



Tanja Joona

Indigenous Peoples' Rights in the Arctic with Comparative Approach

WINTER SCHOOL

Part I



LAPIN YLIOPISTO
UNIVERSITY OF LAPLAND
Pohjoisen puolesta – maailmaa varten



Erasmus+





The course will focus on the development and operation of the **International Labour Organization** and especially the Convention No. 169 dedicated on the protection of the indigenous peoples.

Upon completing this lecture, the student should be able to discuss in depth various questions related to the law of international organizations and **understand the human right position of the indigenous people**, especially the **Sámi** in the Nordic countries.

- **Module 1 – Introduction to Arctic, Saami Rights in Finnish legislation with Comparative Approach**
Student will learn the basic elements of Saami rights in the Finnish legislation, with comparison to other Nordic countries. The focus is on land rights while cultural and linguistic rights are introduced as well.
- **Module 2 – International Instruments protecting the Rights of the Saami**
Student learns the basic international instruments protecting the rights of indigenous peoples in the Saami context. Tools are provided to understand the main challenges related to these instruments and what their implementation could mean in the Finnish context.
- **Module 3 – Current challenges for the Traditional Livelihoods**
Student learns to understand the current challenges faced by the traditional livelihoods in the Finnish Lapland. The aim is to find tools to handle these challenges from legal and political protection.
- **Module 4 – Comparative aspects of ILO Convention No. 169 and indigenous peoples rights**
Student acquires skills in applying and analyzing the ILO Convention No. 169 into particular national cases with challenges in implementing the Convention into political and legal practices.

ARCTIC- WHAT IT IS?





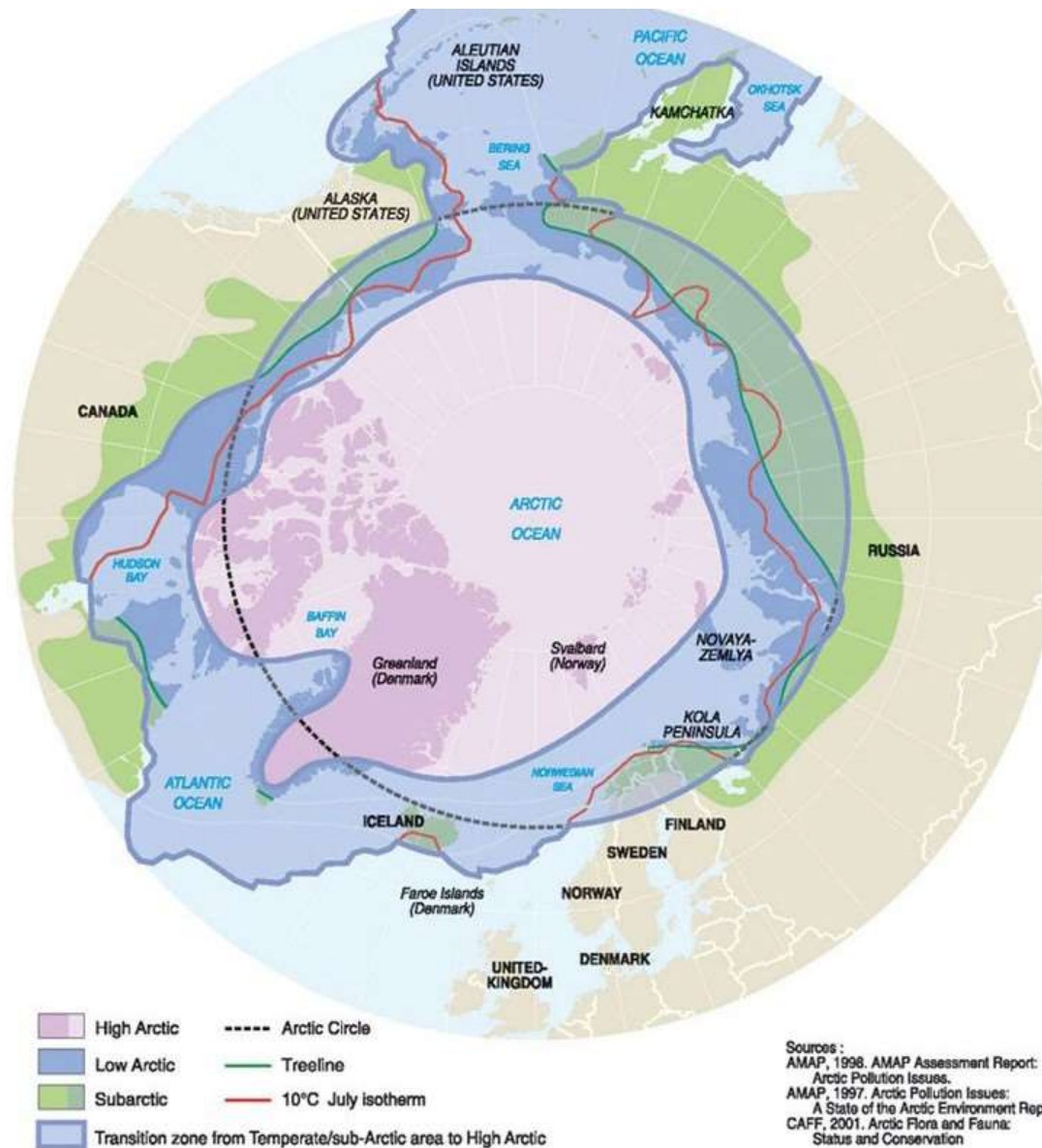
touris — cons-an-reconciliation
Indi enous peoples
Livelihoods

WHAT IS THE ARCTIC REGION?

- The Arctic region surrounding the North Pole, is by its nature a unique area.
- The cultures in the region and the Arctic indigenous peoples have adapted to its cold and extreme conditions.
- From the perspective of the physical, chemical and biological balance in the world, the Arctic region is in a key position. It reacts sensitively particularly to changes in the climate, which reflect extensively back on the global state of the environment.
- From the perspective of research into climatic change, the Arctic region is considered a **so-called-early warning system**.

- There are many definitions for the Arctic region. The boundary is generally considered **to be north of the Arctic Circle** ($66^{\circ} 33'N$), which is the limit of the midnight sun and the winter twilight.
- In international cooperation, the Finnish Arctic region is the northern part of the Province of Lapland above the Arctic Circle. In the natural sciences, this area is a so-called subarctic region.





SETTLEMENT IN THE ARCTIC REGIONS

- Arctic areas are inhabited approximately by **four million people** according to the AHDR (Arctic Human Development Report) definition of the Arctic.
- The settlement area is divided between **eight Arctic countries**; Canada, United States, Russia, Finland, Sweden, Norway, Iceland and Denmark.
- The circumpolar region is extremely sparsely populated. Using more broad definition, according to the University of the Arctic Atlas, there are approximately 13.1 million people living in the area of the circumpolar North.

Population centres in the north



- Indigenous peoples have inhabited the Arctic for thousands of years. The proportion indigenous people is estimated to be about 10 percent of total population living in arctic areas. There are over 40 different ethnic groups living in the Arctic.
- Arctic indigenous peoples include for example **Saami** in circumpolar areas of Finland, Sweden, Norway and Northwest Russia, **Nenets**, **Khanty**, **Evenk** and **Chukchi** in Russia, **Aleut**, **Yupik** and **Inuit** (Inupiat) in Alaska, Inuit (Inuvialuit) in Canada and Inuit (Kalaallit) in Greenland.
- There is a great variation of cultural, historical and economical backgrounds among the groups. However, a common feature for most of the indigenous communities in the Arctic is that **they have already undergone substantial changes** due to the globalization of the western way of life, state policies, modern transport and the introduction of mixed economy.

DEMOGRAPHIC SITUATION

- Despite the fact that the demographic situation is different in various parts of the circumpolar region, there are **general population characteristics** that make the various Arctic populations closely related to each other and distinctly different from those residing in the more southern areas of their countries, or in other non-circumpolar areas of the northern hemisphere.
- **Fertility**, although decreasing, is generally higher in the Arctic when compared to southern parts of Arctic countries and the Nordic countries in Europe as a whole. **Mortality is also higher**, and **life expectancy**, accordingly, is lower.
- During the last decade of the 20th century, the **inflow of population** in all the circumpolar regions has been less than the outflow, resulting in a net loss of population due to migration.

- An important feature of the Arctic in comparison to lower latitudes is its **peripheral character** — a sparsely populated region with low population density and relatively big distances between communities — and the presence of indigenous populations.
- These factors influence social networks, community viability and the way the region is governed. Arctic populations experience ongoing transformation from traditional small, rural communities often living in remote conditions into modern societies, increasingly concentrated in urban areas.

Raanujärvi – Rovaniemi 60 km
Communal health care centre
75 km
High school 60 km
Airport 70 km
Grocery store 40 km



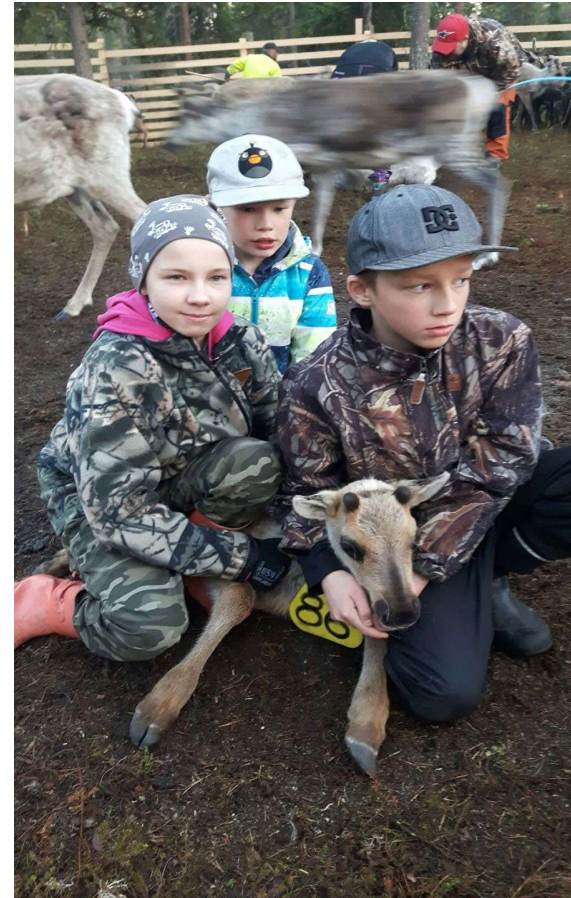
COMPLEX DEMOGRAPHIC TRENDS AND URBANISATION

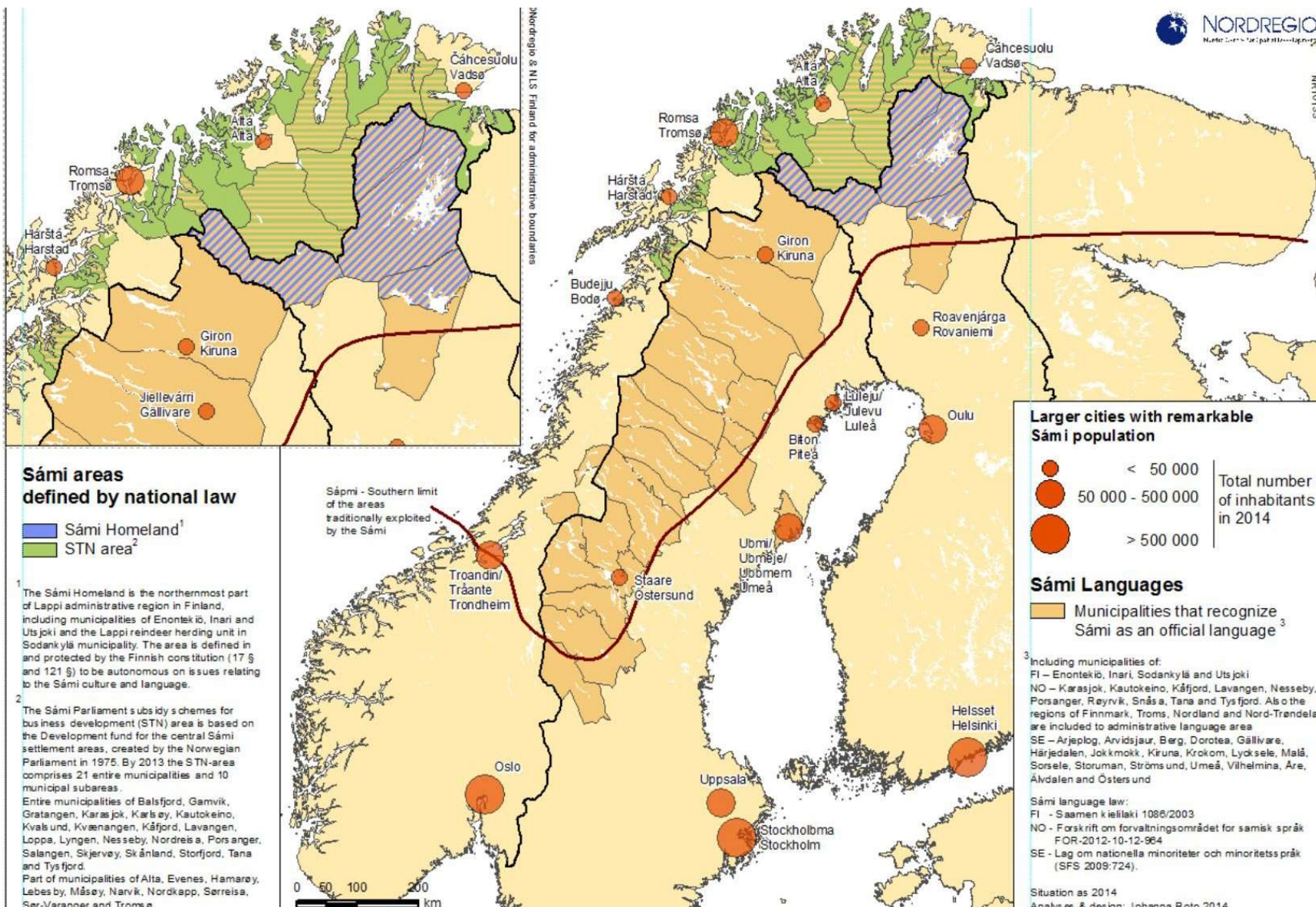
Urbanisation in the Arctic, understood as the changes in lifestyle, occurs in areas previously not considered "urban". Indigenous people living in cities face particular challenges, as their connection to traditional livelihoods and access to language education may be limited.

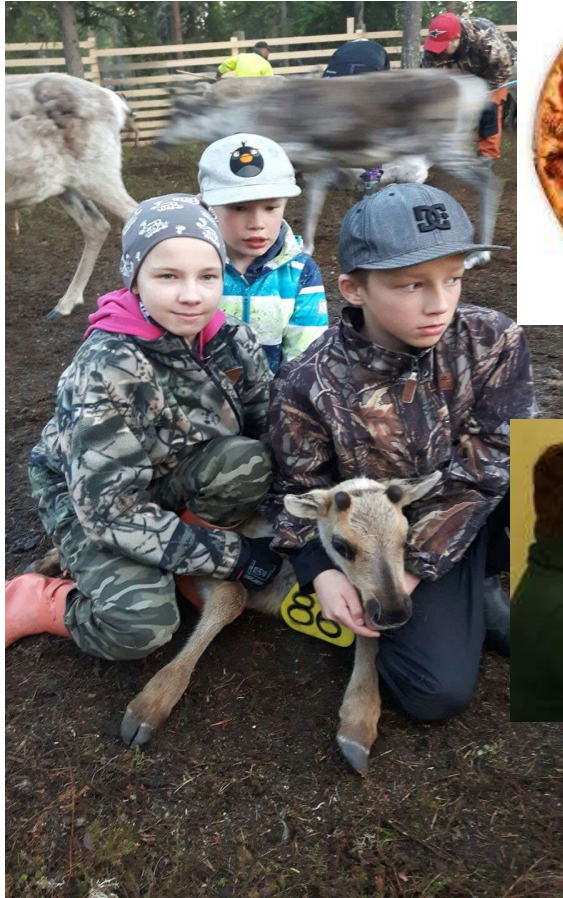


- Urbanisation is a global trend connected with modernisation. **Urban areas offer economic opportunities, education, culture and social networks.** In the Arctic, urbanisation has been driven by an increase in regional trade and administration centres, industrialisation, the expansion of the welfare state, resource extraction and military facilities.
- The emergence of **knowledge-based economy** may lead to further urbanisation. At the same time, conditions for viable economic and social activities are becoming limited in thinning-out rural areas.
- Young people, **especially women**, are increasingly moving to Arctic urban centres and cities in the south, attracted by economic and educational opportunities. This has raised the share of the elderly population in some areas, resulting in **gender and age imbalances**, and threatening the fabric of social services (e.g. workforce shortages in the health and elderly care sectors)

- Arctic gender issues have recently received more attention.
- Challenges include **male-dominated rural areas** and low female participation in traditional and resource-based industries.
- Signs that all is not well in the factors that maintain health include the high suicide rates in parts of the Arctic and the decline in life expectancy in Russia







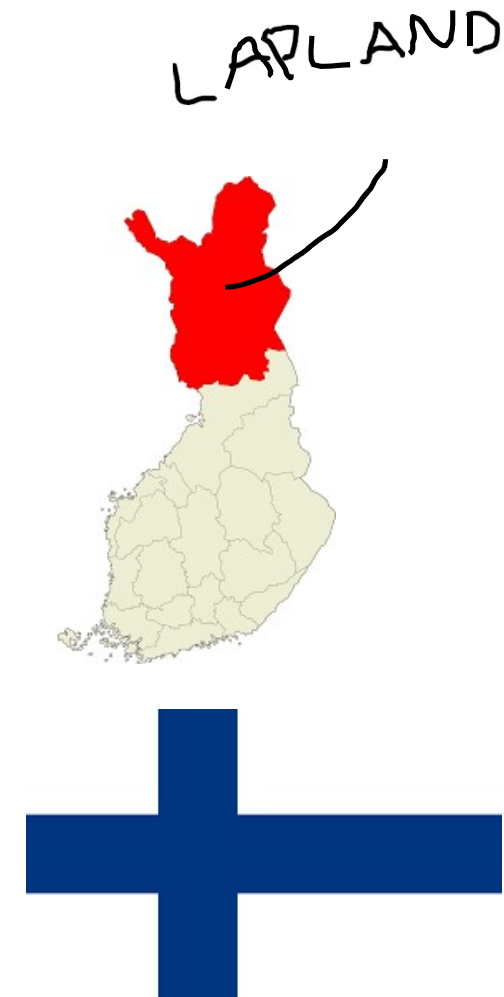
Content

1. Statistics, basic information, language, history
2. Domestic law and international law
3. Current challenges

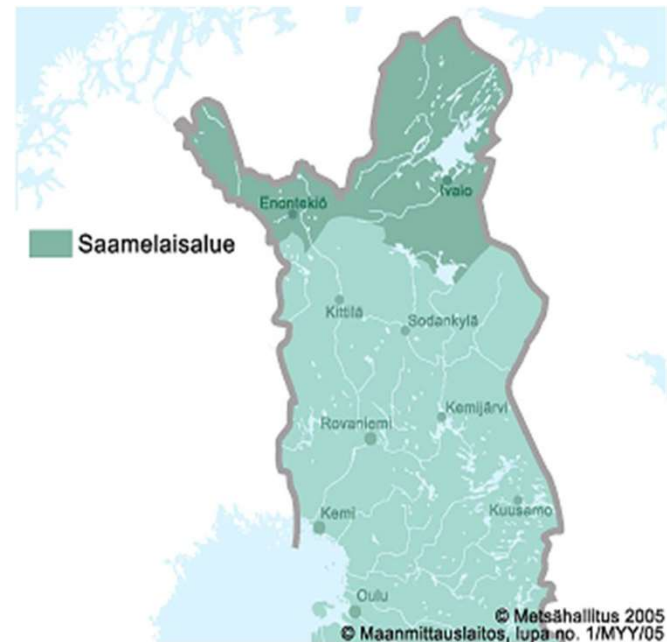


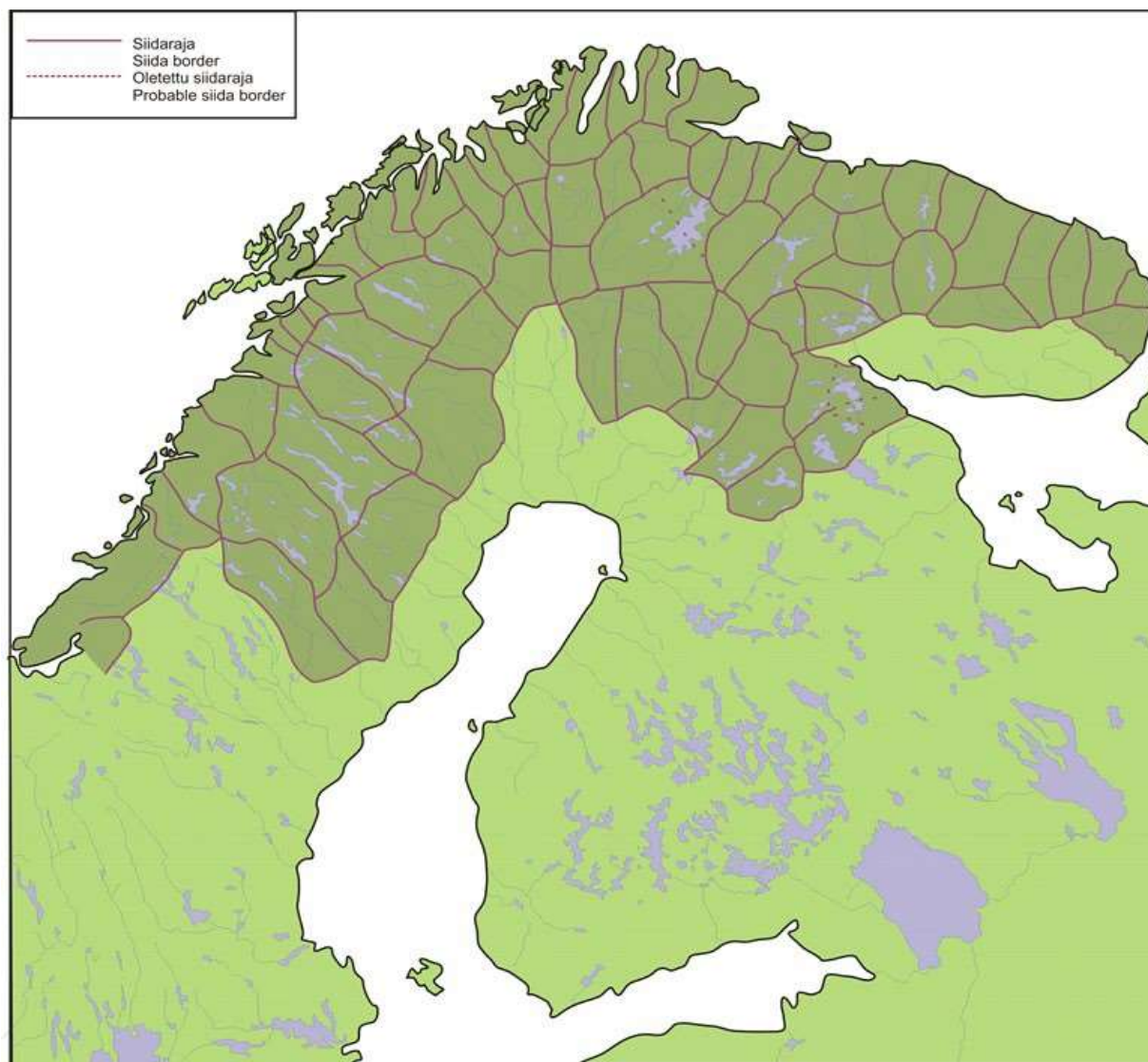
1. Some statistics

- We have about 5,5 million people living in Finland
- 179 000 in Lapland, Northern Finland
- The area of Finland is comparable to the size of France



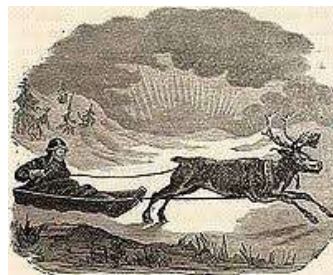
- In Northern Finland we have a special **Sámi Homeland area**, the size of 35 000 km²
- This is an area where the Indigenous Sámi have been granted the **cultural autonomy (Sami Act, 1996)**
- Special institution established for this purpose and called the **Sámi Parliament**





History

- The Sámi are descendants of the people who first inhabited the northern regions of Fennoscandia shortly after the end of the last ice age, approximately 10,000 years ago. Ethnically, the Sámi people was formed when the Sámi language and Finnish became two distinct languages around 2000 BC due to differences in livelihoods and culture.



- From the 16th century onwards (**Settlement Bill 1673** by the Swedish King), the Sámi society was increasingly caught up in drastic changes caused by outsiders. The Nordic countries started to take control of the land of the Sámi by religious converting, supporting settlement and replacing the Sámi way of administration with a Nordic administrative system.
- Along with the establishment of **present state boundaries**, the Sámi area was gradually divided up. When settlement increased in the 19th century, the Nordic states launched a **conscious assimilation policy** which favoured the interests of the dominant population. The Sámi started to lose their own language and culture.

- Under the pressure of the dominant languages, **many Sámi have lost their ability to speak their original language.** Since the ethnic awakening in the 1960s, a variety of measures have been taken to preserve the Sámi languages and bring them back to life.
- The **Sámi Language Act of 1992**, revised in 2004, made Sámi an official language. The Sámi have the right to use the Sámi languages, without prior request, when dealing with any state or municipal authorities or enterprises **within the Sámi Homeland.** **The authorities have the obligation to ensure** that these linguistic rights are secured in practice. In Utsjoki, the northernmost municipality, Finnish have nearly equal status.

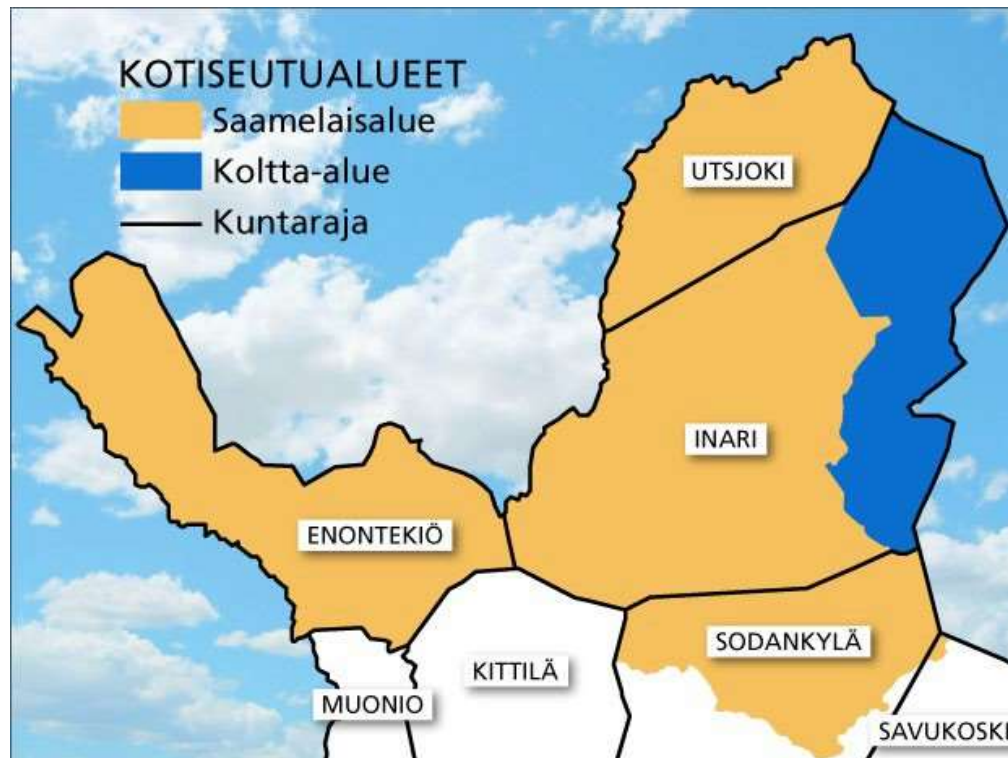
The Sámi Parliament – The representative self-government body of the Sámi

The Sámi Parliament (Sámediggi) is the self-government body of the Sámi, [legislated](#) at the beginning of 1996.

Its main purpose is to **plan** and **implement** the **cultural self-government** guaranteed to the Sámi as an indigenous people. The Sámi Delegation (Sámi Parlamenta), founded under a decree, was a predecessor to the Sámi Parliament, and operated from 1973-1995.

- The Sámi Parliament is the **supreme political body** of the Sámi in Finland. It is an **independent legal entity** of public law which, due to its self-governmental nature, is not a state authority or part of the public administration.
- The Sámi Parliament functions under the administrative sector of the [Ministry of Justice](#). The Sámi Parliament **represents the Sámi** in **national** and **international connections**, and it attends to the issues concerning Sámi language, culture, and their position as an indigenous people. The Sámi Parliament can make **initiatives, proposals and statements to the authorities**.

Municipalities of the Sámi Homeland area



- The **21 members, and 4 deputies**, are elected from among the Sámi every four years. The most recent elections were conducted in autumn 2015. → next fall 2019
- Due to its representative nature, the Sámi Parliament expresses an **official view of the Sámi** in Finland on the issues concerning them. The Plenum, a full-time chair, and an Executive Board are the main organs of the Sámi Parliament. The Sámi Parliament appoints committees to prepare issues. The operation of the Sámi Parliament is funded by the state.





Sámi language

- The Sámi languages belong to the indigenous languages of Europe and are most closely related, within the **Uralic language family**, to the Baltic- Finnic languages (such as Finnish and Estonian). Sámi is spoken in Finland, Sweden, Norway and Russia.
- In Finland, there are speakers of **three** Sámi languages: **North Sámi, Inari Sámi and Skolt Sámi**. With approximately 20,000 speakers in Finland, Norway and Sweden, North Sámi is the most widely spoken of these languages.
- In Finland, North Sámi is spoken by **approximately 2 000** people. Inari Sámi is spoken exclusively in Finland. Skolt Sámi is spoken in Finland and in Russia. In Finland, both languages have approximately 300 speakers, most of whom live in Inari.

- All primary and lower secondary schools within the Sámi Homeland **provide education in the Sámi language**. Students leaving lower secondary education have been able to include a North Sámi or Inari Sámi exam in their Matriculation Examination since the 1990s, and Skolt Sámi has been a further option since 2005.
- Outside the Sámi Homeland, education in and on the Sámi language is scarce, but on the increase. **Online teaching** is one of the methods used.



Livelihoods

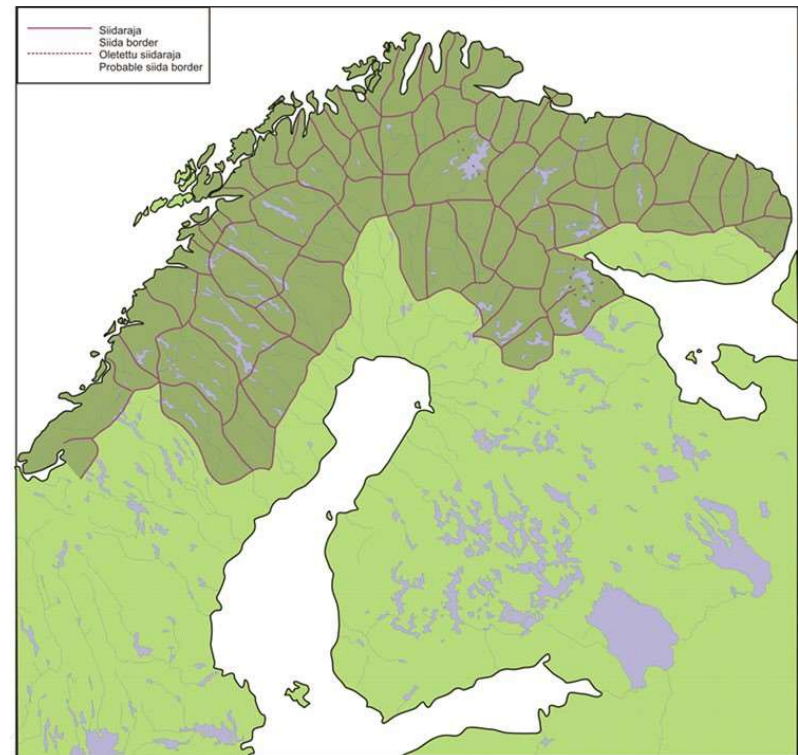
- The traditional Sámi livelihoods are **fishing, gathering, handicrafts, hunting and reindeer herding** and the modern ways of practising them.
- Out of the traditional Sámi livelihoods, reindeer herding still functions as one of the important cornerstones of the Sámi culture by offering both language arena as well as material for, among others, clothing, other Sámi handicrafts and food culture. Ever since the development of reindeer herding, reindeer has been an important form of transportation.



Sida border
 Oletettu sidaaraja
 Probable sida border



Identification of the lands (ILO, Art.14.2)



At the moment... some challenges

- The official number of the Sámi in Finland is based on the right to vote in the elections of the Sámi Parliament, this means that about 6000 persons are registered and also their children are accounted as Sámi. In total this makes about 9.800 Sámi in Finland.
- Over 75 % of these persons are living outside the Sámi Homeland area
- It is said, that the biggest Sámi cities in the Nordic countries are Helsinki, Stockholm and Oslo

- Nowadays only every tenth Sámi is practicing reindeer herding, so it means about 800-900 Sámi reindeer herders. Also other traditional livelihoods, like fishing and hunting are practiced in small scale.



- Only 1800 people are informing one of the Sámi languages to be their mother tongue.

2. Domestic law and international law

Section 17 - Right to one's language and culture (Finnish Constitution)

The national languages of Finland are Finnish and Swedish.

The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

The Sami, as an indigenous people, as well as the Roma and other groups, ***have the right to maintain and develop their own language and culture.*** Provisions on the right of the Sami to ***use the Sami language before the authorities*** are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.

Act on Sámi Parliament (1995)

Nature Conservation Law (2011)

Mining Law (2011)

Water law (2012)

Law on Sámi Languages

Law on Metsähallitus (Finnish Forest and Park services)

Act on Day care

Act on Teaching

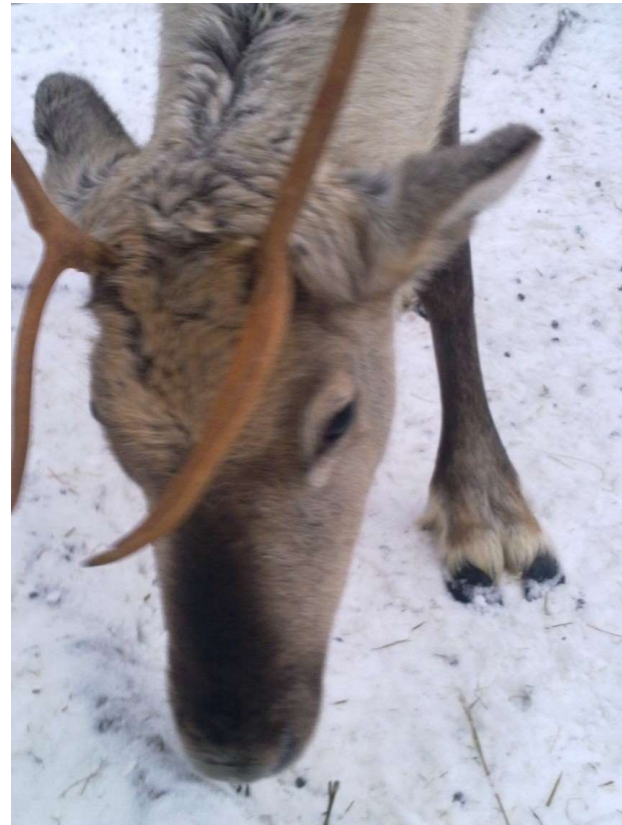
Municipal law

- The ratification of the ILO Convention No.169 concerning the rights of indigenous peoples has been debated in Finland/ Lapland ever since it was drafted in 1989
- 23 ratifications, mainly in South and Latin America
- The ratification has been on the agenda of several Governments
- There has been a very strong pressure from the Sámi Parliament to ratify the Convention, not after 2018
- also from the different international human right bodies
- Finland has signed **UNDRIP (UN Declaration on the Rights of Indigenous Peoples)**
- Negotiating on the **Nordic Sámi Convention**



Why not?

- The Convention's Art 14. requires states to recognize **the ownership and possession** of the peoples concerned to their traditionally occupied lands, this has been the main why obstacle Finland has not ratified the Convention yet.
- Finnish national legislation do not comply with some of the Articles of the Convention, mainly with the land right articles (13-19).
- Same in Sweden,
- Norway ratified 1990



The concept of Land (Articles 13-19, ILO 169)

- Many indigenous and tribal peoples have a **special relationship to the land**. It is where they live, and have lived for generations
- In many cases, their traditional knowledge and oral histories are connected to the land, which may be sacred, or have a spiritual meaning
- The concept of land usually embraces the whole territory they use, including forests, rivers, mountains and sea, the surface as well as the sub-surface

End of part one.... 😊

Article 14

1. The **rights of ownership and possession** of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to **safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access** for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary **to identify the lands** which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. **Adequate procedures** shall be established within the national legal system to resolve **land claims** by the peoples concerned.

Nordic approaches:

Norway: Protected right to use lands

Sweden: Strongly protected right to use lands

Finland: Strongly protected right to use lands



- One can say that the question of indigenous peoples landownership in Finland, in accordance with national legislation is blurry.
- In the legal praxis of the local courts, the Lapps (Sámi) were seen as land owners as late as the 1740s. Today, the presumption is and the prevailing opinion is that the Finnish State owns all of the areas that earlier belonged to the Lapps.

However...

- when the existing Act on Reindeer husbandry was enacted by the Finnish Parliament, the Committee of Constitutional Law stated that the
- “latest scientific research has presented noteworthy considerations in support of the existence of the Sámi’s land ownership”.
- “State landownership had been questioned in recent research”
- “it has been proven that families have had ownership of those tax lands they used”.

→ *Challenge related to the right holders of Art.14 and electoral roll of the Sámi Parliament*

Juha Joona: Ikimuistoinen oikeus - tutkimus Lapin alkuperäisistä maa- ja vesioikeuksista. Erweko Oy, Oulu 2019, Juridica Lapponica 46, ISBN 978-952-337-137-8. ISSN 0783-4144. (1.2.2019)

Module 3 – Current challenges for the Traditional Livelihoods



1. Reindeer herding as traditional livelihood

- reindeer herding has been practiced since the 17th century
- It is considered that reindeer herding is more than just a profession but a way of life. (Finnish Constitution 17§, culture)
- For decades, the reindeer have been a valuable resource for indigenous peoples, the Sámi.
- In traditional herding, reindeer were used for food, clothing, trade (reindeer as a form of money), and for labor. Even before reindeer herding began the Sámi lived on wild reindeer.

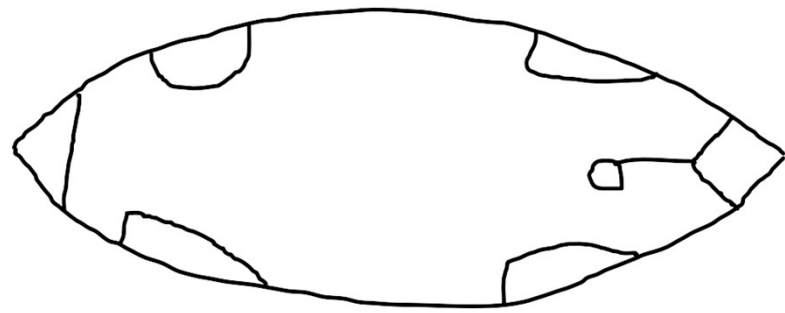




- **Reindeer Husbandry Year (1.6.–31.5.)**

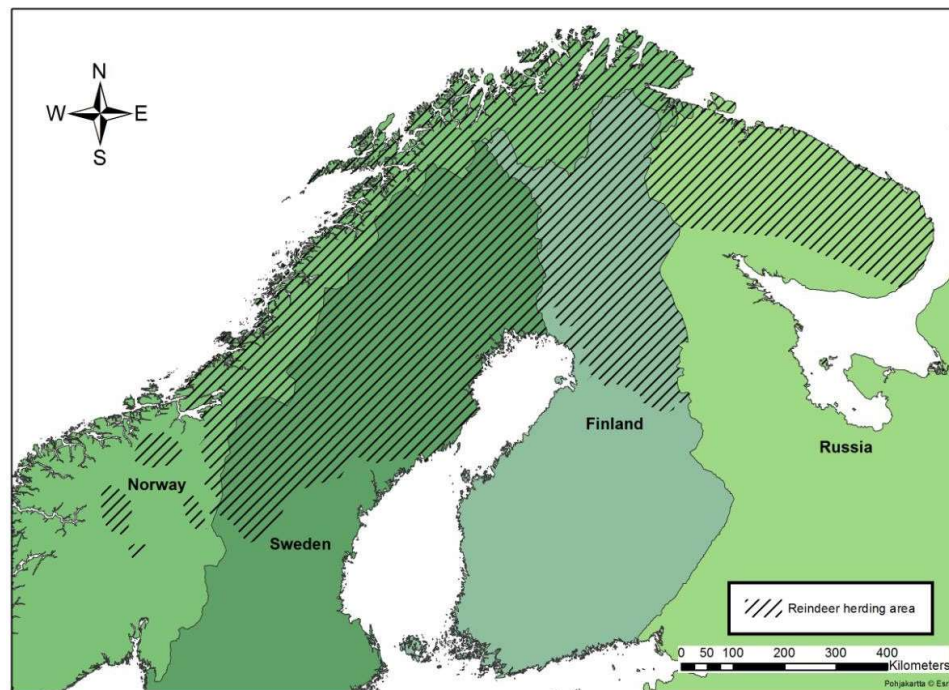
The most intense herding work periods are during the calve markings in June-July and the autumn round ups from the end of September to January. In the summer, the work focuses on maintaining fences, and collecting hay and branches with leaves for reindeer to eat during the winter.

Reindeer herding year starts in **1st of June** and ends in **31st of May**.



JOONA, TANJA





In Finland

- 54 reindeer herding districts
- 4601 reindeer herder (owner)
- Reindeer herding is practiced by indigenous (Sámi) and non-indigenous peoples in Finland
- The largest permitted amount 203 700 (Finnish Ministry of Forestry and Agriculture)
- In south one owner can have: 300
- North: 500
- Meat production
- Reindeer herding is also supported by EU-support funds:
 - 80 reindeers

In Finland, **reindeer have a free grazing right** in the reindeer husbandry area irrespective of land ownership or possession rights. This is vital for practicing reindeer husbandry.

The free grazing right of reindeer is **based on the historical right** in the reindeer husbandry area and it is meant to be permanent right.

Freely grazing reindeer are in the control of the reindeer herding cooperative and they are **responsible of the damage they may cause**.



- **The reindeer husbandry act (848/1990)** regulates reindeer herding and defines the areas where it can be practiced regardless of the land ownership.
- Reindeer husbandry area is divided into 54 different cooperatives.
- The state land situated to the northernmost areas forms an area specifically intended for reindeer herding. The land in this ***area may not be used in a manner that may significantly hinder reindeer herding.***
- Changes in the ownership or leasing of land in this area may only be done on the condition that the landowner or lessee does not have a right to receive compensation for damage caused by reindeer.

- Reindeer herding cooperatives vary in the size of their total area and number of reindeer.
- Every cooperative is responsible of the reindeer herding in its area. Cooperative is a community formed by the reindeer herders.
- Every herder belongs to one cooperative.
- In Finland, reindeer can be owned by a person living in the EU region and in a municipality that a cooperative belongs all or partially.







Practising...

REINDEER HERDING COOPERATIVES IN FINLAND 10/2015

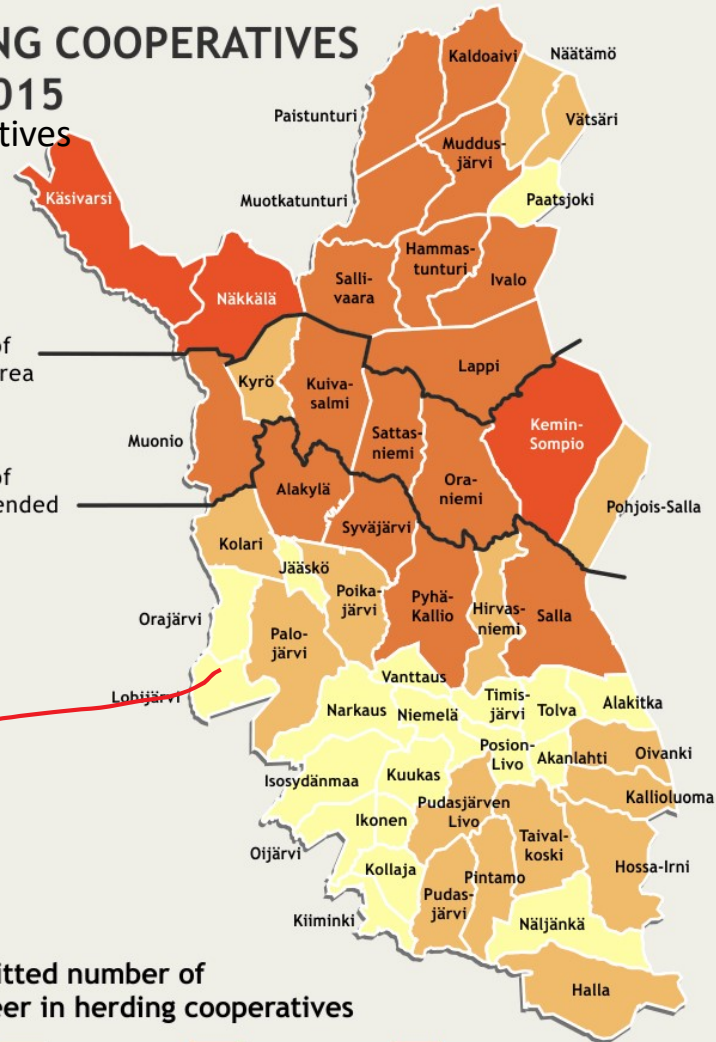
Reindeer herding cooperatives

The southern border of
the Sámi residential area

The southern border of
the area specially intended
for reindeer herding

TANJA

Maximum permitted number of
livestock reindeer in herding cooperatives



The production of reindeer meat varies annually. Primarily these variations are due to the conditions in the nature and the effects of large carnivore.



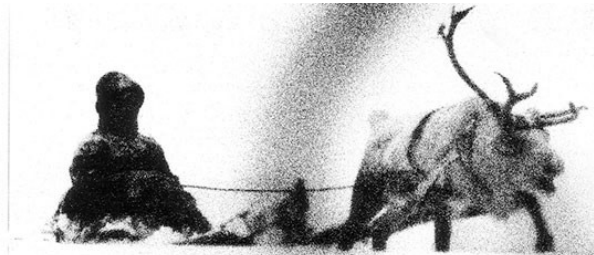
REINDEER OWNERS IN FINLAND 1990-2017



Changes, Modernization and the impact of the Government

- For many centuries reindeer herding has been the livelihood of the Indigenous Sámi who lived in the northern tundra of Scandinavia. Slowly, outsiders moved northward to traditional Sámi lands.





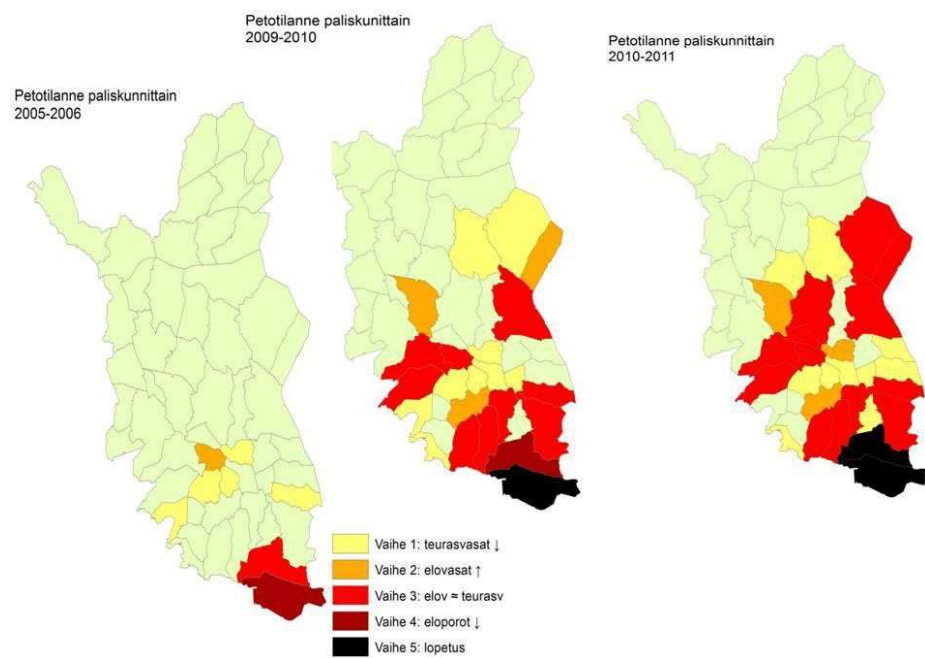
2. Challenges

- *The key challenges of reindeer herding are the growing pressure from **industrial land usage**, and the damages that are caused by **large carnivores**.*
- Reindeer need large and undisturbed areas during the whole year. For many years, reindeer husbandry in Sweden and in Finland has had to grapple with intrusions, such as **mining, hydro power development, wind power development** and industrial scale logging. See www.lappitieto.fi
- New activities are continually encroaching on reindeer pastures. Encroachments into reindeer pastures grazing conditions are seen among both reindeer herders and researchers to be one of the largest threats to the future of Saami reindeer husbandry.

Large carnivores

- The growth in the amount of large carnivores (**wolf, bear, wolverine and lynx**) since the beginning of 2000s has effected significantly to reindeer herding. Herders try to ease the pressure carnivores are causing through extra feeding and taking reindeer into fences during winter. This has added to the total expenses and weakened the profitability of the profession. Loosing breeding reindeer makes a particularly big hole to the wallet of a herder.

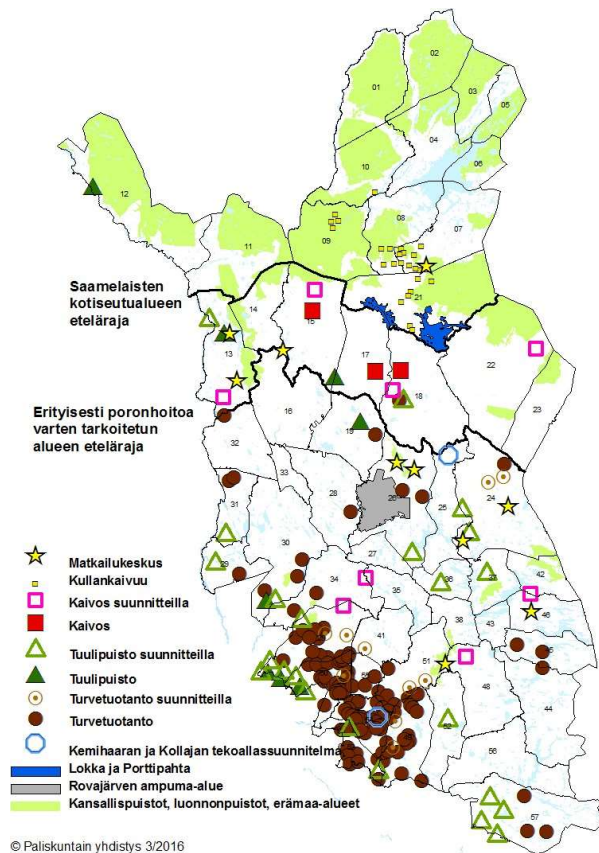




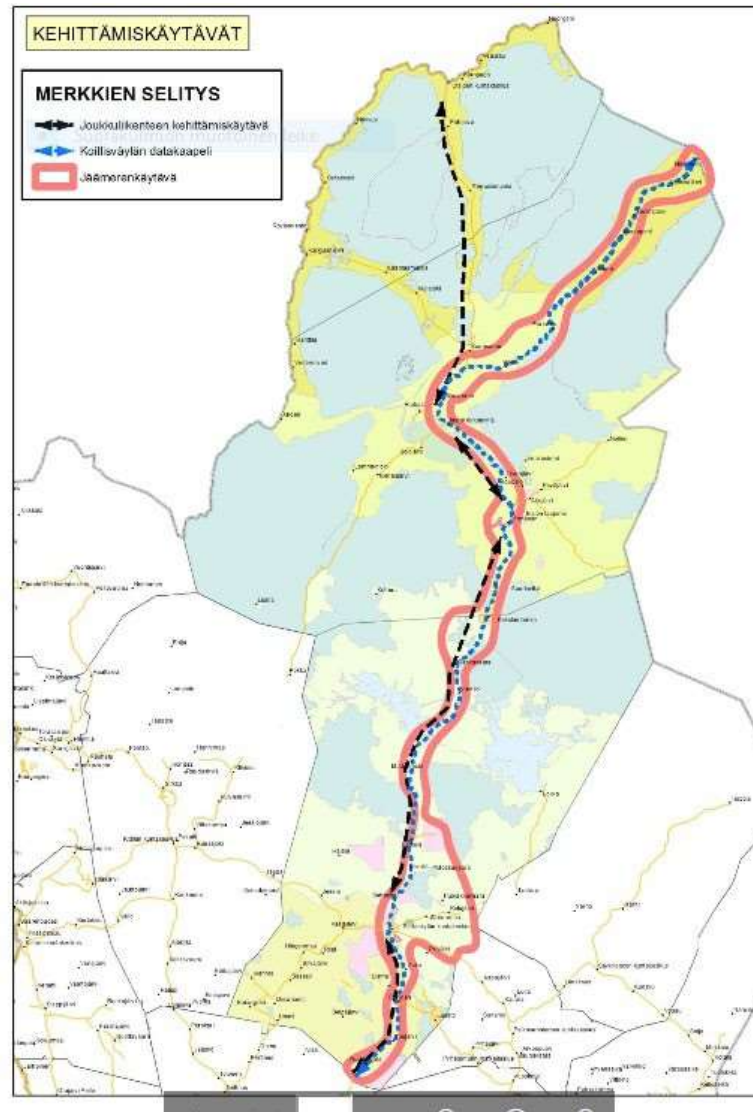


Industrial land usage

- Reindeer herding is dependent on nature and it is based on using renewable natural resources in a sustainable way. Reindeer herding is affected by all land usage related to using natural resources in the reindeer husbandry area. The main influencers are forestry, mining industry, wind farms and hydropower production, travel industry and different kind of protected areas.



County planning 2020 by
Regional Council of Lapland
- Railroad to Arctic Ocean



Further reading:

On Everyday life:

Helmholtz Blogs, Polar Prediction matters,

Joona Tanja, Everyday life in the Arctic, 26.Nov. 2018

<https://blogs.helmholtz.de/polarpredictionmatters/2018/11/everyday-life-in-the-arctic/>

Devorah Kalekin-Fishman, Sociology of everyday life, *Current Sociology*, September 2013.

On Sámi Rights:

Joona, Tanja and Joona, Juha “The Historical basis of Saami Land Rights in Finland and the application of the ILO Convention No. 169.” In Yearbook of Polar Law, Volume 3, 2011.

Joona, Tanja “The Definition of a Sami Person and its Application” in Christina Allard, Susann Skogvann (eds.) *Indigenous Rights in Scandinavia : Autonomous Sami Law*, Ashgate 2015.

Joona, Tanja “Safeguarding the Cultural Rights of Sámi Children, with special Emphasis on the Linguistic Part of Cultural Identity - Current Challenges. *The Yearbook of Polar Law* (Brill) 2018.

Social
relationships



Shoes for the winter...











TYÖ TEKIJÄÄNSÄ KIITTÄÄ
– "The work gives thanks
to worker"







ARCTIC CENTRE
University of Lapland