Institut européen
European Institute

LUISS
School of Government

Joint Master in EU Trade and Climate Diplomacy

The Dark Side of the Green Transition: How Sámi Legal Mobilisation Challenges the Prioritisation of Energy-Driven Projects Over Indigenous Rights in Norway and Finland

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2024/2025

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26/06/2025

Frasca Mattia

ACKNOWLEDGEMENTS

Thank you to

My family for supporting me throughout the unforgettable journey that this Master has been

Two “Sami”: the Sámi people, for their brave and inspirational resistance; and Prof. Dr. Sami Zeidan, for his precious guidance during the entire process of conceptualising and writing this thesis

The new friends made along the way, to whom I do not simply say “thank you”, but rather: grazie, danke, merci, gràcies, gracias, tack, bedankt, go raibh maith agat, tapadh leat, hvala, ngā mihi nui, dziękuję, mulțumesc, благодаря

ABSTRACT

This thesis examines how Sámi legal mobilisation in Norway and Finland challenges the prioritisation of energy infrastructure over Indigenous rights in the context of the green transition. Through a comparative analysis of three emblematic cases - the Fosen and Kalvvatnan wind farms in Norway and the Lätäs 1 mineral exploration project in Finland - it investigates the capacity of legal mobilisation to assert Sámi cultural and land rights in the face of strategic energy interests. The research draws on international legal instruments, including the ICCPR, UNDRIP and ILO Convention No. 169, and applies the analytical frameworks of Multi-Level Governance, Compliance Theory, intersectionality and green colonialism.

Methodologically, the study adopts a qualitative approach, combining primary legal documents, court rulings, administrative decisions and international treaty body views with secondary literature and media analysis. The findings reveal that, despite growing legal sophistication, Sámi victories often fail to translate into effective enforcement due to political, economic and institutional constraints.

The thesis is structured in three chapters. Chapter I outlines the legal and theoretical framework. Chapter II presents the case studies, analysing both litigation strategies and State responses. Chapter III reflects on broader implications, including corporate accountability and the role of advocacy networks, and formulates recommendations for a more rights-based and inclusive green transition.

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INTRODUCTION

The ongoing global shift toward renewable energy - driven by climate imperatives, institutional commitments to carbon neutrality, as well as geopolitical disruptions such as the Russia-Ukraine conflict - has been widely framed as both urgent and progressive. Within this narrative, the expansion of wind power, green hydrogen and mineral extraction is often presented as a necessary reordering of national economies for the sake of planetary survival. Yet, this vision of a green transition is not universally beneficial. For Indigenous communities whose traditional lands intersect with areas designated for energy infrastructure, this transition triggered new forms of contestation, exclusion and environmental injustice.

Among the most affected are the Sámi people of Northern Europe. Their ancestral reindeer herding lands in Norway and Finland have increasingly become sites of large-scale wind energy projects and mineral exploration. These developments are advancing under the banner of sustainability, yet they often fail to uphold international standards of Indigenous rights and consultation, such as Free, Prior and Informed Consent (FPIC). This tension reveals a deeper contradiction: even as States endorse environmental goals and human rights norms, they may sideline Indigenous interests when these clash with strategic energy priorities. The Sámi experience thus challenges the widespread assumption that the green transition is inherently just, and highlights how existing governance structures often marginalise those already at the periphery of power.

Despite the growing body of research on Sámi rights, the intersection between Indigenous legal mobilisation and green energy governance remains under-explored. Notably, there is a lack of comparative analysis that examines how different legal, institutional and geopolitical factors shape State compliance across different countries. Similarly, while the field of climate litigation is expanding, few studies have considered its specific relevance to Indigenous communities and their capacity to influence long-term governance frameworks. Without such analysis, we lack a deeper understanding of the structural conditions that determine whether Indigenous victories in court translate into policy change. The consequences of this knowledge gap are significant: they obscure the mechanisms through which legal mobilisation can reshape energy

governance, and they risk normalising performative compliance that undermines the very rights States claim to uphold.

This thesis aims to address these gaps investigating how Sámi legal mobilisation challenges the prioritisation of energy-driven projects over Indigenous rights in Norway and Finland. It offers a comparative case study of three emblematic disputes: the Fosen and Kalvvatnan wind power projects in Norway, and the Lätäs 1 mineral exploration initiative in Finland. These cases allow for an in-depth assessment of the effectiveness of litigation not only as a juridical tool, but as a political strategy aimed at contesting extractive development. The choice of these two countries is deliberate. Both formally recognise the Sámi as Indigenous peoples and participate in European energy and human rights frameworks, yet they differ in key respects. For instance, Norway has ratified the International Labour Organisation (ILO) Convention No. 169 and institutionalised consultation practices through its Sámediggi (Sámi Parliament), while Finland has not. These legal and institutional asymmetries create distinct advocacy practices and compliance patterns that shape the outcomes of legal mobilisation.

Therefore, the central research question guiding this thesis is: How is Sámi legal mobilisation challenging the prioritisation of energy-driven projects over indigenous rights in Norway and Finland? To address this question, four sub-questions are explored:

1. What factors explain differing State responses to legal and political contestation of energy projects in Norway (Fosen vs. Kalvvatnan) and Finland?
2. To what extent can Sámi legal mobilisation drive systemic policy changes in renewable energy governance?
3. How do international legal norms (e.g., International Covenant on Civil and Political Rights, United Nations Declaration on the Rights of Indigenous Peoples, etc.) influence State behaviour in these cases?
4. How does intersectionality inform Sámi advocacy strategies and outcomes, and how does it reflect the lived realities of exclusion within the green transition?

The hypothesis underpinning this research is that while Sámi legal mobilisation can secure legal and/or political recognition of rights, the enforcement of judicial rulings

and decisions depends on a range of factors: the scale of the contested projects, the geopolitical importance of energy supply, international reputational concerns and domestic State priorities, especially as reframed in the wake of Europe's post-2022 energy crisis.

Methodology and outline

This research adopts a comparative case study approach and qualitative legal-political analysis. Primary sources include court rulings, ministry decisions and international treaty body findings; secondary sources comprise academic literature, Non-Governmental Organisations (NGOs) reports and media coverage. The analysis is informed by Multi-Level Governance Theory and Compliance Theory, alongside critical frameworks such as intersectionality and green colonialism, to account for both institutional behaviour and the broader power structures in which Sámi advocacy operates.

The thesis is structured as follows. Chapter I provides the legal and theoretical framework, covering international instruments protecting Indigenous rights, the evolution of strategic litigation and the concepts of Multi-Level Governance and Compliance. It also incorporates critical perspectives to contextualise the analysis within power structures and historical injustices. Chapter II presents three in-depth case studies - Fosen, Kalvvatnan and Lätäs 1 - to evaluate how Sámi actors have challenged energy projects and how States have responded. Chapter III discusses the broader implications of these findings, focusing on corporate accountability, advocacy networks and policy recommendations for a just transition. The conclusion reflects on how Sámi legal mobilisation offers a transformative lens through which to rethink the legitimacy of energy governance in an era of climate urgency.

In engaging with these issues, this study challenges the assumption that the green transition is inherently just or universally beneficial. It argues instead that sustainability must be held to a higher standard, one that is not only low-carbon but also rights-based, inclusive and accountable to those historically excluded from decision-making.

CHAPTER I

Legal and theoretical framework

The challenges facing Indigenous communities in the context of the green transition do not emerge in a legal or political vacuum. In fact, the collision between energy and environmental ambitions and Indigenous rights in Norway and Finland must be situated within a broader normative, institutional and theoretical framework. This chapter provides the conceptual and legal underpinnings of the thesis by first introducing the international legal instruments relevant to Sámi rights, followed by an exploration of strategic litigation as an emerging advocacy tool. It then turns to theories of Multi-Level Governance and Compliance to account for divergences in State behaviour. Finally, it incorporates critical perspectives - namely intersectionality and green colonialism - to expand the analytical lens and embed the discussion within wider debates on justice and power.

1.1 Indigenous rights in international law

The legal recognition of Indigenous rights has progressively evolved through a body of international treaties, declarations, general comments and soft law instruments. These frameworks not only shape the normative expectations for State conduct, but also provide advocacy tools for Indigenous groups. Among the most consequential instruments is the International Covenant on Civil and Political Rights (ICCPR), whose Article 27 has proven central to the mobilisation of Sámi legal claims. Article 27 reads:

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."[1]

In the landmark Fosen case, the Norwegian Supreme Court ruled that the operation of wind turbines in the Fosen peninsula constituted a violation of Sámi reindeer herders'

[1] United Nations, *International Covenant on Civil and Political Rights*, (New York: United Nations, 1966), https://www.ohchr.org/sites/default/files/ccpr.pdf

cultural rights under Article 27.[2] This judgment illustrates how international legal norms can be embedded into domestic jurisprudence to protect Indigenous cultures from environmental encroachment. Indeed, the court explicitly recognised the incompatibility between the wind power development and the cultural integrity of traditional Sámi reindeer husbandry.

The normative strength of Article 27 has been further elaborated in General Comment No. 23 by the United Nations Human Rights Committee. The Comment clarifies that the rights of minorities to enjoy their culture may include traditional activities such as reindeer herding, hunting or fishing, especially when these practices are essential to the minority's way of life. Point 3.2 of the General Comment reads:

> "The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority."[3]

This interpretative guidance has bolstered Sámi claims in both domestic and international contexts.

Another pivotal instrument is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Though non-binding, the UNDRIP has emerged as a key source of international soft law. Its emphasis on Free, Prior and Informed Consent (FPIC) - mentioned in Articles 10-11-19-29-32[4] - is particularly relevant for evaluating the procedural fairness of State-led development projects affecting Indigenous territories. In the Nordic context, FPIC has become central in evaluating whether

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[2] Supreme Court of Norway, *HR-2021-1975-S, (case no. 20-143891SIV-HRET), (case no. 20-143892SIV-HRET) and (case no. 20-143893SIV-HRET)* (2021), 26, https://www.domstol.no/globalassets/upload/hret/translated-rulings/hr-2021-1975-s.pdf

[3] United Nations Human Rights Committee, *CCPR General Comment No. 23: Article 27 (Rights of Minorities)* (1994), 1, https://www.refworld.org/legal/general/hrc/1994/en/26900

[4] United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* (2007), 11, 16, 21, 23-24, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Indigenous communities are genuinely consulted about projects that may impair their livelihoods.

Furthermore, Norway ratified the ILO Convention No. 169 - also known as Indigenous and Tribal Peoples Convention - in 1990, binding itself to obligations related to land rights, consultation and cultural preservation for Indigenous peoples. Article 14, in particular, recognises the rights of Indigenous peoples to land traditionally occupied and used. Article 6 mandates consultation "in good faith" with the aim of achieving agreement or consent.[5] However, Finland did not ratify the Convention, which creates an important legal divergence between the two countries. Despite Finland's formal endorsement of Indigenous rights through soft-law mechanisms, its reluctance to bind itself to treaty-based obligations has drawn criticism, particularly in light of recent litigation outcomes.[6]

In addition to these instruments, both countries are subject to oversight by UN treaty bodies, including the Committee on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR), which have issued recent findings concerning violations of Sámi rights in Finland.[7] These Views, while non-binding, reflect a growing international consensus on the need to protect Indigenous cultures against the encroachment of extractive or infrastructure projects in the name of sustainability. In parallel, the UN Committee on the Elimination of Racial Discrimination (CERD) has emerged as an influential oversight body in Indigenous rights disputes too. Established under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), CERD monitors State compliance with obligations to eliminate racial and ethnic discrimination in law and practice. Its mandate

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[5] International Labour Organisation, *ILO Convention No. 169* (1990), https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE%2CP55_LANG%2CP55_DOCUMENT%2CP55_NODE:REV%2Cen%2CC169%2C%2FDocument

[6] Leena Heinämäki, "The prohibition to weaken the Sámi culture in international law and Finnish environmental legislation" in *The Significance of Sámi Rights*, ed. Dorothée Cambou and Øyvind Ravna (Routledge, 2024), 87

[7] Tristan Ahtone, "UN report backs up Sámi claims that mining in Finland violates their rights to land and culture," *Grist*, October 18, 2024, https://grist.org/global-indigenous-affairs-desk/un-backs-sami-fight-over-land-finland/

includes evaluating whether State actions disproportionately impact ethnic minorities and Indigenous peoples.[8]

Regionally, the Proposed Nordic Sámi Convention, first drafted in 2005, represents a bold yet unrealised attempt to harmonise Sámi rights across Norway, Sweden and Finland. Negotiated over more than a decade, the Convention contains provisions on cross-border cooperation, consultation and land rights. However, its political sensitivity, especially in Finland, has delayed ratification. In fact, during Finland's national consultation process, numerous State authorities expressed serious reservations about the Convention's implications, particularly its perceived impact on constitutional norms and treaty-making powers. As documented in the Summary Report, substantial institutional and legal obstacles emerged, leading Finland to postpone formal engagement. At the 2007 meeting of the Sámi Council, no decision could be made to initiate negotiations, primarily because Finland had not concluded necessary legal studies on the Convention's compatibility with its constitution and international obligations. These unresolved legal-political frictions illustrate how deeply embedded the Convention's proposals are within broader debates on sovereignty, indigenous autonomy and constitutional interpretation. Still, while not in force, the Convention remains a significant normative reference, symbolising both the potential and the fragility of regional legal coherence on Indigenous matters.[9]

Finally, it is worth recalling the historic Lapp Codicil of 1751, which remains a touchstone for Sámi claims to cross-border land use. As an annex to the Treaty of Strömstad between Denmark-Norway and Sweden, the Codicil guaranteed Sámi communities the right to maintain traditional reindeer herding practices across newly established State frontiers. Even if predating modern international law, it continues to be cited in legal discourse as a treaty-based recognition of Indigenous sovereignty and mobility, particularly in the context of reindeer migration.[10]

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[8] "About the Committee on the Elimination of Racial Discrimination," United Nations, https://www.ohchr.org/en/treaty-bodies/cerd/introduction

[9] Timo Koivurova, "The Draft Nordic Saami Convention: Nations Working Together," *International Community Law Review* 10 (2008): 279–293

[10] ibid, 279-280

1.2 Legal mobilisation and litigation as advocacy

Over the past two decades, litigation has emerged as a central strategy for Sámi communities confronting the prioritisation of energy-driven development on their lands. Strategic litigation - understood as the intentional use of legal processes to advance broader political or social goals - has become an increasingly visible tool in Indigenous advocacy. In the Sámi context, it functions not only as a defensive tool against harmful developments, but also as a proactive method to affirm rights, expand legal interpretations and generate public visibility.

The Fosen case - which will be analysed in detail in the second chapter - exemplifies this trend, as Sámi actors mobilised international legal principles in a domestic court to challenge a project of significant national interest. In 2021, Norway's Supreme Court ruled that the operation of the wind farms violated Sámi cultural rights under Article 27 of the ICCPR, effectively invalidating the licences. However, legal victories do not automatically translate into enforcement. Despite the 2021 ruling in favour of the herders, as of today, the wind turbines continue to operate. This is because the Court did not mandate the removal of the infrastructure, leaving implementation to the executive. Faced with competing priorities - such as energy security, economic considerations and reputational concerns - the government delayed concrete action, opting instead for a mediated settlement over full enforcement. As will be further examined in the next pages, this case reveals the limits of litigation when legal outcomes lack binding implementation mechanisms. Indeed, such dynamic reveals the dual character of litigation: on one hand, it affirms rights and generates precedents; on the other, it can stall at the implementation stage, particularly when economic or political priorities weigh heavily. At the same time, the use of international venues, such as the CRC and CESCR in the Finnish context, illustrates how Sámi actors strategically escalate their claims beyond domestic systems.

Moreover, litigation serves a discursive function: it reframes development conflicts from technical disputes to questions of justice and rights. Through litigation, Indigenous actors redefine public narratives and draw attention to governance asymmetries. By doing so, they not only apply pressure on States, but also expand the public visibility of

their struggles, thereby increasing reputational costs for non-compliant governments. These processes reveal the need to embed litigation in broader strategies of mobilisation developed around the concepts of "climate justice" and "just transition." Savaresi et al. argue that:

> "Just litigation is not brought with the stated purpose of undermining climate action. Instead, it contends that laws, policies and projects must better balance the pursuit of climate objectives with the rights and interests of adversely affected communities. Just transition litigation therefore shines a spotlight on the inequalities associated with the transition, particularly in terms of the distribution of socio-economic and environmental benefits and burdens, and of participation in decision-making."[11]

Therefore, legal proceedings can catalyse activism, policy debates and reputational costs, eventually trying to solve the strong "tensions inherent in the transition."[12] Indeed, in the Nordic context, litigation has also catalysed cross-generational activism, with Sámi youth and women taking leadership roles in both legal and civil resistance efforts.

1.3 European Union (EU) energy law, geopolitics and the green transition

While this study is rooted in the Sámi experience within Norway and Finland, its legal significance must be situated within broader European developments in energy governance. The evolution of EU energy law in response to geopolitical instability - most notably the Russian invasion of Ukraine in 2022 - has introduced new tensions between strategic energy imperatives and legal commitments to human rights and environmental protection.

In the aftermath of the invasion, the EU launched a legal and regulatory overhaul aimed at accelerating its decoupling from Russian fossil fuels. Central to this agenda were the

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[11] Annalisa Savaresi, Joana Setzer, Sam Bookman et al., "Conceptualizing just transition litigation", *Nature Sustainability* 7 (2024): 4, https://doi.org/10.1038/s41893-024-01439-y

[12] ibid, 9

REPowerEU Plan[13] and revisions to the Renewable Energy Directive (RED)[14], both of which redefined the legal parameters for energy infrastructure development. These reforms not only intensified the pace of renewable energy deployment (raising the binding target for renewable energy in 2030 to 42.5%, with the ambition to reach 45%), but also created fast-track mechanisms for energy permitting, such as the Renewable Acceleration Areas.[15] These mechanisms, while designed to enhance resilience, risk circumventing procedural safeguards guaranteed under international human rights law, including the UNDRIP and ILO Convention No. 169.

Norway, though not an EU Member State, plays a pivotal legal and geopolitical role through its participation in the European Economic Area (EEA). The 2022 "Energy Dialogue"[16] and the 2023 EU-Norway "Green Alliance"[17] have deepened cross-border cooperation on offshore wind, green hydrogen and critical minerals. These partnerships are embedded in a complex legal architecture that blends EU law, EEA obligations and international treaties on Indigenous rights. In fact, the EEA affiliation also requires partial alignment with EU climate and energy legislation, including the adoption of key components of the EU's renewable energy packages, defined by the Agreement's Annex IV and EEA Joint−Committee decisions. Norway has implemented the Third Energy Package and much of the Clean Energy for All Europeans Package[18], and participates

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[13] "REPowerEU, Affordable, secure and sustainable energy for Europe," European Commission, https://commission.europa.eu/topics/energy/repowereu_en

[14] "Renewable Energy Directive," European Commission, https://energy.ec.europa.eu/topics/renewable-energy/renewable-energy-directive-targets-and-rules/renewable-energy-directive_en

[15] "Renewable acceleration areas: a tool to boost clean energy in Europe," TotalEnergies, https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2024-03/Reponse_TTE_Consultation_Renewable_energy_guidance_on_designating_renewables_acceleration_areas.pdf

[16] "Commissioner Simson visits Norway to strengthen energy partnership," European Commission, October 2022, https://commission.europa.eu/news/commissioner-simson-visits-norway-strengthen-energy-partnership-2022-10-26_en

[17] "European Green Deal: New EU-Norway Green Alliance to deepen cooperation on climate, environment, energy and clean industry," European Commission, April 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2391

[18] "The EEA Agreement and Norway's cooperation with the EU on energy," Norwegian Ministry of Energy, https://energifaktanorge.no/en/regulation-of-the-energy-sector/eos-avtalen-og-norsk-energipolitikk/?

actively in transnational initiatives such as the North Seas Energy Cooperation.[19] However, its integration remains uneven. The Renewable Energy Directive II (RED II), a cornerstone of EU renewable governance, has yet to be fully transposed, and political resistance to the Fourth Energy Package culminated in the collapse of Norway's coalition government in early 2025.[20] This illustrates how the legal incorporation of EU energy law via the EEA framework is both politically fraught and selectively executed.

Yet, the increasing integration of EU-Norway energy planning is undeniable and it reveals a critical normative disjunction: while EU law asserts leadership in climate governance, its operationalisation often collides with the principles of a just transition. Legal obligations to ensure FPIC, conduct environmental and social impact assessments, and uphold Indigenous participation may become de-prioritised in favour of energy security and investment protection. This leads to growing concern over a compliance gap between formal legal standards and actual practice on the ground.

While Norway's integration occurs through the EEA, Finland, as a full EU Member State, participates directly in shaping and implementing the Union's climate and energy legislation. This includes binding commitments under the Renewable Energy Directives and involvement in strategic frameworks such as the European Green Deal. A prime illustration is the Critical Raw Materials Act (CRMA) of May 2024 which is not merely an industrial initiative, but also a foundational component of the EU's energy transition strategy. In fact, it establishes an EU-wide framework to secure the sustainable, resilient domestic supply of critical and strategic raw materials - such as rare earth elements, lithium, cobalt and nickel - which are indispensable for manufacturing wind turbines, solar panels, batteries, hydrogen electrolysers and grid technologies. The CRMA sets ambitious 2030 benchmarks: at least 10% of strategic raw material consumption must be mined within the EU, 40% processed, 25% recycled, and no more than 65% sourced

[19] "The North Seas Energy Cooperation," European Commission, https://energy.ec.europa.eu/topics/infrastructure/high-level-groups/north-seas-energy-cooperation_en

[20] "Norway's government splits over EU energy row," *Renewable Energy News*, January 31, 2025, https://renews.biz/98511/norways-government-splits-over-eu-energy-row/

from any single non-EU country. It also introduces a "Strategic Project" designation, eligible for accelerated permits.[21]

This evolving legal landscape thus forms a critical site for assessing not only the coherence of EU energy law with international human rights norms, but also the resilience of Indigenous rights in times of geopolitical crisis. As this chapter anticipates, the interplay between accelerated energy cooperation and weakened enforcement of Indigenous safeguards may signal a broader trend: the erosion of compliance with international legal obligations in the face of perceived energy exigencies.

1.4 Multi-Level Governance and Compliance Theory

To make sense of the differing State responses to Indigenous litigation, the thesis draws on the theory of Multi-Level Governance (MLG) as a core analytical lens. This framework refers to the dispersion of authority across multiple and interconnected territorial levels - local, national and international - and among a plurality of actors including States, sub-national entities, Indigenous institutions and civil society organisations. Katherine Daniell employs the following definition:

> "Systems of 'continuous negotiation among nested governments at several territorial tiers' (Marks 1993: 392), where authority is not only dispersed vertically between levels of administration but also horizontally across different sectors of interest and spheres of influence, including non-government actors, markets and civil society."[22]

In the case of Indigenous rights and climate action, MLG helps explain how fragmented jurisdictional landscapes can produce both opportunities and blockages for legal and political mobilisation.

Many scholars, including Lavanya Rajamani, have argued that the international climate regime is increasingly characterised by a sort of poly-centric governance, where formal

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[21] "Critical Raw Materials Act," European Commission, https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en

[22] Katherine A. Daniell and Adrian Kay, "Multi-level Governance: An Introduction" in *Multi-level Governance* (ANU Press, 2025), 6, https://www.jstor.org/stable/j.ctt1zgwjv0.6

and informal norms emerge through overlapping sites. The international climate regime thrives not in spite of, but because of its fragmented, multilevel structure, which enables iterative norm development and legal experimentation.[23] However, this same structure also renders it susceptible to rollback when strategic imperatives - such as energy security in times of crisis - override normative commitments. In the Nordic context, international instruments like the ICCPR, the UNDRIP and ILO 169 interact with national courts, Sámi Parliaments and global advocacy networks. In practice, for Indigenous actors, this means they can activate various governance layers and create multiple entry points for contestation - from Sámi Parliaments to international treaty bodies - to assert their claims and challenge State actions. However, the very dispersion of authority that enables this flexibility also complicates enforcement. The lack of ratification of ILO 169 by Finland, for example, limits the applicability of certain procedural safeguards - such as binding consultation requirements - within the domestic legal framework. Meanwhile, critical findings by international Committees like the CESCR or CRC remain legally non-binding and thus dependent on political will for implementation. This duality reveals a core tension in Multi-Level Governance: while it provides normative leverage, it also permits selective compliance, enabling States to project alignment with international norms rhetorically while evading substantive obligations in practice.

Building on the institutional lens provided by Multi-Level Governance, this thesis also employs Compliance Theory to help interpret why States may formally acknowledge Indigenous rights yet fail to implement them meaningfully.

Traditional compliance models tend to view actors as rational entities responding to incentives or sanctions. Julien Etienne's goal-framing approach enriches this understanding by suggesting that compliance behaviour is shaped by the dominance of three interrelated frames already identified by Sociologist Siegwart Lindeberg in 1983: the normative frame (doing what is right), the gain frame (maximising self-interest) and

[23] Lavanya Rajamani, *Innovation and Experimentation in the International Climate Change Regime* (Brill, 2020), 189

the hedonic frame (seeking positive emotional states).[24] This model is particularly useful for analysing the gap between *de jure* compliance - such as court rulings or treaty ratifications - and *de facto* compliance, i.e., actual behavioural change. In the Fosen case, for instance, the Norwegian Supreme Court recognised a violation of cultural rights under Article 27 ICCPR, yet the State's subsequent actions - or lack thereof - suggest that gain-oriented goals related to energy production may have displaced normative commitments. Etienne's dynamic model conceptualises compliance not as a binary (compliant/non-compliant), but as a spectrum influenced by the interplay of such normative, gain-oriented and hedonic frames. In the context of this thesis, the spectrum of compliance can be illustrated by three positions: at one end, proactive compliance as in the Kalvvatnan case, where administrative authorities halted a project pre-emptively in alignment with Indigenous rights norms; in the middle, partial or performative compliance, exemplified by the post-ruling mediation in the Fosen case, where the State offered compensatory measures without dismantling the turbines, thereby acknowledging rights while preserving strategic energy interests; and at the other end, passive or resistant non-compliance, as seen in Lätäs 1, where Finnish authorities proceeded with licensing despite procedural criticisms, relying on soft-law commitments rather than binding norms. This spectrum reflects how legal conformity may coexist with practical inertia or even resistance, particularly when economic imperatives or geopolitical pressures weigh heavily. Understanding compliance as a fluctuating outcome shaped by litigation, public scrutiny and normative contestation is crucial, especially when analysing Indigenous legal mobilisation not merely as a juridical act, but as a strategy for recalibrating State priorities in the green transition.

Finally, compliance theory underscores the strategic role of international monitoring. Although treaty body findings lack direct enforcement mechanisms, they shape global discourse, embolden domestic advocacy and create soft constraints on State action. As such, compliance is increasingly performative and reputational, especially in countries like Norway and Finland that promote themselves as human rights leaders.

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[24] Julien Etienne, "Compliance Theory: A Goal Framing Approach," *Law & Policy* (2011): 310

1.5 Critical frameworks: intersectionality and green colonialism

To deepen the analysis beyond institutional dynamics, this section incorporates critical perspectives of intersectionality and green colonialism. These perspectives challenge the neutrality of development discourse and highlight the uneven distribution of burdens within Indigenous communities. They also underscore the significance of social identity, history and power in understanding contemporary conflicts.

Intersectionality, a concept developed by American critical legal race scholar Kimberlé Crenshaw, offers a powerful tool for understanding how overlapping systems of marginalisation - such as racism, patriarchy and settler colonialism - interact to produce compounded forms of disadvantage. As Crenshaw describes it:

> "Intersectionality is a metaphor for understanding the ways that multiple forms of inequality or disadvantage sometimes compound themselves and create obstacles that often are not understood among conventional ways of thinking."[25]

While the concept has evolved across legal, feminist and sociological literature, this thesis adopts a working definition of intersectionality as a conceptual framework for analysing how multiple, intersecting axes of identity - such as indigeneity, age, gender and class - mutually shape the lived experiences of marginalisation, particularly in the context of rights-based conflicts over land and development.

In the Sámi context, the intersection of indigeneity, gender, age, economic status and territorial remoteness inevitably generates distinct forms of vulnerabilities, but also unique strategies for resistance. Notably, Sámi women and youth have played increasingly visible roles in legal advocacy and protest, as seen in the civil disobedience campaign following the Fosen ruling. In February 2023, marking 500 days since Norway's Supreme Court determined that the Fosen wind farms violated Sámi reindeer herders' rights, young Sámi activists initiated a series of peaceful protests in Oslo. These actions included occupying the Ministry of Petroleum and Energy (MPE), blocking

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[25] Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," *University of Chicago Legal Forum*, no. 1 (1989), http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8

entrances to multiple government ministries[26] and staging demonstrations outside the Royal Palace. Notably, prominent Sámi youth leaders such as Elle Rávdná Näkkäläjärvi were at the forefront of these protests,[27] which garnered international attention and support, including participation from Swedish climate activist Greta Thunberg, who joined Sámi demonstrators in blocking the entrance to Statkraft, the State-owned operator of the Fosen wind farm.[28] Their leadership not only reflects the disproportionate impact of climate and development policies on marginalised sub-groups, but also signals a generational shift in Indigenous political engagement.

The CRC's focus on the rights of Sámi children further amplifies the importance of intersectional analysis. The Committee has emphasised the cultural and developmental harm posed by resource extraction and land encroachment.[29] In doing so, it explicitly recognised that the effects of environmental degradation are not uniform across a population, but disproportionately borne by those with the least power to influence decision-making.

Green colonialism, on the other hand, offers a powerful critique of how the language and logic of sustainability can reproduce extractive and imperial logics. In this framing, the green transition becomes a new frontier for dispossession, cloaked in the rhetoric of climate urgency. Wind farms, mineral exploration and other clean energy initiatives are thereby recast as instruments of encroachment, especially when imposed on Indigenous territories without adequate consultation and participation.[30] This perspective challenges

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[26] "Norway activists renew protest against wind farm on land used by herders," *AP*, October 11, 2023, https://apnews.com/article/norway-wind-turbine-sami-protest-4e793917265bd63a6bf319ffb7806107

[27] Martine Aamodt Hess, "Norway's Treatment of Sámi Indigenous People Makes a Mockery of Its Progressive Image," *Jacobine*, March 13, 2023, https://jacobin.com/2023/03/norway-sami-indigenous-people-reindeer-herding-wind-turbines-dispossession-protest

[28] "Greta Thunberg and Norwegian activists stand firm against wind farm on Sami reindeer herding land," *EuroNews*, October 12, 2023, https://www.euronews.com/green/2023/10/12/greta-thunberg-and-norwegian-activists-stand-firm-against-wind-farm-on-sami-reindeer-herdi

[29] Committee on the Rights of the Child, *Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 172/2022* (2024) https://um.fi/documents/35732/0/CRC-C-97-D-172-2022_E_UV.pdf/34747d8d-1167-fa49-925c-229c237181f8?t=1728548510560

[30] Eva Maria Fjellheim, "Green colonialism, wind energy and climate justice in Sápmi," *IWGIA*, November 12, 2022

the assumed benevolence of renewable energy and invites a broader reflection on who bears the costs of decarbonisation.

Climate policy in the Nordic region can reinforce extractive logics, even if it aspires to be participatory and inclusive. The push for clean energy has not always translated into just energy. Mechanisms like Corporate Social Responsibility (CSR) and the Social License to Operate (SLO) are frequently invoked to legitimise projects without fundamentally shifting decision-making power. These tools often serve to manage dissent rather than address structural inequality.

The integration of intersectionality and green colonialism into this thesis allows for a richer analysis of Sámi legal mobilisation, illuminating the power asymmetries that underlie the institutional responses to litigation. These frameworks encourage a broader view of compliance, one that includes not just adherence to legal norms, but responsiveness to lived experiences and epistemic pluralism.

1.6 Sámi governance and historical context

Understanding the contemporary landscape of Sámi litigation requires historical and institutional context too.

Historically, the relationship between Sámi communities and Nordic States has been marked by assimilation policies, forced relocations and marginalisation, which have left enduring legacies. The Alta conflict of the 1970s and 1980s is widely regarded as a turning point. The proposed dam on the Alta-Kautokeino river sparked mass mobilisation and international attention, leading to the institutional recognition of Sámi rights and the establishment of the Sámi Parliaments. Yet, the legal and political reforms that followed were partial and remain contested.[31]

The principal foundation for Sámi policy in Norway is article 110a of the Constitution and the Act concerning the Sámi Parliament (the Sámediggi) and other legal matters pertaining to the Sámi ("The Sámi Act"[32]). The amendment of 1988 to the Norwegian

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[31] Luke Laframboise, "Just Like Alta? A Comparative Study of the Alta and Fosen Cases as Critical Junctures for Sámi Rights in Norway," *Arctic Portal*, 2023, https://arcticyearbook.com/images/yearbook/2023/Scholarly_Papers/3_Laframboise_AY2023.pdf

[32] *The Sámi Act* (1987), https://www.regjeringen.no/en/dokumenter/the-sami-act-/id449701/

Constitution explicitly calls upon authorities to protect the Sámi and their culture and traditional livelihoods, stating that "it is the responsibility of the authorities of the State to create conditions enabling the Sámi people to preserve and develop its language, culture and way of life."[33] Norway's Sámediggi has a strong mandate and institutionalised relationship with the State. In 2005, the Sámediggi and the government entered into an agreement concerning consultation procedures which, according to the agreement, "apply in matters that may directly affect Sámi interests" and require that State authorities "provide full information concerning relevant matters that may directly affect the Sámi, and concerning relevant concerns at all stages of dealing with such matters."[34] These consultation requirements are generally in line with the consultation provisions of ILO Convention No. 169. Not by chance, this mechanism was positively reviewed by the UN Special Rapporteur on the rights of indigenous people who considered this agreement "to represent good practice with respect to implementation of the duty of States to consult with indigenous peoples, which provides an important example for the other Nordic countries as well as for countries in other regions of the world."[35] In contrast, Finland's Sámediggi operates under weaker institutional guarantees:

"Current Finnish legislation does not acknowledge or grant any special land rights to the Sami people or acknowledge any exclusive rights for the Sami people to pursue their traditional livelihoods, within or outside of the homeland areas. Furthermore, unlike in Norway and Sweden, in Finland reindeer husbandry is not reserved for Sami people in particular but rather is open to any citizen of the European Union."[36]

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[33] "Multiculturalism Policies in Contemporary Democracies - Norway," Queen's University, https://www.queensu.ca/mcp/indigenous-peoples/resultsbycountry-ip/norway-ip

[34] *Procedures for Consultations between the State Authorities and The Sami Parliament [Norway]* (2005), section 2-3

[35] James Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples* (UN Human Rights Council, 2011), 7

[36] Ibid, pp. 9

Under the Finnish Sámi Parliament Act, the task of the Sámi Parliament is solely "to look after the Sámi language and culture, as well as to take care of matters relating to their status as an indigenous people."[37] Moreover, unlike Norway, Finland does not have an agreement with the respective Sámi Parliaments that establishes how and under what circumstances consultations should be carried out. Also, as a general matter, Sámi Parliaments lack specific decision-making powers in matters pertaining to the use of lands, waters and natural resources.[38]

Besides from formal institutions, such as the Sámi Parliaments, Sámi governance structures include traditional systems too, such as the siidas, which continue to regulate communal reindeer herding and territorial management. The siida is a traditional Sámi cooperative herding group that functions as both a social and economic unit, deeply embedded in the cultural fabric of Sámi society. Historically, it was the fundamental structure through which Sámi families organised their reindeer herding activities, sharing access to grazing lands and coordinating the use of natural resources. It was not a rigidly hierarchical system but rather a flexible and egalitarian system, with leadership typically based on herding skills and experience. Families maintained individual ownership of herds while cooperating closely on daily herding tasks, and decisions were usually made collectively. Over time, the siida system underwent significant changes due to increased regulation and State involvement, particularly in the 20th century. In Norway, it gained legal recognition through the 2007 Reindeer Management Act, which formalised its role in managing herding coordination and grazing rights. Despite these changes, the siida remains a resilient institution that continues to shape Sámi pastoral life.[39] Consequently, the modern siida embodies a resilient indigenous institution that bridges traditional governance with contemporary legal frameworks, ensuring the continuity of Sámi livelihoods and territorial connections. However, legal frameworks often fall short of granting full autonomy or integrating siida governance into national

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[37] *The Sámi Parliament Act* (1992)

[38] Anaya, *Report of the Special Rapporteur*, 11

[39] Marius Warg Næss, Guro Lovise Hole Fisktjønmo & Bård-Jørgen Bårdsen, "The Sami cooperative herding group: the *siida* system from past to present," *Acta Borealia* 38, no. 2 (2021), https://doi.org/10.1080/08003831.2021.1972265

land management and policy-making structures. This limitation has significant implications for Sámi self-determination and land rights, as the siida is more than an economic entity; it embodies Sámi systems of knowledge, governance and connection to ancestral lands, serving as vehicles for cultural continuity, political representation and, increasingly, legal advocacy. Their resilience underscores the pluralistic nature of Sámi governance, which combines statutory and customary elements.[40]

Complementing these local governance practices, the Sámi Council operates as a transnational political and cultural organisation representing Sámi interests across Norway, Sweden, Finland and Russia. It plays a vital role in advancing Sámi self-determination through advocacy, legal intervention and international diplomacy. Its efforts have been particularly influential in amplifying Sámi voices in global human rights forums and shaping the discourse around Indigenous rights and environmental justice in the Arctic region.[41]

In conclusion, this chapter has outlined the legal and theoretical foundations of the thesis. By drawing on international human rights instruments, strategic litigation practices, EU energy law and geopolitics, Multi-Level Governance, Compliance Theory and critical justice frameworks (intersectionality and green colonialism), it offers a multidimensional approach to analysing the legal mobilisation of Sámi communities in the face of energy transition projects.

The evolving jurisprudence around ICCPR, the normative force of UNDRIP and ILO 169 and the discursive power of litigation all shape the terrain on which Indigenous rights are contested. Multi-Level Governance and Compliance Theory reveal how State actions are not merely legal responses, but are conditioned by overlapping norms, institutional complexity and political economy. Critical perspectives on intersectionality and green colonialism challenge the assumptions of neutrality in environmental law and demand a deeper reckoning with power and history.

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[40] Ibid, 5

[41] "About the Saami Council," Sámiraddi, https://www.saamicouncil.net/en/the-saami-council

The next chapter applies these frameworks to three concrete case studies: Fosen, Kalvvatnan and Lätäs 1; each offering a distinct lens on State responses, compliance patterns and Indigenous resistance in the age of the green transition.

CHAPTER II

Case studies

Building on the theoretical and legal frameworks established in Chapter I, this chapter examines how Sámi communities in Norway and Finland have mobilised legal and political tools to resist energy infrastructure developments on their traditional territories. Focusing on three emblematic cases - the Fosen and Kalvvatnan wind farm cases in Norway and the Lätäs 1 mineral exploration case in Finland - this chapter builds a comparative case study to assess divergences in State responses to Indigenous legal mobilisation. The core questions guiding this inquiry are: How have Sámi communities used legal mechanisms and advocacy to contest energy infrastructure developments? To what extent have State institutions complied with judicial and administrative decisions in favour of Sámi rights? And how do legal victories translate into material outcomes in the governance of energy transitions?

The argument advanced is that, while these strategies have yielded important precedents for the protection of Indigenous cultural rights, their transformative impact remains uneven and dependent on external dimensions. The analysis employs the previously explained theories of Multi-Level Governance and Compliance to explain why legal victories for Sámi communities do not always lead to institutional change. It becomes evident that outcomes are filtered through domestic political will, administrative capacity and the strategic economic and geopolitical interests of both States and corporate actors. While international legal frameworks provide normative leverage, their implementation remains fragmented, and often symbolic, unless embedded in a robust compliance regime.

2.1 Norway: between legal victories and governance gaps

2.1.1 The Fosen wind project case

The Fosen case revolves around the construction of wind farms on the Fosen peninsula in Trøndelag County, Norway, an area traditionally used by the South Sámi for reindeer husbandry. In June 2010, the Norwegian Water Resources and Energy Directorate (NVE) granted licences for the construction of four wind farms on Fosen, including

Roan and Storheia. These developments were accompanied by a 420 kV power line licence issued to Statnett SF and permissions for land expropriation.[42]

Following these decisions, multiple appeals were submitted, including by Nord-Fosen siida (against Roan) and Sør-Fosen sijte (against Storheia), citing violations of their rights under Article 27 of the ICCPR. Despite these objections, the Ministry of Petroleum and Energy (MPE) upheld the licences in August 2013, even if with minor modifications, such as partial removal of the Haraheia area from the Roan project.

From 2016 onwards, Fosen Vind DA consolidated operational responsibility for both wind farms, with Roan Vind DA later taking over the Roan facility. The wind farms became operational in 2019 (Roan) and 2020 (Storheia), with the combined development emerging as one of Europe's largest onshore wind parks.

The case quickly drew international attention, notably from CERD, which, in December 2018, requested Norway to suspend construction under Rule 94(3) of its procedural rules. Norway explicitly declined this request, allowing construction to proceed and thereby intensifying the perception of systemic disregard for Sámi rights.[43]

The initial judicial contestation culminated in a 2020 judgment from the Frostating Court of Appeal, which upheld the State's position. The Appellate Court found that although reindeer husbandry would be negatively affected, the interference was not so grave as to breach ICCPR Article 27. This interpretation emphasised the potential for mitigation through measures such as winter feeding, which the Court considered sufficient to safeguard cultural continuity.[44]

This reasoning was decisively rejected by the Norwegian Supreme Court in a landmark grand chamber ruling on the 11th of October 2021. The Supreme Court unanimously held that the licences and expropriation decisions were invalid as they constituted a

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[42] Lilja Mósesdóttir, "Energy (in)justice in the green energy transition. The case of Fosen wind farms in Norway," *Technology in Society* 77 (2024), https://doi.org/10.1016/j.techsoc.2024.102563

[43] "Confound by Norway's disrespect of CERD's request in the Fosen case," Sámiráđđi, https://www.saamicouncil.net/news-archive/confound-by-norways-disrespect-of-cerds-request-in-the-fosen-case

[44] "About the wind farms on Fosen and the Supreme Court judgment," *Norwegian Human Rights Institute*, March 8, 2023, https://www.nhri.no/en/2023/about-the-wind-farms-on-fosen-and-the-supreme-court-judgment/

violation of the Sámi herders' rights to culture under Article 27 of the ICCPR. In particular, it found that the operational impact of the wind farms jeopardised the cultural survival of the reindeer herding communities, and that proposed mitigation measures - especially winter feeding - deviated substantially from traditional practices and lacked a robust impact assessment.[45]

This was a landmark case from several points of view. It marked the first time that Norway's highest court struck down an energy concession on the grounds of Indigenous cultural rights. It affirmed that development projects must not only assess environmental risks, but also conduct rigorous socio-cultural impact evaluations. It also reinforced the interpretation of ICCPR Article 27, in line with UN Human Rights Committee General Comment No. 23.

Yet, the significance of the ruling has been compromised by the State's continued failure to enforce it. In fact, despite the decision, the wind turbines still remain operational up to this date. This non-compliance has sparked national and international condemnation, with prominent Indigenous activists and global environmental figures like Greta Thunberg joining protests to demand the decommissioning of the turbines.

The Fosen case has thus become a powerful symbol of the limits of legal victories in transforming governance realities. The government's inaction prompted the Sámi Council to decry Norway's "mockery" of its human rights commitments[46], drawing attention to the double standards that pervade Norway's self-presentation as a progressive, rights-respecting State. The State's failure to act even after the CERD's interim measures request in 2018 further illustrates the fragility of Indigenous legal gains without institutional mechanisms for enforcement.

After over two years of post-judgment non-compliance, a mediated agreement was reached in March 2024 between the Norwegian government and the Sámi siidas. While the wind farms will remain operational, the deal introduces some key remedial measures: access to alternative winter grazing lands, recognition of the cultural rights of

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[45] Supreme Court of Norway, *HR-2021-1975-S, (case no. 20-143891SIV-HRET), (case no. 20-143892SIV-HRET) and (case no. 20-143893SIV-HRET)* (2021)

[46] "The Saami Council supports the Fosen protests in Oslo," Sámiráđđi, https://www.saamicouncil.net/news-archive/the-saami-council-supports-the-fosen-protests-in-oslo

reindeer herding and monetary compensation of NOK 5 million to support Sámi cultural practices. Though hailed as a political compromise, the agreement has sparked debate. Critics argue it institutionalises a form of green bargaining, where Indigenous rights are partially recognised only after irreversible infrastructural encroachments. It also does not mandate the dismantling of turbines, an omission that can be considered as a sort of dilutement of the Supreme Court's ruling and that might risk legitimising future rights violations so long as *post hoc* settlements are reached.

From a Compliance Theory perspective, this case reveals both procedural and substantive breakdowns. Procedurally, the licensing authorities (NVE and the MPE) failed to ensure meaningful Free, Prior and Informed Consent, a core principle under UNDRIP. Consultations occurred, but the perspectives of Sámi communities were marginalised or procedurally tick-boxed. Substantively, the licensing process relied on economic and environmental modelling that prioritised energy output and national grid integration over the cumulative impacts on Sámi land-use practices.

The State's eventual decision to initiate mediation processes reflects a belated attempt to resolve the crisis without dismantling the infrastructure. These mediated outcomes, while offering partial redress, can be criticised for effectively retrofitting legality onto what was deemed an illegal project.

What the Fosen case reveals is a phenomenon of compensated non-compliance, with cultural harm acknowledged but not undone, and reparation offered without structural reform. As Lilja Mósesdóttir points out:

> "The supporters of the compensation solution were mainly concerned with the economic consequences of removing all wind turbines from the Fosen area. In the media debates, the Sámi herders consequently rejected the compensation solution with the argument that all grazing areas in the Fosen area were already in use. The areal insecurity threatens not only their reindeer husbandry but also their cultural heritage, leaving them with no other options than to demand dismantling of the wind turbines."[47]

[47] Mósesdóttir, "Energy (in)justice in the green energy transition", 9

The protest strategies employed by Sámi activists also represent an evolution in Indigenous legal mobilisation. Youth-led sit-ins, alliances with climate justice movements and appeals to international human rights mechanisms exemplify a hybrid legal-political strategy. These actions are not only aimed at enforcing court judgments but at reshaping public discourse around the green transition. The message is clear: climate action cannot come at the expense of Indigenous survival.

From an intersectional standpoint, the impacts of the Fosen wind farms are felt unevenly within Sámi communities. Women and youth, who often serve as cultural custodians and language transmitters, have highlighted how the loss of grazing areas exacerbates intergenerational trauma and undermines community resilience. Biodiversity concerns, including the displacement of birds and disruption of migratory paths, add an ecological layer to the injustice, aligning with critiques of green colonialism wherein environmental projects impose external logics on Indigenous ecologies.

In sum, the Fosen case underscores the paradox at the heart of the green transition: the push for decarbonisation can reproduce colonial patterns of dispossession if not checked by robust, enforceable Indigenous rights protections. Moreover, it illustrates the disjointed operation of MLG: the Supreme Court ruling emerged from the judicial tier of governance, affirming Indigenous rights under international law. However, other nodes - namely the MPE and corporate actors like Statkraft - failed to act in synchrony. This vertical disconnect between the judiciary and executive underlines the fragmentation of authority characteristic of MLG systems. Applying Etienne's Compliance Theory, the Court operated under a normative frame, prioritising human rights law, while the Ministry and developers maintained gain-oriented logics centred on energy output and infrastructure stability. This misalignment explains the persistent implementation gap. As such, the case remains unfinished, both in terms of legal closure and justice delivered.

2.1.2 The Kalvvatnan case: a precedent for rights-respecting energy governance?

While the Fosen case exposes the systemic failures of post-judicial compliance, the Kalvvatnan wind farm dispute represents a contrasting model rooted in preemptive administrative decision-making which respects international human rights obligations.

The Kalvvatnan case concerns a planned wind power project in an area vital to the South Sámi reindeer herding districts of Voengelh-Njaarke and Åarjel-Njaarke, located across Nordland and Trøndelag counties in Norway.[48] Several organisations and authorities, including Forum For Natur Nordland, Nature Conservation Society, the two Sámi reindeer herding districts involved, the Sámi Parliament and heritage agencies, submitted objections. Unlike Fosen, where turbines were erected in defiance of ongoing legal challenges, the Kalvvatnan project was halted before construction began. This outcome followed a decisive administrative Decision by the MPE in 2016, which assessed the cumulative impacts of the development and determined that the project would disproportionately interfere with Sámi cultural practices.[49] Importantly, this Decision did not emerge from a courtroom, but from a regulatory assessment that still explicitly invoked Article 27 of the ICCPR and ILO Convention 169. In fact, the MPE concluded that the project risked violating the cultural rights of the Sámi people, specifically, their right to maintain and practice reindeer husbandry, which is integral to their cultural identity:

"A violation of the right to cultural expression constitutes a breach of Article 27 of the ICCPR. In such a case, a license cannot be granted under Section 3-1 of the Energy Act."[50]

As noted in Broderstad's analysis, the Ministry viewed Article 27 as establishing an "absolute limit," except in times of national crisis:

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[48] Norwegian Human Rights Institute, *Human Rights Protection against Interference in Traditional Sami Areas*, https://www.nhri.no/en/report/human-rights-protection-against-interference-in-traditional-sami-areas/5-human-rights-protection-against-interference-administrative-practice/?utm_

[49] Ministry of Petroleum and Energy, *Decision of 11 November 2016 – Kalvvatnan*, https://webfileservice.nve.no/API/PublishedFiles/Download/200801262/1905272

[50] ibid, 3

"Measures constituting a denial of cultural rights are not permissible except in times of national crisis (cf. NOU 2007a, p. 195). In its assessment of Kalvvatnan, the Ministry of Petroleum and Energy acknowledges, among other things, that international law establishes the absolute limit on what kind of endeavors can be allowed. Businesses overstep the mark if their plans considerably violate the possibility of cultural practice."[51]

Therefore, if a development project significantly impairs the conditions necessary for cultural practice, then it cannot proceed, as explicitly stated in the Decision:

"As a result, the implications of international law may lead to a situation where a license cannot be granted for a project that would otherwise have a positive net value from a socio-economic standpoint."[52]

In Kalvvatnan, the threshold of disproportionate harm was crossed, and the Ministry acted accordingly. Crucially, Kalvvatnan demonstrates that Indigenous advocacy can trigger institutional self-correction when political cost-benefit calculations permit it.
The Ministry's application of ICCPR Article 27 in the Kalvvatnan case also reflects the institutionalisation of legal reasoning typically reserved for judicial forums. Furthermore, it reveals a nuanced and multi-level approach to rights protection that aligns with the theoretical lens of MLG. The Ministry explicitly acknowledged that, while previous jurisprudence on Sámi rights is sparse and sometimes dated, the Human Rights Committee's General Comment No. 23 establish an authoritative interpretive framework.[53] Moreover, it affirmed that Article 27 not only prohibits outright denial of cultural practices, but also extends to significant restrictions that undermine the conditions necessary for their exercise. It stressed that even seemingly minor infringements on individual reindeer herders' ability to maintain land-based livelihoods

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[51] Else Grete Broderstad, "International law, state compliance and wind power: Gaelpie (Kalvvatnan) and beyond" in *Indigenous Peoples, Natural Resources and Governance*, ed. Monica Tennberg, Else Grete Broderstad and Hans-Kristian Hernes (Routledge, 2022), 31, DOI: 10.4324/9781003131274

[52] ibid, 13

[53] ibid, 18

can constitute rights violations. Consequently, reindeer herding was understood not just as an economic activity, but as a cultural cornerstone tied to language, traditional knowledge and intergenerational continuity.[54] This interpretive stance reflects a shift from a purely procedural to a substantive rights model, an approach that integrates international soft law into domestic administrative reasoning. In doing so, the MPE functioned as a normative interface within the MLG system, translating global human rights standards into tangible administrative constraints. Rather than relying on direct litigation or top-down judicial intervention, the Decision illustrates how compliance can be diffused through overlapping institutional levels when governance actors internalise human rights norms and adapt their decision-making accordingly. Thus, Kalvvatnan became a landmark example of preventive State compliance, demonstrating that regulatory bodies can proactively apply human rights standards following intense advocacy.

The implications of the Kalvvatnan precedent have rippled outward. Sámi communities facing future wind farm proposals frequently cite it as a benchmark, arguing for parity in how rights are interpreted and enforced.[55] Indeed, Kalvvatnan has been invoked in legal briefs, NGO reports and parliamentary debates as evidence that Norway possesses both the normative and procedural tools to respect Indigenous rights if political and economic will align. Lea Simma and Piera Heaika Muotka stated at the United Nations Permanent Forum on Indigenous Issues in April 2018:

"The Saami Homeland is facing a dramatic surge of green colonialism. The future of reindeer herding in Åarjel Fovsen Njaarke is threatened by the fact that Europe's largest wind farm is planned to be built on their winter grazing lands at Storheia in Fosen. By contrast, the planned Gaelpie/Kalvvatnan wind farm was denied concession by the Norwegian ministry of Petroleum and Energy, with an acknowledgement of the importance of reindeer herding for South Saami language and culture and taking in consideration the cumulative effects of encroachments. The latter case, Madam Chair, is an example of best practice, but we cannot talk about best practice

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[54] Åse Pulk, "NSR-leder: – Uaktuelt med vindmøllepark i Kalvvatnan," *NRK*, June 11, 2015, https://www.nrk.no/sapmi/nsr-leder_-_-uaktuelt-med-vindmollepark-i-kalvvatnan-1.12404064

[55] Ministry of Petroleum and Energy, *Decision – Kalvvatnan*, 18

as long as the states aren't consistently complying with the principle of free, prior and informed."[56]

This case demonstrates effective MLG coordination: horizontal collaboration between MPE, Sámi Parliament, NGOs and conservation bodies, along with vertical integration of Indigenous rights into administrative processes, allowed for preemptive conflict avoidance. Unlike Fosen, governance coherence here enabled early respect for international human rights obligations without adversarial proceedings.

That said, Kalvvatnan should not be romanticised. It remains an exception rather than a rule. The broader administrative landscape in Norway continues to suffer from inconsistent application of Article 27 protections. Recent licensing trends suggest that wind energy development in Sámi areas continues, often without adequate consultation or consideration of cumulative effects. The success of this case depended on specific enabling conditions, notably manageable (geo)political and economic stakes. Without systemic reform, these conditions may not be replicated elsewhere.

Nonetheless, Kalvvatnan provides critical evidence that rights-based energy governance is possible. It demonstrates that the green transition needs not entail the sacrifice of Indigenous rights, and that sustainability must be measured not only in carbon metrics but also in cultural survival and procedural justice.

2.2 Finland: the Lätäs 1 mineral exploration conflict

While Norway's Sámi legal mobilisation landscape is shaped by a strong legal framework including ratification of ILO Convention 169 and direct incorporation of the ICCPR into domestic law, Finland offers a contrasting picture of weaker institutional protections and fragmented legal enforcement.

The Lätäs 1 mineral exploration case, situated in the Käsivarsi region of Enontekiö in Finnish Lapland, exemplifies how Indigenous legal resistance operates under more constrained conditions. Unlike the wind power projects in Norway, Lätäs 1 is part of a

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[56] Lea Simma and Piera Heaika Muotka, *Intervention on behalf of The Saami Council on agenda item 8: "Indigenous peoples' collective rights to lands, territories and resources"* (2018)

broader strategy to secure critical minerals for the EU's green industrial transition, with cobalt, nickel and lithium extraction being central to battery technology and renewable energy infrastructure. Yet the project's proposed location overlaps, once again, with reindeer herding areas vital to the Sámi people, part of the traditional territory of the Kova-Labba siida, setting the stage for a legal and political confrontation over land use, consultation and cultural rights.

The Lätäs 1 project was initiated by a private exploration company with a State-issued permit to conduct geological surveys. The permit was granted by the Finnish Mining Authority in 2021 with minimal consultation, prompting immediate opposition. The conflict gained international attention when the Sámi Parliament, alongside reindeer-herder communities, lodged a complaint under the Convention on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). At the heart of the legal opposition was the absence of FPIC. Finland's justification rested on a narrow reading of domestic law: it argued that exploratory drilling did not qualify as having a "significant impact" and thus did not trigger the consultation thresholds set by the Mining Act. This narrow interpretation, however, ran counter to the expectations of international human rights bodies. In fact, the UN Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child issued two Views in 2024 expressing concern over Finland's failure to protect Sámi land use and cultural continuity.[57]

The CESCR concluded that Finland violated Articles 1, 2(2), 11 and 15(1)(a) of the ICESCR by failing to respect Sámi cultural rights and self-determination, and by not legally recognising Sámi ownership of traditional lands.[58] The Committee on the Rights of the Child found that Finland violated Articles 8, 27 and 30 of the CRC, read in conjunction with Articles 2(1) and 12, by ignoring Sámi children's rights to identity,

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[57] "Finland must respect the rights of Sámi Indigenous people to traditional lands," United Nations, https://unric.org/en/finland-must-respect-the-rights-of-sami-indigenous-people-to-traditional-lands/

[58] United Nations Committee on Economic, Social and Cultural Rights, *Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communications No. 251/2022 and No. 289/2022* (United Nations, December 9, 2024), 17

cultural continuity and participation.[59] Crucially, the Committee characterised this as a case of "intersectional discrimination": three young sisters from a multigenerational reindeer-herding family were excluded from decision-making processes that directly affected their cultural future.[60] This finding reflects a growing recognition that Indigenous children occupy a uniquely vulnerable position, shaped by the intersection of indigeneity, age and cultural marginalisation. By denying these children effective participation, Finland not only violated procedural rights, but also undermined the intergenerational transmission of Sámi cultural knowledge and livelihoods. Moreover, the Finnish authorities ignored how exploration activities - dust, seismic vibrations, noise - had already begun altering reindeer behaviour and undermining ecological knowledge systems developed over generations.

The Lätäs 1 dispute highlights a recurring institutional issue in Finland: the tension between formal recognition of Sámi cultural autonomy and the lack of binding mechanisms to enforce it. Although the Finnish Constitution recognises Sámi as an Indigenous people and grants cultural self-government through the Sámi Parliament, these rights are largely procedural and have not been interpreted by courts as veto rights. Finland has also failed to ratify ILO Convention 169, leaving Sámi legal claims reliant on softer instruments like the UNDRIP and non-binding UN committee recommendations. In 2020, the President of the Sámi Council had already called for an amendment of the Mining Act to ensure the protection of indigenous rights in every stage of every process:

"Finland voted for the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, but still has not recognized the land rights of the Sámi people. The Saami Council urges Finland to seize the opportunity to implement the UNDRIP, by ratifying the ILO Convention No 169 and making necessary amendments to the inadequate Mining Act, to make

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[59] United Nations Committee on the Rights of the Child, *Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 172/2022* (United Nations, October 7, 2024)

[60] "Finland must respect the rights of Sámi Indigenous people to traditional lands: UN Committees find," United Nations Human Rights Office of the High Commissioner, https://www.ohchr.org/en/press-releases/2024/10/finland-must-respect-rights-sami-indigenous-people-traditional-lands-un

sure that the principle of free, prior of informed consent is included. That also includes the right to refrain from giving consent."[61]

In this context, while Sámi actors have initiated complaints and appeals, the Finnish judiciary has largely deferred to administrative discretion. The Mining Act and related environmental laws provide broad leeway to authorities in determining whether Indigenous consultation is necessary, and in practice, this discretion is exercised in ways that prioritise resource extraction. Indeed, the justification for the Lätäs 1 permit was based on economic and strategic interests linked to EU mineral independence, rendering cultural impacts secondary or negligible.

The governance failure here is both procedural and epistemological. In fact, Sámi objections were rooted not only in the threat to reindeer herding, but in the broader disruption of Indigenous ecological knowledge systems. Reindeer migration patterns, calving areas and winter grazing zones are interconnected through generational observation and stewardship, none of which were reflected in the geological impact assessments.

Despite sustained opposition, the State did not revoke the exploration license. However, the publicity generated by Sámi resistance did lead to increased scrutiny of Finland's mineral governance policies. In 2023, the Ministry of Economic Affairs and Employment initiated a review of the Mining Act, partly in response to Indigenous advocacy. Among the proposals were stronger consultation procedures and consideration of cumulative impacts, but no formal inclusion of veto rights or binding FPIC standards.

Here, litigation serves more as a vehicle for political visibility than as a transformative legal tool. Sámi actors use legal proceedings and international complaints to signal rights violations and mobilise transnational support, but outcomes remain dependent on discretionary governance choices. As a result, the Lätäs 1 case exemplifies what we can define as a sort of symbolic compliance, where States acknowledge rights discourse but

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[61] "Finland violates the rights of the Sámi people by allowing mining companies in Sámi homeland," Sámiráđđi, https://www.saamicouncil.net/news-archive/finland-violates-the-rights-of-the-smi-people-by-allowing-mining-companies-in-smi-homeland

fail to alter institutional practice. Nevertheless, the Lätäs 1 case has catalysed some relevant shifts in Sámi political strategy, including broader engagement with EU policy debates, exposing the underlying contradiction in the EU's green industrial strategy: the reliance on mineral extraction from Indigenous territories in the Global North without adequate social safeguards.

In sum, the Lätäs 1 conflict reveals the limitations of Multi-Level Governance. The Finnish State apparatus, heavily influenced by EU industrial imperatives, failed to meaningfully engage Indigenous governance bodies like the Sámi Parliament or integrate international treaty guidance into decision-making. The vertical chain of governance thus excluded Indigenous voices from critical mineral strategy, while horizontal coordination among regulatory, Indigenous and civil society actors was negligible. This weak MLG performance resulted in policy silos where economic development agendas overrode human rights safeguards. Etienne's Compliance Theory confirms this: Finnish regulatory bodies operated under a dominant gain frame, valuing EU alignment and market competitiveness, while normative signals remained marginal. The later involvement of international bodies like the CESCR and CRC attempted to reintroduce a normative corrective, but these interventions lacked binding effect. This underscores the need for institutional reform, particularly the integration of binding FPIC standards and cumulative impact assessment tools. Without these, the risk persists that sustainability goals will be achieved through renewed dispossession, replicating the historical marginalisation of Sámi communities under a new environmental mandate.

2.3 Comparative analysis

The Fosen, Kalvvatnan and Lätäs 1 cases collectively present a rich terrain for comparative analysis, offering insights into the variable outcomes of Sámi legal mobilisation in the context of the green transition. Each case reveals different configurations of legal opportunity structures, institutional responsiveness and State compliance, enabling a broader understanding of how Indigenous rights are asserted, resisted and selectively enforced within ostensibly progressive environmental regimes.

Before proceeding with an in-depth analysis, the following visual offers a schematic overview of the key elements characterising the selected cases:

	Fosen (Norway)	Kalvvatnan (Norway)	Lätäs 1 (Finland)
Main legal instrument invoked	ICCPR Art. 27	ICCPR Art. 27, ILO Convention 169	CRC, ICESCR
International mechanism involved	CERD	None	CRC, CESCR
Domestic outcome	Supreme Court victory, no full compliance	MPE Decision, project halted	UN Committees Views, no domestic ruling
Project status	Wind farm operational	Wind project canceled	Exploration permit granted
Government response	Delayed compromise / compensated non-compliance	Preventive action	No clear policy change

All three cases involve Sámi communities invoking international legal instruments such as the ICCPR, ILO Convention No. 169 and CRC/ICESCR. In Fosen, the Norwegian Supreme Court explicitly found a violation of ICCPR Article 27, which protects the cultural rights of minorities. Kalvvatnan also hinged on ICCPR principles, with the MPE halting the project due to the risk of infringing Sámi cultural rights. Meanwhile, in Lätäs 1, the Sámi Parliament and reindeer-herder cooperatives filed formal communications under the CRC and ICESCR, leading to Views by UN treaty bodies in 2024 affirming that Finland had violated Sámi cultural rights by failing to obtain FPIC, but with no clear policy change at the domestic level.

When situated within MLG, it becomes evident that each case navigated different governance nodes: Fosen relied on domestic judicial rulings, Kalvvatnan on ministerial discretion and Lätäs 1 on navigating a fragmented regulatory landscape.

The comparative analysis reveals stark differences in State behaviour following legal mobilisation. Kalvvatnan shows administrative preemption based on anticipated rights violations, leading to the actual halting of the project. While in Fosen, despite a Supreme Court ruling, the turbines remain operational, illustrating a pattern of selective - or even compensated - non-compliance, where the State acknowledges rights in

principle but *de facto* resists altering the political-economic *status quo*. This distinction is significant: in Fosen, legal recognition came too late to prevent harm, and State compliance with the ruling has remained incomplete. In Kalvvatnan, by contrast, rights were respected before the damage occurred. But why did Kalvvatnan yield immediate and effective compliance while Fosen did not? One key factor might lay in the political economy of energy infrastructure. Kalvvatnan, while regionally important, lacked the scale and strategic visibility of Fosen, which was promoted as Europe's largest onshore wind project.[62] The following statement from BKW, a financial stakeholder in the project, is illustrative and requires little further interpretation:

"Its 277 turbines produce around 3.6 terawatt hours of electricity each year. This corresponds to the annual consumption of more than 780,000 Swiss households."[63]

For comparison, the Kalvvatnan wind farm was planned to have 72 wind turbines and a total installed capacity of up to 225 megawatt.[64] It is clear how the reduced political and financial stakes of this project made it more feasible for the State to defer to Indigenous concerns. Moreover, Kalvvatnan benefited from robust administrative procedures, including detailed consultations with affected Sámi communities and a willingness to consider ecological and cultural data. These consultations included testimony from herders, environmental scientists and legal experts, all of whom contributed to a multidimensional assessment of harm.[65] Therefore, these cases exemplify strategic litigation theory as discussed in Section 1.2: while legal rulings or procedural victories are possible, the actual enforcement is unpredictable and often shaped by extra-legal variables.

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[62] "Europe's largest onshore wind power project to be built in Central-Norway," Statkraft, February 23, 2016, https://www.statkraft.com/IR/stock-exchange-notices/2016/europes-largest-onshore-wind-power-project--to-be-built-in-central-norway--/?

[63] "Fosen Vind project complete," BKW, August 12, 2021, https://www.bkw.ch/en/about-us/news/blog/focus/fosen-vind-project-completed?utm_

[64] "Kalvvatnan," Norwegian Water Resources and Energy Directorate, https://www.nve.no/konsesjon/konsesjonssaker/konsesjonssak/?id=132&type=A-6&utm_

[65] ibid

Finland presents a different model: one of procedural deflection. Here, the State neither openly defies international legal opinion nor adopts binding corrective measures. Instead, it deploys technocratic arguments to justify the continuation of extractive projects, arguing that procedural norms were followed and that the impacts do not rise to the level of a rights violation. This results in a *de facto* erosion of Sámi land use and autonomy, masked by legal formalism and policy review processes with no clear enforcement trajectory. Moreover, Norway's incorporation of ICCPR Article 27 into the domestic legal system enables courts to directly invalidate concessions, while Finland's reliance on administrative interpretation creates a fragmented and inconsistent terrain for Indigenous rights enforcement. Lätäs 1's reliance on international mechanisms illustrates the spatial displacement of advocacy when national forums are unresponsive or inaccessible. However, the lack of action from the Finnish government reinforces the critique in Chapter 1 that international legal norms, while symbolically powerful, often lack coercive authority without domestic institutional alignment.

Using Etienne's Compliance Theory, we can read Kalvvatnan as an instance where normative and hedonic goal frames aligned: the Ministry's Decision not only did the right thing, but also avoided reputational damage. Fosen reflects a bifurcated model where the judiciary operated within a normative frame but the executive maintained a gain-oriented stance prioritising energy infrastructure. Lätäs 1 reveals the dominance of gain frames, with weak normative influence and minimal hedonic incentives due to the low visibility of the case. These dynamics highlight how institutions, even under similar legal mandates, interpret compliance differently depending on their internal incentives and external pressures. Therefore, the variation in compliance in both countries highlights the limits of litigation and legal mobilisation when not embedded within a supportive governance architecture.

These cases also reflect different and, at the same time, similar energy governance cultures and their underlying political economies. In Norway, wind energy development has been driven by national climate targets and export-oriented electricity generation, often in collaboration with the European Union as highlighted in the first chapter of this thesis. The size and visibility of the Fosen project - with a total investment of

approximately EUR 1.1 billion[66] - made it a flagship for Norway's green transition, thereby increasing political resistance to dismantling it, even after it was deemed unlawful. Kalvvatnan, by contrast, was a smaller, less politicised project, enabling the State to prioritise legal compliance without undermining its broader energy agenda. In Finland, the Lätäs 1 case is situated within a European geopolitical context that prioritises mineral security for green technologies. This dynamic reflects a strong gain frame - economic and geopolitical benefits tied to EU integration - overshadowing normative commitments to Indigenous rights. The green transition is thus articulated through a logic of extraction and sovereignty, in which Sámi objections are treated as localised concerns secondary to national and continental economic interests. This aligns with critiques of green colonialism, wherein Indigenous territories become sacrifice zones for environmentally framed development goals.

Chapter 1 also briefly theorised the geopolitical context of the Russia-Ukraine war as a new layer in energy governance. The comparative cases support this hypothesis: the urgency to diversify energy sources post-2022 appears to have shifted State priorities towards expedience over procedural justice. Norway's non-compliance in Fosen - despite a clear ruling - suggests the influence of energy security over rights obligations. Finland's ambiguous stance in Lätäs 1, where exploration proceeds despite UN condemnation, echoes similar trade-offs. This confirms the thesis' underlying proposition: that States may frame Indigenous rights as secondary when geopolitical or economic imperatives intensify. Therefore, the comparison becomes a lens to question whether the Nordic States' international image as Indigenous rights defenders can be reconciled with their aggressive pursuit of the green transition.

[66] "Fosen Vind project complete," BKW

CHAPTER III

Discussion and implications

Despite structural and procedural constraints, as well as external political and economic influences analysed in Chapter II, all three cases demonstrate the growing sophistication and impact of Sámi legal mobilisation. This chapter moves beyond descriptive analysis to critically engage with how these legal strategies function as part of a broader political praxis, while looking in particular at the role of corporations and NGOs.

It is by now clear that Sámi actors have increasingly deployed legal mobilisation not only as a terminal recourse, but also as a performative and strategic act of resistance, reconfiguring the terms of engagement with green energy development and contesting the legitimacy of legal and governance frameworks that facilitate extractive projects. Indeed, these case studies illustrate the transformation of legal venues into platforms of political expression: courtrooms become sites where Indigenous voices articulate grievances, assert cultural continuity and challenge the technocratic neutrality claimed by States and corporations. This mobilisation operates within an expanded field of justice, where legal action intersects with protests, international diplomacy and media campaigns. Through it, Sámi actors reassert political agency and redefine the space of environmental governance. This reconfiguration is particularly significant given the asymmetry in power relations between Sámi communities and State or corporate actors. Strategic alliances - with NGOs, human rights institutions and transnational Indigenous networks - also contribute to the expansion of the reach and resonance of Sámi claims, reframing local conflicts as emblematic of global injustices and shifting the discourse from land disputes to human rights violations and intergenerational justice. Moreover, the engagement with the international fora - like in the Fosen and Lätäs 1 cases - reflects a broader shift from litigation as a domestic legal tool to a trans-scalar advocacy strategy.

In this context, intersectionality exposes the structural blind spots in dominant energy governance frameworks, which often fail to account for gendered labour in herding, spiritual relationships to land and the intergenerational stakes of cultural survival. It calls for an expanded justice framework that incorporates epistemic diversity, historical

violence and relational ecologies, thereby unsettling the colonial assumptions embedded in green transition models and challenging dominant metrics of cost-benefit analysis. Sámi legal mobilisation thus contributes to a broader critique of sustainability discourse that remains technocratic and growth-oriented, even as it claims moral high ground.

3.1 Corporate accountability and strategic litigation risks

A recurring theme in recent literature is the growing role of corporate actors in shaping the contours of the green transition. Far from being passive implementers of State policy, corporations are co-producers of governance regimes. Consequently, the accountability landscape becomes more complicated. Through mechanisms such as Corporate Social Responsibility (CSR) and the Social License to Operate (SLO), they actively participate in consultation processes and environmental assessments, often positioning themselves as arbiters of legitimacy.

Broadly speaking, CSR "is an umbrella term referring to business practices that are carried out for social or environmental purposes and are voluntary as not prescribed by law."[67] SLO, on the other hand, refers to the informal, ongoing acceptance of a project or company by local communities and stakeholders. Unlike legal permits, the latter is based on perceptions of legitimacy, trust and social approval. The term gained traction in the early 2000s, particularly after a 2002 report by the International Institute of Environment and Development highlighted the mining industry's failure to earn public trust in many regions. Although the report did not define SLO explicitly, it underscored its growing importance for the sector's survival.[68] As Owen and Kemp explain, SLO emerged not from a rights-based or participatory framework, but "as an industry response to opposition and a mechanism to ensure the viability of the sector."[69] It reflects a shift in corporate discourse, where community approval is seen as essential to

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[67] "What is Corporate Social Responsability (CSR)?," HEC Paris, https://www.hec.edu/en/institutes-and-centers-expertise/sustainability-organizations/think/executive-factsheets/what-corporate-social-responsability-csr

[68] Joel Gehman, Lianne M. Lefsrud and Stewart Fast, "Social license to operate: Legitimacy by another name?," *Canadian Public Administration* (2017): 295

[69] John R. Owen and Deanna Kemp, "Social licence and mining: A critical perspective," *Resources Policy* 38 (2013): 29, doi:10.1016/j.resourpol.2012.06.016

reducing reputational risk, though not necessarily accompanied by meaningful accountability or consent. In fact, these mechanisms are rarely binding and tend to prioritise investor confidence over Indigenous consent. This mirrors critiques that CSR and SLO frameworks often result in "box-ticking exercises" rather than substantive engagement with Indigenous or environmental rights.[70] The Fosen case underscores this paradox: Statkraft, a majority State-owned enterprise, continued to operate wind turbines in defiance of a Supreme Court ruling. As already explained, the absence of enforcement reveals a governance gap in which economic utility overcomes legal authority. Such cases highlight the contradictions of public-private hybridity too, where State-owned corporations enjoy legal impunity while retaining political cover.

Corporations therefore occupy a contradictory space in the green transition. On one hand, they exploit legal loopholes and weak FPIC enforcement to advance projects; on the other, they face growing risks from strategic litigation. As Sato et al. demonstrate, "climate litigation leads to negative market reactions,"[71] with "the largest stock market responses found for cases filed against Carbon Majors, reducing firm value by -0.57% following case filings and by -1.50% following unfavourable judgements." Notably, "larger market reactions are observed in 'novel' cases involving a new form of legal argument or in a new jurisdiction,"[72] suggesting that investors are increasingly sensitive to the exposure associated with climate accountability. Hence, the reputational costs of failing on climate issues are undeniably high. But do violations of Indigenous rights - notably in the context of the green transition - attract the same global attention? Patters of non-compliance identified by this thesis suggest an imbalance in perceived legitimacy and visibility. While the climate crisis has, in recent years, gained significant political momentum - bolstered by rising public concern and media coverage, in all likelihood due to its projected impact on the global population - the same level of

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[70] Ekaterina Aristova and Justin Lim, *Climate Litigation in Europe Unleashed: Catalysing Action against States and Corporations* (Bonavero Institute for Human Rights, 2024), 14

[71] Misato Sato, Glen Gostlow, Catherine Higham, Joana Setzer and Frank Venmans, *Impacts of Climate Litigation on Firm Value*, Centre for Climate Change Economics and Policy Working Paper 421 / Grantham Research Institute on Climate Change and the Environment Working Paper 397 (London: London School of Economics and Political Science, 2023), 4

[72] ibid, 1

attention has not been afforded to the rights of Indigenous and minority communities. Their struggles remain comparatively marginalised in mainstream discourse, despite being disproportionately affected by both climate change and green development projects.

When supported by NGOs pressure and embedded within broader climate justice discourses, local Indigenous legal struggles can catalyse more far-reaching accountability dynamics. The Fosen case exemplifies this potential: it drew more international attention than usual - though still limited - particularly through the involvement of prominent environmental figures such as Greta Thunberg. The acknowledgment by NGOs and activists that renewable energy expansion must not come at the expense of Indigenous rights represents an important evolution in advocacy discourse. It shows how environmentalist engagement does not need to frame conflicts merely in terms of environmental harm, and that it can explicitly recognise the imperative of a just green transition.

This framing is particularly important in light of the historical tensions that have marked Indigenous-environmentalist alliances. As Nyyssönen demonstrates in her study on frame alignment in Finland, environmental NGOs frequently prioritised conservationist framings that sidelined Sámi political demands:

"The whole conservation paradigm bypasses the moral issues of Indigenous rights and their stewardship over ancestral lands."[73]

In some cases, conflicting frames and values were evident:

"Reindeer had a fragmenting effect on efforts to align the frames. The environmentalist movement leaned on a scientific discourse that had for most of the 20th century aired frustration about herding being detrimental to nature conservation and ecosystems."[74]

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[73] Jukka Nyyssönen, "Frame Alignment Between Environmentalists and the Sámi in the Forest Dispute in Inari, Finland Until the 2000s—Competing Conservation Needs and Obstacles for Co-Living With the Non-Human," *Frontiers in Conservation Science* (2022): 5, doi: 10.3389/fcosc.2022.925713

[74] ibid, 6

This legacy makes the current emphasis on Indigenous rights by groups like Nature and Youth and Greenpeace a significant step forward.[75] However, to ensure this momentum translates into genuine justice, NGOs must avoid reproducing extractive dynamics in advocacy. While environmental organisations play a crucial role in providing legal, financial and technical support to Sámi communities - and in connecting them to transnational legal and political platforms - their influence must remain accountable to Indigenous leadership. Genuine partnership requires long-term alliance-building grounded in trust, self-determination and cultural specificity. Without such commitments, there remains a risk that environmental narratives, even when well-intentioned, could eclipse the lived realities and governance priorities of Indigenous communities.

3.2 International norms and the performative dimension of compliance

Reputational concerns affect not only corporations, but also States. International legal norms, particularly those articulated in the ICCPR, UNDRIP and ILO 169, play a dual role: they serve as legal standards and as discursive tools. While not always enforceable, these norms shape public expectations, diplomatic discourse and advocacy strategies. For instance, the CERD's request to halt construction in the Fosen case, even if ignored, added moral weight to Sámi claims and helped internationalise the issue. This performative function is particularly salient in countries like Norway and Finland, which promote themselves as human rights leaders. Non-compliance with international bodies does not simply entail legal risk; it incurs reputational damage. Consequently, international norms exert soft power by increasing the political costs of legal breaches. This is evident in the Norwegian government's eventual move toward mediation in the Fosen case, a decision influenced not just by domestic protests but by international scrutiny.

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[75] "The human rights violations against the Sami in Fosen must be stopped," Greenpeace Norway, March 2, 2023, https://www.greenpeace.org/norway/nyheter/natur/menneskerettighetsbruddene-mot-samene-pa-fosen-ma-stanses/

Yet, soft power has limits. Litigation and international censure alone cannot override entrenched political and economic interests. As previously noted, Norway and Finland may prioritise being seen as dependable energy partners on the international stage over preserving their reputation as defenders of human rights, particularly when those rights concern marginalised groups that remain peripheral to mainstream political discourse. Therefore, compliance must be institutionalised through binding mechanisms, such as integration of FPIC into national permitting laws and judicial review of licensing procedures.

3.3 Policy recommendations for a just transition governance

The findings of this thesis point towards key recommendations for policymakers, scholars, and Indigenous advocates:

1. Institutional reform: States must integrate binding FPIC requirements and cumulative cultural impact assessments into environmental licensing processes. This includes establishing veto mechanisms where projects threaten the survival of Indigenous livelihoods;
2. Corporate accountability: Mandate human rights and environmental due diligence for all energy developers, backed by administrative enforcement and civil liability mechanisms;
3. Intersectional impact assessments: Require cultural, gender and age-sensitive impact assessments as part of project approval processes, ensuring that policies reflect the lived realities of affected communities;
4. Interdisciplinary research: Encourage collaboration between legal scholars, Indigenous theorists and political ecologists to develop nuanced understandings of how green transitions affect marginalised communities;
5. Transnational solidarity: Strengthen alliances with global Indigenous networks and human rights institutions to amplify the reach and impact of legal claims and situate them within global justice frameworks.

In conclusion, the green transition - if it is to be truly just - must be decolonised. This means not only decarbonising energy systems, but also reconfiguring the legal and

political relations that have historically subordinated Indigenous voices. Sámi legal mobilisation, in this context, is more than a defensive tool: it is a vehicle for imagining alternative futures where climate resilience and cultural survival are not mutually exclusive, but mutually reinforcing.

CONCLUSION

This thesis set out to investigate how Sámi legal mobilisation in Norway and Finland challenges the prioritisation of energy-driven projects over Indigenous rights within the context of the green transition. By combining legal analysis, governance theory and critical justice frameworks, it has argued that while strategic litigation can yield important normative advances and judicial victories, it often struggles to generate the systemic transformations required to ensure a truly just and inclusive energy transition. The cases analysed - Fosen, Kalvvatnan and Lätäs 1 - reveal a disjuncture between legal recognition and institutional implementation, as well as an enduring reluctance on the part of States and corporate actors to treat Indigenous peoples as co-decision-makers in sustainability governance.

The comparative approach has demonstrated that State responses to Sámi legal mobilisation are shaped by a complex interplay of domestic legal frameworks, international normative pressure, energy geopolitics and economic interests. In Norway, where Indigenous rights enjoy relatively strong legal protection, the Fosen case exposed the limits of judicial authority when political and economic considerations are prioritised. Despite an unanimous Supreme Court ruling recognising a clear violation of Sámi cultural rights, the State delayed enforcement and opted for mediated settlement only after prolonged civil resistance and international visibility. This stands in stark contrast with the Kalvvatnan case, where authorities halted a similar project pre-emptively, suggesting that legal mobilisation outcomes - and subsequent compliance - are highly contingent on context-specific factors such as project visibility, administrative capacity and public pressure. In Finland, the Lätäs 1 mineral exploration project revealed a different, and arguably more systemic, form of non-compliance. Despite various non-binding findings by UN treaty bodies criticising the project's disregard for FPIC, the Finnish government proceeded with licensing, relying on soft-law frameworks and administrative discretion. This signals not only a weak institutional commitment to Indigenous rights, but also a broader normative gap in how the green transition is operationalised, where sustainability and human rights are often treated as competing rather than co-constitutive imperatives.

Across both cases and jurisdictions, this thesis has shown that the existence of international legal instruments - such as the ICCPR, UNDRIP and ILO Convention No. 169 - is not sufficient to guarantee substantive justice. Instead, their effectiveness depends on whether States integrate them meaningfully into domestic law and administrative practice. The concept of compliance, therefore, must be rethought beyond the binary of implementation vs. violation. As explored through Compliance Theory, particularly Etienne's goal-framing model, State behaviour oscillates between normative, gain-oriented and hedonic frames. This explains why compliance may be selective, performative or symbolic, depending on whether legal rulings align or conflict with strategic energy goals, investor interests or reputational concerns.

The thesis has also highlighted how Sámi litigation cannot be fully understood without attention to the broader governance landscape. MLG theory has illuminated how Indigenous actors operate within - and against - fragmented legal systems. This fragmentation, while providing multiple entry points for advocacy, also allows for ambiguity, blame-shifting and political inertia. International treaty bodies, Sámi parliaments, national courts and civil society each play a role in shaping outcomes, but none hold binding authority on their own. This institutional dispersion enables States to rhetorically align with Indigenous rights while evading the structural changes those rights require.

At the same time, this thesis has insisted on the value of critical frameworks such as intersectionality and green colonialism in interpreting these dynamics. Intersectionality reveals how Sámi resistance is not only legal or territorial but also generational, gendered and epistemic. Youth activists, Sámi women and transnational solidarity networks - such as those involving environmental movements and figures like Greta Thunberg - are reframing these struggles as part of broader climate justice narratives. Green colonialism, meanwhile, forces us to question the assumption that renewable energy is inherently benign. By unveiling the extractive underpinnings of supposedly clean infrastructures, it shows how the green transition can become a new vector of dispossession when deployed without Indigenous participation or consent.

Corporate actors, too, emerge as pivotal players in this evolving landscape. The use of CSR and SLO as legitimacy tools has expanded the arena of governance beyond the State. Yet, these mechanisms are often voluntary, opaque and more focused on investor confidence than Indigenous empowerment. Without binding obligations and enforceable norms on corporate conduct, particularly in the context of critical raw material extraction, the risks of impunity and rights dilution remain high.

The implications of these findings go beyond the Nordic region. As the European Union accelerates its climate and energy agenda - through the European Green Deal, the Critical Raw Materials Act and new transnational partnerships - Indigenous lands are becoming increasingly central to Europe's decarbonisation strategy. Yet, the absence of binding commitments to Indigenous rights within these frameworks raises questions about their legitimacy, coherence and long-term sustainability. A green transition that ignores the foundational principles of justice, participation and self-determination is neither just nor sustainable.

Therefore, this thesis concludes with a call for legal and political reform. First, Indigenous rights - particularly FPIC - must be elevated from soft commitments to enforceable legal standards within both national and EU frameworks. Second, procedural safeguards must be strengthened, ensuring that environmental impact assessments incorporate cultural, social and epistemic dimensions. Third, compliance mechanisms should be made more robust, with independent monitoring, clearer enforcement triggers and stronger consequences for non-compliance. Finally, and most importantly, the green transition must centre Indigenous governance, not as an afterthought or consultative checkbox, but as a co-equal framework for shaping energy futures.

Future research should investigate the role of media in shaping differential levels of public and institutional attention toward Indigenous legal mobilisation compared to the broader climate movement. While the climate crisis has become a central issue in global political discourse - propelled by movements such as Fridays For Future and consistent media coverage - cases concerning Indigenous rights often remain underreported or are only briefly spotlighted during moments of protest. This visibility gap may help explain

why, despite an unanimous Supreme Court ruling, the Fosen turbines continued to operate for years. A comparative media analysis could reveal how limited coverage contributes to weak enforcement, particularly when Indigenous claims are framed as peripheral to urgent environmental goals. Exploring the conditions under which Indigenous-led environmental resistance gains sustained media visibility - and how such visibility shapes public perception - would help clarify how advocacy efforts translate into political pressure. This, in turn, could inform how public discourse influences compliance dynamics and policy responsiveness within the green transition.

In sum, Sámi legal mobilisation is not only a defensive response to unjust development, it is a proactive strategy for redefining the meaning of climate action itself. By asserting Indigenous sovereignty, reclaiming political space and holding States to account, Sámi communities are reminding the world that a decarbonised future must also be a decolonised one. If the green transition is to succeed, it must be grounded in rights, accountability and the radical inclusion of those too often rendered invisible in global sustainability discourses.

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