

JUST TRANSITION OR 'GREEN COLONIALISM'?

**How mineral extraction and new energy projects
without free, prior and informed consent
are threatening Indigenous Sámi livelihoods
and culture in Sweden, Norway and Finland**



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Cover photo: Rönnbäck 20241212. Drone photo of the area where the Rönnbäck nickel mine project would be located. Several Sámi representatives Amnesty International spoke to referred to this as a "core area" for Indigenous culture. © Erik Nylander / WEI

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FOREWORD

by Per-Olof Nutti, President of the Saami Council

Indigenous Peoples stand at the frontlines of the climate crisis. It has taken the Indigenous world immense effort to teach this fact to the rest of the global community. We, the Indigenous Peoples, know the difficulties and uncertainty of the changing climate intimately. In 2023, the Saami Council launched the report “Climate Change in Sápmi - an overview and a Path Forward”, a report that shows the vast and diverse effects of the climate crisis on our lands and waters. The project “Just Transition in Sápmi”, a collaboration between Amnesty International sections in Sweden, Finland and Norway, and the Saami Council, was born from the need to highlight and explain the current unreasonable situation faced by the Sámi People.

The Sámi People have learned to be on alert when the term “green transition” is mentioned. We see that it is a new name for old models of action. We are used to others wanting us to step aside so that they can fulfil their needs at our expense. Mining and industry projects are usually very open about being for-profit business ventures. In the wake of the “green transition”, however, we see a development where these same kinds of ventures are suddenly being sold to us as a service to humanity. The “green transition” becomes a way to talk about for-profit business as something that is supposedly morally good and justified and how these resources are essential for safeguarding a sustainable future. This portrayal is very difficult to stand against or even criticize.

The Sámi People are heavily affected by the climate crisis, and we know our knowledge is vital to mitigating the effects of the climate crisis in our lands. When projects labelled as “green transition” seek access to our lands, they often make it seem as though Sámi resisting these projects are opposing climate solutions. We do not oppose climate solutions. We want to safeguard our lands and combat climate change. That is exactly why we demand space to present our own solutions for our people and our lands. We know that the “green transition” must be a just transition.

This report and the collaboration that has led to it is a promising step forward in bringing crucial awareness to Indigenous Peoples’ rights in the Nordic countries. The report sheds light on how colonialism develops: it does not end with a state simply controlling and exploiting the land. Rather, colonialism is a continuous process that keeps inventing new ways to re-colonize the land. As Indigenous People, we must believe that this cycle can be broken and that there is another way for us to coexist and collaborate. The recommendations in this report set forth a path to a better future.



Per-Olof Nutti, president of the Saami Council. Photographer: Saami Council, Piera Heaika Muotka.

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GLOSSARY

WORD	DESCRIPTION
CERD	The UN Committee on the Elimination of Racial Discrimination.
CESCR	The UN Committee on Economic, Social and Cultural Rights.
CRC	The UN Committee on the Rights of the Child.
CRMA	The EU Critical Raw Materials Act.
FPIC	Free, Prior, and Informed Consent (FPIC) is a specific right granted to Indigenous Peoples recognized in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which aligns with their universal right to self-determination.
GTK	Geological Survey of Finland.
ICCPR	The International Covenant on Civil and Political Rights.
ICESCR	The International Covenant on Economic, Social and Cultural Rights.
ICERD	The International Convention on the Elimination of All Forms of Racial Discrimination.
ILO 169	The International Labour Organization's Indigenous and Tribal Peoples Convention No. 169.
HRC	The Human Rights Committee, the UN treaty body entrusted with overseeing the implementation of the International Covenant on Civil and Political Rights.
NHRI	Norwegian Human Rights Institution.
NVE	Norwegian Water Resources and Energy Directorate.
OED	Norwegian Ministry of Petroleum and Energy (from 1 January 2024: Norwegian Ministry of Energy, ED).
SAMEBY	Sameby (Sámi village in Swedish) is a geographical area as well as organization and administration for reindeer husbandry in Sweden.
SÁPMI	Sápmi is the cultural region traditionally inhabited by the Sámi People. For communicative reasons, the North Sámi word Sápmi is used throughout this report, but depending on the Sámi language, the region is called Sápmi, Saepmie, Sábme, Sábme, Sámjednam, Säämi and Sää'mjännam (within Norway, Sweden and Finland, there are altogether seven different Sami languages used).
SIIDA/ SIJTE	Siida (in North Sámi) or Sijte (in South Sámi) is a traditional organization in Sami societies consisting of several families of reindeer herders whose reindeer graze together.
TUKES	Finnish Safety and Chemicals Agency Tukes is the mining authority in Finland and is responsible for permit processes related to mining and mineral exploration.
UNDRIP	The UN Declaration on the Rights of Indigenous Peoples.
UNGP	The UN Guiding Principles on Business and Human Rights.

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1. EXECUTIVE SUMMARY



Landscape view in Girón, Sápmi. © Erik Nylander/ WEI

Climate change is not only the greatest environmental emergency of our time, but also a resulting human rights crisis. Despite the global nature of climate change, it often takes its greatest toll on already vulnerable countries, people and communities. Arctic Indigenous Peoples are among the first to face the direct consequences of climate change and are particularly sensitive to its impacts.

The world is at a tipping point, and all states must urgently intensify their efforts to combat climate change. The emissions warming the climate must be rapidly reduced, but this cannot happen at the expense of those who are already most harmed by climate change. The transition to renewable energy must, therefore, be both just and consistent with human rights.

This report addresses climate justice and a just energy transition from the perspective of the Sámi People's human rights as an Indigenous People. Our research shows why their rights, especially the right to self-determination, including free, prior and informed consent (FPIC), are essential in this context.

This report is jointly produced in collaboration with the Saami Council and Amnesty International Norway, Sweden and Finland. It is Amnesty International's first full-length report investigating the human rights risks and concerns of Sámi Indigenous People in the Nordic countries.

CLIMATE CHANGE, ENERGY TRANSITION AND THE SÁMI PEOPLE

Climate change threatens the culture and existence of the Sámi Indigenous People in two ways: firstly, through direct environmental impacts such as changing weather conditions and ecosystems, and secondly, through the increasing number of energy projects and resource extraction in Sápmi in the name of "green" development and "clean" energy transition.

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While the climate crisis affects people and ecosystems worldwide, the changes are especially severe in Arctic areas. These are warming nearly four times faster than the global average. Arctic Indigenous Peoples are potentially among the most sensitive to climate change because they live in close interaction with the natural environment. In addition to changing weather conditions, environmental changes related to regional economic development and prolific use of natural resources now threaten the health, well-being and entire cultures of Sámi and other Arctic Indigenous Peoples.

For the Sámi People in Norway, Sweden and Finland climate change has also brought new threats connected to land use. All three countries are looking for climate solutions by increasing the production of renewable energy and related minerals and other raw materials, and many large-scale industrial developments in Sápmi are justified by authorities as being part of the transition away from fossil fuels and towards a low-carbon economy. From a Sámi perspective, these projects are often devastating and trigger disputes between the Sámi communities and the state authorities.

INDIGENOUS PEOPLES' RIGHTS

The Sámi have collective rights as an Indigenous People, enshrined in international treaties. The right to self-determination is a binding right in international law which refers to Indigenous Peoples freely determining their own political status and pursuing their chosen economic, social and cultural development through FPIC. Autonomy over language and culture is also an essential element of Indigenous Peoples' rights.

According to international human rights law and standards, Indigenous Peoples have the right to self-determination and to make decisions about matters that affect their lives. The right of Indigenous Peoples to FPIC is key in this context. FPIC requires states to cooperate and consult with them on decisions that may impact their human rights in order to obtain their consent. Implementing FPIC is crucial to preventing industrial energy developments from violating the human rights of Indigenous Peoples.

This report investigates how the FPIC international human rights standard is currently implemented in legislation across Sweden, Norway and Finland. It includes three case studies: the Fosen wind farms in Norway; a planned nickel mine in Rönnbäck,¹ Sweden; and mineral exploration permit processes in Finland's Käsivarsi area. Our research shines a light on how Sámi local communities increasingly face cumulative pressures linked to "green" energy transition projects on their traditional lands.

RESEARCH METHODOLOGY

The report is based on extensive desk research, including reviews of relevant laws and policies in Norway, Sweden and Finland. The three case studies focused on land use disputes were developed by examining official documents and secondary literature and conducting in-person, online and telephone interviews.

KEY FINDINGS

This report argues that despite recent steps to strengthen legislation on consultations and collaborative processes with the Sámi People in Finland, Sweden and Norway, Sámi representatives still lack legal guarantees ensuring their meaningful participation and effective consultation over decisions on the proposed use of their traditional lands. A thorough analysis of Finland's, Sweden's and Norway's current legislation for this report shows that all three legal systems lack safeguards obligating decision-makers to obtain FPIC from Sámi before initiating land use projects, such as wind power and mining, that may significantly impact their rights as an Indigenous People.

The case studies featured demonstrate how inadequate legislation and policies can lead to years-long disputes with great personal costs for affected Sámi. The resulting uncertainty over current and planned land use is draining and frustrating for Sámi communities and hinders the development of their culture and traditional livelihoods. The national authorities' poor understanding of Sámi culture, power imbalances, and the limited opportunities for meaningful Sámi participation also challenge the realization of rights and the possibility to obtain legal redress for affected Sámi.

MAIN RECOMMENDATIONS

In view of the findings in this report, Amnesty International and the Saami Council urge the governments of Sweden, Finland and Norway to recognize the human rights of Indigenous Peoples, including the right to FPIC, as a key part of a just energy transition. To respect, protect and fulfil human rights in the face of the climate crisis, all three states are obliged to phase out fossil fuel production and consumption as quickly as possible. To ensure the energy transition is human rights consistent, all three states should also:

¹ In official documents, the village is referred to as "Rönnbäcken". However, this report uses the name "Rönnbäck", which is commonly used by many locals.

- Urgently strengthen legal recognition of the Sámi People by adopting legislation, in full consultation and cooperation with the Sámi People, that ensures obtaining free, prior and informed consent (FPIC) for planned projects that may significantly impact them as an Indigenous People and their right to enjoy their culture.
- Adopt measures to ensure that decision-making at all levels relating to the climate and energy transition respects the Sámi People's human rights and incorporates Sámi values, perspectives and traditional knowledge.
- Ensure that in all the land use projects planned in Sápmi the initiators consult Sámi representatives in order to obtain their free, prior and informed consent. No land use developments in mining or energy sector shall take place without the free, prior and informed consent of the Sámi concerned
- Allocate sufficient resources for Sámi representatives to participate effectively in consultations, including funding for legal and technical advice and capacity-building, according to the needs expressed by affected Sámi.
- Establish domestic and sector-specific mechanisms for benefit-sharing and compensation in relation to any decision to limit Indigenous Peoples' rights within the exceptional circumstances of Article 46 of the UNDRIP.
- Ensure, through training and other resources, that decision-makers and officials who handle matters that may impact the Sámi People's rights, including at the local, regional and national levels and in court systems, have adequate knowledge about Sámi culture and livelihoods, and the state's international human rights obligations.
- Spread knowledge among the public, including in schools, about the Sámi People and Indigenous knowledge being part of society's common solution to climate change, climate transition and climate adaptation.
- Adopt a national plan to implement the UN Declaration on the Rights of Indigenous Peoples.

For specific recommendations to each separate government, please see page 75 at the end of this report.

2. METHODOLOGY

This report was produced in collaboration with the Saami Council² and Amnesty International's sections in Norway, Sweden and Finland. It is Amnesty International's first full-length report investigating the human rights risks and concerns of the Sámi Indigenous People in the Nordic countries.

Our research investigates how land use pressures linked to the “green” energy transition in these three countries pose an increasing threat to Sámi rights, culture and livelihoods. It does this by examining to what extent the governments of Sweden, Norway and Finland are implementing their legal obligation to engage in processes to obtain free, prior and informed consent (FPIC) of the Sámi Indigenous People. It also draws attention to the Sámi Indigenous People's position and advocacy from the frontlines of the climate crisis and demonstrates how FPIC is vital to ensuring a just and human rights-centred energy transition.

Amnesty International and the Saami Council have reviewed the relevant legislation and policies relating to the international standard of FPIC and international legal obligations under international treaties to which the pertinent states are party across all three countries. By examining three land use disputes, we highlight clear shortcomings in FPIC legislative protection for the Sámi People. These case studies also provide insights into the impacts of years-long land use disputes on Sámi communities and livelihoods.

GEOGRAPHICAL SCOPE

Sápmi, the territory traditionally inhabited by the Sámi People, stretches across four countries: Norway, Sweden, Finland and Russia. Amnesty International and the Saami Council have deliberately chosen a decolonial cross-border research approach to reflect how the Sámi themselves identify as one nation living in different states. This also highlights how Sámi People face similar challenges wherever they live in Sápmi.

Due to Russia's war of aggression against Ukraine and the resulting geopolitical situation, it has been impossible to conduct human rights research in Russia for this report. Collaboration with Sámi organizations in Russia remains very difficult.

CASE STUDIES

The three land use disputes examined in this report include:

- 1) the Fosen wind farm process in Norway,**
- 2) a planned nickel mine in Rönnbäck, Sweden, and**
- 3) mineral exploration permit processes in Käsivarsi, Finland.**

These cases were carefully chosen following discussions with Amnesty International's advisers in Finland, Sweden and Norway, the Saami Council and other experts on Sámi rights. We have focused on cases of land use disputes triggered by a “green” energy transition project (a project that is presented as being part of or contributing to the “green transition” by one or more stakeholders) and where Sámi rights holders have expressed their clear opposition to the project. All three cases have been subject to judicial and other proceedings for many years, during which domestic remedies have been exhausted, and decisions from national courts or international human rights bodies either exist or are pending.

² Saami Council is a non-governmental Saami organization with Sámi member organizations in Norway, Sweden, Finland and Russia. The Saami Council has been actively dealing with Sámi policy tasks since its foundation in 1956 and has decades of experience with promoting Indigenous Peoples' rights nationally and internationally.

DESK RESEARCH

This report is based on extensive desk research, including reviews of relevant laws and policies and existing literature on Sámi rights in Finland, Norway and Sweden, especially in the context of land use.

It reviews the key legislative framework (including laws, government bills and policies) regarding the Sámi People's rights to participation and consultation, as well as FPIC obligations, in the three jurisdictions. It assesses the extent to which these are compatible with the states' international human rights obligations. The report also relies extensively on international legal norms and jurisprudence on FPIC.

When reviewing the three case studies, Amnesty International and the Saami Council relied on official documents such as permit applications, decisions, statements, memoranda, court appeals, and other correspondence related to licensing and permit processes. These documents were either already publicly available or requested from the responsible authorities. We supplemented this information with media reports on the three cases and qualitative interviews.

QUALITATIVE INTERVIEWS

The research team interviewed 14 Sámi reindeer herders and other rights holders who had been involved in or were familiar with the three land use disputes featured in this report.

Our interviews aimed to gather first-hand insights into Sámi involvement in the land use disputes and how these projects had impacted their lives and livelihood. We actively sought to ensure a representative and diverse group of interviewees across gender, age, livelihoods and language backgrounds.

The interviews conducted include:

Rönnbäck, Sweden: Five interviews, one follow-up interview and email correspondence with Sámi representatives in the Rönnbäck area (two men and three women aged 24-58): three people from the Vapsten reindeer herding community, including their legal representative; one person from Vaapsten Sijte and one person from Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby.

Fosen, Norway: Five interviews with Sámi reindeer herders/owners from southern and northern Fosen (three men and two women aged 24-74).

Käsivarsi, Finland: Four interviews with Sámi from the Käsivarsi area (two men and two women aged 35-64). We also interviewed representatives from the Finnish licensing authority and an exploration permit applicant.

All interviews were conducted between February and July 2024. In-person interviews in Fosen and Käsivarsi were conducted in April 2024, and additional interviews were conducted online. All interviews with people based in the Rönnbäck area were conducted online or on the phone. Interviews were carried out in Swedish, Finnish and Norwegian, with quotes subsequently translated into English by the interviewers. Two of the interviewees did not want their names to be published, so we are referring to them using pseudonyms.

The interviews were semi-structured, broadly focusing on people's experiences of participation and access to information at different stages of the project development and implementation process, as well as the resulting impacts and lessons learned.

While the number of interviewees available for each case study was limited, the resulting insights provide an important perspective on Sámi participation and experiences, especially when combined with extensive desk research.

COMMUNICATION WITH GOVERNMENTS AND COMPANIES

The study focuses on national legislation in all three states, and the impacts that land use conflicts have on the Sámi People in connection to the right to free, prior and informed consent. Research does not examine the conduct of companies and does not make allegations or give recommendations to companies.

In September 2024, our research team requested clarification of legislative changes from the government of Norway, the Ministry of Energy and the Ministry of Local Government and Regional Development, including following relevant Supreme Court decisions. We received a reply in October 2024 covering both legislative changes and Norway's positions on its international obligations. In October 2024, our research team also requested clarification from the Ministry of Climate and Enterprise of Sweden on ongoing legislative initiatives relating to the Indigenous rights of the Sámi People and legislative amendments of the minerals legislation. The Ministry's reply commented on both legislative initiatives and amendments made and gave information

on the future government follow-up and review of the Consultations Act³ currently in force.⁴ Amnesty International and the Saami Council wrote to the respective ministries in Norway, Sweden and Finland and to companies named in the report to provide them with our findings and an opportunity to respond. Altogether, nine responses were received: four responses from ministries and five responses from companies. Ministries that responded were the Ministry of Energy and the Ministry of Local Government and Regional Development of Norway, the Ministry of Climate and Enterprise of Sweden and the Ministry of Economic Affairs and Employment of Finland. Companies that responded were Fosen Vind DA, Roan Vind DA, Statkraft, Bluelake Mineral and Akkerman Finland Oy. The research team reviewed the responses and took appropriate account of the information provided. A summary of the responses received can be found in the Annex on page 78.

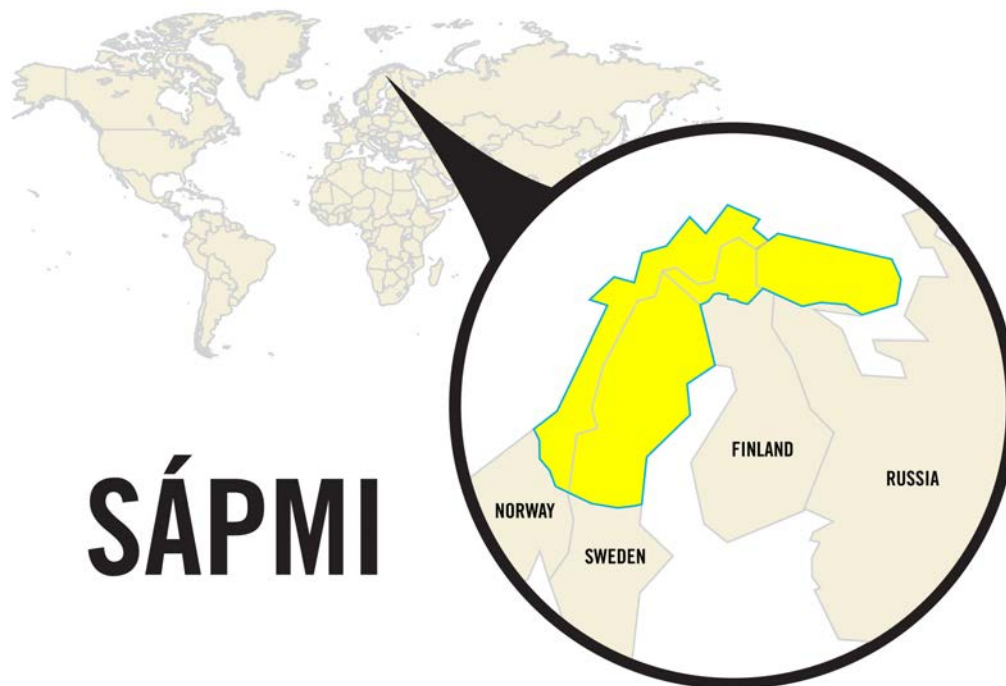
ACKNOWLEDGEMENTS

The report was produced by Amnesty International Finland, Norway and Sweden and the Saami Council as part of our two-year Just Transition in Sápmi project. We would like to thank everyone who agreed to be interviewed for this report, particularly representatives from the Sámi People, as well as academics and other experts who generously shared their experiences, insights, contacts and expertise with us. We also extend our thanks to the state authorities who provided information.

³ Sweden, Lag (2022:66) om konsultation i frågor som rör det samiska folket [“Act (2022:66) on Consultation in Matters Concerning the Sámi People”], <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-202266-om-konsultation-i-fragor-som-ror-det-sfs-2022-66/> (in Swedish).

⁴ Swedish government, En konsultationsordning i frågor som rör det samiska folket [“A Consultation Procedure on Matters Concerning the Sámi People”], prop. 2020/21:64, pp. 125-126, <https://www.regeringen.se/contentassets/ff8132cb67484ff59302098255cee14d/en-konsultationsordning-i-fragor-som-ror-det-samiska-folket-prop.-20202164.pdf> (in Swedish).

3. BACKGROUND



Map of Sápmi, the region traditionally inhabited by the Sámi people. © Amnesty International

3.1 ABOUT THE SÁMI PEOPLE

The Sámi People primarily inhabit the Sápmi traditional territory, which covers parts of Norway, Sweden, Finland and Russia. The estimated total Sámi population in Sápmi and beyond is over 100,000 people, with 50,000-70,000 living in Norway. Approximately 20,000-40,000 Sámi also live in Sweden, 10,000 in Finland and around 2,000 in Russia.⁵

Although the Sámi are divided by the formal boundaries of these four states, they continue to exist as one people, united by cultural and linguistic bonds and a common identity.

There are nine spoken Sámi languages. All are regarded as endangered by UNESCO, but there is also a growing trend toward revitalizing several languages.⁶ Reindeer herding, fishing, hunting, gathering, small-scale farming and duodji handicraft are traditional Sámi livelihoods and important elements of Sámi culture. Many Sámi are currently employed in other kinds of jobs, and many have migrated to urban regions outside Sápmi.

⁵ As ethnicity is not registered in Nordic countries, there are no official statistics on the Sámi population available. Estimates from The Sami Parliament of Norway: The Sami electoral registry 1989-2023 [Sametingets valgmannntall 1989-2023], <https://sametinget.no/politikk/valg/sametingets-valgmannntall/sametingets-valgmannntall-1989-2023/>; Sami Parliament of Finland, Number of Sámi in the 2023 elections to the Sámi Parliament, 2024 (in Finnish); Sámi Parliament of Sweden, Samerna i Sverige, <https://www.sametinget.se/samer/>; The International Work Group for Indigenous Affairs (IWGIA), Indigenous Peoples in Sápmi, <https://www.iwgia.org/en/sapmi.html> (online sources accessed on 1 November 2024).

⁶ Ságastallamin, "The Sámi Languages", <https://site.uit.no/sagastallamin/the-sami-languages/> (accessed on 9 August 2024).

For centuries, the Sámi People have been subjected to colonization, abuse and discrimination by other dominant cultures.⁷ While these have varied across different times and locations, policies of assimilation, religious persecution, forced relocation, residential schools, loss of land, livelihoods and language are all part of Sámi collective history and documented by numerous scholars.⁸ Processes aspiring to establish truth and reconciliation have been initiated or taken place on the Sámi People's initiative in all three states, based on historical documentation and personal testimonies.⁹

Even though Norway, Sweden and Finland have adopted laws and policies recognizing the Sámi People's rights as an Indigenous People, their situation remains concerning in the context of implementation of human rights protection and several international human rights bodies have found that the protection of the rights to self-determination and to lands, territories and resources is still inadequate.¹⁰



Rönnbäck 20250106. Marie Persson Njajta serving coffee in a guskie in the Rönnbäck area. © Amnesty International

⁷ Wilfrid Greaves, "Colonialism, statehood, and Sámi in Norden and the Norwegian high north", in Kamrun Hossain and others (editors), *Human and Societal Security in the Circumpolar Arctic*, 2018, pp.100-121.

⁸ See, for example, Kuka Ranta & Jaana Kanninen, *Vastatuuleen – Saamen kansan pakko-suomalaisesta* ["In the headwind. Forced assimilation of Sámi in Finland"], 2019 (in Finnish); The Parliament of Norway (The Storting), *Report of the Truth and Reconciliation Commission of Norway: English summary*, 2023, <https://www.stortinget.no/globalassets/pdf/sannhets-og-forsoningskommisjonen/rapport-til-stortinget-fra-sannhets-og-forsoningskommisjonen.pdf>, pp. 76-90; Sámi Parliament of Sweden, *Förberedelser inför en sanningskommission om statens övergrepp mot det samiska folket* ["Preparations for a Truth Commission on the State's Abuse of the Sámi People"], 2021, <https://www.sametinget.se/157488> (in Swedish).

⁹ Parliament of Norway, (Storting), *Report of the Truth and Reconciliation Commission of Norway: English summary*, 2023, <https://www.stortinget.no/globalassets/pdf/sannhets-og-forsoningskommisjonen/rapport-til-stortinget-fra-sannhets-og-forsoningskommisjonen.pdf>, pp. 76-90.; Sámi Parliament of Sweden, *Förberedelser inför en sanningskommission om statens övergrepp mot det samiska folket* ["Preparations for a Truth Commission on the State's Abuse of the Sámi People"], 2021, <https://www.sametinget.se/157488> (in Swedish), Government of Finland, *Truth and reconciliation commission concerning the Sámi People*, <https://valtioneuvosto.fi/en/truth-and-reconciliation-commission-concerning-the-sami-people> (accessed on 24 September 2024).

¹⁰ See, for instance, UN Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, 9 August 2016, UN Doc. A/HRC/33/42/Add.3; Human Rights Committee (HRC), *Concluding observations on the seventh periodic report of Finland*, 3 May 2021, UN Doc. CCPR/C/FIN/CO/7, paras 42-43; Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the twenty-third periodic report of Finland* 8 June 2017, UN Doc. CERD/C/FIN/CO/23, paras 14-17; HRC, *Concluding observations on the seventh periodic report of Sweden*, 28 April 2016, UN Doc. CCPR/C/SWE/CO/7; CERD, *Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden*, 6 June 2018, UN Doc. CERD/C/SWE/CO/22-23; HRC, *Concluding observations: Norway*, 25 April 2018, UN Doc. CCPR/C/NOR/7, paras 36-37; CERD, *Concluding observations on the combined twenty-third and twenty-fourth periodic reports of Norway*, 2 January 2019, UN Doc. CERD/C/NOR/CO/23-24, paras 21-22.

JUST TRANSITION OR 'GREEN COLONIALISM'?

HOW MINERAL EXTRACTION AND NEW ENERGY PROJECTS WITHOUT FREE, PRIOR AND INFORMED CONSENT ARE THREATENING INDIGENOUS SÁMI LIVELIHOODS AND CULTURE IN SWEDEN, NORWAY AND FINLAND

3.2 CLIMATE CHANGE THREATENS SÁMI CULTURE

Today's climate crisis is affecting people and ecosystems across the world. However, it is especially severe in Arctic areas, which are warming nearly four times faster than the global average.¹¹ According to the IPCC, climate change is already causing significant negative effects in the Arctic, and these changes are occurring at a “magnitude and pace unprecedented in recent history, and much faster than projected for other world regions”¹². Indigenous Peoples living in the Arctic are, therefore, potentially among the most vulnerable to the effects of climate change because they live in close interaction with nature in areas where the environment is changing most significantly.¹³

In Sápmi, the warming climate has already caused alterations in ecosystems and weather conditions that affect Sámi livelihoods, such as reindeer herding and fishing.¹⁴ It is also causing social and economic change; for example, the loss of sea ice will increase access to Arctic areas and natural resources. Together with the environmental change, these economic developments will have multiple implications for the ecosystems, human security and local livelihoods.¹⁵

Sámi culture has historically been very adaptive and able to adjust to harsh environmental conditions. However, the current environmental changes caused by climate change are so rapid that adaptation becomes difficult. The loss and fragmentation of lands necessary for traditional livelihoods, the preservation of Indigenous knowledge, spirituality and more are also challenging the adaptive capacity of Sámi culture.¹⁶



Reindeer herding in Vapsten Reindeer herding district. © Erik Nylander / WEI

¹¹ Mika Rantanen and others, “The Arctic has warmed nearly four times faster than the globe since 1979”, August 2022, Communications Earth & Environment, Issue 3, Volume 168, <https://doi.org/10.1038/s43247-022-00498-3>

¹² IPCC, AR6 WGII Impacts, Adaptation and Vulnerability: Cross Chapter Paper 6, 2022, p. 2321.

¹³ The Norwegian Human Rights Institution (NHRI), *Canary in the Coal Mine. Sámi Rights and Climate Change in Norway*, 2024, <https://www.nhri.no/en/2024/canary-in-the-coal-mine/>; Leena Hansen, *Ilmastomuutos ihmisoikeuskysymyksenä. Katsaus kansainväliseen ja arktiseen toimintaympäristöön sekä saamelaiden ja muiden arktisten alkuperäiskansojen erityisasemaan* [“Climate change as a human rights issue. A review of the international and Arctic operating environment and the special status of the Sámi and other Indigenous Peoples in the Arctic”], 2024 (In Finnish).

¹⁴ Saami Council, *Climate Change in Sápmi – an overview and a Path Forward*, 2023, <https://www.saamicouncil.net/documentarchive/sami-climate-report/>; Klemetti Näkkäljärvi and others (2024), *Ilmastomuutoksen vaikutukset Suomen saamelaiskulttuuriin. Selvitys Saamelaiden totuus- ja sovintokomissiolle* [“Impacts of climate change on the Sámi culture in Finland. Report to the Truth and Reconciliation Commission Concerning the Sámi People”], 2024 (In Finnish).

¹⁵ Saami Council, *Climate Change in Sápmi – an overview and a Path Forward*, 2023 (previously cited), pp. 61-62.

¹⁶ Saami Council, *Climate Change in Sápmi – an overview and a Path Forward*, 2023 (previously cited); Nicholas J.C. Tyler and others, “The Shrinking Resource Base of Pastoralism: Saami Reindeer Husbandry in a Climate Change”, February 2021, *Frontiers in Sustainable Food Systems*, Volume 4, 585685, <https://doi.org/10.3389/fsufs.2020.585685>

SÁMI REINDEER HERDING AND CLIMATE CHANGE

Reindeer herding is a traditional Sámi livelihood and an important carrier of Sámi languages, culture and knowledge. The impacts of climate change on reindeer herding have vast implications for Sámi society.¹⁷

In Sweden, reindeer herding is an exclusive right of the Sámi People. Sámi individuals need to be members of reindeer herding communities to exercise their right to reindeer herding and other land use rights such as hunting and fishing.¹⁸ In Finland, both Sámi and non-Sámi can practice reindeer husbandry¹⁹ and most reindeer herders are non-Sámi. However, traditional Sámi reindeer herding practices remain distinct from non-Sámi reindeer herding. In Norway, reindeer herding is an exclusive Sámi livelihood within the Sámi territory.

Reindeer herders have been making observations about climate change since the 1960s. Environmental and weather changes have accelerated since the late 1990s.²⁰ During the last three decades, the weather conditions have changed in all seasons, which has caused many difficulties for traditional reindeer herding.²¹ For example, in winter, snow often piles up into large snowdrifts and frequent temperatures around 0°C lead to ice layers in the snow. This leaves the reindeer unable to dig up their food.²² Due to industrial forestry, the tree lichen that works as emergency food is also often scarce. This results in reindeer starving or becoming dependent on supplementary feeding.

Given the scarcity of land available for grazing, supplementary reindeer feeding has become a key adaptation measure for Sámi reindeer herders. However, this increases the costs of reindeer husbandry as the fodder must be purchased. Supplementary feeding also changes the reindeer's natural behaviour; for example, reindeer may become tamer and more reluctant to move from feeding areas to traditional spring or summer pastures.²³ As traditional Sámi reindeer herding has been based on grazing on natural pastures, the increasing dependence on supplementary feeding distances the herders from traditional and experience-based knowledge.²⁴

Unpredictable weather conditions have also made reindeer herding more dangerous, and weather-related accidents are predicted to increase.²⁵ In many areas, the risk of avalanches has increased, and winter routes across lakes and rivers have become hazardous as the ice can suddenly break under a snowmobile.²⁶

The Sámi People are at the frontlines of the climate crisis. Well aware of the impacts of a warming climate on their culture and traditional livelihoods, Sámi have taken an active stance, including by highlighting the science-based 1.5 °C target and advocating for just and effective climate action.²⁷ Sámi representatives have also participated in UN climate negotiation state delegations and in the Local Communities and Indigenous Peoples Platform (LCIPP) working group established in 2015 at the Paris COP21.

¹⁷ Saami Council, *Climate Change in Sápmi – an overview and a Path Forward*, 2023 (previously cited); Klemetti Näkkäljärvi and others, *SAAMI – Saamelaisten sopeutumisen ilmastonmuutokseen -hankkeen tieteellinen loppuraportti*, 2020 [“The SAAMI – Adaptation of the Saami people to climate change research project”], Valtioneuvoston selvitys – ja tutkimustoiminnan julkaisusarja 2020:25, <https://core.ac.uk/reader/326751060> (in Finnish).

¹⁸ Sweden, Rennäringslag (1971:437) [“Reindeer Husbandry Act (1971:437)”] https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/rennaringslag-1971437_sfs-1971-437/ (in Swedish); Samisk informationcentrum, “Samebyn organiserar renskötelsen” [“The Sámi Reindeer Herding Community Organises Reindeer Herding”], <https://www.samer.se/1099> (accessed on 8 November 2024, in Swedish).

¹⁹ Finland, Poronhoitolaki (848/1990) [The Act on Reindeer Herding (848/1990)], <https://www.finlex.fi/fi/laki/ajantasa/1990/19900848> (in Finnish).

²⁰ Klemetti Näkkäljärvi and others, *SAAMI – Saamelaisten sopeutumisen ilmastonmuutokseen -hankkeen tieteellinen loppuraportti*, 2020 [“The SAAMI – Adaptation of the Saami people to climate change research project”] (previously cited).

²¹ Saami Council, *Climate Change in Sápmi – an overview and a Path Forward*, 2023 (previously cited), pp. 84-101.

²² Saami Council, *Climate Change in Sápmi – an overview and a Path Forward*, 2023, pp. 93-95.

²³ Tim Horstkotte and others, *Supplementary feeding in reindeer husbandry: Results from a workshop with reindeer herders and researchers from Norway, Sweden and Finland*, 2020, <https://umu.diva-portal.org/smash/get/diva2:1514960/FULLTEXT01.pdf> (accessed on 12 December 2024).

²⁴ Klemetti Näkkäljärvi and others, *SAAMI – Saamelaisten sopeutumisen ilmastonmuutokseen -hankkeen tieteellinen loppuraportti* [“The SAAMI – Adaptation of the Saami people to climate change research project”], 2020 (previously cited).

²⁵ Saami Council, *Climate Change in Sápmi – an overview and a Path Forward*, 2023 (previously cited) p. 104.

²⁶ Klemetti Näkkäljärvi and others, *SAAMI – Saamelaisten sopeutumisen ilmastonmuutokseen -hankkeen tieteellinen loppuraportti* [“The SAAMI – Adaptation of the Saami people to climate change research project”], 2020 (previously cited), pp. 288-290.

²⁷ Saami Parliamentary Council, Climate policy strategy of the Saami Parliamentary Council, adopted on 14 April 2010; Saami Council, Saami Council Position Paper, adopted on 11 October 2015.

A Saami Council Position Paper from 11 October 2015 states:

“The ongoing climate change in the Arctic causes significant changes in water, oceans, snow, ice and permafrost conditions, with cascading effects on biodiversity, ecosystems, economic and human living conditions in the Arctic with repercussions around the world. Substantial cuts in emissions of CO₂, methane and other greenhouse gases are necessary for any meaningful global climate change mitigation efforts. We call for reduction of the short-lived climate pollutants emitted within and beyond the borders of the Arctic States that have substantial impact on the Arctic health of humans, animals and the environment.”²⁸

A Nordic Sámi Youth Conference declaration in 2021 said that:

“We demand immediate action against the climate crisis regarding the issues raised in the IPCC report(s) [Special Report on 1.5 °C Global Warming (2018), Special Report on the Ocean and Cryosphere in a Changing Climate (2019) and IPCC WG1 AR6 (2021)]. We have talked about the consequences of climate change and the impacts our community has been facing for years. We are not in a position to reduce the impacts and we need to start integration for our culture, languages and livelihoods to survive. As the IPCC report(s) gives brutal facts about the climate crisis, we demand that governments take the report seriously and listen to the science. Science is on our side.”²⁹

For Sámi, climate issues are inextricably linked to securing the rights of Indigenous Peoples, particularly self-determination. Sámi positions on climate policy emphasize the importance of securing Indigenous Peoples’ full and effective participation, including by obtaining FPIC for adaptation and mitigation strategies that impact their traditional lands and culture.³⁰

3.3 ENERGY TRANSITION ADDING PRESSURE ON SÁMI CULTURE AND LIVELIHOODS

Many recent large-scale industrial developments in Sápmi, such as mining for critical minerals, wind power plants or wood-based bioenergy production, have been justified and presented by authorities and companies as being part of the transition away from fossil fuels and towards a low-carbon economy.³¹

For Sámi, such developments are devastating if they take place in areas that are used for reindeer herding or have other importance to Sámi livelihoods and culture. Areas used for industrial developments can’t be used for hunting, fishing, or as grazing lands, migration routes and reindeer calving grounds.³² Mines can also cause noise and lead to water and air pollution. Natural reindeer grazing areas have often been used by the same families or communities for generations. If a grazing area is lost, it is usually very difficult to find alternative grazing land, as areas are tightly regulated and are already in use by other reindeer herders or competing forms of land use.

²⁸ Saami Council, Position Paper, 11 October 2015 (previously cited).

²⁹ Sámi Youth’s declaration on climate change, 23 August 2021, <https://nuor.fi/fi/news-article/sami-youth-demand-actions-to-mitigate-climate-change/> (accessed on 25 September 2024).

³⁰ For example, Saami Council, *Climate Change in Sápmi – an overview and a Path Forward* (previously cited); Saami Parliamentary Council, *Climate policy strategy of the Saami Parliamentary Council*, adopted on 14 April 2010; Saami Council, Position Paper, 11 October 2015.

³¹ Åsa Össbo, “Back to Square One. Green Sacrifice Zones in Sápmi and Swedish Policy Responses to Energy Emergencies”, March 2023, *Arctic Review on Law and Politics*, Volume 14, pp. 112–134, <http://dx.doi.org/10.23865/arctic.v14.5082>; Dorothee Cambou, “Uncovering Injustices in the Green Transition: Sámi Rights in the Development of Wind Energy in Sweden”, December 2020, *Arctic Review on Law and Politics*, Volume 11, <https://doi.org/10.23865/arctic.v11.2293>

³² Tim Horstkotte and others, *Pastures under pressure*, in Tim Horstkotte and others (editors), *Reindeer Husbandry and Global Environmental Change*, 2022, <https://doi.org/10.4324/9781003118565-7>, pp. 76-98; Carl Österlin and Kaisa Raitio, “Fragmented Landscapes and Planscapes - The Double Pressure of Increasing Natural Resource Exploitation on Indigenous Sámi Lands in Northern Sweden”, August 2020, *Resources* 2020, Volume 9, <https://doi.org/10.3390/resources9090104>

Such pressures on land use are increasing in Sápmi as states and companies boost their investments regarding the production of renewable energy and critical raw materials required in the energy transition.³³ The policy push is particularly strong on mining and wind energy.³⁴

In Sweden, nine out of 12 active metal mines are located in the Sámi reindeer herding area. Exploration for new mining sites peaked between 2000 and 2013, and in 2019, there were 361 valid exploration permits within the reindeer herding area.³⁵ The accumulated area designed for mining (including exploration permits, current and closed mines) on traditional Sámi territories in Sweden grew from about 10,000 hectares to 25,000 hectares between 2000 and 2017. The number of mining concessions has also increased significantly.³⁶ In Sweden's four northernmost counties, the number of wind turbines increased from 48 to 1,577 between 2003 and 2019. In 2020, permission was given for 2,155 turbines, and in 2022, another 600 were under evaluation.³⁷

Norway has 17 active mines in the reindeer herding area and 25 wind power development sites with over 550 turbines.³⁸ Wind power development has been particularly rapid: in 2002, there were just two site developments with 30 turbines in Norway's reindeer herding area.³⁹

In Finland, there are currently no wind farms or large-scale mineral mining in Sámi homeland,⁴⁰ but some mining companies have made reservation notifications (the first step in the process of applying for a mineral exploration permit) in the area.⁴¹ There is also growing interest in wind power development in northern Finland, including in Sámi homeland.⁴²

Recent national and EU-level strategies and policies are likely to increase the development of renewable energy production and mining for minerals critical to the energy transition.

As EU members, Sweden and Finland are committed to reducing greenhouse gas emissions by 55% by 2030, as stipulated in the EU's new climate law and the European Green Deal. The revised Renewable Energy Directive, adopted in 2023, sets the EU's binding renewable energy target for 2030 to a minimum of 42,5%.⁴³ The European Critical Raw Materials Act (CRMA), adopted in May 2024, aims to increase the EU's own sourcing of critical raw materials from today's 3% to 10% of global metal production by 2030.⁴⁴ CRMA allows the EU Commission and its member states to highlight projects as strategic projects, thereby accelerating permit processes and providing funding. The CRMA, however, does not require EU member states or project promoters to respect Indigenous Peoples' right to give or withhold their FPIC for projects which will impact their rights. Where rights are breached, the CRMA neither requires that project promoters must provide remedies to those affected in line with their international obligations.⁴⁵

³³ Åsa Össbo, "Back to Square One. Green Sacrifice Zones in Sápmi and Swedish Policy Responses to Energy Emergencies", March 2023, Arctic Review on Law and Politics, Volume 14, <http://dx.doi.org/10.23865/arctic.v14.5082>, pp. 112-134; Dorothee Cambou, "Uncovering Injustices in the Green Transition: Sámi Rights in the Development of Wind Energy in Sweden", December 2020, Arctic Review on Law and Politics, Volume 11, <https://doi.org/10.23865/arctic.v11.2293>

³⁴ Carl Österlin & Kaisa Raitio, "Fragmented Landscapes and Planscapes - The Double Pressure of Increasing Natural Resource Exploitation on Indigenous Sámi Lands in Northern Sweden" (previously cited).

³⁵ Tim Horstkotte and others, "Pastures under pressure", in *Reindeer Husbandry and Global Environmental Change*, 2022 (previously cited), pp. 79-80.

³⁶ Carl Österlin and Kaisa Raitio, "Fragmented Landscapes and Planscapes - The Double Pressure of Increasing Natural Resource Exploitation on Indigenous Sámi Lands in Northern Sweden" (previously cited).

³⁷ Tim Horstkotte and others, *Pastures under pressure* (previously cited), p. 79.

³⁸ Tim Horstkotte and others, *Pastures under pressure* (previously cited), p. 79.

³⁹ Tim Horstkotte and others, *Pastures under pressure* (previously cited), p. 79.

⁴⁰ The Sámi homeland (*Saamelaiusten kotiseutualue* in Finnish) is the northernmost part of Finland. This area is defined in and protected by the Finnish constitution to be autonomous on issues relating to Sámi culture and language.

⁴¹ Sámi Parliament of Finland, "Saamelaiskäräjät vastustaa Inarin ja Sodankylän alueen varauspäätöksiä" ["Sámi Parliament opposes the mine reservations in Inari and Sodankylä"], 22 October 2021, <https://www.samediggi.fi/2021/11/22/saamelaiskarajat-vastustaa-inarin-ja-sodankylan-alueen-varauspaatoksia> (in Finnish); Sámi Parliament of Finland, "Saamelaiskäräjät valitti Enontekiön Hietakeron varauspäätöksestä" ["The Sámi Parliament appealed against the reservation decision of Hietakeron in Enontekiö"], 4 July 2020, <https://www.samediggi.fi/2020/06/04/saamelaiskarajat-valitti-enontekion-hietakeron-varauspaatoksesta> (in Finnish).

⁴² Regional Council of Lapland, FCG, *Lapin aurinko- ja tuulivoimaselvitys 2023-2024* ["Survey on wind and solar power potential in Lapland region"], 23 April 2024, https://www.lapinliitto.fi/wp-content/uploads/2024/03/Lapin-tuulivoimaselvitys_FCG_032024.pdf (in Finnish).

⁴³ European Commission (EC), *European Green Deal: EU agrees stronger legislation to accelerate the rollout of renewable energy*, 30 March 2023, https://ec.europa.eu/commission/presscorner/detail/en/IP_23_2061

⁴⁴ Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401252

⁴⁵ See Amnesty International, Feedback, 30 June 2023, F3429222, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13597-European-Critical-Raw-Materials-Act/F3429222_en

Sweden's climate politics are mainly guided by the EU's climate legislation, Fit for 55, and the national climate goal is to be carbon neutral by 2045.⁴⁶ The climate goal applies only to domestic consumption.⁴⁷ According to the Swedish government, the most important measure to decrease greenhouse gas emissions and reach the climate goal is expanding on nuclear energy. Increasing the use of wind power, including at sea, is also considered an important measure.⁴⁸ In 2024, the Swedish Environmental Protection Agency assessed that Sweden would fail to meet its national climate goals.⁴⁹

Finland's legally binding climate policy targets reducing its greenhouse gas emissions by 60% by 2030 and being carbon neutral by 2035⁵⁰, will require a remarkable level of renewable energy production development. As mentioned, there are currently no plans for wind power projects in Sámi homeland in Finland, but the area has been included in regional assessments examining the potential for wind and solar power production.⁵¹ The National Minerals Strategy of Finland has objectives to develop the Finnish mineral sector and production of critical raw materials.⁵²

Norway is not an EU member but belongs to the European Economic Area (EEA).⁵³ Through a climate agreement with the EU,⁵⁴ Norway has committed to cooperate on reducing emissions, including through emissions trading. Norway's goal is to reduce greenhouse gas emissions by 50-55% by 2030 and 90-95% by 2050 compared to 1990 levels, according to the Climate Change Act.⁵⁵ By 2023, emissions had been reduced by 9,1%.⁵⁶ Norway's Climate Change Act does not address emissions beyond Norwegian territories, despite oil and gas being its most important export commodities. Norway's internal energy supply mainly consists of hydropower, wind power and thermal power. Hydropower accounts for around 88% of Norway's electricity supply, but the country has strong wind resources, and onshore wind is an increasing share of wind energy (10% in 2022).⁵⁷

There is some uncertainty regarding how much wind power production can increase, partly because onshore wind is seen as controversial due to its impact on nature and local communities.⁵⁸ The government has nevertheless prioritized processing wind power plans in Sámi areas, such as in Finnmark county. In September 2024, the Norwegian Water Resources and Energy Directorate (NVE) sent 11 plans for wind farms and four plans for new power lines in Finnmark for public hearing.⁵⁹

DOUBLE BURDEN ON THE SÁMI PEOPLE

It is fair to say that climate change currently threatens the culture and existence of the Sámi Indigenous People in two ways: Firstly, through direct environmental impacts such as changing weather conditions and ecosystems, and secondly, through the increasing number of energy projects and resource extraction in Sápmi in the name of "green" development and the "clean" energy transition.

⁴⁶ Government Offices of Sweden, Miljö och klimat ["Environment and Climate"], <https://www.regeringen.se/regeringens-politik/miljo-och-klimat/> (accessed on 5 November 2024).

⁴⁷ The Swedish Environmental Protection Agency, Sveriges klimatmål och klimatpolitiska ramverk ["Sweden's Climate Goal and Climate Policy Framework"], <https://www.naturvardsverket.se/amnesomraden/klimatomställningen/sveriges-klimatarbete/sveriges-klimatmal-och-klimatpolitiska-ramverk/> (in Swedish, accessed on 3 December 2024).

⁴⁸ Government Offices of Sweden, Environment and Climate (previously cited).

⁴⁹ The Swedish Environmental Protection Agency, När Sverige de nationella klimatmålen? ["Will Sweden Meet the National Climate Goals?"], <https://www.naturvardsverket.se/amnesomraden/klimatomställningen/sveriges-klimatarbete/nar-sverige-de-nationella-klimatmalen/> (in Swedish, accessed on 3 December 2024).

⁵⁰ Finland's Climate Change Act, 423/2022, English translation: finlex.fi/en/laki/kaannokset/2015/en20150609_20220423.pdf

⁵¹ Regional Council of Lapland, FCG, Lapin aurinko - ja tuulivoimaselvitys 2023-2024 ["Survey on wind and solar power potential in Lapland region"], 23 April 2024, https://www.lapinliitto.fi/wp-content/uploads/2024/03/Lapin-tuulivoimaselvitys_FCG_032024.pdf (in Finnish, accessed on 10 June 2024).

⁵² Government of Finland, National Minerals Strategy of Finland, Publications of the Finnish Government 2024:65, 19 December 2024 (in Finnish).

⁵³ The European Economic Area Agreement, 94/1/ECSC, EC.

⁵⁴ Norway-EU Green Alliance, 24 April 2023, [norway-eu-green-alliance.pdf](https://www.norway-eu-green-alliance.pdf) (accessed on 12 December 2024).

⁵⁵ Norway, Act relating to Norway's climate targets (Climate Change Act) [Lov om klimamål (klimaloven)] 2018, <https://lovdata.no/dokument/NL/lov/2017-06-16-60> (in Norwegian); Act relating to Norway's climate targets (Climate Change Act) - Lovdata, <https://lovdata.no/dokument/NLE/lov/2017-06-16-60> (unofficial English version).

⁵⁶ Statistics Norway, Emissions to Air, 6 November 2024, <https://www.ssb.no/en/natur-og-miljo/forurensning-og-klima/statistikk/utslipp-til-luft> (in Norwegian, accessed on 1 December 2024).

⁵⁷ Norwegian Ministry of Energy, Energy Facts Norway, Electricity production - Norwegian Energy, <https://energifaktanorge.no/en/norsk-energiforsyning/kraftproduksjon/> (accessed on 1 December 2024).

⁵⁸ Norway, *Official Norwegian Report NOU 2023*, Mer av alt – raskere – Energikommisjonens rapport ["More of everything faster – report from the Energy commission"], <https://www.regjeringen.no/no/dokumenter/nou-2023-3/id2961311/>, p. 16, (in Norwegian).

⁵⁹ The Norwegian Water Resources and Energy Directorate (NVE), Cases for consultation Fall 2024, 4 September 2024, <https://www.nve.no/konsesjon/konsesjonsprosesser-i-finnmark/saker-paa-hoering-hoesten-2024/> (accessed on 10 October 2024).

As stated in the Saami Council position paper adopted in October 2015, not only the warming climate but also the mitigation and adaptation measures proposed to mitigate the impact of climate change, such as the production of renewable energy, have significant consequences on Sámi lives and culture:

“Many of the ‘green’ - energy projects as hydropower dams, windmill parks and development of green-technology are all demanding big areas, often on indigenous peoples’ land. Therefore it is of outmost importance to ensure special safeguards for indigenous peoples and to promote the respect of their rights to Free, Prior and Informed Consent, with the right to say ‘No’, in all decisions that will affect our lives and generations to come, as spelled out in the UN Declaration Rights of Indigenous Peoples (UNDRIP) adopted in 2007.”⁶⁰

Also, in this research project, four interviewed representatives from the Sámi People told the researchers about their concerns that they are unjustly being blamed for opposing “green” initiatives and how they feel bypassed and ignored in decision-making on climate action.⁶¹ As Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder told Amnesty International:

“As consumption and exploitation increase, it is almost as if scars across [Sámi] generations are growing and expanding, leaving even deeper traces.”⁶²

A growing number of people, including human rights defenders, many of them Sámi, now use the term “green colonialism” to criticize climate mitigation measures that exploit their land or natural resources and are carried out without the consent of Sámi communities.⁶³

Planned industrial developments and ongoing land use disputes are also causing severe psychological pressure on local Sámi communities.⁶⁴ Conflicts over land use between Sámi rights holders and other interests are triggering hate speech in social media and other expressions of racism towards Sámi.⁶⁵ Combined with the environmental impacts of climate change, this is negatively affecting the Sámi People’s health and well-being, including increased levels of stress, anxiety, worrying and depression.⁶⁶ The stress and anxiety caused by land use conflicts and uncertain future prospects were also brought up in the interviews conducted for this report.⁶⁷

While the gendered impacts of the pressures towards Sámi culture and livelihoods were not specifically addressed in the interviews of this study, previous research indicates that there are differences in how the stress caused by the environmental change and land use pressures affect Sámi men and women. The Sámi People are overrepresented in Nordic suicide statistics, and particularly, Sámi men die more often by suicide than the majority populations in Nordic countries.⁶⁸ The suicides among Sámi men are understood to be linked to the difficulties of maintaining Sámi identities when the culture and reindeer herding livelihood are under pressure.⁶⁹ Traditionally, both men and women have had a central role in the family-based structure of Sámi reindeer herding, but the role and position of women in reindeer herding have been changing over time. Today, women more often have occupations outside of reindeer herding, they own fewer reindeer than men, and their role and tasks in reindeer herding have become more constrained and less visible compared

⁶⁰ Saami Council, Position Paper, 11 October 2015 (previously cited).

⁶¹ Interviews by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024; Per-Henning Utsi, reindeer herder in Vaapsten reindeer herding community, 25 June 2024; “Inga Marja”, a young reindeer herder whose name has been changed to protect their identity, 4 July 2024; and Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024.

⁶² Interview by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024.

⁶³ The Barents Observer, “Sámi representatives in COP26 raise concerns over ‘green colonialism’”, 14 November 2021, <https://thebarentsobserver.com/en/indigenous-peoples/2021/11/sami-representatives-cop26-raise-concerns-over-green-colonialism> (accessed on 26 September 2024); Eva-Marial Fjellheim, “Green colonialism, wind energy and climate justice in Sápmi”, 1 October 2022, <https://debatesindigenas.org/en/2022/10/01/green-colonialism-wind-energy-and-climate-justice-in-sapmi/> (accessed on 26 September 2024).

⁶⁴ Hanna Blåhed & Miguel San Sebastián, “Health impact assessment of a mining project in Swedish Sápmi: lessons learned”, *Impact Assessment and Project Appraisal* 40:1(2021), <https://doi.org/10.1080/14615517.2021.1981759>, pp. 38-45; Carl Österlin & Kaisa Raitio, 2020 (previously cited).

⁶⁵ Analyse & Tal, Amnesty International Norway, Negative holdninger og stereotypier om samer på Facebook [“Negative attitudes and stereotypes about Sámi people on Facebook”], 2023, <https://www.ogtal.dk/publikationer/negative-holdninger-og-stereotypier-om-samer-paa-facebook> (in Norwegian).

⁶⁶ Jouni J. K. Jaakkola and others, “The Holistic Effects of Climate Change on the Culture, Well-Being, and Health of the Saami, the Only Indigenous People in the European Union”, *Current Environmental Health Reports*, December 2018, 5(4), pp. 401-404; Kelly Morris, “Loss of land could threaten health of Sámi people”, *The Lancet*, Volume 374, Issue 9683, 2009, pp. 15-16.

⁶⁷ See Chapters 5.2 “Case: Fosen Wind Power Plant”, 6.2 “Case: Planned Nickel Mine in Rönnbäck” and 7.2 “Case: Mineral exploration in Käsivarsi”.

⁶⁸ Stoor, J.P., Suicide among Sámi Cultural meanings of suicide and interventions for suicide prevention in Nordic parts of Sápmi, 2020, <https://munin.uit.no/handle/10037/19912> (accessed on 9 December 2024); and Stoor, J.P. and others, Suicide among reindeer herding Sámi in Sweden, 1961–2017, *International Journal of Circumpolar Health*, Vol 79, 1754085, 2020, <https://www.tandfonline.com/doi/full/10.1080/22423982.2020.1754085> (accessed on 9 December 2024).

⁶⁹ Stoor, J.P. and others, Suicide among reindeer herding Sámi in Sweden, 1961–2017 (previously cited).

to what has traditionally been the case.⁷⁰ Studies have shown that Sámi women are significantly more exposed to psychological, physical and sexual violence than Sámi men and non-Sámi women. LGBTI Sámi experience more violence than any of the groups above.⁷¹

International human rights law on standards for safeguarding Indigenous Peoples' rights has developed significantly in recent decades. It provides guidance to states, including in the Nordic countries, on how to protect the Sámi People's right to maintain and develop their culture. Implementing human rights law and standards at the national level is a prerequisite for ensuring that climate policy and action, including during the current energy transition, take place in a human rights-compliant manner.

While rapid phasing out of fossil fuels is necessary, this should not be allowed to happen at the expense of human rights, such as the Sámi People's right to maintain their culture and self-determination as an Indigenous People.

⁷⁰ Meløy, Marit, Ekstern utredning Endring i kjønnsroller og familiestruktur som følge av statlige tiltak i reindrifta ["Changes in gender roles and family structure as a result of government measures in reindeer husbandry"], External report to the Norwegian truth and reconciliation commission, 2022, <https://www.stortinget.no/globalassets/pdf/sannhets-og-forsoningskommisjonen/endringer-i-kjonnsroller-og-familiestrukturer.pdf> (in Norwegian, accessed on 9 December 2024); Paliskuntain yhdistys, Poronomistajat ["Statistics of reindeer ownership by gender in Finland 1990-2018"]. Statistics including both Sámi and non-Sámi reindeer owners in Finland, <https://paliskunnat.fi/py/materiaalit/tilastot/poronomistajat/> (in Finnish, accessed on 3 December 2024); and The Sámi Parliament of Sweden, Rennaringen i Sverige, ["Reindeer Husbandry in Sweden"] <https://www.sametinget.se/rennaringen-sverige> (in Swedish, accessed on 2 January 2025). See also Sámiid Riikasearvi (SSR), Rennaringslagen och jämställdhet ["Reindeer Husbandry and Gender Equality"], 2012, https://www.sapmi.se/wp-content/uploads/2016/08/Ren_o_Jamn_2012_webb.pdf (in Swedish, accessed on 8 December 2024).

⁷¹ Lávvuo – Forskning och utbildning för samisk hälsa Institutionen för Epidemiologi och Global hälsa, Ubmejen Universitiähta, Våld mot samiska kvinnor ["Violence Against Sámi Women"], 2024, <https://www.sametinget.se/188828> (in Swedish, accessed on 9 December 2024); Eriksen AM and others, Emotional, physical and sexual violence among Sami and non-Sami populations in Norway: The SAMINOR 2 questionnaire study, Scand J Public Health, August 2015, <https://pubmed.ncbi.nlm.nih.gov/25969164/>

4. FREE, PRIOR AND INFORMED CONSENT IN INTERNATIONAL HUMAN RIGHTS LAW





<h2>F</h2> <p>Free</p>  <p>Indigenous Peoples' consent must be given freely, without any coercion, such as threats, manipulation or criminalization.</p> <p>The consultation process should be based on trust, good faith, and an objective of obtaining consent.</p>	<h2>P</h2> <p>Prior</p>  <p>The consultation process should start as early as possible, such as at the conceptualization and design phases of a proposal. States should provide the time necessary for Indigenous Peoples to make an informed decision about a proposed project or measure according to their own decision-making processes.</p>	<h2>I</h2> <p>Informed</p>  <p>The information available to Indigenous representative institutions has to be sufficient, objective, accurate and clear for Indigenous Peoples to understand all the potential harm and impacts that can result from the proposed project, including the compensation or benefit-sharing schemes involved, and their rights in international and domestic law.</p>	<h2>C</h2> <p>Consent</p>  <p>When engaging in consultation processes, Indigenous Peoples have the right to give or withhold their consent. Forms of expressing consent may for instance include treaties, agreements or contracts between state authorities and Indigenous Peoples. Indigenous Peoples should always be able to influence the outcome of decision-making processes affecting them. When the potential harm is significant, FPIC cannot be limited by the state and Indigenous Peoples' consent is required to proceed with a measure.</p>
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Illustration of the principle of Free, Prior and Informed Consent (FPIC). © Amnesty International

JUST TRANSITION OR 'GREEN COLONIALISM'?

HOW MINERAL EXTRACTION AND NEW ENERGY PROJECTS WITHOUT FREE, PRIOR AND INFORMED CONSENT ARE THREATENING INDIGENOUS SAMI LIVELIHOODS AND CULTURE IN SWEDEN, NORWAY AND FINLAND

4.1 FREE, PRIOR AND INFORMED CONSENT AS A RIGHT FOR INDIGENOUS PEOPLES

4.1.1 INTRODUCTION: THE NATURE AND PURPOSE OF FPIC

The right to free, prior and informed consent (FPIC) is a right of Indigenous Peoples that requires states to cooperate and consult with them on decisions that may impact their human rights, in order to obtain their consent.⁷² FPIC appears most comprehensively in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).⁷³

The FPIC process involves identifying possible harms to Indigenous Peoples' rights and potential mitigation measures. It also seeks to restore their control over their lands and resources,⁷⁴ their cultural identity⁷⁵ and to redress any power imbalances between Indigenous Peoples and states.⁷⁶ FPIC interconnects with the right to be consulted; the right to participate; and the right to lands, territories and resources. Therefore, if one of these components is missing, FPIC cannot be guaranteed.⁷⁷

However, FPIC is not only about the process of protecting other rights. It is in itself a substantive right grounded in Indigenous Peoples' rights to self-determination of political, social, economic and cultural priorities⁷⁸ and to be free from racial discrimination. These are guaranteed by the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).⁷⁹

4.1.2 UNDRIP: THE MAIN INSTRUMENT FOR FPIC IN INTERNATIONAL LAW

FPIC has been established through a range of international and regional documents, mechanisms, and policies. However, UNDRIP is the most comprehensive international legal document on recognizing, protecting and promoting Indigenous rights.⁸⁰ Rather than creating new rights, its provisions confirm and clarify Indigenous Peoples' human rights already established in the interpretation and case law of existing standards. UNDRIP provisions also build on the earlier ILO Convention 169,⁸¹ which requires consultation and consent. A total of six UNDRIP articles refer to FPIC.⁸²

For instance, Article 19 states that states shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions, in order to obtain FPIC before adopting and implementing legislative or administrative measures that may affect them.

Article 32 is relevant in the context of natural resource development, in which the rights of Indigenous Peoples are particularly affected.⁸³ Article 32.2 establishes that states shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain FPIC prior to approving any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.⁸⁴

⁷² UNDRIP, Article 19; see Human Rights Council (UNHRC), *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples*, 10 August 2018, UN Doc. A/HRC/39/62.

⁷³ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), paras 1-3 and 5.

⁷⁴ See UNDRIP, Article 28.

⁷⁵ See UNDRIP, Article 11.

⁷⁶ See UNDRIP, Articles 18 and 19.

⁷⁷ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 14.

⁷⁸ See UNDRIP, Articles 3, 4 and 5.

⁷⁹ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), paras 3, 6, 9 and 14.

⁸⁰ UNGA, Resolution adopted by the General Assembly on 13 September 2007, UNDRIP, UN Doc. A/RES/61/295, 2 October 2007.

⁸¹ Indigenous and Tribal Peoples Convention, 1989 (No. 169).

⁸² UNDRIP, Articles 10, 11, 19, 28, 29 and 32.

⁸³ See UNHRC, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples*, 1 July 2013, UN Doc. A/HRC/24/41; UNHRC, *Report of the Expert Mechanism on the Rights of Indigenous Peoples on its fifth session* (Geneva, 9-13 July 2012), 17 August 2012, UN Doc. A/HRC/21/52; and UNHRC, *Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries*, 16 August 2012, UN Doc. A/HRC/21/55.

⁸⁴ UNDRIP, Article 32.2.

Due to the extent of international and national recognition and practices, several international legal experts consider core rights under UNDRIP to be protected by customary international law, such as the right to self-determination; the right to autonomy and self-government, including the right to free, prior and informed consent; the right to traditional lands and natural resources; and the right to reparation and redress for the wrongs suffered.⁸⁵

At the 2014 UN World Conference on Indigenous Peoples, UN member states unanimously reaffirmed their support for UNDRIP and its outcome document specifically calls for FPIC implementation globally.⁸⁶

4.1.3 OTHER INTERNATIONAL AND REGIONAL INSTRUMENTS AND POLICIES

Norway, Sweden and Finland are all state parties to the ICERD, ICCPR and ICESCR. These instruments, which are interpreted by their respective monitoring committees to be in harmony with current developments in international law,⁸⁷ oblige state parties to respect Indigenous Peoples' rights, such as to FPIC.⁸⁸

For instance, the Committee for the Elimination of Racial Discrimination (CERD) calls on states to “[e]nsure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent”.⁸⁹ FPIC rights have also been established in decisions of the UN Human Rights Committee (HRC).⁹⁰ The Committee on Economic, Social and Cultural Rights (CESCR) requires that “[s]tate parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights”.⁹¹ CESCR has further clarified that “[c]ooperation mechanisms for climate change mitigation and adaptation measures shall provide and implement a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment and to guarantee access to information and meaningful consultation with those affected by such projects. They shall also respect the free, prior and informed consent of Indigenous Peoples.”⁹²

Article 8(j) of the Convention on Biological Diversity, which refers to access to traditional knowledge being subject to the approval and involvement of its holders, has been consistently interpreted as “prior and informed consent”, as mentioned in the Akwé: Kon Voluntary Guidelines.⁹³

Furthermore, the Inter-American Court of Human Rights (IACtHR)⁹⁴ and the African Commission on Human and Peoples' Rights (ACHPR)⁹⁵ have each established FPIC, and several UN agency policies also mention FPIC.⁹⁶

⁸⁵ International Law Association, *Rights of Indigenous Peoples - Report of the Hague Conference* (2010), pp. 51-52.

⁸⁶ UNGA, Resolution adopted by the General Assembly on 22 September 2014. Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples. UN Doc A/RES/69/2.

⁸⁷ See, for instance, *Judge v. Canada* (CCPR/C/78/D/829/1998), para. 10.7.

⁸⁸ CERD, General Comment 23: Indigenous Peoples, 18 August 1997, paras 4-5; CESCR, General Comment 21: Right of everyone to take part in cultural life, UN Doc. E/C.12/GC/21, 21 December 2009, paras 36-37; HRC; General Comment 23 (Article 27), UN Doc. CCPR/C/21/Rev.1/Add.5, 26 April 1994, para. 7.

⁸⁹ CERD, General Recommendation 23 (previously cited), para. 4(d).

⁹⁰ See, for instance, HRC, Views, *Ángela Poma Poma v. Peru*, adopted on 24 April 2009, UN Doc. CCPR/C/95/D/1457/2006, para. 7.6.

⁹¹ CESCR, General Comment 21 (previously cited), para. 37.

⁹² CESCR, General Comment 26 (2022) on land and economic, social and cultural rights, UN Doc. E/C.12/GC/26, 24 January 2023, para. 58. See also paras 16 and 21.

⁹³ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 52.

⁹⁴ Inter-American Court of Human Rights (IACtHR), *Saramaka People v. Suriname* (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 172, adopted on 28 November 2007, paras 133-134 and 137, corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

⁹⁵ African Commission on Human and Peoples' Rights (ACHPR), *Endorois Welfare Council v. Kenya*, Case 276/2003, 4 February 2010, para. 291.

⁹⁶ See UN Development Programme (UNDP), UNDP and Indigenous Peoples: A Policy of Engagement, http://www.undp.org/content/undp/en/home/librarypage/environment-energy/local_development/undp-and-indigenous-peoples-a-policy-of-engagement/, 2015; UN Development Group, *Guidelines on Indigenous Peoples' Issues*, <http://www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf>, 2008; and UN Food and Agriculture Organization, Policy on Indigenous and Tribal peoples, <https://www.fao.org/4/i1857e/i1857e00.htm>, 2010.

4.1.4 WHEN IS FPIC REQUIRED AND WHO SHOULD BE CONSULTED?

The obligation to consult to obtain FPIC applies whenever a state decision may affect Indigenous Peoples in ways not felt by others in society.⁹⁷ The state's obligation to consult Indigenous Peoples should be a qualitative process of dialogue and negotiation, with seeking and reaching consent as the objective.⁹⁸

The state's duty to consult with Indigenous Peoples' representative institutions should be operationalized by the state engaging directly with the Indigenous People(s) concerned. Indigenous Peoples should have the freedom to represent themselves as required under their own traditional laws, customs and protocols, and to guide and direct the consultation process, including how it is conducted and its course.⁹⁹

Failure to engage with Indigenous Peoples' legitimate representatives ("through their representative institutions") and according to their own procedures can undermine any consent obtained.¹⁰⁰ At the same time, states should ensure that institutions claiming to represent Indigenous Peoples have the mandate to do so. Further, states may need to assist with rebuilding Indigenous Peoples' capacity to adequately represent themselves in contexts where colonialism has undermined their previous decision-making institutions.¹⁰¹

4.1.5 SCOPE OF FPIC OBLIGATIONS

Indigenous Peoples' consent to a proposal must be *free*. This means that no direct or indirect factors should disturb their free will, for example, through physical or verbal coercion (including threats of withholding services, jobs, and so on), manipulation of Indigenous leadership, including divide-and-rule tactics, or criminalization of Indigenous leaders and activists. The consultation process should also not negatively affect Indigenous Peoples' access to their other rights or existing policies or services.¹⁰² Instead, the relationship between the parties must be based on trust, good faith and an objective to obtain consent.¹⁰³

Prior means that the consultation process should start as early as possible, such as at the conceptualization and design phases of a proposal.¹⁰⁴ States should provide the time necessary for Indigenous Peoples to make an informed decision about a proposed project or measure according to their own decision-making processes.¹⁰⁵

Informed means that the information made available to Indigenous representative institutions has to be sufficient, objective, accurate and clear for Indigenous Peoples to understand all the potential harm and impacts that can result from the proposed project, including the compensation or benefit-sharing schemes involved and their rights in international and domestic law.¹⁰⁶ States must also ensure that Indigenous Peoples have the resources and capacity to understand all the information they receive and take part in consultations and social, environmental and human rights impact assessments.¹⁰⁷

Consent: When engaging in consultation processes, Indigenous Peoples have the right to give or withhold their consent. Forms of expressing consent may, for instance, include treaties, agreements or contracts between state authorities and Indigenous Peoples.¹⁰⁸ If consent has been given, the implementation should be monitored and evaluated regularly, with the effective participation of the affected Indigenous People.

⁹⁷ UNHRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, UN Doc. A/HRC/12/34, 15 July 2009, para. 43. See UNDRIP, Articles 10, 11, 19, 29 and 32.

⁹⁸ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 15.

⁹⁹ Both states and Indigenous Peoples have a responsibility to ensure the representation of underrepresented groups within affected Peoples. See UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), paras 20-23, Annex para. 4.

¹⁰⁰ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 23. See UNDRIP, Articles 18, 19 and 32.

¹⁰¹ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 23.

¹⁰² UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 20.

¹⁰³ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 20, see also para. 22.

¹⁰⁴ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 21; IACtHR, *Saramaka People v. Suriname* (previously cited).

¹⁰⁵ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 21.

¹⁰⁶ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 22.

¹⁰⁷ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 22.

¹⁰⁸ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 43.

Where there are significant changes in the project, consent will need to be reviewed, and where appropriate, a fresh FPIC process will be undertaken.¹⁰⁹

Indigenous Peoples should always be able to influence the outcome of decision-making processes affecting them. This means that it is not sufficient for states to organize consultations where information is provided, and Indigenous representatives can have their views heard without a genuine commitment to address their concerns.¹¹⁰ Importantly, the participation of Indigenous People's representative institutions in consultations should not be presented as support for state decisions in cases when consent has not been given.¹¹¹

4.1.6 RESPECTING INDIGENOUS PEOPLES' WITHHOLDING OF CONSENT

There are many reasons why Indigenous Peoples may decide not to consent to a proposed project. When the potential harm is significant, FPIC cannot be limited by the state and Indigenous Peoples' consent is *required* to proceed with a measure.¹¹² The greater the human rights harm, the more the requirement to respect the Indigenous Peoples' decision hardens into an absolute obligation (often described as a "sliding scale" approach).¹¹³ This is because the planned measure or project would otherwise risk disproportionately limiting the rights protected by international law.¹¹⁴ The evaluation of potential human rights harm "requires consideration of the nature, scale, duration and long-term impact of the action, such as damage to community lands or harm to the community's cultural integrity".¹¹⁵ Natural resource extraction projects generally require consent due to their inherent social and cultural impact on Indigenous Peoples' lives.¹¹⁶

Any decision to limit Indigenous Peoples' rights may only take place if it meets the strict conditions of UNDRIP Article 46.2 and complies with standards of necessity and proportionality with regard to a valid public purpose.¹¹⁷ The UN Special Rapporteur on the rights of Indigenous Peoples has held that "a valid public purpose is not found in mere commercial interests or revenue-raising objectives, and certainly not when benefits from the extractive activities are primarily for private gain."¹¹⁸ Limitations must also be subject to necessary mitigation measures, including necessary safeguards, administrative or judicial review, compensation and benefit-sharing.¹¹⁹ In the event of inadequate consultation, the state is expected to provide redress, such as to act to correct the process or to reject the proposed project.¹²⁰

¹⁰⁹ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), paras 43-45.

¹¹⁰ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 15, see also paras 16-18.

¹¹¹ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited).

¹¹² UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 35, see also paras 36-41. The IACtHR applies the principles "major impact" and "profound impact": IACtHR, *Saramaka People v. Suriname* (previously cited), paras 134 and 137. See also its interpretation judgment in the same case; IACtHR, *Saramaka People v. Suriname*, Series C No. 185, Judgment of 12 August 2008, https://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf

¹¹³ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 35.

¹¹⁴ See UNDRIP, Article 46; James Anaya, Presentation: "El rol de los Ombudsman en América Latina: El derecho a la consulta previa a los pueblos indígenas" ["The role of the Ombudsman in Latin America: The right to prior consultation of indigenous peoples"], Lima, Peru, 25 April 2013, <https://unsr.jamesanaya.org/?p=802> (in Spanish, accessed on 10 November 2024).

¹¹⁵ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 35.

¹¹⁶ UNHRC, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Extractive Industries and Indigenous Peoples* (previously cited), paras 29-31.

¹¹⁷ UNHRC, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples* (previously cited), paras 32-36.

¹¹⁸ UNHRC, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples* (previously cited), para. 35.

¹¹⁹ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), paras 40-41. See also IACtHR, *Saramaka People v. Suriname* (previously cited) and ACHPR, *Endorois Welfare Council v. Kenya*, (previously cited) 276/2003, Decision on 2 February 2010, <https://www.escri-net.org/caselaw/2010/centre-minority-rights-development-kenya-and-minority-rights-group-international-behalf/>

¹²⁰ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), paras 20 and 40.

4.2 INDIGENOUS PEOPLES' RIGHTS IN THE CONTEXT OF BUSINESS AND HUMAN RIGHTS

All companies, regardless of their size, have a responsibility to respect all human rights wherever they operate in the world and throughout their operations. This standard of expected business conduct is set out in widely recognized and endorsed international business and human rights standards, including the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises.¹²¹ The corporate responsibility to respect human rights is independent of a state's own human rights obligations under international law and exists over and above compliance with national laws and regulations protecting human rights.¹²² States are required to take appropriate measures to prevent human rights abuses by businesses and to respond to these abuses when they occur, including by holding the perpetrators to account and ensuring effective remedies for the harm caused.¹²³

In order to meet its corporate responsibility to respect human rights, business enterprises should take proactive and ongoing steps to “identify and assess any actual or potential adverse human rights impacts through meaningful consultation with potentially affected groups, as an integral part of their responsibility to protect human rights”.¹²⁴ Businesses should implement ongoing human rights due diligence processes to identify, prevent, mitigate and account for their adverse human rights impacts, or impacts which they may be directly linked to through their operations, products, services or business relationships.¹²⁵ Companies should also remediate any human rights abuse to which they have caused or contributed.¹²⁶

Businesses have a responsibility to respect all human rights. The core internationally recognized human rights that companies should respect are contained in the International Bill of Human Rights,¹²⁷ but depending on the circumstances, business enterprises may need to consider additional standards, such as UN instruments on the rights of Indigenous Peoples.¹²⁸ Although there is no explicit mention of FPIC in UN Guiding Principles, the recent developments of international standards on business and human rights have emphasized the role of Indigenous Peoples' rights and called for increasing recognition of FPIC in corporate commitments.¹²⁹

¹²¹ This responsibility was expressly recognized by the UN Human Rights Council on 16 June 2011, when it endorsed the UN Guiding Principles on Business and Human Rights, and on 25 May 2011, when the 42 governments that had then adhered to the Declaration on International Investment and Multinational Enterprises of the OECD unanimously endorsed a revised version of the OECD Guidelines for Multinational Enterprises. See Human Rights and Transnational Corporations and other Business Enterprises, Human Rights Council, Resolution 17/4, 6 July 2011, UN Doc. A/HRC/RES/17/4; OECD Guidelines for Multinational Enterprises, OECD, 2011, <https://www.oecd.org/corporate/mne>.

¹²² UN Guiding Principles, Principles 11 and 13 including Commentary.

¹²³ UN Guiding Principles, Principle 1.

¹²⁴ UN Guiding Principles, Principle 18.

¹²⁵ UN Guiding Principles, Principle 17.

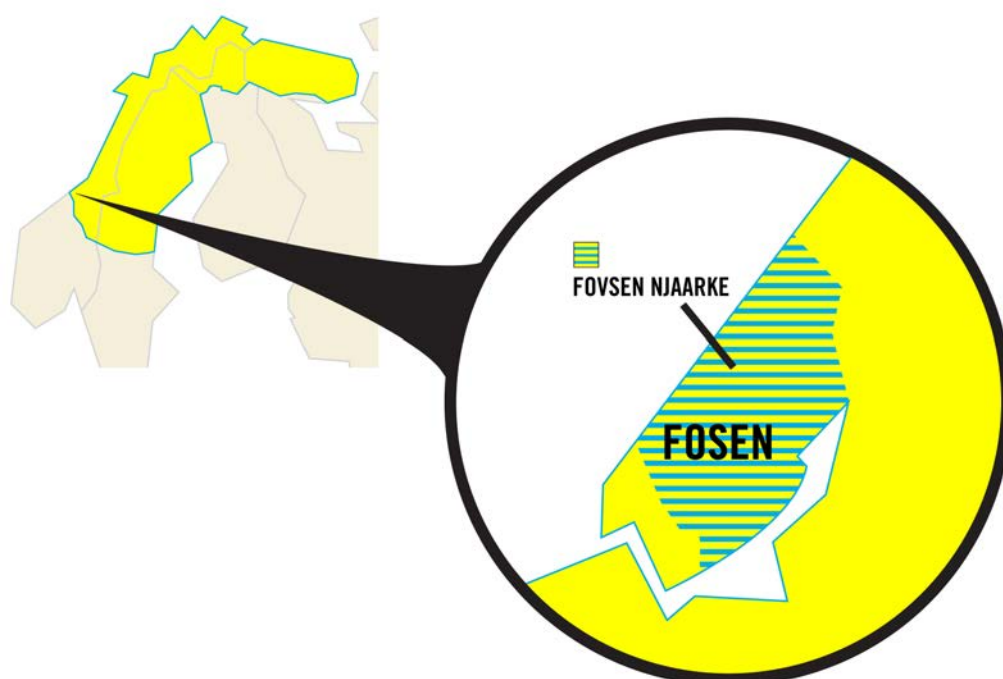
¹²⁶ UN Guiding Principles, Principle 15.

¹²⁷ The International Bill of Human Rights includes three documents: the Universal Declaration of Human Rights, the ICESCR, and the ICCPR and its two Optional Protocols.

¹²⁸ UN Guiding Principles, Principle 12.

¹²⁹ UN Working Group on Business and Human Rights, Raising the Ambition – Increasing the Pace, The UNGPs 10+ Roadmap for the next decade, November 2021, <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>.

5. NORWAY: THE FOSEN WIND POWER PLANTS



Map of the location of Fosen and Fovsen Njaarke reindeer-herding district. © Amnesty International

SÁMI IN NORWAY

There are approximately 50,000-70,000 Sámi in Norway. Their traditional territory generally includes northern and central Norway, approximately 40% of the country's total land. While Norway has no ethnic registry, the Sámi Parliament's electoral registry includes 23,488 registered voters, and documents show that Sámi also live outside the traditional Sámi territory.¹³⁰ In Sámi territory, reindeer herding is exclusively conducted by approximately 3,000 Sámi who make their living from this. Sámi also engage in other traditional and modern livelihoods.

Since 1989, the Sámi Parliament has been their representative assembly in Norway. It was established by a Norwegian Act of law, the Sámi Act, but makes its own priorities and policies based on its mandate from Sámi voters. The Sámi Parliament has administrative responsibility and can make policy in certain

¹³⁰ About 22% of Sámi over the age of 18 who have registered to vote are currently living outside of the traditional Sámi territory. Sámi Parliament in Norway: The Sámi electoral registry 1989-2023 [Sametingets valgmannntall 1989-2023].

JUST TRANSITION OR 'GREEN COLONIALISM'?

HOW MINERAL EXTRACTION AND NEW ENERGY PROJECTS WITHOUT FREE, PRIOR AND INFORMED CONSENT ARE THREATENING INDIGENOUS SÁMI LIVELIHOODS AND CULTURE IN SWEDEN, NORWAY AND FINLAND

areas such as language, culture and education. Chapter four of the Sámi Act states that the Sámi Parliament has a right to be consulted on decisions impacting Sámi. The Sámi Parliament has the right to raise objections to land encroachments in the Sámi area.

5.1 FPIC IN NORWEGIAN LEGISLATION

5.1.1 NORWAY'S INTERNATIONAL OBLIGATIONS

The Sámi People are protected as an Indigenous People under the Norwegian constitution's Section 108, which mandates the state to enable the Sámi to preserve and develop their language, culture and way of life.¹³¹ Norway was the first state to ratify the ILO-convention 169 (ILO169) and participated in the working group for the UNDRIP, but despite Norway's more recent international advocacy for Indigenous Peoples' rights,¹³² its record regarding Sámi rights to lands and resources has been very poor, with a history of harsh assimilation policies.¹³³

Section 92 of the Norwegian constitution establishes the public authorities' duty to respect and protect human rights. Norway's legal system is dualistic, requiring international laws to be incorporated through specific acts. Its Human Rights Act incorporates several human rights treaties into national law, giving them precedence over conflicting national laws.¹³⁴ This includes the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is incorporated through the Equality and Anti-Discrimination Act.¹³⁵ Norway's Supreme Court is guided by the Human Rights Committee's General Comments and findings in individual cases when interpreting the ICCPR.

UNDRIP is considered to be a source of law. In a 2018 judgment, the Norwegian Supreme Court referred to UNDRIP as a central document within indigenous law, as it reflects the international law principles in the field and gained support from a large number of states.¹³⁶

Since ratifying ILO169 in 1990, Norway has taken steps to implement elements of the convention, including legislation that governs different aspects of land use and Sámi rights. One example is the procedures for consultation between State authorities and the Sámi Parliament from 2005.¹³⁷

¹³¹ Dag T. Hoelseth, "Endring i Grunnloven § 108 (samene som urfolk)" ["Amendment to section 108 of the Norwegian Constitution (the Sami as an Indigenous People)"], 16 March 2023, [lovdata.no/artikkel/endring_i_grunnloven_%C2%A7_108_\(samene_som_urfolk\)/4404](https://lovdata.no/artikkel/endring_i_grunnloven_%C2%A7_108_(samene_som_urfolk)/4404) (in Norwegian, accessed on 12 August 2024).

¹³² Norway, Ministry of Local Government and Regional Development: Internasjonalt urfolksarbeid ["International Indigenous work"], <https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/samepolitikk/internasjonalt-urfolksarbeid/id2001314/> (in Norwegian, accessed on 10 November 2024).

¹³³ Norway, National Parliament, Sannhets- og forsoningskommissjonen ["Truth and Reconciliation Commission"], stortinget.no/no/Stortinget-og-demokratiet/Organene/sannhets-og-forsoningskommissjonen (in Norwegian, accessed on 12 August 2024).

¹³⁴ Norway, Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven) ["Act on the strengthening of the position of human rights in Norwegian law (Human Rights Act)"], 1999, <https://lovdata.no/dokument/NL/lov/1999-05-21-30> (in Norwegian).

¹³⁵ Norway: Lov om likestilling og forbud mot diskriminering (likestillings og diskrimineringsloven) ["Act on Equality and prohibition of Discrimination (Equality and discrimination Act)"], 2018, <https://lovdata.no/dokument/NL/lov/2017-06-16-51> (in Norwegian).

¹³⁶ Supreme Court of Norway: *Finnmark estate and others vs Unjarga gilisearvi*, HR-2018-456-P, Supreme Court judgment, 9 March 2018, <https://lovdata.no/dokument/HRSIV/avgjorelse/hr-2018-456-p> (in Norwegian), available in English: <https://lovdata.no/dokument/HRENG/avgjorelse/hr-2018-456-p-eng?q=HR-2018-456-P>

¹³⁷ Erna Solberg and Sven-Roald Nystø, "Procedures for Consultations between State Authorities and The Sami Parliament [Norway]", <https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtpalte/PROCEDURES-FOR-CONSULTATIONS-BETWEEN-STA/id450743/> (accessed on 12 August 2024).

5.1.2 MAIN LAWS REGULATING FPIC (REGARDING ENERGY CASES)

Norway's key legislative frameworks for wind power in Sámi areas are the Sámi Act,¹³⁸ the Energy Act¹³⁹ and the Planning and Building Act.¹⁴⁰ Other relevant acts, including the Reindeer Husbandry Act, the Nature Diversity Act, and the Expropriation Act, interact in different parts of the process.

SÁMI ACT

In 2021, the Sámi Act was amended to include consultation procedures for state authorities, counties, municipalities and private entities acting on behalf of the state. Consultations should be conducted to integrate Sámi interests early in decision-making processes. According to Sections 4–6 of the Sámi Act, consultations must begin early enough for the parties to have a genuine opportunity to agree on a decision.

Consultations should be conducted in good faith with the aim of achieving consensus and should continue as long as the parties still believe that reaching an agreement is possible. All Sámi rights holders must have complete information about the matter at all stages of the process.

The preparatory work for the Sámi Act described its provisions as a continuation of the aforementioned 2005 procedures, except for the introduction of an additional duty to consult for municipalities and counties.¹⁴¹ A guide for municipalities and counties on how to implement such consultations was subsequently issued by the government.¹⁴²

PLANNING AND BUILDING ACT

Norway's Planning and Building Act has, since 2009, given the Sámi Parliament authority to raise objections regarding land use and zoning plans. Objections are reviewed on municipal and regional decision levels and finally settled by the government.

The Planning and Building Act includes provisions to protect the natural foundations of Sámi culture, livelihoods and way of life. Environmental and social impact assessments, a key tool in Norwegian land management, are mandated by the law and regulations to promote sustainable and informed development practices.¹⁴³ An impact assessment should be fact-based, reliable and independent, however, they are commissioned and funded by those proposing a new plan or initiative.

The Nature Diversity Act specifies that authorities shall give weight to traditional knowledge that can contribute to the sustainable use and protection of biodiversity and that measures must be weighed against Sámi interests. However, the aforementioned regulations for impact assessments do not specifically mention traditional knowledge.

Norwegian municipalities are the primary authorities in land-use planning and zoning. Amendments to the Energy Act and the Planning and Building Act in 2023 enhanced municipal roles in the planning of onshore wind power, giving municipalities the authority to refuse planning permits early in the process.¹⁴⁴

THE ENERGY ACT

The Energy Act requires informing the Sámi Parliament and affected reindeer herding districts of proposed wind power projects. Although the Sámi Parliament have no explicit consultation rights under the Energy Act, it retains the right to object under the Planning and Building Act. If objections are not settled, consultations must occur.

¹³⁸ Norway, Lov om Sametinget og andre samiske rettsforhold (sameloven) ["Act relating to the Sami Parliament and other Sami legal matters (Sami Act)"], 1989, <https://lovdata.no/dokument/NL/lov/1987-06-12-56> (in Norwegian).

¹³⁹ Norway, Lov om produksjon, omforming, overføring, omsetning, fordeling og bruk av energi m.m. (energiloven) ["Act relating to the production, conversion, transmission, sale, distribution and utilisation of energy etc. (energy law)"], 1990, <https://lovdata.no/dokument/NL/lov/1990-06-29-50> (in Norwegian).

¹⁴⁰ Norway, Lov om planlegging og byggesaksbehandling (plan- og bygningsloven), ["Act on planning and building permit processing (Planning and Building Act)"], 2009, lovdata.no/dokument/NL/lov/2008-06-27-71 (in Norwegian).

¹⁴¹ Norway, Ministry of Local Government and Regional Development: Proposisjon til Stortinget (forslag til lovvedtak), Endringer i sameloven mv. (konsultasjoner) ["Proposal to the Storting (proposal for a legislative resolution), Amendments to the Sami Act etc. (consultations)"], 2020-2021, Prop. 86 L, regjeringen.no/contentassets/e81b293f4132459f8512dd77dcb24682/no/pdfs/prp202020210086000dddpdfs.pdf (in Norwegian).

¹⁴² Norway, Ministry of local government and modernization, Veileder for kommuner og fylkeskommuner om konsultasjoner med samiske interesser ["Guide for municipalities and county authorities on consultations with Sami interests"], 2021, regjeringen.no/contentassets/e61425c39d6c46eabf448d1d2ebb71d2veileder-for-kommuner-og-fylkeskommuner-om-konsultasjoner-med-samiske-interesser.pdf (in Norwegian).

¹⁴³ Norway, Forskrift om konsekvensutredninger, ["Regulations on Impact assessments"] 2017, <https://lovdata.no/dokument/SF/forskrift/2017-06-21-854> (in Norwegian). Available in English: <https://www.regjeringen.no/en/dokumenter/regulations-on-impact-assessments/id2573435/>

¹⁴⁴ Norway: Lov om endringer i energiloven og plan- og bygningsloven (vindkraft på land), ["Act on changes in the Energy Act and the Planning and Building Act"], 2023, <https://lovdata.no/dokument/LTI/lov/2023-06-16-73> (in Norwegian).

5.1.3 LEGAL GAPS: INCONSISTENCIES WITH INTERNATIONAL HUMAN RIGHTS LAW

NO PROVISIONS ON RESPECTING WITHHELD CONSENT

Norway's Energy Act and Planning and Building Act incorporate the right to be informed about plans and decision processes. Through the Sámi Act, both Sámi rights holders and their parliament also have the right to be consulted on different decision levels. Although the duty to consult with the Sámi has been legislated through the Sámi Act, and consultations would be a natural starting point for obtaining FPIC, this legislation makes no mention of FPIC, and it offers no provisions for respecting withheld consent. Consent from Sámi rights holders or the Sámi Parliament is not a condition, even in advance of decisions with significant potential harm to Indigenous Peoples, as required by international human rights law.

If consultations do not result in an agreement, the government holds the privilege of decision-making, which means that state control is one-sided, even in cases with severe consequences. This limitation to Indigenous Peoples' right to FPIC is not consistent with international obligations as described in Chapter 4.1.

As the ICCPR has been incorporated into Norwegian law through the Human Rights Act, Article 27 is considered a binding law in Norway. In a 2022 report on human rights protection against interventions on Sámi land, the Norwegian Human Rights Institution (NHRI) stated that ICCPR Article 27 should have a more prominent legal footprint in national law, either in legislation or other regulations.¹⁴⁵ The report suggested clarifying the assessment criteria under ICCPR Article 27 through legislation or other regulations to support sound human rights evaluations in decision processes. More detailed regulation would, in NHRI's view, provide both rights holders and potential developers with more legal certainty and predictability.

In a letter to Amnesty International, the Ministry of Energy states their view that Sámi consent is only a requirement in cases that would lead to breaches of ICCPR Article 27.¹⁴⁶ In a letter to the Sámi Parliament, the Ministry of Local Government and Regional Development (KDD) responds to the Sámi Parliament's request for specific legislation on ICCPR Article 27. The Ministry refers to the Human Rights Act and sees no need for additional legislation. The Ministry rejects the proposal to codify ICCPR Article 27, arguing that legal standards are evolving, but raises the possibility of creating a guide to increase understanding of ICCPR Article 27 in municipalities.¹⁴⁷

This correspondence confirms that the Human Rights Act could be an instrument for requiring FPIC, at least in cases with severe consequences for Sámi culture. However, this is insufficient because of the lack of guidance or jurisprudence on the criteria for identifying the threshold of violations within ICCPR Article 27. The risk of human rights violations also increases because municipalities have a limited understanding of their human rights obligations towards minorities and Indigenous Peoples, as confirmed in a report by the NHRI.¹⁴⁸

LACK OF GUIDANCE LEADS TO MISSED OPPORTUNITIES TO CONSULT

There are recent examples of uncertainties regarding municipalities' obligations to consult in the early phase of planning processes for wind power, like the ongoing process regarding the Skarvberget wind farm in Porsanger in Finnmark county.¹⁴⁹ The mayor of Porsanger municipality stated to the media early in 2024 that the obligation to consult is so strict that it is impossible to comply with,¹⁵⁰ after being confronted with claims that the municipality had not consulted the local reindeer herding district before confirming an early planning permit.¹⁵¹ The municipal council in the neighbouring Karasjok requested Porsanger municipality to

¹⁴⁵ Norwegian Human Rights Institution (NHRI), *Menneskerettslig vern mot inngrep i samiske bruksområder* ["Human Rights protection against interventions in Sami resource areas"], 21 January 2022, <https://www.nhri.no/2022/menneskerettslig-vern-mot-inngrep-i-samiske-bruksomrader/> (in Norwegian).

¹⁴⁶ Norway, Ministry of Energy, letter to Amnesty International Norway, 8 October 2024, on file with Amnesty International Norway (in Norwegian).

¹⁴⁷ Norway, Ministry of Local Government and Regional Development, letter to the Sami parliament, 17 September 2024, on file with Amnesty International Norway (in Norwegian).

¹⁴⁸ Norwegian Human Rights Institution (NHRI), *Kommuner og menneskerettigheter* ["Municipalities and Human Rights"], 2021, <https://www.nhri.no/rapport/kommuner/>, pp. 42-43 (in Norwegian).

¹⁴⁹ Norwegian Water Resources and Energy Directorate (NVE): *Skarvberget vindkraftverk* ["Skarvberget wind farm"] <https://www.nve.no/konsesjon/konsesjonssaker/konsesjonssak?id=19325&type=A> (in Norwegian, accessed on 10 November 2024).

¹⁵⁰ NRK Sapmi, *Konsultasjonsplikten er så streng at det er umulig å overholde den*. ["The duty to consult is so strict it is impossible to uphold"], 26 February 2024, <https://www.nrk.no/sapmi/-konsultasjonsplikten-er-sa-streng-at-det-er-umulig-a-overholde-den-1.16779598> (in Norwegian).

¹⁵¹ NRK Sapmi, *Vedtak om vindkraft kan være lovstridig*, ["Decision on wind power might be illegal"] 23 February 2024, <https://www.nrk.no/sapmi/vedtak-om-vindkraft-kan-vaere-lovstridig-1.16775238> (in Norwegian).

halt the planning process, because of lack of consultations with Sámi reindeer herders.¹⁵² The opposition parties in the Porsanger municipal council asked for supervision from the County Governor, as mandated in the Municipality Act. The governor was restricted from giving guidance based on obligations in other legislation and found that the Porsanger municipality had complied with the Municipality Act.¹⁵³

Municipalities' obligations to consult with the Sámi in early planning processes thus remain unclear, and the Government has not offered any regulations to clarify this, except the earlier issued consultation guide.¹⁵⁴ This situation does not comply with the obligation to consult with Sámi rights holders as early as possible in a decision-making process, as described in Chapter 4.1. The opportunities for influence are generally greatest in the early stages of a case's processing. Section 4-6, second paragraph of the Sámi Act stipulates that consultations must begin early enough for the parties to have a "genuine opportunity to reach an agreement on the decision".¹⁵⁵

LACK OF RESOURCES FOR SÁMI REPRESENTATIVES

There are no resources guaranteed under the Sámi Act to support Sámi representatives' participation in consultations. The need for support might include covering legal or technical advice, second opinion impact studies, internal facilitation, coordination and building up and maintaining capacity and competence.

Some efforts to improve the resource situation for reindeer-herding districts have been made through the annual negotiations between the Norwegian government and the Sámi Reindeer Herders Association (NRL-NBR).¹⁵⁶ Resources for a permanent advisory office on land management for reindeer herders were included in the negotiations for 2024-2025 and referred to as a follow-up to the government's action plan for reindeer husbandry and energy.¹⁵⁷ It is not clear if this office will have the capacity to serve the many reindeer-herding communities and the rising interest in industrial and infrastructural interventions. Their services are also limited to reindeer herding Sámi, leaving Sámi outside of reindeer-herding without assistance. Sámi representatives have little support for engaging in consultations that could have a far-reaching impact on their land and livelihoods.

INADEQUATE APPEAL PROCESSES

Sámi reindeer herding is legally protected under the Reindeer Husbandry Act; however, it does not have an exclusive right of access to designated reindeer grazing areas. Sámi reindeer herders are obliged to give way to agriculture and forestry and also to other activities (for example, infrastructural or industrial development) unless it causes significant harm or inconvenience to reindeer herding. Such interventions can be made in grazing areas either by agreement or through compensation. If the parties cannot agree on compensation, it is determined through judicial appraisal, which means court proceedings. In connection with a compensation case, the parties may request the court to consider whether the basis of the case is valid. The court can examine whether the underlying decisions, for example, license decisions, are valid or not. If the court finds that the decisions are invalid, the court must refuse to proceed with the issue of compensation.

Sámi rights holders could thus challenge a government decision on interventions on their grazing lands in court, either by litigating against the license decision or by rejecting compulsory purchase and compensation initiated by the developers. However, the developers may still seek pre-permission to start construction even if court proceedings, including challenges on license validity, are not yet settled.¹⁵⁸ This means that by the time Sámi potentially wins in court, leading to a license being revoked or a compulsory purchase denied, construction might already be complete, possibly having caused irreversible harm to Sámi lands and culture in the process. The practice of pre-permitting/early access to construction increases the risk of human rights violations and makes it more difficult to halt and remedy such violations.

¹⁵² NRK Sapmi, Karasjok krever stans i vindplanarbeid i Porsanger, ["Karasjok demands halting wind power plans in Porsanger"], 23 February 2024, <https://www.nrk.no/sapmi/karasjok-krevert-stans-i-vindplanarbeid-i-porsanger-1.16779121> (in Norwegian).

¹⁵³ Norway, County Governor of Troms and Finnmark, letter to Porsanger municipality, 3 October 2024. On file with Amnesty International Norway (in Norwegian).

¹⁵⁴ Norway, Ministry of local government and modernization, *Veileder for kommuner og fylkeskommuner om konsultasjoner med samiske interesser* ["Guide for municipalities and county authorities on consultations with Sami interests"], 2021, regjeringen.no/contentassets/e61425c39d6c46eabf448d1d2ebb71d2/veileder-for-kommuner-og-fylkeskommuner-om-konsultasjoner-med-samiske-interesser.pdf (in Norwegian).

¹⁵⁵ Norway, Lov om Sametinget og andre samiske rettsforhold (sameloven) ["Act relating to the Sami Parliament and other Sami legal matters (Sami Act)"], 1989, <https://lovdata.no/dokument/NL/lov/1987-06-12-56> (in Norwegian).

¹⁵⁶ Norway, Ministry of Agriculture and Food, *Ivaretagelse av reindriftens arealer* ["Safeguarding of reindeer husbandry areas"], <https://www.regjeringen.no/no/aktuelt/ivaretagelse-av-reindriftens-arealer/id3028360/> (in Norwegian, accessed on 21 August 2024).

¹⁵⁷ Norway, Ministry of Energy, *Tiltakspakke for reindrift og energi* ["Package of measures for reindeer husbandry and energy"], <https://www.regjeringen.no/no/aktuelt/tiltakspakke-for-reindrift-og-energi/id3019596/> (in Norwegian, accessed on 21 August 2024).

¹⁵⁸ Advance compulsory possession is the right to use another's property after an expropriation decision has been made, but before the expropriation compensation has been determined.

LACK OF UNDERSTANDING OF SÁMI CULTURE AMONG DECISION-MAKERS

The 2022 NHRI report also highlighted that Norway could strengthen its human rights compliance by ensuring good quality, early and independent impact assessments of proposed projects in Sámi territories. The NHRI expressed concern regarding the cumulative effects of repeated interventions:

“There is also a lack of knowledge about the cumulative effects of the rapid reduction of land in the Sámi reindeer herding area and the impact this will have on Sámi culture. A “bit-by-bit” degradation is taking place, without an overarching perspective on what this actually means for Sámi culture as a whole. This is serious and must be viewed in relation to the Constitution's overarching duty to facilitate the development of Sámi culture. It is also concerning that this type of knowledge is lacking for the entire Sámi reindeer herding area in Norway, Sweden, and Finland. There is no understanding of how the increased pace of land degradation will affect Sámi cultural practices as a whole.”¹⁵⁹

NHRI recommended ensuring sufficient knowledge about potential impacts through research and mapping in order to properly consider the cumulative impact of various interventions in reindeer husbandry areas.

The level of intrusion of a potential project is assessed based on environmental and social impact assessments commissioned and funded by the developer. This fact, in addition to how such assessments are conducted, can have serious consequences. For example, a lack of insight into Sámi culture and reindeer herding, or a failure to include Sámi traditional knowledge, might lead to biased impact assessments.¹⁶⁰

Sámi traditional knowledge is recognized as a knowledge base for land-nature-management impact assessments, according to Norway's Nature Diversity Act.¹⁶¹ However, Sámi consent is not required to decide on the mandate, methodology, or choice of consultants making such impact assessments. This might be viewed as conflicting with the obligations according to ILO 169 Article 7, paragraph 3, which states that impact assessments shall be carried out “in cooperation with the peoples concerned.”¹⁶² In the *Poma Poma* case, the Human Rights Committee observed the State's failure to require impact studies undertaken by a competent independent body.¹⁶³ The Norwegian impact assessment system should be evaluated to ensure good, early, and independent impact assessments, as also suggested by the NHRI.¹⁶⁴ Failing to do this could leave impact assessments of potential human rights violations both lacking and contentious.¹⁶⁵

OBSERVATIONS ON LEGAL FRAMEWORKS FROM TREATY BODIES (AND OTHERS)

In the 2019 Universal Periodic Review (UPR) of Norway, many recommendations focused on the rights of the Sámi People and the protection of their traditional lands. These recommendations include ensuring meaningful consultations with the Sámi People to obtain their free, prior, and informed consent for extractive activities and other projects on Indigenous lands; reviewing regulations for extractive activities on Sámi lands to guarantee adequate consultation with affected Sámi communities, as well as implementing measures for mitigation, compensation, and benefit-sharing; and adopting legislation to strengthen the protection of traditional Sámi livelihoods, such as coastal Sámi fisheries and reindeer herding, while reinforcing the principle of free, prior, and informed consent.¹⁶⁶

In 2018, during its review of Norway, the Human Rights Committee expressed concern that the Sámi People's right to meaningful participation through consultations to obtain free, prior, and informed consent was not fully protected in law or effectively upheld in practice. It recommended that the Norwegian authorities ensure meaningful consultation with the Sámi People in practice, adopt a law for consultations

¹⁵⁹ Norwegian Human Rights Institution (NHRI), *Menneskerettslig vern mot inngrep i samiske bruksområder* [“Human Rights protection against interventions in Sami resource areas”], 21 January 2022, <https://www.nhri.no/2022/menneskerettslig-vern-mot-inngrep-i-samiske-bruksomrader/>, p. 101 (in Norwegian).

¹⁶⁰ Eva Maria Fjellheim, “Wind Energy on Trial in Saepmie: Epistemic Controversies and Strategic Ignorance in Norway's Green Energy Transition”, 2023, *Arctic Review on Law and Politics* Volume 14, <https://arcticreview.no/index.php/arctic/article/view/5586>, pp. 140-168.

¹⁶¹ Norway, Lov om forvaltning av naturens mangfold (naturmangfoldloven) [“Act relating to the Management of Biological, Geological and Landscape Diversity (Nature Diversity Act)”] 2009, Chapter 2, Section 8, lovdata.no/dokument/NL/lov/2009-06-19-100 (in Norwegian).

¹⁶² ILO 169, Article 7, para. 3: Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

¹⁶³ UN Human Rights Committee (HRC), *Poma Poma v. Peru*, UN Doc. CCPR/C/95/D/1457/2006, para. 7.7.

¹⁶⁴ Norwegian Human Rights Institution (NHRI), *Menneskerettslig vern mot inngrep i samiske bruksområder* [“Human Rights protection against interventions in Sami resource areas”], 21 January 2022, <https://www.nhri.no/2022/menneskerettslig-vern-mot-inngrep-i-samiske-bruksomrader/>

¹⁶⁵ Eva Maria Fjellheim, *Wind Energy on Trial in Saepmie: Epistemic Controversies and Strategic Ignorance in Norway's Green Energy Transition*, 2023, *Arctic Review on Law and Politics* Vol. 14.

¹⁶⁶ Working Group on the Universal Periodic Review (WG UPR), Report: Norway, 28 June 2019, UN Doc. A/HRC/42/3, recommendations 140.202, 140.204, 140.205, 140.209, 140.211.

with a view to obtaining their free, prior, and informed consent, and strengthen the legal framework for Sámi land, fishing, and reindeer rights, particularly ensuring that fishing rights are legally recognized.¹⁶⁷

The 2019 recommendations from the Committee on the Elimination of Racial Discrimination urged Norway, among others, to review all administrative and legislative mechanisms, including the Finnmark Act, the Mineral Act, and the Reindeer Husbandry Act. The goal was to ensure that extractive activities on Sámi lands include consultation with affected Sámi communities, especially regarding their right to free, prior, and informed consent, as well as measures for mitigation, compensation, and benefit-sharing.¹⁶⁸

The Committee also recommended Norway to take steps to legally recognize the land and resource rights of the Sámi People and to improve the legal framework governing Sámi land, fishing, and reindeer rights.¹⁶⁹

In 2019, the Special Rapporteur on the environment recommended that Norway strengthen its commitment to ensuring a safe, clean, healthy, and sustainable environment. The recommendations encouraged Norway to make greater efforts to secure the free, prior, and informed consent of the Sámi People before making any decisions that impact their rights, in line with the Declaration. Additionally, Norway was advised to amend the Reindeer Husbandry Act to create a Sámi co-management system, to finalize the consultation agreement with county and municipal governments.¹⁷⁰

ONGOING EFFORTS TO REFORM THE LAW

In the Government bill regarding legislation on consultations,¹⁷¹ the government admitted that the current Minerals Act¹⁷² does not comply with Norway's international obligations to consult with Sámi. A new Mineral Act, including a strengthening of the Sámi right to consent to mineral extraction on Sámi territories and the establishment of a mechanism for benefit sharing, was proposed by a law commission in 2022.¹⁷³

The draft law was submitted for public hearing in 2022, but the government has not yet presented any bill to the Parliament. The fact remains that FPIC is not explicitly mentioned, recognized or implemented in any Norwegian legislation, despite the above-mentioned recommendations from UN Treaty bodies and UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

5.2 CASE STUDY: FOSEN WIND POWER PLANTS

5.2.1 CONTEXT

Fosen (*Fovse* in southern Sámi) is a peninsula covering 3,270 square kilometres on the coast of central Norway, where almost 26,000 inhabitants, majorly non-Sámi, live across small towns and communities. The area is home to six southern Sámi reindeer-herding families and their grazing lands. (The southern Sámi represent a small section of the Sámi People, consisting of about 2,000 individuals living across Norway and Sweden.)¹⁷⁴

¹⁶⁷ UN Human Rights Committee (HRC), Concluding Observations: Norway, 25 April 2018, UN Doc. CCPR/C/NOR/7, paras 36-37.

¹⁶⁸ UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined twenty-third and twenty-fourth periodic reports of Norway, 2 January 2019, UN Doc. CERD/C/NOR/CO/23-24, paras 21-22.

¹⁶⁹ UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined twenty-third and twenty-fourth periodic reports of Norway, 2 January 2019, UN Doc. CERD/C/NOR/CO/23-24, para. 22e.

¹⁷⁰ UN Special Rapporteur on the issue of Human Rights obligations relating to the enjoyment of a Safe, Clean, Healthy and Sustainable Environment, *Report - Visit to Norway*, 3 January 2020, UN Doc. A/HRC/43/53/Add.2, para. 95p-s.

¹⁷¹ Norway, Ministry of Local Government and Regional Development, Proposisjon til Stortinget (forslag til lovvedtak), *Endringer i sameloven mv. (konsultasjoner)* ["Proposal to the Storting (proposal for a legislative resolution), Amendments to the Sami Act etc. (consultations)"], 2020-2021, Prop. 86 L, p. 79,

[regjeringen.no/contentassets/e81b293f4132459f8512dd77dcb24682/no/pdfs/prp202020210086000dddpdfs.pdf](https://www.regjeringen.no/contentassets/e81b293f4132459f8512dd77dcb24682/no/pdfs/prp202020210086000dddpdfs.pdf) (in Norwegian).

¹⁷² Norway, Lov om erverv og utvinning av mineralressurser (mineralloven), ["Act relating to the Acquisition and Extraction of Mineral Resources (Minerals Act)"], 2010, <https://lovdata.no/dokument/NL/lov/2009-06-19-101> (in Norwegian).

¹⁷³ Norwegian Official Report, NOU 2022:8 Ny minerallov ["New Minerals Act"], 1 July 2022,

<https://www.regjeringen.no/no/dokumenter/nou-2022-8/id2921335/> (in Norwegian).

¹⁷⁴ Rolf Theil and Svernn-Egil Knutsen Duolljá, "sørsamisk" ["South Sámi"], Store norske leksikon ["The great norwegian encyclopaedia"], <https://snl.no/s%C3%B8rsamisk> (in Norwegian, accessed on 12 August 2024).

In the Fovsen-Njaarke reindeer herding district, two separate family groups, the northern Fosen and southern Fosen Sijte, comprising a total of 36 individuals¹⁷⁵ herding 2,100 reindeer¹⁷⁶ in separate areas.

According to the Norwegian Water Resources and Energy Directorate (NVE), Fosen is a favourable location for wind power production¹⁷⁷ due to wind conditions and access to infrastructure. Fosen is close to Norway's third biggest city, Trondheim, and to offshore oilfields that Norway wants to electrify. The demand for energy in the region is growing. Wind power is a renewable energy type that can contribute to lowering carbon gas emissions and curb climate change if it replaces fossil energy sources. Wind power is area-intensive, and in addition to large wind turbines, it requires power lines, road systems and transformer stations.

Fosen is the site of Europe's biggest onshore wind power project, consisting of six different wind farms and 277 wind turbines.¹⁷⁸



Åfjord Fosen 20201013. When Storheia wind farm was transferred to ordinary operation in February 2020, it became Norway's largest wind farm with 80 turbines. © Heiko Junge / NTB

5.2.2 CASE SUMMARY

In 2010, the NVE granted licenses for the Roan wind farm to Sarepta Energi AS and the Storheia wind farm to Statkraft Agder Energi Vind DA, both located within the Fovsen Njaarke reindeer herding district where the southern and northern Fosen sijtes practice reindeer herding.¹⁷⁹ The Sámi reindeer herders argued that the construction infringed on their right to practice their culture, but the Ministry of Petroleum and Energy (OED)

¹⁷⁵ Norwegian Agriculture Agency, *Ressursregnskap for reindriftsnæringen* [Resource accounts for reindeer herding] 46/2023, https://www.landbruksdirektoratet.no/nb/nyhetsrom/rapporter/ressursregnskapet-for-reindriftsnaeringen/_attachment/inline/4bdf25dd-078a-4f48-9c86-9ca663595eb0:db58e001539028d5f3aaebef12d0f8f3606f6e41/Ressursregnskap%20for%20reindriftsn%C3%A6ring%202022-2023.pdf (in Norwegian, accessed on 25 August 2024).

¹⁷⁶ Norway, County Governor of Trøndelag, Fovsen Njaarke Sijte (Fosen reinbeitedistrikt) ["Fovsen Njaarke Sijte (Fosen reindeer grazing district)"], March 2020, <https://www.statsforvalteren.no/contentassets/fa0d19ddc69448ca8794b88ff70e8b2c/fovsen-njaarke-sijte---sijtebilde-2020.pdf> (in Norwegian).

¹⁷⁷ Norwegian Water Resources and Energy Directorate (NVE), *Analyseskjema for område 25* ["Analysis form for area 25"], 1 April 2019, <https://webfileservice.nve.no/API/PublishedFiles/Download/201903419/2733173> (in Norwegian).

¹⁷⁸ Knut A. Rosvold, "Fosen Vind" ["Fosen Wind"], Store norske leksikon ["The great Norwegian encyclopaedia"], https://snl.no/Fosen_Vind (in Norwegian, accessed on 12 August 2024).

¹⁷⁹ NVE, Meddelelse og vilkår for konsesjon Roan vindkraftverk ["Decision and terms for licence Roan wind farm"], 2007, NVE 200701062-113, webfileservice.nve.no/API/PublishedFiles/Download/200701062/309485 (in Norwegian); NVE, Meddelelse og vilkår for konsesjon Storheia vindkraftverk ["Decision and terms for licence Storheia wind farm"] 2007, NVE 200700502-161, webfileservice.nve.no/API/PublishedFiles/Download/200700502/309468 (in Norwegian).

dismissed this claim in 2013.¹⁸⁰ The case was then taken to court. Despite this, construction was allowed to begin, and the wind farms were completed in 2019 and 2020. They are part of the largest onshore wind power project in Europe.

In 2021, the Supreme Court of Norway found a violation of the reindeer herders' right to enjoy their own culture under the International Covenant on Civil and Political Rights (ICCPR), Article 27, and ruled the licence and expropriation decisions invalid.¹⁸¹

The Fosen case study charts how the Sámi People's decades-long fight against wind power projects on their land finally resulted in a Supreme Court win; however, the process of reclaiming what has been lost continues. The case illustrates how early access/pre-permitting to building makes it considerably harder to get the state to stop, repair and secure an appropriate remedy for an ongoing human rights violation.

5.2.3 AN INADEQUATE LEGAL FRAMEWORK AND A HOLLOW VICTORY

During the license processes, the duty to consult was not yet implemented in Norwegian legislation, but the procedures for consultations had been in place since 2005. The sijtes were formally informed of the wind power plans¹⁸² in 2005-2006, when several different projects were sent to public hearing,¹⁸³ but plans for wind power had already been in the works for some years. Leif Arne Jåma, the current leader of Southern Fosen sijte, explained how he experienced the process:

“For a while there were 26 different wind power projects at various stages here in Fosen, and many different developers. It was both confusing and overwhelming. We were asked to provide statements on the individual wind farms, but it was completely impossible to make such statements because all the wind farms were really interconnected due to overlapping seasonal grazing areas and the interaction between these grazing areas.”¹⁸⁴

It soon became clear that the Roan and Storheia wind farms were located on the sijtes' respective winter grazing lands. Leif Arne Jåma described the experience of being the last to be consulted on planning, after all other stakeholders and environmental interests:

“First, they go to the large landowners and promise lucrative agreements. When their neighbours have said yes, the smaller landowners must either join the deal or face forced expropriation with less financial compensation. Then they go to the municipalities, saying they have agreements with the landowners, and gain approval there because it's about votes and big tax revenues. Finally, they deal with the natural habitat, the fish and the owls - and the Sámi reindeer herding.”¹⁸⁵

The sijtes stated from the start of the process that the grazing lands on Roan and Storheia were actively used.¹⁸⁶ One reindeer herder explained that they did not get a say in the choice of consultant and mandate for the environmental and social impact assessment and found the mandate to narrow regarding earlier interventions. They still engaged in the study to make sure it would include historical land interventions, as Arvid Jåma told Amnesty International and Saami Council: “We're on a knife's edge regarding all earlier and future interventions in our grazing land. When you add wind power, it will collapse. That was why we participated in the impact assessment study, to bring up previous interventions, but nothing came out of it.”¹⁸⁷

¹⁸⁰ Norway, Ministry of Oil and Energy, Vindkraft og kraftledninger på Fosen - klagesak [“Wind power and power lines on Fosen - complaint case”], 26 August 2013, 08/742, webfileservice.nve.no/API/PublishedFiles/Download/200700502/761649 (in Norwegian).

¹⁸¹ Supreme Court of Norway, I. Statnett SF v. Sør-Fosen sijte, Nord-Fosen siida and Fosen Vind DA II. Fosen Vind DA v. Sør-Fosen sijte and Nord-Fosen siida III. Sør-Fosen sijte v. Fosen Vind DA and The State represented by the Ministry of Petroleum and Energy (intervener), judgment of 11 October 2021, HR-2021-1975-S, <https://www.domstol.no/globalassets/upload/hret/avgjorelser/2021/oktober-2021/hr-2021-1975-s.pdf> (in Norwegian), available in English <https://www.domstol.no/globalassets/upload/hret/translated-rulings/hr-2021-1975-s.pdf>

¹⁸² Interviews established that information on different wind power plans had been dispersed as early as the late nineties, when NVE initiated wind measuring on Fosen.

¹⁸³ NVE, Fastsetting av utredningsprogram. [“Decision on Impact Assessment Programme”], 18 July 2005, NVE 200500157-2, webfileservice.nve.no/API/PublishedFiles/Download/200500157/1023056 (in Norwegian); Statkraft Development AS, Melding og forslag til utredningsprogram [“Notification and proposal of Impact Assessment Programme”], 30 June 2006, 1066986, webfileservice.nve.no/API/PublishedFiles/Download/200602660/1066986 (in Norwegian).

¹⁸⁴ Interview in person with Leif Arne Jåma (reindeer-herder from southern Fosen), 11 April 2024, Fosen.

¹⁸⁵ Interview in person with Leif Arne Jåma (reindeer-herder from southern Fosen), 11 April 2024, Fosen.

¹⁸⁶ Referring to statements from Fosen reindeerherding district, 16.02.2005, Trøndelag regional reindeer management board, 16.03.2005 and Sami parliament, 10.03.2005, included in a compilation of statements from the public hearing in Norwegian Water Resources and Energy Directorate, Fastsetting av utredningsprogram. [Decision on Impact Assessment Programme], 18 July 2005, NVE 200500157-2, webfileservice.nve.no/API/PublishedFiles/Download/200500157/1023056 (in Norwegian).

¹⁸⁷ Interview in person with Arvid Jåma (reindeer-herder from southern Fosen), 11 April 2024, Fosen.

The first impact assessment was published in 2008.¹⁸⁸ It stated that the Storheia and Haraheia projects would have significant negative impact,¹⁸⁹ in line with the sijtes' position that this would incapacitate indispensable winter pasture. The license applications¹⁹⁰ sent to NVE in 2008 from Statkraft and Sarepta Energi AS, respectively, nevertheless included Storheia and Roan. Terje Haugen, leader of Northern Fosen sijte, described a lingering feeling of doubt and distrust in the process: "They must start taking note of what reindeer herders say, because it's not just nonsense. They must get rid of the stigma that we just cheat and deceive."¹⁹¹

Despite not reaching an agreement with the sijtes, the NVE issued licenses for, among others, the Storheia and Roan wind power facilities and power lines in 2010, including preliminary approval for compulsory expropriation of land and reindeer grazing rights.¹⁹² Both sijtes appealed this decision, and Sara, a Sámi reindeer-herder, described what they communicated: "We participated in countless inspections and said, 'you must not build on Roan'. It will be a big problem for you and for us, and this was stated in the impact assessments."¹⁹³ In August 2013, OED still confirmed the licenses despite not reaching an agreement with the sijtes.¹⁹⁴ Leif Arne Jåma from Southern Fosen sijte described this experience: "I believe central and local politicians and those with power in the civil service, the top bureaucrats, see the Sámi and reindeer herding as something inferior. We are just an obstacle."¹⁹⁵

The licenses were dormant for financial reasons from 2014-2016, leading the sijtes to believe the projects might not be realized. Political pressure on the regional and national levels changed the situation. In 2016, the projects were deemed financially viable, and wind farm construction started later that year.

The Sámi Parliament stated in its March 2016 plenary session that the Fosen wind power plant licenses were made without obtaining FPIC from either the Sámi Parliament or the reindeer herding district: "The Sámi Parliament finds it highly likely that the wind power development in Fosen will result in reindeer herders and the reindeer herding district in Fosen being deprived of or restricted in their ability to practice their culture and livelihood".¹⁹⁶ It further cited violations of the Norwegian constitution, the Human Rights Act, ICCPR Article 27 and UNDRIP Articles 19 and 32.

In June 2018, the District Court assessed compensation for the wind power plants and the power lines. The southern Fosen sijte was awarded about NOK 8,9 million, and the northern Fosen sijte NOK 10,7 million in compensation for pasture loss, crisis feeding, higher workload and other expenses.¹⁹⁷ Statnett SF and Fosen Vind DA appealed, contending that the compensation was set too high. The sijtes responded that the assessment of compensation, citing, among other legal sources, ICCPR Article 27.¹⁹⁸ If the sijtes had succeeded in court with this argument, the licenses would have been declared invalid.

¹⁸⁸ ASK Rådgivning & SWECO Norge, Fagrapport reindrift, Konsekvenser av vindkraft- og kraftledningsprosjekter på Fosen ["Professional report on reindeer husbandry, Consequences of wind power and power line projects at Fosen"], March 2008, <https://www.nve.no/media/2234/reindrift-fosen.pdf> (in Norwegian).

¹⁸⁹ Haraheia was initially a separate project but was later included as a part of the Roan wind farm project. The project will be referred to as Roan.

¹⁹⁰ Statkraft, "Storheia vindpark, konsesjonssøknad og forslag til reguleringsplan" ["Storheia wind farm, licence application and proposed regulation plan"], March 2008, <https://webfileservice.nve.no/API/PublishedFiles/Download/200700502/98594> (in Norwegian); Sarepta, "Roan vindkraftverk, Konsesjonssøknad med konsekvensutredninger og forslag til reguleringsplan" ["Roan Wind Power Plant, Licence application with impact assessments and proposed regulation plan"], March 2008, webfileservice.nve.no/API/PublishedFiles/Download/200701062/99376 (in Norwegian).

¹⁹¹ Interview in person with Terje Haugen (reindeer-herder from northern Fosen), 10 April 2024, Fosen.

¹⁹² NVE, Meddelelse og vilkår for konsesjon Roan vindkraftverk ["Decision and terms for licence Roan wind farm"], 2007, NVE 200701062-113, webfileservice.nve.no/API/PublishedFiles/Download/200701062/309485 (in Norwegian); NVE, Meddelelse og vilkår for konsesjon Storheia vindkraftverk ["Decision and terms for licence Storheia wind farm"], 2007, NVE 200700502-161, webfileservice.nve.no/API/PublishedFiles/Download/200700502/309468 (in Norwegian).

¹⁹³ Interview in person with "Sara", whose name has been changed to protect her identity (reindeer herder from Fosen), 10 April 2024, Fosen.

¹⁹⁴ Norway, Ministry of Oil and Energy, Vindkraft og kraftledninger på Fosen - klagesak ["Wind power and power lines on Fosen - complaint case"], 26 August 2013, 08/742, webfileservice.nve.no/API/PublishedFiles/Download/200700502/761649 (in Norwegian).

¹⁹⁵ Interview in person with Leif Arne Jåma (reindeer-herder from southern Fosen), 11 April 2024, Fosen.

¹⁹⁶ Sámi Parliament in Norway, Vindkraftutbyggingen på Fosen ["Wind power development on Fosen"] SP 13/16, 4 March 2016, <https://innsyn.onacos.no/sametinget/mote/norsk/wfdocument.ashx?journalpostid=2016024837&dokid=674086&version=1&variant=A&ct=RA-PDE> (in Norwegian).

¹⁹⁷ Inntrøndelag district court judgment, *Fosen Vind DA and Statnett SF vs Fosen reindeerherding district, South Fosen sijte and Martin Anzjøn*, cases 14-139974SKJ-INTR and 14-136323SKJ-INTR, verdict of 15 August 2017 (in Norwegian). Inntrøndelag district court judgment, *Fosen Vind and Statnett SF vs Fosen reindeerherding district, South Fosen siida, North Fosen siida and Estern Namdal reindeer herding district*, cases 14-139974SKJ-INTR and 14-136323SKJ-INTR, verdict of 28 June 2018 (in Norwegian).

¹⁹⁸ Frostating Court of Appeals judgment, *Statnett SF and Fosen Vind DA v. Fosen Reinbeitedistrikt South Fosen siida and North Fosen siida*. LF-2018-150314 - LF-2018-150323 - LF-2018-150327, judgment of 6 August 2020, <https://lovdata.no/dokument/LFSIV/avgjorelse/lf-2018-150314> (in Norwegian).

In October 2018, the Saami Council, on behalf of southern Fosen sijte, asked CERD to intervene to halt the wind farm construction.¹⁹⁹ CERD requested construction to be suspended while the case was being considered.²⁰⁰ The Norwegian government did not comply but requested the interim measures to be lifted in a letter to the Office of the United Nations High Commissioner for Human Rights (OHCHR).²⁰¹ Communications between the parties followed while the construction continued. These communications and the court processes regarding licenses and compensation were still ongoing when the wind farms of Roan and Storheia opened for production in 2019 and 2020, respectively.

In 2020, the Frostating Court of Appeals concluded²⁰² that the Storheia and Roan reindeer grazing areas had been lost. It noted that this could not be fully compensated through alternative grazing areas and that without mitigating measures, the herds would have to be culled. The court concluded, citing they were in doubt, that the loss of winter grazing land did not violate ICCPR Article 27, as winter feeding in corrals could be a mitigating measure. The doubt expressed by the court was connected to the Sámi pastoralist tradition, which entails reindeer being herded freely all year, and that corralling the herd through winter to be able to feed them would be a breach of this. The Court of Appeals set compensation significantly higher than the District Court, at around NOK 44.6 million. This compensation was based on calculations of the added costs of feeding in corrals from a new economic report that included Sámi traditional knowledge.²⁰³

In August 2020, Fosen Vind DA appealed against the measure of damages to the Supreme Court. The southern Fosen sijte challenged the interpretation and application of ICCPR Article 27 and ICERD Article 5, seeking a ruling on the license validity. The northern Fosen sijte did not appeal but requested that the appraisal be ruled inadmissible. During the Supreme Court appeal proceedings, the OED intervened through the Attorney General of Civil Affairs in support of the company.²⁰⁴

In 2021, a grand chamber of the Supreme Court of Norway ruled unanimously that the Storheia and Roan wind farm constructions in Fosen violated the reindeer herders' right to enjoy their culture under ICCPR Article 27.²⁰⁵ The licenses and expropriation decisions were ruled invalid.

The Supreme Court stated that while increased renewable energy production is important, less intrusive alternatives exist, and the reindeer herders' right to cultural enjoyment should take precedence. The wind power development would have a significant negative effect on the reindeer herders' ability to practice their culture, and their rights would be further violated if satisfactory remedy measures were not implemented. Remedy measures that in themselves constituted an interference with the Sámi culture were not sufficient. Here, the court referred to winter feeding in corrals as a deviation from traditional nomadic reindeer herding.

The court also referred to the obligations to consult, and referenced several Human Rights Committee decisions, earlier Supreme Court verdicts, the Sámi Act's consultation provisions, effective from July 1, 2021, and cited Proposition 86 L (2020-2021) to the national parliament, Section 4.2, where the government addresses the Sámi right to self-determination and the importance of consultations.²⁰⁶ However, the court saw no reason to elaborate on this, given the standing of the case.

Additionally, the Supreme Court did not offer any guidance on how the already operational wind farms on the site should be dealt with, leaving no roadmap for the follow-up process. The following different interpretations of the verdict suggest unresolved issues and ambiguity regarding the implementation of Sámi rights. The OED stated a need to update the wind farm impact assessment for reindeer herding and mitigating measures required under ICCPR Article 27 in order to renew the licenses.²⁰⁷ The sijtes stated that

¹⁹⁹ Saami Council on behalf of Leif Arne Jáma and others, letter to CERD 23 October 2018, CERD Communication 67/2018. On file with Amnesty International Norway.

²⁰⁰ CERD letter to the Government of Norway, 10 December 2018, Regarding communication 67/2018. On file with Amnesty International.

²⁰¹ Norway, Attorney General, letter to the OHCHR on Communication 67/2018, 21 December 2018. On file with Amnesty International Norway.

²⁰² Frostating Court of Appeals, *Statnett SF and Fosen Vind DA v. Fosen Reinbeitedistrikt South Fosen siida and North Fosen siida*. LF-2018-150314 - LF-2018-150323 - LF-2018-150327, verdict of 06 August 2020, <https://lovdata.no/dokument/LFSIV/avgjorelse/lf-2018-150314> (In Norwegian).

²⁰³ Eira, A., and Eira, I. H. *Reindriftsøkonomiske beregninger i forhold til driftsperiode for Storheia* ["Reindeer herding economic calculations in relation to the operational period for Storheia"], Stiftelsen Protect Sápmi, 2018 (in Norwegian).

²⁰⁴ Supreme Court of Norway, I. *Statnett SF v. Sør-Fosen sijte, Nord-Fosen siida and Fosen Vind DA II. Fosen Vind DA v. Sør-Fosen sijte and Nord-Fosen siida III. Sør-Fosen sijte v. Fosen Vind DA and The State* represented by the OED (intervener) (previously cited).

²⁰⁵ Supreme Court of Norway, I. *Statnett SF v. Sør-Fosen sijte, Nord-Fosen siida and Fosen Vind DA II. Fosen Vind DA v. Sør-Fosen sijte and Nord-Fosen siida III. Sør-Fosen sijte v. Fosen Vind DA and The State* represented by the OED (intervener) (previously cited).

²⁰⁶ Norway, Ministry of Local Government and Regional Development, Proposisjon til Stortinget (forslag til lovvedtak), Endringer i sameloven mv. (konsultasjoner) ["Proposal to the Storting (proposal for a legislative resolution), Amendments to the Sami Act etc. (consultations)"], 2020-2021, Prop. 86L, <https://www.regjeringen.no/contentassets/e81b293f4132459f8512dd77dcb24682/no/pdfs/prp202020210086000dddpdfs.pdf>, p. 91 (in Norwegian).

²⁰⁷ Norway, Ministry of Energy, "Storheia og Roan vindkraftverk – videre saksbehandling etter Høyesteretts dom av 11. oktober 2021 – forhåndsvarsel" ["Storheia and Roan wind power plants - further proceedings after

mitigating measures had already been discarded through court proceedings and that the Supreme Court decision meant dismantling illegal wind farms and restoring their land. The NHRI wrote to OED, stating Norway's obligations to remedy an ongoing human rights violation.²⁰⁸

The Fosen verdict was the first case to be won by the affected Sámi at the Supreme Court on human rights grounds. The ruling got a mixed reception, with joy and relief among Sámi²⁰⁹ and their allies, as well as their astonishment and concern for the energy industry.²¹⁰

However, as the sijtes observed, the Supreme Court verdict did not lead to any changes in their situation for a long time. Sara, a Sámi reindeer-herder, describes the experience as follows: "Someone told us: You thought you won the case, but you only won a prolonged process."²¹¹

To mark 500, 600 and 700 days having passed since the verdict, the Sámi youth organization NSR-U and Young Friends of the Earth Norway held three demonstrations against the government's non-compliance in Oslo, the capital of Norway. Massive protests brought the conflict to mainstream media attention, leading to much debate about Sámi culture and reindeer herding, climate justice and the integrity of the legal system, as well as a backlash against protesters and Sámi.²¹²



Oslo 20231012. The Fosen campaigners are demonstrating to mark two years since the Norwegian Supreme Court ruled that the wind turbines violate the rights of Indigenous Peoples and human rights. © Emelie Holtet / NTB

Supreme Court ruling of 11 October 2021 - advance notice", 13 December 2021, <https://www.regjeringen.no/contentassets/7f0c85e35cf945b4963424a2eb6b0a1ff/fosen-saken-1286326.pdf>, (in Norwegian).

²⁰⁸ NHRI, letter to the OED, 1 April 2022, <https://www.nhri.no/wp-content/uploads/2022/04/NIM-rapport-om-SP-artikkel-27-og-oppfolging-av-Fosen-dommen.pdf> (in Norwegian).

²⁰⁹ NRK Trøndelag, "Samers rettigheter ble krenket da vindkraftanlegg ble bygget på Fosen" ["Sami rights were violated when wind farms were built in Fosen"], 11 October 2021, <https://www.nrk.no/trondelag/vindkraftutbygging-pa-storheia-i-trondelag--norske-samer-mener-strider-mot-urfolks-rettigheter-1.15685096> (in Norwegian).

²¹⁰ Fosen Vind DA, "Fosen Vind er overrasket over dom i Høyesterett" [Fosen Vind is surprised over Supreme Court ruling], 11 October 2021, <https://www.mynewsdesk.com/no/fosenvind/pressreleases/fosen-vind-er-overrasket-over-dom-i-hoeyesterett-3135125> (in Norwegian).

²¹¹ Interview in person with "Sara", whose name has been changed to protect her identity (reindeer herder from Fosen), 10 April 2024, Fosen.

²¹² Young Friends of the Earth Norway: "Fosen-aksjonen, dag for dag" ["The Fosen demonstrations, day by day"] <https://www.nu.no/fosenaksjonen-dag-for-dag/> (in Norwegian, accessed on 11 November 2024).

JUST TRANSITION OR 'GREEN COLONIALISM'?

HOW MINERAL EXTRACTION AND NEW ENERGY PROJECTS WITHOUT FREE, PRIOR AND INFORMED CONSENT ARE THREATENING INDIGENOUS SÁMI LIVELIHOODS AND CULTURE IN SWEDEN, NORWAY AND FINLAND

The government subsequently formally apologized to the Fosen Sámi and pledged to engage with the sijtes to stop and repair the violation.²¹³ However, after meeting the Prime Minister, a sijte representative told media that what they really wanted and needed was their land back.²¹⁴

Mediation between Fosen Vind DA and Roan Vind DA and the Sámi reindeer sijtes began in May 2023²¹⁵ and continued for several months without reaching an agreement. The NHRI wrote to the Prime Minister, reminding him that the duty to remedy human rights violations is a separate obligation under the ICCPR:

“As far as we are aware, the wind power plants are being operated as before, without modifications. The conditions that the Supreme Court found to constitute human rights violations in October 2021 have not ceased. This means that the human rights violation has not been remedied. NHRI now warns that an additional provision in the ICCPR, Article 2(3), may be at risk of being violated. NHRI further requests that the Prime Minister consider whether the Ministry of Petroleum and Energy’s handling of the case should be evaluated.”²¹⁶

In December 2023, after months of mediation, the OED confirmed²¹⁷ an agreement²¹⁸ between Fosen Vind DA and the southern Fosen sijte on the Storheia wind farm, and in March 2024, between Roan Vind DA and the northern Fosen sijte on the Roan wind farm.²¹⁹ The agreements included yearly financial settlements from the company, a monitoring group, a promise of replacement winter grazing lands facilitated by the government and confirmation of the sijtes’ right to consent (FPIC) should the companies seek renewed licenses after 25 years of operation, which would entail the closure of operations of the wind farm. Although the sijtes took part in these agreements, it is worth mentioning that the alternative roadmap for them would have meant the government initiating a new licensing process with a potential of an upcoming decade of court proceedings, with the wind farms still operating during the process.

The replacement winter grazing lands for South Fosen and North Fosen sijtes are still not identified, therefore, the remedial action is not yet complete. According to the agreements, the government has until 2027 to fulfil this promise. At the same time, efforts to establish wind farms in Sámi areas are increasing due to energy prices and demand. Even in Fosen, plans for new wind farms are being explored by the industry, within the grazing lands of Fovsen-Njaarke.²²⁰

Changes in the Sámi Act from 2021 mandate municipalities to consult with Sámi rights holders in planning processes. As with consultations with state entities, Sámi consent is not a condition for the municipality’s decisions. This leads to processes that, so far, have not offered protection for the Sámi cultural practices in Fosen. Changes in the Planning and Building Act from 2023 have, in fact, given municipalities increased financial benefits from wind power and a right to veto wind power plans in the early planning phase. The same right has not been granted to Sámi rights holders. Leif Arne Jåma from southern Fosen sijte told Amnesty International and Saami council that he felt they were considered a hindrance to economic growth and societal development.²²¹

In 2024, the Sámi Parliament demanded an independent investigation of the Fosen case to prevent future violations.²²² The government of Norway has not yet initiated an external investigation. The national parliament has passed a resolution requesting the government to learn from the Fosen case, placing particular emphasis on better knowledge of wind power’s impact on reindeer husbandry, improved

²¹³ Norway, Ministry of Energy, “Norwegian Government apologises to Sámi reindeer herders on the Fosen peninsula”, 4 March 2023, <https://www.regjeringen.no/en/aktuelt/norwegian-government-apologises-to-sami-reindeer-herders-on-the-fosen-peninsula/id2965357/>

²¹⁴ Aftenposten, “Støre innrømmer pågående menneskerettighetsbrudd på Fosen” [“Støre admits to ongoing human rights violations at Fosen”], 3 March 2023, <https://www.aftenposten.no/norge/li/69W0PL/stoere-innrømmer-paa-gaaende-menneskerettighetsbrudd-paa-fosen> (in Norwegian).

²¹⁵ Norway, Ministry of Energy, “Mekling om avtaleløsning i Fosen-saken” [“Mediation to resolve the Fosen case”], 15 March 2023, <https://www.regjeringen.no/no/aktuelt/mekling-om-avtalelosning-i-fosen-saken/id2977337/> (in Norwegian).

²¹⁶ NHRI, letter to the Government, 2 October 2023, <https://www.nhri.no/wp-content/uploads/2023/10/Brev-SMK-2.-okt-2023.pdf> (in Norwegian).

²¹⁷ Norway, Ministry of Energy, “Agreement between Sør-Fosen Sijte and Fosen Vind”, 19 December 2023, <https://www.regjeringen.no/en/aktuelt/agreement-between-sor-fosen-sitie-and-fosen-vind/id3019277/> (in Norwegian, accessed on 13 August 2024).

²¹⁸ Fosen Vind DA, Agreement between Fosen Vind DA and South Fosen siida on Storheia wind farm, 18 December 2023, https://resources.mynewsdesk.com/image/upload/f_pdf_fl_attachment/m74uxj5umlvtzuoeb9 (in Norwegian).

²¹⁹ Aneo, Avtale mellom Roan Vind DA og Nord-Fosen siida [“Agreement between Roan Vind DA and North Fosen siida”], 6 March 2024, https://www.aneogroup.com/contentassets/576c973785c14c7e9d1cf04576196813/1610_001.pdf (in Norwegian).

²²⁰ NRK Trøndelag, “Nordic Wind kartlegger for mer vindkraft i Sør-Fosen sijtes beiteområder på Fosen” [“Nordic Wind plans more wind power in South Fosen siidas grazing lands on Fosen”], 30 June 2024, <https://www.nrk.no/trondelag/nordic-wind-kartlegger-for-mer-vindkraft-i-sor-fosen-sjites-beiteomrader-pa-fosen-1.16924341> (in Norwegian, accessed on 21 August 2024).

²²¹ Interview in person with Leif Arne Jåma (reindeer-herder from southern Fosen) 11 April 2024, Fosen.

²²² Sámi Parliament in Norway, “Enstemmig Sameting ber om uavhengig granskning av Fosen-saken” [“The Fosen case – possible new human rights violation and need for evaluation”], 10 March 2024, <https://sametinget.no/aktuelt/enstemmig-sameting-ber-om-uavhengig-granskning-av-fosen-saken.25120.aspx> (in Norwegian, accessed on 13 August 2024).

competence in safeguarding reindeer husbandry as a Sámi cultural bearer in municipal, regional, and national administrations, and faster clarification of legal validity issues.²²³ The government reported their learning outcomes from the Fosen case in the budget proposal for 2025 and, notably, did not reflect on the challenges and risks regarding pre-permitting/early access to building while cases are not settled in court.²²⁴

5.2.4 IMPACT ON SÁMI

EXHAUSTION AND DISAPPOINTMENT: “IT PUTS AN INHUMAN PRESSURE ON US AND TURNS PEOPLE AGAINST US.”²²⁵

For the Fosen Sámi, their hardship and decades-long process of defending their grazing lands continued more than two years after they won in the Supreme Court. Sara, a Sámi reindeer herder, described her despair and frustration: *“Do you know how many meetings we’ve attended that were completely pointless after the Supreme Court ruling? Quite a few. Many trips to Oslo made me wonder ‘why are we doing this?’ We might as well have stayed home.”*²²⁶

For Sámi, the agreement currently reached does not mean that the case is closed. On the contrary, it represents an unpredictable and maybe frightening future, as Ingrid Maria Jåma, a Sámi reindeer owner from Southern Fosen sijte, described it:

“I’m very concerned for the reindeer herding in Fosen, whether it will even survive. It’s difficult to know what it will be like when we have to start using new grazing lands. It will be a completely new way for us to herd reindeer. You must learn the new landscape, learn where the reindeer migrate. You must relearn everything. It will be very demanding.”²²⁷

Reindeer herding is one of the few remaining carriers of southern Sámi culture and language. Threats to reindeer herding, therefore, also threaten the area’s Sámi culture.²²⁸

CONCRETE HARMS ON HEALTH, CULTURE AND LIVELIHOODS

A survey published in 2018²²⁹ showed that reindeer herders in the southern Sámi area widely believe that authorities lack understanding of reindeer herding, treat it unfavourably, and impose unsuitable regulations. They reported experiencing added workload and stress due to interventions that reduce grazing land, block migration routes, and cause significant reindeer losses. 69% of the respondents in this study reported experiencing harassment, and 49% reported threats, violence, or vandalism from individuals outside the reindeer herding community. These stress levels likely pose a significant health risk for both current adults and the next generation in South Sámi. However, the respondents also report very high levels of well-being (98%) and job satisfaction (95%), although many (74%) also say that they experience periods where their job satisfaction disappears.

Since 2022, a project to increase knowledge about reindeer herding, aiming to foster understanding and minimize harassment, has been funded through the annual Reindeer Husbandry Agreement between the Ministry of Agriculture and Food and the Norwegian Sámi.²³⁰

In the interviews referenced in this chapter, the respondents had not experienced threats, harassment or violence during the process, but all reported stress related to workload and insecurity. Ingrid Maria Jåma from Southern Fosen sijte reflected on the human cost of the struggle:

²²³ Norway, National Parliament: Representantforslag om en uavhengig granskning av Fosen-saken [“Proposal for an independent investigation of the Fosen case”], 21 March 2024, <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=98186> (in Norwegian).

²²⁴ Norway, Ministry of Energy, Forslag til statsbudsjett 2025, [“Proposal for state budget 2025”] Prop. 1 S (2024–2025), October 2024, Chapter 9, <https://www.regjeringen.no/no/dokumenter/prop.-1-s-20242025/id3056642/> (in Norwegian).

²²⁵ Interview in person with Leif Arne Jåma (reindeer-herder from southern Fosen), 11 April 2024, Fosen.

²²⁶ Interview in person with “Sara”, whose name has been changed to protect her identity (reindeer herder from Fosen), 10 April 2024, Fosen.

²²⁷ Interview by video call with Ingrid Maria Jåma (reindeer owner from southern Fosen), 3 May 2024.

²²⁸ Land encroachments influencing reindeer herding have been plentiful in Fosen since 1900. An air force combat base leads to military activity like low-flying aircraft. In the 1980s, plans for a massive military firing range in Fosen met resistance from an alliance of environmentalists and Sámi reindeer herders.

²²⁹ Snefrid Møllersen, Helserelaterte leve- og arbeidsforhold for reindriftssamisk befolkning i sørsamisk område [“Health-related living and working conditions for the reindeer-herding Sami population in the South Sami area”] 2018,

<https://samilogutmutalit.no/nb/2018/helserelaterte-leve-og-arbeids-forhold-reindriftssamisk-befolkning-i-sorsamisk-omrade> (in Norwegian).

²³⁰ Norway, Ministry of Agriculture and Food, <https://www.regjeringen.no/no/aktuelt/satsing-mot-hets-og-rasisme-rettet-mot-reindriftsutovere/id3048447/>

“I think it must have taken an insane amount of strength from those who have been dealing with this for over 20 years now. It must have been utterly exhausting. Not knowing what the future holds and fighting for their own way of life.”²³¹

When the Fosen wind farms were initiated in the early 2000s, little research was available on the consequences for reindeer herding. More recent research has identified changes in how reindeer use land and their avoidance of visible turbines in a radius of up to 10 km.²³²

The movement and sound of turbines can scare the reindeer, preventing grazing. A reindeer herd mainly consists of female reindeer, which are especially sensitive when pregnant or having calves. Roads and traffic caused by wind turbine construction and maintenance also disturb and displace reindeer. In certain weather conditions, the turbines release chunks of ice at high speeds of as far as 200 metres from each turbine, creating risks for both humans and animals. Access for anyone outside wind power operations can, therefore, be restricted or denied in winter, potentially preventing reindeer herders from retrieving straying reindeer.

Terje Haugen from northern Fosen sijte described how the constructions had impacted Sámi livelihoods:

“The biggest changes came after the massive construction activities started. The reindeer spread out, especially in the northern part of northern Fosen, where the grazing lands are terribly fragmented. This resulted in us losing a lot of control over the animals, fewer calves and higher loss of reindeer.”²³³

This description corresponds with GPS data from Roan presented in the Court of Appeals, documenting changes in reindeer behaviour, from frequent land use before construction to almost total avoidance during both the construction and operational phases.²³⁴

Fosen mountain areas are important grazing land for reindeer as winds stop the snow from settling too deep. In winter, reindeer graze on lichen under the snow. Because lichen grows sparsely, reindeer need access to wide areas to thrive. If the snow is too deep and hard-packed, or if rainfall has created ice barriers in the snow, the reindeer will struggle to access lichen and might starve.

Sara, a Sámi reindeer herder, told Amnesty International and Saami Council how land encroachments are affecting reindeer grazing: “Our grazing lands have become very fragmented. We don’t have areas left. That’s the problem. It is important to have areas where we can keep the entire herd together.”²³⁵

Reindeer-herder Leif Arne Jåma pointed to the effects of climate change:

“Climate change brings somewhat warmer summers, and much warmer winters. When I was young, there weren’t many days with above-zero temperatures in the winter, but now there are as many days above-zero in the winter as there are days with freezing temperatures. When it alternates between snow and rain, the snow cover in grazing areas becomes compact and hard, with layers of ice. Access to food for reindeer in winter is normally limited, but climate change has made it worse.”²³⁶

Finally, the Sámi reindeer-herder Sara expressed how she felt about financial compensation presented as a solution for the loss of grazing lands:

“Some things are more important than money. We cannot buy ourselves nature.”²³⁷

²³¹ Interview by video call with Ingrid Maria Jåma (reindeer owner from southern Fosen), 3 May 2024.

²³² Olav Strand and others, *Vindkraft og reinsdyr - En kunnskapssyntese* [“Wind power and reindeer – a knowledge synthesis”], *NINA Rapport 1305*, 2017, <https://brage.nina.no/nina-xmlui/handle/11250/2446889> (in Norwegian).

²³³ Interview in person with Terje Haugen (reindeer-herder from northern Fosen), 10 April 2024, Fosen.

²³⁴ Frostating Court of Appeals, Norway, *Statnett SF and Fosen Vind DA v. Fosen Reinbeitedistrikt*. LF-2018-150314 - LF-2018-150323 - LF-2018-150327, judgment of 6 August 2020, <https://lovdata.no/dokument/LFSIV/avgjorelse/lf-2018-150314> (in Norwegian).

²³⁵ Interview in person with “Sara”, whose name has been changed to protect her identity (reindeer herder from Fosen), 10 April 2024, Fosen.

²³⁶ Interview in person with Leif Arne Jåma (reindeer-herder from southern Fosen), 11 April 2024, Fosen.

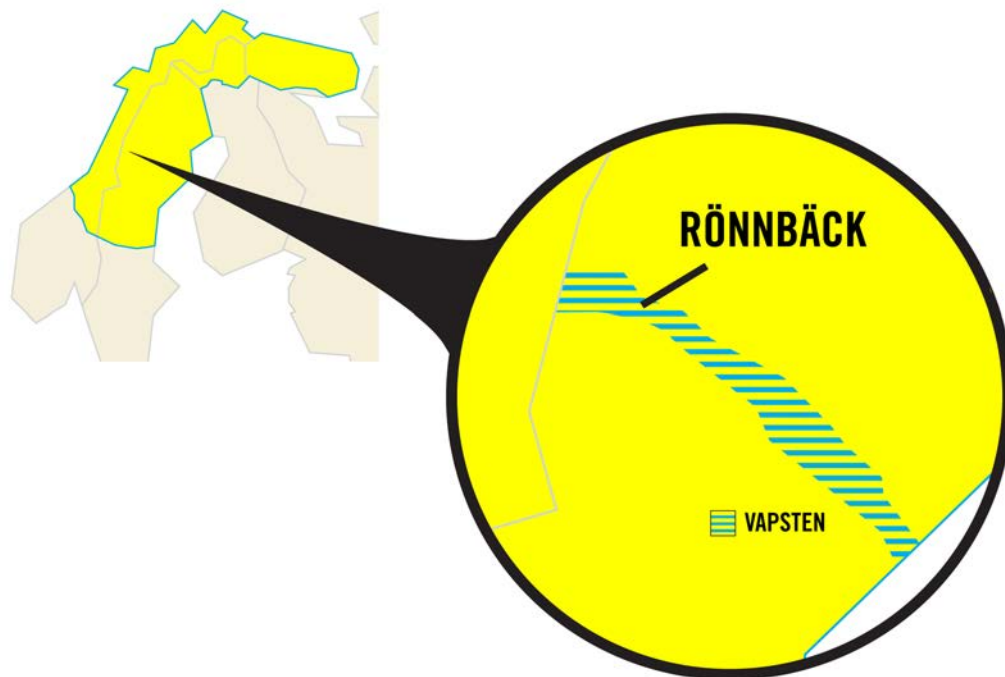
²³⁷ Interview in person with “Sara”, whose name has been changed to protect her identity (reindeer herder from Fosen), 10 April 2024, Fosen.

TIMELINE: FOSEN WIND POWER PLANTS

DATE / YEAR	EVENT
1999-2004	NVE initiates wind measuring in Fosen for government planning purposes and interested companies. These then share information about possible wind power projects. Sijtes participate in public meetings.
2005-2006	Formal plans initiated through notification of several wind farms and infrastructure. Sijtes participate in meetings and hearings and raise their objection.
2007-2009	Impact assessment reports significant or medium negative impact of plans for Storheia or Roan in Fosen, but companies apply for licenses anyway. A later amendment to the impact assessment recommends proceeding with Storheia after minor adjustments.
2010-2013	NVE grants licenses despite not reaching agreement with sijtes. Sijtes appeal the licenses to the Ministry of Petroleum and Energy (OED) and participates in meetings. OED denies appeals and allows building to start, despite not reaching agreement with sijtes.
2016	Building starts after licenses have been dormant for financial reasons.
2017	The district court denies sijtes' appeals and sets compensation from developers. Both sijtes and developers appeal the decision.
2018	Saami Council report to CERD on behalf of southern Fosen sijte, asking for an urgent interim measure to stop construction. Norway does not comply, and construction continues. ²³⁸
2019-2020	Roan and Storheia wind farms start to operate. The Court of Appeals denies appeals but increases compensation. The southern Fosen sijte appeal, and so do the companies. Northern Fosen joins the appeal when it is accepted by the Supreme Court.
2021-2022	Norwegian Supreme Court rules the licenses invalid due to breaches of Article 27 of the ICCPR. OED initiates a new license process. The sijtes' position is that the wind farms must be dismantled. No agreement is reached on the process.
2023-2024	Protests against government inaction start. The sijtes publicly support the protesters. The agreement is reached between sijtes and companies after mediation.

²³⁸ Saami Council on behalf of Leif Arne Jåma and others, Letter to CERD, 23 October 2018. On file with Amnesty International Norway.

6. SWEDEN: PLANNED NICKEL MINE IN RÖNNBÄCK



Map of the location of Rönnbäck and Vapsten reindeer herding district. © Amnesty International

SÁMI IN SWEDEN

The *Sámediggi* (Sámi Parliament of Sweden) estimates that 20,000-40,000 Sámi live within or outside Sápmi in Sweden.²³⁹ Sápmi and the Sámi reindeer herding area cover approximately half of Sweden, although not all the land is suitable for reindeer herding.²⁴⁰ Around 10% of Sámi are members of reindeer herding communities,²⁴¹ which is needed to exercise the right to reindeer herding and other

²³⁹ No registration based on ethnicity is conducted in Sweden. Sámi Parliament of Sweden, "Samerna i Sverige" ["The Sámi in Sweden"], <https://www.sametinget.se/samer> (in Swedish, accessed on 6 November 2024); Samiskt informationcentrum, "Antalet samer i Sápmi" ["Number of Sámi in Sápmi"], <https://www.samer.se/samernaisiffror> (in Swedish, accessed on 6 November 2024).

²⁴⁰ Samisk informationcentrum, "Antalet samer i Sápmi" ["Number of Sámi in Sápmi"], <https://www.samer.se/samernaisiffror> (in Swedish, accessed on 6 November 2024).

²⁴¹ Samisk informationcentrum, "Samebyn organiserar renskötsel" ["The reindeer herding community organises reindeer herding"], <https://www.samer.se/1099> (in Swedish, accessed on 6 November 2024).

land use rights such as hunting and fishing.²⁴² A reindeer herding community is both a geographical district and an economic and administrative association.²⁴³

The Sámi Parliament is both an elected body and a government agency under Sweden's Ministry of Cultural Affairs.²⁴⁴ It was inaugurated in 1993 and tasked with promoting a living Sámi culture through different activities and measures.²⁴⁵

6.1 FPIC IN SWEDISH LEGISLATION

6.1.1 SWEDEN'S INTERNATIONAL OBLIGATIONS

Sweden is a state party to seven out of nine of the UN's core conventions, including the ICERD, ICCPR, ICESCR and the Convention on the Rights of the Child (CRC).²⁴⁶ While the Swedish state has yet to ratify the Indigenous and Tribal Peoples Convention No. 169 (known as ILO Convention 169), it has continuously supported the UNDRIP since its adoption in 2007.

Sweden's legal system is dualistic, which means that international law has to be incorporated into Swedish law by the legislature in order for individual law enforcement officials to directly apply the country's international obligations in their decision-making. The Swedish parliament has so far incorporated four human rights conventions into Swedish law: the European Convention on Human Rights (ECHR);²⁴⁷ the European Framework Convention for the Protection of National Minorities (FCNM); the European Charter for Regional or Minority Languages (ECRML)²⁴⁸ and the CRC.²⁴⁹ The Swedish state has, therefore, only partly incorporated its Indigenous Peoples' rights obligations into its legal system.

Sweden does have the principle of treaty-conforming interpretation of national law, under which national laws should be applied in accordance with binding international obligations.²⁵⁰ However, research shows that it is rarely used by individual law enforcement officials.²⁵¹

²⁴² Sweden, Rennäringslag (1971:437) ["Reindeer Husbandry Act (1971:437)"], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/rennaringslag-1971437_sfs-1971-437/ (in Swedish), Section 1.

²⁴³ Samisk informationcentrum, "Samebyn organiserar renskötsel" ["The reindeer herding community organises reindeer husbandry"], <https://www.samer.se/1099> (in Swedish, accessed on 6 November 2024).

²⁴⁴ Sámi Parliament of Sweden, "Folkvalt organ och myndighet" ["Elected body and government agency"], <https://www.sametinget.se/om-sametinget> (in Swedish, accessed on 6 November 2024).

²⁴⁵ Sweden, Sametingslag ["Sámi Parliament Act"], 1992:1433, https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/sametingsslag-19921433_sfs-1992-1433/#K1 (in Swedish), Chapter 2, Section 1; Samisk informationcentrum, "Antalet samer i Sápmi" ["Number of Sámi in Sápmi"], <https://www.samer.se/samernaisiffror> (in Swedish, accessed on 6 November 2024).

²⁴⁶ OHCHR, UN Treaty Body Database, [tinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx](https://internet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx) (accessed on 6 November 2024).
²⁴⁷ Sweden, Lag (1994:1219) om den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna, ["Act (1994:1219) on the European Convention for the Protection of Human Rights and Fundamental Freedoms"], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-19941219-om-den-europeiska-konventionen_sfs-1994-1219/ (in Swedish).

²⁴⁸ The European Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (CRML) are transferred to the National Minorities and Minority Languages Act (2009:724) (Minority Act), <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-2009724-om-nationella-minoriteter-och-sfs-2009-724/> (in Swedish).

²⁴⁹ Sweden, Lag (2018:1197) om Förenta nationernas konvention om barnets rättigheter ["Act (2018:1197) on the United Nations Convention on the Rights of the Child"], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-20181197-om-forenta-nationernas-konvention_sfs-2018-1197/ (in Swedish).

²⁵⁰ Maria Grahn-Farley, "Fördragskonform tolkning av MR-traktat" ["Treaty-compliant interpretation of human rights treaties"], Svensk Juristtidning 2018 5: pp. 450-463, <https://svjt.se/svit/2018/450> (in Swedish, accessed on 6 November 2024); Swedish Supreme Court, *Girjas Reindeer Herding community v. Sweden*, Målnr. T 853-18, NJA 2020 s. 3, Judgment of 23 January 2020, para. 94, <https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/2019/t-853-18.pdf> (in Swedish).

²⁵¹ Maria Grahn-Farley, Treaty-compliant interpretation of human rights treaties (previously cited), https://svjt.se/content/fordragskonform-tolkning-av-mr-traktat#_ftn1 (in Swedish). See also Patrik Bremdal, Maria Grahn Farley och Jane Reichel, Principen om fördragskonform tolkning förhållande till Sveriges konventionsåtaganden om mänskliga rättigheter, Uppsala universitet, December 2017, <https://lagensomverktyg.se/2018/fordragskonform-tolkning/> (in Swedish, accessed on 6 November 2024).

6.1.2 MAIN LAWS REGULATING FPIC

The Swedish constitution lacks explicit reference to Sweden's international obligations to respect the Sámi People's human rights.²⁵² The constitution does establish a general obligation for the public domain to promote Sámi opportunities to preserve and develop their own culture and social life. However, the Sámi People cannot invoke this principle as a substantial constitutional right.²⁵³ The constitution also establishes the Sámi right to practice reindeer husbandry, which is protected as a property right.²⁵⁴

THE CONSULTATION ACT

Sweden's primary framework for FPIC is the Consultation Act²⁵⁵. It regulates when a consultation process should be initiated, by whom, who should be consulted, and how consultations should be conducted and terminated.

The Consultation Act obliges the government, state authorities, regions and municipalities to consult Sámi representatives before decisions are made in individual or general matters that may be of special importance to the Sámi People.²⁵⁶ Sámi representatives include the Sámi Parliament and, depending on the matter, reindeer herding communities and Sámi organizations.²⁵⁷ Sámi representatives also have a right to initiate consultations.²⁵⁸

The Act states that at an early stage, and *before consultations take place*, the authority obligated to consult must send information about the matter and a request for consultation to the Sámi representative(s).²⁵⁹ The authority duty-bound to consult must meet the Sámi representatives' request for forms of consultation as far as possible, including regarding language, and provide written information about the issues to be consulted on.²⁶⁰ Sámi representatives must also be given reasonable time to obtain necessary information and to otherwise prepare for the consultation. The time given depends on the nature and scope of the matter, mainly its complexity and urgency.²⁶¹

There are matters and bodies exempt from the obligation to consult.²⁶² For instance, applications for mining exploration are exempted as a general rule,²⁶³ as are issues relating to military activities and national security.²⁶⁴ In addition, the Environmental Permit Offices, which decide on permits for wind power, infrastructure, industrial activities and other environmentally hazardous activities, are exempt from the obligation to consult Sámi representatives.²⁶⁵

²⁵² Sweden, Regeringsformen (1974:152) ["The Instrument of Government (1974:152)"], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/kungorelse-1974152-om-beslutad-ny-regeringsform_sfs-1974-152/ (in Swedish).

²⁵³ Sweden, Instrument of Government (1974:152) (previously cited), Chapter 1, Section 2, para. 6; Swedish Supreme Court, *Girjas Reindeer Herding community v. Sweden*, NJA 2020 s. 3 (previously cited), para. 92.

²⁵⁴ <https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/2019/t-853-18.pdf> (in Swedish). See also Minority Act (2009:724) (previously cited), Section 4, para. 2.

²⁵⁵ Sweden, Instrument of Government, 1974:152, (previously cited) Chapter 2, Sections 15 and 17, para. 2. See Swedish Supreme Court, *The Taxed Mountain Case*, Case No. T324-76, NJA 1981 s. 1, Judgment of 29 January 1981.

²⁵⁶ Sweden, Lag (2022:66) om konsultation i frågor som rör det samiska folket ["Act (2022:66) on Consultation in Matters Concerning the Sámi People (2022:66)"], <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-202266-om-konsultation-i-fragor-som-ror-det-sfs-2022-66/> (in Swedish).

²⁵⁷ Sweden, Consultation Act (2022:66) (previously cited), Section 2.

²⁵⁸ Sweden, Consultation Act (2022:66) (previously cited), Section 7. See also Sámi Parliament Act (1992:1433) (previously cited), Chapter 2, Section 1.

²⁵⁹ Sweden, Consultation Act (2022:66) (previously cited), Section 6.

²⁶⁰ Sweden, Consultation Act (2022:66) (previously cited), Section 8.

²⁶¹ Sweden, Consultation Act (2022:66) (previously cited), Section 9; see Sámi Parliament of Sweden, *Vägledning konsultationsordning* ["Guidance on the Consultation Act"], 8 August 2023, Dnr 1.4.2-2022-346, p. 15, <https://www.sametinget.se/165327> (in Swedish).

²⁶² Sweden, Consultation Act (2022:66) (previously cited), Section 9; and Swedish government, *En konsultationsordning i frågor som rör det samiska folket* ["A Consultation Procedure on Matters Concerning the Sámi People"], prop. 2020/21:64, <https://www.regeringen.se/contentassets/ff8132cb67484ff59302098255cee14d/en-konsultationsordning-i-fragor-som-ror-det-samiska-folket-prop.-20202164.pdf>, p. 93.

²⁶³ See Sweden, Consultation Act (2022:66) (previously cited), Sections 3-5.

²⁶⁴ Sweden, Consultation Act (2022:66) (previously cited), Section 2 and Swedish government, prop. 2020/21:64 (previously cited), pp. 62-64. There are situations when consultations should be held in connection to exploration permits, such as when an application concerns important reindeer grazing lands.

²⁶⁵ Sweden, Consultation Act (2022:66) (previously cited), Section 4; Swedish government, prop. 2020/21:64 (previously cited), pp. 68-69. In relation to military exercises, consultations should be held with affected individuals under the Environmental Act, and reindeer herding communities have the right to make written comments about the activities.

²⁶⁶ Sweden, Consultation Act (2022:66) (previously cited), Section 3; and Swedish government, prop. 2020/21:64 (previously cited), pp. 44-45. Environmental Permit Offices are independent functions within some county administrative boards. See Sweden, *Förordning (2011:1237) om miljöprövningsdelegationer* ["Regulation (2011:1237) on environmental assessment offices"], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/forordning-20111237-om_sfs-2011-1237/ (in Swedish).

During consultations, the Act requires reasoned positions and comments on these to be shared in good faith.²⁶⁶ Statements made during the consultation, when and how the consultation was conducted, by whom, and who participated should also be documented.²⁶⁷

The government rejected an earlier draft provision that would have required the consultation body to seek agreement or consent from Sámi representatives.²⁶⁸ Instead, the consultation body (or the Sámi party) may end consultations if it becomes clear that an agreement or consent cannot be reached.²⁶⁹ The current Act prescribes that “the consultation must continue until agreement or consent has been reached [...] or until the party obligated to consult or the Sámi representative declares that no agreement or consent can be reached on the matter.”²⁷⁰ The legislative history specifies that it has to “be clear” from the party’s side that an agreement or consent cannot be reached in order to declare that no agreement or consent can be reached on the matter.²⁷¹

SÁMI PARLIAMENT ACT

The Sámi Parliament has limited tasks that are regulated under Swedish law. Its primary task is to monitor issues regarding Sámi culture in Sweden. As an elected body, the Sámi Parliament is the Sámi People’s main representative in consultations under the Consultation Act.²⁷² It can decide on funding that has been allocated to it, establish goals and lead work on Sámi languages, and take part in urban planning (in Swedish: *samhällsplanering*) to monitor Sámi needs, and so on.²⁷³ It has no particular influence in relation to state policy-making, administrative or legislative measures or processes that concern the rights of the Sámi People.²⁷⁴ Unlike some other states globally, the Swedish parliament does not enable Sámi representative institutions to participate in its legislative procedures.²⁷⁵ Also, concerns have been raised that its role as a government agency limits the Sámi Parliament’s function as a representative of the Sámi People and as an institution for Sámi self-determination.²⁷⁶ In connection to permit procedures on mining projects, the Sámi Parliament has a right to information alongside other stakeholders, including about permit applications and related decisions, and in some instances, a right to issue statements.²⁷⁷

MINORITY ACT AND OTHER RELEVANT LEGISLATION

Per Sweden’s Minority Act²⁷⁸, the authorities should offer national minorities²⁷⁹ real influence in matters that concern them. As far as possible, they should be consulted through a structured dialogue that considers their views and needs during decision-making and enables national minorities to have real influence and

²⁶⁶ Sweden, Consultation Act (2022:66) (previously cited), Section 11.

²⁶⁷ Sweden, Consultation Act (2022:66) (previously cited), Section 12.

²⁶⁸ Swedish government, prop. 2020/21:64 (previously cited), pp. 102-104.

²⁶⁹ Sweden, Consultation Act (2022:66) (previously cited), Section 11 para. 2.

²⁷⁰ Sweden, Consultation Act (2022:66) (previously cited), Section 11 para. 2.

²⁷¹ Swedish government, prop. 2020/21:64 (previously cited), p. 105, see also pp. 104 and 106.

²⁷² Sweden, Consultation Act (2022:66) (previously cited), Section 7; and Swedish government, prop. 2020/21:64 (previously cited), p. 51.

²⁷³ See Sámi Parliament Act (1992:1433) (previously cited), Sections 1-1 a.

²⁷⁴ Sámi Parliament Act (1992:1433) (previously cited).

²⁷⁵ James Haughton and others, “Indigenous and minority representation worldwide”, Research paper series 2023–2024, 24 October 2023, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/9435334/upload_binary/9435334.pdf (accessed on 7 November 2024).

²⁷⁶ Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden’s mining permitting practices, Land Use Policy, Volume 99, December 2020, <https://doi.org/10.1016/j.landusepol.2020.105001> (accessed on 7 November 2024); and James Haughton and others, “Indigenous and minority representation worldwide”, Research Paper Series, 2023–24, 24 October 2023, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/9435334/upload_binary/9435334.pdf (accessed on 7 November 2024).

²⁷⁷ Sweden, Minerallag (1991:45) [“Minerals Act (1991:45)”], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/minerallag-199145_sfs-1991-45/ (in Swedish); Mineralförordning (1992:285) [“Minerals Regulation (1992:285)”], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/mineralforordning-1992285_sfs-1992-285/ (in Swedish).

²⁷⁸ Sweden, Minority Act (2009:724) (previously cited), https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-2009724-om-nationella-minoriteter-och_sfs-2009-724/ (in Swedish).

²⁷⁹ The Sámi People is recognized both as an Indigenous People and a National Minority in Sweden. See, for instance, Sámi Parliament of Sweden, “Är samerna ett urfolk?” [“Are the Sámi an Indigenous People?”], <https://www.sametinget.se/urfolk> (in Swedish, accessed on 7 November 2024).

participation.²⁸⁰ However, the authorities reportedly rarely apply the Minority Act when land use projects impact Sámi rights, and the state seldom follows up on the Minority Act's implementation.²⁸¹

Legislation on land use projects according to different sectors, such as mining and forestry, provides additional, but less detailed, provisions for consultation, mainly for reindeer herding communities.²⁸² These laws apply independently but should, as far as possible, be coordinated with the Consultation Act.²⁸³ In the mining context, except for the Consultation Act's provisions, a company is obligated to consult particularly affected Sámi, generally reindeer herding communities, in connection to its environmental impact assessments under the Environmental Code, including at the stage of the mining concession (the main permit for establishing mines in Sweden).²⁸⁴ Sámi are, however, not consulted as Indigenous rights holders in these consultations but as stakeholders like anyone else.²⁸⁵

Research conducted by the Swedish University of Agricultural Sciences, Luleå University of Technology, Stockholm University and Stockholm Environment Institute also points to regulatory gaps concerning impact assessments,²⁸⁶ which, from a human rights perspective, are crucial in the context of large-scale activities that may affect the everyday lives of local communities and the environment. For instance, Swedish legislation does not require that environmental impact assessments include potential human rights impacts on the culture, reindeer herding and other livelihoods of the Sámi People.²⁸⁷ Nor are there clear requirements directed at the decision-maker to examine the cumulative effects of other existing or planned land encroachments that are important to understand the real conditions for reindeer and Sámi land use locally.²⁸⁸

In addition, research by the Swedish University of Agricultural Sciences, Luleå University of Technology and Stockholm University has questioned the overall permit process as fragmented, complex and politicized.²⁸⁹ A planned mine's full impacts are never holistically examined on the merits at any stage in the process, and the appeals process for mining concessions is limited, often including technical and not merits-based aspects.²⁹⁰ Assessments that do include conditions for Indigenous Sámi, generally reindeer herding as a

²⁸⁰ Sweden, Minority Act (2009:724) (previously cited), Section 5. See Swedish government, En stärkt minoritetspolitik ["A Strengthened Minority Politics"], 21 March 2018, prop. 2017/18:199, pp. 42-43, <https://www.regeringen.se/contentassets/0bd30dc1baee4470b317ae7db82a56f7/en-starkt-minoritetspolitik-prop.-201718199.pdf> (in Swedish); and FCNM, Article 15; Council of Europe (CoE), Advisory Committee on the Framework Convention for the Protection of National Minorities, Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary 2, The Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, 27 February 2008, ACFC/31/DOC(2008)001, paras 18-21 and 72, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800bc813> (in Swedish). See also Swedish government, prop. 2020/21:64 (previously cited), pp. 36-38.

²⁸¹ Civil Rights Defenders, Sweden's Compliance with the Framework Convention For The Protection Of National Minorities (The Sámi People And Non-Citizen Roma), 31 January 2023, <https://crd.org/wp-content/uploads/2023/03/Alternative-Report-to-the-Council-of-Europe-Civil-Rights-Defenders-final.pdf>, paras 11-16; and Civil Rights Defenders and Marie B Hagsgård, Yttrande över betänkandet Högre växel i minoritetspolitiken – stärkt samordning och uppföljning (SOU 2020:27) ["Opinion on the government inquiry A Higher Gear in Minority Politics - Strengthening Coordination and Follow-up (SOU 2020:27)"], 3 September 2020, Dnr. Ku2020/01170/CSM, https://crd.org/wp-content/uploads/2020/10/Yttrande-o-CC%88ver-beta%CC%88nkandet-Ho%CC%88gre-va%CC%88xel-i-minoritetspolitiken-sta%CC%88kt-samordning-och-uppfo%CC%88jning-SOU-2020_27.pdf (in Swedish).

²⁸² For instance, see Sweden, Minerals Act (1991:45) (previously cited); Miljöbalk (1998:808) ["Environmental Code (1998:808)"], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/miljobalk-1998808_sfs-1998-808/ (in Swedish); Skogsvårdslag (1979:429) ["Forestry Act (1979:429)"], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/skogsvardslag-1979429_sfs-1979-429/ (in Swedish).

²⁸³ Sweden, Consultation Act (2022:64) (previously cited), Section 1.

²⁸⁴ Sweden, Minerals Act (1991:45) (previously cited), Chapter 4, Section 2; and Environmental Code (1998:808) (previously cited), Chapter 6; Swedish government, Miljöbedömningar ["Environmental Assessments"], prop. 2016/17:200, <https://data.riksdagen.se/fil/59CFEE06-C21A-4611-B2D1-61B87FB9577C> (in Swedish); and Government Offices of Sweden, Ministry for Foreign Affairs, Communication 54/2013, UDFMR2013/18/CERD, 23 February 2021.

²⁸⁵ See Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices (previously cited).

²⁸⁶ Kaisa Raitio and Rasmus Kløcker Larsen, Cumulative impact assessments and Sámi indigenous rights, SLU Policy Brief, 2 May 2023, <https://www.sei.org/publications/cumulative-impact-assessments-and-sami-indigenous-rights/> (accessed on 8 November 2024); Carl Österlin and Kaisa Raitio, Fragmented Landscapes and Planscapes – The Double Pressure of Increasing Natural Resource Exploitation on Indigenous Sámi Lands in Northern Sweden, 28 August 2020, <https://www.mdpi.com/2079-9276/9/9/104> (accessed on 8 November 2024); and Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices (previously cited).

²⁸⁷ Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices (previously cited).

²⁸⁸ Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices (previously cited).

²⁸⁹ Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices (previously cited). On some political control over the permit process, see Swedish government, Om ny minerallagstiftning m.m. ["On New Minerals Legislation etc."], prop. 1988/89:92, <https://data.riksdagen.se/fil/CE7DAC80-9786-42D6-8530-34684E8B657B> (in Swedish), pp. 66 and 69.

²⁹⁰ Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices (previously cited).

public interest, treat it mainly from an economic angle and not as a fundamental part of an Indigenous culture and a property right.²⁹¹

6.1.3 LEGAL GAPS: INCONSISTENCIES WITH INTERNATIONAL HUMAN RIGHTS LAW

NO OBLIGATION TO OBTAIN CONSENT

At the time of a decision following consultation(s), there is no provision under the Consultation Act or any other law regarding land use (such as sector-specific legislation for mining, forestry, energy, etc.) obligating the decision-maker to take Sámi representatives' views, knowledge or Sweden's international obligations on Indigenous rights into account. The legislative history of the Consultation Act explains that the greater the potential negative impact on Sámi culture and reindeer herding communities' property rights, the more importance the decision-maker should give to opposing Sámi interests.²⁹² However, there is no legal guarantee obligating decision-makers to weigh interests in this way. And no other safeguards exist where Indigenous rights are assessed to halt projects that carry a risk of significantly impacting them. For instance, there is no obligation for decision-makers to assess the potential human rights impacts of an individual land use project, such as the impacts on the Sámi People's right to culture and to lands, territories and resources.²⁹³

Further, while the Consultation Act stipulates that consultations should be held, there is no obligation on the state and companies to seek consent. This contradicts a fundamental principle of Indigenous Peoples' right to FPIC under international law.²⁹⁴ A lack of consent-seeking and one-sided state control over when consultations can end without safeguards further exacerbate the power imbalance in relation to the Sámi People.

Since seeking consent is not part of Sweden's domestic laws on consultation with Sámi, its laws also lack guidance for decision-makers on how to handle a situation in which Sámi representatives withhold their consent. This is a core issue for any state when implementing its FPIC obligations. No matter the potential impact of a proposed project, Swedish decision-makers are never legally required to comply with a Sámi "no" for a decision to be valid.²⁹⁵

NARROW DOMESTIC LEGAL SCOPE AND DUTY FOR OBLIGATION TO CONSULT

Under international human rights law, states are obligated to engage Indigenous Peoples in any matter that may impact their rights and to seek their consent.²⁹⁶ However, as explained above, Swedish law contains crucial exemptions to the duty to consult. For instance, Environmental Permit Offices are completely exempt from any obligation to consult Sámi representatives despite handling permits for environmentally hazardous activities.²⁹⁷ The result is that Sámi representatives are not being consulted in these contexts, pointing to the authorities' obligation to consult them being too narrow in scope and inconsistent with human rights law.²⁹⁸

A LACK OF RESOURCES FOR SÁMI REPRESENTATIVES

Sweden's legal framework requires that the Sámi Parliament, reindeer herding communities and Sámi organizations should be given reasonable time and necessary written information before consultations.²⁹⁹

²⁹¹ Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices (previously cited).

²⁹² Swedish government, prop. 2020/21:64 (previously cited), p. 112. See also Swedish Supreme Court, Girjas Reindeer Herding Community v. Sweden (previously cited), para. 92.

²⁹³ See Rasmus Kløcker Larsen, Maria Boström, Muonio Reindeer Herding District, Vilhelmina Södra Reindeer Herding District, Voernes Reindeer Herding District and Jenny Wik-Karlsson, The impacts of mining on Sámi lands: A knowledge synthesis from three reindeer herding districts, *The extractive industries and society*, 2022, 9: 101051, <https://doi.org/10.1016/j.exis.2022.101051> (accessed on 8 November 2024).

²⁹⁴ See, for instance, UNDRIP, Articles 19 and 32(2); and UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited).

²⁹⁵ Swedish government, prop. 2020/21:64 (previously cited), pp. 109-112; and Sweden's explanation of vote after the adoption of the UNDRIP: United Nations, "General Assembly Adopts Declaration on Rights of Indigenous peoples; 'Major Step Forward' towards Human Rights for All, Says President", <https://press.un.org/en/2007/ga10612.doc.htm> (accessed on 8 November 2024).

²⁹⁶ UNHRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, UN Doc. A/HRC/12/34, 15 July 2009, para. 43.

²⁹⁷ Sweden, Consultation Act (2022:66) (previously cited), Section 3; and Swedish government, prop. 2020/21:64 (previously cited), pp. 44-45.

²⁹⁸ Sweden, Consultations Act (2022:66) (previously cited), Sections 3-5. See Swedish Institute for Human Rights, Supplementary information to the UN Committee on Economic, Social and Cultural Rights for consideration of the seventh periodic report of Sweden, January 2024 (previously cited), para. 75.

²⁹⁹ Sweden, Consultations Act (2022:66) (previously cited), Section 9; and Swedish government, prop. 2020/21:64 (previously cited), pp. 92-93.

JUST TRANSITION OR 'GREEN COLONIALISM'?

HOW MINERAL EXTRACTION AND NEW ENERGY PROJECTS WITHOUT FREE, PRIOR AND INFORMED CONSENT ARE THREATENING INDIGENOUS SÁMI LIVELIHOODS AND CULTURE IN SWEDEN, NORWAY AND FINLAND

However, they are not guaranteed any resources to support their engagement with the consultation, such as legal or technical advice or funding for internal administration and coordination to cover loss of work time and similar.³⁰⁰ Swedish law, therefore, does not address the preexisting power imbalance between Sámi representatives and state and company representatives, which it should do under international human rights law.³⁰¹

The implications that limited resources may have for the Sámi People's effective access to their human rights in practice may be worsened in cases where several parallel land use processes are cumulatively affecting Indigenous lands.³⁰² At the same time, the state lacks insight into the total amount of processes (and earlier land encroachments) affecting reindeer herding communities and other local Sámi rights-bearers. This situation risks forcing a time-consuming and otherwise burdensome workload on Sámi that may hinder their ability to maintain and develop their Indigenous culture,³⁰³ which is discriminatory.

INADEQUATE APPEALS PROCESSES

Sámi representatives have no independent right to appeal or other remedy based on an inadequate consultation procedure for correcting the consultation process, rejecting a proposed project and providing accountability.³⁰⁴ If Sámi representatives have identified errors in the consultation process, they need to rely on whether the final decision can be appealed as determined by the responsible authority. If the decision can be appealed, there are still no guarantees that a court would review any question of compliance concerning the consultation process, let any incompliance affect the review of the merits, or annul a decision. Under administrative law, a second instance may annul a decision by the first instance due to procedural error. However, for this to happen, a serious level of error is generally required.³⁰⁵ Swedish legal sources currently provide little guidance on how to apply administrative rules and standards to consultation procedures for the Sámi People.

In addition, due to existing principles of legal standing, today, it mainly affects individual property owners and reindeer herding communities that own the right to herd reindeer in the area that are immediately affected by projects that are allowed to appeal decisions.³⁰⁶ Other Sámi representatives whose livelihoods and relationship with the lands may also be immediately affected but who do not have membership in a reindeer herding community are not recognized as rights holders in land use processes based on their Sámi identity, generally leaving them without legal standing unless they own land or hold other individual property rights. Reindeer herding communities with grazing lands outside of a designated mining area but who suffer negative consequences such as by railways, roads and other associated mining infrastructures may also have a problem appealing decisions at the concessions stage.³⁰⁷

In a land use context generally, the Swedish system has a few supervisory bodies to which individuals can turn if they have complaints regarding public bodies. The Parliamentary Ombudsman may decide to issue an investigation, which may lead to official criticism against a public authority.³⁰⁸ In some instances, it is also possible to turn to the Chancellor of Justice, including to seek damages.³⁰⁹ There are, however, no legal guarantees that these bodies will investigate an issue, and because a supervisory body's criticism and decisions are never binding on a public body, they cannot revoke a decision already made. It is possible to

³⁰⁰ See Swedish Institute for Human Rights, Supplementary information to the UN Committee on Economic, Social and Cultural Rights for consideration of the seventh periodic report of Sweden, January 2024 (previously cited), para. 75; Swedish Institute for Human Rights, *Konferensrapport: Urfolksrätt och samers rättigheter i samband med klimatomställningen* ["Conference report: Rights of Indigenous Peoples and the Sámi People in the Context of Climate Transition"], 25-26 September 2023, 3.1.2-334/2023, https://minstitutet.se/wp-content/uploads/2022/01/rapport-Konferensrapport_Urfolksratt-samers-rattigheter-i-samband-med-klimatomstallningen-september-2023.pdf, p. 10 (in Swedish, accessed on 8 November 2024); and Sámi Parliament of Sweden, Submission from the Sami Parliament in Sweden to the Committee on Economic, Social and Cultural Rights for the review of Sweden, 18 January 2024, [tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FSWE%2F57207&Lang=en](https://internet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FSWE%2F57207&Lang=en), para. 8.

³⁰¹ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), paras 10 and 22.

³⁰² See Kaisa Raitio and Rasmus Kløcker Larsen, Cumulative impact assessments and Sámi indigenous rights (previously cited).

³⁰³ See Sweden, Instrument of Government (1974:52) (previously cited), Chapter 1, Section 2, para. 6.

³⁰⁴ See Swedish government, prop. 2020/21:64 (previously cited), pp. 115-123; and Swedish Institute for Human Rights, Supplementary information to the UN Committee on Economic, Social and Cultural Rights for consideration of the seventh periodic report of Sweden, (previously cited), para. 75.

³⁰⁵ Sweden, Förvaltningsprocesslag (1971:291) ["Administrative Procedure Act (1971:291)"], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/forvaltningsprocesslag-1971291_sfs-1971-291/ (in Swedish); and Swedish government, prop. 2020/21:64 (previously cited), p. 117.

³⁰⁶ Minerals Act (1991:45) (previously cited) and Sweden, Förvaltningslag (2017:900) ["Public Administration Act (2017:900)"], Section 42 https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/forvaltningslag-2017900_sfs-2017-900/ (in Swedish).

³⁰⁷ Kaisa Raitio, Christina Allard, Rebecca Lawrence, Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices (previously cited).

³⁰⁸ Parliamentary Ombudsman, <https://www.jo.se/en/about-jo> (accessed on 8 November 2024).

³⁰⁹ Chancellor of Justice, <https://www.jk.se/> (in Swedish, accessed on 8 November 2024).

turn to general courts to seek damages, but such procedures can be very costly.³¹⁰ There is thus no mechanism available to the Sámi People where human rights claims can be effectively investigated, redress provided, and state and/or non-state perpetrators held to account.³¹¹ In reality, Sámi are generally dependent on the goodwill of companies in every case, with serious implications for the Sámi People's ability to realize their rights.³¹² In addition, if the state proceeds with its plans, the Swedish system does not allow for benefit-sharing and compensation,³¹³ which should be the case according to international human rights standards.³¹⁴

The Sámi Parliament has in 2014 requested a moratorium on the granting of mining concessions in Sweden until adequate legal reforms are made.³¹⁵

OBSERVATIONS BY INTERNATIONAL HUMAN RIGHTS BODIES

Sweden has sometimes been viewed as a progressive state in terms of human rights,³¹⁶ but in the past decade, the Swedish state has received increasing international criticism from bodies such as the CESCR, the CERD and the CCPR for failing to respect Indigenous Peoples rights, including FPIC, in connection with development projects and extractive industries.³¹⁷

In 2016, the UN Special Rapporteur on the rights of Indigenous Peoples mentioned the Rönnbäck case in her report after a field trip to the area, stating that it “poignantly illustrates the need for a domestic regulatory framework that adequately recognizes and protects Sámi rights in accordance with international human rights standards”.³¹⁸ In 2020, the CERD established that due to the substance of domestic legislation, the Swedish state had breached the rights to property and remedy in the Rönnbäck case, discussed below.³¹⁹

In its latest observations in March 2024, around two years after the Consultation Act entered into force, the CESCR stated it is “concerned about the lack of adequate consideration of the impact on the Sámi people of the development of industries such as wind power and mining of critical minerals on Sámi land, which are being implemented in the context of the green transition”.³²⁰

The CESCR also stated: “The Committee regrets, however, the lack of specific information on effective guarantees, both in law and in practice, to ensure effective consultation with the Sámi in the decision-making that affects them, as well as to ensure their free, prior and informed consent”.³²¹

The Committee effectively recommended that Sweden guarantee FPIC for the Sámi People in all decisions affecting them and respect Sámi traditions and decision-making processes.³²² The Committee also made the following recommendations:

³¹⁰ See Rasmus Kløcker Larsen and others, *The impacts of mining on Sámi lands: A knowledge synthesis from three reindeer herding districts* (previously cited).

³¹¹ See UNDRIP, Article 40; American Declaration on the Rights of Indigenous Peoples, Article 33; and EMRIP, *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: establishing effective monitoring mechanisms at the national and regional levels for the implementation of the Declaration - Report of the Expert Mechanism on the Rights of Indigenous Peoples*, 30 May 2023, UN Doc. A/HRC/EMRIP/2023/3.

³¹² Rasmus Kløcker Larsen and others, *Agreements Between Reindeer Herding Communities and Developers: How Do They Affect Reindeer's Well-being?* (previously cited).

³¹³ Compensation should follow proportionate limitations of reindeer herding rights as property rights through agreement or expropriation; see Sweden, *Instrument of Government* (previously cited), Chapter 2, Section 15; and Rasmus Kløcker Larsen and others, *Agreements between Reindeer Herding Communities and Developers: How Does this Affect Reindeer's Well-being?* (previously cited).

³¹⁴ UNHRC, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples* (previously cited), para. 40.

³¹⁵ Sámediggi, *Sametingets syn på gruvor och mineraler i Sápmi*, [“The Sámi Parliament's Opinion on Mines and Minerals in Sápmi”], May 2014, <https://www.sametinget.se/gruvpolicy> (in Swedish, accessed on 7 November, 2024).

³¹⁶ Kaisa Raitio, Christina Allard, Rebecca Lawrence, *Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices* (previously cited). The article refers to Alison Brysk, *Global Good Samaritans: human rights as foreign policy*, Oxford University Press, 2009, p. 304.

³¹⁷ See, for instance, Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations on the seventh periodic report of Sweden*, UN Doc. E/C.12/SWE/CO/7, 22 March 2024; CESCR, *Concluding observations on the sixth periodic report of Sweden*, 14 July 2016, UN Doc. E/C.12/SWE/CO/6; Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden*, 6 June 2018, UN Doc. CERD/C/SWE/CO/22-23; CERD, *Concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden*, adopted by the Committee at its eighty-third session (12-30 August 2013), UN Doc. CERD/C/SWE/CO/19-21; Human Rights Committee, *Concluding observations on the seventh periodic report of Sweden*, 28 April 2016, UN Doc. CCPR/C/SWE/CO/7; Council of Europe, *Advisory Committee on The Framework Convention for the Protection of National Minorities; Fifth Opinion on Sweden*, Adopted on 11 October 2023, ACFC/OPN(2023)4; and, in connection, see Committee of Ministers, *Resolution (CM/ResCMN(2024) on the implementation of the Framework Convention for the Protection of National Minorities by Sweden*, adopted on 5 April 2024 at the 1494th meeting of the Ministers' Deputies.

³¹⁸ Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, 9 August 2016, UN Doc. A/HRC/33/42/Add.3, para. 48.

³¹⁹ CERD, *Opinion approved by the Committee under Article 14 of the Convention concerning communication 54/2013*, 26 November 2020, UN Doc. CERD/C/102/D/54/2013.

³²⁰ CESCR, *Concluding observations on the seventh periodic report of Sweden*, UN Doc. E/C.12/SWE/CO/7, 22 March 2024, para. 10.

³²¹ CESCR, *Concluding observations on the seventh periodic report of Sweden*, UN Doc. E/C.12/SWE/CO/7, 22 March 2024, para. 14.

³²² CESCR, *Concluding observations on the seventh periodic report of Sweden*, UN Doc. E/C.12/SWE/CO/7, 22 March 2024, para. 15(d).

“Adopt comprehensive measures to protect the rights of the Sámi people against the adverse effects of large development projects, including through environmental and human rights impact assessments in consultation with the Sámi, ensuring their free, prior and informed consent before initiating such projects, and establish mechanisms to mitigate and compensate for any negative impacts on their traditional lifestyles and reindeer herding activities.”³²³

FUTURE LEGISLATIVE REFORMS IN LIGHT OF NEW EU LEGISLATION ON CRITICAL RAW MATERIALS

As discussed above, the EU has adopted the European Critical Raw Materials Act (CRMA).³²⁴ Under this legislation, companies’ applications to extract deposits can be referred to as “strategic projects” when fulfilling certain criteria. When a project is assessed as strategic under the CRMA, it becomes entitled to fast-tracking for mining permits up to a maximum of two years and three months, as well as potential state funding. While the CRMA has already come into effect in Sweden and other EU member states, it is not yet clear what legislative amendments and other measures the Swedish government plans to initiate to implement it. The CRMA, however, does not require EU member states or project promoters to respect Indigenous Peoples’ right to give or withhold their FPIC for projects which will impact their rights, territories and resources as derived from their right to self-determination, despite the risk that it will increase pressure on the lands of Indigenous Peoples in and outside of the EU.³²⁵

6.2 CASE STUDY: RÖNNBÄCK NICKEL MINE PROJECT

“We are dependent on life in these lands, and if I am going to be able to pass on my culture to my children, then I will do it here.”³²⁶

6.2.1 CONTEXT

Rönnbäck³²⁷ is a village in the river valley of *Bearkoenvuemie* (Björkvattsdalen in Swedish), around 25 kilometres south of *Dearna* (Tärnaby) in *Lusspie* (Storuman) municipality, Västerbotten county, in southern Saepmie (Sápmi in southern Sámi). The river valley of Björkvattsdalen, part of the Vapsten reindeer herding district, has plenty of wetlands and high mountains on both sides. Old spruce, pine and birch forests and rich biological diversity make Björkvattsdalen a hub for moose and other wild animals.³²⁸ Throughout history, local Sámi have made a living here through reindeer herding and other livelihoods such as fishing, hunting, small-scale farming, food and herb gathering.³²⁹ More than 6,000 Sámi-owned reindeer currently depend on

³²³ CESCR, Concluding observations on the seventh periodic report of Sweden, UN Doc. E/C.12/SWE/CO/7, 22 March 2024, para. 19(d).

³²⁴ Regulation (EE) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (CRMA), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401252

³²⁵ See Amnesty International, Feedback, 30 June 2023, F3429222, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13597-European-Critical-Raw-Materials-Act/F3429222_en

³²⁶ Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³²⁷ In official documents, the village is referred to as “Rönnbäcken”. However, this report uses the name “Rönnbäck”, which is commonly used by many locals.

³²⁸ Interviews by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 and 27 June 2024; Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024; and Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024. See also Mats Hellmark, “Sveriges ömma punkt: samer och gruvor” [“Sweden’s Sore Point: the Sámi People and Mining”], 19 April 2016, <https://www.sverigesnatur.org/aktuellt/samer-kampar-mot-gruvor/> (in Swedish, accessed on 8 November 2024).

³²⁹ Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024. See Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, To the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Ms. Victoria Tauli-Corpus, *Follow-up report 2018 on Rönnbäck Nickel mining case, after the Special Rapporteur’s visit to Rönnbäck, Sápmi, Sweden*, 2018.

pasture here.³³⁰ Several Sámi representatives Amnesty International spoke to referred to Björkvattdalen as a “core area”³³¹ for Indigenous culture, including its sacred sites and strong storytelling tradition.³³²



Rönnbäck 20241212. Drone photo of the area where the Rönnbäck nickel mine project would be located. Several Sámi representatives Amnesty International spoke to, referred to this as a “core area” for Indigenous culture. © Erik Nylander / WEI

6.2.2 CASE SUMMARY AND TIMELINE

The company Nickel Mountain AB, owned by BlueLake Minerals AB³³³, has gained the right to extract nickel (sulphide) in three open pit mines at three different but adjacent locations in Rönnbäck.³³⁴ Each planned pit mine will have an associated industrial area consisting of water dams for filtering waste products, waste product repositories, loading zones for ore, offices and other employee facilities and so on.³³⁵ A new road system will also be needed to connect the three mining sites.³³⁶

Between 2005 and 2011, Sweden’s Mining Inspectorate granted the company eight individual permits to conduct exploration activities in the area.³³⁷ During 2007-2010, the company held five official consultations

³³⁰ Interviews by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024; Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024.

³³¹ Interviews by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024; Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024; and Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024.

³³² Interview by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024. In connection to the mining area there is, for instance, a cemetery, Voijtjajaura chapel and a homestead.

³³³ Between 2014 and 2020, BlueLake Minerals AB was called Nickel Mountain Resources AB. Before 2014, the name was IGE Nordic AB (IGE Resources).

³³⁴ Except for nickel, the permits include extraction of cobalt, iron ore, gold, silver, platinum, palladium and chrome. Sweden, Mining Inspectorate, Decisions 2010-06-23, Dnr BS 22-177-2010 and BS 22-178-2010; Mining Inspectorate, Decision 2012-10-01, Dnr BS 22-1714-2011; and Government Offices, Ministry of Enterprise and Innovation, Decision 2013-08-22, N2012/1637/FIN, N2012/2776/FIN and N2012/5726/FIN.

³³⁵ Vapsten reindeer herding community, Complaint to the CERD, 18 September 2013.

³³⁶ Vapsten reindeer herding community, Complaint to the CERD, 18 September 2013.

³³⁷ Sweden, Mining Inspectorate, Decisions 2005-08-01, Dnr 200-454-2005 (No. 1); 2007-02-08, Dnr 200-1396-06 (No. 2); 2007-12-11, Dnr 200-1009-07 and Dnr 200-1010-07 (No. 3-4); 2009-06-11, Dnr 200-527-2009 (No. 5); 2009-06-25, Dnr 200-528-09 (No. 6); 2009-10-01, Dnr 200-1015-2009 (No. 7); 2010-11-04, Dnr 200-179-2010 (No. 8).

with the Vapsten reindeer herding community, including site visits.³³⁸ In 2010 and 2012, the Mining Inspectorate granted three mining concessions to the company for properties Rönnbäcken K No. 1, 2 and 3.³³⁹ In 2013, the government confirmed its approval of the mining concessions³⁴⁰ and around a year later, the Supreme Administrative Court approved the government's decision.³⁴¹ In 2020, the UN CERD established that the Swedish state had breached several CERD articles by approving the mining concessions.³⁴² In July 2024, the company applied before the EU Commission for strategic status for the Rönnbäck project under the European Critical Raw Materials Act,³⁴³ as outlined above. Today, the Sámi People are awaiting the EU Commission's decision, which is expected in 2025. According to the Swedish permit system relating to mining activities, the company's next step will be to apply for an environmental permit before a Swedish Land and Environment Court to establish the project.

TIMELINE: RÖNNBÄCK NICKEL MINE

DATE / YEAR	EVENT
2005-2011	Affected Sámi appeal eight exploration permits. Permits are granted, and exploration activities are conducted.
2007-2010	Vapsten reindeer herding community participates in five consultations and individual interviews organized by Nickel Mountain AB. Other affected Sámi are not invited to consultations.
2010-2014	Affected Sámi appeal the three mining concessions (Rönnbäcken K. no. 1-3). Mining concessions are granted.
2013	Vapsten reindeer herding community submits a complaint to CERD under its individual complaint mechanism.
2015-2016	The Sámi Parliaments and affected Sámi invite the UN Special Rapporteur on the Rights of Indigenous Peoples, who criticizes Sweden's mining legislation as inadequate for protecting the Sámi People's rights.
2020	CERD establishes that the Swedish state has violated the rights to property and effective remedy. It also holds that FPIC is part of the right to property for Indigenous Peoples and includes FPIC in its recommendations to Sweden.
2024	Nickel Mountain AB applies for strategic status for the Rönnbäck project according to the European Critical Raw Materials Act (CRMA).

6.2.3 AN INADEQUATE LEGAL FRAMEWORK

When the Rönnbäck mining concessions stage was ongoing, the Consultation Act outlined above was not yet in force. Neither were certain amendments to the Minerals Act that are now in force. While the company's permit applications were pending and later approved, Sweden had no relevant laws requiring consultation with Sámi representatives. The Vapsten reindeer herding community and affected individual property holders, many of whom are Sámi,³⁴⁴ did have a right to receive information about the permit process and also to appeal decisions. The company also decided to hold informal consultations with the Vapsten reindeer herding community, as mentioned above. Some affected Sámi outside the Vapsten reindeer herding

³³⁸ Interview by voice call with Inger-Ann Omma, legal representative for and reindeer herder in Vapsten reindeer herding community, 26 June 2024. Her information complements the information provided by the parties in CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), paras 2.5 and 3.5.

³³⁹ Sweden, Mining Inspectorate, Decisions 2010-06-23 (K No. 1-2) and 2012-10-01 (K No. 3) (previously cited).

³⁴⁰ Government Offices of Sweden, Ministry of Enterprise and Innovation, Decision 2013-08-22 (previously cited).

³⁴¹ Supreme Administrative Court of Sweden, HFD 2014 not. 65, Judgment on 29 October 2014, <https://lagen.nu/dom/hfd/2014/not/65> (in Swedish).

³⁴² CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited).

³⁴³ Bluelake Mineral, "Bluelake Mineral applies for strategic status of the Rönnbäcken nickel-cobalt project within the framework of EU's new mining legislation CRMA", 2 July 2024, <https://www.bluelakemineral.com/en/investors/press-releases/?slug=bluelake-mineral-applies-for-strategic-status-of-the-ronnbac-56077> (accessed on 11 November 2024).

³⁴⁴ Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

community, such as the association Vaapsten Sijte, requested and attended a few meetings with the company.³⁴⁵

Since 1 January 2018, companies have had a legal obligation to consult with mainly affected reindeer herding communities before preparing the environmental impact assessment at the concessions stage.³⁴⁶ However, as outlined above, there are clear gaps in current Swedish legislation concerning consultations as regards FPIC under international law.

6.2.4 IMPACT ON SÁMI

EXHAUSTION AND DISAPPOINTMENT: “YOU BECOME COMPLETELY NUMB.”

In 2007, after being informed about the first decisions on exploration permits, the Vapsten reindeer herding community initiated a visit to the company’s office in Stockholm to share their concerns about reindeer herding.³⁴⁷ When consultations were later held, the Vapsten reindeer herding community made clear that they withheld their consent and maintained their rights as an Indigenous People in relation to the project, including in their appeals against each decision made.³⁴⁸ Inger-Ann Omma, legal representative for and reindeer herder in the Vapsten reindeer herding community, told Amnesty International: “Although we were talking about FPIC [...] it felt [...] extremely odd [...]. But we tried to bring it up, especially in relation to the company, that we are against this, and you need to hear our position based on [...] Indigenous Peoples’ rights.”³⁴⁹

When asked about how Sámi influence worked in the Rönnbäck process, Per-Henning Utsi, a reindeer herder in the Vapsten reindeer herding community, said: “You become completely numb. [...] Traditional knowledge is not worth anything.”³⁵⁰

In the Rönnbäck case, affected local communities have had to take on different roles in the united Indigenous resistance. Sámi, who are not members of the Vapsten reindeer herding community, have struggled to become formal parties to the ongoing permit process. They have accessed information and based their appeals on case documents that they had to request from formal parties, authorities and courts.³⁵¹ Although their appeals were found inadmissible due to a lack of legal standing³⁵² they still submitted them in order to voice their resistance.³⁵³ Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, told Amnesty International that there was limited recognition of Sámi spirituality and history in the area and that many local Sámi are rendered invisible by the system: “They don’t see [...] the spiritual connection to the land. They don’t see the whole history of the area. You are invisible, like a football field of rocks that they need to access.”³⁵⁴

Instead, collaboration, awareness-raising, and campaigning activities have been important tools for Sámi who are not recognized as rights bearers in relation to the Rönnbäck case.³⁵⁵ “The children have had to learn how to demonstrate. They have been involved in demonstrations right from the start, really,” Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, said.³⁵⁶ Some affected Sámi

³⁴⁵ Interview by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024.

³⁴⁶ Swedish government, prop. 2016/17:200 (previously cited); see Government Offices of Sweden, Ministry for Foreign Affairs, Communication 54/2013 (previously cited).

³⁴⁷ Interview by voice call with Inger-Ann Omma, legal representative for and reindeer herder in Vapsten reindeer herding community, 26 June 2024.

³⁴⁸ Interview by voice call with Inger-Ann Omma (previously cited).

³⁴⁹ Interview by voice call with Inger-Ann Omma (previously cited).

³⁵⁰ Interview by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024.

³⁵¹ The constitutional principle of public access to official documents provides extensive access to official documents in Sweden. Interviews by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024; and Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024. Appeals and other communications by the Vaapsten Sijte, Vadtejen Saemiej Sijte and the Organisation Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, and so on, are visible in public documents. See, for instance, Government Offices, Ministry of Enterprise and Innovation, Decision 2013-08-22 (previously cited); and Vadtejen Saemiej Sijte, Email to the Mining Inspectorate, 2010-11-08. See also Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, To the United Nations Special Rapporteur on the Rights of Indigenous peoples, Ms. Victoria Tauli-Corpuz, *Follow-up report 2018 on Rönnbäck Nickel mining case, after the Special Rapporteur’s visit to Rönnbäck, Sápmi, Sweden, 2018*.

³⁵² See, for instance, Luleå Administrative Court, Case 2811-10E, Judgment on 16 February 2010; and Government Offices, Ministry of Enterprise and Innovation, Letter to Vaapsten Sijte, 2013-02-28, N2012/5726/FIN.

³⁵³ Interviews by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024; and Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024; See also Peter Johansson & Johan Karlsson Schaffer, Sámi Legal Mobilization to Protect Indigenous Land Rights In Sweden: Legal Opportunities For Effecting Change In The Girjas, Rönnbäck and Gállok Cases, Forthcoming In 2024, I. Westendorp (Ed.), *Human Rights Strategies*. Edward Elgar Publishing.

³⁵⁴ Interview by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024.

³⁵⁵ Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³⁵⁶ Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

also initiated contact internationally, such as with Indigenous women struggling against land encroachments.³⁵⁷

BATTLING EXHAUSTION

Sámi's struggle against exhaustion linked to the planned project was also noticeable during the research for this report. Many commented on the impact on their physical and mental health due to an uncertain future, the long process and the cumulative impact of other human rights struggles in the area.³⁵⁸ "I wish that we could do something else," Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, said. "You know [...] live] life."³⁵⁹ When discussing the project's impacts on reindeer herding lands, Per-Henning Utsi, a reindeer herder in Vapsten reindeer herding community, told Amnesty International: "[I]t takes a toll on your own well-being and psyche, to think that this could be [...] the beginning of the end."³⁶⁰

"Inga Marja", a young reindeer herder, said when asked about her future: "I would, of course, like to continue to herd reindeer in the area, like I have done all my life and want to continue to do for the rest of my life. For me, it is the reindeer that carry the entire Sámi culture, and I don't see any meaning in life without them."³⁶¹ Marie Persson Njajta also spoke about "life coming to a pause"³⁶² and mentioned cases of self-harm and suicide due to the overall struggle against state oppression and local land encroachments over time.³⁶³

One Sámi representative also told Amnesty International that their resistance against the Rönnbäck project and other land exploitation projects had exacerbated racism from non-Sámi locals.³⁶⁴ According to him, racism is widespread locally, which limits his and his family members' daily lives. For example, they often avoid going to restaurants or bars late at night unless they are in a larger group of people. He has never reported his experiences to the Police authority due to fear of experiencing more racism.³⁶⁵

CONCRETE HARMS ON SÁMI HEALTH, CULTURE AND LIVELIHOODS

Several hundred southern and northern Sámi are directly affected by the planned nickel mines, and their communities have battled against the project since 2005.³⁶⁶ Local lands are already under heavy cumulative pressure from land encroachments and competing activities such as hydroelectricity,³⁶⁷ ongoing gold mining,³⁶⁸ wind power projects, clear-cutting forestry and tourism, with further projects pending.³⁶⁹ Affected Sámi maintain that the Rönnbäck project, such as the location of the mine pits and connecting roads, risk directly and indirectly destroying sacred grounds, fishing waters and land important for gathering food and herbs.³⁷⁰ They maintain that the project will also destroy reindeer grazing lands that are essential during approximately two-thirds of the year and block migration routes needed for reindeer to migrate between

³⁵⁷ Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³⁵⁸ Interviews by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer community, 25 June 2024; and with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³⁵⁹ Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³⁶⁰ Interview by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024.

³⁶¹ Interview by video call with "Inga Marja", whose name has been changed to protect their identity, 4 July 2024.

³⁶² Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³⁶³ Interview by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³⁶⁴ Interview by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024.

³⁶⁵ Follow-up interview by email with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 4 December 2024.

³⁶⁶ The absence of Sámi consent throughout the process is confirmed by sources such as the CERD's opinion, official documents, media reports and interviews conducted by Amnesty International in its research for this report. See also Sámi Parliament of Sweden, "Sametinget kan inte acceptera exploateringen av Sápmi" ["The Sámi Parliament cannot accept the exploitation of Sápmi"], 28 August 2013, <https://www.sametinget.se/61172> (in Swedish, accessed on 11 November 2024).

³⁶⁷ Marie Persson & May-Britt Öhman, Visions for a Future at the Source of the Ume River, Sweden, The Battle against the Rönnbäck Nickel Mining Project, In Johan Gärdebo and others, *RE: Mindings: Co-Constituting Indigenous/Academic/Artistic Knowledges*. Uppsala University, 2014; Interviews by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte, 3 June 2024 and Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³⁶⁸ Except for the active Svartliden mine there are approved concessions for the project Stortjärnhobben, see Sveriges Radio, Vill öppna omstridd guldgruva söder om Storuman ["Wants to open controversial gold mine south of Storuman"], 12 April 2023, <https://sverigesradio.se/artikel/vill-oppna-omstridd-guldgruva-soder-om-storuman> (in Swedish).

³⁶⁹ Interviews by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024; on the phone with Inger-Ann Omma, legal representative for and reindeer herder in Vapsten reindeer herding community, 26 June 2024; by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte, 3 June 2024.

³⁷⁰ Interviews by video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024; Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024. In connection to the mining area there is, for instance, a cemetery, Vojittjajure chapel and a homestead.

JUST TRANSITION OR 'GREEN COLONIALISM'?

HOW MINERAL EXTRACTION AND NEW ENERGY PROJECTS WITHOUT FREE, PRIOR AND INFORMED CONSENT ARE THREATENING INDIGENOUS SÁMI LIVELIHOODS AND CULTURE IN SWEDEN, NORWAY AND FINLAND

grazing lands in different seasons.³⁷¹ All local reindeer herding is, therefore, at risk of collapsing if the project is established.³⁷² One reindeer herder said:

“This area in Rönnbäck [...] I have a hard time putting into words how damn good it is [...] in early springtime. And how much access to food there is. It is the same in the fall. [...] It will be difficult to go where we usually migrate to, to be able to continue the move to winter grazing lands. It will be hard to pass through here because the reindeer is an animal that demands space.”³⁷³

The pasture around Rönnbäck is indispensable for reindeer to survive winters, which has become more difficult with changed climate conditions due to the climate crisis.³⁷⁴ For instance, in the early springtime, when returning from winter grazing lands further east, the Rönnbäck area provides reindeer with critical lichen, which is crucial for their survival. “If there will be a mining area there now, then we will have no tree lichen-bearing forest,”³⁷⁵ one reindeer herder told Amnesty International.

The company says there is potential to extract 23,000 tonnes of nickel and 660 tonnes of cobalt from the area every year for 20 years.³⁷⁶ However, there have been concerns that the nickel (sulphide) recovery rate, hence its quality, is low compared to nickel projects internationally.³⁷⁷

In addition, as Swedish law does not make additional resources available for Sámi representatives, it was harder for affected Sámi to engage effectively in the process. Those Amnesty International spoke with explained how a lack of resources was challenging for many reasons, including a lack of access to information about the pending project and the permit process, less time for pursuing traditional livelihoods important for well-being and lacking funding for legal work and support.³⁷⁸ “[Y]ou are not a lawyer, and you’re trying to understand this. When you don’t have any means [...] it’s very difficult [...] But] we still didn’t keep quiet.”³⁷⁹

UN CERD CONFIRMS HUMAN RIGHTS VIOLATIONS

The Vapsten reindeer herding community filed a complaint to the UN CERD in 2013, claiming that the Swedish state had breached their rights to property, effective remedy and equal treatment before tribunals.³⁸⁰ In its November 2020 decision, the CERD established that due to the substance of domestic legislation, the Swedish state had breached the rights to property and remedy (Articles 5 (d)(v) and 6) and was guilty of racial discrimination.³⁸¹

³⁷¹ Vapsten reindeer herding community, Complaint to the CERD, 18 September 2013.

³⁷² Vapsten reindeer herding community, Complaint to the CERD, 18 September 2013; HFD 2014 not. 65. Interview by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2024; Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, To the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Ms. Victoria Tauli-Corpuz, *Follow-up report 2018 on Rönnbäck Nickel mining case, after the Special Rapporteur’s visit to Rönnbäck, Sápmi, Sweden*, 2018.

³⁷³ Interview by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024.

³⁷⁴ Interview by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024; see further Vapsten reindeer herding community, Complaint to the CERD, 18 September 2013.

³⁷⁵ Interview by video call with Per-Henning Utsi, reindeer herder in Vapsten reindeer herding community, 25 June 2024.

³⁷⁶ Bluelake Mineral, “Nickel”, <https://www.bluelakemineral.com/projekt/nickel/> (in Swedish, accessed on 11 November 2024).

³⁷⁷ Bluelake Mineral AB has calculated the nickel recovery rate to 0,18%. Bluelake Mineral, “Bluelake Mineral applies for strategic status of the Rönnbäck nickel-cobalt project within the framework of EU’s new mining legislation CRMA”, <https://www.bluelakemineral.com/en/investors/press-releases/?slug=bluelake-mineral-applies-for-strategic-status-of-the-ronnbac-56077> (accessed on 11 November 2024).

According to mining expert Arne Müller, that % includes both nickel types, sulphide *and* laterite. Both types cannot be extracted with the same extraction method according to him. According to Arne Müller, the nickel sulphide recovery rate in the Rönnbäck mines is 0,11%. From an international perspective, 0,11% recovery rate is very low. 2% recovery rate is considered a high level. See the e-mail conversation with mining expert Arne Müller, containing several links to written sources including statistics, 20 June 2024. Information about low quality is confirmed in the interview with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024.

³⁷⁸ In the Rönnbäck case, compensation was paid by the company for consultations and interviews in connection to the environmental impact assessment. There was no compensation for legal costs, and more. Interview by voice call with Inger-Ann Omma, legal representative for and reindeer herder in Vapsten reindeer herding community, 26 June 2024; video call with Marie Persson Njajta, founder of Stop Rönnbäck Nickel Mining Project in Ume River, Tärnaby, 13 June 2024; and video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2023.

³⁷⁹ Interview by video call with Torkel Stångberg, spokesperson for Vaapsten Sijte and reindeer herder, 3 June 2023.

³⁸⁰ Vapsten reindeer herding community, Complaint to the CERD, 18 September 2013. It invoked Articles 5(d)(v), and Articles 5(a) and 6 in the ICERD.

³⁸¹ CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), paras 6.12-22, 6.25-29, and 7. See Saami Council, Kommentar till FN:s Rasdiskrimineringskommittés avgörande i *Vapsten sameby v. Sverige* (Rönnbäckensavgörandet) [“Decision of the Committee on the Elimination of Racial Discrimination in *Vapsten Reindeer Herding Community v. Sweden* (Rönnbäckens decision)”], <https://static1.squarespace.com/static/5dfb35a66f00d54ab0729b75/t/60cce4dc57c7861453ce5e71/1624040668680/R%20C3%B6nnb%C3%A4cken+Analys.pdf> (in Swedish, accessed on 11 November 2024).

When assessing the alleged breach of the right to property, the CERD emphasized that the mining concessions were granted without prior consultation according to international standards for FPIC.³⁸² It noted the following:

“The Committee notes that it is incumbent upon the States Parties to provide evidence that they fulfil [FPIC], either directly by organizing and operating the consultations in good faith and with a view to reach consensus, or indirectly by providing sufficient guarantees on effective participation of indigenous communities and by ensuring that due weight is indeed given by any third party to the substantive arguments raised by the indigenous communities. The Committee considers that the duty to consult in such a context, is the responsibility of the State and cannot be delegated without supervision to a private company, especially to the very company with commercial interest in the resources within the territory of the indigenous peoples.”³⁸³

The CERD also established that “by delegating without effective guarantees the consultation process to the mining company [...] and thus failing in its duty to respect the land rights of the Vapsten Sámi Reindeer Herding Community, the State party did not comply with its international obligations.”³⁸⁴

Furthermore, in terms of inadequate consultations, CERD’s international experts maintained:

“Development and exploitation of natural resources, as a legitimate public interest, does not absolve States parties from their obligation not to discriminate against an indigenous community that depends on the land in question by mechanically applying a procedure of consultation without sufficient guarantees or evidence that the free, prior and informed consent of the members of the community can be effectively sought and won.”³⁸⁵

In the Rönnbäck case, the CERD recommended that Sweden provide an effective remedy by effectively revising the mining concessions after an adequate FPIC process.³⁸⁶ The Committee also recommended that Sweden amend its legislation “in order to reflect the status of the Sámi as indigenous people in national legislation regarding land and resources and to enshrine the international standard of free, prior and informed consent”.³⁸⁷

So far, the Swedish government has not undertaken measures to comply with these recommendations.³⁸⁸ The human rights violations identified by CERD are, therefore, still ongoing. The European Critical Raw Materials Act risks increasing the threat against the survival of Indigenous Sámi local communities and the Sámi People’s culture and lands across Sweden.

³⁸² CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), paras 6.12-6.22.

³⁸³ CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), para. 6.17.

³⁸⁴ CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), para. 6.17.

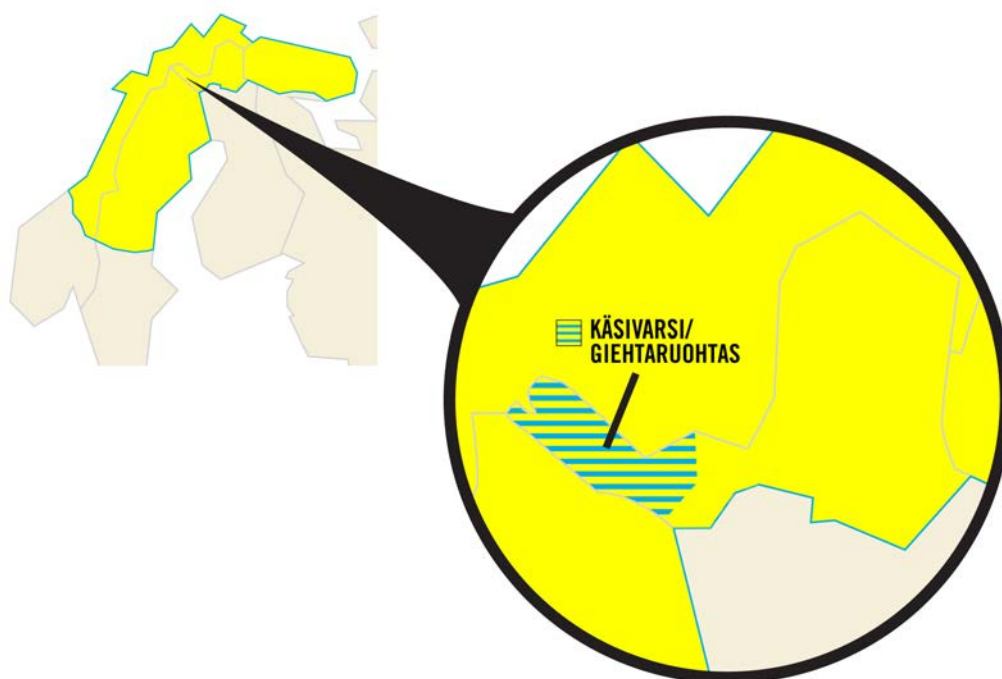
³⁸⁵ CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), para. 6.20.

³⁸⁶ CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), para. 8.

³⁸⁷ CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), para. 8.

³⁸⁸ For comparison, in migration cases on expulsion, the Swedish Aliens Act includes a provision that obliges the migration authority to change its decision (unless there are “exceptional reasons” not to) if an international body has found that it breaches Sweden’s international obligations. See Sweden, Utlänningslag (2005:716) [“Aliens Act (2005:716)”], Chapter 5, Section 4, https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/utlanningslag-2005716_sfs-2005-716/ (in Swedish).

7. FINLAND: MINERAL EXPLORATION IN KÄSIVARSI AREA



Map: Location of Käsivarsi (Giehtaruohtas) area. © Amnesty International

SÁMI IN FINLAND

There are approximately 11,000 Sámi in Finland, of whom about 30% live in the Sámi homeland area in the country's far north³⁸⁹ Sámi in Finland belong to three different groups, all of which have their own Sámi languages: North Sámi, Inari Sámi and Skolt Sámi.³⁹⁰

³⁸⁹ Sámi Parliament of Finland, Number of Sámi in the 2023 elections to the Sámi Parliament, https://dokumentit.solinum.fi/samediggi/download/?d=dokumenttipankki/tilastoja/saamelaisten_lkm_vaaleissa/saamelaisten_lukum%C3%A4%C3%A4r%C3%A4_vuoden_2023_saamelaisk%C3%A4r%C3%A4jien_vaaleissa.pdf (in Finnish, accessed on 24 September 2024).

³⁹⁰ Ministry of Justice Finland, Rights of the Sámi People, <https://oikeusministerio.fi/en/rights-of-the-sami-people> (accessed on 17 September 2024).

Sámi in Finland are granted constitutional status as an Indigenous People to maintain and develop their language and culture.³⁹¹ The Sámi Parliament is their supreme political body, tasked with representing the Sámi nationally and internationally. It also protects the Sámi language and culture and takes care of matters related to their status as an Indigenous People. The Sámi Parliament has no legislative or executive powers and works to realize the right to self-determination through negotiations with state authorities.³⁹²

7.1 FPIC IN FINNISH LEGISLATION

7.1.1 FINLAND'S INTERNATIONAL OBLIGATIONS

Finland is a state party to key UN human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Rights of the Child (CRC) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).³⁹³ While Finland has supported and voted in favour of the UNDRIP, it has not ratified ILO Convention 169.

7.1.2 MAIN LAWS REGULATING FPIC

Under Finland's constitution, the Sámi have the right to maintain and develop their own language and culture as an Indigenous People.³⁹⁴ They also have linguistic and cultural autonomy in the Sámi homeland³⁹⁵ under provisions in the Act on the Sámi Parliament.³⁹⁶

This Act also obligates Finnish authorities to negotiate with the Sámi Parliament on matters affecting the Sámi culture and status as an Indigenous People.³⁹⁷ Legislation covering different sectors, such as Finland's Mining Act, Nature Conservation Act and Environmental Protection Act, includes provisions concerning cooperation with the Sámi Parliament and prohibitions against weakening Sámi culture.

THE ACT ON THE SÁMI PARLIAMENT

The Act on the Sámi Parliament states that the Finnish authorities must negotiate with the Sámi Parliament on matters that may affect the Sámi's status as an Indigenous People:

“The authorities shall negotiate with the Sámi Parliament in all far reaching and important measures which may directly and in a specific way affect the status of the Sámi as an Indigenous people and which concern the following matters in the Sámi homeland: (1) community planning; (2) the management, use, leasing and assignment of state lands, conservation areas and wilderness areas; (3) applications for licences to stake mineral mine claims or file mining patents; (4) legislative or administrative changes to the occupations belonging to the Sámi form of culture; (5) the development of the teaching of and in the Sámi language in schools, as well as the social and health services; or (6) any other matters affecting the Sámi language and culture or the status of the Sámi as an indigenous people.”³⁹⁸

³⁹¹ The constitution of Finland (731/1999), Sections 17 and 121, <https://finlex.fi/en/laki/kaannokset/1999/en19990731> (Translation in English).

³⁹² Finland, Act on the Sámi Parliament, 974/1995, https://www.finlex.fi/fi/laki/kaannokset/1995/en19950974_20031026.pdf (unofficial translation).

³⁹³ Ministry of Foreign Affairs, YK:n voimassaolevat ihmisoikeussopimukset [“UN human rights treaties in force”], <https://um.fi/yk-n-voimassa-olevat-ihmisoikeussopimukset>

³⁹⁴ The constitution of Finland (731/1999), paras 17.3 and 121.4.

³⁹⁵ The Sámi homeland comprises the areas of the municipalities of Enontekiö, Inari and Utsjoki, and the area of the reindeer herding cooperative of Lapland in Sodankylä municipality. It covers the northernmost part of Finland.

³⁹⁶ Act on the Sámi Parliament 974/1995.

³⁹⁷ Finland, Act on the Sámi Parliament, 974/1995, https://www.finlex.fi/fi/laki/kaannokset/1995/en19950974_20031026.pdf (unofficial translation).

³⁹⁸ Finland, Act on the Sámi Parliament 974/1995, Section 9.

According to the Sámi Parliament Act, the relevant authority must also fulfil its duty to negotiate by giving the Sámi Parliament the opportunity to be heard and to discuss matters.³⁹⁹ However, if the Sámi Parliament does not use this opportunity, the authority can proceed with the matter.

The Act on the Sámi Parliament does not contain specific requirements for such negotiations, but in 2017, Finland's Ministry of Justice and the Sámi Parliament produced a joint memorandum⁴⁰⁰ encouraging state authorities to improve the quality of negotiations, which explicitly refers to UNDRIP Article 19 and FPIC.

According to the memorandum, a negotiation process should be a genuine dialogue and go beyond the usual statement and consultation procedure; direct interaction between the Sámi parliament and the authority is essential; and both parties should have sufficiently comprehensive information about the matter under negotiation and the impacts and effects of the planned measure.

According to the memorandum, the emphasis should be on cooperation and negotiations conducted in good faith, with a spirit of mutual appreciation and in a timely manner so that it is truly possible to influence the planned measure through negotiations. The negotiations must also be conducted with the aim of reaching an agreement, but the obligation to negotiate does not mean the right to veto.⁴⁰¹

The current Act on the Sámi Parliament was enacted in 1995, years before the UNDRIP was adopted. As international standards regarding Indigenous Peoples' self-governance have since developed, there have been attempts to reform the Act to better comply with newer international principles. Regrettably, these reform efforts have taken more than a decade. The fourth draft of the amended Act, revised in consultation with Sámi to ensure compliance with international standards, was presented by the government to Finland's parliament in December 2023.⁴⁰² The legislative proposal aimed to strengthen and expand state authorities' negotiation duty under Section 9. The amended Act would also obligate: "[...] *public authorities and other persons exercising public administrative functions to negotiate with the Sámi Parliament in the preparation of legislation, administrative decisions and other measures which may be of particular importance to the Sámi people, with a view to achieving consensus with the Sámi Parliament or to obtain the consent of the Sámi Parliament before a decision is taken*".

The amended Act would also include rules on the consultation and cooperation procedure (Section 9b), with the aim of ensuring the implementation of FPIC.⁴⁰³

At the time of publication of this report, the proposed reform of the Act on the Sámi Parliament is still pending approval from Finland's parliament.

THE MINING ACT

When considering the implementation of the obligation to negotiate on land use issues, particularly for "green" energy transition projects, one of Finland's most relevant sectoral laws is the Mining Act. It states that:

"[...] an exploration permit, mining permit and gold panning permit must not be granted if activities under the permit alone, or together with other corresponding permits and other forms of land use would, in the Sámi Homeland, substantially undermine the preconditions for engaging in traditional Sámi sources of livelihood or otherwise to maintain and develop the Sámi culture."⁴⁰⁴

According to the Mining Act Section 34, the permit applicant shall "provide an adequate report on the effects of the activities referred to in the application on the right of the Sámi as an Indigenous People to maintain and develop their language, culture and traditional livelihoods".⁴⁰⁵ Section 38 states that the permit authority, the Finnish Safety and Chemicals Agency (Tukes), shall:

"[...] assess the effects caused by activity in accordance with the permit on the rights of the Sámi as an indigenous people to maintain and develop their own language and culture and traditional livelihoods and shall consider measures required for decreasing and preventing damage. The Sámi

³⁹⁹ Finland, Act on the Sámi Parliament 974/1995, Section 9.

⁴⁰⁰ Ministry of Justice, Muistio saamelaiskäräjälain 9§ mukaisesta neuvotteluvollisuudesta ["Memorandum on Obligation to Negotiate, according to Sámi Parliament Act Section 9"], 23 November 2017, OM 2/551/2017 (in Finnish).

⁴⁰¹ Ministry of Justice, Muistio saamelaiskäräjälain 9§ mukaisesta neuvotteluvollisuudesta ["Memorandum on Obligation to Negotiate, according to Sámi Parliament Act Article 9"], OM 2/551/2017 (previously cited).

⁴⁰² Government proposal HE 11/2023, Hallituksen esitys eduskunnalle laeiksi saamelaiskäräjistä annetun lain ja rikoslain 40 luvun 11 §:n muuttamisesta ["Government proposal to the parliament on amendment of the Act on Sami Parliament and Chapter 40 Section 11 of the Penal Code"] (in Finnish).

⁴⁰³ Government proposal HE 11/2023 (previously cited), Sections 9 and 9b, also Key proposals Section 4.1.6. p. 52-53 (in Finnish).

⁴⁰⁴ Mining Act of Finland (621/2011; amendments up to 573/2023 included), English translation <https://www.finlex.fi/fi/laki/kaannokset/2011/en20110621.pdf>, Section 50.

⁴⁰⁵ Mining Act of Finland (621/2011; amendments up to 573/2023 included) (previously cited), Section 34.

Parliament, the Skolt village meeting and the local reindeer herding co-operative must also be given an opportunity to comment on the report before the start of cooperation.”⁴⁰⁶

Such an assessment should furthermore be based on the permit applicant’s report and be made in cooperation with them, the Sámi Parliament, Skolt Sámi village meeting, local reindeer herding cooperatives and the authority or institution responsible for managing the area. To clarify the matter, the permit authority can also invite all stakeholders to a consultation event.⁴⁰⁷ Additionally, Section 38 refers to provisions on the obligation to negotiate under Section 9 of the Act on the Sámi Parliament.

7.1.3 LEGAL GAPS: INCONSISTENCIES WITH INTERNATIONAL HUMAN RIGHTS LAW

WEAK SAFEGUARDS

When assessed against international FPIC standards, a key gap in Finnish legislation is that negotiations and cooperation procedures between the authorities and Sámi do not require obtaining Sámi consent. FPIC is not explicitly referred to in Finnish legislation, nor does it mention that negotiations (according to the Act on the Sámi Parliament Section 8) and a collaborative process (according to the Mining Act Section 38) would stipulate seeking Sámi consent.

When consultations do take place, it is unclear whether Sámi truly have an opportunity to influence the outcome of negotiations in cases where they oppose the measure(s) under consideration. Finnish law does not include guidance for decision-makers on how to handle a situation where Sámi decide to withhold their consent.

LIMITED OBLIGATION TO CONSULT

Although the law obliges the authorities to negotiate or organize a collaborative process on decisions that may affect Sámi livelihoods and culture, this obligation does not apply to all land use decisions. As the case study on mineral exploration permit processes in Käsivarsi will illustrate, the negotiations and cooperation procedures under Mining Act Section 38 do not apply to the approval of reservation notifications, which constitute the first stage in the mineral exploration permit process.⁴⁰⁸ The authorities are not required to inform reindeer herders and local communities before granting a reservation notification in an area, nor to organize a consultation or negotiation process in relation to it.

Additionally, according to Administrative and Supreme Administrative Court rulings⁴⁰⁹ Sámi reindeer herders and the Sámi Parliament are not considered to be stakeholders whose rights or interests would be directly affected by reservation decisions.⁴¹⁰ They, therefore, currently don’t have a right to appeal against approved reservation notifications on Sámi reindeer grazing areas. This limits not only Sámi participation in reservation decisions but also their possibility to appeal such decisions in court.

UNCLEAR PROCEDURE FOR CUMULATIVE IMPACT ASSESSMENT

Obtaining free, prior and informed consent is directly linked to the proper assessment of the impacts that the proposed measure would have on Sámi culture and livelihoods.⁴¹¹ The assessment should consider not only the potential impact of the proposed measure itself but also its cumulative pressure on local Sámi alongside other existing and planned land use.⁴¹²

⁴⁰⁶ Mining Act of Finland (621/2011; amendments up to 573/2023 included) (previously cited), Section 38.

⁴⁰⁷ Mining Act of Finland (621/2011; amendments up to 573/2023 included) (previously cited), Section 38.

⁴⁰⁸ The reservation notification gives the company a prerogative to apply for an exploration permit, but it does not permit it to start any actual exploration or mining activities.

⁴⁰⁹ For example, Supreme Administrative Court, Decision KHO:2013:179, 19 November 2013, <https://www.kho.fi/fi/index/maatokset/vuosikirjapaatokset/1384511368758.html> (in Finnish); Supreme Administrative Court, Decision KHO 2021:83, 21 June 2021, <https://www.kho.fi/fi/index/maatokset/ennakkopaatokset/1623919490913.html> (in Finnish), Administrative Court of Northern Finland, Decision 1294/2021, 15 December 2021, https://oikeus.fi/material/collections/20211214084403/7VXgcOYRt/Julkinen_kuulutus_asiassa_21593_21594_21595_21596_21597_2021.pdf (in Finnish).

⁴¹⁰ Finland, Mining Act (621/2011; amendments up to 573/2023 included), <https://www.finlex.fi/fi/laki/kaannokset/2011/en20110621.pdf> (unofficial translation), Sections 162 and 165.

⁴¹¹ Leena Hansen, Askelmerkkejä saamelaiskulttuuriin kohdistuvien kumulatiivisten vaikutusten kokonaisvaltaisen arvioinnin kehittämiseksi ympäristöön ja maankäyttöön liittyvissä kysymyksissä [Stepping stones for developing comprehensive assessment of cumulative impacts on the Sámi culture in matters related to land use and the environment], Publications of the Ministry of Environment 2024:4, pp. 34-36 (in Finnish).

⁴¹² Leena Hansen, Askelmerkkejä saamelaiskulttuuriin kohdistuvien kumulatiivisten vaikutusten kokonaisvaltaisen arvioinnin kehittämiseksi ympäristöön ja maankäyttöön liittyvissä kysymyksissä [Stepping stones for developing comprehensive assessment of cumulative impacts on

The authorities and Sámi representatives often disagree on the adequacy and conclusions of impact assessments of exploration and gold panning permits.⁴¹³ The amended Mining Act 2023 brought some changes and clarifications to impact assessment and cooperation procedures with Sámi and shifted responsibility for impact assessments from the permit authority to the permit applicant.⁴¹⁴ However, a clear procedure and methodological framework for assessing the potential impact on Sámi culture has not yet been established.

In 2024, the Ministry of the Environment published a study on how cumulative impacts on Sámi culture could and should be assessed.⁴¹⁵ According to this study, the permit authority Tukes considers the development of cumulative impact assessments to be important.⁴¹⁶ The study notes that one key challenge for impact assessment is that those conducting or evaluating state impact assessments are unfamiliar with Sámi culture and livelihoods and may, therefore, not be competent to evaluate the potential negative effects of certain decisions and activities.⁴¹⁷

LACK OF RESOURCES FOR SÁMI REPRESENTATIVES

When negotiations and collaborative procedures are organized, resourcing meaningful Sámi participation is also an important practical consideration.⁴¹⁸ The Sámi Parliament has a limited number of officials able to participate in negotiation processes. Reindeer herders and other local Sámi representatives are often involved on their own time, alongside their regular work and other tasks. Without sufficient resources, meaningful participation in impact assessments, negotiations and other collaborative processes can become very challenging physically, mentally and financially.⁴¹⁹

INTERNATIONAL HUMAN RIGHTS BODY OBSERVATIONS

Finnish legislation is still inadequate compared to international FPIC standards, including according to the HRC and the CERD. Both have expressed concerns about the authorities' failure to engage in meaningful consultations with Sámi to obtain their consent.⁴²⁰

On 10 October 2024 also, the CESCR⁴²¹ and CRC⁴²² found that Finland had violated the rights of the Sámi Indigenous People in Käsivarsi by granting mineral exploration permits on their traditional territory without an impact assessment or FPIC. The CESCR noted that:

"[...] the State party's failure to give legal recognition to the rights of Indigenous Peoples to their traditional lands, which are also the base for their livelihood and income, has led to a situation where

the Sámi culture in matters related to land use and the environment), Publications of the Ministry of Environment 2024:4, pp. 34-36 (in Finnish).

⁴¹³ Leena Heinämäki, The prohibition to weaken the Sámi culture in international law and Finnish environmental legislation, p. 91. In Cambou, D., & Ravn, Ø. (Eds.) *The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries* (1st ed.), 2023, Routledge. <https://doi.org/10.4324/9781003220640>; Leena Heinämäki, Saamelaiden alkuperäiskansoikeudet ja saamelaiskulttuuria koskevien vaikutusten arviointi YVA-lain mukaisessa menettelyssä ["The rights of the Sámi as an Indigenous People and impact assessment concerning the Sámi culture in a procedure under the Act on Environmental Impact Assessment Procedure"], 26 January 2023, p. 166 (in Finnish, previously cited); Finland, Mining Act, 621/2011; amendments up to 573/2023 included (previously cited), Lalli Rudolf Roine, "Saamelaiskulttuurin heikentämiskielto ja kaivoslaki: Prohibition of Retrogression of Sámi Culture and the Finnish Mining Act", *Nordic Journal of Legal Studies* 2.1 2023, pp. 48-77, <https://doi.org/10.51421/njls-2023-0024>

⁴¹⁴ The Case Study (Chapter 7.2) on exploration permit processes in Käsivarsi covers the years 2012 to 2024, and the administrative decision to grant the exploration permit in Lätäseno was made in 2016, when the amendments to the Mining Act were not yet in force.

⁴¹⁵ Leena Hansen, Askelmerkkejä saamelaiskulttuuriin kohdistuvien kumulatiivisten vaikutusten kokonaisvaltaisen arvioinnin kehittämiseksi ympäristöön ja maankäyttöön liittyvissä kysymyksissä [Stepping stones for developing comprehensive assessment of cumulative impacts on the Sámi culture in matters related to land use and the environment], Publications of the Ministry of Environment 2024:4 (in Finnish).

⁴¹⁶ Leena Hansen, Askelmerkkejä saamelaiskulttuuriin kohdistuvien kumulatiivisten vaikutusten kokonaisvaltaisen arvioinnin kehittämiseksi ympäristöön ja maankäyttöön liittyvissä kysymyksissä (previously cited), Chapter 8.7. Turvallisuus- ja kemikaaliviraston näkemyksiä ["Views of the Finnish Safety and Chemicals Agency Tukes"].

⁴¹⁷ Leena Hansen, Askelmerkkejä saamelaiskulttuuriin kohdistuvien kumulatiivisten vaikutusten kokonaisvaltaisen arvioinnin kehittämiseksi ympäristöön ja maankäyttöön liittyvissä kysymyksissä (previously cited), Chapter 10, Johtopäätelmät ja suositukset [Conclusions and recommendations], pp. 239-241.

⁴¹⁸ Leena Hansen, Askelmerkkejä saamelaiskulttuuriin kohdistuvien kumulatiivisten vaikutusten kokonaisvaltaisen arvioinnin kehittämiseksi ympäristöön ja maankäyttöön liittyvissä kysymyksissä (Previously cited), Chapter 8.2 Saamelaiskäräjien viranhaltijoiden näkemyksiä ["Views of the officials of the Sámi Parliament"].

⁴¹⁹ Leena Hansen, Askelmerkkejä saamelaiskulttuuriin kohdistuvien kumulatiivisten vaikutusten kokonaisvaltaisen arvioinnin kehittämiseksi ympäristöön ja maankäyttöön liittyvissä kysymyksissä (Previously cited), Chapter 8.2 Saamelaiskäräjien viranhaltijoiden näkemyksiä ["Views of the officials of the Sámi Parliament"].

⁴²⁰ Human Rights Committee (HRC): Concluding observations on the seventh periodic report of Finland 3 May 2021, UN Doc.

CCPR/C/FIN/CO/7, paras 42-43; Committee on the Elimination of Racial Discrimination (CERD): Concluding observations on the twenty-third periodic report of Finland 8 June 2017, UN Doc. CERD/C/FIN/CO/23, paras 16-17.

⁴²¹ UN Committee on Economic, Social and Cultural Rights, Views adopted by the Committee concerning communications 251/2022 and 289/2022, adopted 8 October 2024, UN Doc. E/C.12/76/D/251/2022.

⁴²² UN Committee on the Rights of the Child, Views adopted by the committee concerning communication 172/2022, adopted 7 October 2024, UN Doc. CRC/C/97/D/172/2022.

the Sámi are not entitled to compensation when their traditional lands are subject to the mineral exploration.”⁴²³

CESCR further recommended that the state of Finland should provide affected Sámi with effective reparation based in part on an adequate FPIC process. It should also take all necessary steps to prevent similar future violations, including by amending its legislation and administrative procedures to enshrine the international FPIC standard and include the environmental, social and cultural impact assessment”.⁴²⁴

The CRC stated that:

“State parties must play an important role in promoting Indigenous children’s consultation on all matters affecting them, including issues concerning their traditional territories and environment. [...] Indigenous children must be particularly at the heart of the processes, from [...] impact assessments to their effective participation in [...] consultations aimed at obtaining their free, prior and informed consent.”⁴²⁵

It also requested that the State of Finland amend its legislation to enshrine the international FPIC standard, specifically to ensure affected Indigenous children’s participation and to include an environmental, social and children’s rights-oriented impact assessment.⁴²⁶

7.2 CASE STUDY: MINERAL EXPLORATION IN KÄSIVARSI

7.2.1 CONTEXT

Käsivarsi (*Giehtaruohtas* in northern Sámi) is a wilderness area in north-west Finland, in the municipality of Enontekiö. The land has been used by the Sámi Indigenous People for time immemorial.

Today, the area is used by 191 Sámi reindeer herders belonging to the Käsivarsi reindeer herding cooperative.⁴²⁷ The actual number of Sámi who herd reindeer is higher, as many family members – from children to the elderly – participate in activities such as round-ups (gathering reindeer to count and mark them).

Käsivarsi is one of the few areas in the Finnish Sámi region where an element of traditional Sámi reindeer husbandry survives – the year-round siida system.⁴²⁸ Today, the cooperative includes three main siidas: Gáijjoga (*Kajjukka* in Finnish) in the north, Gová-Labba (*Kova-Labba*) in the centre and Ergona (*Erkuna*) siida in the south.

Käsivarsi is the Sámi homeland’s largest reindeer herding cooperative in terms of surface area (4,840 km²)⁴²⁹ and the maximum number of reindeer allowed (10,000).⁴³⁰ Many reindeer grazing areas in Käsivarsi have been fragmented and lost over decades because of settlement and infrastructure projects. The most recent challenge for reindeer herding in the Käsivarsi area is the increase in tourism activities.⁴³¹

⁴²³ UN Committee on Economic, Social and Cultural Rights, Views adopted by the Committee concerning communications 251/2022 and 289/2022, adopted 8 October 2024, UN Doc. E/C.12/76/D/251/2022, para. 14:11.

⁴²⁴ UN Committee on Economic, Social and Cultural Rights, Views adopted by the Committee concerning communications 251/2022 and 289/2022, adopted 8 October 2024, UN Doc. E/C.12/76/D/251/2022, paras 16 and 17.

⁴²⁵ UN Committee on the Rights of the Child, Views adopted by the committee concerning communication 172/2022, adopted 7 October 2024, UN Doc. CRC/C/97/D/172/2022, para. 9.22.

⁴²⁶ UN Committee on the Rights of the Child, Views adopted by the committee concerning communication 172/2022, adopted 7 October 2024, UN Doc. CRC/C/97/D/172/2022, para. 10.

⁴²⁷ Reindeer Herders’ Association, “Käsivarsi”, <https://paliskunnat.fi/reindeer-herders-association/cooperatives/cooperatives-info/kasivarsi/> (accessed on 22 August 2024).

⁴²⁸ Klemetti Näkkäljärvi, *Selvitys Enontekiön kunnalle Kilpisjärven alueen yleiskaavan laadintaa varten* [“Report to the municipality of Enontekiö for the preparation of a master plan for the Kilpisjärvi area”], 26 April 2021, pp. 4-8.

⁴²⁹ Klemetti Näkkäljärvi and others, *SAAMI – Saamelaisen sopeutuminen ilmastonmuutokseen- hankkeen tieteellinen loppuraportti* [“Final scientific report of the project SAAMI – Adaptation of Saami people to the climate change”], 29 April 2020, <http://urn.fi/URN:ISBN:978-952-287-930-1>, p. 79.

⁴³⁰ Ministry of Agriculture and Forestry in Finland, Maa- ja metsätalousministeriön asetus merkkiipiireistä ja suurimmista sallituista poromääristä [“Decree of the Ministry of Agriculture and Forestry on Character Circles and Maximum Reindeer Allowances”], 1 June 2020, <https://mmm.fi/-/maa-ja-metsatalousministerio-vahvisti-kymmenvuotiskauden-2020-2030-poroluvut-poronhoitoalueen-enimmaisporomaaraan-ei-muutosta> (in Finnish).

⁴³¹ Laura Ölsen and others, “Saamelaisen perinnetiedon sisällyttäminen ympäristöpäätöksentekoon” [“Incorporating Sámi traditional knowledge into environmental decision-making”], University of Lapland, p. 82 (in Finnish).



Reindeer grazing in Käsivarsi Wilderness Area. Käsivarsi is one of the few areas in Finland where reindeer herding is practiced according to traditional siida system. Photographer: Teemu Saloriutta

7.2.2 CASE SUMMARY AND TIMELINE

In 2012, the Geological Survey of Finland (GTK), an agency under the Ministry of Economic Affairs and Employment, made a reservation notification for mineral exploration and, in 2014, applied for a mineral exploration permit in the area which is used for reindeer herding by Gova-Labba siida. The exploration permit was granted to GTK in 2016 by the permit authority Finnish Safety and Chemicals Agency Tukes.

The permit was granted without obtaining free, prior and informed consent, and the Käsivarsi reindeer herding cooperative and Sámi Parliament of Finland clearly expressed in their statements that they were against the exploration. Käsivarsi reindeer herding cooperative and the Sámi Parliament also filed an appeal about the Tukes' decision to the Administrative Court of Northern Finland and after the Administrative Court dismissed the appeal to the Supreme Administrative Court, which also rejected the appeal. In 2020 and 2022, Tukes granted two more reservations to private exploration companies in the Käsivarsi area.

As the opposing statements submitted by the reindeer herding cooperative and the Sámi Parliament had no impact on Tukes and the appeals against the exploration permits had been dismissed by the courts, a local Sámi appealed to UN human rights committees HRC, CESCR and CRC. CRC and CESCR published their decisions in October 2024. The committees found that by granting mineral exploration permits on their territory without an impact assessment or an adequate participation process, Finland violated the rights of Sámi Indigenous People.⁴³²

TIMELINE: MINERAL EXPLORATION PERMITS IN KÄSIVARSI 2012-2024

YEAR	EVENT
2012	The Finnish Safety and Chemicals Agency (Tukes) approves a reservation notification of the Geological Survey of Finland (GTK). The Käsivarsi reindeer herding cooperative and the Sámi Parliament appeal to the District Administrative Court.

⁴³² The case study covers the years 2012 to 2024. The administrative decisions and processes that were appealed to UN human rights committees and that CESCR and CRC since have given their decision on have been taken before the latest amendments in the Mining Act, that came into force in June 2023.

YEAR	EVENT
2013-2014	The court dismisses the appeal. A subsequent appeal to the Supreme Administrative Court is also dismissed. GKT applies for an exploration permit to the Lätäseno area.
2016-2019	In 2016, Tukes grants GTK the Lätäseno exploration permit. Reindeer herding cooperative and Sámi Parliament appeal the decision to the District Administrative Court, which dismisses the appeal. The same complainants file an appeal to the Supreme Administrative Court.
2020	Tukes grants a new reservation notification in the Hietakero area. Appeal on the decision is dismissed by the District Administrative Court.
2021	The Supreme Administrative Court rejects the appeal on Lätäseno exploration permit. Reindeer herders from the Käsivarsi cooperative appeal to the HRC. A group of young Sámi from Käsivarsi appeal to the CRC.
2022	Tukes approves a reservation notification in the Ruossakero area. District Administrative Court dismisses the appeal of the decision. Sámi reindeer herders appeal to the CESCRC about the Lätäseno mining exploration permit and the Ruossakero reservation notification. CESCRC approves their request for interim measures, resulting in a prohibition of prospecting in the area while the Committee deals with the complaint.
2024	CESCRC and CRC's decisions find that Finland has violated the rights of the affected Sámi by granting a mineral exploration permit and reservation notification without an impact assessment and FPIC.

OPPOSING MINERAL EXPLORATION

“Just the fact that they are exploring here stresses me out. That we don’t know if there will be a mine some day and our reindeer herding in this area is over. [...] That fear has been there all the time they [Geological Survey of Finland] have been doing their research here.”⁴³³

There are no large-scale mines in Käsivarsi or elsewhere in the Finnish Sámi homeland, but mining companies are showing increasing interest in the region. The Sámi Parliament and Käsivarsi reindeer herding cooperative have opposed all activities related to local mineral exploration. They are concerned about the direct impacts of mining exploration activities, as well as the destruction of grazing areas and traditional reindeer husbandry, becoming impossible in certain areas should important mineral deposits be discovered and a mine established.⁴³⁴

The Käsivarsi area’s bedrock includes several minerals and metals that are central to the “green” energy transition.⁴³⁵ Geological research has been conducted here since the 1960s, with relatively active ore and

⁴³³ Interview in person with Juha Tornensis, Gova-Labba siida, member and former Chief of District of Käsivarsi reindeer herding cooperative, 16 April 2024.

⁴³⁴ The Sámi Parliament of Finland. Saamelaiskäräjien valitus tukesin varausilmoitukseen 16.4.2020 antamaan päätökseen asiassa VA 2020:0007 [Appeal to the District Administrative Court of Northern Finland against the decision of Tukes on approval of the reservation notification 16.4.2020 in matter VA2020:0007], 18 May 2020. (in Finnish); YLE, “Malmintähtäminen varannut alueen Enontekiöltä Natura-alueelta – poronhoitajat pelkäävät elinkeinonsa puolesta: ‘Tappouhkaus poronhoidolle’” [“A mining company has reserved an area in the Enontekiö Nature Reserve - reindeer herders fear for their livelihood: ‘A death threat to reindeer husbandry’”], 22 May 2020, <https://yle.fi/a/3-11363679> (in Finnish, previously cited).

⁴³⁵ Jukka Konnunaho and others, “Mineraalipotentialin arviointiraportti Enontekiö, Käsivarsi” [“Mineral potential evaluation report Enontekiö, Käsivarsi”], 13 December 2013, Rovaniemi, Geologian tutkimuskeskus, arkistoraportti, 2013, 7: 2013, pp. 4–5 (in Finnish).

mineral exploration in the 1970s and 1980s. The Geological Survey of Finland (GTK), a research institution governed by the Ministry of Economic Affairs and Employment, previously operated in Käsivarsi with a research permit granted by the Metsähallitus, a state agency managing state land use.

After the Mining Act was amended in 2011, GTK was required to apply for a new exploration permit to continue its research activities. In 2012, GTK made a reservation notification⁴³⁶ for mineral exploration, which was approved by Tukes.⁴³⁷ The reservation, covering 1,439 km², was in the middle of the Gová-Labba siida's reindeer grazing areas.

The local reindeer herders and the Sámi Parliament of Finland opposed the reservation⁴³⁸ arguing that GTK's activities had already caused a considerable negative impact on reindeer herding. They argued that research requiring noisy drilling with heavy machinery would disturb the reindeer. The Sámi Parliament also criticized GTK for a lack of consultation and collaboration, as local reindeer herders had not been adequately informed about its local research activities.⁴³⁹

Käsivarsi reindeer herding cooperative and the Sámi Parliament filed an appeal to the District Administrative Court asking for the decision on the reservation to be revoked.⁴⁴⁰ After the Administrative Court dismissed the appeal⁴⁴¹ they appealed to the Supreme Administrative Court, which again dismissed their appeal.⁴⁴² The Supreme Administrative Court decision reasoned that the decision to approve GTK's reservation notification only provided the institution with the prerogative to apply for an exploration permit. As this did not entitle GTK to conduct ore prospecting, it, therefore, did not affect the practice of reindeer husbandry nor restrict the right of the Sámi as an Indigenous People to maintain and develop their culture.⁴⁴³

In October 2014, GTK did apply for an exploration permit on the Lätäseno area covered in the exploration permit application. Measuring about 390 hectares, it was supposed to contain cobalt, iron and gold.⁴⁴⁴

The Käsivarsi reindeer herding cooperative immediately issued statements opposing the application,⁴⁴⁵ arguing that the area is crucial for reindeer herding and that exploration activities would disturb the reindeer. The Sámi Parliament also issued statements opposing the exploration permit⁴⁴⁶ and announced that a proper impact assessment on Sámi culture – as required by the Mining Act – had not been conducted.⁴⁴⁷

Tukes organized an official negotiation meeting, as required under the Mining Act Section 38, in May 2016. Two representatives of the Käsivarsi reindeer herding cooperative took part in the meeting, but neither of them was from the Gová-Labba siida on whose grazing areas the mineral exploration permit was applied.⁴⁴⁸ In the negotiations, Sámi representatives again raised their concerns about the impact of mineral exploration on reindeer herding in the area.⁴⁴⁹

⁴³⁶ Reservation notification is the first phase of a permit process for mineral exploration and gives a temporary prerogative to apply for an exploration permit in the area.

⁴³⁷ Finnish Safety and Chemicals Agency TUKES, Varauspäätös ["Decision on reservation notification"], 8 October 2012, VA2012:0041 (in Finnish).

⁴³⁸ The Sámi Parliament of Finland, Geologian tutkimuslaitoksen (GTK) malminetsintätoiminta saamelaiden kotiseutualueella ["Exploration activities of the Geological Survey of Finland (GTK) in the Sámi homeland area"], 7 June 2012, Dnro:341/D.a.3/2012, p. 5 (in Finnish).

⁴³⁹ The Sámi Parliament of Finland, Geologian tutkimuslaitoksen (GTK) malminetsintätoiminta saamelaiden kotiseutualueella ["Exploration activities of the Geological Survey of Finland (GTK) in the Sámi homeland area"], 7 June 2012, Dnro:341/D.a.3/2012, p. 5 (in Finnish).

⁴⁴⁰ Supreme Administrative Court of Finland, KHO:2013:179, Ruling of 19 November 2013, <https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1384511368758.html> (in Finnish).

⁴⁴¹ Administrative Court of Rovaniemi, Decision concerning the appeal filed by Sámi Parliament of Finland and Käsivarsi reindeer herding cooperative, Decision 13/0155/1, Ruling of 4 April 2013 (in Finnish).

⁴⁴² Supreme Administrative Court of Finland, KHO:2013:179, Ruling of 19 November 2013, <https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1384511368758.html>, p. 7 (in Finnish).

⁴⁴³ Supreme Administrative Court of Finland, KHO:2013:179, Ruling of 19 November 2013, <https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1384511368758.html>, pp. 1, 10 (in Finnish).

⁴⁴⁴ Finnish Safety and Chemicals Agency (TUKES), Malminetsintäluvapahakemuksen kuulutus ["Notice of application for a mineral exploration licence"] (in Finnish), 15 October 2014, ML2014:0029.

⁴⁴⁵ Käsivarren Paliskunta via Asianajotoimisto Haavikko & Salo Oy, Lausunto malminetsintäluvaa koskevasta hakemuksesta ["Statement to TUKES concerning an application for an exploration permit"], 14 November 2014 (in Finnish); Käsivarren paliskunta, Lausunto malminetsintäluvaa koskevasta hakemuksesta ["Statement to TUKES concerning an application for an exploration permit"] 19 June 2016 (in Finnish).

⁴⁴⁶ Saamelaiskäräjät [Sámi Parliament of Finland], Lausunto malminetsintäluvapahakemuksesta ML2014:0029 (Statement to TUKES concerning an application for an exploration permit ML2014:0029), 13 November 2014, Lausunto malminetsintäluvapahakemuksesta ML2014:0029 (Statement to TUKES concerning an application for an exploration permit ML2014:0029), 15 December 2014, and Lausunto malminetsintäluvapahakemuksesta ML2014:0029 (Statement to TUKES concerning an application for an exploration permit ML2014:0029), 22 June 2016 (in Finnish).

⁴⁴⁷ The Sámi Parliament of Finland, Saamelaiskäräjien lausunto malminetsintäluvapahakemuksesta ["Statement by the Sámi parliament on the application for a mineral exploration permit"] (in Finnish), ML2014:0029, 22 June 2016.

⁴⁴⁸ According to the interview with Juha Tornensis (16 April 2024) the reindeer herders from Gová-Labba siida didn't have time to participate as the meeting took place in the middle of calving season when reindeer herders are very busy.

⁴⁴⁹ Tukes meeting memorandum 17 May 2016: Negotiation concerning an exploration permit ML2014:0029, following the Mining Act 621/211, Section 38 (in Finnish).

GTK was granted an exploration permit in Lätäseno in July 2016. According to the approval decision, “an exploration permit can be granted with a permit decision because the permit consideration did not reveal any obstacles that would endanger the status of the Sámi as an indigenous people in the Sámi homeland and that could not be prevented by permit regulations”.⁴⁵⁰

The Sámi Parliament, Käsivarsi reindeer herding cooperative, and the Finnish Association of Nature Conservation appealed this decision to the District Administrative Court, which dismissed the appeal.⁴⁵¹ They then appealed to the Supreme Administrative Court, which saw no grounds for appeal. According to its decision:

“The Sámi Parliament and reindeer herding cooperative have had the opportunity to give their own assessment of the impacts of the planned mineral exploration activities, taking into account the impacts of other land uses on Sámi culture, and to propose measures to reduce or prevent adverse impacts. The Sámi Parliament and the reindeer herding cooperative have thus had the opportunity to participate in the cooperation procedure as required by Section 38 of the Mining Act.”⁴⁵²

The court decision was a disappointment for the Sámi and also showed – once again – how poorly the Sámi culture and livelihoods were taken into account and protected in Finnish legislation and court system.

While GTK’s exploration permit was the first and so far the only actual exploration permit granted in Käsivarsi, other mineral explorers have shown interest in the area. In 2020, exploration company Akkerman Finland Oy made a reservation notification of 245km² on the grazing area of Ergona siida in Hietakero.⁴⁵³ In April 2022, a reservation notification of 283 km² was granted to another exploration company, element92 Suomi Oy, in Ruossakero⁴⁵⁴ on the Gová-Labba siida’s grazing areas.

7.2.3 AN INADEQUATE LEGAL FRAMEWORK

As the authorities are not required to inform reindeer herders and local communities about reservation notifications beforehand, local Sámi only found out about the Hietakero reservation notification from the newspaper.⁴⁵⁵ The Sámi Parliament and a local reindeer herder then appealed against it to the District Administrative Court,⁴⁵⁶ which dismissed the appeals as inadmissible.⁴⁵⁷ The Käsivarsi reindeer herding cooperative’s appeal against the Ruossakero reservation notification was also dismissed. The Court reasoned that since the notification did not entitle the company to prospect or conduct actual mining, it did not affect the practice of reindeer husbandry for the cooperative or individual herders or owners.⁴⁵⁸

Minna Näkkäljärvi, a local reindeer herder who filed an appeal to the court but the appeal was dismissed, found the current legislation very discouraging: “[According to the law] only another mining company that has made a reservation for the same area would have a right to appeal against a reservation notification. How can it be that we who are directly affected by this reservation are not among the parties involved?”⁴⁵⁹

Also, as pointed out by people Amnesty International interviewed, a reservation notification includes a prospect about future possible mining in the area. This makes long-term planning for the reindeer herding community difficult. So, while reservation notifications may not in themselves have an actual impact on the environment, they impact the Sámi community and individuals by causing stress, anxiety and fear for the

⁴⁵⁰ Finnish Safety and Chemicals Agency (TUKES), Malminetsintäluupahakemuksen kuulutus [“Notice of application for an exploration permit”] (in Finnish), 15 October 2014, ML2014:0029, p. 9 (in Finnish).

⁴⁵¹ Administrative Court of Northern Finland, Ruling 18/0277/1, 19 December 2018 (in Finnish).

⁴⁵² Supreme Administrative Court of Finland, Ruling KHO:2121:38, 21 June 2021 (in Finnish).

⁴⁵³ YLE, “Malminetsintäfirma varannut alueen Enontekiöltä Natura-alueelta – poronhoitajat pelkäävät elinkeinonsa puolesta: ‘A death threat to reindeer husbandry’”, 22 May 2020, <https://yle.fi/a/3-11363679> (in Finnish, previously cited).

⁴⁵⁴ Finnish Safety and Chemicals Agency (TUKES), Announcement, VA2022:0014, 20 April 2022 (in Finnish).

⁴⁵⁵ Interview online with Minna Pirit Ellen Näkkäljärvi, Ergona siida, Käsivarsi reindeer herding cooperative, Activist in “No Mines to Käsivarsi” movement, 26 February 2024.

⁴⁵⁶ Minna Näkkäljärvi, Valitus Pohjois-Suomen hallinto-oikeudelle [“Appeal to the Administrative Court of Northern Finland”] 18 May 2020 (in Finnish); Sámi Parliament of Finland, Appeal to the Administrative Court of Northern Finland, 18 May 2020, Dnro:480/D.a.9/2020 (in Finnish).

⁴⁵⁷ Administrative Court of Northern Finland, Valitukset kaivoslain (621/2011) mukaisista varausilmoitusta koskevassa asiassa [“Appeals against a reservation notice under the Mining Act (621/2011)”], 19 November 2020, Dnro 882/03.04.04.04.33/2020 (in Finnish).

⁴⁵⁸ Administrative Court of Northern Finland, Pohjois-Suomen hallinto-oikeuden Päätös kaivoslain mukaisessa valitusasioissa, [“The decision of the Northern Finland Administrative Court in the matter of appeal under the Mining Act”], 15 August 2022, nro 997/2022 (in Finnish).

⁴⁵⁹ Interview online with Minna Pirit Ellen Näkkäljärvi, Ergona siida, Käsivarsi reindeer herding cooperative, Activist in “No Mines to Käsivarsi” movement, 26 February 2024.

future. According to Minna Näkkäläjärvi, one consequence of this uncertainty is a lack of motivation to invest in developing traditional livelihoods linked to nature.

“Even if there is just a reservation notification, it still means we are not able to develop our own livelihood because the future of the area is so uncertain. The fact that this area is now bound to something else hinders the development of our traditional livelihood, as I can't trust that we can use this area in a few years' time. We can't move with our reindeer anywhere else in the region.”⁴⁶⁰

In June 2020, Minna Näkkäläjärvi, with a group of other Sámi, started the *No mines to Käsivarsi* protest movement. In just a few months, they collected over 37,000 signatures for a petition demanding that the Finnish government stop granting mining licenses in Käsivarsi and that GTK and other mineral explorers should leave the area.⁴⁶¹ While this public mobilization brought attention to the issue, it did not lead to changes in legislation.



No Mines to Käsivarsi movement delivered a petition with over 37,000 signatures to the Finnish government in September 2020. Per Antti Labba, Juha Tornensis, Minna Näkkäläjärvi, Laura Olsen-Ljetoff and Anni-Helena Ruotsala in front of the Parliament House in Helsinki. © Kukka Ranta

In November 2021, activists from the *No Mines to Käsivarsi* movement submitted a complaint to the HRC regarding the Hietakero reservation notification.⁴⁶² In 2022, reindeer herders from the Käsivarsi cooperative submitted the Lätäseno and Ruossakero cases to the CESCR. The CRC also accepted a complaint by children from Käsivarsi about the Lätäseno exploration permit in January 2022.⁴⁶³

The CESCR complaint included a request for interim measures, which the committee approved in January 2022. This meant that all exploration activities in Lätäseno were prohibited while the Committee dealt with the complaint.⁴⁶⁴ The Hietakero reservation permit expired in January 2022 while the UN investigation was

⁴⁶⁰ Interview online with Minna Pirit Ellen Näkkäläjärvi, Ergona siida, Käsivarsi reindeer herding cooperative, Activist in “No Mines to Käsivarsi” movement, 26 February 2024.

⁴⁶¹ The Barents Observer, Sámi campaigners deliver 37,200 signatures against mining in reindeer herding area, 2 September 2020, <https://thebarentsobserver.com/en/arctic-mining/2020/09/sami-campaigners-delivers-37200-signatures-against-mining-reindeer-herding>

⁴⁶² YLE, “Käsivarren kaivoksia vastustava liike teki YK:lle ihmisoikeusvalituksen – Minna Näkkäläjärvi: Tuntuu omituiselta ja pahalta pahalta” [The movement opposing the mines in Käsivarsi filed a human rights complaint to the UN - Minna Näkkäläjärvi: “This feels strange and bad”], 11 November 2021, <https://yle.fi/a/3-12184715> (in Finnish).

⁴⁶³ YLE, “Käsivarren porosaamelaiset valittivat malminetsintäluvasta kansainväliseen TSS-komiteaan: Lätäsenolle väliaikainen malminetsintäkielto” [“Käsivar Reindeer Sami appeal mining permit to international TSS committee: temporary ban on exploration in Lätäseno”], 7 February 2022, <https://yle.fi/a/3-12302438> (in Finnish).

⁴⁶⁴ YLE, “Käsivarren porosaamelaiset valittivat malminetsintäluvasta kansainväliseen TSS-komiteaan: Lätäsenolle väliaikainen malminetsintäkielto” [“Käsivar Reindeer Sami appeal mining permit to international TSS committee: temporary ban on exploration in Lätäseno”], 7 February 2022, <https://yle.fi/a/3-12302438> (in Finnish).

JUST TRANSITION OR ‘GREEN COLONIALISM’?

HOW MINERAL EXTRACTION AND NEW ENERGY PROJECTS WITHOUT FREE, PRIOR AND INFORMED CONSENT ARE THREATENING INDIGENOUS SÁMI LIVELIHOODS AND CULTURE IN SWEDEN, NORWAY AND FINLAND

ongoing, and the Ruossakero reservation expired in March 2024. The Lätäseno exploration permit is valid until June 2025, but exploration has been suspended since January 2022.

The CESCR⁴⁶⁵ and CRC⁴⁶⁶ published their decisions in October 2024. Both found that the permit procedures had not met FPIC standards for effective participation and that Finland had violated the Sámi Indigenous People's rights by granting mineral exploration permits on their traditional territory in Käsivarsi without an impact assessment or free, prior and informed consent.⁴⁶⁷

CESCR and CRC asked Finland to provide information about the measures it has taken to give effect on the committees' views within 180 days, so the state response is expected to be given by April 2025.

The Sámi's many failed attempts to stop or revoke reservation notifications and mineral exploration permits in Käsivarsi illustrate how the Finnish legal framework still lacks a duty to obtain consent – despite its explicit prohibition of weakening Sámi culture and obligation to negotiate. Throughout the process, the Sámi Parliament and Sámi reindeer herders have clearly expressed their opposition to reservations and mineral exploration permits being granted in the area, and yet the permit authorities and the courts have consistently ignored complaints and dismissed their legal appeals.

Their conflicting views on the impacts of exploration permits and the adequacy of the negotiation process highlight a clear problem regarding equally vague legislation and impact assessment procedures.

7.2.4 IMPACT ON SÁMI

EXHAUSTION AND DISAPPOINTMENT

Due to Finland's inadequate legal framework, Sámi reindeer herders in Käsivarsi and the Sámi Parliament have had to defend their rights through exhausting court processes and appeals to UN human rights committees.

After their decade-long struggle and repeated appeals, Sámi feel drained, disappointed and frustrated with a time-consuming process that throws into sharp relief their currently very limited ability to influence land use matters.

Tuomas Aslak Juuso, the former president (2020-2023) and current II Vice President of Sámi Parliament, summed up these feelings of frustration in the interview:

“It shows such negligence on the part of the state, the authorities and GTK that they don't need to genuinely take into account the views of the Sámi Parliament and the reindeer herding cooperative. The[ir] views do not carry enough weight for the authorities to pay genuine attention, even though we have done a massive job and explained to them the impacts and what this [mineral exploration] will lead to.”⁴⁶⁸

Since 2012, local reindeer herders and the Sámi parliament have put huge resources into opposing the exploration projects. A former Käsivarsi district chief, Juha Tornensis, estimates that the cooperative has spent over EUR 100,000 just on court processes.⁴⁶⁹ While this has caused all other development in the reindeer herding cooperative to be deprioritized, he says there was no other option:

“We had to do this [the appeals process in courts] if we still want to herd here. If we hadn't raised the issue, then it would have been easy [for the authorities] to say that you haven't even complained about it. [...] Even if there is no money for anything else it is spent on it [the appeals processes], and everything else takes second place. This is the most important thing for us to focus on.”⁴⁷⁰

⁴⁶⁵ UN Committee on Economic, Social and Cultural Rights, Views adopted by the Committee concerning communications 251/2022 and 289/2022, adopted 8 October 2024, UN Doc. E/C.12/76/D/251/2022.

⁴⁶⁶ UN Committee on the Rights of the Child, Views adopted by the committee concerning communication 172/2022, adopted 7 October 2024, UN Doc. CRC/C/97/D/172/2022.

⁴⁶⁷ UN Committee on Economic, Social and Cultural Rights, Views adopted by the Committee concerning communications 251/2022 and 289/2022, adopted 8 October 2024, UN Doc. E/C.12/76/D/251/2022, paras 14-17.

⁴⁶⁸ Interview in person with Tuomas Aslak Juuso, member of Gáijjoga siida and Käsivarsi reindeer herding cooperative, member of the board of Käsivarsi reindeer herding cooperative (2016-2027), member (2008-2011 and 2015-2027), president (2020-2023) and II Vice President (2016-2020 and 2024-2027) of Sámi Parliament in Finland, 16 April 2024.

⁴⁶⁹ Interview in person with Juha Tornensis, Gova-Labba siida, member and former Chief of District of Käsivarsi reindeer herding cooperative, 16 April 2024.

⁴⁷⁰ Interview in person with Juha Tornensis, Gova-Labba siida, member and former Chief of District of Käsivarsi reindeer herding cooperative, 16 April 2024.

In addition to financial contributions many local Sámi spent countless hours reading documents, drafting complaints, following court proceedings and raising awareness about their cause.

Minna Näkkäläjärvi, a Sámi reindeer herder who was mobilizing the *No Mines to Käsivarsi* - movement, describes the campaigning almost like a full-time job:

“It was a huge effort and took up our kind of mental resources. We were all quite exhausted then, and we might still be a little bit. Yes, it was draining, and the time and effort we all spent on the process could have been used for something else, such as maintaining and developing our culture and livelihoods.”⁴⁷¹

The amount of time, effort and resources Sámi have invested in following and opposing the exploration process also illustrates how reservations and plans – however initial – in themselves burden Sámi with stress and uncertain future prospects. The worry and insecurity caused by “mines on paper”,⁴⁷² affects all local Sámi, but especially the young, who need to decide if they are willing to stay in the area and continue their traditional livelihoods. The uncertainty linked to the planned mines and other industrial developments may lead young Sámi towards other professions and ultimately moving away from their home region. In the words of Juha Tornensis: *“The elderly reindeer herders can comfort themselves by saying that well, that mine won’t probably come in my lifetime. This uncertainty probably affects the young people more.”⁴⁷³*

CONCRETE HARMS ON SÁMI CULTURE AND LIVELIHOODS

While Sámi and their parliament argue that mineral exploration activities disturb reindeer and cause direct harm to herding⁴⁷⁴ authorities and courts downplay these impacts. As stated by the former president (2020-2023) and current II Vice President of Sámi Parliament Tuomas Aslak Juuso, in his interview for this report, this underlines Finnish authorities’ lack of knowledge about Sámi culture and livelihoods:

“The [permit process] mindset is to only assess the number of hectares where the activity takes place. They don’t think about how the reindeer behaves and how it affects herding when you have drilling activity and traffic to the exploration site.”⁴⁷⁵

Reindeer herders report that even a temporary local disturbance can lead to permanent changes in reindeer behaviour. For example, if certain winter grazing areas can’t be used because of exploration activities and siida needs to start feeding the reindeer, they will quickly adapt to supplementary feeding. If exploration activities subsequently end after a few years, it can be difficult to return the reindeer to natural grazing because they have become used to supplementary feeding. This can permanently change local reindeer herding, which in Käsivarsi is still mainly based on natural pasture grazing.

According to Tuomas Aslak Juuso, the lack of knowledge and understanding of Saami culture and livelihoods in courts can also make it difficult for Sámi to get to justice:

“The experts in the Supreme Administrative Court are inexperienced about the practices of our community. It is difficult for us to get our point understood, when you consider that that the person reading your papers is a judge with a law school degree, but who has certainly never, as an example, considered what effect will it have on reindeer husbandry if a half of an area of 100 hectares is untouched snow and half is not. How could this poor judge ever understand the concrete impacts and challenges to reindeer husbandry caused by the extraction industry projects in question?”⁴⁷⁶

Finnish authorities and courts also often do not recognize or understand the siida system, nor its established practices and customary laws. This often results in their failure to recognize siidas as rights holders or at

⁴⁷¹ Interview online with Minna Pirit Ellen Näkkäläjärvi, Ergona siida, Käsivarsi reindeer herding cooperative, Activist in “No Mines to Käsivarsi” movement, 26 February 2024.

⁴⁷² Maija M. Lassila, Mapping mineral resources in a living land: Sámi mining resistance in Ochejohka, northern Finland, *Geoforum* 96 (2018) 1-9.

⁴⁷³ Interview in person with Juha Tornensis, Gova-Labba siida, member and former Chief of District of Käsivarsi reindeer herding cooperative, 16 April 2024.

⁴⁷⁴ Leena Heinämäki, Saamelaisten alkuperäiskansaoikeudet ja saamelaiskulttuurista koskevien vaikutusten arviointi YVA-lain mukaisessa menettelyssä [“The rights of the Sámi as an Indigenous People and impact assessment concerning the Sámi culture in a procedure under the Act on Environmental Impact Assessment Procedure”], 26 January 2023, <http://urn.fi/URN:ISBN:978-952-361-219-8>; Publications of the Ministry of the Environment 2023:2, p. 166 (in Finnish); Finland, Mining Act, 621/2011; amendments up to 573/2023 included (previously cited).

⁴⁷⁵ Interview in person with Tuomas Aslak Juuso, member of Gáijjoga siida and Käsivarsi reindeer herding cooperative, member of the board of Käsivarsi reindeer herding cooperative (2016-2027), member (2008-2011 and 2015-2027), president (2020-2023) and II Vice President (2016-2020 and 2024-2027) of Sámi Parliament in Finland, 16 April 2024.

⁴⁷⁶ Interview in person with Tuomas Aslak Juuso, member of Gáijjoga siida and Käsivarsi reindeer herding cooperative, member of the board of Käsivarsi reindeer herding cooperative (2016-2027), member (2008-2011 and 2015-2027), president (2020-2023) and II Vice President (2016-2020 and 2024-2027) of Sámi Parliament in Finland, 16 April 2024.

least stakeholders in decision processes concerning their grazing areas. Anne-Maria Magga, a reindeer herder and a post-doctoral researcher at the University of Lapland, specialized in laws and legal principles related to the land use of Sámi reindeer husbandry, explains this in the interview:

“At present, the siida system is not recognized by (Finnish) legislation. Neither the authorities nor the courts are legally obligated to take siidas into account in their decisions. This means the exploration permits are examined from the perspective of the whole reindeer herding cooperative and on that scale. An exploration permit area may look small on the map, but it could cover half the grazing area of a certain siida. As far as I'm concerned, it's easier to get approval for an exploration permit because they're viewed on the scale of the entire reindeer herding cooperative.”⁴⁷⁷

If the impacts of land use are assessed on the scale of the whole reindeer herding district, these impacts may appear minimal, while a siida that is most affected by the land use may lose significant parts of its grazing areas.

Although the Käsivarsi case ended up in court, it is worth noting that the dispute is not only judicial but also ontological: The Sámi are not simply contesting the authorities' decisions on exploration permits, but also their and the companies' framing of the area as a “potential mineral deposit”. Instead, they could draw on local and indigenous Sámi knowledge that emphasizes other ways of understanding and valuing the land, such as how vital the land is for reindeer and the existence of the local Sámi culture and livelihoods.⁴⁷⁸

According to the interviewees, the struggles to defend the traditional land and livelihoods in Käsivarsi are draining, but there is no other option. Giving up would mean losing not only the grazing lands but also the culture, language and knowledge associated with the traditional Sámi reindeer herding.

Reindeer herder and activist Minna Näkkäljärvi sums up the concerns of many Sámi:

“I'm generally concerned about this reckless mindset – what they will do to nature and the clean waters we still have in this area. Once you pollute the water, and once you ruin the nature, you can't buy it back with any amount of money. [...] That's my biggest concern. But the second biggest is of course our livelihood, which may end. And with the livelihood dies so much what is important for Sámi culture and way of life.”⁴⁷⁹

⁴⁷⁷ Interview in person, Anne-Maria Magga, PhD, a post-doctoral researcher at the University of Lapland and a reindeer herder, 17 April 2024.

⁴⁷⁸ On mining disputes as ontological struggles see Maija M. Lassila, Mapping mineral resources in a living land: Sámi mining resistance in Ochejohka, northern Finland, *Geoforum* 96 (2018) 1-9.

⁴⁷⁹ Interview online with Minna Pirit Ellen Näkkäljärvi, Ergona siida, Käsivarsi reindeer herding cooperative, Activist in “No Mines to Käsivarsi” movement, 26 February 2024.

8. CONCLUSIONS

Increasing interest from states and companies to extract critical raw materials, establish renewable energy projects and conduct other activities in Sápmi as part of society's climate transition is adding to an already challenging situation for the Indigenous Sámi People across Norway, Sweden and Finland. It also has consequences for the realization of the human rights Sámi have as Indigenous People. For centuries, the Sámi People's traditional lands and resources have been cumulatively conquered and exploited, and their rights violated.⁴⁸⁰ At the same time, reindeer herding and other traditional livelihoods are increasingly, and already disproportionately, affected by higher temperatures and unstable weather conditions due to climate change.⁴⁸¹ Given the pressures of this double burden on the Sámi People and their culture, it is both urgent and crucial that the Nordic states adopt new legislation on Sámi consent and implement it effectively in light of obligations under binding human rights treaties and standards to which they are party.

International law requires states to deem Indigenous Peoples' withholding of consent to be a deciding factor if a proposed measure or project is likely to have a significant direct impact on their lives or land, territories or resources. UNDRIP Article 32(2) establishes that states must consult and cooperate with Indigenous Peoples to obtain FPIC before approving any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. FPIC is also embodied in several UN core human rights conventions that the Nordic states are parties to, such as the ICERD, ICESCR and ICCPR.

A thorough analysis of Finland's, Sweden's and Norway's current legislation for this report shows that all three legal systems lack safeguards obligating decision-makers to obtain FPIC from Sámi representative institutions before initiating land use projects, such as wind power and mining, that may significantly impact on their rights as an Indigenous People. While all three countries have laws obligating states to consult or negotiate with Sámi representatives, this legislation remains too narrow compared to international human rights law.

All three states also fail to guarantee Sámi representatives adequate resources to take part meaningfully and effectively in consultations. Additionally, the states either do not require decision-makers to incorporate Sámi traditional knowledge into their decision-making processes at the policy level or in individual cases, or such a requirement is not explicit or consistent in the regulations. Furthermore, Finland and Sweden both lack requirements for seeking Sámi consent during consultations – a basic criterion under international law. Neither the Finnish nor the Swedish systems include safeguards for including Indigenous rights in decision-making.

All three case studies on land use disputes in this report demonstrate that as the Sámi People's rights to meaningful participation and effective consultation in matters that impact their culture are not protected through domestic legislation, affected Sámi communities are forced to defend their culture and livelihoods through appeals to the courts or international human rights bodies. These years-long appeals processes are very exhausting and require enormous amounts of work and financial resources, which may also hinder the Sámi People's ability to maintain and develop their Indigenous culture.

The case studies also highlight the power imbalance and barriers to justice experienced by affected Sámi. Independent bodies also found human rights violations in all three cases, underlining the crucial role of Indigenous Peoples' consultation and FPIC rights in providing both a substantive and a procedural safeguard and ensuring that potential human rights violations are identified at an early stage and prevented. Significantly, all cases show the great personal cost for Sámi forced to fight for their rights in order to, ultimately, pass on their culture to their children.

⁴⁸⁰ Kukka Ranta & Jaana Kanninen, *Vastatuuleen – Saamen kansan pakko-suomalaisistamisesta* ["In the headwind. Forced assimilation of Sámi in Finland"], S&S 2019 (in Finnish); The Parliament of Norway (The Storting), Report of the Truth and Reconciliation Commission of Norway: English summary, 2023; Sámi Parliament of Sweden, *Föberedelser inför en sanningsskmission om statens övergrepp mot det samiska folket* ["Preparations for a Truth Commission on the State's Abuse of the Sámi People"], 2021, https://www.sametinget.se/rapport_sanningsskmission (in Swedish).

⁴⁸¹ Saami Council, *Climate Change in Sápmi – an overview and a Path Forward*, 2023, <https://www.saamicouncil.net/documentarchive/sami-climate-report>

ENERGY TRANSITION MUST BE CONDUCTED IN A WAY WHICH ENSURES RESPECT FOR HUMAN RIGHTS

At the time of writing this report, the global temperature reached the highest level on record, close to the 1.5°C limit.⁴⁸² In the face of an escalating climate crisis, states have a responsibility to prevent or minimize the adverse impacts of climate change on human rights by taking adequate action to reduce GHG emissions.

Decarbonizing the economy is crucial to tackle the climate crisis. Wealthy industrialized states, such as Norway, Sweden and Finland, have a heightened obligation to reduce emissions and to phase out fossil fuels within the shortest possible time frame. It is also important to ensure that the transition away from fossil fuels is just and consistent with human rights. Sustainable energy transition must lead to a more equal society rather than replicate the inequalities and human rights violations that are inherent to the fossil fuel economy. Delivering just and sustainable solutions to the climate crisis requires placing respect for and compliance with human rights obligations at the heart of all climate action and new energy development.

Norway, Sweden and Finland must change their perspective, comply with their international human rights obligations, and respect, protect and fulfil the rights of the Sámi People. A welcome change would be to understand the Sámi People as also victims of the harmful consequences of climate change and that they – and their collective rights – can be part of climate solutions instead of being treated as a hindrance. This means ensuring that Sámi representatives and Sámi knowledge on sustainable maintenance and conservation of nature would guide decision-making at all levels on issues that impact their lives, rights and culture as an Indigenous People.

⁴⁸² Copernicus, 2023 is the hottest year on record, with global temperatures close to the 1.5-degree limit, 9 January 2024, <https://climate.copernicus.eu/copernicus-2023-hottest-year-record>

9. KEY RECOMMENDATIONS

In view of the findings in this report, Amnesty International and the Saami Council urge the governments of Sweden, Finland and Norway to comply with their international obligations, including pertinent recommendations by international human rights bodies on Indigenous Peoples' human rights. We also urge the governments to recognize the human rights of Indigenous Peoples, including the right to FPIC, as a key part of a just energy transition.

To respect, protect and fulfil human rights in the face of the climate crisis, all three states are obliged to phase out fossil fuel production and consumption as quickly as possible. To ensure the energy transition is human rights consistent, all three states should also:

9.1 TO THE GOVERNMENTS OF NORWAY, SWEDEN AND FINLAND

- Urgently strengthen legal recognition of the Sámi People by adopting legislation, in full consultation and cooperation with the Sámi People, that ensures obtaining free, prior and informed consent (FPIC) for planned projects that may significantly impact them as an Indigenous People and their right to enjoy their culture.
- Adopt measures to ensure that decision-making at all levels relating to the climate and energy transition respects the Sámi People's human rights and incorporates Sámi values, perspectives and traditional knowledge.
- Ensure that in all land use projects planned in Sápmi, the initiators consult Sámi representatives in order to obtain their free, prior and informed consent. No land use developments in mining or energy sector shall take place without the free, prior and informed consent of the Sámi concerned
- Allocate sufficient resources for Sámi representatives to participate effectively in consultations, including funding for legal and technical advice and capacity-building, according to the needs expressed by affected Sámi.
- Establish domestic and sector-specific mechanisms for benefit-sharing and compensation in relation to any decision to limit Indigenous Peoples' rights within the exceptional circumstances of Article 46 of the UNDRIP.
- Ensure, through training and other resources, that decision-makers and officials who handle matters that may impact the Sámi People's rights, including at the local, regional and national levels and in court systems, have adequate knowledge about Sámi culture and livelihoods, and the state's international human rights obligations.
- Spread knowledge among the public, including in schools, about the Sámi People and Indigenous knowledge being part of society's common solution to climate change, climate transition and climate adaptation.
- Adopt a national plan to implement the UN Declaration on the Rights of Indigenous Peoples.

9.2 TO THE GOVERNMENT OF NORWAY

General recommendations regarding land interventions in Sámi areas:

- Mandate fully independent Environmental and Social Impact Assessments that incorporate Sámi Indigenous knowledge.
- Establish procedural rules for assessments regarding ICCPR Article 27, to protect the cultural and subsistence rights of the Sámi People.
- Establish monitoring of land and resources in Sápmi, with the full and effective participation of the Sámi People, to secure the natural foundations of Sámi culture.
- Cease granting developers preliminary approvals for construction ahead of court decisions.

Recommendations regarding wind power projects in Sámi areas:

- Commission and support research on the cumulative effects of wind power developments on Sámi land, livelihoods and lives.
- Recommendations in the Fosen wind power case:
 - Initiate an independent investigation to identify lessons learned and recommendations to prevent future human rights violations.
 - Urgently follow up on replacing the northern and southern Fosen sijtes' winter grazing lands as a partial remedy for the human rights violations they have suffered.
 - Increase protection of the northern and southern Fosen sijtes' remaining grazing lands and ban any further land encroachments unless FPIC has been granted.
 - Not undertake any further plans for wind power development in Fovsen Njaarke without the free prior informed consent of the affected Sámi.

9.3 TO THE GOVERNMENT OF SWEDEN

General recommendations regarding the Sámi People in Sweden:

- Urgently initiate legislative reform in full consultation and cooperation with the Sámi People, such as to:
 - Adequately reflect their status as an Indigenous People in the constitution and other domestic legislation, including with regard to competing land use activities, such as mining, forestry, renewable energy, infrastructure and tourism.
 - Ensure that legislation that may impact the Sámi People's rights, including regarding mineral exploitation, explicitly requires FPIC, in line with international law and standards.
 - Ensure that seeking consent and consensus in good faith constitutes the basis for all consultations with Sámi representative institutions, including by issuing concrete guidance to decision-makers on how to adequately include Indigenous Peoples' rights and their potential withholding of consent in their decisions, in line with international law and standards.⁴⁸³
 - Establish a procedure for holistically assessing the cumulative effects and human rights impacts of individual project proposals for mining, forestry, renewable energy and other land use activities.
 - Guarantee that all Sámi affected by projects are recognized as Indigenous rights bearers and given legal standing in permit processes on land use.
 - Require that decision-makers automatically revise individual decisions found to breach Sweden's international obligations.⁴⁸⁴

⁴⁸³ See UNDRIP (previously cited), Article 46(2).

⁴⁸⁴ See Sweden, Aliens Act (2005:716) (previously cited), Chapter 5, Section 4.

- Ensure effective remedies by establishing a grievance mechanism with binding findings, to address and compensate human rights violations and to hold state and company actors to account.
- Make sure that its implementation of the European Critical Raw Materials Act is done in full compliance with Sweden's obligations under other international instruments, such as human rights law and standards (since EU law neither excludes nor prevails over Sweden's other international obligations).
- Establish an independent mechanism for holistically monitoring the overall cumulative impacts of state and company behaviour that may affect the Sámi People's ability to maintain and develop their culture on the Swedish side of Sápmi.
- Initiate a government inquiry into the compliance of Sweden's domestic law with the main international human rights instruments of which Sweden is a party, such as the ICERD, the ICCPR and the ICESCR, and take necessary measures to incorporate these instruments into the Swedish system.
- Ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.

Recommendations for the Rönnbäck nickel mining case:

- In light of CERD's recommendations, urgently make necessary legal amendments to oblige the Mining Inspectorate to effectively revise the mining concessions for Rönnbäcken K No. 1-3 after a process of FPIC to stop ongoing and prevent further human rights violations.⁴⁸⁵
- Remedy human rights violations for all affected Sámi rights bearers.
- Initiate an independent investigation into the Rönnbäck case to identify necessary measures to prevent future human rights violations in similar cases.

9.4 TO THE GOVERNMENT OF FINLAND

- Reform the Sámi Parliament Act, including by enshrining the state's obligation under Section 9 to consult and cooperate with Sámi representative institutions in order to obtain FPIC.
- Revise the Mining Act to ensure (under Article 38) a meaningful consultation to obtain FPIC and to clarify responsibilities regarding the evaluation of cumulative impacts on Sámi culture.
- Ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.
- Make sure that the implementation of the EU Critical Raw Materials Act is done in full compliance with Finland's obligations under other international legal instruments, such as human rights law and standards.
- Ensure that seeking consent and consensus in good faith constitutes the basis for all consultations with Sámi representative institutions, including by issuing concrete guidance to decision-makers on how to adequately include Indigenous Peoples' rights and their potential withholding of consent in their decisions in line with international law and standards.

⁴⁸⁵ See CERD, UN Doc. CERD/C/102/D/54/2013 (previously cited), para. 8.

10. ANNEX

SUMMARY OF RESPONSES RECEIVED FROM GOVERNMENTS AND COMPANIES

Amnesty International and the Saami Council wrote to the respective ministries in Norway, Sweden and Finland and to companies named in the report to provide them with our findings and an opportunity to respond. Altogether, nine responses were received: four responses from ministries and five responses from companies.

10.1 RESPONSES FROM MINISTRIES

10.1.1 MINISTRY OF ENERGY OF NORWAY

The Ministry of Energy shared general comments in the form of a non-paper regarding energy-related matters, choosing not to review or comment on the provided text. The paper is cited below.

The Ministry reserved the right to disagree with parts of the report text, even where no comments were provided. Furthermore, they referred to the comments from the Ministry of Local Government and Regional Development.

REGARDING INADEQUATE APPEAL MEASURES AND THE LICENCING PROCEDURE FOR ENERGY PROJECTS

No legal entity, whether private or state-owned, can own, produce, or operate a power production facility or power transmission facility in Norway without a valid licence issued by the energy authorities after a thorough procedure.

In most cases, the Sámi reindeer herders are not property owners of the grazing lands but have a traditional right of use of the grazing areas. The property owners are protected under Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, but their property rights holder's enjoyment of their possession is restricted in consideration of the Sámi reindeer herding activity and the reindeer herders right of use of their land. A development project of a new energy production facility or transmission lines must acquire the necessary rights to the lands from both property owners and right-of-use holders. This can be achieved either through an amicable agreement between the private parties or through an expropriation licence issued by the relevant authorities.

Under no circumstance is a decision on advance possession (pre-permitting/early access in the draft note) granted unless a valid licence and permission for expropriation are already granted. To be granted permission for expropriation in energy-related matters, the concessionaire must also obtain a valid licence in accordance with the Energy Act Section 3-1.

A decision to grant a license after Section 3-1 is a discretionary administrative decision. The reasoning of the discretionary decision must be grounded within the purpose of the Energy Act, pursuant to Section 1-2. However, a decision in accordance with the Energy Act cannot conflict with the law that supersedes the

Energy Act, including the International Covenant on Civil and Political Rights, which is ratified and enforced as Norwegian law, pursuant to the Human Rights Act Sections 2 and 3, and prevails over other, statutory laws.

An administrative decision cannot be made in conflict with the safeguarding of Sámi rights under Article 27 of the ICCPR. The Ministry of Energy and the Norwegian Water Resources and Energy Directorate (NVE) make thorough assessments of the planned project's cumulative impact on the affected Sámi culture and whether it exceeds the threshold in Article 27, in accordance with the legal reasoning as developed through several cases and General Comments by the Human Rights Committee.

This means that a decision on advance possession cannot be given in conflict with the Sámi rights under Article 27 of the ICCPR. Such permission is only granted after careful consideration from the relevant authority. Decision on advance possession is an important legal tool to ensure that projects of importance, including the development of critical national infrastructure, are implemented within a reasonable timeframe.

Sámi interests, or right holders that may be affected by development plans of energy production or transmission, have a legal right to be consulted at the earliest stage possible in the process, long before a licence is granted. If a licence is granted without following the legal procedures for consultations, the licence may be regarded as invalid.

Both a permit, permission to expropriate, and a decision on advance possession may be challenged in court, for example, with a demand for a temporary injunction ("midlertidig forføyning") or a claim that the permit, permission, or decision is invalid.

GENERAL COMMENT REGARDING THE FOSEN CASE

In 2013, the Norwegian Ministry of Petroleum and Energy granted concession under the Energy Act for the construction and operation of several wind farms in Fosen and the Snillfjord area, including the Roan and Storheia wind farms, affecting grazing areas in the Fosen reindeer herding district.

The developer was also granted a license for expropriation and a permit for advance possession of the areas. The wind farms were constructed while compensation cases between Fosen Vind and the reindeer herding were ongoing in the legal system. The North group consented to advance possession and struck a deal with the developer for terms of compensation during construction, while the South group objected. The South group filed a suit for interim injunction against the developer, but the case was dismissed in all instances up to the Supreme Court.

The central issue is whether the wind farms deprive the Sámi of their right to cultural practices based on reindeer herding. Both the District Court and the Court of Appeal ruled the concession decision valid and thus set compensation. The Court of Appeal acknowledged new information, concluding that the winter grazing areas at Storheia and Roan are practically lost to reindeer herding, but the decision could still be upheld by compensating for the winter feeding of some reindeer herds.

On 11 October 2021, the Supreme Court rejected the case on the measurement of expropriation compensation to reindeer herding in Fosen, reasoning that the concession and expropriation decisions were invalid as they violated reindeer owners' right to cultural practices. The Supreme Court further concluded that the mitigating measures in the concessions were insufficient to avoid significant negative consequences for the reindeer herding in the area in the future. The Supreme Court did not specify what should happen to the wind farms, and changes require new administrative decisions. Therefore, the government initiated a process to determine how to follow up on the ruling.

The government has consistently emphasized that the state shall ensure that its international legal obligations towards the Fosen reindeer herding Sámi are met. In December 2021, the Ministry of Petroleum and Energy notified the reindeer herding community, the Sámi Parliament, and the wind power companies that it would consider reversing the concessions. Changes in the concession decisions require sufficient information and an updated knowledge base. The Ministry has conducted several consultations with the reindeer herding community and the Sámi Parliament. This process has been both challenging and time-consuming.

Later, in the spring of 2023, the Ministry also initiated an alternative process with mediations between parties in the Fosen case, aiming for an amicable solution. The mediations were led by national mediator Mats Ruland, District Court Judge Hanne Sofie Bjelland, and reindeer herder Tom Lifjell. Mediation is an internationally recognized alternative conflict resolution mechanism in such cases, as stated by the Norwegian National Human Rights Institution.

The mediation team achieved an agreement between the South group and Fosen Vind DA on 18 December 2023. An agreement was also reached between the North group and Roan Vind DA on 6 March 2024. The

agreement between the parties, states that there is no longer a violation of the Fosen reindeer herding district rights under Article 27 of the ICCPR.

Based on the agreement reached between the parties, it is the assessment of the ministry that there is no basis for implementing a reversal process for the licenses. Therefore, the Ministry has halted this process.

REGARDING ENVIRONMENTAL IMPACT ASSESSMENTS

According to the Environmental Impact Assessment Regulations, the developer is responsible for the costs of the implementation of assessments. In most cases, the developer contracts experts in environmental studies to conduct the assessments. Regardless of how the developer chooses to implement the assessments, the requirements in the Environmental Impact Assessments regulations must be fulfilled.

The administrative authorities must consider if the assessments are sufficient and can be used in the further licencing procedure. Other assessments conducted by other parties in the matter can be taken into account before the authorities' decision. This was recently the case in the planned project of a new power line between Skaidi-Lebesby, where the authorities, after consultation with the impacted reindeer herding district, deemed the impact assessment insufficient and forced the developer to conduct new and improved assessments.

After an administrative decision to grant a licence is made, the affected Sámi community may appeal the administrative decision to a higher body of the administration or the Government. If the appeal is not successful, the affected Sámi community may pursue other legal actions through the court system. The normal procedure is that the developer brings the affected party before the court in order for the court to decide the level of compensation. The affected Sámi community may also bring the case before the court themselves by suing the State. The latter alternative is seldom used, but the option is there.

10.1.2 MINISTRY OF LOCAL GOVERNMENT AND REGIONAL DEVELOPMENT OF NORWAY

In addition to some notes on inaccuracies, which have been reviewed and revised where deemed necessary, the Ministry provided the following comments:

The Ministry of Local Government and Regional Development appreciates the opportunity to provide comments in relation to sections 5.1 and 5.2 of the draft report. We note for the record that we have not seen the entire draft report.

REGARDING THE DUTY TO CONSULT AND THE AIM OF REACHING CONSENT

In the Ministry's assessment, Norwegian law regarding the topics covered in the report is in compliance with Norway's international obligations. The Sámi Act implements the duty to consult with the Sámi people. The act mandates that consent or agreement must be the aim of any government authority when carrying out the consultation requirement. The provisions in the Sámi Act track closely with the requirements in Article 6 of the ILO Convention 169 and Article 19 of the UNDRIP, in which FPIC is not phrased as a standalone right but as an objective when carrying out consultations. Article 27 of the ICCPR is incorporated as Norwegian law in the Human Rights Act, which ensures that reaching consent is a requirement in cases when Article 27 would have been breached without consent being reached. The Norwegian National Human Rights Institution has the same understanding of when FPIC is a mandated aim and when reaching FPIC is also a requirement in its report "Human Rights Protection Against Interference in Traditional Sámi Areas" from 2021, see pages 28–29, Section 3.4.4.

The Ministry consulted the Sámi Parliament in the process of codifying into law the duty to consult, a process which was concluded in 2021. The parties reached an agreement on the wording of the new chapter in the law and, notably, the preparatory works. The adoption of these amendments to the Sámi Act also fully implements the recommendation from the UN Human Rights Committee in 2018 that Norway should: "Ensure meaningful consultation with the Sámi peoples in practice and adopt a law for consultations with a view to obtaining their free, prior and informed consent, in consultation with them" (para. 37b).

REGARDING IMPACT ASSESSMENTS

The Ministry of Local Government and Regional Development and the Ministry of Climate and Environment have initiated a review of the regulations for impact assessments. In this work, the ministries will look more closely at how the regulations can better facilitate assessments of reindeer husbandry.

10.1.3 MINISTRY OF CLIMATE AND ENTERPRISE OF SWEDEN

The Ministry of Climate and Enterprise of Sweden pointed out that in the legislative history of the Consultation Act, it has been suggested that an evaluation should take place after both the Consultation Act and the following legal change, making it mandatory also for regions and municipalities to consult had come into effect. The latter legal change went into effect on 1 March 2024. The government has not yet decided on how this evaluation will be carried out. In their reply, the Swedish government also pointed out that in the budget for 2025, the Sámi Parliament has been appointed a permanent budget reinforcement of 5 million SEK per year for work on preparation and participation in relation to consultations. Regarding the case before CERD (CERD/C/102/D/54/2013), the government refer to their submitted opinion in the case.

10.1.4 MINISTRY OF ECONOMIC AFFAIRS AND EMPLOYMENT OF FINLAND

The Ministry of Economic Affairs and Employment of Finland notes that The Sámi Parliament Act is proposed to be amended, and the government proposal on the amendment of the act is pending in the parliament of Finland.

The Ministry points out that the provisions on cooperation procedures within the scope of the Mining Act sections 34 and 38 have been specified as the Mining Act was amended in 2023. The administrative decisions that the CESCRC and CRC have given their decisions on have been taken before the amendment of the Mining Act. The Ministry of Economic Affairs and Employment has also been preparing a decree on the Mining Act that would specify the permit applicant's obligations and cooperation procedure.

10.2 RESPONSES FROM COMPANIES

10.2.1 ROAN VIND DA.

Roan Vind expressed in their response the importance of balancing Sámi rights with the need for renewable energy development to combat climate change. The company says they support the initiative of the report to improve consultation and communication processes in projects affecting Sámi rights, to avoid similar cases in the future.

Roan Vind highlighted the amicable agreement with northern Fosen siida and the established follow-up group for continued dialogue and cooperation. Roan Vind stated its commitment to good dialogue and collaboration.

While providing one clarifying comment on the report's description of the history of the project, the company refrained from further comments, emphasizing the importance of maintaining a balance between protecting Sámi rights, preserving nature, and increasing renewable energy production.

10.2.2 FOSEN VIND DA.

Fosen Vind chose not to provide direct comments or confirm the accuracy of the case description.

Fosen Vind summarized their involvement following the Norwegian Supreme Court ruling, emphasizing the amicable agreement with southern Fosen sijte that was achieved after mediation. Fosen Vind highlighted that a follow-up group had been established to facilitate ongoing cooperation and emphasized that the current dialogue with southern Fosen sijte is constructive and open.

Fosen Vind reiterated their commitment to respecting human rights and supported initiatives to prevent similar cases in the future.

10.2.3 STATKRAFT AS.

Statkraft responded by acknowledging its role as majority owner of Fosen Vind DA and recognized that the Fosen case has been particularly challenging, especially for members of southern Fosen sijte. Statkraft

expressed commitment to implementing the terms of the amicable agreement achieved through mediation, and to rebuild trust and cooperation with southern Fosen sijte while ensuring that lessons learned from the case are incorporated into their operations.

Statkraft decided not to comment on or contribute to the report, citing the lack of broader context and their inability to verify the accuracy of the case description. The company emphasized its commitment to respecting human rights, which is anchored in its Code of Conduct and governance system.

10.2.4 BLUELAKE MINERAL

Bluelake Mineral AB, owner of Nickel Mountain AB, stated in their reply that the mining concessions for the areas Rönnbäck 1-3 were granted in accordance with Swedish law. The company further stressed that the Supreme Administrative Court, in the ruling of 2014 where the concessions were confirmed, stated that the regulations applied in Sweden with regards to the protection of the land use of the reindeer herding community go beyond what is required according to the international obligations of Sweden. Bluelake Mineral AB is, therefore, of the opinion that the process was in accordance with all relevant regulations in place at the time and that the company's actions cannot be questioned or be said to violate human rights. Bluelake Mineral also points out that the company have consulted with the Vapsten reindeer herding community on several occasions and claims that as it is within these communities that the right to reindeer herding is organized, the absence of consultation with other actors cannot be seen as a shortcoming of the company's actions. The company also points out that the Swedish government does not hold the view that FPIC entails a right to veto and that this opinion is shared by the former UN Special Rapporteur on the Rights of Indigenous Peoples in a report from 2009. The company means that even if the mining concessions were granted despite an opposing opinion from the Vapsten reindeer herding community, it does not mean there has been a violation of the right to free, prior and informed consent.

10.2.5 AKKERMAN FINLAND OY

Akkerman Finland Oy noted that regarding the Hietakero reservation notification granted by Tukes in 2020, the studies of Akkerman Finland Oy were limited to the compilation and analyses of earlier exploration data by the Geological Survey of Finland. In other words, only desk research was carried out. No new studies were conducted, neither from the air nor on the ground. Neither did Akkerman Finland Oy apply for an exploration permit in the area covered by the reservation notification before the reservation notification expired in 2022.

Akkerman Finland Oy emphasizes that their role in this particular case has been very limited and that the reservation notification did not have any negative impact on the environment or on the reindeer herding in the area during its validity.

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JUST TRANSITION OR 'GREEN COLONIALISM'?

HOW MINERAL EXTRACTION AND NEW ENERGY PROJECTS WITHOUT FREE, PRIOR AND INFORMED CONSENT ARE THREATENING INDIGENOUS SÁMI LIVELIHOODS AND CULTURE IN SWEDEN, NORWAY AND FINLAND

The increasing interest from states and companies in extracting critical raw materials and establishing renewable energy projects in Sápmi is exacerbating challenges faced by the Indigenous Sámi People in Norway, Sweden, and Finland.

Historically, the land and resources of the Sámi People have been exploited without proper protection, and now, the impacts of climate change are further threatening their traditional livelihoods. This situation represents a clear human rights issue, as international law mandates that Indigenous Peoples' consent must be obtained before any project that affects their land or resources can proceed.

However, current legislation in the Nordic states fails to ensure Sámi consent, provide adequate resources for meaningful participation, or incorporate Sámi traditional knowledge in decision-making processes. As a result, Sámi communities are often forced to defend their rights through lengthy and resource-intensive legal battles.

To address this, it is crucial that Nordic countries adopt legislation that aligns with international human rights standards, ensuring Sámi consent is integral to any development affecting their land and culture, thereby supporting a just and sustainable energy transition.

Amnesty International and the Saami Council recommend that the Nordic states ensure that no land use development in mining or energy sector shall take place in Sápmi without the free, prior and informed consent of the Sámi concerned.