



Workshop Report

Beyond the individual: the notion of group in human rights research

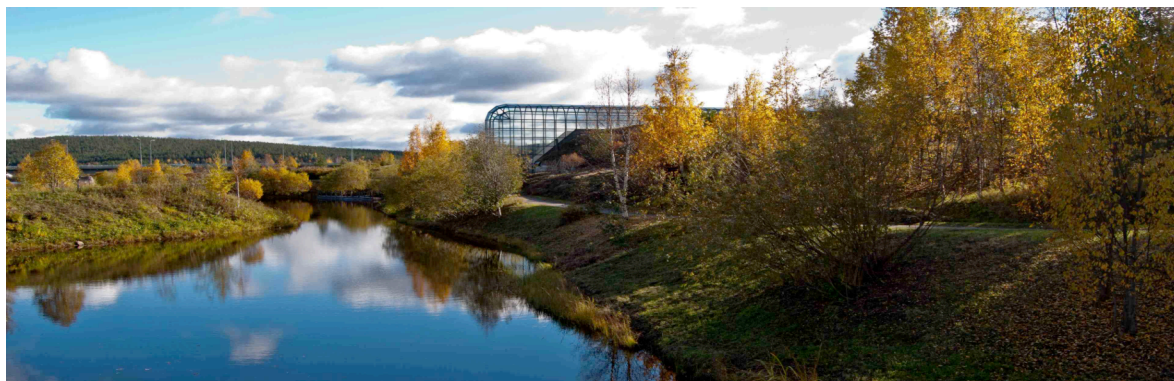
Wednesday 10th – Friday 12th April 2013
Rovaniemi (Finland)

Finnish Doctoral Programme in Human Rights Research

**Northern Institute for Environmental and Minority Law
(Arctic Centre – University of Lapland)**



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1. Summary

The workshop aimed at providing a crosscutting discussion on the individual/collective dichotomy within the specific themes of our research of the participants. In relation to many specializations of human rights research (migrants, indigenous peoples, family rights, human rights and the environment), the notion of collective rights raises theoretical and practical questions. The papers presented by the participants addressed, in the relation to their own research field, both theoretical aspects of the attribution of human rights to groups as well as more critical perspectives on the theoretical implications of such attribution. Plenary sessions offered the theoretical framework guiding the discussions for the length of the workshop. The presentations delivered during the workshop were mainly rooted in legal and social sciences.

Considering that the recognition of collective rights has occurred under international law mainly in relation to indigenous peoples, this theme was particularly prominent during the presentation of many participants who addressed from various perspectives or through different case study the issue of the definition of collectives in the context of indigeneity.

A roundtable was also organized in order to enrich the workshop with a more in depth discussion rooted in the local context and expertise. The round table provided an opportunity for Sámi scholars to exchange perspectives on the concept of collective rights in the Sámi culture. Panelists to the roundtable provided a comparative assessment of the developments in the Norwegian, Swedish, and Finnish legal system.

The conclusions of the workshop pointed at the fact that, while individual/collective rights dichotomy is relevant in very diverse contexts, only limited research has been done to explore the implications of this normative question, in particular in relation to legal scholarship. The concept of intersectionality also emerged as a crucial element in order to understand fully the implications of recognizing rights to collective; yet too little research has been accomplished up to now to consider intersectionality in various legal fields.

2. Scientific content of and discussions

Wednesday, 10th April 2013

Plenary Session 1: The Collective Dimensions in Human Rights

The first plenary session facilitated by Prof. **Timo Koivurova** (University of Lapland) offered an opportunity to root the upcoming discussions in a theoretical and historical context.

Prof. **Elina Pirjatanniemi** (Åbo Akademi) opened the workshop in questioning “what are collective/individual rights anyway?” from both legal development and historical perspective. Elina highlighted the legal relevance of this question, contemplated the scope of the subjects of rights and described the successive steps in the recognition of fundamental rights.

Exploring the historical context of the emergence of fundamental rights, **Dr. Jarna Petman** (University of Helsinki) offered a critical, albeit sympathetic, reflection on the reasons for and possibilities of group rights. She first examined the dark implications of the assumptions that inhere in human rights law – decomposing the different stages of the redaction of the 1789 Declaration of the Rights of Man and of the Citizen in revolutionary France, and then turn to analyze the universalist promise of rights understood as the universalist promise of inclusion.

Session 1: Exploring the Notion of Group in International Law

The first session of the workshop addressed the issue of the definition and of the treatment of distinct groups under international law. **Elisa Novic** (European University Institute) presented a paper offering a assessment of the definition of ‘Group’ in international law related to the prevention of the crime of genocide. While the notion of groups is a core of the prevention of this crime, international law does not seem to provide for either a uniformed concept or a unique methodology of identification. Genocide law distinguishes between a subjective and an objective way of identifying of groups when human rights law rather seems to adapt its scope of protection depending on whether the group membership is ‘homogenous’ or ‘heterogeneous’. Elisa’s presentation opened a discussion on the consistency of international law approaches to the notion of group with non-legal understandings and imperatives.

Julia Maria Muraszkiwicz (Vrije Universiteit Brussel) addressed the issue of the notion of group from a very different perspective, considering the rights and obligations of collective groups in relation to illiberal practices such as female genital mutilation on children. Julia discussed the perspectives defended by Kukathas and Kymlicka and suggesting to engage in greater discourse with members of the groups as well as placing individual autonomy at the centre of collective rights.

Session 2: Individual, Group or Collective Rights?

During the second session, presenters highlighted the normative issues implied by the distinction between collective and group rights into different case studies. **Dorothee Cambou** (Vrije Universiteit Brussel) commented on the adoption of the UN Declaration on the Rights of Indigenous Peoples that acknowledges that Indigenous Peoples are, as group, holders of human rights including the right to self-determination. The adoption of the declaration has done however little to respond to the questions attached to this recognition. Dorothee emphasized the importance of the identity of indigenous peoples as human rights holders and in the definition of their rights and offered views on whether and how

indigenous peoples' rights challenge the traditional understanding and practice of both Human Rights and International Law.

Considering the same issues in relation to the recognition of the rights to food and safe drinking water, **Dr. Irene Galtung** (European University Institute) proposed that adopting a non-Western perspective and recognizing a collective element to these rights could benefit their effective implementation. Such a recognition would have important implications for how we define the right-holders, duty-bearers and agents of accountability.

Thursday, 11th April 2013

Plenary Session 2: Rapidly evolving international status of indigenous peoples: free, prior and informed consent,

Dr. Leena Heinämäki (University of Lapland) highlighted how indigenous peoples' international status and rights have been developed from general human rights, through positive discrimination as minorities towards the recognition of indigenous peoples as collectives - peoples in international human rights law. She described the international acceptance of the UN Declaration on the Rights of Indigenous Peoples in 2007 as one of the milestones for a change of the international legal status of indigenous peoples from objects to "semi-subjects", with the right of self-determination and related principles such as a free, prior and informed consent (FPIC) of indigenous peoples.

Session 3: Indigenous Peoples and Collective Rights

During the third session Emma Nyhan (European Union Institute (EUI) presented a case study of the Bedouin in Israel, shading a new light on the framing by language of Indigenous Peoples' identity and the definition of the relevant legal framework. The increasing need for Bedouins to find stronger legal protection has resulted in an ongoing swaying between the minority rights and the indigenous rights discourse. Emma commented on the interaction between the legal discourses and framing of identity, which has led to oppositionality between the Bedouin and the State of Israel which manifests itself in the dispute over land ownership.

Humberto Fernando Cantú Rivera (Panthéon-Assas Paris II) presented a analysis of a complex body of case law at the Inter-American Court of Human Rights regarding the collective rights of Indigenous Peoples. He emphasized the importance of the identification by the court of different sets of rights that individuals are entitled to, depending on their individual or collective nature. The Inter-American Commission of Human Rights has defined collective rights as those rights that refer to the legal conditions of organizations or groups of persons and to which they are entitled to. Humberto used his analysis of relevant cases to assess the evolution of the concept of collective rights before the regional tribunal and the possibilities of application outside the American continent.

Deborah Delgado Pugley (Université Catholique de Louvain) concluded the session in considering the practicalities related to the consultation of indigenous populations in Bolivia and Peru and how those relate to international advocacy worth for to ensure the rights of indigenous peoples to participation and self-determination.

Session 4: Family Life and Human Rights

During the fourth session, two papers focused on the legal recognition of the family units were discussed. **Linda Hart** (University of Helsinki) described how family relations are interpreted in the case law of the European Court of Human Rights and the impact of granting non-heterosexual people the possibility to form civil unions, to marry and to obtain parental rights.

Younous Arbaoui (VU University Amsterdam) discussed the relation between individual freedoms and the protection by international law of the family life of asylum seekers and refugees. The presentation addressed in particular methodological challenges to integrate the use of social sciences methods to support legal research on this specific question.

Finally, **Elizabeth Ann Benedict Christensen** (Copenhagen Business School) discussed the impact on the exercise of fundamental rights of the definition of a collective identity to all undocumented immigrants in the US as a group. Such a definition tends to ignore individual experiences and specificities. The paper considered the challenges resulting from this categorization for the respect of the right to family life and highlighted how the immigration status can undermine both individual and collective rights of the U.S. undocumented population.

Plenary Session 3 - The political representation of national minorities in Europe

Dr. Andreea Carstocea (European Centre for Minority Issues) addressed the issue of the political representation of national minorities in Europe along two main lines of inquiry. She first discussed the representation of national minorities from an identity perspective. She then moved on from the focus on *who* represents minorities and concentrated on *how* the political participation of minorities takes place in democratic contexts.

Session 5: Minorities in the European Union

The fifth session built on the previous plenary session and considered the protection of minorities within the European Union. In the post Lisbon context, **Eliska Pirkova** (Faculty of Law, University of Helsinki) questioned whether the lack of a dedicated institutional mechanism could undermine the recognition in EU primary law of the need to respect the rights of minority. Noting the gradual emergence of a minority conscious implementation of non-minority specific EU policies, Eliska highlighted the absence of EU definition of the groups qualifying as minorities.

Jozefien Van Caeneghem (Vrije Universiteit Brussel) continued this discussion with a case study focused on the experience of the Roma minority in Belgium. Jozefien argued for the need to adopt a multicultural framework respectful of Roma identity and thus allowing for self-identification. She further highlighted the importance to consider the desirability and compatibility of a collective right to cultural identity but also the possible pitfalls of such approach.

Session 6: Intergenerational Justice & Environmental Governance

In the context of the raging debt crisis in Europe, **Lukas Koehler** (Munich School of Philosophy) considered juridical and philosophical aspects of the ethics of intergenerational public debt making. While this question is often raised in more economic terms, Lukas considered it from a normative

perspective and linked responsibility, benevolence and agency in his analysis, considering as well implications of cost-benefit analysis.

Sébastien Duyck (University of Lapland) discussed the nature of procedural rights in environmental decision making and the implication of the identification of specific groups the participation of which is considered especially important. His paper questioned whether reliance on the concept of group rights could provide a satisfactory and pragmatic approach to the recognition a right for stakeholders under still largely Westphalian international legal frameworks.

Friday, 12th April 2013

Plenary Session 4: Rountable - A Sami perspective on Collective Rights

The fourth plenary session took the form of a rountable shared by Leena Heinämäki (University of Lapland) during which Sami scholars presented their perspectives on the notion of collective rights and highlighting to what extent this concept was recognized in the legal regime applicable to the three states concerned.

Prof. Øyvind Ravna (University of Tromsø) discussed the recognition of collective Sámi property rights in the 2012 and 2013 reports of the Finnmark Commission that provide a first legal clarification of a particular area after 30 years examination of Sámi rights. He assessed to what extend the current Norwegian legal system - and in particular the provision of the 2005 Finnmark Act - meets the requirements imposed by the ratification by Norway of the ILO Convention 169 on the rights of indigenous people.

Johan Strömgren (Uppsala University) further elaborated on the adoption of Sámi customs into the Swedish legal system and the related implications for collective rights. He discussed the terms of the 1971 Reindeer Husbandry Act that recognizes to Sami people the right to use land for reindeer herder s based upon ancient prescriptive right. The benefit of this right is however limited to the members of the Sámi community thus raising important questions related to membership.

The Finnish Sami scholars **Anne Nuorgam** (University of Lapland) and **Antti Aikio** (University of Lapland) acted as respondent during this session, presenting the current state of play of Finnish legislation on the definition of the rights of its Sami population and reporting on ongoing efforts to further develop this legal framework.

Session 7: Indigenous Rights with Examples from Sami Rights

The seventh session provided an additional opportunity for researchers to elaborate on their research related to the morning session. **Anna Gremesperger** (University of Lapland, Faculty of Law) discussed the role played by customary law (in opposition to national law) in indigenous societies, building on case studies of the Sami, the Inuit and the Maori people, in particular in relation to the collective right to exercise indigenous livelihoods.

Offering a case study, **Stefan Kirchner** (Vytautas Magnus University, Kaunas, Lithuania) linked the issue of territorial claims of indigenous groups with the right to a fair trial, an in particular its protection under

Article 6 of the European Convention on Human Rights (ECHR). Disagreeing with the conclusions of the court on the nature of the burden of proof, Stefan highlighted that the current standard recognized by the Swedish legal might be incompatible with today's understanding of rights of nomadic peoples and argued that the right to a fair trial under Article 6 ECHR will require taking into account different way in which claims can be proven.

Session 8: Exploring Collective and Individual Dimensions of Human Rights

In the eight session, **Audelina Ahumada-Jaidi** (Institute for human rights, Åbo Akademi University) discussed the implication for the **right to privacy of the biometric technology** and centralized databases that constitute core elements of the EU border control project. Starting from the premise that primary function of the right to privacy is to maintain a specific relationship between autonomous individuals and their democratic collective, Audelina questioned to what extent non-EU citizens subjected to border surveillance measures can expect legal protection by an international human rights regime that restricts the right to political participation to citizens.

Emanuela Ignatou-Sora (National School for Political and Administrative Studies) elaborated on the issue of recognition and membership when allocating collective or individual rights. She highlighted an ongoing trend towards an ever-faster 'collectivization' of rights: in relation to indigenous peoples, but also to ethnic minorities, children, migrants, the disabled and the elderly. She discussed the implications of this collectivization from the perspective of philosopher Paul Ricoeur.

3. Assessment of the results and impact

Evaluation

The workshop was considered very constructive due to the large amount of time dedicated to discussions after each presentation and to the creation of an informal atmosphere stimulating sincere and open discussions among the participants.

The choice of the papers presented also revealed a high level of convergence of the presentations, each contributing to addressing an aspect of the same normative question. Yet the presentations addressed different theoretical approaches to this question – building both on legal and social sciences - or considering practical dimensions to this question in specific contexts.

In relation to the participants and panellists invited, the added value of the presence of Sami scholars was particularly highlighted. At the same time, the absence of non-academic stakeholders such as NGO advocates and decision-makers could have provided an even greater diversity of perspectives presented during the workshop and offered the opportunity for more pragmatic approaches to be discussed in response to theoretical discussions.

Impact for the participants

The workshop offered an opportunity for many participants to reflect on the implications in their own research of the attribution of collective vs. individual rights. Several participants highlighted the fact that, while this element is present in some way in their own work, the workshop created the space for them to consider this aspect of their research more specifically. The diversity of the case studies presented and the interdisciplinary nature of the workshop provided both alternative insights and challenges that the participants will be able to use as they deepen their analysis.

While many participants focus in their research on the rights of indigenous peoples, the roundtable dedicated to the recognition of Sami rights provided a unique in depth case study. It enabled a comparative analysis of the recognition of these rights in three legal system and offered the valuable insights of Sami scholars on this question.

Finally, the workshop also provided the participants with a useful networking opportunity. As a result of the workshop, one participant has already accomplished a short research visit under the supervision of one of the invited scholars.

Future directions

The conclusions of the workshop pointed at the fact that, while individual/collective rights dichotomy is relevant in very diverse contexts, only limited research has been done to explore the implications of this normative question, in particular in relation to legal scholarship. The main literature available addresses this issue in relation to indigenous peoples rights. Still, participants identified the need for more theoretical research on the implication of collective rights for the various legal systems.

One more specific gap was also highlighted with respect to the limited research ongoing on the issue of intersectionality. This concept is key when considering implications of specific rights to groups or to members of a collective. Yet, many research addressing the latter question do not tackle the question of intersectionality.

4. Program

Tuesday 09th April

19:00 Dinner in Wingston (Kansankatu 17)

Wednesday 10th April

08:30-9:00 Registration in Arktikum Entrance Hall

9:00-10:30 Skills Development Workshop: Conducting Research Interviews, AK – Auditorium
This workshop is a brief introduction to the practical skills contributing a (qualitative) research interview. Following topics are discussed: concept of the interview, roles of the interviewer and informant and practical matters such as choosing the surroundings and using recorders.

By: Tapio Nykänen

Coffee Break

10:45-12:15 Skills Development Workshop: From Research to Story, AK – Auditorium
“Why would I adapt my research to a story, and how could I even do it?” This workshop includes examples of research narratives and visualization, and a group work on how to popularize your own research.

By: Marjo-Riitta Laukkanen

12:15 Lunch – Arktikum Café

14:00-15:45 Plenary Session 1: The Collective Dimensions in Human Rights

AK - Polarium

Chair: Prof. Timo Koivurova, University of Lapland

Lecturers: *Beyond the Individual: a Particular Reaching for the Universal*
Dr. Jarna Petman, University of Helsinki

Beyond the Dichotomy - What Are Collective/Individual Rights Anyway?
Prof. Elina Pirjatanniemi, Åbo Akademi

Coffee Break

16:00-17:30 Parallel sessions (2+2)

Session 1: Exploring the Notion of Group in International Law Chair: Anna Gremesperger, UL <i>AK - Classroom</i> Respondents: Jarna Petman Novic: Muraszkwicz responds Muraszkwicz: Novic responds	Session 2: Individual, Group or Collective Rights? Chair: Deborah Pugley, UCL <i>AK - Auditorium</i> Respondents: Leena Heinämäki Cambou: Galtung responds Galtung: Cambou responds
Elisa Novic, EUI: <i>Group Destruction From Genocide: A Critical Assessment of the Definition of 'Group' in international Law</i>	Dorothee Cambou, VUB: <i>The adoption of the UNDRIP: contribution and challenges to International Law and Human Rights</i>
Julia Muraszkwicz, VUB: <i>What to do with oppressive collective groups?</i>	Irene Galtung, EUI: <i>The Right to Food: An Individual and Group Right</i>

17:45 Welcoming to Arctic Centre – Arktikum Art Gallery

19:30 Dinner in Monte Rosa (Pekankatu 9)

Thursday 11th April

09:00-9:45 Plenary Session 2
AK-Auditorium
Chair: Stefan Kirchner, University of Kaunas & University of Giessen

Rapidly evolving international status of indigenous peoples: free, prior and informed consent
Dr. Leena Heinämäki, University of Lapland

Coffee Break

10:00-12:00 Parallel sessions (3+3)

Session 3: Indigenous Peoples and Collective Rights Chair: Sébastien Duyck, UL <i>AK-Auditorium</i>	Session 4: Family Life and Human Rights Chair: Irene Galtung, EUI <i>AK – Classroom</i> Respondents: Elina Pirjatanniemi
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Respondents: Øyvind Ravna Nyhan: Pugley responds Cantú: Nyhan responds Pugley: Cantú responds	Hart: Christensen responds Arbaoui: Hart responds Christensen: Arbaoui responds
Emma Nyhan, EUI: <i>The Rise and Fall of Language Framing Indigenous Peoples' Identity and Legal Frameworks and their Articulation</i>	Linda Hart, UH: <i>Relational Subjects and the ECHR: Beyond the Individual Rights Holder</i>
Humberto Cantú, UPA: <i>The Development of an International Corpus Juris by the Inter-American Court of Human Rights Regarding Collective Rights</i>	Younous Arbaoui, VUB: <i>Studying Refugee Families: Theoretical and Methodological Struggles</i>
Deborah Pugley, UCL: <i>New Developments in International and Sub-regional Policies and Indigenous Communities in the Amazon</i>	Elizabeth Christensen, CBS: <i>A Claim on Rights: U.S. Undocumented Youth and the Right to Family Life</i>

12:00 Lunch in Arktikum Café

<p>13:00-13:45 Plenary Session 3 <i>AK-Auditorium</i> Chair: Prof. Elina Pirjatanniemi, Åbo Akademi</p> <p><i>The political representation of national minorities in Europe</i> Dr. Andreea Carstocea, European Centre for Minority Issues</p>
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14:00 Departure by bus from the Arctic Centre (outside, at the top of the long staircase) to Loma-Vietonen

15:15 Welcome coffee in Loma-Vietonen

15:30-17:00 Parallel sessions (2+2)

<p>Session 5: Minorities in the European Union Chair: Dorothee Cambou, VuB <i>Loma-Vietonen</i></p> <p>Respondents: Andreea Carstocea Pirkova: Van Caeneghem responds Van Caeneghem: Pirkova responds</p>	<p>Session 6: Intergenerational Justice Chair: Audelina Ahumada-Jaidi, ÅA <i>Loma-Vietonen</i></p> <p>Respondents: Leena Heinämäki Koehler: Duyck responds Duyck: Koehler responds</p>
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Eliska Pirkova, UH: <i>An EU Perspective on Minorities in Post-Lisbon Era: Why Minorities Matter</i>	Koehler, MsP: <i>Is Intergenerational Debt Making Wrong for A State? A Juridical, Philosophical and Mathematical Analysis</i>
Jozefien Van Caeneghem, VUB: <i>Collective Rights to Cultural Identity as a Missing Element of Roma Inclusion</i>	Sébastien Duyck, UL: <i>Procedural Rights, Public Participation and International Environmental Governance</i>

- 17:00-18:00 Outdoor Activity
- 18:00 Dinner in Loma Vietonen
- 20:00 *Sauna: Women's turn*
- 21:00 *Sauna: Men's turn*
- 22:00 Departure from Loma-Vietonen back to Rovaniemi (expected arrival no later than 23:00)

Friday 12th April

- 09:00 Optional visit of Pilke Science Centre (Ounasjoentie 6)

10:00-12:00	Plenary Session 4: Rountable - A Sami perspective on Collective Rights <i>AK – Auditorium</i>
Chair:	Leena Heinämäki, University of Lapland
Presenters:	<i>Recognition of collective Sámi property rights in the reports of the Finnmark Commission</i> , Prof. Øyvind Ravna, University of Tromsø <i>The Adoption of Sámi Customs into the Swedish Legal Framework - Some Aspects on Collective and Individual Rights</i> , Johan Strömngren, Uppsala University & Samisk Högskola
Respondents:	Anne Nuorgam, University of Lapland Antti Aikio, University of Lapland

- 12:00 Lunch in Arktikum Café
- 13:00 Optional visit of Arktikum
- 14:00-15:30 Parallel sessions (2+2)

Session 7: Indigenous Rights with Examples from Sami Rights

Session 8: Exploring Collective and Individual Dimensions of Human Rights

<p>Chair: Tahnee Prior, UL <i>AK – Auditorium</i></p> <p>Respondents: Øyvind Ravna Gremberger: Kirchner responds Kirchner: Gremberger responds</p>	<p>Chair: Linda Hart, UH <i>AK - Classroom</i></p> <p>Respondents: Jarna Petman Ahumada-Jaidi: Ignatiou-Sora responds Ignatiou-Sora: Ahumada-Jaidi responds</p>
<p>Anna Gremberger, UL: <i>To Live and Let Them Live: Right to Traditional Livelihood</i></p>	<p>Audelina Ahumada-Jaidi, ÅA: <i>Who is the Individual Protected by the Right to Privacy?</i></p>
<p>Stefan Kirchner, JLU: <i>Territorial Claims of Indigenous Groups and the Right to a Fair Trial</i></p>	<p>Emanuela Ignatiou-Sora: <i>Collective vs. Individual Rights: The Issue of Recognition and Membership</i></p>

Coffee Break

15:45 -17:00 Wrap-Up Workshop, *AK – Auditorium*

18:30 Dinner in Restaurant Nili (Valtakatu 20)

5. List of Speakers and Participants

Keynote Speakers		
Dr. Andreea Carstocea	European Centre for Minority Issues	carstocea@ecmi.de
Prof. Elina Pirjatanniemi	Åbo Akademi	elina.pirjatanniemi@abo.fi
Dr. Jarna Petman	University of Helsinki	jarna.petman@helsinki.fi
Dr. Leena Heinämäki	University of Lapland	leena.heinamaki@ulapland.fi
Dr. Timo Koivurova	University of Lapland	timo.koivurova@ulapland.fi
Panelists of the roundtable on “A Sami perspective on Collective Rights”		
Prof. Øyvind Ravna	University of Tromsø	oyvind.ravna@uit.no
Johan Strömgren	Uppsala University & Samisk Högskola	Johan.Stromgren@samiskhs.no
Anne Nuorgam	University of Lapland	anne.nuorgam@ulapland.fi
Antti Aikio	University of Lapland	aaikio@ulapland.fi
Presenting participants		
Anna Gremesperger	University of Lapland	annagremesperger@gmail.com
Audelina Ahumada-Jaidi	Åbo Akademi	aahumada@abo.fi
Deborah Delgado Pugley	Université Catholique de Louvain	Deborah.delgado@uclouvain.be
Dorothee Cambou	Vrije Universiteit Brussel	dorothee.cambou@gmail.com
Elisa Novic	European University Institute	elisa.novic@eui.eu
Eliska Pirkova	University of Helsinki	eliska.pirkova@helsinki.fi
Elizabeth B Christensen	Copenhagen Business School	ebc.ibc@cbs.dk
Emanuela Ignatou-Sora	European University Institute	emanuela_ignatou@yahoo.com
Emma Nyhan	European University Institute	Emma.Nyhan@EUI.eu
Humberto Fernando Cantú Rivera	University Panthéon-Assas Paris II	humberto.cantu.r@gmail.com
Dr., Irene Galtung	European University Institute	Irene.galtung@eui.eu
Jozefien Van Caeneghem	Vrije Universiteit Brussel	jozefien.van.caeneghem@vub.ac.be
Julia Maria Muraszkievicz	Vrije Universiteit Brussel	j.muraszkiewicz@gmail.com
Linda Hart	University of Helsinki	linda.hart@helsinki.fi
Lukas Koehler	University of Giessen	lukas_k22@hotmail.com
Sébastien Duyck	University of Lapland	sebastien.duyck@ulapland.fi
Stefan Kirchner	University, of Kaunas & University of Giessen	kirchnerlaw@yahoo.com

Younous Arbaoui	VU University Amsterdam	y.arbaoui@vu.nl
Other participants		
Nafisa Yeasmin	University of Lapland	nafisa.yeasmin@ulapland.fi
Shahnaj Begum	University of Lapland	shahnaj.begum@ulapland.fi
Tahnee Prior	University of Lapland	tahnee.prior@gmail.com