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NOTE

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Traditional Knowledge and Cultural Expressions: The Sámi Perspective

The Sámi Parliament in Finland

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Council of the European Union
Working Party on Intellectual Property
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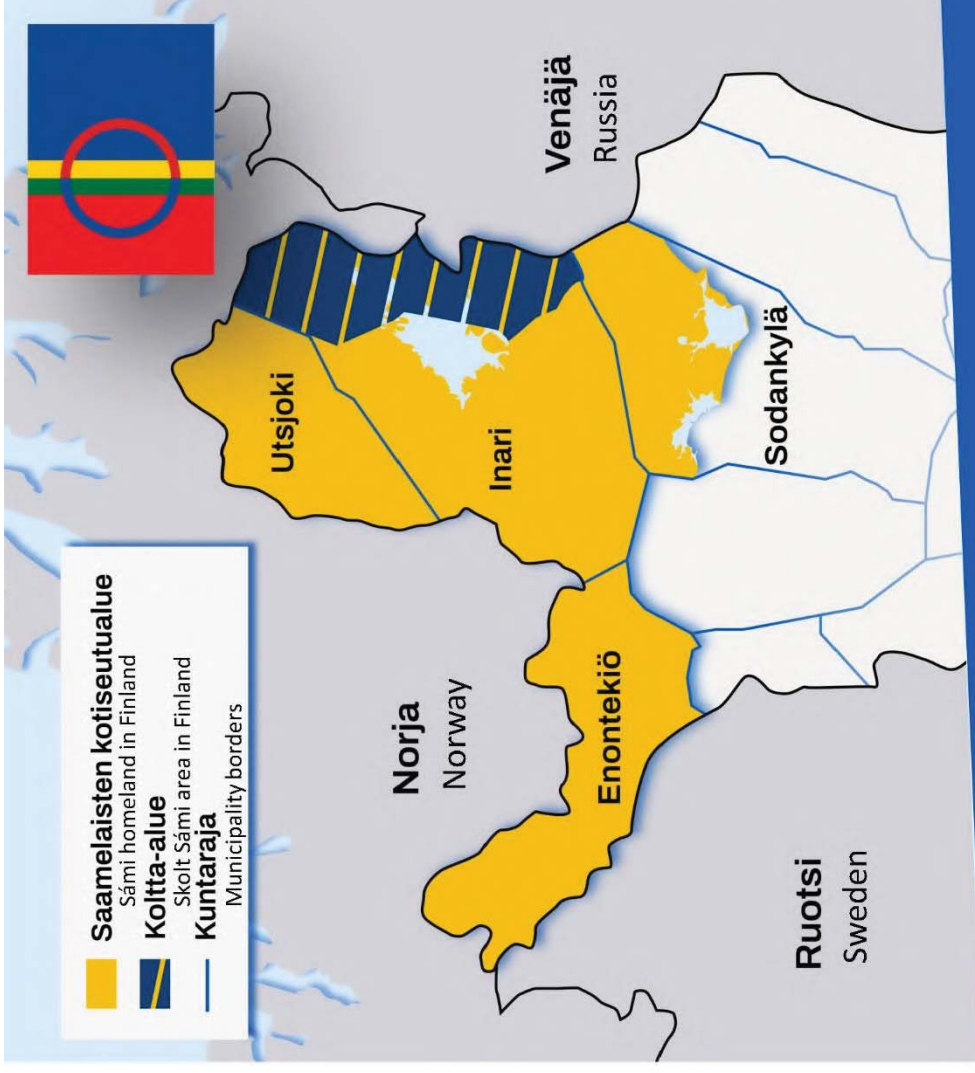
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The Sámi: An Indigenous People across borders

- The Sámi are the only recognized Indigenous People in the EU area.
- Sám̄i, Säǟm̄i, Säǟmm̄i, the home of the Sámi, has been divided into four by national borders
 - Appr. 11,000 Sámi in Finland, 100,000 in total
 - Over half live outside the Sámi homeland, less than half speak Sámi languages
- Three living Sámi languages in Finland: Inari Sámi (<15%), Skolt Sámi (<15%) and North Sámi (70-80 %)

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Linguistic and cultural self-government

- Recognised as an Indigenous People in the Finnish Constitution:
"The Sami, as an indigenous people - have the right to maintain and develop their own language and culture."
- Linguistic and cultural self-government in the Sámi Homeland

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Photo: Ville Fofonoff



The Sámi Parliament in Finland

- Supreme political body of the Sámi in Finland
- Independent legal entity of public law - not a state authority or part of the public administration.

Main tasks as defined by the Finnish Constitution and the Act on the Sámi Parliament:

- realisation of Sámi self-determination.
- deciding on matters concerning the Sámi language, culture and position as an Indigenous People
- expert on Sámi-language education and training to safeguard the maintenance and development of the Sámi languages and culture
- negotiating with state authorities on matters that impact Sámi languages and culture, the status or rights of the Sámi as an indigenous people
- representing the Sámi in national and international contexts

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Kuva: Ville Fofonóff

Indigenous Peoples' rights in the International Human Rights Framework

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

- Right of Indigenous Peoples to **maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions** (Art. 31)
- Right to **self-determination** and participation in decision-making
 - UNDRIP establishes the principle of **free, prior and informed consent (FPIC)** in situations where decisions may significantly affect Indigenous Peoples (Art. 18, 19).

ILO Convention No. 169

- Binding framework concerning consultation, participation, cultural integrity and Indigenous Peoples' self-determination

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Sámi cultural expression and traditional knowledge

- Sámi cultural expression consists of (among other things)
 - Sámi languages
 - Traditional Sámi livelihoods (reindeer herding, fishing, hunting, handicrafts (*duodji*, *tyeji*, *kiõtt-tueji*) and gathering)
 - Other forms of cultural expression, like music, storytelling and clothing
- Intrinsically linked to cultural identity and the transmission of traditional knowledge and cultural practices between generations.

Photo: Tomi Guttorm



Photo: Eeva Mäkinen



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Tangible and intangible cultural expressions

- Intangible cultural expressions and traditional knowledge are intertwined with tangible cultural expressions
- Not questions of economic rights, but moral questions of identity, self-determination and cultural continuity.
- **Example: the gákti** (traditional Sámi clothing)
 - Tangible object
 - Carries intangible cultural meanings.
 - Specific patterns, models and colours communicate information about the wearer's Sámi identity and belonging to the Sámi people

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Photo: Kevin Francett

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Why IP protection matters from a Sámi rights perspective

- **Example:** the industrial commodification of Sámi culture
 - Sámi-inspired products sold on global online marketplaces
- Risk of use without connection to or involvement of the Sámi community
- More than economic rights: cultural integrity and identity at stake



Photos: Ville Fofonoff



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Example: Frozen II

- Disney engaged with the Sámi Parliaments of Finland, Sweden and Norway regarding the use of Sámi cultural elements in *Frozen II*.
- Direct negotiations resulted in agreements allowing the use of these elements under agreed conditions and with the consent of the Sámi Parliaments.
- Good practice
- Demonstrates the need for binding rules that do not depend solely on the goodwill of individual actors.
- Clear rules can provide legal certainty for both Indigenous Peoples and economic actors.

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Sámi Parliament views on the Draft Joint Recommendation on Traditional Knowledge and Traditional Cultural Expression

1. A legally binding instrument

- Indigenous Peoples' rights to traditional knowledge and traditional cultural expressions must be firmly protected through enforceable legal measures rather than discretionary guidelines.

2. No broad exceptions

- Any exceptions should be established through meaningful consultation with the Indigenous Peoples concerned.

3. Recognition of Indigenous Peoples as distinct from local communities

- Any reference to UNDRIP must exclusively pertain to Indigenous Peoples

4. Alignment with international human rights standards

- UNDRIP, ILO 169

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Spä'sseb!
Takkâ!
Giitu!
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