt to gain a better understanding of the wording and clarity of the document. The second question was concerned with the extent of the damage that had been recorded by the National Board of Antiquities. Taskinen kindly responded with the following information:

Finnish rock paintings are protected by the Antiquities Act. All our ancient remains are protected automatically from the moment they have been found. The Antiquities Act of 1963 extends automatic protection to all permanent ancient monuments, and forbids their excavation, covering, and disturbing in any way without permission granted by the National Board of Antiquities in accordance with the Antiquities Act. [ . . . ] Fire has [caused damage at a number of] rock paintings: Valkea Löppösenluola is the place where the fire place may have been before the discovery of the rock paintings (1974). On the rock wall there is black soot. In Mäntyharju, Haukkavuori III [there are three different places where rock paintings can be found in this municipality] there is also soot on the ceiling of the cave. The figures in front of the cave are very difficult to [see]. Fire has been made also near the rock-painting wall at Laukaa, Saraakallio.

National Board of Antiquities made a report of the offence to the Police, when we noticed that the Jaala Kapasaari rock painting was damaged by shooting [caused by shotgun pellets].

Police did not find the shooter. Many figures have been lost. I think quite near the Ruokolahti Kolmiköytisienvuori rock painting has been some marks of shooting but they are not on the area where the figures are.

Kuusankoski Pakanavuori [Kouvola] is situated near the town centre and young people often come together there. The protection of this place is a big problem. Fire has been made near the rock wall and graffiti paintings or letterings have been drawn over and near the figures. Our conservator cleaned the wall a couple of years ago. I am afraid there are maybe again some letterings or graffiti paintings on the wall. The protection of that place is especially difficult.

There are information panels at the rock painting sites. All sites are not possible to visit without a boat in the summer time, and at that kind of places there are no mark to put information panels. [...] On the Jyväskylä, Halsvuori rock painting wall there are marks of the rock climbing. The hooks are near the paintings but higher on the rock wall. National Board of Antiquities has forbidden the permission of the climbing at the Lohja, Linnavuori walls. Near the Valkea, Olhavanlampi rock painting there is also a popular climbing place but the figure there is safe" [Helena Taskinen, interviewed September 25. 2012; September 26, 2012, and September 5. 2013].

In addition to the legislation in The Antiquities Act (1963), in Finland there is a "[...] legal concept of Everyman's Right [which] gives everyone the chance to enjoy outdoor pursuits, and the freedom of the country's vast forests and fells, and many lakes and rivers, with few restrictions. Public access to private land is much wider in Finland, and other Nordic countries, than in most other countries" (The Finish Ministry for the Environment 2007: 3).

On analysis of the feedback and additional information provided by Taskinen, the following conclusion was drawn. The occurrences of vandalism in Finland are no different from the same types of vandalism encountered in other countries where there are prehistoric rock paintings (for example, see Bednarik 2007; Illiès and Lanjouw 2005; Deacon 2006; Austin 2005). Evidence suggests there is a trend, which is ongoing in many cultures throughout the world, and in this sense the problem in Finland can be placed within this trend, which highlights the overall struggle in the management of sacred sites and preservation of ancient traditions.

## **9.7 Vandalism and Damage at Sacred Sites and Current Legislation Linked to Protection of Heritage Sites**

To support the photographic data, and help to outline the scale of the concern, the valuable correspondence with Taskinen and Ehrström from the National Board of Antiquities is also included in the research, in textual form, which makes reference to the nature of the damage that has been officially recorded by the state at sites presented below, and the importance of these sites in terms of cultural heritage.

Further interest relating to the enquiry by the author is connected to a visit to one of three rock painting sites at Haukkavuori close to Mäntyharju, in southern Finland in 2008 that is still recognized as a holy-sacred place, which is protected by law. On encountering the island by boat, it was a shock to discover that a grill

had been built for cooking food on, directly underneath the area the painted pictures were located on the rock formation. Needless to say, the carbon from the fire had covered a number of the painted red images, some of which were faintly visible. Notably, it was not visitors to the area who had contributed to the damage, but the persons from the local municipality who had built the grill in such a carefree way, and probably without any idea that the paintings even existed. Previously, and in addition to the visit to Haukkavuori in 2008, further information was collected by the author concerning desecration to rock paintings, during an interview with Alpo Rissanen in 2006, who works at [Jalonneimi House](#), Suomussalmi Tourist Office in Suomussalmi, northern Karelia. The conversation took place during a fieldwork trip to the famous rock-painting site at Hossa, a location also known as Colour Rock, at Väräkallio. The site is approximately 100 km east of the town of Suomussalmi. During the discussion, Rissanen revealed a story concerning how and when the rock paintings were first discovered, the local reindeer herders did not want people to visit the area, due to the threat of disturbing the reindeer breeding, and therefore, someone poured a large amount of tar over the pictures, as an attempt “[...] to destroy them” (Rissanen 2007: 82) and keep all potential visitors away from the area.

In 2009, a visit to the rock paintings at Astuvansalmi, which is approximately 40 km south the Haukkavuori site, revealed there had been some restoration work carried out to the painted area that looked as if it had been disturbed. Where the painted images were, markings indicated projectiles had been used on the paintings, meaning someone had tried to scrape some of the images away. During the time spent examining the paintings through a camera lens, other visitors to the site were climbing on the rock terrace to take close-up photographs of the images, which meant contact with the area where the paintings were located. Despite an information panel in close proximity describing both the uniqueness and age of the paintings, evidence suggested the information was irrelevant in this case to one group of visitors.

In the following years, other visits were made to further rock painting sites. The first was Verla, Kouvola; the Juusjärvi and Vitträsk; sites, Kirkkonummi, as well as Julma Ölkky and Hossa sites, located in northern Karelia, and Saraakallio, Laukaa which is a municipality in central Finland. At Hossa, Astuvansalmi, and Juusjärvi, there were signs informing visitors to the area that rock paintings existed, whereas and in the case of Haukkavuori, there were no signs at all. The sign at Juusjärvi was quite poor and looked very old, and was written in Finnish and Swedish text. During a visit to the rock painting site at Saraakallio in the winter of 2014, evidence suggested that one of the rock painting information signs had been damaged with a shotgun blast, demonstrating that the vandalism is not only directed towards the paintings, but also to the wider area where the paintings were not located (Fig. 9.4).

In 2013 after hearing about further damage at rock art sites in Finland in a discussion with rock painting photographer Ismo Luukkonen<sup>1</sup>, and as a way of seeking further clarification with reference to the level of vandalism encountered at the three painted locations noted above, correspondence was established by telephone and e-mail with Helena Taskinen. The reason for making contact with



**Fig. 9.4** The plaque on the wall at Saraakallio reveals traces of what resemble shotgun markings and three letters missing from the text which look as if they have been scratched away. The Finnish text when translated to English says that ‘Archaeological Sites are protected by the Law’ (Photograph and copywrite Francis Joy 2014)

Taskinen was to gain further understanding and clarification with regard to the current legislation and policies which protect rock paintings and sacred sites. During the correspondence, and in response to my interview with Alpo Rissanen, Taskinen was able to confirm the following. “[...] on the discovery of the Väräkallio rock painting, tar was poured on the rock wall. [...] Because tar is a product of nature no conservation action was needed. After a couple of years, the tar disappeared. [...] I believe all figures were not covered, only the lowest ones.” (Taskinen 2012: 1). In addition to the aforementioned communication with Taskinen, contact was then made with Margaretha Ehrström as a way of establishing the status of rock paintings in Finland with regard to World Heritage Sites, which is discussed later in the paper.

As has been mentioned briefly above, at the sites of Astuvansalmi and Hossa-Väräkallio, in close proximity to where the rock paintings are located are large anthropomorphic faces in the natural rock formations. These humanoid type figures appear to be affiliated with the paintings, and could be categorized as natural spirits or rulers of the area, seen manifest in the rock face, a type of indwelling guardian and protector that had both significance and value for the artist who created the paintings.

Moreover with regard to sacrificial activities that has featured prominently in both Sámi and Finnish pre-Christian religion. It is obvious that in order to provide adequate conservation of a sacred site, there has to be a wider cordon of protection considered to the surrounding area where rock paintings are located. Quite close



**Figs. 9.5 and 9.6** *Left*, Kapasaari, Kouvola (Jaala), before the images had been destroyed (Photographs and copywrite (Ismo Luukkonen 1994–2016)). The photograph on the *left* (Fig. 5) shows the *red* markings, which have been digitally retouched to help bring out the images. Visible at the *top right* side is a figure that is standing upright on its rear legs, with large ears or horns, which appear to be dancing. Other red areas are so faded that the images are not recognizable. Fig. 6, (*right*), is taken of the painted area after the damage, which was caused by the deliberate use of a shotgun, that changed the content of the painted area considerably, to the extent that it has virtually erased all the pictures. The *red circle* shows the area where the pellet marks are visible. “There are no signs at the location” (Luukkonen 1994–2016), which indicate what the site informing of the locations status as a place of historical and cultural interest and history. The vandalism in this case has caused extensive and irreversible damage to the artwork

to the rock face at Astuvansalmi a fireplace, wood shed and toilet have been built for camping purposes. The significance of the importance and value of the wider area appears to have not really been given the necessary consideration as to how the surrounding landscape and its ritualized use may have a role to play in relation to sacred space and area where the paintings are (Figs. 9.5 and 9.6, 9.7, 9.8, 9.9 and 9.10, 9.11, 9.12, and 9.13).

The photographs of the desecration in my opinion, emphasizes the enormous challenge presented to both Museovirasto (The National Board of Antiquities) and Metsähallitus who are the two governing bodies responsible for site management and ancient monuments in Finland, and the planning and management of natural resources. The scale of the damage portrayed above cannot help but question current effectiveness and policy management concerning the Antiquities Act of 1963 and its implementation, in terms of not only protecting rock paintings but also making successful prosecutions of individuals who are known to have purposefully caused damage to sites. Important data presented as evidence by Taskinen and from the photographic content above provided by Luukkonen, is indicative of how approximately as many as ten to twelve percent of Finland’s rock paintings have been vandalized extensively. Individually, rock paintings can be categorized as being vulnerable due to local tourism and graffiti, but also to random acts destruction in



**Fig. 9.7** The painted panel at Ruusin Turasalo, Taipalsaari (Photograph and copywrite (Ismo Luukkonen 1994–2016)). A single human figure is visible on this section of the panel. Other original red images have been painted over with white paint, thus covering up any interpretation of the events taking place in the larger portrait

relation to shotgun usage. It seems like a series of criminal acts as to why someone would

[...] commit an act of such senseless destruction against inanimate work of prehistoric importance. It is not an act of revenge by someone who has been wronged, nor is it territory marking by an emerging group, or religious nullification by a new culture; but it can be accurately described as an irrational act of violence against our collective past by persons having no respect for others or for themselves (Austin 2005: 1).

The threat of vandalism is not only against rock paintings. Sieidi sacrificial stones, which are often not recognized in the rock formation can be linked to rock paintings are also vulnerable. These sacred places on the landscapes are used extensively for rock climbing and for lighting fires and pitching tents against, as emphasized in the feedback from Taskinen who highlighted the problem with fires and rock climbing.

In 2011 during a field work trip to a Sieidi on the Porvoniemi peninsula in Lapland, I witnessed first-hand destruction of the sacrificial stone by a fire, which has been lit against it. It seems apparent the absence of protection may be as a



**Fig. 9.8** Pakanavuori, Kouvola (Photograph and copywrite (Ismo Luukkonen 1994–2016)). A dancing figure with human characteristics is still partly visible. Other symbols have been painted over to the extent they are not recognizable. “No signs informing visitors to the area are visible at the location” (Luukkonen 1994–2016)

result of limited resources, a lack of management, unwritten rules and codes of conduct and unsupervised tourism which questions the perceived level of value of the sites in terms of heritage and conservation. As far as is known, there are no records kept of the number of visitors to rock painting sites in Finland, or the nature of the activities which take place in their immediate vicinity because of ‘Every Man’s Right and the Freedom to Roam Legislation’ (2007). What is clear from the photographic material above is human activity at sites is having a negative impact on the environment, and from these accounts, it seems that “[ . . . ] because of direct and indirect vandalism, as more and more people go to the sites, the greater the threat of vandalism. The incidence of graffiti has increased dramatically” (Clottes 2005: 19). In other words, “Rock art was once protected by its remoteness and inaccessibility. Today, as civilization draws nearer, the rock art that once stood undisturbed for thousands of years is falling victim to ‘progress’” (Austin 2005: 1).

One important element in terms of the protection of heritage sites within this legislation, which is lacking concerns the following. In both The Antiquities Act (1963) and Everyman’s right (2007), there is no specific written guidance or direction, which provides particular instructions for example, regarding rock

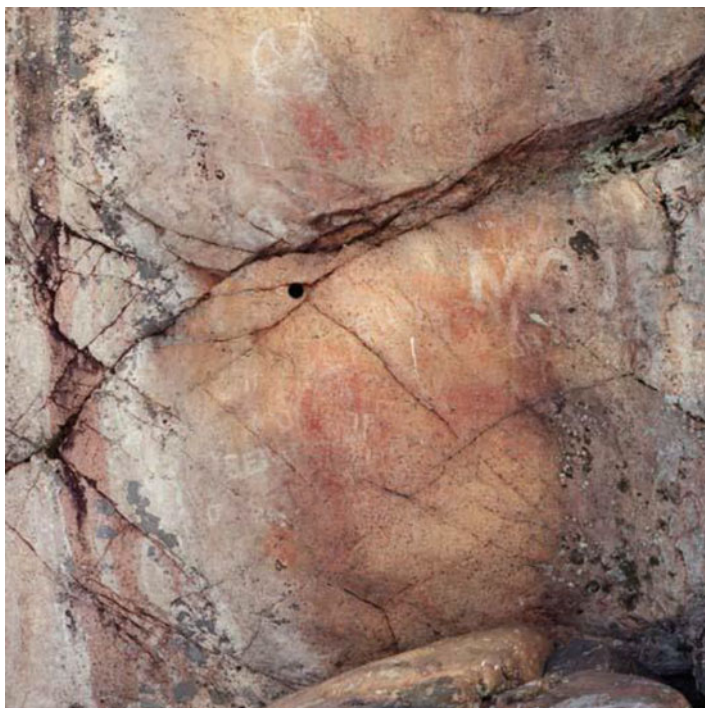


**Figs. 9.9 and 9.10**

Rautvuori, Heinola, close to a residential area (Photographs and copy write (Ismo Luukkonen 1994–2016)). The extent of the damage at the site speaks for itself in this case, thus covering over the original image on the boulder formation. “No signs are found here informing persons what the paintings are” (Luukkonen 1994–2016)



climbing activities, which is a major sport in Finland; not only for native Finns but also foreign visitors as well. Due to the fact many of Finland’s rock paintings are located on large vertical boulder formations or single vertical boulders and rocks close to lakes and rivers, at those locations that do not have any signs designating the area/s as containing paintings this is mainly where vandalism has occurred. It appears the Sieidi holy sites are in some cases such as Astuvansalmi, viewed as ideal places for rock climbing and camping and are often subject to damage as well for example, and as seen by the author, where areas have been covered with magnesium carbonate, the chalk substance used by rock climbers, which is applied to wet and slippery rock surfaces. Furthermore, it is not uncommon to find steel pegs close



**Fig. 9.11** Löppösenluola (Löppönen's cave) Kouvola (Valkeala). "Here, a grill has been built in the cave, but it is not that close to the paintings, however, graffiti is bigger problem at this location, to the extent that none of the images are recognizable. No signs located here either" (Luukkonen 1994–2016) (Photograph and text reproduced with permission from Ismo (Luukkonen 1994–2016))

to rock paintings that have been hammered into the rock surface, as mentioned by Taskinen; practices which are also harmful. Moreover, it seems important to understand that as long as rock paintings are designated as tourist attractions, without the relevant management and supervision, their integrity is compromised and the threat of vandalism is significantly increased.

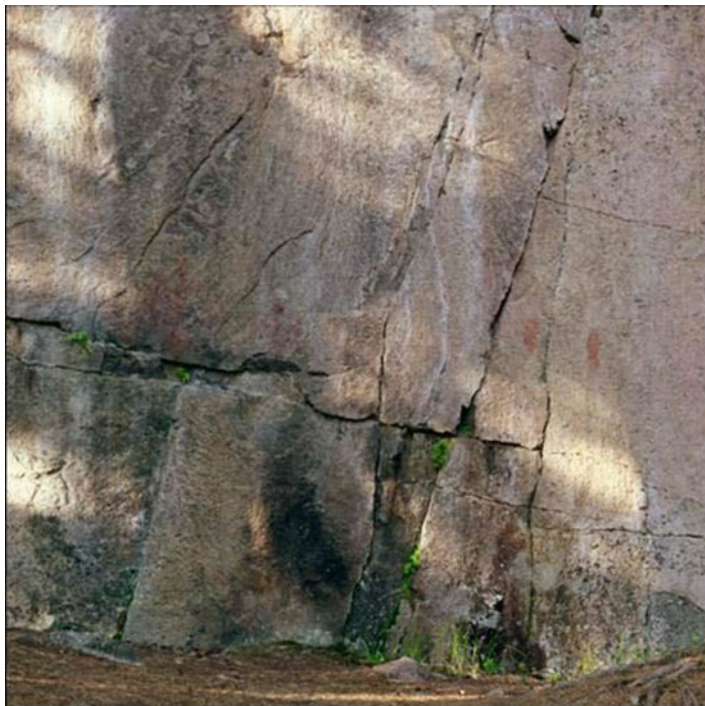
After analyzing the feedback from Taskinen, within the protection of heritage sites from this legislation, although mostly unspoken, there are un-resolved heritage issues, which still exist between Finnish and Sámi cultures regarding ancient pre-history in Finland, that may have a direct impact regarding protection at rock painting sites. It is important to understand that research in Finland has in the past not necessarily been pro Sámi because of the bitter colonial history; therefore, difficulties are encountered when speaking about Sámi pre-history and ancestry with regard to rock paintings. A further point of interest for the study is that in Finland the rock paintings are listed under the cultural heritage of the Finns and not cultural heritage of the Sámi, despite evidence of many portraits of Sámi religious practices recognized within the content and context of the paintings. This is because



**Fig. 9.12** Haukkavuori is close to Mäntyharju. “There are three painting sites in Haukkavuori. In the first place there is a grill under the paintings. Red areas can be made out which are covered with carbon from the fire. There are no signs located here either, informing visitors what the paintings are” (Luukkonen 1994–2016) (Photograph and copywrite (Ismo Luukkonen 1994–2016))

of how, and as a result of colonialism, the Sámi are considered part of the Finnish population, due to past assimilation policies, despite many differences in culture, world views, and language, religious and cultural practices. Therefore, another element, which adds to this historic complexity is perhaps one of the reasons why there is no involvement from the Sámi side in the discussion about rock paintings because with the exception of two sites in Lapland mentioned previously, all the pre-historic rock art locations are in the central and southern parts of Finland. Meaning that chiefly, all the rock-painting locations are below the designated Sámi areas that are presently only given official recognition within the Arctic Circle, Lapland, where the Sámi currently reside.

One must also take into consideration that when addressing issues relating to cultural history and identity in relation to the Sámi, recent ethical considerations have been put forward in Sámi scholarly material that “to protect their heritage, indigenous peoples must also exercise control over all research conducted within their territories, or which uses their people as subjects of study.” (Porsanger 2008: 22). It seems however, that this has not yet taken root in southern Finland where



**Fig. 9.13** Also Halsvuori Jyväskylä (mlk), paintings are damaged by a fire, which has been lit beneath the painting of two human figures who have their arms outspread as if dancing. “There are no signs here informing visitors to the area what the paintings are” (Luukkonen 1994–2016). Photograph and copywrite (Ismo Luukkonen 1994–2016)

a large chapter of Sámi history seems ambiguous in relation to links with rock paintings. In other words, despite traces and scenes of Sámi shamanism and cosmology within the art and also many place-names that are Sámi, the Sámi have not been considered or involved in the decision making of policies or the management of rock painting sites, and most of the research has been undertaken by persons from outside the culture (for example: Lahelma (2001, 2005, 2008a, b; Autio 1991, 1995; Siikala 1981, Kivikäs 1995, 2000, 2005). A recent proposal concerning rock art conservation is discussed by Sanz (2012) who states that “In evaluating the distribution, quantity, quality and rarity of rock art themes and traditions [...] rock art sites [should] be assessed in the context of the ideology and history of the people who created the rock art, the fabric of the site, its archaeological history, and its link with the landscape”. This in itself is also problematic because as of the present time the policy in Finland is that Sámi Cultural Heritage is not officially recognized below the Sámi areas in Lapland, despite extensive research into Sámi pre-Christian religion in Finnish scholarly discourse (see in particular the work of Antti Lahelma 2008a). Overwhelming evidence presented above in the

photographic material shows that due to the growth and expansion of the tourist industry and extension of urban areas, the historical environment is changing rapidly and as a response, rock painting locations would benefit from adequate structures and policies implemented in order to meet these changes effectively. In addition, the on-going demise of rock painting locations close to urban areas is an indicator as to how these locations are where foresight is needed especially. Moreover, it is essential for being able to identify remaining on-going threats to sacred sites as a way of providing conservation and sustainability for the future. As noted previously, in Finland there is an un-spoken recognition of pre-history, which links the Sámi with the rock art. Therefore, when taking these factors into consideration, we encounter a lack of signs, education and unresolved cultural issues that constitute a loop hole through, which one of the most extensive and foremost losses of ancient knowledge and culture in Finland's pre-history; subsequently caused by human agents and their interaction with the natural environment takes place. One effective example of rock art conservation which needs stating concerns a brief examination of strategies used in Saharan rock art conservation in Niger. In what the authors Sidi Mohamed Illies and Annette Lanjouw (2005: 78) refer to as.

threat abatement conservation” describes how successful cooperation by different actors and players within the local communities helps provide valuable oversight, conservation and management of rock painting sites and how through careful research practices “the field of environmental conservation has developed approaches which can be effectively adapted and applied to help in understanding how rock art sites can best be protected with the participation and for the benefit of local communities.

Furthermore, (Illies and Lanjouw 2005: 78) also describe how, “it is for this reason that the emphasis of all conservation action must be focused on involving local people, including leaders, local government and both nomadic and sedentary populations”. This is certainly not the case in Finland, because of the division between the Finns and Sámi, and a general lack of information regarding rock painting sites and their vulnerability.

Through the compilation and analysis of rock painting data, brought together by the aforementioned scholars, since the majority of the art was discovered between the 1970s and 2010, clearly demonstrates how the paintings have become a major asset in relation to cultural pre-history in Finland, and one of the unique and rare sources of oral history and narrative that dates back many millennia. There is a time-line, which runs between rock painting history in Finland and noaidi-shaman drum symbolism from Norwegian, Swedish and Finnish Lapland. Desecration and loss of aspects of the oral history written on the boulder formations and stones prevents future possibilities for examining further links between the two sources of knowledge. In fact, it could be argued that both rock paintings and drum symbolism are related to each other because they have been created for the same reason; as a way of embedding knowledge for the transmission of culture. More coherently, for promoting and preserving cultural narratives that provide rare insight as to how the persons who created the paintings related to their environment, which has contributed to the construction and shaping of identity and sense of belonging. Rock paintings and drum symbols on analysis, express the same language. The age of

the paintings and their outstanding features speaks for the durability of the images, which have survived, is informative of the different dimensions of human history.

Further consideration has also to be given to the nature of the artistic illustrations, where for example, dance is visible. Meaning that where content as such is depicted, these may have had important spiritual significance, and that each location may have been chosen carefully and specifically for its value and purpose for depicting certain scenes and contexts. The study of Sámi culture demonstrates time after time, how the transmission of traditional knowledge is undertaken through sacrificial practices with regard to hunting magic, shamanism and cosmology, the events of which have then been translated into art. Art is the main criterion, which has been extensively investigated as critical historical material via the nature of the symbols on the heads of divination drums from Lapland as a way of understanding and in certain instances, reconstructing the culture and cultural practices in order to understand aspects of ancient history. Rock paintings may be viewed in a similar light because the recorded events illustrate how preserving cultural memory has taken place.

Expressing the culture through art is one of the typical traits of indigenous societies; in fact, it is the unique ability to create culture from nature, which is then depicted as art that illustrates the unique features of hunter-fishing-trapping societies. However, as a result of the vandalism, the structural elements of an ancient worldview in the photographic material presented have been negatively impacted.

Consideration must be given to why perhaps the Finnish state does not legally acknowledge the rock paintings as being linked to Sámi culture? It may well be recognition would mean that the status of the Sámi in terms of land rights would be recognized, thus giving validation and credibility to the culture. Moreover, the knowledge presented within rock paintings, which has been transmitted from generation to generation is being used for commercial purposes without real cooperation between the Finns and the Sámi. One would expect that the benefits of joint involvement and cooperation between the Sámi and majority culture in the management and preservation of rock painting locations and sacred sites would help in determining a more coherent policy that would contribute to better protection and help strengthen their preservation.

One further point that needs attention is by putting signs up at rock painting locations, there is a risk of further vandalism. However, and as the material above has demonstrated, vandalism occurs at rock painting locations where there are no signs present. The graffiti culture in Finland is evident everywhere; especially under railway bridges and old buildings, and numerous other locations where flat stone or wooden surface are accessible; in fact, it is encouraged in certain areas in towns and cities, perhaps at the cost of ancient pre-historic culture. Because there are no signs erected where rock paintings are and where archaeological material has been discovered, this increases opportunities for teens and children to vandalize as well as those persons who perhaps have a distorted understanding of ancient religious practices and the value of pre-historic culture (Figs. 9.14 and 9.15).

As a way to gain a clearer understanding of the status of rock paintings in Finland with regard to any possible links with sites that have World Heritage potential, correspondence was made with Margaretha Ehrström from the Cultural



**Fig. 9.14** Information panel about the Seita (Sieidi), which is located in Mounio, western Lapland, is textual information designated by the organization Metsähallitus that shows the level of protection to the area; Metsähallitus is responsible for preserving and maintaining sacred sites in Lapland. (Photograph and copywrite Francis Joy 2014)



**Fig. 9.15** The information panel at Juusjärvi, Kirkkonummi, which has similar text to the panel at Saraakallio, Laukaa. The information panels are quite small and the smallness of the text, which is written in Finnish and Swedish, appears not clear enough for non-native visitors to the sites. (Photograph and copywrite Francis Joy 2014)

Environment Protection Unit at Museovirasto in Helsinki. Ehrström provided the following information:

All rock paintings in Finland are automatically protected according to our national legislation. See the web-sites of National Board of Antiquities [http://www.nba.fi/en/cultural\\_environment/archaeological\\_heritage](http://www.nba.fi/en/cultural_environment/archaeological_heritage). [However, and despite the pictures being irreplaceable sources on information], there is no rock paintings listed on the World Heritage List, but Astuvansalmi is on the tentative list of Finland since 1990. The tentative list of Finland, which also includes *Astuvansalmi* will be evaluating in 2014–2015. It's premature to evaluate or judge which sites will be on the tentative list of Finland in the future. A number of experts will be consulted and discussions will be held before final decision.

The nomination of sites to the WHL always needs comparative analyses with the same type of heritage within a cultural/geographical region. By these studies the final choice of sites is made and the nomination completed. The most important matter is that the site/sites meet the requirement of Outstanding Universal Value. More information on the process on nomination can be found on web-site <http://whc.unesco.org/en/nominations/> and paragraphs 77–78 on Outstanding Universal Value in Operational Guidelines <http://whc.unesco.org/archive/opguide13-en.pdf>.

There is Rock Art of Alta, Norway <http://whc.unesco.org/en/list/352> and Rock Carvings of Tanum, Sweden <http://whc.unesco.org/en/list/557> which are on the World Heritage List.

The prospect of listing rock paintings in Finland as world heritage sites might be one of the stepping stones needed to draw wider attention and a greater responsibility to the value of sacred sites in Finland, thereby, upgrading protection. The findings in this paper may help highlight the urgent need for this process.

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# Chapter 10

## Safeguarding Sacred Sites in the Subarctic Zone – Three Case Studies from Northern Russia

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### 10.1 Introduction

In order to provide an overview of the present day situation of sacred places of indigenous people leading a seminomadic or sedentary lifestyle in multi-ethnic regions in the subarctic zone we present here ethnographic case studies from two geographical regions and three ethnic groups. We concentrate on an anthropological analysis of practices around indigenous sacred sites of Russian villagers in the Kenozero National Park (Arkhangelsk Region), and the Forest Nenets and Eastern Khanty in the middle Ob River region in Western Siberia. We analyse ongoing processes of identification, description and classification of sacred sites, the processes of acculturation and interethnic relations between indigenous people and incoming

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settlers, and the influence of different non-indigenous groups and their interests in the protection of sacred sites. Different groups: tourists, Christian missionaries, oil and gas workers, scientists, journalists and politicians have nowadays an impact on different forms of land use on sacred sites – religious activities, tourism, ethnographic and archaeological research and extractive industries. Different groups and different concepts of ‘use’ are associated with different and sometimes opposed concepts of protection, education (knowledge transmission), recognition and respect but also punishment and retaliation for violations of sacred sites of indigenous people.

We do not limit ourselves to indigenous religious concepts and belief. Scientific research itself dealing with the description of sacred sites, their identification, mapping, and classification is part of social practices on sacred sites as are political decision-making, legal protection, touristic use or the extraction of subsurface resources. Research and the presence of scientists at sacred places happens increasingly by order of indigenous groups themselves but state and scientific institutions with their own agendas and laws are involved as well. Scientists and indigenous people interact on sacred sites before the background of a history of colonisation (political integration in a modern state, economic integration in regional and global flows of goods, ideological integration in predominant religions and hegemonic worldviews) in which religious practices and beliefs of indigenous as well as settler groups underwent processes of acculturation.

## 10.2 Natural Environment and Local Communities

The two geographical regions of the boreal forest zone in Russia we have chosen for comparison are similar in environmental respect, but very diverse regarding the importance of different resources for the Russian state today and the degree of protection of natural and cultural diversity.

1991 Russia established the national park “Kenozero” at the border of the Republic of Karelia and the Arkhangelsk region. In 2004 the park became part of the UNESCO World Network of Biosphere Reserves. The Kenozero National Park is a nature reserve of national importance protecting biological and cultural diversity. It plays a significant role in the preservation of the avifauna of the region. The Park is included in the catalogue of important bird habitats. The Park has a unique location on the watershed of the Baltic Sea and the White Sea, a hilly plain with more than three hundred natural water objects such as rivers, lakes and brooks in a terrain formed during the last ice age.

Russian geographer I.S. Polyakov described the topography of Kenozero as follows: “*High hills with specific shapes, often with steep valleys and canyons appear here in all areas. The lake Kenozero itself spread between hills consists of a number of separate lakes connected by several channels the number of which increases during the flood. < . . . > and many of the peninsulas breaking the lake in to separate parts turn with the spring-flood into islands*” (Polyakov 1871: 349–350).

Toponymics and archaeology as well as historical sources confirm that the cultural landscape between the lakes of Kenozero and Vodlozero was formed by Protosámi, Baltic-Finnic (Karelian and Veps) and Slavic people which became through mixing and acculturation two local Russian groups – the Kenozers and Vodlozers.

The other region of our case study is the middle Ob River in Western Siberia at the border of the taiga and forest tundra zone. The floodplain of the Ob River and thousands of small lakes, swamps and rivers characterise the region containing Eurasia's biggest peatlands (Kremenetski et al. 2003). The Ob-River divides the region in two parts distinctive by natural features, economic patterns and lifestyle of indigenous inhabitants. Hunting of big mammals like moose and wild reindeer but also fur hunting dominate in the river basins of the Bolshoi Yugan and the Demianka Rivers south of the Ob River. Northwards in the basins of the Agan, Tromyogan, Pim and Lyamin Rivers reindeer herding dominates. Fishing and gathering are important economic activities among indigenous people in both regions. Indigenous inhabitants belong to the Eastern Khanty or Forest Nenets peoples. They lead a seminomadic life, change their campsite up to four times a year and move around in a territory, which can be estimated up to about 400 km<sup>2</sup> directed by the needs of the reindeer herd and by the fishing season. Both indigenous groups, the Eastern Khanty and Forest Nenets nowadays established close kinship but also cultural and economic ties and are using a great number of sacred sites together. The number of the Forest Nenets can be estimated to 2000 people (Volzhanina 2007) and the number of Eastern Khanty of about 5000 (Jordan and Filchenko 2005). Until now, the traditional way of life in the boreal forest and tundra is quite common among the indigenous people but the majority of them lives in villages and towns with different jobs in the public sector or in the oil industry, which boomed since the last 50 years.

### 10.3 The Sacred Sites

The Kenozero National Park (Arkhangelsk region, Russia) was set up to protect a unique cultural landscape including a whole set of sacred natural sites and ritual objects: stones, springs, rivers, lakes, islands, trees and groves, wooden crosses, chapels, churches, cemeteries, remains of monasteries, etc. that are not historical relics but a living tradition. The Other or the numinous appeared to human beings in acts of hierophany and the natural space (topos) becomes cultural in the form of a sacred place. The process of creation is according to Lidov a hierotopy (Lidov 2009) in which every sacred site obtain its sacred myth (oral tradition) and ritual practice. The Kenozero and Vodlozero hierotopy includes Christian Orthodox objects and a sacral topography, which is based upon the substrate of the pre-Christian sacred landscape. After Christianisation chapels were build on former sacred sites. Cemeteries often located on islands have their special space in this hierotopy.

According to the worldview of the Eastern Khanty and Forest Nenets, every sacred site correlated with a deity, spirit or event in their mythology. The social significance of sacred sites relates often to the hierarchy of deities in the pantheon expressed by their kinship relations. We can distinguish roughly three categories of sacred sites. The first category includes the sacred sites revered by all indigenous peoples of the region. The second category includes the sacred sites revered by one of the territorial groups of the Eastern Khanty living at one of the basin of the major tributaries of the Middle Ob River. The third category includes sacred sites revered by local groups of the Eastern Khanty or by individual families. People hold images of personal and family deities-protectors that are linked to specific sacred places at their homes in the forest, but also in the villages and towns. People state that it is necessary to carry them with one's person (FM Rud', interview with K.V.I. February 2004)<sup>1</sup> as they fulfil an important protective and guarding function (FM Rud', interview with T.R.I. September 2005; village of Russkinskaya October 2009) (Rud' 2016: 118–119).

## 10.4 Ritual Practice

All sacred sites in the Kenozero National Park are included in system of actual indigenous ritual practices. Certificates produced by the park administration in collaboration with local tradition holders (see below) testify various taboos linked with sacred groves: *“There was a big cross with headscarf and towels in the sacred grove, on the place where the chapel was. Children never played around this cross. Father hanged up to thirty birdhouses in the sacred grove”* (Myza village: Certification of Villages program 2013). The custodians (*starosta*) of the chapels (their function look below) performed rituals and sacraments like baptism and funerals for their communities at the sacred places, kept the sacred objects (icons and textile votives), organised the ritual meals and collected offerings and money and kept it in the chapels chest. They invited the parish priest for service on church holidays and sold in rare cases also sacred objects for the healing of children. The tradition of the celebration of St. Simeon the God-receiver in the village of Boyarinova was also associated with the wellbeing of children (Melyutina 2009: 65).

The Khanty and Nenets rituals consist of prayers that are always accompanied with offerings. They distinguish offerings without bloodshed from sacrifices involving the killing of animals. We distinguish individual and collective rituals that are dependent on the occasion and the involved deity exclusively performed by different groups of people. Today the middle generation of Forest Nenets and Eastern Khanty is often not fully competent in the performance of rituals and researchers observe moments of improvisation (FM Havelka; see also Leete 1997).

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<sup>1</sup>We will use the abbreviation FM for ethnographic fieldwork materials and indicate the name of the author.

Especially Forest Nenets from the northern part of the middle Ob region seem not to visit sacred places regularly anymore and prefer to visit Orthodox churches build in the settlements of the oil-workers. Eastern Khanty that moved to the cities seem to be more conservative in their attitudes towards their traditional religion. A Khanty family from the town of Kogalym often visiting their forest settlement admitted that some stripe of cloth hanging from the wall in her apartment stems from a sacrificial ritual at a sacred place. The main aim of the ritual was to gain protection and luck for the live of the couple in the city (FM Rud', Kogalym May 2009; Rud' 2016: 119). Another example from the same city shows that even cult statues of the deities were found at a computer desk openly displayed in the corner of the living room (FM Rud', Kogalym May 2009; Rud' 2016: 119). Such a location is traditionally appropriate to store religious items from Khanty ritual practice at the sacred back wall of the Khanty dwelling (kotmul') as well as similar to the sacred corner (krasnyj ugol) in orthodox households (Rud' 2016: 119).

It is important to mention that indigenous rituals among Khanty and Nenets are more or less exclusively visited by people who are involved in the local religious tradition and have a serious reason to attend them. The idea of almightiness of the single Christian god makes worship potentially universal, not limited in frequency and inclusive for everybody. The polytheistic religious practice is by contrast based on the idea of personal and collective relationships with specific deities of different power based on trust and mutual exchange of goods and services. Such a relationship includes a certain part of agency and autonomy on the side of the worshipper as well to be able to offer valuable sacrifices in the ritual exchange. Requests of help and the offerings have to be not too frequent and limited to the group of people involved in the contract of protection. The rituals on natural sacred sites in our case studies are located on a continuum between these extremes. The orthodox Christians in the Kenozero region preserved traces of polytheistic practices and personal and exclusive access to sacred communication on special places like chapels and crosses. The Khanty hold, as we will see below, ideas of inclusivity of the protection of certain deities. The Forest Nenets with their non-frequent and hesitant visits to the sacred places display the attitude of independent and egalitarian reindeer herders that leave the religious communication to cases of and people in real misery.

## **10.5 Persecution of Ritual Activity and the Role of Custodians**

Soviet times saw all over the country the condemnation and persecution of religious activities beginning and most violently in the thirties and becoming less strict during and after WWII. Western Siberia experienced a wave of persecution of religious specialists called summarily shamans by the state after the incidence of local resistance that became known as the Kazym War in 1933, when several members of a soviet cultural brigade were killed after defiling the Num-To sacred site (e.g.

Leete 2003). A grandfather of one of Rudolf Havelkas field partners, a practicing shaman, was arrested by a representative of the state security police NKVD and was probably shot:

*See, my husband's grandfather was a shaman. A big one. A very big one. They imprisoned him because of that. He did not return; he was then 90 years old. They sailed in a prison ship on the Ob River to the town of Tobolsk. In Tobolsk they shoot them. It was after the Bolshevik revolution, in the thirties (sic). Maybe it happened in 1940es. They were hiding. He had four sons. They took them to the army. At first, they arrest them. Their mother was Russian. So they could read. Two returned. (...) He was a big shaman. There was no bigger shaman at that time. The prison-boat stopped for two days in Tarko-Sale, something broke. They were unable to repair the ship. After that, the Russians recognized that there were shamans among the prisoners. Maybe in that time they killed them. We learned it from those who returned. His (the shaman's) name was Tuuta. The second one was Kyla from Khalesavoy. We know that from the old man Vilva, who returned. He told us. He was then young. He was 20 at that time. He just walked back from Salekhard. He was in the prison in Berezovski. They put them into a dark prison. In the Tobolsk prison there are still the holes in the walls, were they executed them. (FM Havelka, Nadya A., 60 years old)*

After such experience most Forest Nenets were both hiding their faith and the sacred paraphernalia or, especially the younger ones, really abandoned it in content with the new communist's ideology. The elders became hesitant to endanger themselves and their children by teaching them the forbidden religious stories and ritual knowledge. Nonetheless, religious attitude towards the environment and the members of the Nenets' society (including the deceased) were and is present among people who live rather independently in the forest and work as reindeer pastoralists. Some religious rituals at the sacred places were practised in a clandestine way (FM Havelka). Religious revival started together with the demand of ethnic self-determination and land rights since Perestroika, even if it seems to be more strongly expressed among the Eastern Khanty than among the Forest Nenets (e.g. Glavatskaya 2004; Leete 2005; Alferova 2006; Stammer and Wilson 2006).

Most of the ritual practices on Eastern Khanty sacred places are performed nowadays in secrecy due to the fact that it underwent different forms of persecution since the incorporation of Siberia into the Russian state at the turn of the sixteenth to the seventeenth century. During the Soviet Union, religious practices were considered "relics of class society" or "opium for the masses" (Golovnev 1995: 163–196, Kopylova 1994). Nevertheless, the Eastern Khanty did not stop their religious practices but performed them secretly (FM Rud', interview U.P.Ya. March 2007; Rud' 2016: 111) The presence of outsiders was almost unimaginable. Among the Khanty at the Yugan River people remember that some communists among the Khanty took part in the repressions of religious practices and believe that the consequences of such behaviour last until now, in form of misfortune and bad luck (FM Rud', interviews with K.E.P. and K.G.N in May 2008 and March 2009; Rud' 2016: 111) Another obstacle was the ignorance of oil-field development for sacred places. During the last 30–40 years, the number of sacred places consisting cult buildings and objects is shrinking dramatically in the Forest Nenets and Eastern Khanty region. We know also cases where the sacred places were robbed, a practice that is observable over the whole Russian North were sacred chapels and places



exist in some distance from human settlements. Not only criminals were emptying the sacred buildings but also scientists transferred objects to the storage of their institutions sometimes without even informing the local practitioners. The Khanty reacted with removing the sacred objects and buildings to new places (FM Rud', interview with T.R.I. Spetember 2005, interview with R.S.G. Spetember 2010, interview with R.A.A. March 2011; Rud' 2016: 118), a practice that is known since the first attempts of Christianisation, when several sacred places were destroyed by missionaries (see Karjalainen 1995: 76–96).

In the case of the villages around Kenozero we observe similar strategies. In addition to secrecy there was another strategy deployed when during the war the “the sacred” tradition, and the function of the Chapel elders has become a part of a female subculture. According to the peasants tradition of the Russian North the service in the chapel was men’s task (Lyutikova 1992: 150). “*Women have to keep silent in the congregation*” was the unquestioned law. The materials about local custodians from pre-revolutionary times found in Kenozero are rare. The earliest evidence dates back to 1805: the name of chapel’s custodian of St. John the Baptist in the village of Gorbachikha was Ivan Filippov (Zaruchevskaya 2009: 535). The collective memory of the people living in Gora village (Fomina Gora) preserved the story about an old man named Kharin who was the custodian of the chapel of Virgin Mary of Tikhvin (Davydov 1982: 89). Old residents of the village of Ust-Pocha remember: “*Grandfather Manushkin performed liturgical singing and served as a custodian of the chapel of St. Nikolas the Wonderworker. Without any education he was just doing the church service*” (Davydov 1982: 114). Mikhail Fedorovich Yuriev was the keeper of chapel of St. Nicholas of the Wonderworker in the village of Gorbachikha. We were able to obtain information indicating that in the Old Believers hermitage of Chazhenskii “*in the chapel where only women gathered for worship the service was carried out by the maiden Anna Ivanova Sinitsyna or Zaleski*” (Ostrovsky 1900: 2). In the second half of the twentieth century, ‘religious old ladies’ started to take over the function of custodians. Stories told by local residents have kept valuable information that are not preserved in official documents of the Soviet period: “*in the chapel of Blessed Mother of Tikhvin in the village of Shishkino*” the old custodian lady “*was selling candles for 15 kopecks each*” (Davydov 1982: 89). Stories from the second half of the twentieth century suggests a continuity of the functions of the elders, the transmission of the service “*from hand to hand*” within members of one family. Agatha Alexandrovna Artemyeva has served as a custodian of the chapel of the Archbishop Athanasius of Alexandria in the village Tarasava until the end of the 1970s when the village was resettled. Her grandfather an Old Believer from the strain of bespopovtsy (priestless) was in charge of the chapel before her.

N.F. Nozhkin (1882–1981) was custodian of the Ilyinskaya chapel on the Mamonovo Island: “*He has been the elder of the chapel for forty-two years, and he went to the chapel every Sunday and on holidays for praying. The whole family believed and prayed. While at the table - they pray. He always said: ‘go to the chapel, it is a holiday today - we must honour God.’ We celebrated Ilya the prophet. The chapel was located on this place – you sail over the lake, and it is there on the hill.*” – remembers P.N. Nozhkina (Shatkovskaya 2010: 43).

The Soviet policy of concentration of population after the war declared the village on Mamonovo Island to be without prospects and it was resettled. The Nozhkin family lived on the island on their own for sixteen years. In 1974 the custodian of the Ilyinskaya chapel had to observe in great sorrow the transportation of chapel to the museum “Malye Korely”.

P.N. Nozhkina recalls: “*My father did not deliver the key to the chapel. Parts of the chapel were falling apart. They broke to the door with a crowbar. They took the icons and books to the museum and throw away some old votive cloth. We dug a grave and buried them.*” (Programm “certification of the villages”)

A few years after the destruction of the sacred building Nikolai Filipovich died – just 13 days before his hundreds birthday. His daughter Pelagia Nikolaevna Nozhkina initiated the rebuilding of the Nikolskaya chapel in the village of Vershinino and became its custodian. She remembers how the women gathered in the abandoned chapel with spades and axes, removed the debris and cleaned the chapel up. “*All the icons were stolen. Now people bring them back. I arrive to the chapel and icons are standing at the porch. I wash them with holy water and bring them inside.*” (Shatkovskaya 2010: 43). Viktor Alekseevich Buyanov constructed from the storehouse of the village Glushevo a chapel in a grove near the village of Shishkin in 1950. His grandmother Anastasia Lavrentevna Buyanova (1881–1957) and his mother Tatiana Stepanivna Buyanova (1901–1976) became custodians of this chapel (Programm “certification of the villages”). “*The chapel had many icons, an iconostas at the wall, and a donation box with money*” old residents remember. “*Somebody took that all, set fire and burned everything to the ground.*”

A high degree of local autonomy and self-governance were always characteristic for the Russian North. The local Russian communities (mir) organised independently their religious, social, economic and ecological issues. This remained the ideal of social order in the Russian North for centuries. The ‘spirit’ of autonomy exist up to the present day. Religious activities linked with the hierotopy of the landscape played a dominant role in community organisation. The social fabric of the community is at display, confirmed but also under discussion, and in transformation during feasts and religious holidays at the sacred places (see Handelman 2005). Custodians of religious traditions took always a leading role in social life of their communities. In pre-Christian times of the Finno-Ugric past religious specialists similar to shamans carried out the sacrifices and took care of the sacred places and buildings. After Christianisation, this function was transferred to certain elders as the informal religious leaders of the communities in the region of the Kenozero Lake. Furthermore, the tradition of self-government in the Russian North presupposes the election of orthodox priests. Their names and images are kept in the collective memory fixed in the landscape of the Kenozero. They were not only the custodians of the chapels but also of all the other elements of the sacred space. They “kept the key” and they take zealously care of the content of their congregation. The chapel tradition is very much based on the idea of a ‘private’ god and personal relation to a sacred place and shows clearly the transformation and preservation of ideas in the process of Christianisation of pre-Christian religious sacred landscape and practises in the Russian North.

## 10.6 Christianity

Vernacular forms of popular religion dominate in the Orthodox Christianity of the Kenozero communities. However, their ritual life and mythology preserves traces of a substrate of Baltic-Finnish and Sámi cultural heritage. At the middle Ob River, attempts of Christianisation by Metropolitan Filofei Leshchinski at the beginning of the eighteenth century were formally successful mainly among the Khanty (Glavatskaya 2005). The traditional religious practice remained intact and was only superficially influenced and covered by Christian practises. A lot of Khanty keep orthodox icons nowadays at home that are often combined with attributes of their polytheist religion like stripes of textile, heads of bears, drums and boxes for holy items (FM Rud', 2000–2014). Khanty often parallel Jesus Christ with the Khanty god-creator Torum or with his son Kon Iki. The last one is one of the most venerated deities among the Khanty and their neighbouring Mansi and known among the Eastern Khanty under several names like Sorni Kon Iki (The Golden-King) Peste Yanki Iki (The Fast Runner) Ai Pakh (Little Son) etc. The comparison of Kon Iki and Jesus Christ who are both sons of the God the Creator and send to earth in order to help people exemplifies the approach of the Khanty towards the Christian belief and was used widely by missionaries. They searched for trajectories in the traditional Khanty religion comparable and replaceable by Christian ones accordingly (Rud' 2016: 115). The more nomadic Forest Nenets living in the swampy forest tundra were less effected by orthodox missionary activity.

Today Khanty religious practice assimilated certain formal elements of Orthodox Christianity without conflict. As one of the Khanty from the Bolshoi Yugan River puts it: “A lot of Khanty keep icons. God is one. The Russians call him Jesus Christ and the Khanty Torum. He is one and the same – only the Russians call him in Russian and the Khanty in Khanty language. The Khanty were baptised long ago still under the Tsar’s rule. Every time I visit the town of Surgut I visit the church as well to pray. In the old times Khanty went to church as well.” (FM Rud', interview with K.V.D. March 2007) This is all the more remarkable before the background of this man being the irreplaceable custodian of the most important deity of the Bolshoi Yugan River – Yaun Iki (Rud' 2016: 115).

Some other, especially women, became devoted Orthodox Christians:

*I have a wish: After my daughters finish the studies, I want to go to the Ch... Lake, there is a sacred island. There lived my ancestors. I want to make there an Orthodox Christian chapel. I will cut down the trees and the priest will come to sanctify it. He must also consecrate the hands of the workers. I wish to pray there for the deceased ancestors. That lake is a sacred lake for our clan Vella. I cannot sacrifice a candle for my deceased parents and grandparents in the church, because I do not know, who of them was baptized. However, I can do it at home. I am a godmother of 13 kids. All my daughters are baptized. However, my son does not want to. If there were shamans, they would say why he does not want to. I do not want to search now for some shaman. The Christians should not do so. I am Orthodox now. This was God’s will. After my daughter finishes the school, I want to live there by that lake and pray for the people who raised me up. Maybe I will become a nun. I saw that in a dream. If I will become a nun and I will pray; God will redeem our clan. The father’s line, Vella. I have fulfilled all the women’s duty by now. (Octabrina A., 65 years old)*

After 1991 various protestant missionary groups spread over the region and many Eastern Khanty and Forest Nenets adopted their faith, burning or leaving their sacred sledges and images of the gods and stopped their visits of the sacred places (FM Havelka, see also Vallikivi 2011). The function of the custodian of the above-mentioned sacred place of the deity Yaun Iki for instance was transferred regular after several years among the men of the settlement of Kayukovy. At the beginning of the 2000s almost all the men at the settlement converted to Baptism and refused the role of custodians. Only two men remained to perform the rituals and host the pilgrimages from the other regions of the middle Ob River. One of the most important sacred sites of the region appeared to be endangered. The head of the local cooperative (obshina) of the Yugan Khanty hunters and fishermen “Yaun Yakh” in the village of Ugut decided at this moment to build a sacred storage house to host the deity from the Bolshoi Yugan River next to his house in the village (FM Rud’, interview with N.N.V. March 2007 in the village of Tailakova) in the case of a full conversion of the population of the Kayukovy settlement to Baptism (FM Rud’, interview with K.V.S. March 2007 in the village of Ugut) (Rud’ 2016: 115–116).

The ease with which new religious denominations take over the role of the old religious practices can be considered as signs of a deep crisis caused by quick ideological, political and economic changes in the modern Russian society. The crisis caused by socio-economic change in connection with industrialisation and establishment of capitalist economy effects first of all the cultural-ecological link of indigenous people with their environment. The conversion of part of the Eastern Khanty and Forest Nenets communities from the old nature based religion to Protestant Christianity divides nowadays kinship groups and even families and limits the number of potential marriage partners from the same denomination. Two protestant churches seem to be the most successful one: the Baptists (Union of Evangelical-Christian Baptists) and the Pentecostals (Church of evangelical Christians “Word of Life”) (see Wiget and Balalaeva 2007).

## 10.7 Outsiders and Indigenous Sacred Places

Today we see a lot of outside factors and actors involved in the ritual practices but also in the knowledge transfer linked with sacred sites and the sacred landscape. Our two case studies exemplify two different extremes of the role of outsiders for the survival of sacred places. The Kenozero national park is as an institution established by the state directed towards preservation of the cultural landscape. The Western Siberian oil-province as the major producer of private profit as well as tax income in the Russian Federation shows the potential of subsurface resource extraction to endanger different features of the cultural landscape that lay in the way of access to the resources. Beside the two poles of protection and destruction outsiders influence in both cases the local religious practices and local knowledge transfer in different ways. Scientists and state officials as well as the private business are in both

regions involved in attempts to mitigate the endangerment for the sacred landscape. The local population and practitioners choose different response strategies towards the involvement of outsiders, from collaboration and participation to avoidance of interaction and hiding of information.

The cultural landscape of the Kenozero region always intersected with the outside world because it played an important role in the Russian cultural and philosophical discourse. The Russian philosopher and poet Y.V. Linnik for instance expressed its metaphysical meaning as an archipelago of salvation, a protected area for the conservation of traditions and sacred values of the North and perceived the Kenozero complex as a manifestation of the myth of the unsinkable island-town of Kitezh: *“Sacral territories, they are often imagined as islands. Let us recall the Isles of the Blessed. The Earthly Paradise, the search of which was so essential for medieval times in Russia, was usually located on an island. That is one reason why great monasteries in the North are situated on archipelagos. Kitezh in its essence is a protected island transferred to the transcendental Wonderland for its salvation. (. . .) The Kenozero area as well became a kind of fairy-tale island for our mythopoetic consciousness. (. . .) A.F. Gilferding called the Kenozero area an “oasis” which we consider as synonym to “island” in this context. The great folklore specialist wants to express that for the folk memory the Kenozero area is an exceptional place – it is from all sides surrounded by a deserts of amnesia”* (Linnik 2003: 18)

The Kenozero National Park established a «roadmap» of paths for ecological tourism and religious pilgrimage to access the network of natural sacred sites. An international youth camp uniting local inhabitants and youth from countries of the Barents Euro-Arctic region produced a unique educational program for the younger generation.

Opposed to the discourse of salvation and protection we present here examples for the impact of oil-production on Forest Nenets sacred sites. The hillock-shaped sacred place *Ivai-Sale-Iyivei-Syadya* west from the town of Tarko Sale was the only elevation in an otherwise absolute flat landscape and severely damaged due to the construction of a pipeline. The case of the sacred place *Kapi-Tyakhan-Nyotu* is also very instructive. The site is located at the territory of the Povkh oil field licenced to the company Lukoil. The forest and surface was removed for the construction of roads and pipelines leaving the pure sand open. It was ones a narrow but rather long and high sand dune with some pine tree on its top lying on otherwise very flat ground. The main god of this place was *Tyaptu kahe*. No religious events are taking place there nowadays, maybe except leaving a coin or a cigarette by bypassing indigenous workers. Y.K. Vella, latterly deceased local reindeer herder, conservationist and writer, wrote about this sacred place in his *Toponymic dictionary*:

*The main sacred place of the Vatyegan River was situated ten steps away from the local LUKOIL office. The shaman Yancha performed a ritual here in 1946 (two years before I was born) and foretold my parents my birth and the death of my father. (...) Nowadays, when I drive through the oil workers’ village, I drop secretly a coin here. Even if the coin*

*happens to fall with a clink on the cold asphalt, it falls in my mind on the warm lichen of the sacred hillock. Then I hear clearly the sound of the shaman's drum of Yancha. Then I sing in my mind his shaman song: 'Mukhomor, mother mukhomor!// On one leg/ On one stable leg/ You will stand'... . (Vella 2012: 15)*

Forty years of oil development had of course its influence on the worldview and traditions of indigenous people in the middle Ob basin. First of all, they became a tiny minority of less than 2% of the overall population. A big part of Khanty and Nenets lives nowadays in towns and villages and not in the forest, where the environmental and religious knowledge is rooted. In the 1960–1980s the direct persecution of religious practice stopped, but outsiders and non-Khanty or Nenets were rarely be seen on the sacred sites. If so, then they were people of other ethnic background but living for long time in the Khanty communities (FM Rud', June-July 2005 Demyanka River) or people who enjoyed great respect and trust among the indigenous people (FM Rud', information of N.V. Shatunov about rituals including shamanic trance and reindeer sacrifice performed at the request of Ya.A.P. by Tromyogan Khanty on the occasion of the illness of a close relative and information of S.A.S. about the invitation of a high ranking official of the state administration of the Surgut region to a collective ritual (mir) of the Tromyogan Khanty at the end of the 1980s). Khanty at the Tromyogan comment on the present day situation as following: *"Now everything became different . . . The Russians go together with the Khanty to the sacred places to pray. In the past Khanty used to say: 'if a Khanty is praying and a Russian comes along it is a bad sign. The Khanty will suffer.'"* (FM Rud', interview with R.D.N. March 2006) (Rud' 2016: 111)

The political and economic reforms and the social change introduced at the end of the 1980s and in the 1990s and causing the dissolution of the USSR opened up possibilities for a revival of indigenous cultures and religions. At the same time, the interests of politicians, journalists and researchers towards indigenous people and their religions grow as well.

Today we can observe that different categories of people take part in ritual activities at sacred places of indigenous peoples in Western Siberia. The motivation and social origin of outsiders is quite different but tells about the mechanism and possibilities of intercultural understanding. We mentioned already people who are living among indigenous people and are integrated well in everyday life. Some of them take over the religious viewpoints of the people they live among as well and take part in religious practices. We documented such instances at the River Demyanka and at the Bolshoi Yugan River in connection with hunting rituals. In the second half of the twentieth century Tungus, Russian and Tshuvash hunters from the village of Kalimyaga and surroundings visited together with the Khanty the sacred place at the mouth of the River Kalimyaga and brought offerings there (FM Rud', June-July 2005 river Demyanka). Yugan Khanty reported that Russian hunters from the village of Ugut visited the god Yaun Iki (the above-mentioned highest deity at the Bolshoi Yugan) in order to pray there (FM Rud', 2014 river Maly Yugan) (Rud' 2016: 112).

Another category of outsiders that is frequently present at sacred sites of indigenous people in Western Siberia are friends from the towns and villages.

Khanty call them with one term *rut'* (Russian) if they are not belonging to another indigenous group and independently of the ethnic origin. They have different professions and social status from the ordinary worker to high-ranking managers. These relationships are characterised by certain forms of reciprocity – indigenous people invite their friends to collect berries and mushrooms for hunting and fishing. The town's people help their friends, when they come to town – they offer a place to stay overnight, help to sell products of the forest, support in legal issues, search for goods and services. They attend sacred places and religious rituals out of interest for the traditional culture and as a sign of respect for the religious belief of their forest friends (Rud' 2016: 113).

A third category are representatives of the state administration, inspectors of state monitoring institutions, managers of the oil-companies, medical workers, journalists, experts etc. involved in the regulation of the relationship of indigenous people and oil companies or control and monitoring of the use of the natural environment. These relationships often involve controversial perspectives and the potential of conflict (e.g. at the occasion of a discussion of zones of protection for the sacred sites of the Tromyogan Khanty Sut Pokhel' at the higher Nyatlongayagun River in 2005 and the sacred lake Imlor in 2012). Often these conflicts culminate when it comes to the use of sacred sites and places of worship for other purpose like oil drilling. However, there are also other instances proving that indigenous people consider the presence of this kind of outsiders at their sacred places as an inevitable evil. T.R.I. from the Tromyogan River reports:

*Once people gathered for a feast at the Tromyogan River up at the mouth of the River Pikhtovoi. At the same day the medics came on helicopter to vaccinate everybody. They came to one forest settlement and found nobody, then on another settlement again nobody. Somewhere they could make vaccinations but somewhere nobody was home. Probably somebody told them or they saw it themselves that people were gathering at the sacred place. The helicopter landed directly beside the sacred place.”(FM Rud', interview with T.R.I. September 2005; Rud' 2016: 113).*

The interaction with these outsiders changes the way religious practices are organised and performed at sacred places. In the 2000s for instance Khanty from the Tromyogan River north of the Ob used helicopters to fly to the sacred place of Yaun Iki (FM Rud', at the settlement of Kayukovy January 2003, interview with T.E.A February 2004) and to faraway sacred sites in the basin of their own River Tromyogan (FM Rud', March 2006). Beside the pilgrims, the helicopter were also transporting the sacrificial animals – reindeer (Rud' 2016: 110). The appearance of oil-industry and a new wave of incoming settlers and urban lifestyle and infrastructure caused also the appearance of new deities in the Khanty pantheon who are responsible for these new spheres in human lives. At the upper Lyamin River one Khanty mentioned in an interview the existence of a god with the name Rut' Tarem: “*Now oil people, oil fields and roads appeared everywhere. The Khanty drive cars or snowmobiles to do business in the towns and villages. There is one such god Rut' Tarem – The Russian Strong. He helps the Khanty in town or when they are in town so that their vehicles do not break down and there will be no accidents.*” (FM Rud', interview with V.A.N. July 2003) (Rud' 2016: 111).

## 10.8 Collaboration Between Scientists and Local Custodians for the Protection of Sacred Sites

In the case of the Kenozero national park, the protection of the sacred natural sites and joint work with indigenous custodians and local communities is a core policy of the parks administration. They consider the indigenous custodians of the sacred heritage as the ones that should take a leading role in the recognition and safeguarding of the sacred sites. The park administration organises joint activities aiming at the identification, archiving, mapping, protection, conservation and restoration of the sacred natural sites in the park. The collaboration between scientific personal of the national park with local custodians of sacred sites plays therefore a fundamental role for the maintenance of sustainable cultural and biological diversity in the territory of the Russian-Karelian-Veps ethno-cultural borderland. The national parks of the Russian North (Kenozero, Vodlozero, Onega Pomor Region, and Russian Arctic) create their management program for sacred natural sites according to principles and recommendations of Russian institutions and international organizations. The book «Sacred Natural Sites: Guidelines for Protected Area Managers» (Wild et al. 2008) is the main tool for the conservation of sacred sites in strictly protected nature areas of Northern Russian National Parks. The Kenozero National Park became in particular a territory of partnership and cooperation implemented on an international level (within UNESCO, UN, and Barents Euro-Arctic Regions programs) as well as within federal, regional, and local government systems. Local communities and particular persons – custodians of sacred oral traditions – traditionally took key positions in the management of ecological, social, and religious systems.

The parks program of “The Certification of Kenozero area villages” determines the identification, recognition, and preservation of sacral nature sites of the Kenozero National Park. It was implemented in 2001 and helps to reconstruct the past of the region based not solely on official documents and literary historical sources but mainly on field research. This includes the collection and description of various artefacts, but also written and oral history texts kept in the local communities. The certification of natural sacred sites is then implemented in close cooperation with the heritage keepers – local residents of the Kenozero villages. The field research concludes in the description, mapping and preparation of detailed certificates for the sacred natural sites. Up to the present day, more than 130 interviews were recorded. Certificates exist already for many churches, chapels, free standing wooden crosses, sacred groves, trees, stones.

In the middle Ob region, the not yet destructed sacred natural sites can be included into state protection as parts of the regions cultural heritage, but this requires a long process of field research, consultancy, documentation and certification. Often there is not more protection as for comparable archaeological monuments, that become an obstacle for the oil-industry were rescue excavations takes place before the place is destroyed to some extend. Socio-cultural impact assessment studies (called ethnological expertise) are not obligatory according to the Russian legislation and some research have to be done only if a place is under



state protection (FM Havelka; see also Murashko 2006). Some attempts occurred to catalogue the sacred places, such as the CAFF project (CAFF 2004). Studies financed by “Western” countries are regarded nowadays with fundamental mistrust by the local administration. From the perspective of the involved indigenous people such catalogues are often considered a double-edged issue, because they most often believe, due to their historic experience, that the best protection of their still used sacred places is keeping them in secret. Thus, usually only the most common and well known or not any more used sacred places are put into such lists. Some sacred places are “preserved” at least in scientific literature by local indigenous scholars who live their whole lives in the area. They are more trusted and yet they do not publish openly about all the sacred palaces or without permission of their field partners (see e.g. Kheno 2005; Lar 2003 for the Tundra Nenets). The local administration tries to circumvent conflicts and to avoid this topic.

The meeting of an older Forest Nenets with an officer responsible for indigenous people in the Yamal Nenets Autonomous Region can serve as an example (from FM Havelka). The Nenets man was blaming one of the companies to damage the cemetery of his family. The clerks’ reaction was more than calm, trying to persuade the angry Nenets that the case is not so serious. At the end, they agreed that the company would build some little road for the man’s use as a compensation. There was no officially binding protocol made. The local indigenous community regards the clerk (a half-Nenets) with deep mistrust and often blame him just to be quaking not to lose his good paid job in the administration. The strategy of silencing conflict is apparent also in the book about the Forest Nenets (Gardamshina et al. 2006) published with state money. There is only very little information on the religion in general and virtually nothing about the sacred places, not mentioning the need of their protection. No one oil spill or openly burning flares is among the hundreds of photographs put into this book. The problems caused by the extractive industry to the Forest Nenets and the omnipresent ecological damage simply seem not to exist.

In the Ob-River basin in the town of Surgut the consultancy “Historical and Cultural Research and Production Center «Barsova Gora» in the city of Surgut” is operating with the task to gather ethnographic materials for the natural-cultural heritage preservation among indigenous peoples, the Forest Nenets and Eastern Khanty. They surveyed more than 100 sacred sites in the last 15 years and documented the ritual practices at these sites. Their collaboration with local custodians and involvement of indigenous scholars aims at the preparation of studies that serve the state agencies to provide some protective status for the Khanty and Nenets sacred sites and cultural landscape.

Researchers and journalists motivations to take part in rituals at sacred places is different but linked with their professional interest, the documentation and research of the culture and religion of indigenous peoples. For indigenous custodians, the situation when people want to visit sacred sites just out of curiosity in order to gather knowledge, to document and collect data is unusual and hard to understand. To bother the powers that are located there without a serious reason is considered to be dangerous. Indigenous persons experience ambivalent feelings, when they want to help journalists and scientist to gather information in order to assist them

in safeguarding the sacred sites. For outsiders these ambivalent feelings but also many details of the ritual practices and religious relationship to the sacred sites are often difficult to grasp, to understand and to respect. Indigenous people often fear the punishment and retaliation of their gods and spirits in cases of inappropriate behaviour at sacred spaces and if the ritual obligations of people towards them at sacred places are not observed properly (Rud' 2016: 113–114).

Indigenous persons sometimes record ritual practice themselves as they explain, “to remember”. Often people tell researchers that they did recordings of rituals and sacred places in former times, but when it comes to archiving or collecting them it seems to be impossible to find them (FM Rud', interview with K.E.P. May 2008). All categories of outsiders that attend for different reasons indigenous sacred places as mentioned above are doing audio-visual recordings and photographs as well, sometimes with the approval of indigenous custodians, sometimes secretly. They usually concentrate at the most visually appealing and exotic moments of the rituals and their behaviour becomes sometimes obtrusive what is met with condemnation.

The prohibitions to make photo and video recordings are not fixed and can change depending on the participants and situations from a total taboo, over the partly agreement on particular purpose to quite free recordings. The most strictly forbidden subjects for recording are the content of cult buildings, the shamanic trance rituals, divination rituals and collective sacrifices though this taboos can be removed in favour of the photographer and camera operators. In 2007 members of the abovementioned consultancy asked at the sacred place of Yaun Iki at the settlement of Kayukovy for the authorisation for recordings and got the following answer: “*There are no elders left. Now the young allow everything. The elders did not allow photographing. There is such a law. The young ones allow that now – they do not care. But the elders – not. Never did they allow.*” (FM Rud', interview with N.N.M. March 2007) Then as an answer on the prohibition of filming inside the sacred storage room another indigenous participant replied: “*I came here not long time ago with my father and together with us some cameramen. They filmed inside the storage and everything went normal, nothing bad happened and their camera worked well*” (FM Rud', interview with M.N.V. March 2007; Rud' 2016: 114). The precondition of successful collaborations with indigenous practitioners is of course to do any audio-visual and photo recording only and exclusively with their explicit approval and stop it immediately if they demand.

During the performance of rituals the usage of modern technology is limited. The majority of indigenous people turn their TVs., radios, mobile phone etc. off (FM Rud', 2002–2014). The priority of traditional techniques and ways before modern ones is clearly visible during big rituals. At the Tromyogan river for instance the ritual fire is until today produced with a fire drill. Guests are often asked to put on the traditional fur clothing (kumysh, malica) and explained that as following: “*during the big feasts one has to be in Khanty clothing, the urban clothing is not allowed*” (FM Rud', interview with P.D.N. February 2010). Another example was observed at a ritual ad home – during the preparations of the sacrifice the host told his wife that started to heat water at a gas cooker: “*When we are doing a ritual ...*

*it is better not to warm up the kettle and the teapot on the gas, better we do that on the open fire . . .*” (FM Rud’, settlement of S.I.I. August 2006) (Rud’ 2016: 109).

The traditional materials of wood and birch bark are preferred at the construction of cult architecture, the storage buildings at the sacred places, where indigenous people keep the figures of their deities, especially south of the middle Ob at the territory of the Yugan Khanty. The usage of traditional materials in the sacral architecture is motivated with the argument that the gods would like “*to have it in this places like in old times*” (FM Rud’, January 2003, March 2004, March 2007). The Yugan Khanty tell until today stories about the taboo to build sacred buildings from modern materials: “*It happened here. People build a new storage not so long ago, and covered it with roofing felt in order to make it more durable. It is forbidden to build it this way. At such a storage, the roof has to be from birch bark – like in old times. He did not exist a long time. There was a thunderstorm, the thunder hid the storage, and it tumbled-down completely. The elders told then that you should not cover the roof with roofing felt. They built a new storage and covered it with birch bark. Several years it is standing now and nothing is happening*” (FM Rud’, interview with K.V.M. July 2014; Rud’ 2016: 109–110). Another example is the use of reindeer transport at important sacrificial rituals. Pim and Tromyogan Khanty gathered at the mouth of the River Nazym in December 2010. Some participants took sledges pulled by reindeer to travel from the pilgrims’ camp at the village of Pyryakh to the sacred place even if the rest of the pilgrims used snowmobiles (FM Rud’, December 2010). The decision to use the traditional form of transport was influenced by the result of a shamanic divination ritual (FM Rud’, interview with K.S.V. March 2014) (Rud’ 2016: 110).

Nowadays there are indigenous politicians, journalists, researchers due to Soviet education policies and most of them support the traditional livelihood (Lukina 2002, 2006). A lot of them work in the educational and cultural sphere of the Khanty-Mansiiskii autonomous region like for instance in the Ob-Ugrian Institute for Applied Research that was founded 2005 by uniting the Institute for Ugric studies and the Scientific Folklore Archive of the Indigenous People of the North in the town of Khanty-Mansiisk. Knowledge of indigenous languages, kinship ties, knowledge and socialisation in the traditional environments help them to build up the needed rapport and trust to work for linguistic, folklore, ethnography and oral history research among indigenous people. Some of them are criticising non-indigenous scientists for their inabilities to understand certain subtleties and nuances of cultures that are foreign to them.

We would say that the remains of the traditional and *living* culture of the Forest Nenets, including the religious knowledge and practice, is almost exclusively tied to the life in the forest itself. It is likely that no religion of this type is transferable into town and city environment. However, even the very way of living in the forest, which provides the vital background for the traditional religious activity, is seriously endangered by the ever advancing growth of the extractive industry in this area. The activities related to the industry, like roads and pipelines constructing, often cause physical damage to the sacred places and, even more crucially, effectively hinder the reindeer herding, not mentioning, in this context, the pervasive polluting of

the whole West-Siberian environment. Some traditions are also kept in the features of the social life and dwelling (see Zen'ko-Nemchinova 2006). But most of the old rules of behaviour with the religious sanction degraded into a rather chaotic collage of “bans” or “sins”, called *chaewi* in the Forest Nenets language (Salminen 2005: 74), which religious background and sanction have been forgotten (personal information and experience FM Havelka). Even if some of the members of the middle generation have become aware of the importance of the religion of their ancestors, the young after-soviet times generation is not very interested in these matters. They are almost fully absorbed by the local version of the global consumer society and culture. The soap operas and cartoons in TV for example replaced the evening stories of any kind. The youth does not participate in the religious rituals or rather unwillingly and under pressure of their parents or grandparents.

*“Some time ago I used to live in the city of Kogalym in a building with nine floors. I prayed in my flat to the Khanty gods and made them offerings – pori (unbloody offerings). When I prayed I say: So and so, please forgive me if I do something not the right way, how it was in the old-times. I am not praying in the forest. Maybe I am saying the words not in the right way – it is not my fault. I pray how I am able to”* (FM Rud', interview with S.Ya.K. July 2004; Rud' 2016: 119). Part of the cultural traditions of indigenous people in Western Siberia get lost in the process of long time exposure to the urban culture. New media and information content have an influence on indigenous people, but also the authority, scientists, journalists or politicians claim or are speaking with, plays an important role in changing indigenous practitioners' attitudes towards traditions. Though often the indigenous practitioners and custodians do not agree with the point of view of researchers (FM Rud', interview with V.A.N. July 2003, interview with K.I.D. June 2006). In some cases, they even refuse further collaboration if the visitors are not showing an appropriate understanding or interpretation from their point of view (FM. Rud', interview with S.I.I. March 2006, interview with N.N.V. February 2007). However, in other cases they express as well that they discovered new insights and ways of understanding after discussions of religious ideas with researchers (FM Rud', interview with S.I.I. March 2008, interview with R.S.G. July 2012). They reintegrate ideas rediscovered from ethnographic publications they get as gifts from visiting scholars (FM Rud', interview with V.A.N. July 2003, interview with T.L.I. August 2006). Religious ideas are not only transmitted in the oral way inside traditional communities and by experiencing religious practices but also through books and communication with outsiders like journalists, politicians and scientists or through electronic media (Rud' 2016: 120–121).

## 10.9 Conclusion

The preservation of sacred natural sites in the subarctic zone in Russia meets as we have seen very different conditions depending first of all on the interest of the economically and politically most powerful actors in society. Are the

territories containing indigenous sacred sites determined for recreation, protection of ecosystems and touristic purposes or for the development of subsurface resources, the establishment of industrial infrastructure, and for settlements of the incoming work force? Ideas of very personal and exclusive relationship to particular parts of the cultural landscape become endangered not only by the advancement of industry but also by the spread of universalist ideologies, nowadays new fundamentalist forms of Christianity. Custodians of sacred sites in their attempts to stop the endangerment and destruction search for support in another generalising, objectifying and universalist practice – scientific research and state legislation for the protection of cultural and natural heritage. During the last decades indigenous activists and among them custodians of sacred sites succeeded in their attempts to change the attitude of scientists towards equal collaboration and mutual respect and recognition of respective agendas. The cases we choose show clearly the common aims and attempts under very different circumstances and points of departure. In the case of the Arkhangelsk region, we deal with agriculturalists practicing Russian orthodox Christianity, in the case of Western Siberian indigenous people we have to do with shamanistic reindeer herders and hunters. Christianity based on universalistic and inclusive values being a highly institutionalised religion with the dominance of scripture differs clearly from religious traditions based on the spontaneous experience of individual ritual experts being in their practice bound to a particular social order of the local kinship groups with their particular and exclusive values. Nevertheless, we see in the vernacular religious practices and concepts in both regions very high emphasis on local exclusivity, personal and local experience of the sacred and localised meaning of ritual practice. The Russian orthodox Northerners preserved localised, personal and group bound relationships with sacred places in their natural environment as the Western Siberian indigenous people developed certain universalist concepts in order to incorporate outsiders of different kind into their shamanic and sacrificial ritual practice at sacred places.

In both cases, we also recognise the importance of local self-governance and autonomy, the independence to decide about the religious practice but also different factors that put these forms of self-determination under pressure. Indigenous people succeeded in securing the exclusive access to local cultural resources and they preserved a high degree of economic independence in the subarctic zone in Russia. We have to understand the importance of local and often informal forms of self-governance as a precondition for survival, which means the preservation of alternative forms of authority (often religious ones) that were not legitimised by the state and even persecuted during the Soviet Union. The historic experience of religious repression and deprivation of access to sacred sites or their destruction is influencing the strategies and organisation of ritual practice by custodians of sacred sites until today. New pressures are appearing in new forms of ideological influence through electronic media, first of all television. Certain practices of purism, conservatism and traditionalism can be seen as effects of this development. However, new media bring also new opportunities for communication and a growing competence of indigenous people in intercultural exchange that does not endanger the traditional cultural resources and can mitigate negative aspects of globalisation.

Up to the present day, indigenous communities trust in the powers they had to rely on for their survival over centuries of colonisation and repression. Sacred sites are proof of these powers, and they are the place to communicate with these powers and secure the relationship with these powers. Not sacred places or the powers that inhabit them need protection - the ability of human communities to use them for the interaction and exchange with these powers needs protection. Spiritual communication including beings of very different status – humans and deities, mortal and eternal – is always a precarious one and needs the protection of custodians and the transmission of knowledge by tradition. The task of scholars, lawmakers, politicians and others that are involved in the protection of sacred natural sites today is to acknowledge these powers and the agency of the sentient landscape (hierotopy) they inhabit. They can learn this only from and in close collaboration with indigenous custodians of these places.

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# Chapter 11

## From Knowledge to Action: How to Protect Sacred Sites of Indigenous Peoples in the North?

Leena Heinämäki and Thora Martina Herrmann

By taking into consideration the diverse contributions presented in this book, and by intertwining them with the overall approach presented in our introduction, this concluding chapter aims to summarise key messages and strategies for supporting Sacred Natural Sites (SNSs) and related indigenous cultural heritage. It does so in a form of introducing and analysing the *Statement and Recommendations on: “Recognizing and Safeguarding Sacred Sites of Indigenous Peoples in Northern and Arctic Regions”* (The Conference Statement hereafter) (Pyhätunturi Statement 2013), which was mentioned in the introduction of this volume. The process of writing the Conference Statement was guided by Bas Verschuuren, who serves as co-Chair of IUCN’s Specialist group on Cultural and Spiritual Values of Protected Areas and is co-founder of the Sacred Natural Sites Initiative, to whom we would like to express a special gratitude.

The Conference Statement starts by referring to the recommendations of the Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples (Alta Outcome Document 2013), in which the participants “recommend that States affirm and recognize the right to the protection, preservation and restitution of our sacred places, sites and cultural landscapes and establish mechanisms that can effectively promote the implementation of these rights

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including through the allocation of sufficient financial resources” (Alta Outcome Document 2013, At. 5).

Both the Conference Statement as well as Alta Outcome document highlight the right of self-determination of indigenous peoples and related legal principle of free, prior and informed consent concerning all decision-making related to their cultural heritage, including SNSs. The Alta Outcome states: “We affirm that the inherent and inalienable right of self-determination is pre-eminent and is a prerequisite for the realization of all rights. We indigenous peoples have the right of self-determination and permanent sovereignty over our lands, territories, resources, air, ice, oceans and waters, and mountains and forests” (Alta Outcome Document 2013, At. 4).

Circumpolar Inuit Declaration on Sovereignty in the Arctic, referred to by Rode (in Chap. 3), reminds that “the inextricable linkages between issues of sovereignty and sovereign rights in the Arctic and Inuit self-determination and other rights require states to accept the presence and role of Inuit as partners in the conduct of international relations in the Arctic” (ICC Declaration on Sovereignty in the Arctic, 2009, Art. 3.3).

As maintained by Rode, Inuit Declaration underpins the growing awareness of Indigenous Peoples of promoting new partnerships that does not view indigenous rights to self-determination anymore as detached from shaping political relations and economic development. Disputes over ownership, use and conservation of their traditional lands and territories have been overshadowed for decades and centuries by the negative impact of energy development in the Arctic and circumpolar North. Particularly since the nineteenth century Indigenous communities in the Arctic like the Inuit in Greenland, Canada, Alaska, and Chukotka experienced long-lasting impacts on their livelihoods, well-being, cultures and languages as a result of the expansion of extractive industries and resource development in the circumpolar region.

As mentioned by several legal chapters of this volume, the right to self-determination and related principle of free, prior and informed consent has become accepted by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. As the UNDRIP is regarded as codifying and specifying already established legal principles concerning indigenous peoples, the authors of this volume have argued that the Declaration should be used as a guideline for interpreting other instruments that guarantee rights for indigenous peoples. Rode’s argument, according to which the UNESCO World Heritage Convention, in relation to its protection of the world heritage sites that belong to indigenous peoples’ heritage, should be read under the recognized rights of the UNDRIP is highly relevant and a very timely issue. In a similar vein, Heinämäki and Xanthaki (in Chap. 5) use UNDRIP as giving weight to general human rights and environmental standards concerning indigenous peoples. Mentioned writers argue that not only should the self-determination and free, prior and informed consent of indigenous peoples be applied in decisions concerning indigenous peoples, but this should be done by taking into account indigenous peoples’ own customary laws.

Although the right of self-determination of indigenous peoples is still a somewhat disputed concept (e.g., Anaya 2004; Daes 1996; Davis 2008; Koivurova 2008a, b;

Vars 2009; Xanthaki 2009, 2014; Åhren 2016), a general understanding is growing, according to which this right, although not guaranteeing indigenous peoples a total political freedom (option for secession), embraces their control or at least strong decision-making power over the issues that are most important for them as peoples (Heinämäki 2013). Due to traditional, nature-based livelihoods and lifestyles of indigenous peoples, human rights monitoring bodies, such as UN Human Rights Committee, has started to apply to indigenous peoples' cases article 1 of the International Human Rights Covenants<sup>1</sup>, which guarantees peoples' right to self-determination in international law. Particularly the natural resource aspect as well as the aspect of effective decision-making related to lands and natural resources has become a general trend by the international human rights monitoring bodies in their statements concerning indigenous peoples' rights. The same trend has been transferred to the Convention on Biological Diversity and related instruments. As a way of life-right, the right to cultural integrity of indigenous peoples has been expanded to the protection of their lands, by strengthening the decision-making capacity of indigenous peoples in relation to their traditional lands and resources.

After the adoption of the UNDRIP in 2007, UN Human Rights Committee (2009), in the case of *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006 24 April 2009), applied the right of the members of Aymara community to free, prior and informed consent in a case where an environmental interference violated their right to traditional livelihood. Similarly, as described by Heinämäki and Xanthaki, the Inter-American Court of Human Rights, in *Saramaka v. Suriname* case (Inter-American Court of Human Rights, Judgment of November 28, 2007, Series C, No 172.), directly referring to the specific Articles of UNDRIP, required that the consent of the community needs to be applied prior to any project that can have a large-scale effect on the community's ability to practice their traditional livelihood. Although it is a common place to say that declarations are not legally binding, UNDRIP has been widely applied and referred to both in international and national

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<sup>1</sup>Article 40 of the CCPR requires States Parties to submit reports on measures taken to give effect to the rights defined therein. An initial report is to be submitted one year after the state ratifies the CCPR, and further reports are required periodically (normally every 5 years). State reports and the Concluding Observations of the UN Human Rights Committee, <http://www.unhcr.ch/html/menu2/6/hrc/hrcs.htm> (accessed 5 March 2007). See Concluding Observations of the Human Rights Committee on Canada UN Doc. CCPR/C/79/Add.105 (1999). Explicit references to either Article 1 or to the notion of self-determination have also been made in the Committee's Concluding Observations on Mexico, UN Doc. CCPR/C/79/Add.109 (1999); Norway, UN Doc. CCPR/C/79/Add.112 (1999); Australia, UN Doc. CCPR/CO/69/Aus (2000); Denmark, UN Doc. CCPR/CO/70/DNK (2000); Sweden, UN Doc. CCPR/CO/74/SWE (2002); Finland, UN Doc. CCPR/CO/82/FIN (2004); Canada, UN Doc. CCPR/C/CAN/CO/5 (2005); and the United States, UN Doc. CCPR/C/USA/CO/3 (2006) ; ; Concluding observations on the Sixth periodic report of Finland, CCPR/C/FIN/CO/6, 22 August 2013; Concluding Observations on the Seventh Periodic Report of Sweden, CCPR/C/SWE/CO/728 April 2016, paras 38–39; Concluding observations on the Sixth periodic report of Finland, CCPR/C/FIN/CO/6, 22 August 2013; Concluding Observations on the Seventh Periodic Report of Sweden, CCPR/C/SWE/CO/728 April 2016, paras 38–39.

legal settings. The high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, which was held in September 2014, States reaffirmed their support for the Declaration and committed to upholding its principles, including free, prior and informed consent (UNGA 22 September 2014, A/RES/69/2). This shows that the time has become ripe to embrace, at least to a certain extent, legal subjectivity of indigenous peoples rather than to merely see them as objects to be protected.

The Alta Outcome Document reaffirms the legal subjectivity of indigenous peoples by stating: “As the original and distinct peoples and nations of our territories, we abide by natural laws and have our own laws, spirituality and world views. We have our own governance structures, knowledge systems, values and the love, respect and lifeways, which form the basis of our identity as indigenous peoples and our relationship with the natural world” (Alta Outcome Document 2013, At. 3). It strongly recommends that States, with the full and effective participation of indigenous peoples, establish mechanisms to ensure the implementation of the right of free, prior and informed consent before entering the lands and territories of indigenous peoples, including in relation to extractive industries and other development activities (Alta Outcome Document 2013, At. 5).

Concerning the recognition and protection of the SNSs of indigenous peoples, viewing indigenous peoples as custodians and “owners” of their own cultural heritage is vital. Although indigenous peoples themselves often emphasize that from the worldview point of view they do not own the Nature or “Mother Earth”, but are rather a parts or guardians of it, human rights monitoring bodies, particularly the Inter-American Commission and Court, as indicated by Newman, Ruozzi and Kirchner (in Chap. 2) have already a while ago accepted collective property rights for indigenous peoples in relation to their traditional lands that is based on the traditional use of the land rather than ownership in a private sense.

The Conference Statement calls for the recognition of indigenous peoples’ customary laws that include long-standing rules and principles regarding the custodianship, governance and management of their SNSs that should be recognized and respected within a framework of legal pluralism cognizant of indigenous religions, spirituality, beliefs and practices. The call for a legal pluralism and indigenous peoples’ own laws has been made by Bunikowski and Dillon (Chap. 4). Bunikowski and Dillon remind that “the most important problem in implementing the thesis in practice concerns the fundamental ideas of ‘equality’ and ‘justice’: “It is not equal to treat some groups better (in terms of the law) than others, but it is justified to make it an excuse for some important historical reasons” (Bunikowski 2014). This is where the said authors see that legal pluralism and the embrace of indigenous peoples own laws offers not only philosophical but also a concrete solution. As Heinämäki and Xanthaki show in their chapter, the recognition of customs and customary laws of indigenous peoples is a rapidly evolving area in international human rights and environmental law.

Additionally to legal pluralism, the cultural ecology has a valuable approach to offer. It comes quite close to the embracing of the biocultural frame, as described in the introduction. As argued by Bunikowski and Dillon, the standard view

of cultural ecology is that it integrates biological and cultural processes in the study of adaptations of humans to their environment, where environment is taken in the broadest sense to include its psychological and social elements as well the physical. Thus, in short, cultural ecology is concerned with the reciprocal interactions between the behaviour of people and the environments they inhabit. As stated by the Conference Statement, SNSs are important for the biological diversity (plants, animals, their habitats, ecosystems and genetic diversity) and cultural diversity, (spiritual practices and beliefs, identity, linguistic expression), which are inextricably connected in what is increasingly understood as biocultural diversity.

Biocultural diversity is fundamental to a sustainable future in the North, and ensures resilience in Arctic socio-ecological systems, which are a key strength in today's era of global change (Maffi and Woodley 2010). Modern conservation science recognizes that SNSs support high levels of biodiversity, sometimes to an equal or even higher degree than larger public/private parks nearby, and often they are more efficiently protected (Dudley et al. 2009). They can be seen as the world's oldest conservation areas (Wild and McLoed 2008). In addition to the biodiversity value stands the cultural and spiritual value of these lands, as stated by Higgins-Zogib: "[...] millions of people have a special regard for and relationship with hundreds, or thousands, of protected areas not because of their importance to biodiversity but because of their spiritual values" (Higgins-Zogib 2008). SNSs are increasingly recognized as a resilient conservation network and as important natural reservoirs harbouring high levels of biocultural diversity (Maffi and Woodley 2010). They help to uncover the processes by which beliefs and cultural practices (myths, songs, stories, dances) create inextricable inter-linkages between societies and nature, and thus they reveal new strategies/tools for conservation (Verschuuren and Wild 2012). Bunkikowski and Dillon remind that indigenous customary laws, like the cultural ecological relations outlined earlier, are based on the principle of reciprocity: a constellation of mutual relationships, obligations and duties among people in a given community. Therefore, the self-determination of indigenous peoples is both a right and a duty and a call for sustainable practices in managing the traditional lands and SNSs. This idea has been emphasised by the concept of the bio-cultural rights.

In many Arctic communities Elders are culture-bearers who are holding in-depth knowledge gained over the course of their lifetimes in relation to SNS. However, the last generation of elders who lived a 'traditional life on the land', is passing away very quickly, and their role is getting endangered. Hence, there is an urgent need for Indigenous peoples to be provided with the resources to record the knowledge, language, experiences and history, that only the elders possess, and provide examples of education projects linked to the transmission of knowledge, beliefs and practices linked to sacred sites and territories. The Conference Statement, strongly emphasises the role of Elders as culture-bearers to support the education of youth regarding the values, role, beliefs of their culture as well as the development of skills to protect sacred sites by using appropriate tools (e.g. storytelling).

The Conference Statement calls for better recognition, legally protection and management of the Sacred Sites and sanctuaries of IPs in the Arctic region. Conclusion on Newman et al's chapter (Chap. 2) is that we actually do not lack international legal tools for the protection of the rights of indigenous peoples or SNSs. Only have these tools been so far inadequately red in relation to the protection of indigenous peoples. With a contemporary reading, taking into account UNDRIP and collective rights aspect in the case of indigenous peoples, present international legal tools can be much more effectively and meaningfully used and implemented than has happened so far. This volume has focused mainly on international protection with only some national examples. The case of Finnish legislation, as explained by Ojanlatva and Neumann (Chap. 6), however, demonstrates the overall situation in many Northern and Arctic countries. National legislation is not yet sufficient to protect SNSs and related cultural heritage of indigenous peoples.

The Conference Statement acknowledges an urgent need to address growing threats to sacred natural sites such as: climate change, industrial development, extractive industries such as mining, forestry, hydro-electrics, oil and gas, and their associated operations (such as helicopters and transport corridors), unsustainable tourism, military operations and (related) infrastructural developments (such as low level flying), State dominated educational curricula, religious imposition and vandalism.

Vandalism is a rather common but very little discussed or researched phenomenon. Joy, in Chap. 9, brings to a reader's attention what has become an escalating problem of vandalism which has been caused primarily by deliberate destruction of sacred sites in Finland that host pre-historic rock paintings belonging to an ancient rock painting tradition which has links with Sámi culture and history. One important element in terms of the protection of heritage sites within this legislation which is lacking concerns national legislation. Taking Finland as an example, there is no specific written guidance or direction which provides particular instructions for example, regarding rock climbing activities which is a major sport in Finland, not only for native Finns but also foreign visitors as well. Joy also reminds how recent ethical considerations have been put forward according to which the protection of indigenous peoples' heritage, these peoples themselves must exercise control over research conducted within their territories, or which uses their people as subjects of study. It seems however, according to Joy, that this has not yet taken root in southern Finland where a large chapter of Sámi history has been recorded through rock paintings. In other words, the Sámi have not been considered or involved in the decision making of policies or the management of rock painting sites, and most of the research has been undertaken by persons from outside the culture. Joy calls for an educational aspect in terms of rock paintings. For example, in local educational establishments where awareness of the value and treatment of rock paintings might give the children a greater sense of responsibility in terms of protecting local history and indigenous heritage.

Ojanlatva and Neumann, in their Chap. 6, identify the gaps in Finnish legislation and its ability to protect SNSs. Although fixed relics or sites of Sámi culture are mentioned as 'ancient monuments' under the Antiquities Act, they are, however,

not otherwise specified thereunder. As maintained by the previous authors, in order to recognise and determine Sámi sacred sites it is vital to have expertise in Sámi culture and languages. Also, it is always vital to take into account Sámi participation and to respect the local indigenous knowledge when dealing with Sámi sacred sites. It is a key to understand and interpret the Sámi cultural landscape. Since most Sámi sacred sites under the Antiquities Act are interpreted and determined by archaeologists, it imposes a huge challenge to define the protective area around the site on field. Only a few of them have education in Sámi culture and archaeology. Thus, there is an immanent risk of misinterpretation and disregard of protection if the archaeologists, researches, and the officials dealing with Sámi sacred sites lack the necessary knowledge.

One considerable element for the protection of the SNSs and related cultural heritage, as becomes evident in several chapters of this volume is a lack and a need to educate actors that are, in a way or another, in relationship to SNS's. As described by Dudeck, Rud', Havelka, Terebikhin and Melyutina (Chap. 10), SNSs have been or still continue to be influenced by different non-indigenous groups and their interest in the protection of sacred sites. Different groups: tourists, Christian missionaries, oil and gas workers, scientists, journalists and politicians have nowadays an impact on different forms of land use on sacred sites – religious activities, tourism, ethnographic and archaeological research and extractive industries. Dudeck et al focus on three case studies from Northern Russia, namely Kenozero National Park (Arkhangelsk Region), and the Forest Nenets and Eastern Khanty in the middle Ob River region in Western Siberia. As shown by Dudeck and others, different SNS's are approached differently by State and other agencies, dependent on varied purposes and circumstances.

The chapter includes a story of “success“: Kenozero national park is as an institution established by the state directed towards preservation of the cultural landscape. The Kenozero National Park established a «roadmap» of paths for ecological tourism and religious pilgrimage to access the network of natural sacred sites. As described by the authors, in the case of the Kenozero national park, the protection of the SNSs and joint work with indigenous custodians and local communities is a core policy of the parks administration. They consider the indigenous custodians of the sacred heritage as the ones that should take a leading role in the recognition and safeguarding of the sacred sites. The park administration organises joint activities aiming at the identification, archiving, mapping, protection, conservation and restoration of the sacred natural sites in the park. The collaboration between scientific personal of the national park with local custodians of sacred sites plays therefore a fundamental role for the maintenance of sustainable cultural and biological diversity.

On the contrary and opposed to the protection idea, Dudeck et al. present also examples for the impact of oil-production on Forest Nenets sacred sites. The hillock-shaped sacred place *Ivai-Sale-Ijyivei-Syadya* west from the town of Tarko Sale was the only elevation in an otherwise absolute flat landscape and severely damaged due to the construction of a pipeline. The case of the sacred place *Kapi-Tyakhan-Nyotu* is also very instructive. The site is located at the territory of the Povkh oil

field licenced to the company Lukoil. The forest and surface was removed for the construction of roads and pipelines leaving the pure sand open. It was once a narrow but rather long and high sand dune with some pine tree on its top lying on otherwise very flat ground. The main god of this place was *Tyaptu kahe*. No known religious events are taking place there nowadays, maybe except leaving a coin or a cigarette by bypassing indigenous workers.

Religious imposition and assimilation policies have been playing a significant role in the loss of traditional spiritual practices attached to the SNSs. As described by Dudeck et al, in Russia, the Soviet times the condemnation and persecution of religious activities took place the most violently in the thirties and becoming less strict during and after WWII. West Siberia experienced a wave of persecution of religious specialists called summarily shamans by the state after the incidence of local resistance that became known as the Kazym war in 1933, when several members of a soviet cultural brigade were killed after defiling the Num-To sacred site. In a similar way, christianisation had impacts on indigenous religions, spiritual worldview and practices. Myrvoll (in Chap. 7) describes how the Christian mission and the assimilation policy had severe and often irretrievable consequences for survival of Sámi belief and religious practices. Eradication of Sámi place names from official maps was a part of policy of Norwegianization of Sámi landscapes. Place names are important cultural heritage, correct names on maps and road-signs are therefore important. Myrvoll concludes that the Sámi sacred mountains are an endangered cultural heritage. The visible, physical mountains still rise in the visible landscape, but in many places the invisible, sacred mountains as well as the invisible landscape have disappeared. The connection between the visible and invisible reality is no longer functioning. She argues that the narratives have to be told to maintain and confirm ideas about the world, and to give continuity to the knowledge and perception of the invisible reality.

Similary, Näkkäljärvi and Kauppala (Chap. 8) with respect to Sámi SNSs in Finland stress the impacts that Christianity and the assimilation policy had on survival of Sámi religious practices. Yet, as they point out, we would be mistaken to think of the Sámi sacred sites in only as historical places. On the contrary, as they clearly state, the emotional affinity of the Sámi towards these sites in Finland remains strong until today. People are proud of these living places, identify with them, find them important for themselves and call for their preservation. With respect to Finland, and in a time when extractive industry development in the Finnish Arctic is accelerating and thus might becoming a major threat for SNSs, the authors highlight the importance of the ratification of the ILO Convention 169 on the rights of Indigenous and Tribal Peoples, by Finland, and the other Barents States. This Convention stresses the rights of all indigenous peoples to maintain their traditional cultures and livelihoods, and thus prevents destruction of any sacred sites in the current Sámi lands without their consent.

The *Conference Statement and Recommendations on: "Recognizing and Safeguarding Sacred Sites of Indigenous Peoples in Northern and Arctic Regions"* includes those and other concrete recommendations to states and political decision-makers at different levels, to the general public, civil society and media, to



environmental and conservation organisations, to religious associations and faith groups, to businesses, corporations and the private sector (real-estate, mining, forestry, fisheries), as well as to the academia, researchers and the education sector. These recommendations aim to provide tools from knowledge to action, and are created by the Conference participants, including many of the authors of this volume.

The Conference Statement recommends that States, government and political parties (1) respect and implement the 2007 UN Declaration on the rights of Indigenous Peoples; (2) ratify and implement the ILO No. 169, (3) acknowledge and implement the recommendations of the global Indigenous preparatory conference for the United Nations high level plenary meeting of the general assembly that will be known as the World Conference on Indigenous Peoples (UNGA, 13. Sept. 2013, A/67/994); (4) recognize the customary laws, systems and practices, traditional knowledge as well as cultural protocols of Indigenous Peoples, including those regarding the management of Indigenous sacred sites and territories and the implementation of positive measures in order to prevent any violation thereof; (5) adopt pluri-legal approaches and establish mechanisms with the active participation of Indigenous Peoples, to effectively promote the implementation of Indigenous protection, conservation and restoration of Indigenous sacred sites; (6) establish processes for Free, Prior and Informed Consent at all levels of decision making regarding sacred natural sites, taking into account the recent related jurisprudence of international human rights monitoring bodies, – execute continuous assessments and reviews of national laws, policies and practices that support and/or hinder the protection, conservation and restoration of Indigenous sacred sites and adjust national laws and policies to the latest international developments; (7) respect the principle of cost internalization as codified by general international law regarding any environmental damage which can have an impact on Indigenous Peoples' lifestyle; (8) recognise Indigenous Peoples as rightful benefit-sharers of any project on their sacred sites and the dissemination of their cultural heritage, – recognise Indigenous Peoples as rights-holders and duty bearers in any decisions, projects and benefit sharing affecting their sacred sites and cultural heritage; (9) develop and implement restitution measures of historical injustices committed towards Indigenous Peoples related to the sacred places and cultural heritage; (10) develop studies of best practices and policies on the protection, conservation and restoration of Indigenous sacred sites with full participation of the indigenous communities involved.

To the general public, civil society and media the Conference Statement calls to: (1) respect and seek the Free, Prior and Informed Consent of Indigenous Peoples to any decisions regarding their sacred sites; (2) respect confidentiality, access to and dissemination of culturally sensitive information and indigenous custodians' control over Indigenous sacred sites; (3) respect, recognise and where appropriate support the protection, conservation and restoration of sacred natural sites; (4) recognise Indigenous Peoples as beneficiaries of any projects and/or exploitation of Indigenous sacred sites; (5) adopt and promote a fundamental value of mindfulness – a continual willingness to evaluate one's own understandings,

actions, and responsibilities in relation to Indigenous Peoples and their sacred sites; (6) recognise the historical injustices and the previous harm and destruction that Indigenous Peoples have suffered regarding their sacred sites and related cultural heritage, and construct processes of reconciliation.

The Conference Statement further instructs the environmental and conservation organisations to: (1) implement the IUCN UNESCO sacred natural sites guidelines and practice the right to Free, Prior and Informed Consent in policy and implementation that affect sacred sites; (2) make efforts to increase understanding and respect by conservationists for Indigenous sacred sites, and; (3) foster successful partnerships between indigenous communities and conservation agencies in support of the recognition of indigenous peoples and their sacred sites.

To religious associations and faith groups the Conference Statement recommends to: (1) acknowledge and where appropriate stop the damage done to Indigenous sacred natural sites and work towards a strategy of reconciliation and when possible, restitution; (2) give recognition to Indigenous Peoples, whose spiritualities have traditional as well as mainstream religious elements, and respect their right to self-determination and religious practice; (3) work towards constructive equal dialogue with Indigenous Peoples and communities, who are custodians of sacred natural sites.

Additionally, the Conference Statement advice businesses, corporations and the private sector (real-estate, mining, forestry, fisheries) to: (1) respect the right of Indigenous Peoples to Free, Prior and Informed Consent at all stages of the planning process of development projects that affect sacred sites; (2) undertake environmental, cultural and social impact assessments according to the CBD Akwé: Kon guidelines prior to undertaking any activities; (3) support responsible community based and community guided tourism at sacred natural sites that is considerate and respectful of the views and priorities of the communities and custodians; (4) seek respectful ways in cases of commercialisation of Indigenous sacred sites in the tourism market, according to, or improving on, the best standards of corporate governance and business ethics.

Finally, to the academia, researchers and the education sector the Conference Statement recommends to (1) ensure that any research on Indigenous sacred sites is carried out based on the Free, Prior and Informed Consent of the custodians, under their guidance and with the active participation of the site custodians and based on their own codes of conduct including respect of secrecy; (2) ensure that researchers support custodians and that research takes place through respectful partnerships and approaches of 'applied or participatory' research; (3) ensure that research takes an interdisciplinary approach involving different scientific disciplines, belief systems and ways of knowing; (4) prevent any damaging or exploitative research (methods); (5) ensure that educational systems and curricula, especially those of boarding schools, allow for Indigenous Peoples to continue their traditional cultural obligations and responsibilities to enable the transmission of traditional knowledge, (6) emphasise the role of museums collaborating with local Indigenous Peoples and sharing and providing access to information, especially in areas where there are very few archaeological findings; (7) where appropriate, address gaps in education

regarding culture and religion in national and local curricula where sacred natural sites are concerned, always respecting secrecy and cultural protocol; (8) emphasise the role of Elders as culture-bearers in many communities -they hold in-depth wisdom, knowledge, experience and historic memory gained over the course of their lifetimes- to support the education of youth regarding the values, role, beliefs of their culture as well as the development of skills to protect sacred sites by using appropriate tools (e.g. storytelling), (9) design and implement, with the guidance and active participation of Indigenous Peoples, balanced curricula that develop appropriate and fundamental knowledge and respect of Indigenous sacred sites and their indigenous custodians in younger generations and the general public; (10) respect the sacred and sacred natural sites in the context of their custodians' worldviews and natural environments and prevent de-sacralisation by removing specific aspects of the sacred outside this context.

This volume has been an attempt to articulate some of the challenges as well as possible solutions for the more effective protection of the SNSs and indigenous peoples' rights to their own cultural heritage. It invites to further research, particularly in relation to cultural revitalization, traditional knowledge, customary laws as well as studies concerning national legislations and implementation of international norms. The protection, conservation and revitalization of SNSs across the Arctic are complex but vital not only for the existence and maintainance of cultural diversity and biodiversity in the North but also for human well-being and life as a whole.

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