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Preservation of the North: Evaluating the Influence of Indigenous Rights Laws & Commitments on Saami Self-Determination

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Preservation of the North: Evaluating the Influence of Indigenous Rights Laws & Commitments
on Saami Self-Determination

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I Abstract

Despite the Nordic countries' commitment to robust international Indigenous rights agreements, Europe's only recognized Indigenous people, the Saami, struggle against the dispossession of their traditional lands in the northern regions of Sweden and Norway. As many states seek to capitalize on the development opportunities presented by the circumpolar Arctic while also recognizing the rights of Indigenous peoples, Indigenous sovereignty and self-determination are widely discussed and relevant issues. How effectively do national laws and international Indigenous rights commitments protect the Saami from these potentially invasive natural resource developments on their traditional lands? In this thesis, I aim to answer this question by examining the outcomes of two land disputes between the Saami People and the state: the Stekenjokk case in Sweden and the Fosen Vind Project case in Norway. I argue that, in these cases, the laws and commitments adopted by Sweden and Norway are ultimately insufficient in safeguarding the self-determination of the Saami. The outcome of the two cases indicates possible vulnerabilities in the implementation of the international Indigenous rights regime in Europe that could threaten the future well-being of the Saami People.

II Introduction

The feeling you get when you get up there and you know that this is mine – this is where I belong. Here generations of my family have lived far back in time. I feel I belong in the mountains, and it's an important part of my identity that I feel at home there ... Knowing that it is being taken away from us is so painful, and we see that it is destroyed right in front of our eyes.¹

States and companies are racing to secure profitable opportunities to develop in the circumpolar Arctic. Due to the rapidly changing climate, global interest in these regions is “mushrooming,” causing high rates of urbanization in Arctic states.² At the same time, the UN 2030 Agenda for Sustainable Development puts pressure on states to prioritize providing widespread access to green energy, incentivizing renewable energy companies to take advantage of the changing Arctic landscape and develop renewable resources in these sparsely populated regions.³ Researchers anticipate that these northern regions will become increasingly economically important;⁴ however, development of the circumpolar Arctic is already being challenged, because the economic flux often jeopardizes Indigenous ways of life. In Europe’s Far North, the push to progress green energy developments is threatening the traditional livelihood of Europe’s only recognized Indigenous people, the Saami.

The Saami People practice reindeer herding throughout their traditional lands in the northern regions of Norway, Sweden, Finland, and parts of Russia which has effectively preserved the European Arctic for centuries. Their way of life is dependent on this vast, natural landscape that allows reindeer to migrate and eat lichens that grow in mossy tundra.⁵ Saami communities oppose the accelerating development of the Arctic, because the construction of

¹ Member of the South Saami from Nilssen, “South Saami Cultural Landscape Under Pressure,” ch. 9.

² Larsen and Fondahl, *Arctic Human Development Report: Regional Processes and Global Linkages*.

³ United Nations, “The 17 Goals.”

⁴ Käpylä and Mikkola, “The promise of the geoeconomic Arctic: a critical analysis,” 203–220.

⁵ Patonia, “Critical evaluation of the Roan wind farm (part of the Fosen wind project) from an impact assessment standpoint.”

wind farms, dams and roads limits their capacity to herd. In the past, the Saami have fought numerous legal battles to prevent natural resource developments on their traditional lands, but development ventures have nonetheless crept northward. Now, renewable energy companies advocating for sustainability pose a threat to the Saami People's sustainable way of life.⁶

Although European states like Sweden and Norway have passed national legislation and international Indigenous rights commitments that aim to protect Indigenous peoples' traditional cultures, customs and livelihoods, the Saami People fear that their ability to preserve and practice reindeer herding will diminish as development moves forward in the Arctic regions of Europe, indicating potential shortcomings of the laws and commitments in place. How effectively do these national laws and the international Indigenous rights regime protect the Saami People's right to self-determination in Europe? In this thesis, their influence is examined by exploring questions of international Indigenous sovereignty and closely reviewing cases in Sweden and Norway in which these laws and commitments were relevant.

In order to answer my research question, I begin by delving into authors who reflect on the history and attitudes that shape the trends in international Indigenous sovereignty today, as well as authors who scrutinize the circumstances of the Saami People specifically, considering how best to protect their self-determination in a rapidly changing environment. Further, I contextualize the Saami People's relationship with the Swedish and Norwegian states and survey the legislation that affects them. By comparing two similar land disputes that contest the construction of wind farms on traditional Saami lands in Sweden and Norway, I then evaluate the influence of national laws and international commitments on the outcomes of the cases.

Acknowledging that my access to many sources written in Saami, Swedish and Norwegian was

⁶ Fjellheim and Carl, "'Green colonialism' is ruining Indigenous lives in Norway."

limited due to a language barrier, I propose that, in these cases, the laws and commitments adopted by Sweden and Norway are ultimately insufficient in safeguarding the self-determination of the Saami.

Although Indigenous sovereignty is a widely discussed issue, it is ever-changing. Because the nature of resource development is shifting toward a renewable model that is integral to Sweden and Norway's green energy initiatives, I look at recent cases that exemplify how sustainable development can directly conflict with Indigenous peoples' sustainable way of life. Additionally, my case studies look comparatively at two international Indigenous rights commitments that function as the international Indigenous rights regime, ultimately concluding that although one is considered significantly more robust than its counterpart, neither was more capable of aiding the Saami People in my chosen case studies. The inability of both international Indigenous rights commitments to protect the Saami People's self-determination in my chosen cases is relevant as Norway, Sweden and Finland seek to implement the Draft Nordic Saami Convention, intended to improve upon the existing international Indigenous rights regime.

III Literature Review

Stripped of Sovereignty

Indigenous peoples exercised sovereignty within and across present-day borders before having their sovereignty taken from them by means of European settler colonialism.⁷ Frederico Lenzerini and Indigenous scholar Aileen Moreton-Robinson establish that tensions between Indigenous peoples and the state originated following the beginning of the colonial period. European colonizers viewed Indigenous peoples as less than fully human and therefore incapable

⁷ Lenzerini, "Sovereignty Revisited: International Law and Parallel Sovereignty of Indigenous Peoples," 155–90.

of self-governing.⁸ This presumed lack of sovereignty empowered European colonizers to declare themselves as sovereign on Indigenous lands and establish territories that entirely disregarded prior governance by Indigenous peoples.⁹

The Contemporary International Indigenous Rights Regime

Following the end of World War II, the global push to address human rights caused a clear shift in states' attitudes regarding Indigenous sovereignty. The creation of the United Nations (UN) and adoption of the Universal Declaration of Human Rights (UDHR) encouraged states to enact legislation concerning the rights of oppressed groups, including Indigenous peoples. Consequently, states pursued efforts to protect Indigenous peoples and moved in the direction of restoring Indigenous peoples' sovereignty to varying degrees.¹⁰

Many states have formally recognized that Indigenous groups exercised sovereignty within and across present-day borders before being colonized and having that sovereignty denied. While this recognition carries moral significance, it does little, if anything at all, to protect Indigenous peoples or restore their sovereignty (citations). Additionally, many states have passed national legislation that protects the continuation of Indigenous cultures, customs and livelihoods or they have granted Indigenous groups some degree of autonomy within their borders.¹¹

At the international level, states agreed with international organizations to protect the rights of Indigenous peoples. The most important commitments on the rights of Indigenous peoples are the International Labor Organization's Indigenous and Tribal Peoples Convention (ILO C169), adopted in 1989, and the UN Declaration on the Rights of Indigenous Peoples

⁸ Pexa, "The White Possessive: Property, Power, and Indigenous Sovereignty Aileen Moreton-Robinson (Review)," 253–55.

⁹ Lenzerini.

¹⁰ Ibid.

¹¹ Ibid.

(UNDRIP), adopted in 2007; together, they function as the basis of the international Indigenous rights regime. The two commitments will be elaborated on in the historical background of my case studies; but briefly, they both aim to protect Indigenous peoples' right to self-determination. This means that they acknowledge that Indigenous peoples have priorities separate from the state and that those priorities should be protected.¹²

Although the international Indigenous rights regime indicates a global trend toward the restoration of Indigenous peoples' sovereignty, the extent to which states want to restore that sovereignty is limited. According to Lenzerini and Moreton-Robinson, current norms do not indicate that states have any intention of fully restoring Indigenous peoples' sovereignty.¹³ To begin with, the Western belief that sovereignty can only be achieved through statehood paired with the existence of present-day borders poses a major barrier to the restoration of Indigenous sovereignty. Additionally, most states simply do not want to give up their authority to Indigenous peoples.¹⁴

The tension between the global trend toward the restoration of Indigenous sovereignty and the interests of states creates a problem that is central to my discussion on the Saami People's self-determination in Europe. Are states able to protect Indigenous self-determination without restoring their sovereignty? According to Lenzerini and notable political science and Saami studies scholar Ulf Mörkenstam, states virtue signal their intent to protect Indigenous self-determination by ratifying international commitments such as UNDRIP but fail to enact specific, forceful legislation that would inhibit states from jeopardizing Indigenous self-determination when it gets in the way of state interests.¹⁵ Mörkenstam defines this

¹² Ibid.

¹³ Lenzerini; Pexa.

¹⁴ Lenzerini.

¹⁵ Lenzerini; Mörkenstam, "Organised hypocrisy? The implementation of the international indigenous rights regime in Sweden," 1718-1741.

phenomenon as “state hypocrisy.”¹⁶ Similarly, given that very few states have ratified ILO C169 (which is more rigorous in its attempt to protect Indigenous self-determination compared to UNDRIP), Lenzerini argues that states “do not want to be bound by precise and strict requirements concerning such sovereignty...they rather wish to retain autonomy over the definition of its concrete terms and conditions.”¹⁷

Moreton Robinson and researcher Rebecca Lawrence extend this argument, suggesting that states never abandoned their settler colonial mentality. Moreton Robinson claims that the “shape-shifting nature of colonization” allows states to discreetly dispossess Indigenous peoples of their traditional lands under the guise of public interest in natural resource developments.¹⁸ Lawrence adds that in the Saami case, the Saami continue to be gradually dispossessed of their traditional lands, and at no point returned any of it, despite the shift in global attitudes on Indigenous sovereignty. Lawrence calls this process internal colonization.¹⁹

Approaches to Saami Self-Determination in Europe

Due to the Saami People’s unique situation as the only recognized European Indigenous people as well as a transnational people, the issue of Indigenous sovereignty is applied quite differently in Europe. Because the Saami were not colonized by an overseas state, much of the early international Indigenous rights regime did not apply to them, and they were pushed into the shadows of the global discussion on Indigenous rights.²⁰ Consequently, several different approaches to protecting the Saami People’s self-determination were proposed.

Scholars such as Erik Reinert, Kamrul Hossain and Anna Petrétei argue for more practical approaches that aim to protect the Saami People’s ability to practice traditional reindeer

¹⁶ Mörkenstam.

¹⁷ Lenzerini.

¹⁸ Pexa.

¹⁹ Lawrence, “Internal Colonisation and Indigenous Resource Sovereignty: Wind Power Developments on Traditional Saami Lands.”

²⁰ Ibid.

herding, a fundamental aspect of their self-determination. Reinert claims that economic adaptation is key. By economically conjoining the Saami reindeer herding industries transnationally throughout all of the Nordic countries, the Saami would have far more financial power to protect traditional Saami livelihoods and augment their authority over their traditional lands.²¹ While Reinert offers a strategy that would benefit the transnational Saami People, it does not concretely protect the physical landscape that Saami reindeer herding is dependent on.

Kamrul Hossain and Anna Petrétei lean more towards protecting the cultural environment that is so fundamental to the Saami People's self-determination. In order to do so, they propose that more rigorous environmental human impact assessments would protect Saami self-determination while still allowing the Norwegian state to pursue a renewable energy infrastructure. According to their research, improved impact assessments that include more Indigenous participation seem to be highly effective when the primary negotiators are Indigenous communities and the state.²² Although more thorough impact assessments would improve the Saami People's ability to preserve their cultural environment, when the state has economic interests in natural resource developments, the power dynamic becomes severely lopsided, thereby leaving a critical lack of consistency.

Other approaches to the Saami People's self-determination focus more on national legislation and international commitments. Scholar Rainer Grote argues that the Saami People could protect their self-determination if they were protected by Indigenous rights rather than minority rights in their respective countries. Because minority rights legislation in Europe originated from a religious context, they were never intended to protect an Indigenous way of life

²¹ Reinert et al., "Adapting to Climate Change in Sámi Reindeer Herding: the Nation-State as Problem and Solution," 417-32.

²² Hossain and Petrétei, "Resource Development and Sámi Rights in the Sápmi Region: Integrating Human Rights Impact Assessment in Licensing Processes," 302-340.

holistically. Additionally, because minority rights legislation in Europe is mainly geared towards addressing national minorities, Grote argues that they do not fit the needs of a transnational people like the Saami. Rather, Grote suggests that minority rights legislation that is specific to Indigenous peoples would be able to properly protect the Saami People's self-determination in Europe.²³

Grote offers a national legislative solution to protecting Indigenous self-determination that aligns with the current global trends concerning Indigenous sovereignty that were explained by Lenzerini. The widespread ratification of UNDRIP in Europe indicates that European states are more willing to pass legislation that addresses Indigenous peoples as separate from other minorities. Essentially, Grote's claims are supported by those trends; however, due to newly proposed international commitments, his argument is slightly outdated. My case studies will include the most recent, relevant Indigenous rights commitments and legislation in order to assess whether or not Grote's argument is still useful for future discussions on Indigenous sovereignty.

Notable Arctic researcher Timo Koivurova expands on Grote's argument and proposes that a better transnational Indigenous rights commitment is the most effective way to protect the Saami People's self-determination. A major hindrance to the Saami is the fact that they are a transnational people, and the current international Indigenous rights regime does not protect transnational peoples. In order to do so, Koivurova advocates for the passing and ratification of the Draft Nordic Saami Convention. The Draft Nordic Saami Convention improves Article 36 of UNDRIP so that transnational Indigenous peoples would be recognized as one entity. This would give the Saami improved capacity for movement and more authority over their collective traditional lands as well as prevent obstacles caused by the differing national legislation that

²³ Grote, "On the Fringes of Europe: Europe's Largely Forgotten Indigenous Peoples," 425-43.

affect the Saami people's self-determination across state borders.²⁴ Importantly, the Draft Nordic Saami Convention was agreed upon by the Nordic states in 2016 but not yet ratified or put into practice.²⁵ This development will certainly alter the Saami People's self-determination when it is put into place and leaves room for further research on the effectiveness of convention.

Conclusively, the literature shows that while there is a global trend towards the restoration of Indigenous sovereignty, that restoration is limited and varies between states. While European states adhere to that trend, separate approaches to the Saami People give the challenges to their self-determination another degree of complexity.

IV Historical Background



Figure 1, Map of circumpolar Sápmi region²⁶

²⁴ Koivurova, "Can Saami Transnational Indigenous Peoples Exercise Their Self-Determination in a World of Sovereign States?" 105-124.

²⁵ UN News, "Land, resource rights key to Sami people's self-determination, says UN expert."

²⁶ Melbøe, "Identity construction of Sami people with disabilities."

Historical Saami Relations in Sweden and Norway

Since the beginning of the 17th century, the Saami People have gradually been dispossessed of their traditional lands. The ancestors of the Saami have occupied the Sápmi region that spans the northern regions of Norway, Sweden, Finland and the Kola Peninsula of Russia (see Fig. 1) for at least 7,000 years.²⁷ Nonetheless, the Arctic regions of Scandinavia have been historically romanticized as a final frontier or an untouched landscape with a major depository of natural resources, apt for development and economic benefit. Following a surge of interest in the Arctic regions since the early 17th century, settlers moved northward, onto traditional Saami lands.²⁸

As northward expansion progressed, the Swedish and Norwegian states implemented institutions to manage relations with the Saami People. For example, the Lapp Protectorate Authority was established to represent the Saami People in Swedish government, because they were deemed unable to govern themselves. Further, the Swedes viewed the Saami as unqualified to own land, because they were nomadic. Early relations between the Saami People and the Nordic states were characterized by this kind of “Lapp Protectionism,” or the infantilization and patronization of the Saami People by the state. Consequently, the Saami People’s sovereignty over their traditional lands was gradually nullified by Swedish and Norwegian national law.²⁹

Much of the early national legislation concerning the Saami People concentrated on their right to practice reindeer herding. National laws guaranteed traditional Saami herders access to grazing and herding lands. Those laws, however, did not give the Saami any form of ownership

²⁷ Broadbent, *Lapps and Labyrinths*, ch. 11.

²⁸ Mörkenstam.

²⁹ Lawrence.

or authority over those lands. This was the only kind of significant legislation on the Saami People during the 1800's through the mid-1900's.³⁰

Contemporary Saami Relations in Sweden and Norway

Following the end of World War II and the adoption of the UDHR, the amplified global discussion on human rights brought attention to the rights of the Saami People in Sweden and Norway.³¹ In Norway, for example, a land dispute between the Saami People and the state known as the Alta Conflict during the late 1970's brought national attention to the Saami People; demonstrations held by the Saami People and allied environmentalists opposing the construction of a dam on traditional Saami lands were widely covered in Norwegian media. Although the state eventually won the land dispute, the conflict amplified the Saami People's struggle for rights in Norway.³²

Elevated interest in the Saami People catalyzed a series of changes in national legislation both in Sweden and Norway.³³ During the 1960's and 1970's, Sweden legally recognized the Saami People as a national minority and ratified the International Covenant on Civil and Political Rights in 1966, establishing that the Saami have a legal right to preserve their culture as a minority.³⁴ In a similar manner, Norway established the Saami Rights Commission in 1980 to evaluate how to better protect Saami rights.³⁵

In accordance with the decision to protect the preservation of Saami culture, Sweden passed national legislation on traditional Saami reindeer herding—specifically the Reindeer Husbandry Act of 1971 which safeguards the Saami People's access to their traditional livelihood. In 1981, a landmark court case favoring the Saami strengthened the legal position and

³⁰ Mörkenstam.

³¹ Mörkenstam; Nilssen.

³² Nilssen.

³³ Mörkenstam; Nilssen.

³⁴ Mörkenstam.

³⁵ Nilssen.

national importance of herding in Sweden.³⁶ Further, an amendment to the Reindeer Husbandry Act in 1993 known as the Significant Harm Principle, stating that Saami reindeer herding is protected from activities that could cause “serious detriment,” made the act doubly valuable to the Saami; however, what constitutes serious detriment is not clearly defined.³⁷ Consequently, reindeer herding quickly became the strongest legal argument for the Saami People in Swedish land disputes.³⁸

Traditional Saami herding is similarly valuable to the Saami in Norwegian land disputes. In 2016, for instance, the Ministry of Petroleum and Energy decided to reject the applications for wind-power development by Fred Olsen Renewables on traditional Saami lands due to its potential harm to Saami herding practices. While it is an isolated incident, the Ministry of Petroleum and Energy stated that reindeer herding is of national importance, causing the threat to herding practices to become an extremely valuable legal defense for the Saami in Norway.³⁹

Adoption of the International Indigenous Rights Regime in Sweden

Concerning the implementation of the international Indigenous rights regime, Sweden and Norway took divergent paths. In 2007, Sweden voted for the adoption of UNDRIP but has not ratified ILO C169. UNDRIP is a non-legally binding agreement that aims to protect Indigenous peoples’ right to self-determination. In order to do so, UNDRIP states that Indigenous peoples have the right to practice and preserve their traditional cultures, customs and livelihoods.⁴⁰

In order to prevent the dispossession of Indigenous peoples’ lands, UNDRIP clearly delineates rights to self-determination regarding traditional territories. Article 26 states that

³⁶ Ibid.

³⁷ Mörkenstam.

³⁸ Nilssen.

³⁹ Ibid.

⁴⁰ Mörkenstam.

“Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” The right to control their traditional lands is further extended to the right to conserve their environment.⁴¹ Importantly, though UNDRIP covers many facets of Indigenous peoples’s right to their traditional lands, it is a non-legally binding agreement.⁴²

Adoption of the International Indigenous Rights Regime in Norway

Like Sweden, Norway voted for the adoption of UNDRIP in 2007. Additionally, Norway ratified ILO C169. In comparison with UNDRIP, ILO C169 is more rigorous in its attempt to protect Indigenous self-determination.⁴³ Notably, Articles 14 and 15 of the convention aim to better protect Indigenous lands from dispossession and invasive natural resource developments. Unlike UNDRIP, ILO C169 is a legally binding document, so states must meet the standards described in the convention.⁴⁴

Article 14, Section 1 of ILO C169 addresses the ownership of Indigenous lands, including specifications for sparsely populated lands and nomadic peoples:

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.⁴⁵

Because traditional Saami reindeer herding requires access to vast Arctic landscapes suitable for reindeer migration, Article 14 is quite valuable to the Saami People.⁴⁶

⁴¹ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*.

⁴² Mörkenstam.

⁴³ Nilssen.

⁴⁴ International Labour Organization, *Indigenous and Tribal Peoples Convention, C169*.

⁴⁵ Ibid.

⁴⁶ Nilssen.

Further, Article 14 of ILO C169 addresses Indigenous peoples' right to the natural resources on their lands. The article states that in cases where the state owns the natural resources on traditionally Indigenous lands, states must develop adequate consultation practices with Indigenous communities before beginning natural resource developments, in order to evaluate whether or not their self-determination would be compromised.⁴⁷

Finally, Sweden and Norway both agreed to the Draft Saami Convention in 2016 which aims to seriously expand rights for the Saami People transnationally; however, it is considered a future objective and has not been implemented in any way.⁴⁸

V Case Studies

In order to explore how national laws and international Indigenous rights commitments impact the Saami People's self-determination in Sweden and Norway, I have selected comparable cases in each state. Both cases involve land disputes over renewable resource developments on traditional Saami lands. During court proceedings, varying pieces of national legislation and international commitments, intended to protect Indigenous peoples' right to self-determination, were cited by the Saami. These cases are standard examples of unwanted natural resource developments on historically claimed Indigenous lands. By examining each land dispute based on the type of communication between the developers and the affected Saami communities, the projected harm to the Saami People's cultural environment and the national laws and international commitments that were explicitly cited in each case, I will attempt to evaluate the influence of those laws and commitments in the outcome of each case.

⁴⁷ Ibid.

⁴⁸ UNPFII Recommendations Database, "UNPFII Recommendations Database, View record [ID: 1435]."

Case Study A: Stekenjokk

Overview

According to first-hand accounts reported by Lawrence, in 2008, a local county administrative board in Vasterbotten County, Sweden considered proposals by three wind power companies to build a wind farm in Stekenjokk, a northern region of the country. Soon after, the county board signed a letter of intent with Fred Olsen Renewables, and began planning for the construction of a wind farm in Stekenjokk. Because Stekenjokk lies on traditional Saami lands, the Saami community in the region opposed the plans and began an arduous battle in the local media and district court in an attempt to stop the construction of the wind farm. The Saami community claimed that the natural landscape in Stekenjokk is extremely important to Saami culture; additionally, they argued that the construction of a wind farm in the region would seriously disrupt reindeer grazing and migration patterns that are crucial to the traditional livelihood. Ultimately, the district court did not side with the Saami people, and Fred Olsen Renewables was permitted to begin construction of the wind farm.⁴⁹

Communication & negotiation with Saami communities

The Saami community in the Stekenjokk region were neither informed nor involved in the negotiations concerning the possible construction of a wind farm prior to the letter of intent being signed. In court proceedings, the Vasterbotten County Administrative Board argued that they were negotiating on behalf of the Saami. The county board stated,

“The Saami community could end up in a strange situation when there are several companies and one may be more skilled than the other ... one of them might pay compensation, the Saami community might confuse things ... and then it would be strange if one company had paid the Saami community compensation ... and if

⁴⁹ Lawrence.

[the Saami community] gave in to one company and the County Board believed another company would be more appropriate.”⁵⁰

In this statement, the county board clearly asserts their decision-making authority over the Saami; further, the board claims that they are better equipped to make decisions concerning natural resource developments on their traditional lands. Lawrence notes that individuals in the Saami community expressed that this statement was perceived as reminiscent of Lapp Protectionism, the often patronizing attitude directed towards the Saami by the Swedish state, rooted in the antiquated belief that the Saami People were unable to govern themselves.⁵¹

Degree of Harm to Cultural Environment

The Saami people claimed that the destruction of the natural landscape in the Stekenjokk region would constitute a significant loss to the community due to its cultural value. The Saami name for Stekenjokk, Stihken, translates to “where the reindeer rest,”⁵² so naturally, the region is of major importance for traditional Saami reindeer herding. The Saami community in Stekenjokk claimed that the construction of a wind farm would indisputably interfere with their herding practices, because wind farms have been proven to disrupt migratory patterns and limit the grazing lands available to reindeer.⁵³

Further, the plans to construct a wind farm in Stekenjokk was interpreted by many members of the Saami community as a foot-in-the-door to further acts of dispossession. A Saami herder stated, “It feels like the County Board is using the state directive on renewable energy in order to gain access to the lands—once they get a wind power park in there who knows how it will turn out for the mountain areas.”⁵⁴ The Saami are skeptical of the state’s intentions.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

Considering the aggressive renewable energy infrastructure goals set by Sweden, the Saami community fears that the landscape in the whole Stekenjokk region could change drastically in the coming years.

Norms & laws cited

During the Vasterbotten County district court proceedings, the amendment to the Reindeer Husbandry Act of 1971 was explicitly cited in defense of the Saami community. The amendment, often referred to as the Significant Harm Principle states that “Saami reindeer herding is protected from activities that could cause serious detriment”⁵⁵ In this case, the Saami were denied the ability to claim whether or not wind farms would constitute significant harm. According to an informant, a member of the county board stated that “land encroachments would be considered detrimental when the reindeer industry was close to extinction” during court proceedings.⁵⁶

Additionally, the Saami claimed that the construction of the Stekenjokk wind farm was in violation of UNDRIP, because the wind farm would interfere with their right to practice and preserve their traditional livelihood.

Case Study B: Fosen Vind Project

Overview

The Norwegian Ministry of Petroleum and Energy and a group of Norwegian wind energy companies began construction of the Fosen Vind Project (Fosen Wind Project) in 2016. Consisting of six separate wind farms, either constructed or to be constructed, across the Fosen Peninsula of Norway, this venture will be the largest onshore wind power site in Europe.⁵⁷ The

⁵⁵ Mörkenstam.

⁵⁶ Lawrence.

⁵⁷ Statkraft, “Roan wind farm.”

Fosen Vind Project has been contested by the Saami community as well as the UN Committee on the Elimination of Racial Discrimination; because according to the Saami, the wind farms pose a threat to traditional reindeer herding practices on their lands and violate their right to preserve the Saami culture. In 2017, the reindeer herding districts in Fosen lost in a court battle contesting the project at the Inntrøndelag District Court and were later denied an appeal to that court decision by the Supreme Court of Norway. As the Fosen Vind Project's wind farms continue to be built, they continue to be contested. Further in 2018, The UN Committee on the Elimination of Racial Discrimination advised the Norwegian state to suspend the construction of another Fosen Vind Project wind farm in Storheia, Norway due to its potential negative impact on traditional Saami livelihoods; however, the Ministry of Petroleum and Energy stated that they will continue with construction of the wind farm despite criticism.⁵⁸

Communication & negotiation with Saami communities

Communication concerning the Fosen Vind Project has involved local actors as well as national ones. The Saami community in Fosen was informed of the plans to construct a wind farm, but they were neither consulted nor negotiated with before the plans were already solidified. In a letter written in 2011, the Saami in Fosen stated that the actions taken by the wind developers were nearing a violation of international law.⁵⁹ Court proceedings on the Fosen Vind Project attracted media attention, so the debate soon became national. Consequently, the Saami General Assembly, the Supreme Court of Norway, the Ministry of Petroleum and Energy, the wind energy companies and the UN Committee on the Elimination of Racial Discrimination were involved in the land dispute.

Degree of Harm to Cultural Environment

⁵⁸Karagiannopoulos, "Norway to build wind farm despite concerns of reindeer herders."

⁵⁹ Nilssen.

The wind energy developers argued that they performed the necessary environmental impact assessments in accordance with Norway's national laws and found nothing that would bar them from constructing the wind farms across the Fosen Peninsula. According to the wind energy companies, the Saami community was taken into consideration, but the Fosen Vind Project would “not prevent the practice of Saami culture in the region ... [because] the intervention is planned in such a way that it will permit ‘the minority to continue to have financial gain from the activity.’”⁶⁰

However, the Saami community firmly disagreed and argued that the impact assessment findings were inaccurate. During the 2017 Inntrøndelag district court proceedings, a spokesperson for the Saami community claimed that “building wind turbines [would] mean the beginning of the end for reindeer herding and the Saami culture in Fosen.”⁶¹ Additionally, a critical evaluation of another Fosen Vind Project site in Roan, Norway, reported that “the development of roads, power lines and the construction of stations would substantially affect the region” and that the “destruction of lichens and landscape fragmentation that would be detrimental to herding practices.”⁶²

Norms & laws cited

The Saami community in Fosen unsuccessfully attempted to utilize the international Indigenous rights regime to stop the construction of the Fosen Vind Project. During the Inntrøndelag district court proceedings, the Saami defense specifically cited ILO C169 and UNDRIP, stating that the Fosen Vind Project would violate international law on the grounds that it would interfere with the preservation of their culture and traditional livelihood of reindeer herding. In response to this, the wind energy companies argued that “the ILO Convention (on

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Patonia.

indigenous and tribal peoples in independent states) has not been embedded in Norwegian legislation, and that the Saami thus cannot base rights directly on this platform.”⁶³

VI Analysis

Influence of national laws and international commitments in Sweden

The national and international Indigenous rights commitments adopted in Sweden indicate that the Swedish state means to protect the interests of the Saami People; however, the historical and present pattern of communication and negotiation with the Saami demonstrate otherwise. Though the Reindeer Husbandry Act and UNDRIP are intended to protect the Saami People’s ability to practice their traditional livelihood, the Saami community was not given a chance by the Vasterbotten County Board to express concerns about the wind farm before the plans to construct in Stekenjokk were already in place.⁶⁴ It is possible that this lack of cohesion is due to conflicting priorities of the Swedish state and local Swedish governments. However, given that there is no specific Swedish legislation that requires the government, national or local, to consult Saami communities regarding resource developments on their traditional lands, it more likely reflects the “state hypocrisy,” explained by Mörkenstam. By adopting non-legally binding agreements like UNDRIP, the Swedish state symbolically signals their desire to protect Indigenous self-determination but avoids more detailed legislation such as ILO C169 that would obligate them to create specific procedures to communicate or negotiate with Saami communities directly.⁶⁵

⁶³ Nilssen.

⁶⁴ Lawrence.

⁶⁵ Mörkenstam.

The manner in which the Saami were communicated with in the Stekenjokk case suggest that the Swedish state continues to put its own interests ahead of Saami interests despite current Indigenous protections. The language used towards the Saami throughout the Stekenjokk case, including the notion that the Saami “might have confused things” if they were to deal with wind energy companies directly, is reminiscent of the antiquated Lapp Protectionism that shaped the Swedish state’s policy regarding the Saami through the 19th century.⁶⁶ Further, the Saami in the region reported that they feared the Stekenjokk wind farm would be the first of many resource developments that would continue to dispossess them of their traditional lands, undeterred by their objections. Reflecting Moreton-Robinson’s “shape-shifting nature of colonialism,” the Stekenjokk case, particularly the manner of communication used by the Vasterbotten County Board, indicate that the Indigenous right laws like the Reindeer Husbandry Act in Sweden do not effectively safeguard the Saami People’s self-determination when the state decides to override those laws.

In the case of the Stekenjokk wind farm, the national Indigenous rights laws in Sweden were not effective at protecting the Saami People’s self-determination, specifically their ability to preserve their cultural environment. Because the preservation of the Arctic landscape of their lands is so integral to traditional reindeer herding, the Reindeer Husbandry Act should have prevented the destruction of that landscape based on the Significant Harm Principle. However, due to the law’s ambiguity, it failed. Fundamentally, the Reindeer Husbandry Act only protects the activity of herding but not necessarily the land itself or the Saami herders who perform it. Without a concrete definition of what constitutes significant harm, the law is inconsistent in its ability to protect reindeer herding in Sweden.

⁶⁶ Lawrence.

Additionally, the international Indigenous rights commitments adopted by Sweden did not aid the Saami People's desire to preserve the natural Arctic landscape in Stekenjokk. Article 26 of UNDRIP that enforces the rights of Indigenous peoples "to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupations" is intended to protect Indigenous lands from invasive developments, but it failed.⁶⁷ Article 26 of UNDRIP lacks force in Sweden, because the state does not officially recognize the Saami People's traditional lands. Given this, the legislation intended to protect the Saami's ability to preserve their cultural environment in Sweden is insufficient. The results of the Stekenjokk case agree with Grote; the Saami would benefit from enforceable Indigenous rights in Sweden that protect the preservation of Indigenous ways of life holistically.

Influence of national laws and international commitments in Norway

Due to the ratification of ILO C169 in Norway, I expected the amount of communication between the Saami in Fosen, wind energy companies and the Norwegian state to be much greater than that of the Stekenjokk case, but they were quite similar. The Saami community in Fosen were informed of the plans to build the Fosen Vind Project; however, like the Saami in Stekenjokk, they were not consulted, meaning Saami interests were not taken into account during the planning process. Like the Stekenjokk case, the developers of the Fosen Vind Project stated that they took the Saami into consideration when choosing the site, but they neglected to actually consult with the communities that would be affected by the project. In effect, the Fosen Vind Project case demonstrates that without consulting Saami communities in resource development projects, the Saami People's self-determination is not protected despite the legislation in place in Norway.

⁶⁷ UN General Assembly.

Further, national laws did not protect the Saami People's ability to preserve their cultural environment. Although Norway requires environmental impact assessments for resource development projects that take into account potential effects on society and biodiversity, the requirement did not protect the interests of the Saami nor the landscape that is essential to the Saami's cultural environment in the Fosen Vind Project case.⁶⁸ The wind energy companies argued that their impact assessment concluded that the Fosen Vind Project would not be detrimental to the environment and that it would not impede Saami reindeer herding practices. On the contrary, the Saami argued that the project would be extremely detrimental, and a separate evaluation of the impact assessment agreed.⁶⁹ The disparity between these assessments demonstrate a clear problem with the standards and consistency of the environmental impact assessments in Norway. Hossain and Petrei may be correct in claiming that more rigorous assessments for resource development projects could prevent harm to Indigenous communities and livelihoods while still permitting renewable resource development in Europe, but the impact assessments would need to be totally unbiased in order to prevent inaccurate results that favor the state or developers, like the one completed for the Fosen Vind Project site in Roan.⁷⁰ At the root, lack of authority over their traditional lands inhibits the Saami from the preservation of the cultural environment despite legislation intended to protect Indigenous interests.

Additionally, the international Indigenous rights regime did not successfully protect the Saami People's self-determination in the Fosen Vind Project case. The Saami community in Fosen cited ILO C169 during court proceedings, but the wind energy companies were able to evade it by arguing that the Convention had not yet been implemented into Norwegian law.⁷¹

⁶⁸ Patonia.

⁶⁹ Nilssen.

⁷⁰ Hossain and Petrétei.

⁷¹ Nilssen.

ILO C169 had been ratified in Norway for 27 years at the time of the Inntrøndelag district court proceedings, so either the wind energy companies were incorrect yet still permitted to construct the wind farm, or the Norwegian state has not adequately put the Convention into effect in its national law. Either case indicates a weakness in the implementation of ILO C169 in Norway that could be researched further.

The invocation of UNDRIP and the involvement of the UN Committee on the Elimination of Racial Discrimination further demonstrates that the international Indigenous rights regime did not effectively protect the Saami People's self-determination in the case of the Fosen Vind Project. The Saami cited UNDRIP during the Inntrøndelag district court proceedings with no success, and the UN Committee on the Elimination of Racial Discrimination called for the suspension of the Fosen Vind Project in Storheia, again with no success. These results reflect the "state hypocrisy" proposed by Mörkenstam; the Norwegian state agreed to protect Indigenous interests by ratifying the international Indigenous rights regime but failed to protect those interests when it comes to practical applications that interfere with the desires of the state.

Influence of national laws and international commitments in Europe

Both the Stekenjokk case and the Fosen Vind Project case reveal that the manner of communication between the state and Indigenous communities pose an obstacle to the protection of Indigenous self-determination in Europe. In both cases, the state or wind energy companies did not communicate with the Saami communities that would be affected by the construction of a wind farm until absolutely necessary. In neither case did the state or wind energy companies consult the Saami community; therefore, the Saami were given no opportunity to voice their opposition until plans for a wind farm were in place. A requirement obligating the state or natural resource developers to consult with Saami communities before beginning resource

development projects could better protect the Saami People's self-determination. On the other hand, it is possible that the manner of communication may not have a significant effect on the outcome of other land disputes of this nature; however, the neglect to consult Saami communities in Sweden and Norway does indicate that Saami interests are not consistently prioritized by the state, reflecting Morkenstam's "state hypocrisy" that characterizes the Indigenous rights regime in Europe.

Additionally, the Stekenjokk and Fosen Vind Project cases indicate that the national Indigenous rights laws in Sweden and Norway more thoroughly cover the activity of traditional Saami reindeer herding than the preservation of the Saami People's cultural environment that it depends upon. Historical precedent and current legislation confirm that the threat to reindeer herding is the most effective legal defense that the Saami can employ, but it is not consistent. For instance, the failure of the Significant Harm Principle used in the Stekenjokk case demonstrates that loopholes allow the state and wind energy companies to evade Swedish national Indigenous rights legislation when Saami interests interfere with the state's interests. In Norway, wind energy companies stated that the Saami would be able to continue reindeer herding despite the environmental impact of the Fosen Vind Project. In these cases, national Indigenous rights legislation in Europe focuses disproportionately on protecting Saami reindeer herding rather than the Saami People's self-determination holistically.

Further, a comparison of both case studies reveals that the differing extents to which the state has adopted the international Indigenous rights regime did not change the outcome of the land disputes in Sweden and Norway. Although Norway has ratified ILO C169 which is more rigorous in its attempt to protect Indigenous self-determination, specifically in its attempt to protect Indigenous peoples' traditional lands, both the Stekenjokk case and the Fosen Vind Project

case had similar results: the state and wind energy companies proceeded with the construction of wind farms on traditional Saami lands despite opposition reinforced by the international Indigenous rights regime. It is clear that ILO C169 was not able to protect the Saami People's self-determination in Norway any more effectively than UNDRIP in Sweden, at least in these cases. I believe the primary issue stems from the fact that Sweden and Norway do not recognize traditional Saami lands as valid. This lack of recognition prevents ILO C169 from having any real force in Norwegian law. The same is true in Sweden; without recognizing traditional Saami lands, UNDRIP is not effective.

VII Conclusion

Global trends demonstrate that while states do not intend to fully restore Indigenous sovereignty, they are increasingly motivated to protect Indigenous peoples' self-determination by granting them varying degrees of autonomy or passing legislation that safeguard Indigenous interests, even when they are separate from the state. Sweden and Norway established their intention to protect Indigenous self-determination by gradually passing more robust national laws that protect fundamental aspects of Saami culture like traditional reindeer herding and by adopting international commitments that aim to augment the rights available to Indigenous peoples in their respective states. However, made evident in the Stekenjokk and Fosen Vind Project cases, the legislation and commitments adopted by Sweden and Norway failed to protect the Saami People's self-determination in practice.

Three main conclusions can be drawn from a comparison of the Stekenjokk and Fosen Vind Project land disputes. Firstly, without legislation that requires the state or development

companies to directly consult with Saami communities before confirming plans to build, the Saami People's self-determination is not being taken into account. Further, National legislation in Sweden and Norway reveals alarming loopholes that the state and companies can use when their interests conflict with Saami interests; the national legislation regarding the Saami mainly protects the right to practice reindeer herding, but not the natural Arctic landscape it is dependent on, nor the Saami herders themselves. Finally, a comparison of how UNDRIP and ILO C169 influenced the outcome of these cases demonstrates that while ILO C169 is widely considered to be more robust in its attempt to protect the rights of Indigenous peoples, neither international commitment was able to prevent the construction of wind farms on traditional Saami lands.

At the root of the issue, lack of authority over their traditional lands prevents the Saami People from being able to consistently prevent invasive natural resource developments that neglect their Indigenous self-determination. Because Sweden and Norway do not officially recognize traditional Saami lands, much of the international Indigenous rights regime carries little force in Swedish and Norwegian law. This raises questions about their true intentions. Mörkenstam proposes that governments are inclined to protect Indigenous People's interests only when they are not at odds with the state⁷², and the two cases seem to agree. Although, the agreement by Norway, Sweden and Finland to pass the Draft Nordic Saami Convention indicates otherwise. The new Convention will give the Saami much more power as a transnational people and consequently more authority over their traditional lands. However, considering the inconsistency of UNDRIP and ILO C169 in the Stekenjokk and Fosen Vind Project cases, the success of the Convention will depend upon the quality of its implementation. As economic interest in the circumpolar Arctic grows and the Nordic states continue their green energy initiatives, the Saami People's traditional way of life may depend on it.

⁷² Mörkenstam.

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