

# JOURNAL *of* NORTHERN STUDIES



# JOURNAL *of* NORTHERN STUDIES

The *Journal of Northern Studies* is a peer-reviewed academic publication issued twice a year with a specific focus on human activities in northern environments—how people and human culture affect, and are affected by, the environment. We particularly invite interdisciplinary and multidisciplinary contributions. Apart from scholarly articles, the journal contains book reviews, and a section with reports and information on issues relevant for Northern Studies.

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CHRISTINA ALLARD, Guest Editor

# Green Transition or Green Colonialism?

## Introduction

From 2022–2024, I have had the honour of holding the position of Arctic Six Chair in Sami/Indigenous Peoples Law, and this special issue is one of the results from that position.<sup>1</sup> Chairs form a component of the Arctic Six, whereby their primary goal is to foster collaborations in research and education amongst colleagues within the Arctic Six universities.<sup>2</sup> Many of the authors of this special issue are participants of the Arctic Six through their respective universities.

Green Transition or Green Colonialism? is the title of this special issue; the issue is devoted to placing a lens on the “green transition,” or rather, the re-industrialization processes, currently taking place across the region known as Sápmi.<sup>3</sup> For those who are unfamiliar with the word, Sápmi is the Sami name for the traditional Sami homeland region, and it comprises northern areas of Norway, Sweden, Finland and the Russian Kola Peninsula. The Sami are formally recognized both as an Indigenous people and a minority in all the three Nordic states, which means that these states have specific obligations in regard to in the upholding of related national and international laws, including laws relating to the human rights of the Sami.

Throughout the articles of the issue, the reader has the opportunity to follow both historical and contemporary issues related to Sami rights, settlements and, industrialization objectives. Today, with the climate crisis, these matters are commonly framed within the context of the “green transition,” or “green transformation.” This issue includes stories in this context from both the Swedish and Finnish sides of Sápmi, as well as international law aspects relevant for the Sami. By placing a longitudinal and critical perspective, the articles in this issue, when combined, address much-needed knowledge on aspects of the green transition that are not readily communicated in research outputs or our Northern societies at large. Typically, matters pertaining to the Sami and Sami rights are, rightfully, perceived as complicated and politically sensitive. Thus, in the context of this special issue, short-length articles offer, all together, a perspective and understanding of complex issues in a compact, efficient way, mak-

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<sup>1</sup> I gratefully acknowledge the funds I received in relation to my Chair, from the Arctic Six and the Department of Social Sciences, Technology and Arts at Luleå University of Technology.

<sup>2</sup> Arctic Six; see <https://www.arcticsix.org/arctic-six/research>; accessed on 10 Jan. 2025.

<sup>3</sup> For a map of Sápmi see <https://www.samer.se/karta>; accessed on 10 Jan. 2025.

ing comprehension possible to those outside of our own disciplines, as well. The aim of this issue is to critically analyse different aspects of the ongoing green transition and its negative effects, or potential negative effects, on Sami rights and Sami culture, while also invoking the challenging subject of green colonialism in relation to the Sami.

Colonialism as a concept has indeed longstanding roots, commonly defined as a form of domination over a territory and/or behavior of other individuals and groups, and usually tied to an (historical) influx of permanent settlers connected to the colonizing state or power.<sup>4</sup> Indigenous peoples living within settler-colonial states have ongoing struggles to reclaim control of traditional territories and to regain self-determination.<sup>5</sup> Because of historical and ongoing effects of colonization on Indigenous communities there are endeavors to establish a mutually respectful framework for a sustainable nation-to-nation-relationship between settler society and Indigenous peoples, via International Human Rights Law and pushed by some states. Scholarly literature on settler colonialism offers different assessments of approach, primarily focusing on reconciliation and revival in countries such as Canada, the United States and New Zealand.<sup>6</sup> In Norway, Sweden and Finland, the concept of reconciliation until recently has been applied very little in the context of a state–Sami relationship;<sup>7</sup> reconciliation has only recently surfaced on the public agenda in the Nordic states, in forms of truth and reconciliation processes in Norway, Sweden and Finland.

What, then, is meant by *green* colonialism in the context of the Nordic states and this special issue? In the context of today's green transition and contemporary debate, the term *green* is increasingly used to include "critical perspectives regarding policies that, under the guise of development, involves promoting and expanding practices like resource extraction and infrastructural development that implicitly rely on increased energy consumption."<sup>8</sup> The Nordic states are considered to be at the forefront of the green transition while making significant commitments to achieving zero carbon emission goals and promoting a green economy.<sup>9</sup> However, cumulative effects of existing and planned industries and other competing land and water uses in Sápmi are real and pressing. These new industries, including adjoining infrastructural projects, require land and, therefore, further reduce grazing areas for culturally significant Sami reindeer herding. Such industry adds cumulative pressures, within landscapes where grazing areas have been steadily shrinking, through developments of, for example, hydroelectric plants and dams, modern forestry, mines, windmills, other industry and infrastructural developments, tourist centres, and more.

Among many Indigenous politicians, including many Sami politicians, this sustainability transition is also increasingly referred to as green colonialism.<sup>10</sup> For example, Aili Keskitalo, the former President of the Sámi Parliament of Norway, ad-

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<sup>4</sup> See e.g. Horvath, "A definition of colonialism," 1972, pp. 46, 50.

<sup>5</sup> Kohn & Reddy, "Colonialism," *The Stanford Encyclopedia of Philosophy*, 2024.

<sup>6</sup> Kohn & Reddy, "Colonialism," *The Stanford Encyclopedia of Philosophy*, 2024.

<sup>7</sup> See e.g. Allard & Curran, "Indigenous influence and engagement in mining permitting," 2023, p. 15.

<sup>8</sup> Sandström, "Green transformation or green colonialism," 2024, p. 127.

<sup>9</sup> See e.g. Sandström, "Green transformation or green colonialism," 2024, p. 131.

<sup>10</sup> E.g. during the 22<sup>nd</sup> session of the Permanent Forum on Indigenous Issue at the UN headquarters in New York City on 20 April 2023. See Monet, "'Green colonialism.' Indigenous world leaders warn over West's climate strategy," *The Guardian* 23 April 2023.

dressed, at an Arctic Circle Conference, the paradox of green colonialism; Keskitalo explained that the Sami are expected to give up their traditional livelihoods to save the world, because Sami lands are needed for “green” industries and energy production.<sup>11</sup> Keskitalo argues that Indigenous peoples carry both the burdens of climate changes and the burden of facilitating climate change mitigation on their territories. A Saami Council Declaration from 2022 sums up the situation in the following words:

We distance ourselves from the resource rush and the overconsumption that have caused the climate challenges that the world faces today. A “green shift” is needed, but it must be just and fair, and it cannot be based on colonialist practices. We demand that Indigenous Peoples’ rights are respected when combatting and adapting to climate change.<sup>12</sup>

A common thread seems to be that these “green” projects risk reinforcing existing power imbalances and may further result in the displacement and marginalisation of Sami communities that have been sustainably managing their lands and resources for generations.<sup>13</sup> Therefore, it is necessary to acquire a more comprehensive understanding of the multifaceted challenges of land use conflicts across the Sápmi region, if the “green transition” will have a chance of becoming a just transition for the Sámi people involved;<sup>14</sup> this special issue seeks to contribute to such an endeavour.

All articles in this issue display the complicated and still painful relationship between the Sami and the states, focusing on various aspects and effects of the green transition. In the first article, Åsa Össbo sets the scene by giving a historical overview of certain Swedish extractive projects and settlement measures from mid-1600s to approximately the year 2010; Össbo argues that there exists an ongoing process of replacement rather than a single event of conquest. In today’s green transition, Össbo elaborates, negative Sami experiences of previous industrialisation processes are left unconsidered. She further explains that the preconditions for both a just transition and social sustainability risk being overshadowed by “green” industry needs of forestry, minerals, and water/wind power as these industry measures are articulated in the name of climate change.

The second article, written by Laura Del Duca, Adriana Abril, Rasmus Kløcker Larsen, Biljana Macura, Neal R. Haddaway and Maria Boström in collaboration with Muonio reindeer herding community, Vilhelmina södra reindeer herding community and Voernese reindeer herding community, focuses on mineral extraction and impacts on reindeer herding. More specifically the authors have been reviewing selected Environmental Impact Assessments (EIAs) made by mining companies operating in Sweden (as a component of a mining-related permitting process) and how the negative effects on Sami reindeer herding are expressed therein. The authors have examined Sami experiences of real impacts from two existing mines in Sápmi, in Sweden, and then the authors, in turn, compared the two data sets. Overall, the authors found

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<sup>11</sup> YouTube. Arctic-Global Indigenous Dialogue on Indigenous Guardianship and Self-Governance (17 Jan. 2020); [https://www.youtube.com/watch?v=Dpbh4ED\\_NPA](https://www.youtube.com/watch?v=Dpbh4ED_NPA), at 6:01; accessed on 17 Jan. 2025.

<sup>12</sup> Saami Council, The Váhtjer Declaration, 2022, p. 3.

<sup>13</sup> Allard, “Sámi rights in the sustainable transition,” 2024, p. 184.

<sup>14</sup> Cf. Sandström, “Green transformation or green colonialism,” 2024, p. 136.

that there were considerable discrepancies between, on the one hand, the actual impacts of mining experienced by Sami practising reindeer herding and, on the other hand, how well the EIAs understood and expressed these impacts. These authors, who also include members of Sami reindeer herding communities, are concerned that policy proposals made to fast-track permitting, so as to enable “green” industry, also risk neglecting, in particular, economic and socio-cultural aspects of Sami rights. The authors address the legislative process that led up to the European Union (EU) Critical Raw Materials Act<sup>15</sup> as an example of the lack of interest EU policy makers and Member States have in protecting Sami rights in the green transition.

After focussing on re-industrialisation impacts in Sweden, this special issue then turns to Marlene Payva Almonte, who, in her article, takes an overarching stance in the context of International Environmental Law (IEL); she asks how the IEL discipline’s view of nature as anthropocentric, or as aimed to satisfy human needs and to be used for promoting unlimited economic growth, can be improved. Payva Almonte emphasises that IEL is a root cause of eventual unyielding exploitation of land and natural resources. While rethinking IEL, she, by embracing non-Western views of nature, argues that Indigenous knowledge systems from Arctic peoples may contribute to expand IEL’s conceptual horizons while correcting the human-nature relationship. Examples from the world views of the Skolt Sami in Finnish Sápmi are used by Payva Almonte as guiding principles for rectifying IEL’s underpinning assumptions. She explains that because the Arctic and Sápmi are at the forefront of climate impacts, the many “sustainable development” projects promoted in the context of the green transition in these areas pose additional risks to these already vulnerable regions.

In the fourth article, Leena Hansen focuses on climate change and human rights, in particular the new and progressive Finnish Climate Act. The Sami, as well as other Indigenous peoples, have demanded justice and adoption of a human rights-based approach, namely in the form of respect for their rights in climate change mitigation and adaptation measures, which is enshrined in the Paris Agreement from 2015. The aim of Hansen’s article is to analyse the extent to which the climate justice and human rights-based approach in the new Finnish Climate Act succeeds in both protecting Sami culture against climate change and safeguarding the Finnish constitutional protection of the Sami as an Indigenous people. Hansen finds that the new Finnish Climate Act demonstrates a high-level legal commitment to implementing the justice and human rights-based approach of the Paris Agreement; in fact, the Finnish course has already been endorsed by important bodies of the United Nations. Finland has, thus, not only the potential to herald in a new approach to climate change legislation for Norway and Sweden in relation to Sami rights, but also for other states with Indigenous peoples. However, Hansen also highlights a few concerns that may jeopardise the actual application of the act.

The last article of this special issue, authored by Juha Joona, addresses the importance of recognizing Sami land rights as private rights in Finnish legislation and especially due to ongoing “green” industrial projects (in particular, mines). Joona analyses, first, the various legal statuses in Finland of reindeer owners and in different grazing areas, and the reasons behind these statuses. After that, the article puts a spotlight on

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<sup>15</sup> EU Regulation 2024/1252.

the protection of Sami rights in Finland in the context of Finland's minerals-related permitting. Joona explains that, although the Finnish Reindeer Husbandry Act states that reindeer may graze within a designated area regardless of who owns the land, this herding is not based on principles of private law as its Swedish counterpart is. Reindeer husbandry, in Finland, Joona explains, has a stronger protection within the demarcated Sami homeland than outside of it; this discrepancy can be seen as inequality when a non-Sami person practicing reindeer husbandry in the Sami homeland is in a more protected legal position than a Sami reindeer herder who is situated outside of the demarcated area. In Finland there are, thus, several legal challenges connected to the rights to reindeer herding and the green transition, according to Joona; the obvious challenge being that the green transition accelerates the reduction of Sami reindeer grazing areas. One finding by Joona is that, for example, protection afforded by Finnish legislation, expressed as "significant harm" to reindeer herding, holds uncertainties that are not interpreted to the advantage of Sami reindeer herders.

*Enjoy reading this special issue!*

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ÅSA ÖSSBO

# On Colonial Past and Present in Sápmi

Considering Ideas of the Land of the Future in Northern Sweden

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**ABSTRACT** Ever since the 1630s and the discovery of silver ore deposits in the alpine areas of Sápmi, Sweden has nurtured settler colonial ideas in relation to Sápmi and the Sami. The first legal settler colonial tool was the Lappmark Proclamation of 1673. However, the vision of “the land of the future” with mining and agriculture proved to be somewhat of a mirage. A second wave of settler colonial ideas came with the industrial breakthrough. As we are now entering the third era of settler colonial ideas, sacrificing Sami lands, rights, and self-determination seems to be a continued strategy of the Swedish state. Once again, entrepreneurs, companies and politicians project the idea of a “land of the future” onto the north and Sápmi. In this article, I describe this phenomenon, which has been—and still is—based on settler colonial ideas, an-optimism and sidelining of the Sami and their historical as well as current land rights.

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**KEYWORDS** Sami history, settler colonialism, hydropower, natural resource extraction, re-industrialization, green transition

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## Introduction

In the wake of the so-called green transformation intended to take place in northern Sweden, several narratives and visions are resurfacing. One of these is the phenomenon of projecting an idea known as “The Land of the Future”<sup>1</sup> onto Norrland. In this article, I analyse the continuum of colonialism towards Sápmi through a historical

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<sup>1</sup> Sörlin, *Framtidslandet*, 1988.

overview of some Swedish extractive projects and settlement measures. I depart from a settler colonial theoretical approach,<sup>2</sup> asking how settler colonial ideas and practices have influenced Sweden's colonization projects in Sápmi.

Settler colonialism's primary focus is land and settlement, unlike classical colonialism which primarily involves exploitation of Indigenous peoples as labour and resource. To complete the settler colonial goal, the original inhabitants of the land must be replaced, or their rights and connection to the land terminated. These processes and measures, which eventually made settlers the majority population, are referred to as an "elimination of the Native" and defines settler colonialism as a structure placed upon an area and its inhabitants, rather than the single event of a conquest or an invasion.<sup>3</sup>

Perceived as a structure, settler colonialism is never a phenomenon of the past but is rather continually reproduced and reshaped, while also trying to cover its tracks. This feature of inevitability is criticised by researchers who point out that Indigenous communities' resistance and persistence against settler colonialism has proven that the invasion is rather "a process, not a structure or an event."<sup>4</sup> However, recognizing elimination and replacement processes as central to settler colonial states does not imply that Indigenous peoples were eradicated.<sup>5</sup> Researchers have criticised the structuralism and binarities often used in Settler Colonial Theory (SCT), arguing that this rigidity often fails to harness history's complexity and tends to obscure the agencies of both Indigenous peoples and settlers.<sup>6</sup> Additionally, other scholars have pointed to the challenges of including other groups and actors in the colony, such as former slaves and people of mixed-race categories, in the settler-native divide.<sup>7</sup> These aspects are important since different parts of the Sami area have for a long time also been the home of other ethnic groups and cultures, such as Tornedalians, Finns, Norwegians, and Swedes. Nordic settler colonialism is rather "a structure of replacement"<sup>8</sup> or, as I argue here, an ongoing process of replacement.

In addition, the vastness of the area requires consideration of both geographical and topographical differences that have left traces of a wide range of events, experiences, and histories. However, the diversity within Sami communities has often been generalised into a certain view or idea of *the* Sami in the authorities' perspective.<sup>9</sup> This, in turn, has resulted in one-sided and sometimes contradictory Swedish administration and policies.<sup>10</sup> A concept that applies to Swedish settler colonial disregarding of the Sami and making their rights invisible, which over time risks eliminating them, is *anopticism*, "the politics of not seeing."<sup>11</sup> Although anopticism contrasts with the

<sup>2</sup> Ostler & Shoemaker, "Settler colonialism in early American history," 2019; Konishi, "First Nations scholars, settler colonial studies, and Indigenous history," 2019.

<sup>3</sup> Wolfe, "Settler colonialism and the elimination of the Native," 2006.

<sup>4</sup> Ostler & Shoemaker, "Settler colonialism in early American history," 2019.

<sup>5</sup> Ostler, "Locating settler colonialism in early American history," 2019.

<sup>6</sup> Konishi, "First Nations scholars, settler colonial studies, and Indigenous history," 2019; Kēhaulani Kauanui, "A structure, not an event," 2016.

<sup>7</sup> Wildcat, "Fearing social and cultural death," 2015, pp. 394–395; Miles, "Beyond a boundary," 2019, pp. 417–426; Spears, "Beyond the native/settler divide in early California," 2019, pp. 427–434.

<sup>8</sup> Kuokkanen, "The Deatnu Agreement," 2020, p. 511

<sup>9</sup> Lundmark, "*Lappen är ombytlig, ostadig och obekväm*" 2002; Nordin, *Relationer i ett samiskt samhälle*, 2002.

<sup>10</sup> Lantto, *Lappväsendet*, 2012; Mörkenstam, *Om "Lapparnes privilegier"*, 1999.

<sup>11</sup> Dale, "Anopticism," 2019; Broberg & Rönnbäck, "Aednan och Bolaget," 2020.

control and surveillance of the Foucauldian concept of *panopticon*, both aspects are evident in later Swedish policies against the Sami.

It may not always be entirely relevant to describe Swedish and Sami relations as colonial and settler colonial. Therefore, I identify three eras, guided by the intensity of Swedish colonial projects in Sápmi. These eras also determine how this article is structured: *Early mining and settler colonisation* from the mid-1600s (Section 2); *Industrialisation* from the early 1800s (Section 3); and *Re-industrialisation* from the 2010s and onwards (Section 4). Lastly, a discussion (Section 5) concludes the article.

## Early Mining and Settler Colonisation

When silver ore was discovered in the alpine areas at Nasafjäll in the 1630s, Swedish authorities constructed a narrative of Norrland as a colony with a pinch of “a promised land” sentiment, such as when the nobleman Carl Bonde in 1635 wrote to Chancellor of the Exchequer, Axel Oxenstierna, expressing a hope that Norrland “will be the Swedes’ West India.”<sup>12</sup> Some decades later, in the 1660s, new silver ore deposits in the alpine areas motivated a Swedish settler policy aimed at inhabiting and colonizing the north-western parts of the kingdom. In the Lappmark Proclamation of 1673, Swedish and Finnish settlers were offered land with tax privileges for up to 30 years and lifelong freedom from military service.<sup>13</sup> Subsequent Lappmark regulations of 1695 and 1749 clarified the different duties and rights of settlers. This can be perceived as the settler colonial shift from earlier fiscal and trade colonialism, when settlers became the infrastructure for Swedish resource extraction.

Settlements were encouraged by the Crown and established by settlers, who in their role as farmstead settlers (Swe. *nybyggare*), were offered reduced taxes on farms, and later, in their role as workers, enabled natural resource extraction contributing to a colonial power in a distant metropolis in the capital city. Although the settlements eventually led to an “elimination of the native,”<sup>14</sup> research has shown<sup>15</sup> that the Sami, like the North American First Nations, did not surrender their lands “easily, quickly, or entirely.”<sup>16</sup> Initially, Sami customs influenced the judicial culture, which can be exemplified by the district courts in the northern parts of Sweden. The district courts’ jurisdictional areas were established in the north during the first part of the 1600s, and in certain localities in the more northern parts (today’s Västerbotten and Norrbotten counties), a majority of the courts’ jurors were Sami until the end of the eighteenth century.<sup>17</sup> Other research has traced court decisions diverting from Sami

<sup>12</sup> Cited in Sörlin, *Framtidslandet*, 1988, p. 30.

<sup>13</sup> Arell, *Kolonisationen av lappmarken*, 1979, pp. 13–14.

<sup>14</sup> Wolfe, “Settler colonialism and the elimination of the Native,” 2006.

<sup>15</sup> See Korpjaakko-Labba, *Om samernas rättsliga ställning i Sverige-Finland*, 1994; Lantto, *Tiden börjar på nytt*, 2000; Lundmark, *Samernas skatteland i Norr- och Västerbotten under 300 år*, 2006; Päiviö, *Från skattemannarätt till nyttjanderätt*, 2011; Norstedt, *A Land of One’s Own*, 2018; Larsson & Päiviö Sjaunja, *Self-Governance and Sami Communities*, 2022.

<sup>16</sup> Ostler & Shoemaker, “Settler colonialism in early American history,” 2019, p. 364.

<sup>17</sup> Lundmark, *Samernas skatteland i Norr- och Västerbotten under 300 år*, 2006, pp. 26, 106.

customs in the most northern court sessions as early as the mid-1700s<sup>18</sup> and, in the Forest Sami area of Pite Lappmark, in the 1780s.<sup>19</sup>

Among other intentions, the settlements were supposed to function as an infrastructure facilitating the transportation of ore from mines in the alpine areas of the Pite and Lule lappmarks, since reindeer-herding Sami had initially been forced to transport overly heavy ore loads on their reindeer-drawn sleds from the mines down to the coast and return with provisions. Many Sami refused to partake in forced labour that devastated their reindeer husbandry. Instead, they stayed on the Norwegian side, which left some Sami areas on the Swedish side completely abandoned.<sup>20</sup> Further north, in Torne Lappmark, copper and iron ore mines and mills were established, and it seems that, as constraining the Sami was prohibited under local rules, they had to be contracted. Research on the Sjangeli copper mine mentions negotiations in 1699, on what seems to have been equal terms, between the mining company and Sami leaders, in which the Sami accepted the compensation offered for the transports.<sup>21</sup>

The settlement policy was based on the idea that the settlers and the Sami could co-exist—the so-called parallel theory<sup>22</sup> which anopticized the full diversity of Sami subsistence—but it soon failed; making a living solely out of farming in the harsh Nordic climate was challenging. While it has been described in research that settlers soon encroached on Sami livelihoods such as hunting and fishing, this may not hold for the entire Sami area, as some parts of northernmost Lapland were early on also inhabited and used by Tornedalians.<sup>23</sup> Research has also brought forward the notion that in the early days of colonisation, the Sami welcomed settlers and offered them suitable places to set up a station on a migration route and become part of the community.<sup>24</sup> However, other narratives, from another geographical location, speak of Sami people fearing to have settlers in their vicinity, and that some of them resorted to violence.<sup>25</sup>

From a historical perspective, cooperation is often harder to trace in the source material, which often consists of court records dealing with various conflicts. Settlers' supplementary rights to fish and hunt became more restricted in the Lappmark Regulation of 1749, and the obligation to cultivate the land was underlined.<sup>26</sup> In court records from the seventeenth century, we can follow litigations between different Sami actors, but increasingly also between Sami and settlers who had come into conflict with each other.<sup>27</sup> The farming settlements were often established on Sami taxation lands. These lands can be described as a property rights category that has been

<sup>18</sup> Päiviö, *Från skattemannarätt till nyttjanderätt*, 2011, pp. 140–154.

<sup>19</sup> Bylund, *Koloniseringen av Pite Lappmark t.o.m. 1867*, 1956, pp. 235ff.

<sup>20</sup> Sköld, *Samisk bosättning i Gällivare 1550–1750*, 1992, p. 40.

<sup>21</sup> Awebro, *Tre gruvfält i norr*, 1989, pp. 58, 73.

<sup>22</sup> Arell, *Kolonisationen av lappmarken*, 1979, p. 8.

<sup>23</sup> Claims for a more nuanced history writing have been forwarded by the recent Truth and Reconciliation Commission for Tornedalians, Kvens and Lantalaists, SOU 2023:68; The political aspects and background of history writing by groups in the north have been noted by Wallerström, *Vilka var först?*, 2006, and Hagström Yamamoto, *I gränslandet mellan svenskt och samiskt*, 2010, pp. 83–115, 116–135.

<sup>24</sup> See Beach, *Reindeer-Herd Management in Transition*, 1983, pp. 280–281.

<sup>25</sup> See Pettersson, *Kristoffer Sjölssons minnen*, 1979, p. 276.

<sup>26</sup> Olofsson, “Övre Norrlands historia under frihetstiden,” 1974, p. 526.

<sup>27</sup> Granqvist, *Samerna, staten och rätten i Torne lappmark under 1600-talet*, 2004; Ejemar, “Encountering Diversity Before and Beyond the District Courts. The Saami's Situation in North-Western Jämtland 1649–1700,” 2023; see also Larsson & Päiviö Sjaunja, *Self-Governance and Sami Communities*, 2022, pp. 49–69.

regarded as equivalent to the rights of homesteaders and settlers—rights that eventually transformed into modern ownership rights.<sup>28</sup>

The mid-1700s are referred to as a kind of golden age for the Sami due to the thriving in reindeer nomadism and trade, Sami positions in the district courts, and the fact that Sami rights to transboundary herding, fishing, hunting and trade were recognised in the border treaty with Denmark-Norway.<sup>29</sup> Research also argues that the Crown used the strong Sami rights to secure its territory, but directed that the Sami had to choose citizenship and that they could only own land in one country. This resulted in a more collective land use in the northernmost parts of Swedish Sápmi.<sup>30</sup> Thus, while the states respected the Sami and their rights in international treaties, they actually enforced “a Western concept of land ownership that effectively excluded all Sami who had a nomadic lifestyle.”<sup>31</sup> At the end of the eighteenth century, some Sami communities had experienced severe climate impacts, epizootic diseases and predators that diminished their herds. Many Sami had to move and abandon reindeer nomadism, and the Sami population decreased in these areas.<sup>32</sup> The County Administrative Board considered the taxation lands to be Crown lands and gradually removed such land issues from the jurisdiction of the district courts.<sup>33</sup> This can be seen as a reaction to the new deal by King Gustaf III, who had granted self-owning peasants in Sweden stronger rights to their lands. In the new system, settler colonial replacing of Indigenous rights to land appears, as the Sami taxation lands were redefined as crown-owned reindeer pastures. However, according to Lundmark, practices were different in the different counties.<sup>34</sup>

During the first era, settler colonial ideas were visible in the solutions proposed by decision-makers and authorities in order to be able to extract resources, namely, to populate the area with settlers. Initially, settlers were obliged not to encroach on Sami livelihoods. These, however, were so narrowly defined—or anopticized—that the consequences for the diversity of Sami subsistence could not be foreseen as immigration and colonisation increased at the end of the period. The prominent idea was the parallel theory, which was based on anopticism of Sami livelihoods and underpinned the gradual replacement of Sami livelihoods through settlers’ farming, and a transformation but not a complete elimination of Sami property rights.

## Industrialisation

The industrial revolution and the dawning of the liberal era in politics and public administration was marked by the replacement of the old Diet of the four estates with a bicameral national assembly, which was introduced in 1866.<sup>35</sup> Sawmills had already been established along the Swedish Bothnian coast when the steam engine

<sup>28</sup> Päiviö, *Från skattemannarätt till nyttjanderätt*, 2011; Korpiaakko-Labba, *Om samernas rättsliga ställning i Sverige-Finland*, 1994; Lundmark, *Samernas skatteland i Norr- och Västerbotten under 300 år*, 2006.

<sup>29</sup> Kvist, *Rennomadismens dilemma*, 1989; Lundmark, *Samernas skatteland i Norr- och Västerbotten under 300 år*, 2006.

<sup>30</sup> Päiviö, *Från skattemannarätt till nyttjanderätt*, 2011, p. 195.

<sup>31</sup> Lantto, “Borders, citizenship and change,” 2010.

<sup>32</sup> Kvist, *Rennomadismens dilemma*, 1992.

<sup>33</sup> Lundmark, “Formlös förvaltning och flyktiga rättigheter,” 2008, p. 112.

<sup>34</sup> Lundmark, “Formlös förvaltning och flyktiga rättigheter,” 2008, p. 114.

<sup>35</sup> Lundmark, “Formlös förvaltning och flyktiga rättigheter,” 2008, pp. 132–133.

was introduced and log driving developed in the rivers.<sup>36</sup> With these processes, the forest became an asset that spurred the conclusion of the land partition process in the northern parts of Sweden.<sup>37</sup> In Jämtland, the farmstead owners gained large forest areas at the expense of reindeer herding and the Sami-taxed mountains, marking a settler colonial elimination and anopticism towards the Sami.<sup>38</sup> In 1841, a royal decree paused the process until the situation of the Sami had been dealt with. When the reindeer-herding Sami in the north-western parts of Jämtland gained influence in the process, they negotiated to secure areas for their livelihoods.<sup>39</sup>

As this process moved northwards, the new view of the forests' value eventuated a different approach to Sami land by the state.<sup>40</sup> Instead of acting against the criticism of forest devastation and the expansion of sawmill operations, the Parliament targeted the system of new farm settlements (Swe. *nybyggesväsendet*), which was perceived as being more a matter of forest felling than of cultivating land.<sup>41</sup> Seemingly anti-settler colonial, the decision-makers took several precautionary measures, including introducing a cultivation border above which further settlements were prohibited. Furthermore, the farmsteads' forest units were to be partly divided into forest commons to prevent settlers from selling their entire forests to logging companies, and large forest areas as well as the most important waterfalls were to be reserved for the Crown's management.<sup>42</sup>

However, the land partition process excluded those Sami who had taxation lands. Lundmark points to a reverse historiography when it comes to the proposals for the first Reindeer Grazing Act and their assumptions about Sami reindeer herding in different parts of the country.<sup>43</sup> Decision-makers deemed that the reindeer grazing lands had been recently established and successively become more numerous, thus replacing many hundred years of Sami land-use history. In actual fact, the taxation lands had become fewer, and had existed for at least 250 years before the government inquiry. In 1886, the Reindeer Grazing Act further replaced Sami rights into a usufruct right for reindeer herders, collectively as herding communities (Swe. *lappbyar*), to utilise Crown lands and private lands for grazing reindeer, living, fishing, hunting, and harvesting firewood and building materials. This was a new system for the Southern Sami, while in the northernmost parts, herding had developed into a more collective activity in the nineteenth century. The legislation was modelled on the northern herding system, imposing a one-size-fits-all system on diverse geographies and communities, ranging from nomadic Mountain Sami to semi-sedentary Forest Sami.<sup>44</sup>

<sup>36</sup> Törnlund & Östlund, "Floating timber in Northern Sweden," 2002.

<sup>37</sup> Lundmark, "Formlös förvaltning och flyktiga rättigheter," 2008, pp. 132–139.

<sup>38</sup> Rumar, "Avradslanden, skattefjällen och avvitrningen i Jämtlands län," 2008, pp. 178–187.

<sup>39</sup> Kilander, *När tiden byttes ut*, 2021, pp. 86–87.

<sup>40</sup> Lundmark, "Formlös förvaltning och flyktiga rättigheter," 2008, p. 133.

<sup>41</sup> Bergström, *Kolonisation på kronoparkerna i Norrbottens 1894–1950*, 1979, pp. 10–11.

<sup>42</sup> Stenman, *Avvittringen i Västerbottens läns lappmarker*, 1983.

<sup>43</sup> Lundmark, "Formlös förvaltning och flyktiga rättigheter," 2008, p. 117.

<sup>44</sup> Lantto & Mörkenstam, "Sami rights and Sami challenges," 2008; Nordin, *Relationer i ett samiskt samhälle*, 2002.

### *Agriculture and Industries*

Sawmills, mines, and hydropower required labour migration to these industries, and people moving from the lands that were to be logged, excavated, and dammed. Nevertheless, policies protected agriculture, which was often characterised by sedentariness. This parallel replacement process of agrarian and industrial settler colonialism played an important part in providing forestry and industry with labour in the resource periphery, an infrastructure of the evolving industrialization. The downsides of this process were articulated in the so-called Norrland issue (Swe. *Norrlandsfrågan*), a parliamentary debate on questions concerning the ownership of land in Norrland, especially following the different phases of the land partition. Forest companies had increasingly purchased areas in Norrland, and to counteract the passage of property from peasants to companies, the state launched the Norrland Committee in 1901, followed by a prohibition act in 1906 against certain acquisitions by companies.<sup>45</sup> In the debates on the so-called “reign of companies” (Swe. *bolagsväldet*), Sami rights to land were not discussed, but merely the possibility for Sami who had left herding to live on lands that were utilised as reindeer pastures.<sup>46</sup> Various Sami livelihoods were replaced and limited to herding.

Although the cultivation border had been drawn during the land partition process with a view to protecting and replacing reindeer grazing lands by turning them into Crown lands, new settlements as well as industrial sites continued to be illegally established west of the border. Norrland was described as a “Promised Land,” in competition with North America. With mines like the one in Kiruna, which demanded other industrial enterprises such as railroads, an industrial revolution was emerging in the north.<sup>47</sup> In 1899, the state tasked the Waterfall Committee with investigating important waterfalls owned entirely or partly by the Crown. The investigation concluded that the state was the owner of 271 waterfalls of “major importance.” Thus, hydropower had the greatest potential in the northern parts of the country where the state could claim ownership of watercourses to the greatest extent.<sup>48</sup>

A large proportion of these watercourses were located within Sami reindeer grazing lands. In the counties of Norrbotten and Västerbotten alone, there were 158 such watercourses, and several others in these counties were not included as their geographical location made them less accessible and because of the lack of industries in the immediate area. The future hydropower resources were located in Norrland, as outlined in 1908 in a book titled *Lappland. Det stora svenska framtidslandet* [‘Lappland. The great Swedish land of the future’].<sup>49</sup> A proposal for a permanent waterfall commission resulting from government enquiries into a modern water legislation eventually resulted in the establishment of the Royal Hydropower Board, Vattenfall, in 1909.<sup>50</sup>

<sup>45</sup> Sörlin, *Framtidslandet*, 1988, pp. 186–188.

<sup>46</sup> Norrlandskommittén, *Underdåniga utlåtanden i anledning av den s.k. Norrlandskommitténs den 27 oktober 1904 afgifna betänkande*, 1905, pp. 116, 219–220.

<sup>47</sup> Hansson, *Porjus*, 1994.

<sup>48</sup> Vattenfallskommittén, *Betänkande afgivet den 17 mars 1903 af den för utredning beträffande vissa staten tillhöriga vattenfall af Kungl. Maj:t den 9 juni 1899 tillsatta kommitté*, 1903, p. 2.

<sup>49</sup> Bergqvist & Svenonius, *Lappland*, 1908.

<sup>50</sup> Lantto & Össbo, “Det åsidosatta folket,” 2011.

One of the first duties of the Vattenfall board was to investigate the possibilities for hydropower expansion in either the Torne or the Lule River for the electrification of the railroad between Luleå and Narvik on the Norwegian side. The choice finally fell on Porjus in the Great Lule River due to the benefits from an agrarian perspective, that is, the area's perceived character of wilderness, and the fact that the Torne River runs along the border with Finland. The most important aspect, however, was the prospects of utilizing the heights of fall, both upstream and downstream in the Lule River water system.<sup>51</sup> Reducing the dependency on imported coal was important for the Swedish state, not least in the face of war. Bårjås, or Bajasberg, was a Sami farmstead settlement with eight inhabitants in 1908. In just a couple of years, the settlement had been transformed into one of Sweden's largest workplaces at the time and a settler colonial company town. The power station was operational in 1915.<sup>52</sup>

With a view to curbing the emigration overseas by potential workers, the government appointed the Colonization Committee in 1916. The committee worked for several years and put forward various proposals for further colonization of the interior of northern Sweden, excluding the area above the cultivation border.<sup>53</sup> In the committee report, Sami lands were dealt with on one single page, in line with settler colonial replacement, and treated as pasture lands guarded by the cultivation border. Simultaneously, a one-man government inquiry investigated the historical evolution and legal position of the Sami taxation lands.<sup>54</sup> If the customary right to Sami taxation lands remained in place, this would clearly cause problems for the new colonization, for the land partition process that was in its final phase, and for the legal framework of the industrial establishments from the late nineteenth century.

### *Decolonial Voices from Sami Actors*

To the above account of the various parts of the industrialisation process must be added the government's concern for reindeer husbandry, and its discourse on the Sami as "dying natives"<sup>55</sup> must be added, even though the Sami political mobilization that arose in the late 1800s and early 1900s points to vibrant and advanced Sami communities. We find several Sami actors pushing back at notions of a monoculture. Among these was midwife Elsa Laula Renberg (1877–1931), who, together with others, established the first nationwide Sami organisation, and in 1917, the Sami Women's Association, of which she was a member, initiated the first cross-border Sami meeting in Trondheim/Tråante. In 1904, Laula wrote a pamphlet, *Inför Lif eller Död? Sanningsord i de lappska förhållandena* ['Facing life or death? Words of truth about the Lappish conditions']. The pamphlet was a reaction against the Reindeer Grazing Acts of 1886 and 1898. In an argument for Sami self-determination, Laula asserts that the Sami ought to have lands of their own and suggests that they should be allowed to use the lands above the cultivation border for whatever purpose they wanted.<sup>56</sup>

<sup>51</sup> Össbo, *Nya vatten, dunkla speglingar*, 2014, p. 75; Lantto & Össbo, "Det åsidosatta folket," 2011, p. 330.

<sup>52</sup> Össbo, "Hydropower company sites," 2023b, pp. 120–121.

<sup>53</sup> SOU 1922:22.

<sup>54</sup> SOU 1922:10.

<sup>55</sup> See Konishi, "First Nations scholars, settler colonial studies, and Indigenous history," 2019, p. 301.

<sup>56</sup> Laula, *Inför lif eller död?* 1904.

Local government clerk Torkel Tomasson's (1881–1940) long-standing publication of *Samefolkets egen tidning* ['The Sami people's own journal'] (first pilot issue in 1904, regularly issued since 1918) is another example of Sami agency. Preacher and priest Gustaf Park (1886–1968) was also part of the early Sami political movement and took over the editing of the journal. In 1950, Park was elected the first chairman of Sámiid Riikkasearvi (The National Association of the Sami People in Sweden, SSR).<sup>57</sup> Teacher Karin Stenberg (1884–1969) stated in her 1920 diatribe on Swedish colonial politics and historiography *Dat lāh mijen situd – Det är vår vilja! En vädjan till svenska nationen från Samefolket* ['This is our will! An appeal to the Swedish nation from the Sami people'] that the Sami have a right to Sami land and their taxation lands under the legal principle of "prescription by time immemorial." The appeal also focused on education and the discriminating nomadic school system.<sup>58</sup> She wrote the book together with Valdemar Lindholm (1880–1947), a Swedish author who engaged in and supported the Sami political movement. Lindholm's writings evince a kind of settler colonial awareness and he criticised and dismissed racial biology as unscientific,<sup>59</sup> which was uncommon in the 1920s. While other authors from the northern parts of Sweden were praised as the "Norrländ Authors," Lindholm's work was dismissed by literary critics as "Lapp romanticism."<sup>60</sup>

### *Anopticism in Culture and Politics*

Several important frameworks for the expansion of industrialisation were developed at the beginning of the twentieth century. When studying these investigations, legislations, and proposals, anoptical strategies in the Sami politics which also characterize culture become apparent. The "Norrländ authors" like Olof Högberg, Ludvig Nordström, and Martin Koch dealt with Norrländ's colonial history, but without mentioning the Sami. Koch refers to the Sami as displaced,<sup>61</sup> but continues: "How such a virgin land becomes exploited and destroyed by greedy fortune seekers, how the natives [Swe. *infödingarna*] are enslaved under the obedience of strangers."<sup>62</sup> In his writing, Koch projected the Indigenous identity onto the settlers<sup>63</sup>: they were the natives, and the logging companies were the strangers that enslaved them. Another feature common in settler colonial states is that settlers gradually make themselves native to the land they have settled in. This is referred to in research as settler self-indigenization<sup>64</sup> and occurs when non-Indigenous persons claim an Indigenous identity, which eventually undermines and devalues Indigenous peoples' rights. Describing Norrländ as a Swedish colony whilst omitting Sami history and experience of colonialism exemplifies settler self-indigenization.

In politics, the Water Act was based on the knowledge of where future hydro-power production would be located. Nevertheless, the Act only deals with three local industries of enough importance to be considered: agriculture, forestry (including

<sup>57</sup> Lantto & Mörkenstam, "Sami rights and Sami challenges," 2008, p. 35.

<sup>58</sup> Stenberg & Lindholm, *Dat lāh mijen situd!* 1920.

<sup>59</sup> Lindholm, *Vildmarkens besegrare*, 1925.

<sup>60</sup> Össbo, "Hans själ är nomadens," 2020b.

<sup>61</sup> Koch, *Timmerdalen* del 1, 1913a, p. 8.

<sup>62</sup> Koch, *Timmerdalen* del 2, 1913b, p. 87.

<sup>63</sup> Veracini, *Settler Colonialism*, 2010, pp. 46–48.

<sup>64</sup> Leroux, *Distorted Descent*, 2019; Junka-Aikio, "Can the Sámi speak now?" 2016.

log-driving) and fishing. Reindeer herding and Sami presence were anoptitized. Even in the 1960s, when there were strong opinions against hydropower, and Sami organisations mobilised to include reindeer herding in the Water Act, this continued to be ignored by decision-makers and authorities.<sup>65</sup> It was not until the 1970s and the work with national planning and a revised Reindeer Husbandry Act, that representatives of reindeer herding finally became involved. However, it was at best as a business interest among others in a group of so-called national interests.<sup>66</sup> This can be seen as contributing to the lack of procedural justice concerning the other values of the Sami landscape, not to mention the complete anoptitization of Sami culture as a national interest.

### *Decommissioning Policy*

Just a few decades into the post-war period, the projection of the future onto Norrland slowed down.<sup>67</sup> In some debates, this period and these politics are referred to as “the decommissioning policy” towards the northern parts of Sweden, the former “Land of the Future.”<sup>68</sup> However, the state has pursued a regional policy with a focus on Norrland through several measures since the 1940s. The question is whether these measures were right or had the intended effect.

The contradictions between the physiocratic ideals of subsistence and the practice in the development programmes that followed the second Norrland Committee in the 1940s led to measures that emphasized modernization and industrialization. However, the holistic perspective on the policy areas was not optimal: an agricultural policy decision aimed at achieving income equality between the agricultural population and other population groups through the introduction of “income goals” resulted in the need to phase out farm units of less than 10 hectares. In Norrland, 85 per cent of all farm units were smaller than 10 hectares, which resulted in a rapid downturn in agriculture and increased labour migration from the northern to the southern parts of the country. In Norrland, the combination of agriculture and forestry was important, and therefore the increased mechanization of forestry and the companies’ policy concerning full-time employees had a further impact on combined livelihoods,<sup>69</sup> as well as on those reindeer herders who occasionally worked in forestry. In the modernised Reindeer Husbandry Act of 1971, the former *lappbyar* became reindeer herding Sami communities (RHSCs) modelled on economic associations, and, for a few years, severance pay was initially given to small-scale reindeer herders who left the occupation.<sup>70</sup> Leaving herding eliminated the possibility to utilise Sami rights as defined in the Act. This constitutes a settler colonial replacement, as the state decreased the number of individuals that could utilise their Sami rights.

According to economic history research, the Norrland elite’s adherence to the ideas that Norrland should be compensated for natural resource extraction through public investments led to the rejection of alternative development strategies in favour of “a policy that aimed either at creating a physiocratic agricultural and forestry so-

<sup>65</sup> Össbo, *Nya vatten, dunkla speglingar*, 2014, pp. 191, 194.

<sup>66</sup> Lundmark & Stjernström, “Environmental protection,” 2009.

<sup>67</sup> Sörlin, *Framtidslandet*, 1988, pp. 254–261.

<sup>68</sup> Tidholm, *Norrland*, 2014; Össbo, “Hydropower company sites,” 2023b, p. 117.

<sup>69</sup> Eriksson, *Synen på befolkning och försörjning i Norrland 1940–1970*, 2010, p. 22.

<sup>70</sup> Össbo, *Nya vatten, dunkla speglingar*, 2014, p. 160.

ciety or a region dominated by public activities.”<sup>71</sup> While the rest of Sweden reaped the benefits of industrialism, the heyday of hydropower expansion was over in the sparsely populated areas in the north; rationalization and centralization were promoted as the solution for agriculture, forestry, and reindeer husbandry, which led to fewer and fewer people finding their livelihoods in the former primary industries. The impacts of hydropower expansion on reindeer husbandry included, among other things, fragmented and lost grazing areas, poorer grazing quality, and disrupted and destroyed reindeer migration routes. Sami society at large was also affected, with land losses that eventually circumscribed the rights of Sami outside reindeer herding and changed divisions of labour within the households.<sup>72</sup> The supplementary income from fishing was often lost, while other income from seasonal work for the hydropower company became more common, even though its facilities were detrimental to reindeer husbandry.<sup>73</sup> Overall, reindeer herding became mechanized and more dependent on modern equipment such as larger boats, boat engines, trucks, snowmobiles and motorcycles.<sup>74</sup>

The “Norrländ debate” encompassed the refusal of economic rationality and demands for a mobile work force forwarded by businesspeople and politicians, while Norrlanders refused to migrate.<sup>75</sup> Evident in this debate is also the dimension that Norrland ought to get some return from the extraction of natural resources in the area and a certain degree of independence, given the continuity of excavating resources, and thus the elimination of Sami rights. However, these opinions did not develop into claims that Norrland should be a state in its own right.<sup>76</sup> In the war and post-war political debates on Norrland, the ideas displayed the same characteristics as those in the discussions in the early 1900s, when the region was presented in physiocratic terms as an agriculturally-oriented “Land of the Future” ever since the colonisation period.<sup>77</sup> However, the Sami and their livelihoods were anoptimized in the more general Norrland debate.

## Re-Industrialization

Since the 2010s, increased climate mitigations have spurred economy and technology towards a vision of a green transition re-industrialization. The so-called greening of energy and steel production, as well as mining, are defined as being of decisive importance, and the focus is directed towards the sparsely populated northern parts of Sweden, especially after the city of Skellefteå won a bid to house a factory for the production of batteries for electric cars in 2017. Shortly afterwards, the state-owned mining company LKAB presented an investment in fossil-free steel production in Gällivare, and another company with the same focus was established in Boden.<sup>78</sup> The argument for these locations was the proximity to renewable energy production, i.e.,

<sup>71</sup> Eriksson, *Synen på befolkning och försörjning i Norrland 1940–1970*, 2010, pp. 44–45.

<sup>72</sup> Össbo, *Nya vatten, dunkla speglingar* 2014, pp. 248–251; Amft, *Sápmi i förändringens tid*, 2000, p. 44.

<sup>73</sup> Amft, *Sápmi i förändringens tid*, 2000, p. 45; Beach, *Reindeer-Herd Management in Transition*, 1983, p. 294.

<sup>74</sup> Amft, *Sápmi i förändringens tid*, 2000, pp. 44–45.

<sup>75</sup> Eriksson, *(Re)producing a periphery*, 2011, pp. 35–36.

<sup>76</sup> Össbo, “Hydropower company sites,” 2023b.

<sup>77</sup> Eriksson, *Synen på befolkning och försörjning i Norrland 1940–1970*, 2010, pp. 16–20.

<sup>78</sup> De Leeuw, “Scrutinising the commodity hype in imaginaries of the Swedish green steel transition,” 2024; Coates & Holroyd, “Northern Sweden and economic development,” 2021.

hydropower and wind power. Since then, interest in the Norrland region has once again grown enormously in Sweden.

Surprisingly, in today's transition, Sami experiences of previous processes of industrialisation are made invisible and left unconsidered. Co-existence, an offspring of the old parallel theory, between new extractive projects and reindeer husbandry is often referred to as feasible.<sup>79</sup> Although Sweden is taking steps towards recognizing Indigenous rights thanks to the hard work of Sami organisations over decades, the Sami—now recognised as an Indigenous people—are still excluded from decisive processes, and, at best, merely consulted in deliberation processes and requests for comments on government bills.<sup>80</sup> Sparsely populated municipalities suffering from decades of depopulation previously grasped the straw offered by mining or other extractive industries in hopes of in-migration. However, these communities now risk becoming the target of fly-in/fly-out businesses, while still having to offer a fair number of public services. Kiruna municipality is an example, a sacrifice zone due to over a hundred years of mining, yet a resource periphery in constant making.<sup>81</sup> The mining operations beneath the city, conducted by LKAB, are forcing the city to move to nearby safer grounds. Branded as “urban transformation,” this involves the resettlement of thousands of Kiruna residents from 2012 and onwards.<sup>82</sup> As a miner has a higher salary than a teacher or a homecare assistant, the Kiruna and Pajala municipalities are increasingly losing employees to the mines, which creates further challenges to public and social services due to a lack of educated and experienced personnel.<sup>83</sup> When Sweden held the chairmanship of the EU, the LKAB company announced the discovery of a deposit of rare earth metals which they argued could become vital for Europe's independence from Russia and China. The deposit is located on Gabna RHSC's traditional land, which is already heavily impacted by existing mining operations, but the community was not informed prior to the press release. By labelling the discovery as good news “not only for LKAB, the region and the Swedish people, but also for Europe and the climate,”<sup>84</sup> while completely ignoring the RHSC and leaving out the land the company operates on, the company blatantly anopticized the Sami.

## Discussion

If we consider “elimination of the native” politics in the Swedish context, its most common elements are ethnic categorization and the establishment of different borders, rather than necropolitics,<sup>85</sup> the physical eradication of Indigenous peoples, often referred to in connection with settler colonial states. Ethnic categorisation led to segregation policies towards reindeer-herding Sami and assimilation policies towards the Sami who engaged in other livelihoods such as farming or sedentary reindeer

<sup>79</sup> Kløcker Larsen et al., “The impacts of mining on Sámi lands,” 2022.

<sup>80</sup> Össbo, “Back to square one,” 2023a.

<sup>81</sup> Lopez, *Transforming Kiruna*, 2021; Nuttall, “Wild lands, remote edges,” 2022, p. 85.

<sup>82</sup> Lopez, *Transforming Kiruna*, 2021, p. 19.

<sup>83</sup> *Dagens Nyheter*, 20 May 2022; [www.dn.se/ekonomi/hon-lamnade-hemtjansten-for-gruvjatten-borde-ha-gjort-det-tidigare/](http://www.dn.se/ekonomi/hon-lamnade-hemtjansten-for-gruvjatten-borde-ha-gjort-det-tidigare/); accessed on 29 Nov. 2024; Sveriges television, 17 Aug. 2022; [www.svt.se/nyheter/lokalt/norrbotten/intensiv-jakt-pa-larare-i-kiruna-in-i-det-sista](http://www.svt.se/nyheter/lokalt/norrbotten/intensiv-jakt-pa-larare-i-kiruna-in-i-det-sista); accessed on 29 Nov. 2024.

<sup>84</sup> LKAB, Europe's largest deposit of rare earth metals located in Kiruna area, 12 Jan. 2023; <https://lkab.com/en/press/europes-largest-deposit-of-rare-earth-metals-is-located-in-the-kiruna-area/>; accessed on 10 Oct. 2024.

<sup>85</sup> Veracini, *Settler Colonialism*, 2010; Wolfe, “Settler colonialism and the elimination of the Native,” 2006.

herding.<sup>86</sup> The establishment of various borders have resulted in forced relocations of Sami ever since the eighteenth century.<sup>87</sup> The gradual replacements of Sami and their rights to land, prioritizing settlers farming, and making certain Sami livelihoods and groups invisible to rights claims, as in the land partition process, have paved way for continuing collisions between different groups in local communities, among Sami groups and between local communities, RHSC:s and extractive industries.

Although leisure activities, and marketing their alpine areas, nature reserves and forests as wilderness have become the strategy of sparsely populated northern municipalities, hopes of re-industrialization still remain. Both these activities and strategies have the potential to create tensions within the local communities in terms of land-use rights.<sup>88</sup> This may be best exemplified by the public debate following the affirmation of the exclusive right of a reindeer-herding Sami community to manage hunting and fishing on state-owned land in the Girjas court ruling, and by the subsequent review of the reindeer husbandry legislation.<sup>89</sup> The preconditions for a just transition and social sustainability risk being overshadowed by the need for forestry products, minerals, water/wind power and access to nature and leisure activities, both for the workforce expected to move into the northern communities as a result of the reindustrialisation, and the local population. In this future-driven discursive landscape, the settler colonial objective of gaining access to land by the state, state-owned companies and regional and local authorities, and utilizing it for whatever purpose, replacing and making invisible the Sami and their rights and connection to the land, is still very much in evidence.

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<sup>86</sup> Mörkenstam, *Om “Lapparnes privilegier”*, 1999.

<sup>87</sup> Össbo, “Från lappmarksplakat till anläggsamhällen,” 2020a; Lantto, *Lappväsendet*, 2012.

<sup>88</sup> Sandström, “Green transformation or green colonialism,” 2024.

<sup>89</sup> Johansson et al., “Cultural expertise in Sami land rights litigations,” 2023.

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LAURA DEL DUCA, ADRIANA ABRIL, RASMUS KLØCKER LARSEN, BILJANA MACURA, NEAL R. HADDAWAY & MARIA BOSTRÖM IN COLLABORATION WITH MUONIO REINDEER HERDING COMMUNITY, VILHELMINA SÖDRA REINDEER HERDING COMMUNITY & VOERNESE REINDEER HERDING COMMUNITY

# Knowledge Gaps about Mining Impacts on Sami Lands

A Call for Epistemic Justice in European Minerals Extraction

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**ABSTRACT** In the context of the EU's Critical Raw Materials Act, which prioritizes mineral extraction and imposes time limits on project approvals, there have been a surge of policy proposals that aim to expedite licenses for green industry projects. Meanwhile, the academic literature largely overlooks risks for Indigenous Sami rights and reindeer herding. In this paper, we examine if a similar knowledge gap exists in a key part of the practitioner literature informing licensing decisions for new mines, namely environmental impact assessments (EIAs). To do so, we undertake a comparative synthesis of results from i) unpublished findings from a review of selected EIAs from mining companies in Sweden, and ii) a review of Sami knowledge about impacts at two mining sites in Sweden. Findings reveal a considerable mismatch between predicted impacts in corporate EIAs and those impacts experienced by herding communities. Using an epistemic justice lens, we argue that this knowledge gap is no coincidence—instead it reflects an epistemic injustice underlying European and hence Swedish minerals policy and its ambitions to fast-track licensing and exploit Sami lands in the name of the green transition.

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**KEYWORDS** green transition, epistemic justice, Indigenous, Sami, mineral extraction, environmental impact assessments

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## Introduction

The Nordic countries are poised to play a pivotal role in aiding Europe's Green New Deal and meeting climate targets, as member states will be expected to provide increasing supplies of critical raw materials. In recent years there has been a surge of policy proposals focused on expediting licenses for green industry projects, including projects that target mineral deposits in the north of Sweden. There, as in other places in the world, minerals exist on Indigenous lands, governed by policies that demonstrate a limited understanding of the human consequences of mining projects.<sup>1</sup> The EU's Critical Raw Materials (CRM) Act 2024<sup>2</sup> epitomises these developments: it is motivated not only by climate concerns but also by geopolitical and financial interests, driven by global competition for raw materials and land for commercial activities.

The CRM Act, which prioritises mineral extraction over other concerns and imposes time limits on project permitting and consultation processes, is likely to exacerbate already significant—and arguably legitimate<sup>3</sup>—resistance from Sami and environmental groups. In Sweden, these issues have been brought to the fore as state-owned Swedish mining company Luossavaara-Kiirunavaara Aktiebolag (LKAB) announced plans<sup>4</sup> to exploit rare earth minerals near Kiruna, triggering opposition<sup>5</sup> from affected Sami reindeer herding communities.

The Sami homeland, Sápmi, hosts 13 out of 16 active metal mines in Sweden.<sup>6</sup> The region contributes, in one estimate, 98.5% of Sweden's mineral extraction value.<sup>7</sup> Existing mines in Sápmi draw extensive criticism from both environmental and Sami organizations, particularly reindeer herding communities, of the harms the mines cause to native flora and fauna, traditional land uses, and rights and culture. While empirical academic research on social and cultural impacts on Indigenous peoples remains scarce,<sup>8</sup> our own studies have shown that the actual impacts on herding communities exceed estimates provided by private industry or government actors in project proposals.<sup>9</sup>

When we initiated the research presented here, in November 2018, 585 studies existed in the published research, comprising both primary empirical and secondary scientific studies on impacts of mining in Sweden, Russia, Finland, and Norway

<sup>1</sup> Kemp & Owen, "Researching 'resource frontiers' is vital for understanding the human consequences of scaling up renewable energy technologies," 2024.

<sup>2</sup> See Regulation (EU) 2024/1252.

<sup>3</sup> See CERD = International Convention on the Elimination of All Forms of Racial Discrimination, 2020.

<sup>4</sup> LKAB, Europe's Largest Deposit of Rare Earth Elements 25 Percent Larger. Today Marks First Step in Critical Review, 2023.

<sup>5</sup> Kejerhag, "LKAB:s gruvfynd kom som en chock för samebyn" ['LKAB's mining discovery came as a shock to the Sami reindeer herding community'], 2023.

<sup>6</sup> Lawrence & Åhren, "Mining as colonisation. The need for restorative justice and restitution of traditional Sami lands," 2016. In addition to the 12 mines noted, the first mine in 10 years was opened in Sweden in 2024, see "Sveriges första nya gruva på tio år öppnas i Vindelgränsele. 'Finns guld för en miljard i området'" ['Sweden's first mine in ten years. "Gold worth a million in the area"]], 2024.

<sup>7</sup> Lawrence & Åhren, "Mining as colonisation. The need for restorative justice and restitution of traditional Sami lands," 2016.

<sup>8</sup> Haddaway et al., "Evidence of the impacts of metal mining and the effectiveness of mining mitigation measures on social-ecological systems in Arctic and boreal regions. A systematic map," 2022.

<sup>9</sup> Kløcker Larsen et al., "The impacts of mining on Sámi lands. A knowledge synthesis from three reindeer herding districts," 2022.

(nations encompassing Sápmi).<sup>10</sup> Of these studies, only nine (4%) mentioned Sami reindeer herding communities, and there were no empirical studies on impacts on the Sami people, let alone reindeer herding communities specifically. Some studies focused broadly on perceptions of residents in northern Finland; others provided interview data from Sami communities, but as part of legal or justice-related analysis rather than assessments of actual impacts, while others discussed governance or political issues about mining and Sami rights. A subsequent qualitative review that we undertook during 2021 indicated that this pattern had not changed.<sup>11</sup> In summary, whereas the research literature shows an awareness and discusses important governance issues on the topic, it contains scant empirical data about mining impacts on Sami communities.

Taking note of this knowledge gap in the academic literature, the objective of this paper is to examine if a similar gap exists in a key part of the practitioner literature typically informing licensing decisions for new mines, namely environmental impact assessments (EIAs), and discuss some of the possible reasons and implications for this. To do so, we compare results from unpublished findings from i) a review of selected EIAs from mining companies in Sweden,<sup>12</sup> and ii) a review of Sami knowledge about impacts at two mining sites in Swedish Sápmi.<sup>13</sup> We refer to the original sources for readers, who wish to read about the respective methods in detail.

Our larger argument is about a concern that policy proposals to fast-track licensing to enable the green transition are formulated with a lack of awareness of risks to the economic, social, and cultural rights of the Sami. Theoretically, whilst lacking the space for a comprehensive discussion, we situate this study in a meeting between two literatures. First, earlier work on impact assessments and Indigenous (Sami) rights is used to guide the broader framing of the paper and understand the study context and materials. Second, an epistemic justice lens is adopted to help make sense of the findings, providing for an argument that the documented knowledge gap is no coincidence. Instead, we propose, it reflects an underlying injustice in knowledge production, serving a green colonialism agenda in the European North.

Since the 1970s—ironically around the time impact assessments became standard—feminist standpoint theory highlighted that the most marginalized hold unique knowledge of societal problems and related solutions.<sup>14</sup> When epistemic justice is not achieved, the resulting epistemic *in*justice can be two-pronged, comprising both of a testimonial injustice (where knowledge is not valued as such due to the bias of the knowledge receiver) and hermeneutical injustice (where groups are kept from contributing to understanding).<sup>15</sup> Epistemic violence must be considered a form of vio-

<sup>10</sup> Haddaway et al., “Evidence of the impacts of metal mining and the effectiveness of mining mitigation measures on social-ecological systems in Arctic and boreal regions. A systematic map,” 2022.

<sup>11</sup> Kløcker Larsen et al., “The impacts of mining on Sámi lands. A knowledge synthesis from three reindeer herding districts,” 2022; see also Tolvanen et al., “Mining in the Arctic environment. A review from ecological, socioeconomic and legal perspectives,” 2019.

<sup>12</sup> Macura et al., “Mapping the predicted and potential impacts of metal mining and its mitigation measures in Arctic and boreal regions using environmental and social impact assessments. A systematic map protocol,” 2019.

<sup>13</sup> Kløcker Larsen et al., “The impacts of mining on Sámi lands. A knowledge synthesis from three reindeer herding districts,” 2022.

<sup>14</sup> Harding, *The Science Question in Feminism*, 1996.

<sup>15</sup> Fricker, *Epistemic Injustice. Power and the Ethics of Knowing*, 2007.

lence even if the intention is not violence.<sup>16</sup> Indigenous peoples' knowledge has long been considered inferior<sup>17</sup> and unscientific for not meeting some of the criteria of Western science such as universality, or even being in writing and referenced.<sup>18</sup>

## Methodology

Partly in response to the knowledge gap in the academic literature highlighted above, we conducted an empirical study, during 2019–2020, evaluating mining impacts from the perspective of affected Sami reindeer herding communities. The study followed principles of participatory action research and Indigenous research, in a collaboration between three Sami reindeer herding communities, the Sámiid Riikkasearvi (The National Association of the Sami People in Sweden, SSR) and an independent research institute.<sup>19</sup> This study identified a host of environmental, social and cultural impacts that the three communities have experienced as a result of mining on their traditional territories, such as disturbances and stress to the reindeer, substantially increased workload, constrained opportunities for Sami youth to continue traditional reindeer herding, and destruction of cultural relicts and sacred sites (see Fig. 1).

For the analysis presented in this paper, we drew on the unpublished dataset by Macura et al.<sup>20</sup> This dataset was prepared for a systematic map of predicted and potential impacts of metal mining and its mitigation measures in Arctic and boreal regions using environmental and social impact assessments (SIAs), combining Swedish and English language searches on specialist websites and Google Scholar with direct requests to relevant stakeholders for additional information.<sup>21</sup> The dataset contains a subset of EIAs for Swedish mining projects, the selection of which was based on the type of mined mineral, type of mining (underground or above ground), and location of the project, aiming for a set of mining projects as diverse as possible. We filtered the Macura et al. dataset (which included mines at different stages of operation, including post-closure and abandoned mines) which yielded 11 EIAs relevant for 11 Swedish mining projects, prepared between 2001 and 2016.

EIAs of large mining development projects in Sweden have been conducted since the 1970s. SIAs are not mandatory in Sweden, while EIAs are, as part of the statutory licensing for mining projects. Macura et al. categorized impacts predicted in the EIAs into six groups, namely impacts on:

<sup>16</sup> Dotson, "Tracking epistemic violence, tracking practices of silencing," 2011.

<sup>17</sup> Agrawal, "Dismantling the divide between indigenous and scientific knowledge," 1995.

<sup>18</sup> Sultana, "The unbearable heaviness of climate coloniality," 2022.

<sup>19</sup> Kløcker Larsen et al., "The impacts of mining on Sámi lands. A knowledge synthesis from three reindeer herding districts," 2022.

<sup>20</sup> Macura et al., "Mapping the predicted and potential impacts of metal mining and its mitigation measures in Arctic and boreal regions using environmental and social impact assessments. A systematic map protocol," 2019.

<sup>21</sup> Macura et al., "Mapping the predicted and potential impacts of metal mining and its mitigation measures in Arctic and boreal regions using environmental and social impact assessments. A systematic map protocol," 2019.

- soil;
- surface water, groundwater, ice, or marine water;
- climate or atmosphere;
- flora, fauna, or ecosystems;
- landscapes, economic impacts, service and infrastructure, culture and history, or health and wellbeing; or
- impacts spanning more than one of these categories.

To compare Sami experiences of actual impacts with the predicted impacts portrayed in the EIAs, we defined which of the 391 impacts recorded in the Swedish dataset are relevant to reindeer herding communities. We considered as “relevant” those categories of impacts identified by the three reindeer herding communities participating in our empirical study introduced above.<sup>22</sup> Other impacts were also coded as relevant through an additional detailed reading of the data, for instance when the reports explicitly referred to reindeer herding communities or activities but with unclear statements about the types of impact.

Finally, we compared the predicted impacts in the selected Swedish EIA data to the impacts collected from Sami experiences, identifying gaps and overlaps. This comparative analysis was done by matching the description of each relevant impact from the EIA dataset to impacts identified by Sami herding communities, where possible (Fig. 1, see left column). Where a recorded impact could be categorized in multiple ways, it would be counted for each applicable category. To mitigate risk of misinterpretation, an initial impact categorization conducted by the academic researchers behind this study was shared with the Sámiid Riikkasearvi for consolidation.

As with other parts of the work described above, this paper is the product of a project collaboration between three reindeer herding communities, the Sámiid Riikkasearvi, and an international research institute. The community contributions to this text have been approved for publication by the community boards. The researchers are solely responsible for the policy analysis and academic theorization.

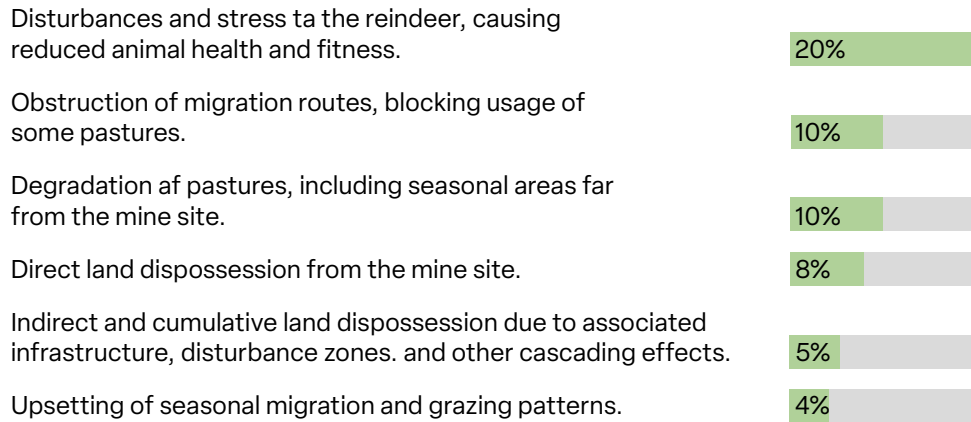
As regards study limitations, we acknowledge that the included EIAs were undertaken at different times and for different types of mining projects. They have hence also been subject to partly differing legal requirements and other expectations on the assessments, e.g., related to government policy and understanding of good practice. Moreover, we do not claim to give anything near a complete representation of impacts on Sami culture. The comparison is only with a smaller subset of reindeer herding communities and crucial parts of Sami culture and relations to land are not captured, e.g., as relevant to the Sami populations that are without membership in the herding communities.

## Results

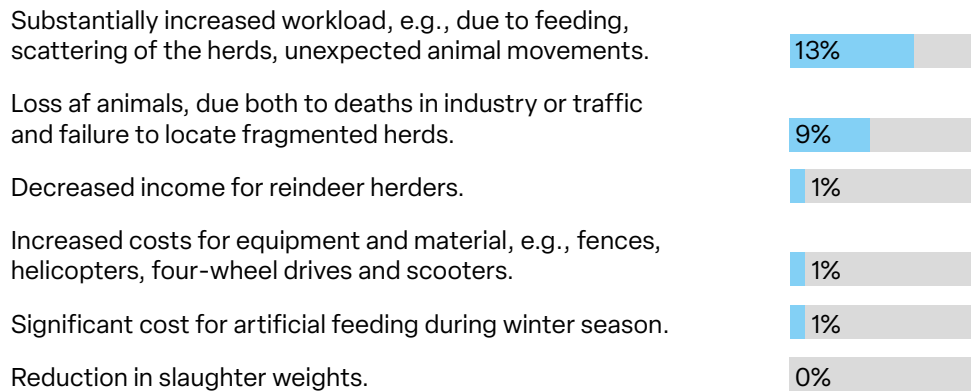
When contrasting the types of impacts predicted by the 11 corporate EIAs with those impacts that Sami herding communities actually experience, we find that Sami knowledge is poorly reflected. Out of 391 predicted impacts described in the EIAs, most

<sup>22</sup> Kløcker Larsen et al., “The impacts of mining on Sámi lands. A knowledge synthesis from three reindeer herding districts,” 2022.

### Impacts on the land and the reindeer



### Impacts on the economy



### Social and cultural impacts

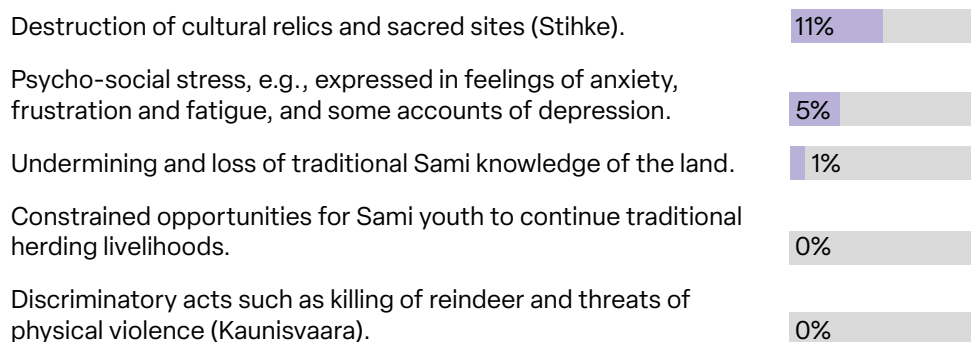


Fig. 1. Percentage of the 391 distinct predicted impacts on reindeer herding communities, as reported in 11 EIAs for mining projects in the Swedish part of Sápmi, that map categories of impact identified by Sami herding communities. Source for the summary of impacts of mining on Sami lands, right column: Kløcker Larsen et al. 2022.

(323, or 83%) were about impacts not perceived, in the EIAs, to have a consequence for Sami herding communities. The remaining predicted impacts (68, or 17%) referred to impacts on reindeer herding communities but concentrated on few distinct types of impact, with little attention to impact categories deemed critical by the herding communities themselves (Fig. 1). Over half (57%) of the impacts concerning reindeer herding described in the EIAs pertained to direct effects on land and reindeer, with considerably less attention to economic (25%) or socio-cultural impacts (18%).

Of the 17 impact categories identified as important by the three herding communities themselves, seven are mentioned only once or not at all in the 11 EIA reports (these seven categories are labelled with 0% or 1% in Fig. 1). These seven categories include economic impacts such as decreased income for reindeer herders, increased costs for equipment and material, significant cost for artificial feeding, and reduction in slaughter weights, and socio-cultural effects such as undermining and loss of traditional Sami knowledge, constrained opportunities for Sami youth to continue traditional livelihoods, and the risk of harassment or discrimination. The three impacts on reindeer herding communities identified by Sami herding communities and most commonly predicted in the EIAs refer to disturbance and stress to reindeer (representing 20% of predicted impacts), substantially increased workload (13%), and destruction of cultural relics and sacred sites (11%).

## Discussion

The above analysis shows that, just as for the academic literature, EIAs undertaken by project proponents yield little understanding of the impacts of mining experienced by Indigenous Sami herding communities. While documented, datasets of this size are rare in the literature.<sup>23</sup> What are the reasons for this gap between how Sami herding communities experience and understand mining impacts and information on impacts in the public domain, whether in academic research or EIAs from companies or consultancies?

We have elsewhere<sup>24</sup> discussed potential factors that may contribute to the lack of research into the impacts of mining on Sami lands, including the persistence of a colonial logic in the practice of science itself and risks of reviewer bias working against studies aimed to understand impacts from the perspective of affected communities.<sup>25</sup> It is also possible that researchers self-censor and, even unconsciously, avoid topics such as this, which can be perceived as controversial and carry the risk of being exposed to criticism. There are several examples where industry organizations have attempted to stifle researchers and undermine legitimacy of published research.<sup>26</sup> It is worth recalling the growing number of calls from both Sami organ-

<sup>23</sup> O'Faircheallaigh, *Indigenous Peoples and Mining. A Global Perspective*, 2023.

<sup>24</sup> Kløcker Larsen et al., "The impacts of mining on Sámi lands. A knowledge synthesis from three reindeer herding districts," 2022.

<sup>25</sup> Schipper et al., "Equity in climate scholarship. A manifesto for action," 2021; Lewis et al., "Mining and environmental health disparities in Native American communities," 2017.

<sup>26</sup> Lawrence & Raitio, "Academia and activism in Saami research. Negotiating the blurred spaces between," 2016; Gunnarsson, "Vindkraftsbolagen stoppade larmrapport om rennärigen" ["The wind power companies halted the alarm report about reindeer husbandry"], 2017.

izations and research institutions to urgently decolonize knowledge production.<sup>27</sup> More needs to be done but efforts have been made to raise awareness amongst researchers of the need to ensure Sami involvement in the planning of research as well as its execution.

As noted above, in the EIAs we studied, economic and socio-cultural impacts received considerably less attention than direct effects on land and reindeer. Arguably, this is likely to be expected in EIAs, as opposed to, e.g., SIAs, which are not mandated in Sweden. The knowledge bias, e.g., with information on biophysical and economic impacts prevailing, could support an argument for countries such as Sweden to introduce mandatory social and human rights impact assessments. Notwithstanding, our observations in this paper relate only to a mismatch in the *types* of impacts. While the dataset used in this paper did not allow for an in-depth analysis of impacts, we are acutely aware that a discrepancy typically exists in how to interpret the *extent and implications* of impacts—in part prompted by fundamental epistemic (or even ontological) divergence between communities and industry.<sup>28</sup> The limitations in impact assessments driven by project proponents is one reason why some scholars argue for a need to rethink the governance of impact assessments altogether, shifting both authority and resources towards Indigenous groups so they have greater influence, via either co-management arrangements or Indigenous-led studies.<sup>29</sup>

The decision-making on the CRM Act, introduced in the beginning of this article, testifies to the scant interest, or ability, of European policy makers and member states, such as Sweden, to protect Sami rights in the green transition. In September 2023, the European Parliament decided on amendments to the Commission's draft of the CRM Act that aim to provide stronger social and environmental safeguards. Of greatest interest to Indigenous peoples was a proposed addition, in Annex 3 and referring to article 5.1, of a reference to the United Nations Declaration on the Rights of Indigenous Peoples and, especially, the right to give or withhold free, prior and informed consent (FPIC). Mining projects in Indigenous areas that wish to qualify as "strategic," and thus merit fast-tracking and financial support from the EU, would have to demonstrate obtained consent. While the amendment to FPIC was undoubtedly a step towards the realization of Sami rights, it was insufficient, as we have argued elsewhere,<sup>30</sup> due to the assumption that member state bureaucracies would consult in good faith with the Sami. It therefore ignores the shortcomings in national legislation, which in Sweden lacks effective provisions on Sami rights in mineral laws and environmental licensing procedures.<sup>31</sup>

<sup>27</sup> Herrmann et al., *Comprehensive Policy-Brief to the EU Commission. Roadmap to Decolonial Arctic Research*, 2023.

<sup>28</sup> Roche et al., "Understanding why impact assessment fails. A case study of theory and practice from Wafi-Golpu, Papua New Guinea," 2021.

<sup>29</sup> Kløcker Larsen "Impact assessment and indigenous self-determination. A scalar framework of participation options," 2017.

<sup>30</sup> Raitio & Kløcker Larsen, "EU's Critical Raw Materials Act fails to protect Sámi rights. Here's how to strengthen it," 2023.

<sup>31</sup> Raitio et al., "Mineral extraction in Swedish Sápmi. The regulatory gap between Sami rights and Sweden's mining permitting practices," 2020.

Yet in the final triologue negotiations to finalize the CRM Act, between the European Commission, Council, and Parliament, even this general reference to FPIC was removed and replaced with formulations about “meaningful consultations,” not adding anything new to existing regulations. According to media reports,<sup>32</sup> this political agreement came about following pressure from, among others, the Swedish government.<sup>33</sup> Such processes both testify to how the EU rush for minerals is a highly contested colonial resource frontier,<sup>34</sup> and underline how decision-makers display limited awareness of potential impacts on people and the environment.<sup>35</sup>

As this paper demonstrates, our understanding of the impacts of mining on Sami communities is currently scant, and our awareness is even more limited of the risks linked to new policy proposals to fast-track licensing for new mineral extraction for the climate transition. Arguably, decision-makers who wish to speed up licensing should ensure a solid knowledge base for decision-making, focusing less on imposing time limits and more on understanding the root causes of societal resistance<sup>36</sup> to mineral extraction. When speaking of “our” lack of knowledge of mining impacts on the Sami, we refer to Western society, notably the EU and its member states, including Sweden. Sami communities are knowledgeable about mining impacts, yet—as we have observed—their voices are rarely heard in corporate EIAs. Moreover, given the legal construction of Sami rights in Swedish legislation, defining herding communities as the rights-holding subjects as concerns land use, most of the Sami population finds itself without formal opportunities to contribute their knowledge.<sup>37</sup>

This leads us to our second main argument: there is an urgent need for both policymakers and the mining industry to consider how their actions can support epistemic justice in policy and practice around mineral extraction. Around the world, epistemic justice and violence are increasingly being linked to green grabbing, defined as “the appropriation of land and resources for environmental ends,”<sup>38</sup> and to green extractivism.<sup>39</sup> Particularly in the Global South, EIAs have been used as instruments to legitimize extraction, but this has been documented in the European North as well.<sup>40</sup> What could progress on epistemic justice mean in the context of policy on mineral extraction? For one, it could mean negotiating agreements with both government and industry about new modes of decision-making procedures. This could provide conditions for a funda-

<sup>32</sup> Raitio & Kløcker Larsen, “EU’s Critical Raw Materials Act fails to protect Sámi rights. Here’s how to strengthen it,” 2023.

<sup>33</sup> Fröberg, “Här ställs kampen om samebyns framtid på sin spets” [“The battle for the future of the Sami village is coming to a head”], 2023.

<sup>34</sup> Normann, “Green colonialism in the Nordic context. Exploring Southern Saami representations of wind energy development,” 2020; Laframboise, “Brussels looks north. The European Union’s latest Arctic policy and the potential for ‘green’ colonialism,” 2022.

<sup>35</sup> Össbo, “Back to square one. Green sacrifice zones in Sápmi and Swedish policy responses to energy emergencies,” 2023; Zografos & Robbins, “Green sacrifice zones, or why a green new deal cannot ignore the cost shifts of just transitions,” 2020.

<sup>36</sup> Zachrisson & Beland Lindahl, “Political opportunity and mobilization. The evolution of a Swedish mining-sceptical movement,” 2019.

<sup>37</sup> Knoblock, “Att skriva från gränslandet. Dekoloniala berättelser från Sápmi” [“Writing from the borderlands. Decolonial stories from Sápmi”], 2021.

<sup>38</sup> Fairhead et al., “Green grabbing. A new appropriation of nature?” 2012.

<sup>39</sup> See for instance Tornel, “Energy justice in the context of green extractivism. Perpetuating ontological and epistemological violence in the Yucatan Peninsula,” 2023.

<sup>40</sup> Lassila, “An irreplaceable place. Onto-epistemological contestation in the environmental impact assessment process of the green Anglo American Sakatti mine, Arctic Finland,” 2023.

mental re-conceptualization wherein Sami rights-holders have both mandates and resources to contribute to land-use planning and licensing, guided by Sami legal customs and cultural perspectives.<sup>41</sup> In the case of impact assessments, Sami experts could then conduct or guide their own studies, rather than integrating Sami knowledge inside assessment reports written by consultants trained in Swedish legal terminology and paid and supervised by companies.

## Conclusion

European and Swedish policymaking aimed at advancing the “green transition” should no longer ignore the profound risks associated with expediting licensing for mining projects on Indigenous lands and overlooking Indigenous knowledge about mining impacts. To meet climate targets and ensure a green transition that is not only fast but also just, the scientific literature, policy discourse and impact assessments in the Nordics need to better reflect Indigenous Sami knowledge on the socio-ecological impacts of mining in Sápmi. Sami activists, but also a growing number of academic scholars, critique green transition policies, arguing that they are more correctly understood as mechanisms of green colonialism.<sup>42</sup> In this paper, we do not present evidence that directly supports such claims, nor do we adopt the notion of green colonialism as part of a theoretical lens. We show instead the existence of an epistemic injustice underlying European and hence Swedish minerals policy and its ambitions to fast-track licensing and exploit Sami lands in the name of the green transition.

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<sup>41</sup> Nilsson, Att bearkadidh. *Om samiskt självbestämmande och samisk självkonstituering* [‘Bearkadidh. On Sami self-determination and Sami self-constitution’], 2021.

<sup>42</sup> Normann, “Green colonialism in the Nordic context. Exploring Southern Saami representations of wind energy development,” 2020; Fjellheim, “Wind energy on trial in Saepmie. Epistemic controversies and strategic ignorance in Norway’s green energy transition,” 2023; Össbo, “Back to square one. Green sacrifice zones in Sápmi and Swedish policy responses to energy emergencies,” 2023; Kuokkanen, “Is reindeer the new buffalo? Climate change, the green shift and manifest destiny in Sápmi,” 2023.

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MARLENE PAYVA ALMONTE

# Interrogating International Environmental Law's Approach to Nature

## An Arctic Indigenous Model?

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**ABSTRACT** International Environmental Law (IEL) reflects a rooted misconception of nature present across the international legal system, whereby nature is presented as instrumental to satisfying human needs oriented to unlimited economic growth. Such an anthropocentric view lacks an ecological awareness that conceives and values nature in its own right, and fails to recognize humans as part of it, leading to relentless exploitation of the natural world, at the core of the climate and ecological crises. In this article, I contend that rethinking IEL in a way to interrogate its inherent conceptual premises and embrace non-Western views on and relationalities with nature is essential. The Arctic being at the forefront of climate effects that severely and disproportionately impact its ecosystems and (human and non-human) communities; and “sustainable development” projects contextualised as part of the green transition pose additional risks to the region. I argue that Indigenous knowledge from Arctic peoples can contribute to expanding IEL’s conceptual horizons and correcting inherited (mis-)understanding of nature and reimagining the human–nature relationship. Integrating, for example, the overarching principle of respect of the Skolt Sami in ordinary human–nature relationships can assist in rethinking IEL and inform a truly sustainable design, interpretation and implementation of its provisions.

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**KEYWORDS** IEL, nature, Arctic, climate change, Indigenous knowledge, sustainability, respect

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## Introduction

Like the rest of the international legal system, International Environmental Law (IEL) emerged and flourished with an inherent anthropocentric (mis)understanding of nature and the human–nature relationship. Rooted in Western thought, IEL presents

nature as an external object with the instrumental function of satisfying human needs oriented to (unlimited) economic growth. IEL, therefore, lacks an ecological awareness that conceives and values the natural world in its own right, regardless of its utilitarian function for humans, and fails to recognise human beings as *part of* the diversified unity of nature. Instead, IEL presents the human world as separate and with hierarchical authority over nature and, as such, entitled to exploit it in a managerial way. This misconception of nature reflected in IEL legitimises a harmful human–nature relationship that promotes its relentless exploitation.

Against this backdrop, in a context of human-driven climate and ecological crises with catastrophic planetary consequences, it is imperative to interrogate and rethink IEL's foundational notions of and approaches to nature that have systematically ignored non-Western knowledge in its formation. Indigenous peoples' knowledge of and relationalities with nature provide opportunities to expand IEL's conceptual horizons, rethink and correct its rooted anthropocentric (and state-centric) ethos, in such a way that it incorporates an ecological awareness upon which a harmonious and respectful human–nature relationship can be grounded. This does not imply attempting to eliminate or neglect our innate anthropocentric approach to nature in (human) law, which—I argue—would be impossible due to the inevitable human perspective from which we humans look at the natural world around us and form part of it. Therefore, an anthropocentric approach to the natural world is not problematic *per se*. The problem with IEL's anthropocentrism is the lack of an ecological awareness that recognizes the interconnectedness and interdependence of all components of nature (including humans) in a common but differentiated unity, and their inherent value, regardless of their value for humans. Such a one-sided anthropocentric view of nature in IEL is thus deprived of an ecological dimension, which is profoundly correlated with its unconcern for the impact of destructive human activity across world ecosystems. As a consequence, IEL embraces an understanding of nature where this is objectified, subjugated (to human authority)<sup>1</sup> and depleted *for* and *by* humans without considering “others” (marginalised humans, future generations, non-humans, i.e. animals, plants, ecosystems) components of nature. Correcting IEL thus implies integrating an ecological awareness into our essential and ineludible anthropocentric worldview in a way to resignify nature and the human–nature relationship. Accordingly, a receptive approach to historically neglected knowledge and (legal) traditions in Western-centered IEL production, such as Indigenous peoples' traditional knowledge, would benefit the redefinition of IEL's theoretical foundations. The context of climate and ecological crises evidences the risks of maintaining a harmful anthropocentric relationship between humans and nature.

In this article I first interrogate the IEL's anthropocentric approach to nature in order to identify its essential (mis)understandings of the relationship between human and nature. Second, I will zoom into the Arctic region to understand how IEL can support exclusionary “othering” patterns that increase vulnerability in the Arctic. Third, taking interdisciplinary insights from the field of environmental anthropology, I explore “alternative” Arctic Indigenous peoples' views on and relationalities with na-

<sup>1</sup> Anna Grear, for example, interrogates the prevailing hierarchical structures within the “anthropos” itself that are central in the Anthropocene (Grear, “Deconstructing anthropos,” 2015).

ture, giving as example the case of the Skolt Sami living in Northern Finland. Finally, I conclude that Indigenous views on and relationalities with the natural world provide opportunities to rethink nature in IEL and correct its anthropocentric approach to nature and the human–nature relationship in such a way that it embraces an ecologic awareness and becomes fit for its purpose of environmental protection.

## What Is Wrong in IEL?

Despite that the *raison d'être* of the regime is the protection of the natural world, IEL has been incepted and flourished from a Eurocentric (“Western”) view of nature. IEL presents the natural world as a mere utilitarian means to human ends and, as such, its components are deemed as “human resources.” As in the rest of the international legal system, in IEL, nature is thus presented as an object separated from the human realm without inherent value and agency, which should be managed by an external and implicitly superior human. Hence, IEL endorses an anthropocentric imagery of nature where this exists *for* humans entitled with intrinsic authority and power *over* it and to whom it serves as a “storage of raw materials.”<sup>2</sup> Such anthropocentric (mis)understanding of nature rooted in IEL promotes an uncaring, greedy and market-based relationship between humans and nature and neglects humans’ belongingness and interconnectedness to it as part of a continuum of ecosystems and ever-developing natural processes that are not necessarily known or understandable to humans (science). In the face of the existential global climate change and ecological crises, it is important that legal scholars and operators take a “critical attitude” and challenge unquestioned assumptions on nature infused across international (environmental) law.<sup>3</sup> Such a Western view of nature inherited in IEL facilitates anthropocentric human–nature relationships characterised by widespread harmful human activity oriented to capital (economic) growth that also ignores non-Western views on and relationalities with nature.

While in this article I challenge the anthropocentric approach to nature in international (environmental) law and its deleterious climate and ecological consequences for the planet, it is important to clarify here that, in my view, while anthropocentrism is part of the problem of IEL, it is not the problem in itself. It is the kind of anthropocentrism embraced in the “Western” international legal system and, thus in IEL, that—conflated with trajectories of colonisation<sup>4</sup>—is leading the Earth to collapse. Accordingly, I argue that anthropocentrism should not be condemned—or, even worse, counterproductively attempted to get rid of—but instead, evolved. This means that the existing anthropocentrism in international law should be overcome and evolved into a conscious, yet inevitable, anthropocentrism from which the world is seen and experienced as a multiplicity of material and immaterial<sup>5</sup> beings that are differentiated parts of the dynamic unity of nature and the cosmos. In this evolved cosmo-ecologically-aware version of anthropocentrism,<sup>6</sup> humans are recognised as part of nature, whose components have inherent value and as such are worthy of the

<sup>2</sup> Bookchin, *The Ecology of Freedom*, 2018, p. 20.

<sup>3</sup> Lindroth, Sinevaara-Niskanen & Tennberg, “Introduction,” 2022, p. 4.

<sup>4</sup> Kotzé, “Coloniality, neoliberalism and the Anthropocene,” 2019, p. 1–6.

<sup>5</sup> Not necessarily discernible by (human) science or passive of identification or regulation by human laws.

<sup>6</sup> One that I would call “cosmo-eco anthropocentrism,” or something alike.

same respect, care, protection as humans. An evolved anthropocentric view of nature would thus entail embracing an ecological dimension of (human and non-human) nature. Such cosmo-ecological awareness is currently absent in the anthropocentric view of nature presented in IEL. This must be corrected in order for IEL to become fit for its purpose of protecting the “environment”<sup>7</sup> and coherently contributing to halting the destructive relationship human–nature and its consequences. As I have said, changing

this path requires rethinking our relational approach vis-à-vis the natural world, which implies reconceptualising anthropocentric notions of nature inherited and expanded through colonialism and reflected in the legal system.<sup>8</sup>

However, overcoming the current anthropocentrism that “hinges on an ontological separation of people and nature, situating humans as the main actor within the natural world,”<sup>9</sup> would require a foundational shift in IEL's understanding of nature incepted from its origins. The 1972 Stockholm Declaration of the UN Conference on the Human Environment,<sup>10</sup> is usually identified as marking the outset of IEL as a branch of international law dedicated to environmental protection.<sup>11</sup> Since then, the body of IEL has steadily developed and ramified into an array of normative and technical instruments regulating different aspects of the protection of the environment, some of which are also covered by other related branches of international law.<sup>12</sup> In this process, states have played a pivotal role. The development of IEL has largely taken place in the context of multilateral negotiation processes where states, as central actors of international law and decision-makers, shape the rules and, thereby, societal understandings of human–nature interactions reflected in IEL instruments and their implementation at national levels. Such state-centrism in the creation and operationalisation of international law is thus another problem of IEL that reinforces the one-sided (“Western”) anthropocentric view of nature as separated from humans, in alignment with an international order that prioritises economic development over respect, care, conservation and protection of the (non-human) natural world.<sup>13</sup>

This state-centric approach adds onto the notion of nature as capable of being

<sup>7</sup> As (non-human) nature is referred to in most of IEL instruments.

<sup>8</sup> Payva Almonte, “Rethinking the relationship between humans and nature in law,” 2023b.

<sup>9</sup> Depelteau, “Anthropocentric and biocentric narratives in the context of neoliberalism and catastrophe narratives,” 2021, p. 21.

<sup>10</sup> Declaration of the United Nations Conference on the Human Environment. UN Conference on the Human Environment, Stockholm, 5–16 June 1972.

<sup>11</sup> The emergence of IEL was in great part a response of the international community to grievous cases of trans-boundary environmental harm and pollution. For example, the Trail Smelter Arbitration case, between United States and Canada, Decision, 11 March 1941. (*United States v. Canada*) (1938 and 1941) 3 R.I.A.A. 1905.

<sup>12</sup> For example, the Convention on Trade in Endangered Species of Wild Fauna and Flora, adopted 3 March 1973, entered into force 1 July 1975 (993 UNTS 243); and Convention on Biological Diversity, adopted 5 June 1992, entered into force 29 December 1993 (1760 UNTS 79) have given rise to IEL sub-regimes dedicated to addressing biodiversity loss and other environmental issues. Under other international law regimes, see for example, the UN Convention on the Law of the Sea, adopted 10 December 1982, entered into force 16 November 1984, 1833 UNTS 397; the UN Framework Convention on Climate Change (UNFCCC), adopted 9 May 1992, entered into force 21 March 1994, S. Treaty Doc No. 102-38, 1771 UNTS 107; and the Paris Agreement to the UN Framework Convention on Climate Change, adopted 12 December 2015, entered into force November 4, 2016, T.I.A.S. No. 16-1104.

<sup>13</sup> See Reid, “Interrogating the neoliberal biopolitics of the sustainable development–resilience nexus,” 2013; and Kotzé & Adelman, “Environmental law and the unsustainability of sustainable development,” 2023.

humanly moulded according to the anthropocentric arrangements, needs, priorities and (state) structures of a hierarchically superior humankind. Thereby, nature is compartmentalised as per sovereign states' borders and managed as per national interests grounded on a market-based system of governance that promotes nature's exploitation. In its Preamble, for example, the Stockholm Declaration explicitly proclaims that

Man is both creature and *moulder* of his environment [...] a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale.<sup>14</sup>

Here, the text reflects the over-reliance on a superior powerful human, capable of adjusting the environment at discretion, without concern for the implications for the natural world. Further, in line with the state-centric ethos of international law, Principle 21 of the Stockholm Declaration explicitly proclaims the states' "sovereign right to exploit their own resources" as long as they do not cause environmental damage to other states or areas beyond their national jurisdiction, reinforcing thereby the notion of ownership of nature by states. In doing so, from its origins in foundational instruments, IEL promotes and supports the exploitation of nature to the extent of recognising it as a "sovereign right" of states.

Such anthropocentric and correlated state-centric logic within IEL is at the core of the climate and ecological crises, where an imagery of nature as a rich repository of (inexhaustible) natural resources ready to be exploited was reaffirmed in subsequent environmental summits. For example, the 1992 UN Conference on Environment and Development issued the Rio Declaration, which proclaims in its Principle 1 that "Human beings are at the centre of concerns for sustainable development."<sup>15</sup> Certainly, the notion of "sustainable development" has been increasingly instrumental to the logic of exploitation of nature for human economic-oriented development. As Kotzé and Adelman note, IEL

has played a pivotal role in turning sustainable development into a normatively, politically, economically, and socially powerful concept, and is therefore complicit in promoting a socio-ecologically destructive understanding of sustainable development in a body of law that is supposed to be primarily concerned with ensuring planetary integrity.<sup>16</sup>

Besides, Principle 2 of the Rio Declaration reaffirms states' centrality as holders of the "sovereign right to exploit their own resources pursuant to their own environmental and developmental policies."<sup>17</sup> This IEL's notion of nature as being merely utilitarian to attain the ultimate human/states' goal of economic-oriented "development" and

<sup>14</sup> Declaration of the United Nations Conference on the Human Environment. UN Conference on the Human Environment, Stockholm, 5–16 June 1972, Preamble.

<sup>15</sup> Declaration on Environment and Development. UN Doc. A/CONF.151/26 (Vol.1), UN Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, Preamble.

<sup>16</sup> Kotzé & Adelman, "Environmental law and the unsustainability of sustainable development," 2023, p. 233.

<sup>17</sup> Declaration on Environment and Development. UN Doc. A/CONF.151/26 (Vol.1), UN Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, Principle 2.

its subsequently upgraded version, “sustainable development,” has been reinforced by subsequent development policy frameworks. The 2000 Millennium Development Goals<sup>18</sup> and, later, the 2015 Sustainable Development Goals,<sup>19</sup> have positioned the notion of (sustainable) development as a *laissez-faire* tool to achieve states’ goals of growth through natural exploitation, with the endorsement of IEL, which

plays a key role in further cementing sustainable development as its cornerstone principle, and as the guiding mantra of a neoliberal world order where growth without limits is legitimised and even encouraged.<sup>20</sup>

### *Is There Hope for Change in the IEL's Approach to Nature?*

Despite IEL's inherent anthropocentrism, characterised by, *inter alia*, a firm state-centrism, “which preserves sovereignty by shutting out alternative modes of ecological care,”<sup>21</sup> the field seems to have planted early seeds towards the development of an ecological awareness therein. For instance, the 1992 Convention on Biological Biodiversity (CBD)<sup>22</sup> recognises the “intrinsic value of biological biodiversity” in its Preamble. However, in its substantive part, it turns to show the IEL's traditional anthropocentric approach to nature. Article 2 of the CBD refers to the biological and genetic biodiversity as “resources” and explicitly assesses their worth in anthropocentric terms by saying “with actual or potential use or value for humanity,” although, in the case of “genetic resources,” it omits to specify “for humanity” at the end as the beneficiary of such “resources.”<sup>23</sup> Also, although the CBD gives a step forward by recognising in its preambular part the “close and traditional dependence of many Indigenous and local communities embodying traditional lifestyles on biological resources,”<sup>24</sup> it seemingly restrains the importance of biological resources to Indigenous peoples and local communities.

Nevertheless, more recent developments, such as the 2022 Kunming-Montreal Global Biodiversity Framework (KMGBF),<sup>25</sup> reflect that an ecological awareness might be emanating in the field of IEL. The KMGBF, for example, explicitly refers to nature as “Mother Earth” throughout its text, and recognises the “diverse value systems and concepts, including, for those countries that recognize them, rights of nature and rights of Mother Earth, as being an integral part of its successful implementation.”<sup>26</sup> Moreover, the KMGBF even goes a step further by explicitly calling for “Moth-

<sup>18</sup> UN General Assembly, “United Nations Millennium Declaration,” UN Doc. A/RES/55/2, 8 September 2000.

<sup>19</sup> UN General Assembly, “Transforming Our World: The 2030 Agenda for Sustainable Development,” UN Doc. A/RES/70/1, 25 September 2015.

<sup>20</sup> Kotzé & Adelman, “Environmental law and the unsustainability of sustainable development,” 2023, p. 233.

<sup>21</sup> Kotzé & French, “The anthropocentric ontology of International Environmental Law and the sustainable development goals,” 2018, p. 7.

<sup>22</sup> Convention on Biological Diversity, adopted 5 June 1992, entered into force 29 December 1993 (1760 UNTS 79).

<sup>23</sup> Convention on Biological Diversity, adopted 5 June 1992, entered into force 29 December 1993 (1760 UNTS 79), Article 2.

<sup>24</sup> Convention on Biological Diversity, adopted 5 June 1992, entered into force 29 December 1993 (1760 UNTS 79), Preamble.

<sup>25</sup> Kunming-Montreal Global Biodiversity Framework, UN Doc. CBD/COP/DEC/15/4, Secretariat of the Convention on Biological Diversity, 19 December 2022.

<sup>26</sup> Kunming-Montreal Global Biodiversity Framework, UN Doc. CBD/COP/DEC/15/4, Secretariat of the Convention on Biological Diversity, 19 December 2022, Section A(1).

er Earth-centric actions,” which should include Indigenous peoples and local communities.<sup>27</sup> According to the KMGBF, Mother Earth-centric actions encompasses an

[ecocentric] and rights-based approach enabling the implementation of actions towards harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings and their communities and ensuring the non-commodification of environmental functions of Mother Earth.<sup>28</sup>

Such explicit adoption of an ecocentric approach to nature and the recognition of the contribution and rights of Indigenous peoples and local communities in the KMGBF, provide room for hope that IEL can gradually become fit for its purpose of environmental protection. But the ongoing ecological and climate crises require urgent and radical actions in every field. The KMGBF has even been considered “one of the most ambitious environmental agreements of the twenty-first century.”<sup>29</sup> However, it remains to be seen whether there is an actual or merely declaratory change towards an ecocentric approach as the implementation of the KMGBF continues to unfold.

All in all, despite recent developments in the field, IEL falls short in meeting its main task of environmental protection, as the prevalent anthropocentric approach, where nature is seen as an object, or, in IEL terms, a “resource” for human (anthropocentric) exploitation, remains at its core. Changing the IEL’s approach to nature and incorporating an ecological awareness in international (environmental) law goes beyond the mere declaration of a new ecocentric approach to “Mother Earth.” Instead, it requires interrogating and rethinking the values, assumptions, trajectories and priorities encapsulated in IEL’s conceptual and practical arrangements:

Ecological thinking “interrogates and endeavours to unsettle the self-certainties of western capitalism and the epistemologies of mastery it underwrites.” It “is not simply thinking *about* ecology or *about* ‘the environment,’ [but] a revisioned mode of engagement with knowledge, subjectivity, politics, ethics, science, citizenship, and agency that pervades and reconfigures theory and practice.”<sup>30</sup>

In this vein, incorporating an ecological awareness in IEL’s logic that steps away from its traditional anthropocentric approach to nature, requires correcting its endorsement of environmentally harmful human activity in pursuance of relentless economic growth at the cost of pervasive depletion and pollution of nature. This embedded logic in the thinking, making and practice of IEL is problematic and contradictory, and certainly does not contribute to addressing the climate and ecological crises, but rather intensifies them. Such approach to nature embraces at its heart a detrimental anthropocentric view of the world where human “needs” prevail, support and reproduce

<sup>27</sup> Kunming-Montreal Global Biodiversity Framework, UN Doc. CBD/COP/DEC/15/4, Secretariat of the Convention on Biological Diversity, 19 December 2022, Target 19 (f).

<sup>28</sup> Kunming-Montreal Global Biodiversity Framework, UN Doc. CBD/COP/DEC/15/4, Secretariat of the Convention on Biological Diversity, 19 December 2022, Target 19 (f), footnote 13.

<sup>29</sup> Hughes & Grumbine, “The Kunming-Montreal Global Biodiversity Framework,” 2023, p.1.

<sup>30</sup> Adelman, “Epistemologies of mastery,” 2015, p.15, citing Code, *Ecological Thinking*, 2006, p. 4–5.

intra- and inter-species injustice globally. In doing so, IEL also consistently neglects “others” views of nature and relationalities with it, such as those ancestrally cultivated by Indigenous peoples worldwide and the agency of non-human nature in the formation of the relationship with the human world. Correcting and redirecting IEL's counteractive anthropocentric trajectory is imperative, in light of the intertwined and multi-faceted planetary crises. The emerging concept of green transition calls for a shift to a more participatory, inclusive, equal and “green” global approach in the process towards a decarbonised planet that respects planetary boundaries.<sup>31</sup> Yet, it is at least uncertain whether the green transition will *actually* be just and green for all, in particular for those at the periphery of societies and decision-making processes, whose views, such as those of Indigenous peoples, are often absent in the design and implementation of environmental laws and (increasingly “green”?) policies. Indigenous views on nature and relationalities with it could potentially contribute to expand IEL's conceptual horizons and taxonomic hierarchies in a way to prioritise the respect and care for the natural world and promote its preservation, which is particularly urgent in vulnerable ecosystems like the Arctic.

## A Changing Arctic and the Green Transition

The Arctic is one of the most vulnerable regions to climate change.<sup>32</sup> Its effects severely impinge on the human rights of Arctic communities and disrupt fragile ecosystems at the forefront of climate impacts.<sup>33</sup> Global warming is two<sup>34</sup> to four<sup>35</sup> times faster in the Arctic than in the rest of the globe, manifested in a rapidly changing Arctic environment. However, such state of affairs in the Arctic should not be seen in isolation, as its enablers and implications are global in essence. From a global perspective, the Arctic could be seen as the tip of a melting iceberg resulting from long-lasting human activity mainly performed, promoted and legitimised far away from the Arctic—including within Arctic states—and whose “melting” process will eventually reach the rest of the iceberg (world). As Finger describes, “the Arctic should be looked at in the context of the fate of the planet, [as] a ‘laboratory of the Anthropocene.’”<sup>36</sup> Being thus one of the uniquely threatened ecological and human systems in the world,<sup>37</sup> which first exhibits, and disproportionally faces, the symptoms of a global (warming) problem, the critical situation in the Arctic must serve as a compelling warning of the severe planetary consequences of relentless environmentally harmful human activity and the need to reconsider the normative and policy frameworks that allow it. One should thus ask whether IEL can plausibly be fixed in a way that it becomes fit for

<sup>31</sup> See, for example, UN General Assembly, “The ‘Just Transition’ in the Economic Recovery. Eradicating Poverty within Planetary Boundaries,” UN Doc. A/75/181, 7 October 2020; UN Framework Convention on Climate Change, “Just Transition of the Workforce, and the Creation of Decent Work and Quality Jobs,” Technical Paper, 2016; and International Labour Organization, “Gender, Labour and a Just Transition Towards Environmentally Sustainable Economies and Societies for All,” 7 November 2017.

<sup>32</sup> IPCC, “Summary for policymakers,” 2018.

<sup>33</sup> See, for example, Payva Almonte, “Vulnerability in the Arctic in the context of climate change and uncertainty,” 2023a.

<sup>34</sup> IPCC, “Summary for policymakers,” 2018.

<sup>35</sup> Rantanen et al., “The Arctic has warmed nearly four times faster than the globe since 1979,” 2022, pp. 168–178.

<sup>36</sup> Finger & Rekvig, “Introduction,” 2022, p. 16.

<sup>37</sup> Along with, for example, coral reefs and mountain glaciers (IPCC, “Summary for policymakers,” 2018).

its purpose of environmental protection. Or, in other words, what can plausibly be done differently in the IEL regime to correct its pernicious anthropocentric path that supports the exploitation of nature on the basis that it is necessary for humans' (economic) growth and (sustainable) development activities in the Arctic and globally?

The Arctic region showcases the most severe environmental consequences of global actions and decisions taken elsewhere, but it could also play a leading role for a radical turn in the anthropocentric trajectories that led it to its current state of vulnerability, including in the multilevel legal and policy frameworks that enabled it. As Tennberg notes, "[political] and economic development of the Arctic is increasingly intertwined with politics beyond the region, and its governance is decentralized, taking place locally, nationally, regionally and globally."<sup>38</sup> In manifesting the decentralised character of Arctic governance, the green transition presents the Arctic as a key and attractive partner for its implementation. However, the rapidly changing Arctic environment facing snow cover decrease, thawing permafrost and rapidly melting sea ice, increases the accessibility to the Arctic and its natural resources, particularly minerals<sup>39</sup> necessary for the green transition, which, in turn, increases the interest from (Arctic and non-Arctic) states and extractive industries in the region.<sup>40</sup> Amidst these unfolding challenges in the Arctic, Indigenous peoples are at the receiving end of not only climate change impacts, but also of (sustainable) development projects increasingly framed as part of the green transition, which, instead, can put at further risk already vulnerable Arctic ecosystems and Indigenous lifestyles. Unabated (sustainable) development projects exacerbate conflicts over use of land in the Arctic and further threaten the rights of Indigenous peoples, which are correlated with their ancestrally cultivated relationship with their lands, such as their right to health, livelihoods, subsistence and culture, among other rights. As Cambou notes,

Indigenous peoples' relations with their land, territories and resources go beyond a Western conception of legal property [which] clashes with a more collective and holistic conception of land, territories and resources held by Indigenous groups.<sup>41</sup>

A holistic worldview with a strong ecological dimension and relationship with nature is commonly present in Indigenous knowledge systems and cosmology. Indigenous peoples' worldviews, traditionally absent in international law, can thus aptly inform the development of a more integrated understanding of the relationship human-nature in IEL. Accordingly, in attempting to build interdisciplinary bridges with anthropological perspectives, in the next section, I explore Arctic Indigenous peoples' views and values underpinning their understanding of nature and relationship with it.

<sup>38</sup> Tennberg, "Narratives," 2022, p.193.

<sup>39</sup> In this regard, Finger points out that at least "some of the resources—especially the rare-earth-metals—are central to the energy transition (decarbonization) and should be mined precisely for this reason" (Finger, "Sustainable development of the Arctic?" 2022, p. 340).

<sup>40</sup> Payva Almonte, "Vulnerability in the Arctic in the context of climate change and uncertainty," 2023a.

<sup>41</sup> Cambou, "Indigenous peoples right to self-determination and the principle of state sovereignty over natural resources," 2022, p. 162.

## Indigenous Knowledge from the Arctic Periphery. Skolt Sami Views on Nature

Based on Panu Itkonen's environmental anthropology study on Skolt Sami conceptions of nature obligations as the basis for environmental sustainability,<sup>42</sup> I explore how Arctic Indigenous understanding of and relationalities with nature can inform the development of ecological awareness in IEL. An expansion in IEL conceptual horizons informed by Indigenous' relationalities with nature can assist in interrogating and rethinking inherent anthropocentric (mis)understandings of nature and, in turn, enable societal transformation for a harmonious, respectful and caring human-nature relationship. Looking at nature through Indigenous lenses in the IEL realm might help to identify avenues to transcend its natural anthropocentric logic of (economic) growth at the cost of a subordinated external natural world, and, instead, recognise the human world as part of nature and reflect it in (human) laws, which present a dangerous split from nature. As Natarajan and Dehm reflect, "law's ability to conceptually isolate itself from the natural world has helped create and foment environmental catastrophes."<sup>43</sup>

As Itkonen notes, peoples "way of conceptualising nature depends on how they use it and how they invest knowledge in different parts of it,"<sup>44</sup> which could vary as per "the person's position in relation to different perceptions of sustainable or unsustainable action."<sup>45</sup> There is a perception that Indigenous peoples enjoy a more sustainable way of life, in harmony with nature, which has largely been explored by anthropologists. Itkonen points out that it "is a common belief that Indigenous peoples live in biologically rich environments and use natural resources sustainably." Yet "modernisation can have affected Indigenous sustainability comprehensions as well."<sup>46</sup> Hence, from a Critical Arctic Studies standpoint that problematises "truths" and interrogates assumptions,<sup>47</sup> it should not be assumed that (all) Indigenous peoples' beliefs or practices are necessarily ecologically aware or sustainable vis-à-vis nature. Nor should it be attempted to discern a unique pan-Indigenous (sustainable) approach to nature, as this may vary according to a multiplicity of factors, including individual and collective Indigenous experiences.<sup>48</sup>

In his study, Itkonen focuses on Skolt Sami environmental obligations to nature as these "form the basis of sustainability."<sup>49</sup> The Skolt Sami are part of the Sami Indigenous group living across northern Finland, Norway, Sweden and (north-eastern)

<sup>42</sup> Itkonen, "Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson," 2022, p. 290.

<sup>43</sup> Natarajan & Dehm, "Introduction," 2022, p. 9.

<sup>44</sup> Itkonen, "Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson," 2022, p. 292, *citing* Ellen, "Forest knowledge, forest transformation," 2008.

<sup>45</sup> Itkonen, "Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson," 2022, p. 292.

<sup>46</sup> Itkonen, "Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson," 2022, p. 292.

<sup>47</sup> Lindroth, Sinevaara-Niskanen & Tennberg, "Introduction," 2022, p. 5.

<sup>48</sup> Payva Almonte, "Rethinking the relationship between humans and nature in law," 2023b.

<sup>49</sup> Itkonen, "Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson," 2022, p. 294.

Russia amounting to about 80,000 people.<sup>50</sup> Sami ways of life have varied over time until today, and cannot be generalised. Yet, they were commonly based on seasonal annual cycles of moving to different areas, “in which the lands and waters across an expansive area were shared between families based on a joint decision.”<sup>51</sup> This traditional Sami organisational system, the *siida* (in Sami language), “ensured that scarce natural resources were used responsibly and carefully.”<sup>52</sup> Contemporary history of the Sami, the only (recognised) Indigenous group in Europe, is defined by colonisation. As explained in the Sámi Museum and Nature Centre Siida:

From the 18<sup>th</sup> century onwards, the Nordic nations began to take over Sámi lands. Settlers played a particularly large role in controlling these areas. The pressure of outside settlers and the actions of the authorities also forced the Sámi people to settle down [in cases of] disputes concerning land use and fishing waters.<sup>53</sup>

The establishment of state borders was incompatible with the Sami ways of life, government and movement across lands. The Skolt Sami, for example, had to appeal to an official document to prove their rights over land.<sup>54</sup> The Skolt Sami are a

small but culturally and linguistically distinct group of the Eastern Sámi, [whose traditional homeland covers the area] from the shores of Lake Inari in the west to the Kola Bay in the east, and the present-day location of the Russian city of Murmansk.<sup>55</sup>

Itkonen's study focuses on the Skolt Sami group living in Inari in northern Finland. His study departs from the premise that “emphasis on duties might promote environmental sustainability more than the focus on rights.”<sup>56</sup> This opposes the traditional Western view of nature reflected in (international) law, which had a crucial role “in converting nature into exchangeable property [and] turning connected ecosystems into realms of infinite commodification and exchange.”<sup>57</sup> Contemporary legal systems' emphasis on rights, including property rights, therefore reinforce the notion of appropriation, apportionment and authority of the human over land (and sea). Contrarily to this view, Indigenous peoples' ways to relate with land, as Cambou notes, “go beyond a Western conception of legal property that focuses on the exclusive rights of individual owners to private property in order to support the market-oriented economy.”<sup>58</sup> A focus on duties (to land), rather than rights, could be functional to limit environmentally harmful human activity by state and non-state actors—such as corporations—empowered with quasi-human entitlements over nature. Accord-

<sup>50</sup> Minority Rights Group website; <https://minorityrights.org/communities/sami/>; accessed on 22 Sept. 2024.

<sup>51</sup> Sámi Museum and Nature Centre Siida, “These lands are our children” exhibition, Inari, Finland, 29 July 2024.

<sup>52</sup> Sámi Museum and Nature Centre Siida, “These lands are our children” exhibition, Inari, Finland, 29 July 2024.

<sup>53</sup> Sámi Museum and Nature Centre Siida, “These lands are our children” exhibition, Inari, Finland, 29 July 2024.

<sup>54</sup> Sámi Museum and Nature Centre Siida, “These lands are our children” exhibition, Inari, Finland, 29 July 2024.

<sup>55</sup> Raygorodetsky, “Skolt Sámi path to climate change resilience,” 2017.

<sup>56</sup> Itkonen, “Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson,” 2022, p. 294.

<sup>57</sup> Natarajan & Dehm, “Introduction,” p. 9.

<sup>58</sup> Cambou, “Indigenous peoples right to self-determination and the principle of state sovereignty over natural resources,” 2022, p. 155.

ing to Itkonen's study, the views of Skolt Sami, if considered and tested first at local level through, for example, local environmental legislation, could be scaled up and implemented in a wider context, although with adjustments in accordance with the specificities of the scenario where these are applied.

Further, in the search of Skolt Sami's understanding of human environmental obligations, the study addressed three main themes: "(1) reasonableness in the use of natural resources to secure continuity; (2) conservation of nature; and (3) respect and appreciation for nature as a large and important whole."<sup>59</sup> With the use of qualitative and quantitative methods, including interviews with Skolt Sami individuals living in Inari, Finland, the study shows that:

*Respect for nature* can be seen as directing the two other themes [...] Respect may connect, for example, to how much natural resource can be used and how much nature is left outside human influence. Feedback from experiences of human–nature interactions can cause changes in the scale of respect [...] Respect can [also] be related to nature as a *whole*. Sacred places can be seen to connect to the greater spiritual dimension of nature.<sup>60</sup>

The prevailing notion of respect is based on research concerning Skolt Sami nature-based livelihood activities, such as reindeer herding, fishing, hunting, gathering and handicrafts.<sup>61</sup>

Such a notion of respect reflected in ordinary activities demonstrate the deep-rooted intimacy and natural relationship of Skolt Sami with their surrounding environment, which comes with a sense of reciprocity and care for it, not only in relation to subsistence activities but in every aspect of life. This is aligned with the general Sami philosophy that understands the entanglements of nature where everything is connected:

Language, humans and livelihoods are tied together: livelihood helps preserve culture but both are dependent on the land and its well-being. This means equality with nature: you only take what you need from it.<sup>62</sup>

Accordingly, for Skolt Sami, respect entails an overarching normative principle that can be implemented in ordinary human activity as a pattern of behavior in human–nature interactions, which may vary as per individual and collective experiences, and, at the same time, maintain its spiritual (immaterial) dimension. IEL is, at least in principle, unable to incorporate this knowledge due to its (sole) reliance on material science-based evidence and technologies, unconcerned with the spiritual and intangible, and more evidently, its rooted market-based orientation which supports destructive patterns of production and consumption to satisfy human (economic) needs through relentless exploitation of nature.

<sup>59</sup> Itkonen, "Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson," 2022, pp. 302–303.

<sup>60</sup> Itkonen, "Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson," 2022, pp. 302–303.

<sup>61</sup> Itkonen, "Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson," 2022, p. 294.

<sup>62</sup> Siida Sami Museum and Nature Centre, "These lands are our children" exhibition, Inari, Finland, 29 July 2024.

Respect for nature entails consciously using its resources in a way that is mindful of its boundaries and wellbeing, and allows other species and people—including future generations—to benefit from its blessings, too. Developing an ecological awareness in IEL would require incorporating respect for nature as the overarching principle rid of any meaning based on its financial value or productivity. As Itkonen points out: “Respect for nature is connected to reasonableness.” He puts the example of fishing practices of Skolt Sami, where both “the fish and the catch are treated with respect,” and limited to family or commercial needs, in which case the catch size “can be measured per fishing enterprise.”<sup>63</sup> Of course, this can be problematic at large scale. However, the principle of reasonableness can aptly inform the development of an ecological approach in IEL that is mindful of nature’s boundaries and which does not support its greedy exploitation. In putting this into practicable actions, Itkonen suggests to question, *inter alia*, how respect is reflected in practical actions, such as:

what kind of respect for nature can be seen in the use of natural resources and in the possible related reasonableness? [...] how does respect for nature relate to defining the quantity and quality of nature protection? [...] how important is respect for nature in the survival of humans and society?<sup>64</sup>

Responses to these and other questions reflecting ecological values and care for nature’s boundaries and the implications of human actions for nature itself, other humans and non-human components of the natural world, rather than concern for nature’s productivity or economic profit, could assist in integrating an ecological awareness into IEL. Itkonen’s study concludes that “the Skolt Sámi paid a lot of attention to respecting nature.” This is expressed in their notion of reasonableness, which is “strongly connected” to the protection of nature and sustainable use of natural resources.<sup>65</sup>

Indigenous views on nature and what represents a sustainable approach are especially relevant in the context of the green transition in the Arctic, which, despite being one of the most vulnerable ecosystems,<sup>66</sup> is increasingly envisaged as a key supplier of natural resources necessary for the green transition.<sup>67</sup> The Skolt Sami have ancestrally interacted with Arctic nature and respected its boundaries. Their knowledge of Arctic nature based on respectful interaction with it throughout generations can assist in designing and articulating new ways of thinking in IEL at local, regional, national and international levels. This is particularly relevant in the Arctic, where the integration of an ecological awareness in the design, interpretation and implementation of environmental laws is urgently needed to develop a harmonious relationship human–nature based on respect.

<sup>63</sup> Itkonen, “Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson,” 2022, p. 303.

<sup>64</sup> Itkonen, “Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson,” 2022, pp. 303–304.

<sup>65</sup> Itkonen, “Environmental sustainability generated by the views of the Skolt Sámi and Gregory Bateson,” 2022, pp. 303–304.

<sup>66</sup> IPCC, “Summary for policymakers,” 2018.

<sup>67</sup> See, for example, Finger, “Sustainable development of the Arctic?” 2022; and Laframboise, “Brussels looks north,” 2022.

## Conclusion

This article discussed the anthropocentric approach to nature in IEL, which, despite a few progressive changes in relation to the protection of biological biodiversity, lacks an ecological awareness that conceives and values nature in its own right. It therefore fails to recognise humans as part of it, leading to the relentless exploitation and destruction of the natural world, which is at the core of the climate and ecological crises. I argued that it is essential to rethink IEL's approach to nature by interrogating its inherent anthropocentric assumptions on nature traditionally associated with property (and thus exploitative) entitlements over it, and to embrace non-Western views on the human–nature relationship. In this vein, Indigenous peoples' views could aptly assist in expanding IEL horizons, challenging its rooted foundations and informing its reform. The Arctic being at the forefront of climate impacts that severely affect its peoples and ecosystems, “sustainable development” projects boosted in the context of the green transition pose additional risks to the already vulnerable state of the region. In building interdisciplinary bridges with other fields, anthropology provides grounds to understand “alternative” Indigenous views, knowledge of and relationalities with nature that can assist the necessary conceptual and practical development of IEL's approach to nature which it aims to protect. I reflected on Itkonen's environmental anthropological study of Skolt Sami conceptions of nature obligations as a guide to environmental sustainability. Thereby the respect for nature as the overarching principle guiding the relationship between human and nature is manifested in ordinary activities, such as fishing, hunting or herding. Developing the notion of respect vis-à-vis nature in IEL is central to building a new understanding of nature therein and enabling a harmonious relationship human–nature that overcomes its current anthropocentrism. As argued, not in a way to unproductively attempt to “delete” it but to evolve it, and ensure a coherent interpretation and application of its provisions. I conclude that Sami as well as other (Arctic) Indigenous systems of knowledge can provide useful conceptual and practical insights to develop an ecological (post)anthropocentric approach to nature in IEL and international law in general, which can be applied first in the Arctic and also scaled up and adapted to other regions.

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LEENA HANSEN

# Sami Rights in Finland's Climate Act

## Implementing a Human Rights-Based Approach

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**ABSTRACT** This article concerns climate change and its alarming, accelerating consequences and impacts on human rights—in particular, the rights of persons and groups, such as Indigenous peoples, in unique, vulnerable situations. The rights of the Sami people are threatened by effects of climate change as well as resource and energy developments aimed at addressing climate change in the name of green transition—a situation similar to that of many Arctic Indigenous peoples. Indigenous peoples, including the Sami, have demanded justice and adoption of a human rights-based approach as acknowledged in the Paris Agreement, with respect to their rights, in climate change mitigation and adaptation measures. The scope of this article is to study, in the context of Finland's new Climate Act (2022), the national implementation of the international framework of a justice and human rights-based approach, in relation to the Sami people's rights recognized in Finland's Climate Act and climate policies.

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**KEYWORDS** Sami, Indigenous peoples' rights, human rights-based approach, climate change, Finland's Climate Act

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### Introduction. Scope and Context

The scope of this article encompasses Sami rights in the recently adopted Climate Act of Finland (423/2022; hereafter referred to in this article as the Climate Act). The article first forms an overview of the International Framework on a human rights-based approach to climate change, reflected in the Paris Climate Agreement (2015) and endorsed by many UN reports and resolutions. Since Finland has chosen to embrace a justice and human rights-based approach in its Climate Act, the aim of this article is to review to what extent this approach succeeds in protecting Sami culture against climate change and safeguarding Finland's Constitutional status for the Sami as an Indigenous people.

The context of this article consists of alarming consequences of climate change and impacts on human rights therein, in particular on the human rights of those who are in vulnerable situations. In its sixth assessment report of 2023, the Intergovernmental Panel on Climate Change (IPCC) depicts drastic consequences of rising greenhouse gas (GHG) emissions around the world.<sup>1</sup> The current President of the Saami Council, Áslat Holmberg, has rightfully stated that “climate change is the greatest threat of our time to the well-being of humans and nature.”<sup>2</sup>

Although climate change affects all regions and populations and in different ways, certain vulnerable groups are disproportionately impacted—including women, children, the elderly, people with disabilities, and Indigenous peoples.<sup>3</sup> The IPCC has addressed patterns of historical and ongoing colonialism in relation to climate change, which are factors that also exacerbate Indigenous peoples’ vulnerability to climate change. The Arctic is among the regions characterized by high levels of human vulnerability in the context of climate change, and, therefore, it is a region considerably sensitive to climate change and related hazards.<sup>4</sup> Nature in the Arctic is not only very sensitive to climate change; the Arctic is also warming three to four times faster than the rest of the world.<sup>5</sup> The IPCC shows in its research that Arctic Indigenous peoples and their cultures, as well as the ecosystems on which they depend, are exposed to significant future risks due to climate change.<sup>6</sup>

In Sápmi (Sami homeland), rapidly-evolving climate change is already having increasingly negative effects on Sami culture, health, and livelihoods such as reindeer herding, fishing, hunting, and gathering practices.<sup>7</sup> Climate change is exacerbating an already challenging situation of the Sámi, adding to the cumulative negative impacts of historical assimilation policies and industrial developments in Sápmi.<sup>8</sup>

The rights of Sami people, as is the case for many other Arctic Indigenous peoples, are threatened by the effects of climate change as well as by resource and energy developments aimed at addressing climate change; this double burden places the Sami people in a unique and specific vulnerable situation.<sup>9</sup> Sami have, in many places, expressed serious concern about developments taking place in Sápmi that are

<sup>1</sup> IPCC, *AR6 Synthesis Report*, 2023.

<sup>2</sup> Saami Council, “Climate change in the Sápmi,” 2023, p. 10.

<sup>3</sup> IPCC, “Summary for policymakers” [H.O. Pörtner et al. (eds.)], 2022b, p. 9; see, Norwegian National Human Rights Institution, *Canary in the Coal Mine*, 2024, p. 11; Islam & Winkel, *Climate Change and Social Inequality*, 2021; Tyler et al., “The shrinking resource base of pastoralism,” 2021.

<sup>4</sup> Saami Council, “Climate change in the Sápmi,” 2023, p. 31. See, IPCC, “Summary for policymakers” [H.O. Pörtner et al. (eds.)], 2022b, p. 12.

<sup>5</sup> AMAP, *Arctic Climate Change Update*, 2021, p. 2.; Rantanen et al., “The Arctic has warmed nearly four times faster than the globe since 1979,” 2022, p. 168.

<sup>6</sup> IPCC, *Climate Change 2022. Impacts, Adaptation and Vulnerability* [H.-O. Pörtner et al. (eds.)], 2022a, pp. 2344–2349.

<sup>7</sup> Lee et al., “Regional effects of climate change on reindeer,” 2000, pp. 99–105; Rasmus et al., “Suomen poronhoitoalueen muuttuvat talviset sääolosuhteet” 2014, pp. 169–185; Markkula et al., “A review of climate change impacts on the ecosystem services in the Saami Homeland in Finland,” 2019, pp. 1070–1085. Hindar et al. “Assessment of the risk to Norwegian biodiversity and aquaculture from pink salmon (*Oncorhynchus gorbuscha*),” 2020, p. 39.

<sup>8</sup> Norwegian National Human Rights Institution, *Canary in the Coal Mine*, 2024, p. 13; Jaakkola et al. “The holistic effects of climate change on the culture, well-being, and health of the Saami, the only indigenous people in the European Union,” 2018, pp. 401–417; Norwegian National Human Rights Institution, *Human Rights Protection against Interference in Traditional Sami Areas*, 2022, p. 3.

<sup>9</sup> Norwegian National Human Rights Institution, *Human Rights Protection against Interference in Traditional Sami Areas*, 2022, p. 8.

aimed to secure what is referred to as a “green” or “just” transition—developments that include measures such as increased mining for raw materials, increase in energy production through wind power plants and hydropower, and increases in bioenergy from forestry; all of these developments can have negative impacts on Sami culture and livelihoods.<sup>10</sup>

Sami have also used the term “green colonialism” to criticize hegemonic climate change policies, as the current climate and ecological crisis is a result of colonisation and capitalist expansion on Indigenous peoples’ traditional lands.<sup>11</sup> In the Declaration from the Sixth Conference of Sami Parliamentarians, May 2022, Sami Parliamentarians emphasized that, in terms of designing climate action globally and in the Arctic, the green transition must neither violate the Sami right to self-determination nor prevent Indigenous peoples from exercising their traditional economies and land uses.<sup>12</sup>

## A Human Rights-Based Approach to Climate Change and Indigenous Peoples

Climate justice has become a central theme in present-day climate change policy discourses.<sup>13</sup> The starting point for climate justice is the recognition that climate change impacts different geographical areas and actors differently—within states, climate change affects different areas, segments of populations, societal groups, and also livelihoods, and all in a variety of ways. Climate change impacts youth and future generations more than those who are currently in decision-making power positions. Indigenous youth, along with other young people in different parts of the world, have, in recent years, become active climate change-based actors. In 2021, Sami youth issued a declaration on climate change and its impacts, demanding immediate climate action and equitable involvement of Sami, including Sami youth, in the work.<sup>14</sup>

Directly related to and interlinked with environmental justice and climate vulnerability is a human rights-based approach to environmental issues. This approach has its origins as far back as the Stockholm Declaration on the Human Environment of 1972, which proclaims that the “environment is essential to the enjoyment of human rights—even the right to life itself.”<sup>15</sup> This approach has since become recognized as “a human rights-based approach” to environmental issues,<sup>16</sup> which has, over the years, been strengthened in climate change discourse. Several UN Special Rapporteurs have paid a great amount of attention, via reports, to advancing a human rights-based approach to climate change, including climate justice considerations, in particular, in

<sup>10</sup> Saami Council, “Climate change in the Sápmi,” 2023, p. 63.

<sup>11</sup> Fjellheim, “Green colonialism, wind energy and climate justice in Sápmi,” 2022.

<sup>12</sup> Conference of Sami Parliamentarians, “Declaration from the Sixth Conference of Sámi Parliamentarians in Aanaar,” 2022.

<sup>13</sup> Kivimaa et al., “Evaluation of justice in climate policy,” 2023; see also Juhola et al., “Connecting climate justice and adaptation planning,” 2022, pp. 609–619; Sultana, “Critical climate justice,” 2022, pp. 118–124; Schlosberg & Collins, “From environmental to climate justice,” 2014, pp. 359–374; Acha “Climate justice must be anti-patriarchal, or it will not be systemic,” 2019, pp. 246–252; Brand & Bullard, “Contours of climate justice,” 2009, pp. 46–53.

<sup>14</sup> Nordic Sámi Youth Conference, “Sámi Youths’ Declaration on Climate Change,” 2021.

<sup>15</sup> Stockholm Declaration on the Human Environment, 1972, princ. 1.

<sup>16</sup> See, e.g. Shelton, “Human rights, environmental rights and the rights to environment,” 2012; Francioni, “International human rights in an environmental horizon,” 2010, pp. 41–55.

the last couple of decades. One of the major achievements of such work took place in 2022 when, on the heels of the UN Human Rights Council's resolution recognizing the human right to environment,<sup>17</sup> the UN General Assembly unanimously passed a resolution (A/76/L.75) that affirmed a clean, healthy, and sustainable environment as a human right for all people.<sup>18</sup>

Former UN Special rapporteur on human rights and environment John Knox has been one of the pioneers and strong advocates for a human rights-based approach when studying both substantial and procedural aspects in relation to human rights and climate change.<sup>19</sup> He puts forward that application of human rights in coping with climate change could become a central and very suitable approach, since human rights form an ethically accepted global regime offering a coherent, enforceable and applicable normative framework. He also explains that a human rights-based approach helps to perceive how climate change impacts individuals instead of only humanity at large.<sup>20</sup>

Human rights-based approaches have also been advanced by several academics,<sup>21</sup> as well as, for example, former UN Special Rapporteur on human rights and environment David Boyd. Boyd emphasized principles of universality and non-discrimination built into a human rights-based approach, denoting that human rights must be granted to all people, including those who are in vulnerable situations.<sup>22</sup> Former UN Special Rapporteur on human rights and climate change Ian Fry, in his work, identified climate change as impacting several human rights, including rights to life, health, food, water, sanitation, development, work, decent living conditions, and freedom from violence, sexual abuse, human trafficking, and slavery.<sup>23</sup> Fry has also paid particular attention to climate justice and human rights issues of certain climate change mitigation and adaptation measures, referring to the acute concern of Sami people about wind power as an option for green energy and the violations therein, due to wind power, of Sami rights and cultural practices.<sup>24</sup>

Although a human rights-based approach was not originally a part of the global climate change regime (UNFCCC), the Paris Agreement (2015) acknowledges the human rights-based approach and climate justice. In the preambular text of the Paris Agreement, it is stated:

Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, chil-

<sup>17</sup> UN Human Rights Council, Resolution, 18. October 2022, A/HRC/RES/48/13.

<sup>18</sup> UN General Assembly, Resolution, 26. July 2022, A/76/L.75.

<sup>19</sup> Knox, "Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment," 2018.

<sup>20</sup> Knox, "Climate ethics and human rights," 2014, pp. 22–23.

<sup>21</sup> See, Shelton, "Litigating a rights-based approach to climate change," 2009, p. 211; Rajamani, "The increasing currency and relevance of rights-based perspectives in the international negotiations on climate change," 2010, pp. 391–429.

<sup>22</sup> Boyd, *A Safe Climate*, 2019, p. 18.

<sup>23</sup> UN Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, 2022.

<sup>24</sup> UN Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, 2022, pp. 6–8.

dren, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

Furthermore, in the preamble it is noted:

the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice,” when taking action to address climate change.

Vulnerability and the climate justice approach are also recognized in the context of adaptation in Article 7 of the Paris Agreement, which gives a particular attention to Indigenous peoples’ knowledge. Article 7.5 reads:

Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.

In addition to women, gender and sexual minorities,<sup>25</sup> children and youth,<sup>26</sup> elderly people,<sup>27</sup> disabled persons,<sup>28</sup> and immigrants,<sup>29</sup> UN human rights bodies have highlighted Indigenous peoples as a major vulnerable group whose human rights, including the participatory rights, should be paid particular attention to in climate change policies and actions—not only because Indigenous peoples’ cultures and rights are at

<sup>25</sup> UN Committee on the Elimination of Discrimination against Women. General recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, 13 March 2018, CE-DAW/C/GC/37; UN Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Women, girls and the right to a clean, healthy and sustainable environment, 5 January 2023, A/HRC/52/33.

<sup>26</sup> Office of the United Nations High Commissioner for Human Rights, “Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child,” 4 May, 2017, A/HRC/35/13; UN Committee on the Rights of the Child (2023). “General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change,” 22 August 2023, CRC/C/GC/26.

<sup>27</sup> Office of the United Nations High Commissioner for Human Rights, “Analytical study on the promotion and protection of the rights of older persons in the context of climate change,” 30 April 2021, A/HRC/47/46; Mahler, “Report of the Independent Expert on the enjoyment of all human rights by older persons,” 25 July 2023, A/78/226.

<sup>28</sup> Office of the United Nations High Commissioner for Human Rights, “Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change,” 22 April 2020, A/HRC/44/30.

<sup>29</sup> UN High Commissioner for Human Rights, “Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps,” 23 April 2018, A/HRC/38/21; Reports of the UN Special Rapporteur on the human rights of internally displaced persons: 21 July 2020, A/75/207; 9 August 2011, A/66/285, 3 August 2009, A/64/214.

stake, but because of Indigenous peoples' unique and valuable knowledge related to climate change.<sup>30</sup>

As proposed by the IPCC, supporting Indigenous peoples' self-determination, recognizing the rights of Indigenous peoples, and utilizing Indigenous peoples' knowledge are crucial components of combatting climate change; such measures will not only accelerate effective and robust climate-resilient development pathways, they will also address historical inequities and unjust processes—actions that, in turn, can increase resilience and contribute to multiple benefits for health, well-being, and ecosystems.<sup>31</sup> This IPCC analysis is important, because climate change and related impacts, in combination with legal and institutional barriers that affect coping mechanisms and the adaptive capacity of Indigenous peoples, make climate change an issue of human rights, inequality, and justice. Thus: including Indigenous peoples and Indigenous peoples' knowledge in climate change related measures are a fundamental part of climate justice.<sup>32</sup>

Arctic Indigenous peoples have already been on the frontlines of the climate battle for more than two decades. It was the famous petition of the Inuit Circumpolar Council<sup>33</sup> (ICC) to the Inter-American Commission on Human Rights (IACHR), against the United States, in 2005,<sup>34</sup> that started a global discussion on the need to adopt a human rights-based approach to climate change mitigation and adaptation policies. The petition relied heavily on the climate change research of the Arctic Climate Impact Assessment (ACIA) which, already in 2004, pointed to dramatic changes in Arctic environments and communities, especially for Indigenous peoples.<sup>35</sup> Despite the petition having carefully described impacts of climate change on Inuit culture and lives, as well as its claims that the inactions of the United States, the largest emitter of GHGs at the time, was in violation of affected Inuit rights to life, health, culture, and property, after consideration and oral testimonies the Inter-American Commission did not proceed forward with the matter.

As pioneers in this regard, Inuit had brought forward their petition at a time when legal connections between human rights, State/national Constitutions, sectoral legislation, and climate change had not yet been formerly outlined as such in such a venue. Since then and in more recent years, climate change-based litigation has exploded worldwide; at the beginning of 2023, the Sabin Center's Climate Change Litigation databases reported a documented count of 2,180 such cases filed in 65 jurisdictions and international or regional courts, tribunals, quasi-judicial bodies, or other adjudicatory bodies, including special procedures of the United Nations and arbitration tribunals.<sup>36</sup>

<sup>30</sup> UN Special Rapporteur on the rights of indigenous peoples, "A thematic study on the impacts of climate change and climate finance on indigenous peoples' rights," 1. November 2017, A/HRC/36/46 UN Permanent Forum on Indigenous Issues, Impact of climate change mitigation measures on indigenous Peoples and on their territories and lands, 19 March, 2008, E/C.19/2008/10.

<sup>31</sup> IPCC, "Technical summary" [Pörtner H.-O. et al.], 2022d, pp. 85–86, 108–109.

<sup>32</sup> IPCC, "Technical summary" [Pörtner H.-O. et al.], 2022d, pp. 108–109; see, Saami Council, "Climate change in the Sápmi," 2023, p. 32.

<sup>33</sup> Inuit Circumpolar Conference at the time being.

<sup>34</sup> ICC, "Petition to the Inter-American Commission on Human Rights," 2005.

<sup>35</sup> ACIA, *Impacts of a Warming Arctic*, 2004.

<sup>36</sup> Sabin Center for Climate Change Law; UN Environment Programme, "Global Climate Litigation Report, 2023, p. 4.

Indigenous peoples' success in international climate change litigation occurred in 2022, when the UN Human Rights Committee found, in the case of *Daniel Billie et al. v. Australia*,<sup>37</sup> that the Government of Australia was in violation of the rights of members of Indigenous communities of Torres Strait Islanders. The UN Human Rights Committee found that Australia's failure to adequately protect Indigenous Torres Islanders against adverse impacts of climate change violated the Indigenous Torres Islanders' rights to enjoy their culture (ICCPR art. 27) and to be free from arbitrary interferences with their private life, family, and home (art. 17). Significantly, in this decision the UN Human Rights Committee highlighted the claimants' spiritual connection with their traditional lands, as well as the dependence of the claimants' cultural integrity on the health of their surrounding ecosystems.<sup>38</sup>

In *Daniel Billie et al. v. Australia*, the UN Human Rights Committee set a significant precedent for Indigenous peoples' land rights in relation to environmental interference, including that of climate change, by recalling that ICCPR article 27, when interpreted in the light of the United Nations Declaration on the Rights of Indigenous Peoples<sup>39</sup> (UNDRIP), enshrines the inalienable right of Indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity.<sup>40</sup> The decision also shows that the UNDRIP is no longer regarded as merely a non-binding, aspirational, quasi-judicial declaration, but rather that the UNDRIP is, and can be, used as a legal source internationally and nationally, including in the interpretation of legally-binding conventions. The Norwegian Supreme Court, in the *Nesseby* judgement, has also asserted that the UNDRIP is a primary Indigenous Rights instrument, as well as that the UNDRIP reflects international law including ILO Convention 169.<sup>41</sup>

What is particularly significant in the *Billie et al. v. Australia* case, however, is the recognition by the UN Human Rights Committee that the rights falling under ICCPR article 27 include the right of Indigenous peoples to transmit their culture and traditions to future generations—in this particular case, Australia had violated this right by failing to adopt timely adequate climate change adaptation measures.<sup>42</sup> This case also sets important standards and guidance in Sápmi for the safeguarding of the rights of the Sami people, keeping in mind Sami children and youth as well as future Sami generations.

The right of the Sami to transmit their culture to future generations thus includes that their rights are respected regarding green transition projects. In Norway, the NHRI is currently recommending that Norwegian State authorities should adopt measures to ensure that Sami rights are respected in the renewable energy transition, including under ICCPR article 27, and in light of cumulative impacts of past, pres-

<sup>37</sup> UN Human Rights Committee, *Daniel Billie et al. v. Australia*, 22 Sept. 2022, CCPR/C/135/D/3624/2019.

<sup>38</sup> Ibid., see, also, <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/> (accessed on 16 April 2024).

<sup>39</sup> UN Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007, 61/295.

<sup>40</sup> UN Human Rights Committee, *Daniel Billie et al. v. Australia*, para 8.13.

<sup>41</sup> Supreme Court of Norway, HR-2018-456-P (*Nesseby*), 2018, para. 97.

<sup>42</sup> UN Human Rights Committee, *Daniel Billie et al. v. Australia*, Para 8.14.

ent, and potential future interferences.<sup>43</sup> The NHRI report emphasizes that a human rights-based approach, with broad and inclusive public participation in decision-making by affected communities, can contribute to legitimacy and democratic support for a rapid and comprehensive green transition.<sup>44</sup>

## Climate Change and Sami Rights-Based Approach in the Climate Policy of Finland

Finland (as well as Norway and Sweden) has granted a Constitutional status for the Sami people to maintain and develop their culture and related traditional ways of life.<sup>45</sup> Indigenous peoples' human rights, which are interlinked into Finland's Constitutional rights of Sami, are protected by several international human rights conventions<sup>46</sup> and enshrined in the UNDRIP. Climate change might violate several human rights of the Sami. The most obvious violation, as such, is that of Sami rights to culture and traditional livelihoods, including to transmission of their (Sami) cultural heritage and traditional knowledge, as well as the Sami right to self-determination; these rights are interlinked, and they should be implemented and read together, as noted by the UN Human Rights Committee.<sup>47</sup> Also recognized by the UN Human Rights Committee are the rights to privacy, home, and family life, both as applicable and, as such, potentially violated in the context of climate change and Indigenous peoples' rights.<sup>48</sup>

Additionally, the Sami people's right to health is impacted by climate change, as illustrated by a recent report by the NHRI.<sup>49</sup> As a component of their right to health, the Sami people also have rights to a traditional Sami diet and related Sami food sovereignty.<sup>50</sup> In a report commissioned by the Government of Finland on Sami adaptation to climate change, studies referred to show that a decrease of the Sami traditional diet might cause health problems for Sami people.<sup>51</sup> Climate change might affect the health and well-being of Sami in multiple ways—examples of this mentioned in previous studies include accidents related to changed circumstances, health risks related to heatwaves, increase of allergies, and negative impacts on mental health<sup>52</sup> (including worry and stress about the future of traditional livelihoods).<sup>53</sup> In the worst cases, circumstance-related accidents, such as snowmobile accidents due to unpredictable

<sup>43</sup> Norwegian National Human Rights Institution, *Canary in the Coal Mine*, 2024, p. 9.

<sup>44</sup> Norwegian National Human Rights Institution, *Canary in the Coal Mine*, 2024, p. 8.

<sup>45</sup> Section 17.3. in Finnish Constitution; Chapter 1 Section 2 in Swedish Constitution (1974:152); Section 108 of the Norwegian Constitution (LOV-1814-05-17).

<sup>46</sup> CERD; CESCR; CRC; ICCPR.

<sup>47</sup> UN Human Rights Committee, *Tiina Sanila-Aikio v. Finland*, CCPR/C/124/D/2668/2015; UN Human Rights Committee, *Klemetti Näkkäljärvi et al. v. Finland*, CCPR/C/124/D/2950/2017.

<sup>48</sup> UN Human Rights Committee, *Daniel Billie et al. v. Australia*, 22 September 2022, CCPR/C/135/D/3624/2019.

<sup>49</sup> Norwegian National Human Rights Institution, *Canary in the Coal Mine*, 2024, p. 27–30.

<sup>50</sup> See, Huambachano, "Indigenous food sovereignty," 2019, pp. 1–6; Whyte, "Food sovereignty, justice and Indigenous Peoples," 2017, pp. 1–21.

<sup>51</sup> Jaakkola et al. "The holistic effects of climate change on the culture, well-being, and health of the Saami, the only indigenous people in the European Union," 2018, pp. 401–417.

<sup>52</sup> Jaakkola et al. "The holistic effects of climate change on the culture, well-being, and health of the Saami, the only indigenous people in the European Union," 2018, pp. 401–417.

<sup>53</sup> Näkkäljärvi et al., "Final scientific report of the project SAAMI. Adaptation of Saami people to the climate change," 2020, p. 271.

snow conditions, have even led to death.<sup>54</sup> Thus, climate change impacts can even violate the right of life. The UN Human Rights Committee has confirmed, in its General Comment on the Right to Life (art. 2), that the duty to protect life also implies that State parties should take appropriate measures to address the general conditions in society that can either give rise to direct threats to life or prevent individuals from enjoying their rights to life with dignity. Such general conditions can include, for example, degradation of the environment and deprivation of Indigenous peoples' lands, territories, and resources.<sup>55</sup>

The Government of Finland chose to implement a justice and human rights-based approach in the preparation process of the Climate Act,<sup>56</sup> including with an emphasis on the rights of the Sami people. A climate justice and human rights-based approach, as adopted in the Paris Agreement, are reflected in both the renewal process and the content of Finland's Climate Act. In 2019, the Government of Finland commissioned a Sami project related to climate change (SAAMI—Adaptation of Saami people to the climate change).<sup>57</sup> The main objectives of the project were to investigate the effects of climate change on Sami culture, identify ways for reindeer-herding Sami to adapt to climate change, and determine related required actions. The research classified direct and indirect climate change observations made by Sami persons themselves. The project also looked at possibilities for the Sami to influence climate policy, which were very limited at the time.<sup>58</sup> The SAAMI project was very influential; Sami status in the new Climate Act is, to a large degree, based on the recommendations of the SAAMI project's final report.

As a part of the preparations of the Climate Act, the Finnish Ministry of Environment commissioned a study on the relationship of the Climate Act and fundamental and human rights.<sup>59</sup> The Sami people's rights and their unique situation in relation to climate change were also briefly addressed in this study, which further encouraged incorporating Sami rights into the text of the Climate Act.

The Finnish Climate Act also adopts an intertwined justice and human rights-based approach; according to the Government Bill, the subjective aspect of the justice approach is based on human rights obligations, such as those in human rights treaties and case law, as well as the Constitution.<sup>60</sup>

The Climate Act, additionally, includes a Climate Change Panel<sup>61</sup> with the task of producing, compiling, and analysing scientific information, as well as identifying information needs concerning climate change mitigation and adaptation for climate policy planning, implementation, monitoring, and decision-making (Section 20).

<sup>54</sup> Näkkäläjärvi et al., "Final scientific report of the project SAAMI. Adaptation of Saami people to the climate change," 2020, p. 237.

<sup>55</sup> UN Human Rights Committee, General Comment No. 36, 3 September 2019, CCPR/C/GC/36, para 26.

<sup>56</sup> It should be noted that in Finland, the original Climate Act is from 2015; renewal process took place in 2019–2022, with the new Act in 2022 + the amendment in 2023.

<sup>57</sup> Näkkäläjärvi et al., "Final scientific report of the project SAAMI. Adaptation of Saami people to the climate change," 2020.

<sup>58</sup> Näkkäläjärvi et al., "Final scientific report of the project SAAMI. Adaptation of Saami people to the climate change," 2020, p. 10. Description sheet in English.

<sup>59</sup> Ekroos et al., *Ilmastolain kytkennöistä muuhun lainsäädäntöön sekä perus- ja ihmisoikeuskysymyksiin*, 2020.

<sup>60</sup> HE 27/2022 vp (Finnish government bill), p. 55.

<sup>61</sup> The Panel was originally established in 2011, by the Ministry of the Environment. The role and tasks of the Panel were first defined in the 2015 Climate Act.

From its inception, the Climate Change Panel has been very active in advancing a climate justice and human rights-based approach into climate policy. The panel has produced a separate memorandum on the rights and climate justice of the Sami people, including addressing concerns related to green transition and calling for the full respect of the rights of Sami, not least their right to participate in the mitigation and adaptation policies.<sup>62</sup>

## Rights of the Sami People in Finland's Climate Act

The objectives of Finland's Climate Act and the climate policy planning system that is based on it also include to contribute to ensuring that the obligations concerning the reduction and monitoring of greenhouse gases, strengthening of sinks, and adaptation arising from the treaties binding on Finland and from European Union legislation are met (Section 2). Therefore, the Climate Act has a justice and rights-based approach that is directly derived from the Paris Agreement. In the Government Bill related to the Climate Act, human rights treaties are also referred to as relevant instruments for the implementation of the Act.<sup>63</sup> In addition, other objectives of the Climate Act and the climate policy planning system based on it are to: 1) contribute to ensuring sustainable development and justice in climate measures, and 2) contribute to ensuring the prerequisites for the Sami people to maintain and develop their own language and culture (Section 2).

In Finland's Constitution, the Sami, as an Indigenous people, have the right to maintain and develop their own language and culture (Section 17.3). Additionally, in the Sami homeland, the Sami have linguistic and cultural self-government, provided for in Finland's Sami Parliament Act<sup>64</sup> (Section 121.4 of the Constitution of Finland). Thus, the Constitutional status of the Sami in Finland has been reaffirmed in one of the objectives of the Climate Act. Moreover, as discussed earlier, climate justice—also recognized as an objective of the Climate Act—directly relates to the rights of Sami in relation to climate change mitigation and adaptation, as also highlighted by the work of Finland's Climate Change Panel that produces information for the purpose of the Climate Act.

Section 14 of the Finnish Climate Act has been titled "Promotion of Sami culture;" it states that, when climate policy plans are prepared, consideration shall be given to the right of the Sami people to maintain and develop their own language and culture in the Sami homeland. To safeguard this right, the authorities are to negotiate with the Sami Parliament of Finland when preparing the plans. These negotiations are to take place in accordance with the procedure laid down in section 9 of the Act on the Sámi Parliament. The provisions of Finland's Skolt Act (253/1995) on promoting the living conditions of the Skolt Sami people and opportunities to practice their livelihoods in the Skolt area, and on maintaining and promoting the Skolt culture, are also to be taken into account in the preparation of the plans (Section 14).

The Act on the Sámi Parliament is currently under a process to be renewed; the

<sup>62</sup> Näkkäläjärvi, Juntunen, & Jaakkola, *Ilmastopolitiikan oikeudenmukaisuus alkuperäiskansa saamelaisten kannalta*, 2023.

<sup>63</sup> HE 27/2022 vp (Finnish government bill), p. 17.

<sup>64</sup> Act on the Sámi Parliament (974/1995).

corresponding new Government Bill (100/2023) proposes substantial strengthening of the negotiation duty of the authorities under section 9, embracing the principle of “free, prior and informed consent” (FPIC).<sup>65</sup> In the current Act on the Sámi Parliament, section 9, it is stated that the authorities shall negotiate with the Sami Parliament of Finland in all far-reaching and important measures that may directly or in any way affect the status of the Sami as an Indigenous people, listing therein different areas such as community planning, the management, use, leasing, and assignment of State lands and conservation and wilderness areas, and others. The list is not exhaustive; at the end of the list, an objective of negotiation includes “any other matters affecting the Sami language and culture or the status of the Sami as an Indigenous people” (Section 9.1, item 6).

According to section 9 of the current Act on the Sámi Parliament, to fulfil obligations of negotiation the relevant authority must provide the Sami Parliament of Finland with the opportunity to be heard and discuss matters, and, at the same time, failure to use this opportunity by the Sami Parliament in no way prevents said authority from proceeding in the matter (Section 9.2). The current section 9 does not contain any qualitative requirements for the negotiations; however, Finland's Ministry of Justice and the Sami Parliament of Finland have together created a memorandum encouraging state authorities of Finland to improve and strengthen the quality of the negotiations with an aim to reach common understanding or agreement between negotiators.<sup>66</sup>

Section 21 of Finland's Climate Act establishes a Sami Climate Council in Finland to support the preparation of climate policy plans; the Government of Finland is to appoint the Sami Climate Council (hereafter referred to in this article as the Sami Climate Council) for a fixed term. Appointed members of the Sami Climate Council are to include both persons in possession of traditional Sami knowledge and persons representing key fields of science. The task of the Sami Climate Council is to submit opinions on climate policy plans with regard to promotion of Sami culture. The Sami Climate Council might also carry out other tasks concerning the production of information related to climate change and Sami culture and rights. A reasonable remuneration can be paid to the members of the Sami Climate Council for carrying out their duties (Section 21).

According to the same section 21, further provisions on the tasks and composition of the Sami Climate Council and other procedures concerning the activities of the Sami Climate Council, including on the selection, terms of office, and remuneration of its members, can be laid down by Finland Government decree (Section 21).

The Finland government decree also specifies the tasks of the Sami Climate Council, which are to: 1) produce statements related to climate mitigation and adaptation plans, 2) produce a knowledge base related to climate policy impact assessment and monitoring (from the viewpoint of Sami culture), 3) produce statements related to local and regional climate change plans and measures, and 4) document and report

<sup>65</sup> HE 100/2023 vp (Finnish government bill); see also, Heinämäki, “Legal appraisal of Arctic Indigenous peoples’ right to free, prior and informed consent,” 2020, pp. 225–351.

<sup>66</sup> Oikeusministeriö [Ministry of Justice], “Memo on the negotiation duty of section 9 of the Act on the Sámi Parliament,” 23.11.2017, OM 2/551/2017.

on other knowledge bases that support Sami culture in climate change mitigation and adaptation.<sup>67</sup>

An example of “other knowledge bases” referred to in listed item number 4 above could be, for example, to produce a cumulative impact assessment of planned climate change mitigation and adaptation measures. In addition, the Sami Climate Council could, for example, conduct assessments of impacts of climate change where coupled with other developments that affect Sami culture. The fundamental rights of the Sami in Finland’s Constitution, coupled with human rights (particularly article 27 of the ICCPR and related case law), require that—when activities are planned that would either be placed on or have effects on the Sami homeland—the impacts of such activities are to be assessed in the context of considering cumulative impacts of other past, present, and planned activities.<sup>68</sup> The prohibition to cause significant harm to Sami culture, derived from legal application of article 27 of the ICCPR,<sup>69</sup> has been included in Mining, Environmental Protection, Water, and Nature Conservation Acts of Finland, as well as in Finland’s Act on the implementation of the Nagoya Protocol on Biological Diversity.

Finland’s recognition of the use of Sami traditional knowledge is quite remarkable, in that it both embraces the approach in the Paris Agreement and follows recommendations of the IPCC. At the time of writing this article, Finland’s Sami Climate Council members have only recently been nominated; the Council’s future work will exhibit what kind of role Sami traditional knowledge will have in the work of the Council and also to what degree Sami traditional knowledge will be implemented and reflected in Finland’s climate change policies.

Regarding Finland Government decisions based on the climate policy plan, under the Climate Act (section 21b) and in line with the requirements of environmental legislation, the Sami Parliament of Finland and the Skolt Sami Village Committee of Finland also have the right(s) to appeal to Finland’s Supreme administrative court. This right to appeal was added to the Climate Act after its entry into force, following a commissioned investigation by Finland’s Ministry of the Environment that included an elaboration on rights-based climate change cases in State courts around the world, as well as international bodies, and supported the right to appeal for the Sami Parliament of Finland and the Skolt Sami Village Committee of Finland,<sup>70</sup> as proposed by the subsequent Government Bill.<sup>71</sup>

## Conclusions

Finland’s Climate Act is a progressive piece of legislation that has been internationally celebrated as a forward-thinking model, not least due to its ambitious goal to reach net zero in 2035 and net negativity—meaning to absorb more CO<sub>2</sub> than emitted—by 2040. Moreover, with its strong focus on climate justice grounded in human rights

<sup>67</sup> Valtioneuvoston asetus saamelaisesta ilmastoneuvostosta, 435/2023.

<sup>68</sup> UN Human Rights Committee, *Jouni Länsman and Eino Länsman v. Finland*, Communication No. 1023/2001, UN. doc. CCPR/C/83/D/1023/2001, 17 March 2005. See, Heinämäki, “The prohibition to weaken the Sami culture in international law and Finnish environmental legislation,” 2023, pp. 84–100.

<sup>69</sup> ICCPR, GA resolution 2200 A (XXI).

<sup>70</sup> Vihervuori, *Uuden ilmastolain muutoksenhakusääntely, oikeudellinen selvitys ympäristöministeriölle*, 2022.

<sup>71</sup> HE 239/2022 vp (Finnish government bill).

of the national Climate Change Panel, while also codifying Sami rights as part of Finland's climate policy planning, it shows a high-level legal commitment to implementing the justice and human rights-based approach of the Paris Agreement and as has been endorsed by UN Human Rights Bodies and the UN General Assembly. In a best-case scenario, Finland could, thus, not only pave the way to similar kinds of developments of climate change legislation in Norway and Sweden in relation to Sami rights, but it could also lead the way for other states that have Indigenous peoples within their state boundaries.

The Sami people's status as an Indigenous people is strong in Finland's Constitution. However, the protection of the Sami people's rights to maintain and develop their culture and related cultural self-government is rather weak in both the Act on the Sámi Parliament and other sectoral legislation. The Sami right to cultural self-government in Finland does not grant the Sami Parliament of Finland any powers to decide any matters related to traditional lands, waters, or areas as such—not even where related to Sami cultural heritage (unlike in Norway).<sup>72</sup> For the most part, the Sami Parliament of Finland only has influence in Finland through statements and negotiations with State authorities.

Finland's Climate Act directly refers to the negotiation duty of Finland State authorities under section 9 of the Act on the Sámi Parliament. Without strengthening of section 9 of the Act on the Sámi Parliament, as currently proposed by the Government of Finland, the participation of and real influence of the Sami Parliament of Finland in climate planning may risk remaining minimal. On the other hand, Finland's Sami Climate Council, a unique and innovative establishment, might strengthen the negotiation positions of the Sami Parliament of Finland. Outcomes will very much depend on individual authorities and their approaches as to how much consideration they will give to the work of the Council, and how well and in good faith, negotiations are carried out with the Sami Parliament of Finland. Finland's Ministry of Environment has already shown an unprecedented approach to Sami rights during the preparation phase of the Climate Act: along with the Sami Parliament of Finland and the Skolt Village Committee of Finland, Sami society, as a whole, was largely involved in the process.

The impact of Finland's Sami Climate Council will likely depend on economic resources, in particular State funding. There is an interesting potential for cooperation between "Western" science and Sami knowledge within the work of the Sami Climate Council. The Sami Climate Council of Finland might also provide a significant contribution to the work of the IPCC. As stated by the IPCC, "Indigenous knowledge and local knowledge can provide important understanding for acting effectively on climate risk and can help diversify knowledge that may enrich adaptation policy and practice."<sup>73</sup> The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) has highlighted that most policymaking approaches around the world have prioritized a narrow set of values and in that vein frequently ignore values associated with Indigenous peoples' worldviews in relation to the environment.<sup>74</sup> The Sami Climate Council also has great potential to assist in Finland's climate

<sup>72</sup> Myrvoll et al., "Unpredictable consequences of Sámi self-determination," 2012.

<sup>73</sup> IPCC, "Point of departure and key concepts" [R. Ara Begum et al.], 2022c, p. 124.

<sup>74</sup> Pascual et al., "IPBES 2022," 2022.

policymaking through incorporating Sami values—values that are inherently built on the survival of Sami culture, Sami practices, and Sami cosmovision as an Indigenous people.

The Climate Act is quite ambitious in its GHG reduction targets, which, when applied, will help the Sami people, as well. However, whether the culture and rights of the Sami people can be protected from climate change impacts will also depend on the degree of global success in combatting climate change. When considering Finland's Climate Act, incorporating Sami values and views into climate plans will likely have good prospects. At a minimum, the Sami Climate Council of Finland might be able to influence green transition plans in Finland that concern the Sami homeland to include the Sami concerns. However, the negotiation duty under Finland's current Act on the Sámi Parliament neither reflects the right of the Sami to self-determination, nor the right to Sami decision-making in the setting of priorities for the development of lands, waters, and natural resources. Since Sami culture is pressured by the cumulative effects of many activities in the Sami homeland and, coupled with that, the impacts of climate change, strengthening Sami rights in other sectoral legislation such as Mining Act and Environmental Protection Act in Finland is necessary if Finland is to enforce the Sami people's Constitutional status as an Indigenous people with rights to self-determination and related self-governance.

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# Reindeer Herding Right and Mining in Finland

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**ABSTRACT** The article examines reindeer herding as a land use right and its status, particularly in relation to mining activities, which, due to the so-called green transition, have become a significant competing form of land use in Finland. The article begins by exploring the historical development of reindeer herding legislation and the formation of the current reindeer herding area. Additionally, it briefly compares the reindeer herding legislation of Finland and Sweden, including who is entitled to practice reindeer herding. Finland's reindeer herding area is divided into three distinct regions, within which the status of reindeer herding varies. The article investigates the origins of these regions and the differences between them. A central focus of the article, however, is the relationship between reindeer herding and mining activities. This involves both legislation and legal practice. Regarding legal practice, the discussion focuses particularly on decisions of the Supreme Administrative Court in cases where environmental and mining permits granted by administrative authorities have been deemed to cause harm to the practice of reindeer herding.

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**KEYWORDS** reindeer herding rights, green transition, indigenous peoples, Sami, Lapland border, Lapp villages, Sami land rights, property law, legal history, Finland

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## Introduction

Section 3 of Finland's Reindeer Husbandry Act stipulates that reindeer may graze in the reindeer herding area regardless of land ownership. Without this right in legislation, the practice of reindeer husbandry in its current form would not be possible. However, this right is quite exceptional as a property right. If the land used for reindeer husbandry is repurposed, reindeer husbandry generally has to yield.

Although reindeer grazing areas have been shrinking almost since reindeer husbandry began, these losses have not halted reindeer husbandry in any region. However, we are now facing a new situation that involves the green transition, a shift towards more sustainable and environmentally friendly production practices. In practice, this

means, for example, wind farms producing emission-free electricity or mines set up for green technology needs.

The goals behind the green transition are good and desirable in many respects. However, mines must be established where ore deposits are located. Wind farms are often planned in remote areas where they are considered to cause as little harm as possible to local residents and industries. For these reasons, many realized and planned mining and wind power projects are situated within the reindeer herding area. However, each such project takes land away from reindeer husbandry. In many cases, the land in question is important—even vital—for reindeer herding. The green transition accelerates the reduction of grazing areas.

Reindeer husbandry in Finland differs markedly from that of the two other Nordic countries in a certain respect. In Sweden and Norway, reindeer husbandry is primarily understood as a *land use right* belonging to the (reindeer herding) Sami.<sup>1</sup> Sweden's first Reindeer Husbandry Act already dealt with the "right of Sweden's Lapp people to reindeer herding."<sup>2</sup>

In Finland, the development has taken a different direction. Reindeer husbandry in Finland is primarily seen as a *livelihood*, and according to Section 4 of the Reindeer Husbandry Act, all permanent residents of the reindeer herding area who are citizens of a state belonging to the European Economic Area may own reindeer.

However, there is another side to this issue. Although it has not been explicitly clarified or stipulated in the current legislation, there are reindeer herders in Finland who meet the same Sami descent criteria as those traditionally required of reindeer herders in Sweden's Reindeer Husbandry Act. In Finland, there are reindeer herders of Sami origin who live in areas of the old Sami villages—that is, areas historically settled by the Sami—and their families have practiced reindeer husbandry for several generations. Should we consider the legal status of these reindeer herders comparable to that of members of a Sami village in Sweden?

This question will, however, only be mentioned in passing in this context, as the aim of this article is, firstly, to analyze and discuss the legal status of reindeer herders—both Sami and Finnish—as determined by the current legislation, contrasted with Sweden's reindeer husbandry legislation.<sup>3</sup> Within Finland's reindeer herding region, the status of reindeer husbandry differs somewhat and the article points to the historical reasons behind these distinct areas. Secondly, the article also aims to critically analyze the mining legislation and the case law concerning the conditions for mining activities within the reindeer herding region.

<sup>1</sup> Swedish Reindeer Husbandry Act 1971:437, s. 1; Norwegian Reindeer Husbandry Act 2007:40, ss. 4, 9, 32; Cramér & Prawitz, *Studier i renbetesstiftning*, 1979, pp. 40–48; Bengtsson, *Samerätt*, 2004 pp. 15, 45–46, 70–71; Allard, *Two Sides of the Coin*, 2006, pp. 326–327; Skogvang, *Samerett*, 2023, pp. 306–313; Ravna, *Same- og reindrifstrett*, 2019, pp. 287–291.

<sup>2</sup> Lag angående de Svenska lapparnes rätt till renbete i Sverige 1886:38.

<sup>3</sup> As Finland was once part of the Swedish Kingdom for 600 years, Finland and Sweden share a common historical and legal background. This applies not only to legislation and administration, but also to reindeer husbandry and ethnic groups such as settlers, farmers and the Sami people. See e.g. Allard, "Some characteristic features of Scandinavian laws and their influence on Sami matters," 2015b, pp. 50–51, 57.

## The Areas Covered by Finland's Reindeer Husbandry Act

### *The Current Reindeer Herding Area*

Finland's current Reindeer Husbandry Act dates from 1990.<sup>4</sup> The law includes a map defining the reindeer herding area and the areas of the reindeer herding cooperatives. This combined area is practically the same as that defined in the first Reindeer Husbandry Act of 1932.

The regional demarcation of the reindeer herding area is discussed in the report of the committee that prepared the 1932 Act. The committee concluded that in the area north of the so-called Lapland border, which crossed the current region of Northern Finland, reindeer husbandry involves a special right to land use.<sup>5</sup> According to the committee, in this area, the Sami had an exclusive right to all land use, including reindeer husbandry. Thus, in this part of Finland's current reindeer herding area, the right to practice reindeer husbandry was based on the old land use rights of the Sami, which the committee stated were also recognized by the Swedish state and its legal system.<sup>6</sup>

However, at the time of the enactment of the first Reindeer Husbandry Act, reindeer husbandry was also practiced south of this area. The committee noted that although reindeer husbandry practiced in this southern area may not have had "such a formal legal basis as the reindeer husbandry practiced by the Sami, an old customary and consistent practice has created a fully equivalent land use right."<sup>7</sup>

The current reindeer herding area in Finland thus consists of two distinct regions with different legal-historical and property law statuses. The area comprises, on the one hand, the area of Lapp villages located north of the Lapland border<sup>8</sup> and, on the other hand, the area located south of this border, to which reindeer herding had expanded by 1932. Unlike in Finland, Swedish legislation still maintains this division between the area north of the Lapland border and the area outside of it, and this distinction still has significance for the content of reindeer herding rights.<sup>9</sup>

Although the current Finnish Reindeer Husbandry Act does not distinguish whether the area is located within the territory of old Lapp villages or not, it does not mean that the division is no longer relevant. In terms of reindeer herding, the issue may concern the legal content of the land use right, such as fulfilling the criteria for immemorial prescription. Additionally, the issue may involve other land and water use rights historically held by the Sami, such as hunting and fishing rights.<sup>10</sup>

<sup>4</sup> Reindeer Husbandry Act 1990:848. Legal issues related to reindeer husbandry in Finland have been addressed in, among others, the following studies: Hyvärinen, "Kenellä on poronhoito-oikeus saamelaiden kotiseutalueella," 1981; Savolainen, "Suomen poronhoito-organisaatio ja -omistus autonomian ajan lopulla," 1984; Joona, *Poronhoidon hallinto ja hallintolainkäyttö*, 1989; Joona, *Poronhoito-oikeus maankäyttöoikeutena*, 1993; Joona, *Poronhoitolaki oikeuskäytännössä*, 2021; and Magga, *Siidan lait*, 2024.

<sup>5</sup> See, for example, Joona, "Lapland border," 2005 pp. 187–189.

<sup>6</sup> Committee report 1929, *Komiteanmietintö 1929:8. Erinäisiä poronhoitoa koskevia kysymyksiä selvittämään asetetun komitean mietintö I*, pp. 50–51.

<sup>7</sup> Committee report 1929, *Komiteanmietintö 1929:8. Erinäisiä poronhoitoa koskevia kysymyksiä selvittämään asetetun komitean mietintö I*, p. 51. Allard, *Renskötselrätt i nordisk belysning*, 2015a, pp. 47–52.

<sup>8</sup> Korpijaakko-Labba, *Om samernas rättsliga ställning i Sverige-Finland*, 1994, pp. 52–58.

<sup>9</sup> Swedish Reindeer Husbandry Act 1971:437, p. 3.

<sup>10</sup> See Supreme Court case NJA 2020:3, decision 23 January 2020 (The Girjas Case), pp. 40–54. See further Allard, *Two Sides of the Coin*, 2006, pp. 271–282.

### *The Area Specifically Intended for Reindeer Husbandry*

In the current Finnish Reindeer Husbandry Act, two areas are defined where the status of reindeer husbandry differs from that in the rest of the reindeer herding area. One of these areas is *the area specifically intended for reindeer husbandry*, as stipulated in Section 2, Subsection 2 of the Reindeer Husbandry Act. The background of this regulation also extends to the first Reindeer Husbandry Act. The committee that prepared the act proposed that larger areas be formed of state-owned land in the central and northern reindeer herding regions. The requirement was that in these areas, reindeer husbandry could be considered to be of greater benefit than agriculture and cattle breeding. These areas would be formed *exclusively* for reindeer husbandry.<sup>11</sup> It is evident that this proposal was influenced by the cultivation boundary prescribed in Sweden in 1867, which is also referenced in the committee's report.<sup>12</sup>

The possibility of forming areas where only reindeer husbandry would be practiced was, however, repealed just 16 years later. The Reindeer Husbandry Act Committee of 1942 stated that the wording of the Act, according to which only reindeer herding is allowed in the area, could be considered flawed, because if the idea were "literally interpreted, all other livelihoods would be prohibited."<sup>13</sup> The result was that the formation of such areas was still possible, but other livelihoods could also be practiced in these areas under certain conditions.

The current Reindeer Husbandry Act also defines a special area where the status of reindeer husbandry is more protected than in the rest of the reindeer herding area. In this area, state-owned land cannot be used in a way that causes "significant harm" to reindeer husbandry. However, the legislative preparatory works do not specify in detail what is meant by significant harm. The relevant government proposal only notes that "in practice, this restriction would mainly apply to forestry measures."<sup>14</sup> The map below indicates the boundary of the area specifically intended for reindeer herding (thick black line). The map also shows the boundary of the Sami homeland (yellow line) and the area of the Kemin-Sompio herding cooperative, which will be discussed later.

However, the protection only applies to state-owned land within the specified area. If state-owned land is transferred to private ownership, it is no longer subject to this usage restriction. This arrangement differs from Sweden's Reindeer Husbandry Act, which stipulates that the relevant provisions apply not only to state-owned land but also to land that was owned by the state in 1992.<sup>15</sup> Unlike in Sweden, the transfer of state-owned land to private ownership in Finland affects the legal status of reindeer herders.

### *The Sami Homeland*

The Reindeer Husbandry Act also defines another area where the content of reindeer husbandry rights differs from that of the rest of the herding area: the Sami homeland.

<sup>11</sup> Committee report 1929, *Komiteanmietintö 1929:8. Erinäisiä poronhoitoa koskevia kysymyksiä selvittämään asetetun komitean mietintö I*, pp. 52–53, 73.

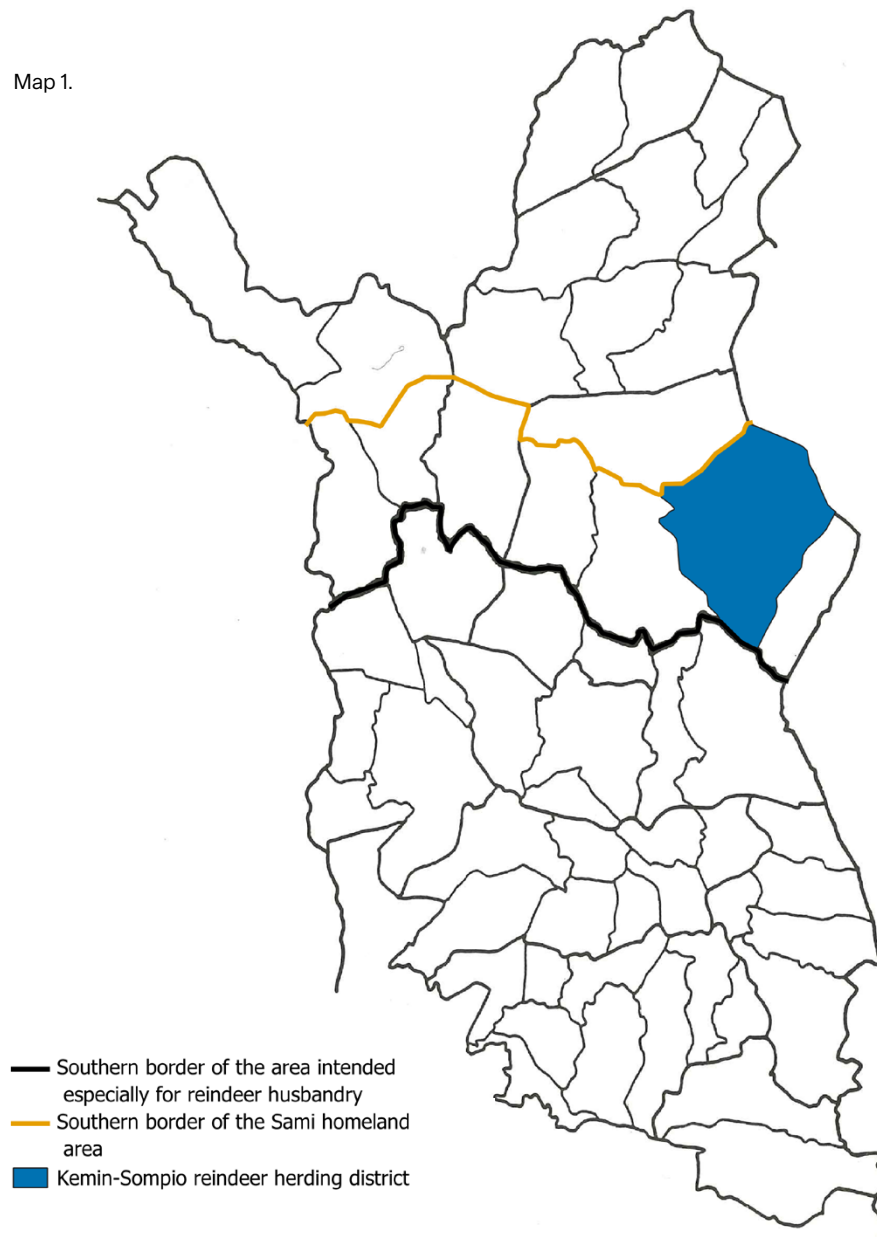
<sup>12</sup> Committee report 1929, *Komiteanmietintö 1929:8. Erinäisiä poronhoitoa koskevia kysymyksiä selvittämään asetetun komitean mietintö I*, p. 45.

<sup>13</sup> Committee report 1942, *Komiteanmietintö 1942:8*, p. 4.

<sup>14</sup> Government proposal 244/1989, p. 6.

<sup>15</sup> Swedish Reindeer Husbandry Act 1971:437, s. 3.

Map 1.



The background of this area involves an interview study conducted in the municipalities of Enontekiö, Inari, Utsjoki, Sodankylä, and Kittilä. The study aimed to identify individuals, or their parents or grandparents, who had learned Sami as their first language.<sup>16</sup> The area where these interviews were conducted became later known as the Sami homeland. According to Section 4 of the Sami Parliament Act of 1995, the Sami homeland includes the municipalities of Inari, Enontekiö, and Utsjoki, as well as the Lappi reindeer herding cooperative area in the municipality of Sodankylä.

The provisions of the Reindeer Husbandry Act concerning the Sami homeland are not particularly significant. They mainly concern the obligation to prevent reindeer

<sup>16</sup> See, Nickul, "Suomen saamelaiset vuonna 1962," 1968, pp. 6–26.

from causing damage and the duty to compensate for damage caused by reindeer, primarily to agriculture.<sup>17</sup> The special status of this area primarily arises from other legislation. For example, according to the Water Act, any project located in the Sami homeland must be implemented in such a way that it does not significantly impair the Sami's ability to "exercise their right as an indigenous people to maintain their culture or to engage in traditional livelihoods."<sup>18</sup> Similar provisions are also found in the Environmental Protection Act<sup>19</sup> and in the Mining Act, which will be addressed next.

## The Legislation Regulating Reindeer Husbandry and the Establishment of Mines

### *Specific Protection within the Sami Homeland*

The current Mining Act dates back to 2011.<sup>20</sup> According to its Section 38, Subsection 1, when processing a permit referred to in the Act, the licensing authority must

assess the effects of the activity on the rights of the Sami as an indigenous people to maintain and develop their own language and culture and traditional livelihoods, and consider measures to reduce and prevent harm.<sup>21</sup>

In the Skolt area, the licensing authority must request an opinion from the Skolt Village Assembly regarding the activity covered by the permit to ascertain the effects of the activity on Skolt livelihoods and living conditions.<sup>22</sup> The Skolt area refers to the area located in the eastern parts of Inari municipality.<sup>23</sup>

Exploration, mining, and gold panning permits cannot be granted if the activities covered by the permit, alone or together with other similar permits or other types of land use activities in the area, would significantly impair the conditions for traditional Sami livelihoods in the Sami homeland or otherwise impede the maintenance and development of Sami culture. Furthermore, a permit cannot be granted if it would significantly worsen the living conditions and livelihood opportunities of the Skolt people living in the Skolt area. However, the permit may be granted if the obstacle to granting the permit can be removed by permit conditions.<sup>24</sup>

The following observations can be made from these provisions of the Mining Act. The protected legal good in these provisions does not relate to Sami property-based rights but concerns the protection of culture and livelihoods. The prohibition on im-

<sup>17</sup> Swedish Reindeer Husbandry Act, s. 31.

<sup>18</sup> Water Act (587:11), s. 8.

<sup>19</sup> Environmental Protection Act (527:14), ss. 49.1, 6.

<sup>20</sup> Mining Act (621:11).

<sup>21</sup> The Sami Parliament, the Skolt Village Assembly, and the local reindeer cooperative must be given the opportunity to comment on the report. Mining Act, s. 38.1

<sup>22</sup> Mining Act, s. 38.3; See also Pölönen et al., "Finnish and Swedish law on mining in light of collaborative governance," 2020, pp. 104–105, 122; and Heinämäki "Saamelaiden oikeudet Suomessa," 2017, pp. 78–85.

<sup>23</sup> According to the Skolt Act (253:95), s. 9, a Skolt referred to in the Act has the right in Skolt area to take wood, obtain gravel, build structures related to hunting, fishing, and reindeer husbandry, graze cattle, and fish in state waters. See Joona, Maa- ja vesialueiden yleiskäyttöoikeudet erityisesti Pohjois-Suomen alueella, 1995, pp. 272–276.

<sup>24</sup> Mining Act, s. 50.

pairing the Sami homeland concerns not only reindeer husbandry but also other traditional Sami livelihoods, such as hunting and fishing. A permit cannot be granted if the project would impede the maintenance and development of Sami culture. This may involve not only the use of land and water areas, but also other activities related to Sami culture.

The law does not specify who should be considered as subjects of the protected rights. Section 38, Subsection 2 of the Mining Act specifically states that the purpose is to protect the living conditions and livelihoods of the Skolt people in the Skolt area. However, the prohibition on impairment concerning the Sami homeland does not explicitly point out such a subject. Although hunting, fishing, and reindeer husbandry are considered traditional Sami livelihoods, they can also be practiced by non-Sami people in Finland. Therefore, the wording of this provision does not make it clear whether the prohibition on impairment only applies to livelihoods practiced by Sami people or whether it refers to Sami livelihoods practiced in this area regardless of who practices them. Another question is, of course, who is meant by Sami people if the prohibition on impairment only applies to them.

The Sami Parliament and, if the issue concerns reindeer husbandry, also reindeer herding cooperatives have the right to appeal,<sup>25</sup> but regarding hunting and fishing, the community's right to appeal may be more ambiguous. In any case, every natural person—including individual reindeer owners—has the right to appeal if a decision violates the interests and rights of a person and if other conditions for appealing are met.<sup>26</sup>

### *Provisions of the Mining Act Concerning the Area Specifically Intended for Reindeer Husbandry*

Section 50 of the Mining Act provides that exploration, mining, and gold panning permits shall not be granted if the activities authorized by the permit would cause significant harm to reindeer husbandry in the special reindeer husbandry area. The

<sup>25</sup> However, see Supreme Administrative Court (SAC) case SAC 2013:179, where it was held that the Sami Parliament and the cooperative did not have the right to appeal a reservation decision. According to the court, a reservation decision only provides a priority right to an exploration permit. The court stated that since a reservation decision does not authorize exploration, it does not affect reindeer husbandry. See also SAC 2014:111 and SAC 2021:83.

<sup>26</sup> SAC 16.3.2018 no. 1165. The licensing authority granted the applicant a permit for mechanical gold mining on a five-hectare gold panning area. According to the permit conditions, the permit holder had to, among other things, slope the trenches in such a way that they did not pose a danger to reindeer or reindeer husbandry activities. The Sami Parliament appealed the decision. SAC dismissed the appeal. According to the reasoning of the SAC, gold panning was intended to be conducted annually only between 15 May and 30 September and furthermore, the permit was valid for a relatively short period (three years). Therefore, it was possible to review the permit conditions quite soon if there was a need to reduce harm. The court considered the granted permit not to be contrary to the Mining Act, s. 50, subsection. See also SAC 4.2.2015 no. 274; SAC 2020:124. According to the permit granted by the licensing authority, gold mining would have extended up to about 70 meters from the reindeer fence between reindeer herding cooperatives. The Sami Parliament appealed the decision. The SAC narrowed down the operating area so that there was a wider, unobstructed passage between the gold mining area and the reindeer fence, allowing access to the summer grazing area. In its reasoning, the court referred to research on the noise and barrier effects of mechanical gold mining, the terrain of the area, and the behavior of reindeer. According to the court, there was a risk that digging trenches would largely render the reindeer summer grazing area unused due to the difficulty of reindeer movement. This would result in more intensive use of the reindeer herding cooperative's (other) grazing areas, their quicker wear, disruption of the reindeer grazing cycle, and, among other things, the need to increase winter feeding of reindeer. Note that the case did not concern the interpretation of the Mining Act, s. 50.1, but the Environmental Protection Act (527/14), s. 48.1, s. 6, of which, however, is similar in content to the Mining Act, s. 50.1.

wording is thus the same as in Section 2(2) of the Reindeer Husbandry Act. In the preparatory work of the Act, it is explicitly stated that the scope of application of this provision should not be extended to other reindeer herding areas. However, the matter is not explained in more detail.<sup>27</sup>

In interpreting the provision, a key component is the Sokli mining project located in Savukoski municipality. The project is unusually large in the Finnish context, with the mining concession area covering 59.3 square kilometers and comprising a total of 14 open-pit mining areas. This area belongs to the Kemin-Sompio cooperative, which is the largest cooperative in Finland in terms of both the area and the maximum allowed number of reindeer (12,000).<sup>28</sup>

The reindeer herding cooperative had asserted both in the planning of land use (approval of the local master plan) and in the Mining Act proceedings (amendment of the mining concession area) that the project would cause significant harm to reindeer husbandry in the area. However, the Supreme Administrative Court (SAC) ruled in 2017 that the mining project would not cause significant harm.<sup>29</sup> This was justified, among other reasons, by the fact that the scope of the original plan involving the project had been reduced and that the area of the project was relatively small compared to the entire area of the cooperative.<sup>30</sup>

However, a condition for the implementation of the project was that the company would also obtain an environmental permit under the Environmental Protection Act. In its appeal, the Kemin-Sompio reindeer herding cooperative stated that the realization of the project would fragment and destroy grazing land and disrupt the natural grazing cycle of reindeer. The ore was planned to be transported from the area by heavy trucks. In addition, the energy production of the mine was planned in such a way that a separate thermal plant would be built on the site, using annually 200,000 cubic meters of wood that would be sourced from within a radius of 100 kilometers, mainly from the grazing areas of the cooperative. According to the cooperative, such extensive logging would cause unreasonable damage to reindeer nutrition during the critical spring-winter period.

The Vaasa Administrative Court (the court of first instance) held that the mining project would cause the loss and fragmentation of grazing land and hinder the movement and transportation of reindeer, as claimed in the appeal. However, the Court also held that since the Environmental Protection Act is a general law concerning environmental pollution, it does not address these issues, which instead are dealt with under the above-mentioned Mining Act and Land Use and Building Act. Therefore, the Court considered the matter only to the extent that it concerned the noise and dust from the project affecting reindeer husbandry. According to the Court, the noise and dust from the project would not cause significant harm as referred to in Section 2(2) of the Reindeer Husbandry Act.<sup>31</sup>

As for the position of the Sami, the Administrative Court stated that the Sokli

<sup>27</sup> Government Proposal 126/2022, s. 2.3.12.

<sup>28</sup> See above, Map 1. The name of the Kemin-Sompio cooperative comes from the Kemin and Sompio forest Sami villages.

<sup>29</sup> SAC 15.9.2017 No. 3829 and SAC 11.1.2017 No. 34.

<sup>30</sup> Administrative Court of Northern Finland 7.4.2015 No. 15/00132/1.

<sup>31</sup> Vaasa Administrative Court 5.5.2020 No. 20/0034/3, p. 174–176.

mining project is not located in the Sami homeland. According to the Court, the contested decision cannot therefore be considered illegal based on what has been presented in the legal proceedings concerning the determination and consideration of the rights of indigenous peoples.<sup>32</sup>

The cooperative appealed to the Supreme Administrative Court. SAC repealed the decision and remitted it for renewed assessment and decision to the competent authority.<sup>33</sup> The Court's reasoning is interesting and summarized here. The SAC concluded that the Sami's right to practice traditional livelihoods, such as reindeer husbandry, is secured under Section 17(3) of the Finnish Constitution and Article 27 of the International Covenant on Civil and Political Rights (ICCPR). This right is protected whether or not the project is located in the Sami homeland. However, the SAC also stated that the obligations under the ICCPR are largely considered in the procedure for assessing whether the project causes significant harm as referred to in Section 2(2) of the Reindeer Husbandry Act.<sup>34</sup> According to the Court, the Sami's right under Article 27 of the ICCPR to practice their culture is thus equated with the prohibition on causing significant harm to reindeer husbandry.

In its decision, the SAC also states that the starting point of the assessment of significant harm is that the assessment is made within the framework of the permit and other procedures under different laws, considering the specific circumstances of each project. According to the Court, the assessment of harm is not limited solely to forestry measures, although forestry is mentioned as an example of significant harm.

Regarding procedural conduct, the SAC addressed the matter only to the extent that it concerned permit assessment according to the Environmental Protection Act.<sup>35</sup> In this regard, the Court notes that activities regulated under the Environmental Protection Act may cause harm to reindeer husbandry in the form of noise, dust, vibration, light, and the placement of waste areas. The matter also pertains to blasting activities, crushing, beneficiation operations and traffic. As a result, reindeer may flee to a distance of several kilometers. The SAC highlights that regarding the expulsion effect of noise on reindeer, it should be considered that the reindeer grazing in the Kemin-Sompio cooperative area are primarily unaccustomed to human activities.<sup>36</sup>

Regarding harm caused by traffic, the Court refers to the fact that ore transportation by road would pass through the central and southern parts of the reindeer herding cooperative district. The route would traverse both the summer and winter grazing areas of the herding district. During production, the average traffic volume would be approximately 300 heavy vehicles per day. This would likely cause the reindeer to flee from the vicinity of the road due to noise and vibration, which would also affect the use of grazing areas. Also, the placement of waste would affect the calving areas and disrupt grazing rotation. Finally, the SAC states that "during its 20-year operation period, the extensive project may result, as assessed in advance, in harmful

<sup>32</sup> See the decision of the Vaasa Administrative Court 5.5.2020 No. 20/0034/3, p. 179.

<sup>33</sup> See SAC 2022:38.

<sup>34</sup> SAC 2022:38, p. 344.

<sup>35</sup> Pölönen et al., "Finnish and Swedish law on mining in light of collaborative governance," 2020, pp. 121–123.

<sup>36</sup> SAC 2022:38, pp. 341–342.

consequences for reindeer husbandry, causing significant harm as referred to in the cited provision.”<sup>37</sup>

Regarding forest logging associated with the project, the SAC notes that extensive energy wood harvesting around the mining area could have significant effects on reindeer husbandry. However, the Court also states that it may only consider the environmental impacts concerning the power plant in an environmental permit case.

## Conclusions

As stated at the beginning, Finland and Sweden are quite close to each other in terms of legal history. This applies to both historical events and legislation. However, the legislation concerning the Sami and reindeer husbandry in these countries differs significantly in certain respects. In Sweden, it is assumed that there are land and water rights belonging to the Sami people who meet certain criteria. And although the content of this right has been detailed in legislation, the starting point has been that this right is based on principles of private law.

In Finland, the adopted approach can rather be described as public law-oriented. For example, the extent of the reindeer herding area is not based on whether the right to use this land (grazing rights) exists in a particular area. In practice, it was simply accepted with the first Reindeer Husbandry Act that reindeer husbandry could be practiced in the area where it was practiced at that time (in 1932). The legislator decided which area would be designated as the reindeer herding area and which would remain outside it. From a private law perspective, this did not treat all property owners equally.

Furthermore, the division of different areas in the current Reindeer Husbandry Act is not based on any specific property law principles. Although the preparatory documents of the Reindeer Husbandry Act state that the current reindeer herding area consists of two different areas in terms of property law, this difference is not reflected in the actual legislative text. A historically more justified approach would have been that—similarly to Sweden—reindeer herding north of the Lapland border is subject to different property law content than reindeer herding south of this border.

North of the Lapland border, the rights to reindeer husbandry and other use of land and water were different from the rights south of it, as stated not only in the preparatory documents of the Reindeer Husbandry Act but also in many other contexts.<sup>38</sup> If the legislator has not consciously abolished or amended these rights, the starting point must be that they still exist.<sup>39</sup>

The different areas referred to in the current Reindeer Husbandry Act can also be considered problematic from the perspective of equality. According to the preparatory documents of the Reindeer Husbandry Act, reindeer herding right north of the Lapland border is based on the land rights of the Sami people. If this is taken as the starting point, reindeer herding rights should nowadays primarily belong only to

<sup>37</sup> SAC 2022:38, p. 343

<sup>38</sup> See for example NJA 1981:1 (The Taxed Mountain Case), p. 196, where the Supreme Court of Sweden states that especially in Kemi and Tornio Lappmarks, the Sami (land use) right was equated with the peasants' rights. Tornio Lappmark was located partly and Kemi Lappmark entirely in what is now Finland.

<sup>39</sup> The same opinion is expressed in Allard, *Rensköttselrätt i nordisk belysning*, 2015a, p. 52. See also Torp, “The interplay of politics and jurisprudence in the Girjas case,” 2023, p. 77.

the descendants of those Sami who practice reindeer herding in the respective area. However, according to the current legislation, the right also belongs to those who do not meet this criterion.

This becomes problematic in the context of the Sami homeland and the reindeer herding area outside the homeland area. Historically and in terms of property law, they are regarded as the same area, but under the current legislation, the position of reindeer husbandry is weaker south of the Sami homeland. The fact that the delineation of the Sami homeland is based on a study of the Sami language conducted in the 1960s does not put this area in a legally different position. The situation can be particularly problematic at the individual level. A non-Sami person who practices reindeer husbandry in the Sami homeland is in a better position than a Sami person who practices reindeer husbandry south of that area.

In Finland, the legal challenges related to the green transition and reindeer herding are connected to these issues. The current Finnish Reindeer Husbandry Act does not recognize Sami rights, nor the legal-historical and property law foundations upon which the status of reindeer herding should be based. In relation to competing land uses, such as mining and wind farms, the position of reindeer herding therefore appears weaker than it actually is. This is not a matter of public right but of a private law right. This issue has, of course, existed well before the green transition projects, but the green transition has made this matter particularly topical.

The current legislation can also be criticized for using very general terms such as “significant harm,” “substantial impairment,” or the prohibition of “detriment to the maintenance and development of Sami culture.” In many cases, it remains unclear what is prohibited and what is allowed.<sup>40</sup> General and open-ended legislation leaves the decision-making power to the interpreter of the law, although defining such questions should primarily be the responsibility of the legislative preparer and parliament. It is also problematic for the parties involved if the answer can only be obtained through judicial proceedings.

In the context of the Sokli environmental permit case, it was noted by the Administrative Court that indigenous rights in Finland only concern the Sami homeland, but here the SAC correctly held that the Sami people’s right to practice their traditional livelihoods, such as reindeer husbandry, is protected under the Finnish Constitution as well as Article 27 of the ICCPR. This right is safeguarded regardless of whether the impact on Sami rights caused by a project or activity occurs within the Sami homeland area. This case also clarified the interpretation of the concept of significant harm to some extent. According to the SAC, the topic is not solely about forestry but also about any other land use that may cause significant harm to reindeer husbandry.

When deciding on a permit, only the activities covered by that permit are considered, which effectively *fragments* the assessment of impact into multiple parts. Consequently, it is more likely that the threshold for significant harm is not considered

<sup>40</sup> The issue is not only about legislation but also about the administration related to mining. See Pölönen et al., “Finnish and Swedish law on mining in light of collaborative governance,” 2020, p. 122: “The Finnish mining authority (Tukes) has given very few case-specific conditions in these situations.” Instead, it has repeated flexible wording of the law, such as: “Mining shall not give rise to significant harm to the public or the private interest nor infringement of public or private interests,” in its decisions. This practice has been heavily criticized by both the Court and academics. See also Similä & Jokinen, “Governing conflicts between mining and tourism in the Arctic,” 2018, p. 164.

exceeded even if the project as a whole could be deemed to exceed this threshold. In theory, it is thus possible for a mining project to be deemed legal in permit procedures even if it would not pass as such when evaluated as a whole. However, the premise regarding significant harm to reindeer husbandry has been that projects are understood as a whole.

As for significant harm, exceedance of the threshold has been extremely rare in the practice of authorities and courts. Also, in the previous SAC decisions regarding Sokli (mining law, land use planning), the threshold was not exceeded. The case concerned a mining law concession covering 60 square kilometers located on the summer and winter grazing lands of the reindeer herding cooperative. As the threshold was not exceeded in this case, one may wonder whether it ever will be. However, the legal interpretation is clearly inconsistent with the preparatory documents. This can be said because according to the preparatory work for the Reindeer Husbandry Act, even a single forestry measure can cause significant harm to reindeer husbandry.<sup>41</sup>

Based on the SAC's decision regarding the environmental permit, the question of the area of the reindeer herding cooperative is not addressed at all. In previous decisions, and also in case law, the rejection of appeals related to significant harm has been justified by the fact that the area affected constitutes only a very small part of the cooperative's total area. However, it is obvious that the legislator has not considered the matter from this perspective. When referring to, for example, forestry measures, the legislator has meant the harm caused to reindeer husbandry practiced in a certain area. In interpreting the law, the starting point should be that the size of the reindeer herding cooperative has no impact on determining whether a land use project should be regarded as a cause of significant harm to reindeer husbandry.

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<sup>41</sup> Government proposal 244/1989, p. 6.

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