The Saami and the Karen — common experience and differences: a comparative perspective

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Abstract
This paper offers a comparative perspective on a specific issue of the indigenous peoples of the Saami and the Karen. The groups being compared are from Europe and Asia, selected on the basis of their particular circumstances of living in more than one State. However, while the Saami are a relatively well-treated people that enjoy a form of cultural autonomy; the Karen are in a far worse situation with regard to their legal position as well as actual living conditions. The authors examine the cultural, political, and legal aspects of the Saami and the Karen situations and compare their common experience and aspirations. The article attempts to answer the question as to what the similarities and differences between the two indigenous peoples are and what lessons can be learned by those peoples that may be helpful in realizing their aspirations.

Introduction
The global population of indigenous peoples is estimated at about 370 million individuals (about 5% of the world population). Such peoples live in more than seventy States (UN Resource Kit on Indigenous Peoples’ Issues, 2008, 2008, p. 10; Symonides 2007, p. 235). For centuries, indigenous peoples, their needs, rights, culture and identity have been neglected and destroyed, yet despite that, they managed to endure and preserve their distinct cultures and livelihoods. Their oppressive situation is gradually changing, partly due to the efforts of the international community that led
to creating international instruments of ‘hard law’ and ‘soft law’, with provisions ensuring respect for the rights of indigenous people such as the right to self-determination and land rights. There are also less tangible rights, e.g. to have their traditions and customs, cultures and languages respected; to participate in decision-making on matters that would affect their rights, to improve their social and economic position, or to maintain and develop their traditional knowledge. The most important result of such efforts, however much delayed, was the *UN Declaration on the Rights of Indigenous Peoples* adopted in 2007 by the UN General Assembly. Many of the above listed rights are guaranteed in that Declaration (hereinafter: *UN Declaration*), which, however, is formally non-binding, and in the legally binding *ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries* (1989). The *ILO Convention* aims to protect the rights of indigenous peoples, their way of life and their culture. Taking all this into account, one may conclude that there are quite progressive legal provisions protecting the indigenous peoples. Unfortunately, law in books does not always transform into law in action, hence its implementation is problematic, in many cases reaching the state of an “implementation abyss” (International Work Group for Indigenous Affairs 2016, p. 10; Wiessner 2001, p. 138; Szpak 2018, p. 179).

In this paper, the authors will offer a comparative perspective on a specific issue of the indigenous peoples of the Saami and the Karen. The groups being compared are from Europe and Asia, selected on the basis of their particular circumstances — they live in more than one State. While the Saami are a relatively well-treated people that enjoy a form of the cultural autonomy, the Karen, are in a far worse situation with regard to their legal position as well as actual living conditions. The article will examine cultural, political and legal aspects of their situation and then compare their common experience and aspirations. This comparative analysis will lead to the answer to the research question: what are the similarities and differences between the two indigenous peoples and what lessons can be learned by those peoples that may be helpful in realizing their aspirations? The research method used consists of comparative legal analysis (in particular with reference to the legal documents on the indigenous peoples). The authors offer a unique comparative approach by looking at indigenous identity politics in Europe and Asia. The basic criterion for comparison is the fact that both the eponymous indigenous peoples live in territories divided by state borders. However, the other relevant issues are the ways in which the Saami and the Karen pursue their right to self-determination and their position on the continuum line. The Saami are clearly closer to the ideal of political autonomy though not yet there, while the Karen have a longer way to go. Looking at their stage of self-governance may offer mutual lessons for the two peoples to be learned.

**Indigenous peoples and their characteristic features**

The term “indigenous peoples” has been used to encompass distinct peoples who have lived from time immemorial on their ancestral territories (thus, the name the ‘first people’) and who have been pursuing their own concept of development, endeavoring to sustain their identity, languages, customs, values, beliefs and
lifestyles as well as control over their lands and natural resources (UN Resource Kit on Indigenous Peoples’ Issues, 2008, p. 7). As a starting point, this paper adopts the definition of indigenous peoples by José Martinez-Cobo: “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems” (Cobo 1986–7). The only normative definition of indigenous peoples was formulated in the ILO Convention 169.

The factors crucial to the concept of indigenous peoples include priority in time in occupying a specific territory, voluntary preservation and development of their cultural distinctiveness (language, religion, laws, institutions, livelihoods, customs, social and political organization), self-identification at the individual and group level, meaning that a person identifies him/herself as indigenous and is recognized as such by the group (recognition by the State authorities is also indicative but its lack does not mean that a certain collectivity is not an indigenous people) and “an experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist” (UN Resource Kit on Indigenous Peoples’ Issues, 2008, p. 8; Magnarella 2001–2002, p. 426; Meijknecht 2002–2003, p. 316–318). Self-identification is the basic criterion for determining the indigenousness (Art. 1.2 ILO Convention 169 1989 and Art. 1.2 of the American Declaration on the Rights of Indigenous Peoples 2016).

Definition of indigenous peoples is controversial, especially in Asia and Africa. In Asia, many countries do not recognize indigenous peoples (e.g. India, China, Bangladesh and Myanmar), and in the rest of the continent their situation is very diverse (Kinsbury 2008, p. 121–122). The refusal to recognize indigenous peoples is based on the claim that all citizens are equally indigenous; however, this approach is usually an expression of the assimilationist attitudes of States. This, in turn, is a manifestation of ongoing discrimination against indigenous peoples. Micah F. Morton (2017a, p. 3) argues against such thinking by claiming, on the example of Thailand, that “Indigenous Peoples in Thailand reframe the boundaries of Indigeneity in identifying themselves as the victims first and foremost of relatively recent and ongoing processes of “internal colonization” within modern Thailand”. Furthermore, the legal recognition of these peoples does not necessarily have to guarantee the observance of their collective and individual rights as long as the law is not actually implemented (Indigenous Peoples and ASEAN Integration 2015, p. 44. For more details see Morton 2017a).

Arguments against the recognition of indigenous peoples raised by Asian and African states can be classified as definitional, practical and political arguments. The first type concerns a controversial reference to the times of colonialism and invasion (the salt water doctrine). Classical colonization actually took place only in the Americas and Australia, where the colonizers and settlers conquered the territory of indigenous peoples and introduced their own rules encompassing the whole social,
economic and legal system. In Africa and Asia, only the administration and export were taken over by the colonizers, while the socio-legal system and structures were left almost intact. Thus, when the colonizers left, the self-determination and self-government of indigenous peoples were restored. Considering practical arguments, it is often very difficult, if not even impossible, to prove who was the first to live in the territory in question. Lastly, political arguments are based on fears of States that recognizing certain indigenous peoples’ rights will lead to escalation of demands — other groups will also make similar claims (Schreiber 2009, p. 156; Oguamanam 2004, pp. 360, 369–71).

The controversy surrounding the definition of indigenous peoples in its application to Asia was also highlighted by the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. In his report of July 31, 2013, he stated that he was aware that the vast majority of the population in Asia could be considered indigenous. On the other hand, the Special Rapporteur noted that there were special groups in Asia which differed from the general population in such a way that they fell within concept of indigenous peoples as construed under the auspices of the UN. These groups are, today, among the most discriminated, socially and economically marginalized and politically subordinated parts of the societies of Asian States in which they live. Regardless of the controversy surrounding the definition of indigenous peoples, political actors in Asia (e.g. ASEAN) agree that there is a need to solve the problems of these groups and to recognize and implement their human rights and their collective rights analogously to the rights of indigenous peoples (Report of the Special Rapporteur, 2013, pp. 5–6). In addition, according to the Special Rapporteur, the UN Declaration on the Rights of Indigenous Peoples applies to indigenous peoples of Asia, including tribal peoples, which are not recognized by the governments of Asian countries (Report of the Special Rapporteur… 2013, p. 6; Anaya, 1996, p. 3; Report of the African Commission’s … 2005, pp. 89–90; Operational Policy 4.10 2005, paras. 3–4; Asian Development Bank 1998, p. 3; MacKay 2005, p. 72).

The same conclusion also applies to the Saami as they do not fit into the classical narrow definition of indigenous peoples, the one including the reference to the salt water doctrine meaning that in order to qualify as an indigenous people, there should be salt water between the colony/a people and the colonizing country (Roy 2001). In the Saami’s case, no settlers came from overseas, but the Norwegians, Swedes and Finns arrived from other regions of the Scandinavian Peninsula in the territories already occupied by the Saami. Thus, the Saami experience is one of initially external colonization or oppression that with time turned into internal one.

Sarivaara et al. (2013) argue that there is no universal definition of indigenous peoples as each of them is rooted in a specific context, meaning the unique histories of each indigenous people, particularly the fragments related to colonialism. However, certain main characteristics of these definitions can be discerned. Hence, among the characteristic features of indigenous peoples, one may enumerate those that are common and at the same time do not limit the application of the definition only to the American-Australian context:
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1. Indigenous peoples identify themselves as indigenous and are, as such, accepted by members of that group (self-identification at individual and group level).
2. They have strong connection to their lands and natural resources.
3. They maintain social, economic and political systems that are at least partially separate from the dominant national systems.
4. They have fully or partially preserved their distinct languages, culture, beliefs and systems of knowledge.
5. They are determined to preserve and develop their identity and distinct social, economic, cultural and political institutions.
6. They are in a non-dominant position (despite sometimes being a majority numbers-wise) as colonized or oppressed peoples, even if their particular experiences of colonization are more of the internal rather than external form.

The requirements of historical continuity and temporal priority are considered unnecessary, but may rather be regarded as additional factors for identifying the indigenous nature of a given group. Another factor that should be considered in the identification of indigenous peoples may be *inter alia* the recognition of the indigenous peoples in national laws (in the constitution or other legal acts) (UN Resource Kit on Indigenous Peoples’ Issues, 2008, p. 9). One must, however, remember that the basic criterion for the identification of indigenous peoples is self-identification; hence, the voice of indigenous peoples is crucial, taking into account the specificity and concrete circumstances of each group (UN Resource Kit on Indigenous Peoples’ Issues, 2008, p. 9). Saami and Karen voices will be included in various part of this article. Even on the basis of this brief outline, it is clear that recognition of a concrete indigenous group depends on the understanding of the concept of indigenous peoples. For the Saami, the self-identification criterion is decisive. According to Art. 4 of the Nordic Saami Convention (2005) (not yet in force), in whose adoption the Saami representatives participated, “the Convention applies to persons residing in Finland, Norway or Sweden that identify themselves as Saami and who 1. have Saami as their domestic language or have at least one parent or grandparent who has or has had Saami as his or her domestic language, or 2. have a right to pursue Saami reindeer husbandry in Norway or Sweden, or 3. fulfill the requirements to be eligible to vote in elections to the Saami parliament in Finland, Norway or Sweden, or 4. are children of a person referred to in 1, 2 or 3”. This definition combines objective and subjective criteria. As to the Saami voices on who a Saami is, they argue that “[…] if you consider that the Sámi are only those who are in the [electoral] register and have been granted the right to vote, then this is a kind of judicial murder committed against the real indigenous people who are the Forest Sámi and Forest Lapps. But it seems that you can get the right to vote in the Sámi parliament just by studying the language and practicing the culture to some extent. You don’t have to be genetically Sámi […], you can be absolutely anything. […] It should not be confined to the Sámi homeland and major towns, to ‘city Sámi’. The truly indigenous peoples live in old ‘siida’ all the way down to Kuusamo. These are the people” (Report Truth and reconciliation process concerning Sámi issues 2018, p. 27). One of the Saami also added that “[b]elonging to the electoral register of the Sámi Parliament should not be a qualifier for allowing someone to feel that they are Sámi in terms of their
identity. [...T]he importance of access to the electoral register of the Sámi Parliament above all has nothing to do with the right of identity. Experiences of being discriminated against and oppressed do not eliminate the right to identify oneself in the way one wants” (Report Truth and reconciliation process concerning Sámi issues 2018, p. 61, 67). Niklas Sarri, a Saami who does not own reindeer but makes leather craft and paints for a living, says that people question Saami identity if a Saami person does not own reindeer and that this reinforces the stereotype of a Saami. He does not agree with the statement that to be a Saami you have to own reindeer and lead a nomadic lifestyle. Once again the self-identification is stressed as — in the words of a Saami writer Nils Aslak — “the inside of me is my home. It will follow me wherever I go” (I am Sámi, 2017).

In case of the Karen, the situation is very different. In many aspects, the Karen are a heterogeneous group (Clarke et al., 2019, p. 92). The basic divisions usually take into consideration the geographic and linguistic criteria (Burma (Myanmar) Karen Cultural Profile). The Karen population is fairly widespread in Myanmar, divided into smaller groups and subgroups. As the authors of the Re-examining Ethnic Identity in Myanmar book write, Karen communities include small, rather homogeneous villages located on the hills or in remote woodlands and mountains and tend to have area-specific livelihood sources. However, many Karen are scattered across different geographic locations and are confused with neighboring communities of different ethnic identities. In lowland areas such as the Ayeyawady Delta, Karen communities were integrated into the wider Burmese society a long time ago. Also, although Kayin (Karen) State was established as the place for the Karen community, it is estimated that only a relatively small percentage of the Karen population lives there. The situations of the Karen communities are, thus, very diverse and many have experience of living in heterogeneous environments (Clarke et al., 2019, pp. 94–95). Karen cannot be perceived as adherents of one religion; though the majority are in Buddhist denominations, there are strong animist influences and Christian communities as well (Seekins 2006, p. 247). The Karen speak several related languages and dialects, with most popular dialects being Sgaw and Pwo. The former is generally used by Christian communities and highland animists, while Pwo tends to be used by lowland Buddhist communities. However, there are many exceptions (Clarke et al., 2019, p. 95). All the differences notwithstanding, a number of researchers argue that although the ethnic groups considered to be Karen peoples may have distinct political identities and speak mutually incomprehensible languages, “they are connected by the customs, traditions and long history of shared communities, and thus a sense of unity in diversity” (The Karen Struggle for Self-Determination in Kawthoolei 2018).

Saami experiences — cultural, political, and legal aspects

The Saami are the indigenous peoples who live in northern Europe in Norway, Sweden, Finland and Russia. Overall the number of the Saami is about 70,000: 35,000 live in Norway, 17,000 in Sweden, 5000 in Finland and 2000 in Russia (Baer 2005, p. 247). According to other estimates, the overall population of the Saami amounts
to 80,000 or even 100,000 (Saami in Sweden online; Fitzmaurice 2009, p. 77). Most of the Saami live in democratic welfare States (except for Russia) and enjoy relatively high quality of life compared to most of indigenous peoples all over the world. This, however, does not mean that their situation and respect for their rights are ideal. The scope of this paper will be restricted only to the Nordic Saami. In their case, the transboundary aspect is clearly discernable — the Saami are an indigenous peoples divided by the borders of the States in which they live. So-called Lapp Codicil appended to the border treaty between Sweden and Norway in 1751, one of the first documents devoted to the Saami, recognized Saami’s customary rights as well as their right to migrate across the borders of the Nordic State (which was particularly important with reference to their reindeer herds and their migrations between winter and summer pastures) (First Codicil… 2012, pp. 273–281; Heinämäki et al. 2017, p. 347). Naturally, the Saami are not monolithic, so the administrative border is not the only one. There are more divisions of a social kind, such as different languages that the Saami use, their different occupations as described below, or their different legal-political situation.

Constitutions of the three Nordic States recognize the Saami as indigenous peoples (Art. 108 of the Norwegian Constitution, Arts. 17 and 121 (3) of the Finnish Constitution (1999) and art. 2 of the Swedish Instrument of the Government). Sweden explicitly recognized the Saami as indigenous peoples in 2011 (previously since 1977 as indigenous population); however, it still treats them rather as an ethnic minority.1 Actually, only the Finnish Constitution (1999) explicitly recognizes the Saami as an indigenous people, while Sweden and Finland do that more indirectly through the recognition of their rights and Saami linguistic-cultural autonomy. As far as Russia is concerned, its Constitution states that the Saami are one of the many northern indigenous small-numbered peoples (Koivurova 2008, p. 281). The indigenous small-numbered peoples of the Russian Federation are defined in Art. 1 of the Federal Law on the Guarantees of the Rights of the Indigenous Small-Numbered Peoples of 1999 as “peoples numbering less than 50,000 people; living on ancestral lands, maintaining traditional way of life, economic activities and crafts and perceiving themselves as separate ethnic groups”. In Russia, there is no Saami parliament. Overall, Russia merely respects the cultural rights of the Saami without according them any kind of autonomy or self-governance (Bunikowski 2014b). One can conclude that the legislative guarantees set out in the Federal law are substantial, but there is a problem with their effective implementation (Koivurova et al. 2015).

The Saami are associated with reindeer husbandry even though only a minority of them (about 10%), in fact, earn their living in this way (Wiessner 2001, p. 92). For centuries, the Saami lead a nomadic lifestyle. This is relevant especially for the mountain Saami engaged in reindeer herding (Bunikowski n.d., p. 2). Importantly, according to the Saami’s values and beliefs, human beings and nature constitute a unity: human beings are an inherent part of nature. As reindeer herders, the Saami have always followed their herds, so that land ownership and borders were concepts

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1 See also L. Heinämäki et al. 2017, p. 343; Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Sweden, 2012, para. 25.
largely alien to them. The emergence of modern State borders forced many Saami families to change their places of living in order to maintain access to reindeer pastures. The policy of assimilation implemented by Nordic States damaged the Saami culture (Woodard n.d.). In 2016, the Church of Sweden published the White Book, which listed historical harms done to the Saami under the guise of assimilation. The White Book, in particular, described segregation schools which were intended for the children of the Saami reindeer herders (such schools operated between 1913 and 1962) (Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Sweden 2017, para. 39; Ravna, 2009).

Reindeer herding, hunting, fishing and shamanism have constituted important elements of Saami’s traditional livelihood and cultural practices. Jukka Pennanen, Saami professor of cultural anthropology, points out that the reindeer is an inherent part of the Saami culture (Bunikowski 2014a; for more, see: Borchert 2001; Koivurova et al. 2015); thus, preserving these important traditional livelihoods is necessary. Saami culture cannot exist without reindeer herding as the reindeer is an inherent part of the Saami culture (Bunikowski 2014b, p. 43). In Norway and Sweden, reindeer husbandry is reserved for the Saami although they must operate within a siida (which is usually defined as a cooperative consisting of several families), whereas in Finland, reindeer husbandry is open to all (Arctic Human Development Report 2014, p. 36; Ahrén 2004, p. 67; Fitzmaurice 2009, p. 86; International Centre foe reindeer Husbandry online). Reindeer herding is strictly associated with the Saami’s connection to their lands as reindeer herding relies heavily on access to extensive and undisturbed areas as reindeer migrate between different seasonal pastures. Migrations of reindeer are mainly determined by climatic and ecological factors. Reindeer are always looking for the best grazing possible, and attempts to force them to change pastures (to push them out of their traditional routes to which the animals are adapted) can lead to a loss of control over the herd and the consequent loss of animals. Clearly, it is not only the Saami who show a strong relationship with the land, but also their reindeer (Ahrén 2004, p. 70). These elements are essential components of the Saami indigenous identity. The rhythm of reindeer life also determines the rhythm of the Saami calendar. They distinguish eight seasons: winter, winter-spring, spring, spring–summer, summer, summer-autumn, autumn and autumn–winter. Each one is associated with the transition of reindeer to a new pasture as animals have to move from place to place, and people follow. However, reindeer herding areas are shrinking. Currently, they cover about 40% of the total area of Norway, Finland and Sweden. All available areas for reindeer pastures in Norway, Sweden and Finland are already in use. Norway has around 140,600 km² of potential reindeer pasture (around 40% of the country’s total land area), Sweden has around 160,000 km² (34%) and Finland 114,000 km² (33%). The shrinking means that there will always be too many herders and reindeer, which in turn will lead to increased competition between them (Huntington 2013, p. 599). The main reason for the loss of pastures in Norway, Sweden and Finland is infrastructure development

2 This situation is also exemplified in the movie Sameblod directed by Amanda Kernell (2016).
such as new road construction, military installations, power lines, pipelines, dams or vacation homes.

While these changes threaten the traditional livelihoods, there are voices among the Saami that although reindeer herding is a traditional occupation that is a distinguishing feature of the Saami, people cannot be bound to an animal. Some Saami cannot imagine their lives without reindeer, yet others put more emphasis on the culture, the connection to the land and Saami language(s). As mentioned, being a Saami does not have to mean reindeer herding (I am Sámi, 2017). The Saami emphasize their connection to the lands: “The most important question is land. If the people has no land, it is left unclear how Sámland was derived and it is interpreted in two ways. We interpret it such that the Sámi area is the Sámi area, but the Finns interpret it such that a Sámi area is an area in which there are points where Sámis live here and there. There’s such a great difference in interpretation that it affects the enactment of laws. For example, the Act on Forest Administration, which is based on the fact that everything, the whole region is state-owned land, but there are just a few areas where there are Sámi dwellings. And such an interpretation has eaten away the foundation of the entire Sámi people. The Sámi people has been eliminated. In every way” (Report Truth and reconciliation process concerning Sámi issues 2018, p. 28).

The Saami are also very politically aware and, taking into account the fact that the reindeer play such a fundamental role in the Saami culture and livelihood, there are multiple Saami organizations that represent the Saami interests in this respect at the national and international levels. Examples include the Confederation of Norwegian Reindeer Herders or the Association of World Reindeer Herders (see the website of the Association) or, in the wider field of activities, the Saami Confederation, the Swedish Saami National Union or the Confederation of Swedish Saami.

Moreover, in every Nordic State, the Saami have their representations in the Saami parliaments. These bodies were established in 1989 in Norway, in 1995 in Sweden and in 1996 in Finland. Their task is to promote and support the rights, culture and development of the Saami (Fitzmaurice 2009, p. 82). For example, according to the Finnish Act on the Saami Parliament of 1995, the Saami enjoy the linguistic and cultural autonomy, and the Saami parliament serves to implement this goal (Arts. 10 and 17 of the Act on the Saami Parliament). Among the competences of the Saami parliament is the care for the Saami language and culture and protection of their status as indigenous peoples. In these respects, the Saami parliament may initiate actions and make proposals to the national authorities. Finnish Saami parliament decides how to distribute and utilize the funds accorded to it, and these decisions are not subject to appeal. Finnish authorities are obliged to negotiate with the Saami parliament all the important matters that may directly affect the Saami (Art. 8 and 9 of the Act on the Saami Parliament). To meet this obligation, Finnish authorities must ensure that the Saami parliament has a meaningful voice and provides a representation of the Saami’s views (Finnish Act on the Saami Parliament). Moreover, Finnish legislation cannot hamper the implementation of the Saami’s rights (Fitzmaurice 2009, p. 81).

The competences of the Swedish Saami parliament are more modest and its position is peculiar as, apart from representing the Saami, it also constitutes a part of the Swedish executive (Advisory Committee on the Framework Convention for the
Protection of National Minorities, Opinion on Sweden 2017, para. 9). The Saami’s position is strongest and most satisfactory in Norway, though still far from political autonomy (Norwegian Constitution 1814 as amended in 2016; Bunikowski 2014a, p. 80). The aim of the Norwegian Saami parliament is — similarly to its Finnish counterpart — to enable the Saami to care for and develop their language, culture and livelihood (Act of 12 June 1987 No. 56 concerning the Sameting (the Saami parliament) and other Saami legal matters (the Saami Act) (1987), para. 1–1). Norway is the only Nordic State so far to have adopted a progressive legal act, so called Finmark Act 2005, which accorded the Saami additional rights. 95% of Finmark, inhabited mainly by the Saami, was located under common administration of Finmark Estate that is conducted by the Finmark Estate Board. The Board consists of six members, three designated by the Finmark County Council and three by the Saami parliament. The Saami representation obligatorily includes reindeer herders (Fitzmaurice 2009, p. 100; Heinämäki et al. 2017, p. 317). The Finmark Act regulates ownership of lands and natural resources of Finmark. The sustainable management of those lands is to serve as a basis for the Saami culture and the reindeer herding (Fitzmaurice 2009, p. 102).

Saami parliaments are not legislative bodies. Still, as a form of protection and institutionalization of the political rights of the Saami, they acquired a possibility of asserting and benefiting from their rights, including their land rights. Even if the Saami parliaments in Sweden, Norway and Finland do not possess the same prerogatives, it does not contradict the conclusion that the parliaments influence the procedural aspects of the Saami rights such as the rights to consultations, negotiations and participation in decision making in matters that affect them (Hossain 2016, p. 422). As a way to formalize the cooperation of the Saami and reinforce their voice, in 2000 the three Saami parliaments convoked the Saami Parliamentary Council. It deals with issues that may influence the Saami and coordinates Saami priorities at the international level, in particular, in reference to the international policy towards indigenous peoples (Stoyanova 2013, pp. 203–304).

The previous considerations lead to a conclusion that the Saami in Nordic States have their self-government institutions, although these institutions are not free from weaknesses or difficulties. The main cause of this are Saami’s parliaments restricted capabilities. Only Norway ratified ILO Convention 169. Dawid Bunikowski (2014a, p. 83) perceives the current Nordic States Saami policy as directed at keeping the status quo, which means lack of recognition of the Saami land rights and their political autonomy. There is some irony in that the Nordic States are democratic welfare States, yet they still fail to fully respect the Saami rights (Bunikowski 2014a, p. 83). Hence, the wording of the regulations may be very progressive but many issues remain unresolved, such as land ownership and reindeer herding. An example of a Saami victory should be mentioned here: the judgment of the Supreme Court of Sweden of 23 January 2020 with regard to reindeer herding, in which the Court held that the Saami community called Girjas Sameby “had an exclusive right to fishing and hunting in Girjas reindeer-herding areas on the basis of […] their presence there from time immemorial […]. Not only can the Sami village confer hunting and fishing rights on others without the Swedish state’s permission, but the state does not have a right to confer these rights […]” (Hofverberg 2020). However, the struggle
for Saami land rights continues as this judgment refers only to this particular village and not the Saami in general.

**Karen experiences — cultural, political, and legal aspects**

Among the world countries, Myanmar is one of the most ethnically diverse due to three waves of migrations from Central Asia and Tibet. The first one brought the Mons and the Khmer, the second consisted of Tibeto Bamars, and the last migration, which occurred around the thirteenth and fourteenth centuries brought the Tai-Chinese peoples (Yin and Elias 2012, p. 52). The origins of the Karen are unclear; there are various theories regarding their migration from Tibet, China and through Southeast Asia, which most likely took place in stages (Neiman et al. 2008).

There is lack of specific data as to the number and populations of indigenous peoples in Burma, which partially results from the lack of acceptance for the internationally recognized concept of indigenous peoples. The Myanmar government maintains that all citizens are “indigenous” (taing-yin-tha), thus, denying that the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) is applicable to Myanmar. To describe the indigenous peoples of Myanmar, indigenous rights activists use the Burmese term hta-nay-tain-yin-tha, which is based on international principles. The criteria they use include under domination in the national context, historical continuity, ancestral territory and self-identification. Only eight ethnic groups are recognized by the government as national races or taung yin tha: Kachin, Karen, Karenni, Chin, Mon, Burman, Arakan and Shan. According to the Citizenship Act of 1982 (Refworld.org) the criterion for being considered as taung yin tha, was the presence of the particular ethnic group in the geographic area of Myanmar prior to 1823. It should be noted, however, that Myanmar has more ethnic groups that see themselves as indigenous peoples (IWGIA 2020, p. 292).

The official (Anglicized) name of the Karen and the name of the state were changed to “Kayin” by the military government in 1989; however, this has been rejected by much of the community (Clarke et al. 2019, p. 94). The group consists of about 4 million in Myanmar and about 400,000 people in Thailand (Intercontinental Cry online). The Karen inhabit the upland and mountainous areas that form the border between Myanmar and Thailand, including the southern Shan state, Stan Kayah (Karenni), Stan Karen (Kayin), Stan Mon and Division Tenasserim (Tanintharyi), as well as parts of Pegu (Bago) Division, especially around Toungoo (Taungoo). Traditionally, they practiced agriculture in mountainous areas. Many of them settled also in the delta of the Ayeyarwady (Irrawaddy) river where they grow rice in wetlands and, to a large extent, have assimilated with the neighboring Burmese or Mon populations. Karen communities are also found around Bassein (Pathein), Pyapon and Henzada (Hinthada), the Irawaddy (Ayeyarwady) Division. There is also a significant Karen population in Rangoon (Yangon), especially in Insein Township (Seekins 2006, p. 247). However, life in many Karen communities is far from idyllic.
Conflicts between its numerous minorities make Myanmar one of the most troubled countries in Asia. Ethnic minority groups in Myanmar have been marginalized and denied basic rights for a long time, due to decades of civil war and competing economic interests in areas and resources on which many nationality peoples depend for survival. According to David I. Steinberg, “Burma/Myanmar has experienced 236 “conflict years,” or 40 percent of all those in Southeast Asia, and 30 percent of all conflict casualties. Many minority armies now have negotiated cease-fires, but some are still active and one, the Karen rebellion that started in 1949, is the longest in modern world history” (Steinberg 2010, p. 12). The Karen in Myanmar have suffered from forced labor, forced relocation, confiscation of land, burning of villages, rapes and other sexual violence. Every year, usually during the dry season, Burmese troops attack the villages of Karen, burning houses and fields and destroying grain and agricultural implements. People who manage to escape hide in nearby woodlands. Many of them then experience malnutrition or contract malaria and other diseases. Those internally displaced persons (IDPs) only return to their villages when the Burmese army leaves the area. The Karen have also been forcibly relocated and their villages populated with ethnic Burmans. In August 2016, Victoria Tauli-Corpuz, the UN Special Rapporteur on the Rights of Indigenous Peoples, pointed to militarisation of conflict in Myanmar leading to rapes, sexual enslavement and killings of indigenous girls and women (Cultural Survival 2015).

Internal armed conflict caused many Karen to look for refuge in Thailand. Not surprisingly, because of the conflict, thousands of Karen refugees have crossed the border into Thailand for safety and live in one of the twelve refugee camps (Neiman et al. 2008). Large constructions, like the building of a Hat Gyi hydroelectric dam, result in displacement of thousands of people. In the case of this dam, whose construction began in 2007, mainly the Karen, have also been displaced to Thailand (Cultural Survival, 2015; Karen Human Rights Group online, pp. 24–25).

The recognition of minority status and rights is undoubtedly one of the greatest challenges facing the government of Myanmar (Steinberg 2010, p.12). A change might be achievable if ethnic groups were offered the possibility to participate in the exercise of power. Therefore, around the last parliamentary elections in 2020, a lot of attention was paid to barriers to representation by ethnic minority groups other than the Bamar people. The first barrier is the constituency structure, which perpetuates the dominance of large national parties focused on the interests of the Bamar majority. The second barrier to nationality representation is the first-past-the-post voting system. In the seven regions where the Bamar population constitutes the majority in most constituencies, it is actually impossible for ethnic minority parties to win any seats in the parliament, as confirmed by the results of the 2015 election to the national parliament. Experts predict that it will not change in the nearest future (Myanmar: Ethnic Politics and the 2020 General Election).

With regard to international indigenous peoples’ rights, Myanmar and Thailand have not ratified ILO Convention 169 but voted for the UN Declaration (IWGIA 2018, p. 340). Thailand does not recognize officially the existence of indigenous peoples in its borders (IWGIA 2018, p. 307). Hence, its vote for the Declaration is
perceived rather as a support for the concept and rights of indigenous peoples outside of Thailand (Morton 2016, p. 6).

Myanmar Constitution (2008) labels ethnic populations as “national races” but fails to define this term. Its general interpretation comes from the 1983 Procedures to the Myanmar Citizenship Law of 1982, which define the 135 national races, including the Karen (Ethnic Minority Groups/Indigenous Peoples, p. 129). However, in 2015 the Ethnic Rights Protection Law was adopted. According to Sect. 2 (a) in Chapter 1, “Ethnic Groups means ethnic groups who have resided continuously within the Republic of the Union of Myanmar, stipulating as the original State”. This definition by no means reflects the concept of indigenous peoples. Analogously, the rights of such groups do not include such significant rights of indigenous peoples as land rights, focusing instead on rights typical to national or ethnic minorities (see Chapter 3).

There are several other acts, such as the US-Myanmar Joint Statement on Good Governance and Transparency in the Energy Sector, which states that the objective of both Governments is transparent management of the energy sector, and that transparency helps companies to operate with the free prior and informed consent of affected communities. The Forest and Conservation laws in Myanmar stipulate consulting local communities and considering community rights and benefits (Indigenous Peoples’ Rights and Business in Myanmar 2016, pp.15–18).

The situation in Thailand does not seem to be better. Indigenous peoples in Thailand have long faced severe discrimination by Thai society. According to Ian G. Baird (2019), “Thailand is a good example of a nation where a large number of people self-recognised as being Indigenous People, even when the government does not extend this recognition to them”. None of Thailand’s previous constitutions or any piece of Thai legislation either recognizes or even mentions “Indigenous Peoples”. The existence of people from “ethnic groups” is recognized in Thailand, but they are not distinguished in terms of rights and responsibilities. The 2017 Constitution does not mention indigenous peoples either. It only contains Sect. 70 that stipulates: “The State should promote and provide protection for different ethnic groups to have the right to live in the society according to the traditional culture, custom, and ways of life on a voluntary basis, peacefully and without interference, insofar as it is not contrary to public order or good morals or does not endanger the security of the State, health or sanitation”. In 2010, the government of Thailand issued a resolution aimed at recovering “the Karen livelihood in Thailand via policies and principles of implementation assigned to government agencies and organisations such as the support to the biodiversity of highland communities and the promotion and support of the Karen people’s ethnic identities and culture” (Asia Indigenous Peoples Pact 2015, p. 46). However, neither this resolution nor Sect. 70 has been implemented with any particular force.

The situation of the Karen in Thailand and Myanmar is far from perfect: their land rights are disrespected and there are no self-governance institutions (e.g. similar to the Saami parliaments). Indigenous peoples in Thailand, including Karen, are currently working towards establishing such institutions and developing ways to protect their language, culture and livelihood. Numerous initiatives that affect Karen rights are undertaken without their free, prior and informed consent. For example,
in Thailand, the programme of increasing forest cover by, among others, stopping deforestation and rehabilitating forest areas lead to many Karen being arrested for encroaching on or destroying forest lands — the lands which the indigenous people of Karen have occupied for hundreds of years and on which they have depended for their living (IWGIA 2018, pp. 308, 309). For example, the Karen were relocated from the national park Kaengkrachan Forest Complex under the rubric of forest conservation (IWGIA 2018, p. 309). Many relocated Karen were promised land for farming but have not received it and have come back to the Complex only to be arrested by the park officers (IWGIA 2018, p. 309). The Karen should be able to participate in consultations on the future of this Complex as well as other lands traditionally occupied by them; their free, prior and informed consent should be obtained before any action that affects their rights and interests is taken. Indigenous Karen ecological/traditional knowledge should be taken into account in forest and natural resources conservation and management. As stated in the Report on the Indigenous World 2018,

> [t]he policies and laws governing forest resources are not in line with reality. They focus on forest resources, flora and fauna more than the traditional residents/communities and their forest-dependent livelihoods […] The state continues to believe that traditional indigenous land use – e.g. rotational farming – is not sustainable and provides little economic income in comparison with permanent agriculture […]. This is not true. Many research findings reveal that such kinds of agricultural practice are sustainable and suitable for the highland areas […] (IWGIA 2018, pp. 311, 312).

With reference to land rights of the Karen (as well as indigenous peoples in general), the situation in Myanmar is similar. Here, too, the obligation to obtain free, prior and informed consent of the Karen is not respected (IWGIA 2018, p. 34; Ethnic Minority Groups/Indigenous Peoples, p. 137). Consequently, in 2018 the Karen together with other Myanmar indigenous peoples organized protests and demanded respect for their “right to decide how the natural resources they depended on for their livelihoods are used on traditional lands”. Like Thailand, Myanmar plans to build hydroelectric dams that will likely destroy the Karen livelihood and the natural environment (IWGIA 2018, p. 344). Mining activities also cause detrimental consequences for the Karen. In one case, when a group of Karen villagers wanted to inspect the Yun La Mountain mining site, they were shot at (IWGIA 2018, p. 345). There is, however, one notable exception — Salween Peace Park in the Karen state. This park is “a grass-roots, people-centered alternative to the centralised national park implementation process that usually results in indigenous peoples’ loss of land and livelihoods” (IWGIA 2018, p. 345; See also: Pearce 2020). Some Karen organizations are involved in the process like the Karen Environmental and Social Action Network as well as representatives from Karen villages (IWGIA 2018, p. 344).

Despite the lack of relevant national regulations, there are multiple initiatives in Myanmar and Thailand that aim to improve the situation of indigenous peoples in both countries. For example, it the Asia Indigenous Peoples Pact (AIPP) Foundation based in Chiang Mai, Thailand, is playing a key role in promoting solidarity, networking, and capacity-building among Indigenous Peoples in Asia. It also
helps local communities to link with international funders and advocates such as the International Work Group for Indigenous Affairs (IWGIA) (Morton 2017c, p. 8) or The Indigenous Peoples’ Movement in Thailand (Morton 2016, p. 2). Similar initiatives arise in Myanmar, such as the “Coalition of Indigenous Peoples in Myanmar/ Burma” created in 2015 as an umbrella organization representing 24 ethnic minority NGOs. Its achievements include drawing attention to the lack of constitutional recognition of “Indigenous peoples” (IPs) by the Myanmar government and to the violation of their rights as enshrined in the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (Morton 2017b, p. 2).

Common experience, aspirations and differences — concluding remarks

Both the European Saami and the Asian Karen are indigenous peoples. First of all, they both self-identify as indigenous but whereas the Saami are recognized as such by the States where they live, the Karen not necessarily are. Myanmar treats them as “national races” but not expressly as indigenous peoples, while Thailand does not recognise the existence of indigenous peoples. The characteristic feature of the Saami and the Karen — typical of most indigenous peoples — is their strong connection to and relations with their lands and natural resources. They have preserved, at least in part, distinct social, economic and political systems and use distinct languages (different dialects of the Saami language and Karen languages); they have distinct cultures, beliefs and unique indigenous knowledge. Furthermore, the Saami and the Karen are determined to preserve and develop their identity and distinct social, economic and political institutions. One may as well state that even the requirements of historical continuity and priority in time are met as the Saami are the “first people” on their traditional land and territories now also inhabited by Norwegians, Swedes and Finns that came after them. With reference to the Karen the functional approach is relevant leading to a conclusion that they are in a non-dominant, marginalised position experiencing discrimination and even persecution. One could argue that certain Karen were also the first populations — or least preceding the rise of the Thai and Myanmar states — that settled in the mountainous regions that today are the Thai-Myanmar borderlands.

Out of the three Nordic States and two Asian ones, only Norway has ratified the ILO Convention 169; however, all of them voted in favour of the UN Declaration. Moreover, Norway, Sweden and Finland have issued specific legislation pertaining to the Saami, first of all on the Saami parliaments. Nordic States’ Constitutions also contain provisions on the recognition of the Saami as indigenous peoples and/or their cultural autonomy. With reference to Myanmar, the recognition of certain groups living as indigenous peoples is rather unclear in law and disputed in practice, hence the term “national races” was adopted. This — as a consequence — leads to the situation in which the Myanmar Constitution and other domestic laws do not acknowledge the concept of indigenous groups who have their own rights in accordance with international standards. Thailand does not recognize the existence of indigenous peoples in its territory at all.
What is common to both the Saami and the Karen is that they live in territories of more than one State. The transboundary factor has a specific meaning for the Saami as it is connected with the necessity of their reindeer herds to cross the State borders between winter and summer pastures. As all indigenous peoples, the Saami and the Karen depend on nature and natural resources. Hence, their lands and rights to them are crucial to them. They are not fully respected although the Saami are in a better situation. As mentioned, there have even been some progressive laws enacted recognizing Saami land rights to a broader extent, e.g. Finmark Act in Norway. Still, even in the case of the Saami very often hydroelectric dams or wind farms are built without their free, prior and informed consent, even though such projects seriously affect their way of live, especially the reindeer herding.\(^3\) The Saami land rights are sometimes violated as a result of ventures associated with renewable energy sources (hydroelectric dams or wind farms) that can lead to restrictions of the range of reindeer pasture, and the rights and interests of the Saami in this regard are ignored. The situation of the Karen is similar as their villages and environment are destroyed by large constructions like hydroelectric dams. For example, in Thailand there is an unresolved problem of indigenous peoples’ access to land and natural resources and their natural resources and their conservation and management. Moreover, many Karen living inside national parks in Thailand have been evicted (Asia Indigenous Peoples Pact 2015, p. 34) in the name of forest conservation. As for indigenous peoples divided by national borders, Art. 36 of the Declaration on the Rights of Indigenous Peoples (2007) reaffirms that such peoples have “the right to maintain and develop contacts, relationships and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across the borders”.

Both of the indigenous peoples examined here aspire to self-governance (the Karen) or increased self-governance (the Saami, striving in particular for political autonomy). However, the difference between them is that the Saami have cultural autonomy and self-governance institutions (Saami parliaments) while the Karen lack any autonomy and self-governance bodies. To achieve these goals, both groups — the Karen in particular — may learn some lessons from each other and benefit from cooperation. Remembering that the situation of the Saami is much better than the Karen and taking into account that situation of the Karen is much worse than that of the Saami, including the persecution and even killings, the former still have organizations representing them, some of which were mentioned above. Hence, one may conclude that the Karen are politically and/or socially organized and as such they may initiate and maintain relations with the Saami parliaments or other Saami organisations, e.g. the Saami Council. Such contacts are possible within international bodies such as the UN Expert Mechanism on the Rights of Indigenous Peoples, which meets annually. The representatives of States, indigenous peoples, indigenous peoples’ organisations, civil societies, inter-governmental organizations and academia take part in its sessions (see the website of the Expert Mechanism). Another possibility might be participation in events such as the World Conference on Indigenous

\(^3\) See for example the building of the Markbygden wind farm: Burgess 2010 online.
Peoples (2014). Through such channels the Saami and the Karen may be in contact and exchange their experience and aspirations. Their similarities will clearly contribute to better understanding and cooperation built on these foundations. The first goal that the Karen could attempt to achieve in order for their situation to improve is to gain recognition as indigenous peoples by the States in which they live. Despite the fact that their rights, individual and collective, are inherent and independent of any recognition by States, the reality is that the States must show political will to respect these rights. It is worth stressing that this is their legal as well as moral obligation. Obviously a mere recognition is not sufficient and it must be followed by implementation of indigenous rights. The obligation to implement these rights flows from the UN Declaration on the Rights of Indigenous Peoples which, despite being formally non-binding, consolidates existing indigenous rights and may also reflect international customary law (Conservation and indigenous peoples’ rights… 2016, para. 22).

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