

Uncovering Injustices in the Green Transition: Sámi Rights in the Development of Wind Energy in Sweden

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Abstract

This contribution is an analysis of how the rights of the Sámi to engage in reindeer husbandry are guaranteed in the green transition to renewable energy in Sweden. Consideration of the increasing number of court decisions addressing the impacts of wind energy on reindeer husbandry in Sweden raises significant questions about the fairness of the transition to sustainable development. The purpose of this analysis is to examine the impacts of wind energy on reindeer husbandry and uncover the justice issues raised by this development. Drawing on the discourse of just transition that includes distributional, procedural and recognition considerations, this analysis more specifically examines the distributive effects of the development of wind energy on reindeer husbandry and identifies how Sámi reindeer herders are included and their status and human rights as an Indigenous people recognised within this process. On this basis, the conclusion from this study is that systemic reforms of the Swedish system that take due consideration of the human rights of the Sámi as an Indigenous people must be implemented in order to ensure a transition to sustainable development that equally benefits Sámi reindeer herders and can therefore provide justice for all.

Keywords: *Sámi rights, wind energy, just transition, social justice, Indigenous peoples, Swedish law*

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Introduction

While calls for ‘a sustainable and just transition’ have grown recently, little attention has been paid to the exact meaning of ‘justice’ in the green transition. When this call is addressed, most understandings of the term in the context of the transition from

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fossil fuel to renewable energy focus almost exclusively on the right to affordable energy and the right to access sustainable energy infrastructure. This conceptualisation is grounded in international legal and policy documents that focus on the urgency to provide sustainable energy for all, in particular the United Nations 2030 Agenda for Sustainable Development and its Goal 7, which calls upon states to “Ensure access to affordable, reliable, sustainable and modern energy for all”.¹ By contrast, much less attention has been paid to justice considerations, including the potential for distributional inequities that the energy transition may generate. In fact, most of the policy and decision makers addressing the topic emphasise the question of providing sustainable energy but often overlook the social risks generated by the impact of renewable energy projects. Hence the call for a sustainable transition mostly leaves unaddressed whether and how the deployment of this transition imposes a cost on some while providing a benefit for others. It promotes a transition to sustainable development but does not fully engage with the asserted “need to build peaceful, just and inclusive societies”.²

However, there are growing examples of the negative impacts caused by the transition from fossil fuel to renewable energy.³ Prominent voices among Indigenous peoples are now contending that policy and legislation supporting the green transition do not adequately reflect their interests, and in some instances, even perpetuate colonialism.⁴ In Sweden, where the green transition is well underway, Sámi reindeer herders oppose the development of wind energy projects on their traditional land. As the Indigenous people of Sweden, Sámi reindeer herders have maintained a unique way of life linked with the exercise of reindeer husbandry,⁵ a cultural practice that is covered by the protection of international human rights instruments and recognised under national law.⁶ However, the recent development of wind energy projects on their traditional lands has become an important issue due to its adverse impact on reindeer husbandry.⁷ As a result, Swedish courts are now dealing with an increasing number of lawsuits in which Sámi reindeer herders oppose wind energy developers. These cases call into question the fairness of the development of wind energy as a means to promote sustainable development.

Given the pledge by all states that no one should be left behind in the transition to sustainable development,⁸ the purpose of this contribution is to uncover the impact of wind energy projects on reindeer husbandry and examine the adequacy of the remedial framework to ensure that the rights of the Sámi as an Indigenous people are adequately accounted for in the green transition. The premise of this analysis is that the current governance system is based on a discursive relationship of settler-colonial society that misrecognises Indigenous cultural status and rights. Although important achievements have been made to recognise the rights of Indigenous peoples at the international level within the framework of human rights, the national governance system of most countries, including Sweden, remains hostile to, or inadequate in guaranteeing, the rights of Indigenous peoples. As a result,

there is an acute risk that the promotion of sustainable development cannot fulfil human rights and ensure social justice. Even if there is no silver bullet with which to solve this issue, one theoretical approach that has the potential to elucidate and assist in reforming the system is situated in the cross cutting research agenda of “just transition” which seeks to apply justice principles to energy policy, production and climate change. The theoretical grounding emphasised by scholars working on just transition includes distributional, procedural and recognition considerations in order to ensure transformation that makes explicit the need to consider social justice in the process leading towards sustainable development.⁹ Drawing on this scholarship, the underlying goal of this article is to question “the ways in which benefits and ills are distributed, remediated and victims are recognized” in the green transition.¹⁰ To put it more simply, it addresses “what, how and who” are considered in the transition to sustainable energy by focusing on distributive and procedural justice issues in the development of wind energy in Sweden and the recognition of the rights of the Sámi people as an Indigenous people in this context.

From this lens, the contribution proceeds as follows. The first part provides a short theoretical background, which underlines the importance of adopting a broad conception of justice which encompasses distributional, procedural and recognition considerations as a basis for promoting a just transition that guarantees the human rights of Indigenous peoples. The second part of the article provides a factual background analysing the distributive issues raised by the development of wind energy projects on reindeer husbandry in Sweden. The third part focuses on procedural justice issues and examines how the protection of reindeer husbandry interests is considered in the Swedish permit process for wind energy projects both legally and empirically. Although it is beyond the scope of this analysis to provide a comprehensive assessment of the court decisions concerning this issue, the fourth part of the article outlines the limitations faced by the judicial system in ensuring justice based on the recognition of the status and rights of Sámi reindeer herders as an Indigenous people. The article concludes by underscoring the importance of putting justice and human rights at the forefront of sustainable development as a basis to move from mere rhetoric to concrete action towards the achievement of a transition that is both green and just for all.

1 A just transition for Indigenous peoples: A theoretical background

Since the adoption of the Paris Agreement on climate change and the UN Sustainable Development Goals (SDGs) adopted in 2015, just transition has become a popular concept, with a range of theories, practices and approaches. Originally, the discourse on just transition was forged by labour unions and environmental justice groups to advocate that the costs of environmental change towards sustainability should be shared fairly.¹¹ Simultaneously, Indigenous peoples have also been at the

forefront of calls for a just transition. Following the adoption of the Millennium Development Goals that had been criticised for failing to address their rights and interests,¹² Indigenous peoples' organisations have insisted that the next steps for development must leave no one behind. As they explained, "leaving no one behind" means respecting subsistence economies and promoting non-monetary measures of well-being".¹³ It also means that the implementation of the SDGs needs to take place in conformity with human rights and "that programs to implement the 2030 Agenda are culturally sensitive and respect Indigenous peoples' self-determination as well as collective rights in terms of land, health, education, culture, and ways of living".¹⁴ On this basis, Indigenous peoples generally call for a just transition that would emphasise the recognition of their specific status and human rights. This call goes hand in hand with the understanding that respect for human rights is a key condition for sustainable and inclusive development and a means to oppose social injustices.¹⁵

The importance of including the recognition of the distinct status and rights of Indigenous peoples as means to ensure a just transition is also reflected in emerging scholarship addressing the issue of just transition. Specifically, this emerging scholarship promotes a broader conception of justice that includes distributional, procedural and recognition aspects of justice,¹⁶ termed as a new triumvirate of tenets to support a just transition.¹⁷ This new approach brings together distributional and procedural justice considerations, based on the work of Rawls,¹⁸ with a recognition approach, in line with Fraser's theory, which argues that focusing on distributive justice is an incomplete approach to justice.¹⁹ Shifting from distributional justice and its concern with how a society should distribute the benefits and burden required to maintain it, a broader conception of justice emphasises that injustice also results from social structures, cultural beliefs and institutional domination or subordination, which, if left unaddressed, can perpetuate injustices.²⁰ In this regard, Fraser and others posit that recognition of group difference is key to solving social injustice.²¹ On this basis, scholars engaged in the conceptualisation of just transition also argue "that sustainability transformations cannot be considered a success unless social justice is a central concern" and advances "a pragmatic framing of just transformations that includes recognitional, procedural and distributional considerations".²²

Through this lens, there is therefore a need to challenge the governance status quo and uncover social injustices in order to achieve a just transition. This includes identifying and remedying the distributional impacts of certain development that may adversely affect certain groups (also named distributional justice), addressing exclusionary practices in the decision-making process that fail to include individuals and local communities in development processes affecting them (also termed procedural justice) and redressing the lack of recognition of pre-existing rights, needs and livelihoods of certain right-holders, (which is also labelled recognition justice).²³ Such an understanding of justice strongly resonates with the call by Indigenous peoples for a

just transition that aims to establish a society in which their distinct status and rights are acknowledged in the development process affecting them. From a legal perspective, it is also in line with a human rights based approach to sustainable development that puts equality and non-discrimination at the heart of the achievement of the sustainable development goals.²⁴ As unequivocally stated in the 2030 Agenda, the aim of the SDGs is to “realize the human rights of all”. This commitment also means that states must promote sustainable development in accordance with the rights of Indigenous peoples, including their right to maintain and develop their culture, their right to participation in decision-making processes affecting them and their right to access and use their land and resources. Recognised by several international instruments, the realisation of those rights also reflects the three core objectives promoted by a just transition framework, namely, to ensure distributional, procedural and recognition justice.

In Sweden, the government is at the forefront of efforts to promote sustainable development, but it is questionable whether these efforts are converging with a realisation of the rights of the Sámi Indigenous people and the objective to ensure social justice. The Sámi people, whose traditional land spans the northern parts of Finland, Sweden and Norway and Russia’s Kola Peninsula have maintained their culture and traditional livelihoods, including reindeer husbandry since time immemorial. The specific status of the Sámi as Indigenous and as a people is recognised at both the national and international levels.²⁵ In addition, international law has also recognised the importance of reindeer husbandry as the basis of the human right of the Sámi to culture. Several Swedish laws and policies acknowledge exclusive rights for the Sámi to reindeer husbandry within their traditional areas.²⁶ However, effective implementation of the rights of the Sámi people and their unique status as an Indigenous people continues to face practical challenges. Over the last decade, several UN international reports and national lawsuits have provided evidence that the legal and policy system still fails to accommodate the rights of the Sámi in accordance with international legal standards concerning the rights of Indigenous peoples.²⁷ As a result, the question of the misrecognition of the unique status and rights of Sámi reindeer herders as an Indigenous people and their right to participate as a group in the decision-making process affecting them looms large in the debate concerning the governance of their land and natural resources. Researchers have previously analysed these issues by focusing on conflicts concerning the impact of mining, hydroelectric and forestry projects.²⁸ In contrast, even if the development of wind energy today poses similar issues, little attention has been paid to the challenges faced by Sámi reindeer herders in the transition to sustainable development. Given the increasing opposition of reindeer herders to the deployment of wind energy projects, the time is therefore ripe to uncover the extent to which development of wind energy is in compliance with the rights of the Sámi and whether a commitment to promote sustainable development converges with the objective to ensure social justice in practice.

2 Distributive injustice: The development of wind energy and its impacts on reindeer husbandry

Based on previous studies and governmental reports, the following sections describe how the development of wind energy projects affect the protection of reindeer husbandry from spatial and ecological perspectives (2.1) and examine whether this development raises distributional justice issues (2.2).

2.1 The impact of the development of wind energy projects on reindeer husbandry

Sweden is a leader in the transition to green energy. By 2012, the country reached the government's 2020 target of 50 per cent renewable energy and has set an ambitious aim of achieving 100 per cent renewable energy production by 2045.²⁹ Between 2000 and 2018, the policy goal to achieve a green transition has resulted in the rapid increase of wind energy projects and significant growth in the production of wind energy from 0.5 to 16.6 TWh.³⁰ In effect, this policy has translated into the construction across the country of an estimated 3,569 wind turbines operating by the end of 2018.³¹ From a spatial perspective, most wind turbines are concentrated in the southern parts of the country, along the coastline and on the agricultural plains and large lakes in this area.³² However, with the technological improvements to wind turbines, it has now become possible to utilize wind resources in forested and inland areas.³³ As a result, there has been an exponential growth in wind turbine construction in the north, increasing from 48 wind turbines in 2003 to 1,410 turbines in 2019 in the counties of Västernorrland, Jämtland, Västerbotten and Norrbotten.³⁴ This development increasingly overlaps with Sámi reindeer herding areas, covering nearly 50 per cent of Sweden's surface and spanning from Norrbotten county to the southern border of Dalarna county. Furthermore, the construction of wind projects on the traditional lands of the Sámi people is expected to increase. It is estimated that the northern part of the country will have more installed capacity within a few years than the rest of Sweden.³⁵ Thus, the northern region of Sweden, where the Sámi herding areas are located, has now become the cradle of the Swedish green transition.

However, the fact that wind energy projects are being developed on traditional Sámi lands is not without consequences. Until recently, there was little knowledge of the possible effects of wind energy projects on reindeer husbandry.³⁶ Yet knowledge concerning this issue has now increased, and today a growing body of research has confirmed that the impact of wind energy projects on reindeer husbandry is real and can significantly affect reindeer husbandry in some cases.³⁷ These impacts can occur at different stages of the development process. They can materialise during the construction phase of wind turbines, often due to an increase in human activity in the construction area, as well as during the operating phase due to the noise and visual disturbance caused by wind turbines.³⁸ In addition, the impact of new roads built in the area to service the projects and the placement of power lines have also

been identified as indirect impacts that can affect the migration and environmental habitats of reindeer.³⁹ Finally, emerging studies also underline the need to take into account the cumulative impacts of wind projects in a landscape that is already fragmented by other land uses and which may therefore aggravate existing threats to the reindeer grazing habitat.⁴⁰ In this context, whereas researchers continue to dispute the extent of the impact that wind energy projects have on reindeer,⁴¹ it is no longer contested that the development of wind energy creates disturbances for reindeer husbandry.

2.2 The issues of distributive justice in the development of wind energy

While reindeer herders have increasingly protested against the development of wind projects, it is interesting to note that permits for wind projects in the northern part of Sweden are more likely to be approved than projects located in the south.⁴² According to a study looking at wind energy proposals until 2015, more than a quarter of the wind energy proposals were rejected in the south of Sweden, but only slightly more than one per cent were rejected in the north during the same period.⁴³ Several hypotheses can explain this north-south divide including geographic and environmental factors such as wind speed or factors such as land use policies, which include the designation of priority or exclusion areas for wind power and the assignment of areas of national importance. In addition, incentive to support deployment of wind energy in the north has also been connected to the fact that northern Sweden has “traditionally been viewed as an area with vast empty spaces, but also with great potential for natural resource exploitation”.⁴⁴ This situation is exemplified by a demographic situation that makes the north more attractive for medium and large-scale projects as there are only 2.5–11.5 inhabitants per square meter in the four northernmost counties, as opposed to 25.4 inhabitants per square kilometre in the rest of Sweden.⁴⁵

However, beyond these factors, recent studies have also begun to question whether this apparent north-south divide in the placement of wind turbines in Sweden raises questions in relation to distributive justice. From a socio-economic perspective, a study published in 2017 demonstrated that there is a higher likelihood of a wind project being approved in Sweden in areas with higher proportions of unemployed workers and non-workers, as opposed to areas where a higher proportion of the population is highly educated, works in the private sector, and was born in a Nordic country.⁴⁶ This study therefore calls into question whether the development of wind energy might not mask social injustice issues and therefore warrant further policy and research attention to distributive justice issues connected to the development of wind power in Sweden.⁴⁷ Interestingly, this study also pointed out a lack of analysis that accounts for the relevance of the ethnic component when reflecting on issues of energy justice, including the lack of data concerning the Sámi Indigenous people.⁴⁸ Other studies have also begun to underline such shortcomings and have explained

the lack of attention paid to Sámi concerns in this context to the fact that their rights to their traditional lands are inadequately recognised in Sweden. As argued by Lawrence, the fact that Sámi rights to land are recognised in the form of use rights (as opposed to ownership) has rendered Sámi land use less visible in Sweden. In her own words, the result of this legal situation is that it makes “legitimate the argument that there is, quite simply, more room for wind power ‘up North’ than in the more heavily populated and industrialised southern areas of Sweden”.⁴⁹ The lack of attention paid to Sámi concerns therefore calls into question whether the development of wind energy is inequitable and unfair towards the Sámi people in Sweden.

In practice, there are also indications that the impacts of wind projects raise distributive justice issues for Sámi reindeer herders in Sweden. Looking at the application process for wind permits between 2014 and 2018, it is clear that the protection of reindeer husbandry is one of the reasons considered by public authorities for rejecting certain wind energy projects.⁵⁰ However, statistically, it is also evident that protection of reindeer husbandry has played a marginal role in limiting the construction of wind projects in Sweden up to the present. According to a report published by the Swedish Energy Agency, the protection of reindeer husbandry only accounts for about 7 per cent of permits rejected between 2014 and 2018 in Sweden.⁵¹ From an industrial perspective, these numbers also mean that an estimated 10 per cent of turbines were not installed due to their potential impact on reindeer husbandry in this period.⁵² Sámi reindeer herders have sometimes been vilified by the press for creating a bottleneck in the green transition, however, the numbers demonstrate that Sámi interests have rarely prevented the development of wind power in Sweden. Furthermore, despite an increasing number of court cases raised by reindeer herders against wind developers, few court judgements have led to a rejection of a wind permit applications in practice (see below). Thus, given the adverse impact of wind development projects on reindeer husbandry, it could be questioned whether the balance of interests between the promotion of wind energy and the protection of reindeer husbandry is being weighed equitably and fairly by the Swedish public authorities.

3 Procedural injustice: The permit process for wind energy development and the protection of reindeer husbandry

While the distribution of cost and benefit in the development of wind energy is important, the role citizens and communities can play in the decision-making process is also significant in ensuring a just transition. The inclusion of people and their capacity to influence the outcome of the decision-making process, which is termed procedural justice, is usually regulated by law and takes place during the permit process when the public authorities make their assessment. In this regard, the following sections describe the permit setting for wind energy development in Sweden (3.1)

and present an analysis of the extent to which Sámi reindeer husbandry actors are able to influence this process in practice (3.2).

3.1 The framework for wind energy permits in Sweden

The permission process for wind development in Sweden is complex, fragmented, and decentralised. Several laws and institutions regulate the process. In this regard, the Environmental Code is among the most important legal frameworks used. The overall purpose of the Code is to promote sustainable development that will assure a healthy and sound environment for present and future generations.⁵³ Even if wind energy is not specifically mentioned in the code, Chapter 2 indicates that “Preference shall be given to renewable energy sources” and several court decisions have also confirmed that increased energy production based on wind power can contribute to achieving the environmental code’s goals for sustainable development.⁵⁴ For this reason the court decisions also indicate that “it is therefore essential that areas suitable for wind power generation can be used for this purpose, insofar as the establishment of wind power can take place with the necessary considerations of protective interests on site”.⁵⁵ As a result, wind energy occupies an ambivalent position; it is both acknowledged as a contributor to sustainable development and as a potential threat to the environment which requires regulation in accordance with the Swedish legal framework.

In accordance with the Environmental Code, a permit application for medium and large-scale wind energy projects can only be permitted if the project complies with certain environmental requirements, including basic and specific resource management provisions and localization requirements.⁵⁶ As mentioned in Chapter 3 of the Code, basic resource management provisions provide a framework for the use of land and water in Sweden and in assessments of conflicting interests. According to Chapter 3, the basic principle is that “land and water areas shall be used for the purpose for which the areas are best suited” and “priority shall be given to use that promotes good management from the point of view of public interests”. Furthermore, areas that are important for nature and cultural values, reindeer husbandry or that are particularly suitable for energy production are among the interests that are afforded special protection under these provisions.⁵⁷ In relation to the protection of reindeer husbandry, Section 5 of Chapter 3 of the Environmental Code provides further details about the extent of the protection allocated to lands of importance for reindeer husbandry.⁵⁸ Specifically, Section 5 provides, *to the extent possible*, protection for reindeer husbandry against measures that *may significantly* interfere with the operation of the reindeer industry. In addition, Paragraph 2 of Section 5 in Chapter 3 further protects “areas that are of national interest for the purposes of reindeer husbandry”. This provision implies that areas designated as being of national interest for reindeer husbandry will be protected against activities that *may significantly* interfere with the interests of the reindeer industry, whereas other areas are only

safeguarded *to the extent possible*. In addition, when an area is concomitantly a designated area of national interest for both wind energy and reindeer husbandry, the Code indicates that priority should be given to the purposes that are most likely to promote sustainable management of land.⁵⁹ But the Environmental Code does not define either what constitutes a significant interference nor what purposes are most likely to promote sustainable development.

From the above provisions, it can therefore be inferred that some areas can be protected simultaneously for combined but opposing purposes (i.e. wind energy production and reindeer husbandry). However, the vague formulation of the Environmental Code makes it difficult to predict in advance how public authorities will balance competing interests between different land uses that equally promote sustainable development.⁶⁰ Thus, the legal framework leaves authorities with substantial discretion in deciding whether to accept or reject wind projects.⁶¹ That said, it has been demonstrated that certain elements and actors can influence the process to a greater extent than others. Specifically, it is established that local governments play a key role in the determination of wind development as it is usually required that municipalities have approved the permit before it can be approved by the County Administrative Board (CAB). This amounts to a municipal quasi-veto.⁶² In this context, the first stage in the authorisation process of wind energy projects is connected to the spatial planning process and is closely connected to the municipal comprehensive plan, which offers important guidance in planning and building new wind energy projects.⁶³ Although not binding,⁶⁴ municipal plans clarify areas that are suitable for the establishment of new projects and are taken into account both by the CAB and the courts as an assessment basis for their decision to grant permits.⁶⁵ In practice, the municipal comprehensive plans are drafted in accordance with public and national interests and comply with environmental standards (including those mentioned in the Environmental Code) but are *de facto* also influenced by the political interests of the parties in power.⁶⁶ In this regard, even though the municipalities' decisions are constrained by legal and policy imperatives, a number of studies have demonstrated that municipalities have a large margin of discretion in wind power planning and therefore play a key role in determining the outcome of the permit procedure.⁶⁷ The CAB, the courts and the state also have the capacity to influence the process, especially when they are responsible for making assessments and decisions on how to weigh up opposing interests. The extent to which Sámi reindeer husbandry actors can have a bearing on the general permit process of wind energy development is further discussed below.

3.2 The lack of procedural rights for Sámi reindeer herders

In the permit process for wind power development, the involvement of citizens and affected groups constitutes an important element of the decision-making process. However one issue that arises in this context concerns the lack of procedural rights

for Sámi reindeer husbandry actors to influence the decision and assessment process.⁶⁸ In Sweden, the legal framework remains silent on the duty of the state to engage in direct consultation with the Sámi as an Indigenous people. Instead, there is a law on ethnic minorities that mentions the effective participation of minorities in land and resource decisions, which remains poorly implemented in practice.⁶⁹ In addition, sectoral legislations connected to the decision-making process concerning wind energy and other land uses mention the right of the public and citizens to be consulted without singling out the rights of the Sámi in this context. For instance the Planning and Building Act requires consultation with all affected authorities and individuals when a municipality drafts a proposal for a comprehensive plan,⁷⁰ but in practice leaves municipalities with considerable freedom to decide how participation should be carried out.⁷¹ In this context, Sámi interests can be safeguarded, but in many cases other economic interests are promoted at the expense of Sámi interests.⁷²

Similarly, the Environmental Code requires developers to consult with private individuals who are likely to be affected at an early stage and within the context of environmental impact assessment.⁷³ However, reindeer herders are considered to be the same as other individuals and the Swedish legal framework leaves a wide margin of appreciation to the developers about the way to organize and implement consultations. In fact, there are no requirements stipulated by law as to how to consult Sámi communities during the process of EIA and there is no obligation to carry out reindeer-herding impact assessments.⁷⁴ In this context, the Sámi Parliament and affected communities are given the opportunity to request additional information and provide their opinions on the projects concerned. However, this process is informal and does not guarantee effective participation in practice. As a result of this legal shortcoming, Larsen et al. have therefore criticised that “the state expects developers to consult Sámi communities in what is often merely information exchange with little possibility for real influence”.⁷⁵ In her study of the mining planning process, Lawrence et al. also concur that “mundane, every day and seemingly benign planning processes effectively ignore, extinguish, or at best compensate, Sámi for their loss of reindeer pasture lands to industrial developments”.⁷⁶ However, Sámi reindeer herders often sign a compensation agreement not because they support the project, but because they have little choice, knowing that the project is likely to go ahead regardless.⁷⁷ Ultimately, the last resort for Sámi reindeer husbandry actors to influence the decision-making process is often to appeal against a permit before the environmental and land court. Yet, again, the opportunity to influence the permit process in this context is limited. First, the court rarely rules in favour of Sámi interests (see below) and second, because Sámi reindeer husbandry actors often lack the resources to file lawsuits, which sometimes requires that they represent themselves or seek counsel from Sámi lawyers.⁷⁸

The lack of procedural rights of the Sámi in the decision-making process affects the governance of their land and resources. A lack of consultation and hindrances

they face in accessing justice have been frequently criticised by human rights bodies in relation to their status as an Indigenous people. In *Handölsdalen Sámi Village and Others v. Sweden*,⁷⁹ a case concerning a dispute between the Sámi people and Swedish landowners, the European Court of Human Rights (ECtHR) decision had for example already signalled that the Swedish judicial system was inadequate to ensure the right of the Sámi people to effective access to justice.⁸⁰ In the light of the duration of the proceedings of the case which “was excessive and failed to meet the “reasonable time” requirement”, the court had concluded that Sweden had breached the right of the Sámi to a fair trial as recognized under Article 6 § 1 of the Convention.⁸¹ In addition Judge Ziemele, partly dissenting, argued that the applicants’ access to court was not effective and that to place the burden of proof and legal cost on the Sámi villages and people as Indigenous peoples defending their own land rights to the State, was discriminatory.⁸² In her view, the right of access to the court ‘could not be effective until and unless the entire approach to land disputes of this kind is revised to take account of the rights and particular circumstances of indigenous peoples’.⁸³ However, because the ECHR had declared inadmissible the complaints concerning the alleged violation of the right to use land for winter grazing, the possibility for the Sámi to claim their rights to land has been limited in practice.⁸⁴ On a similar basis, the Committee on the Elimination of Racial Discrimination (CERD), had also previously stressed its concerns ‘about de facto discrimination against the Sámi in legal disputes, as the burden of proof for land ownership rests exclusively with the Sami’, and the legal aid provided to Sámi villages as litigants is often insufficient to claim their rights to land in front of the courts.⁸⁵

Beyond the question of access to effective justice, several academic and UN reports have also demonstrated that Sweden is still failing to comply with its obligations to protect Sámi rights in accordance with its obligation under international law, because the legislation is inadequate to fully guarantee consultation based on the right to free, prior and informed consent.⁸⁶ The state’s duty to consult Indigenous peoples has been affirmed in several international instruments that apply in Sweden, including the International Covenant on Civil and Political Rights and the UN Declaration on the Rights of Indigenous Peoples. While the extent to which consultation should provide a veto right over development remains contested, on the basis of these instruments international law unequivocally recognises that consultation should aim to obtain free prior and informed consent,⁸⁷ which guarantees the right for Indigenous peoples to have a real say in development affecting their traditional land.⁸⁸ Despite recent discussion concerning a potential new bill on the duty to consult the Sámi people in Sweden,⁸⁹ concerns nevertheless remain about “the insufficient legislation to fully guarantee the right to free, prior and informed consent, while natural resource extraction, industrial and development projects continue”.⁹⁰ Together therefore, these shortcomings call into question whether procedural justice can truly be ensured for the Sámi in the development of wind energy.

4 Recognition injustice: The court decisions and the remediation of the impacts of wind energy projects on the rights of the Sámi Indigenous people

While the Sámi have few means to influence decisions pertaining to the development of wind projects at an early stage, opponents of any project can appeal decisions made to the Swedish Land and Environment Court. Although we have seen that procedural obstacles can limit access to the court system, in recent years, the number of cases brought to the Court by reindeer herders against wind energy developers has substantially increased. It is therefore important to examine the role of the judiciary in remedying injustice in this context.⁹¹ Although it is beyond the scope of this study to offer a comprehensive analysis of the court's assessment in all of these cases, the following sections briefly survey court decisions to reject and authorise permits for wind development (4.1) as a means to analyse the limits of the court system as an avenue to provide justice for Sámi reindeer herders while specifically focusing on the recognition of their rights as an Indigenous people (4.2).

4.1 The court decisions concerning wind permits

From the outset, it is notable that few lawsuits have led to a rejection of a permit for wind energy projects on the grounds of an incompatibility with the interest of the reindeer husbandry industry in Sweden. Between 2006 and 2019, seven lawsuits associated with permit applications involving land of importance to reindeer husbandry led to rejections of the permits, including three decisions made by the appeal court.⁹² The appeals give several reasons justifying the decision to reject the permit, but there are only two of the court cases in which the protection of reindeer husbandry was the explicit reason for rejecting permit applications for wind energy development.⁹³ These two cases, the Gabrielsberget and Ava cases, concerned a similar area located in Nordmaling municipality considered to be of great importance for reindeer husbandry. In the Gabrielsberget case, the district and appeal courts concurred in their opinion that an expansion of the Gabrielsberget project with the construction of six new wind turbines, in an area with forty existing turbines, would threaten reindeer herding and could risk causing its extinction in the area.⁹⁴ The assessment of the court was based on reindeer herders' testimonies and scientific studies previously conducted to test the impact of the existing turbines on reindeer. These studies provided evidence that the existing wind project made it significantly more difficult to conduct reindeer herding in the area and entailed the risk of long-term deterioration of the viability of the grazing lands. In this regard, the court concluded that no safeguard measure would be able to counteract or prevent the inconvenience that arises for reindeer husbandry if the area's natural function disappeared. Consequently, the court rejected the permit application for the proposed expansion. In similar fashion, the court in the Ava case, which concerned a permit for construction and operation of nineteen wind turbines, concluded that the land had already been used for wind energy at Gabrielsberget.⁹⁵ Even if safeguard

measures were to be implemented by the company to limit the impact of the project, the court's assessment was that the impacts of a wind energy establishment on reindeer herding would be significant. More specifically, the court also determined that it was not possible to conclude that a new wind energy project in this area would guarantee that reindeer husbandry activities would not completely cease. Consequently, this permit was also rejected.

Based on these court decisions, it appears that the courts are more likely to reject a permit for wind energy if compelling evidence demonstrates that reindeer husbandry might completely cease as a result of the disturbance caused by the project in question. Yet, such a situation is often difficult to prove in practice. As a result, the court often concludes that co-existence between wind energy and reindeer husbandry is possible and has increasingly stressed that the disruption wind energy projects may cause for reindeer husbandry, "may be considered acceptable given the weight of increased production of renewable energy" to achieve the national green goals.⁹⁶

Whereas few decisions have rejected issuance of wind energy permits due to the impact on reindeer husbandry, it is nonetheless notable that many court decisions have led to some adjustments in the terms and conditions of the permits in order to accommodate protection of the reindeer husbandry industry. In other words, the court decisions generally do not provide a "blanket licence" to wind energy companies. Instead, they may include safeguard measures to guarantee protection of reindeer husbandry interests to ensure co-existence between the two conflicting interests while promoting sustainable development.

To safeguard the protection of reindeer husbandry interests, the courts usually identify two types of measures. The first measures concern the construction phase of the wind energy project. During this phase, the courts have often confirmed and/or amended protective measures that concern the location of the wind project in relation to the migration routes of reindeer or their collection areas.⁹⁷ In some cases, the court has also enjoined companies to consult with the concerned Sámi village (Sámiby), in connection with the design of the facility and during the construction phase in order to ensure that land damage and any disturbance suffered by the reindeer industry will be as small as possible.⁹⁸ Among other elements, these consultations may target the design of roads, wiring, the handling of soil layers, and the construction schedule. Measures also include the requirement that companies adjust their construction schedule and coordinate with the concerned community about the timetable for the construction work, both in good time before the work starts and in the event of changes during the construction phase.⁹⁹ In the Ormberget-Fädbobrännan case, which concerned a permit for eleven wind turbines in Lyксеle municipality, the district court provided additional details about the conditions that meet the threshold for good consultation.¹⁰⁰ According to the court, the company will be seen to have fulfilled the condition of consultation (samråd) when it has effectively invited the Sámiby for consultation and when the consultations are notified in advance and supervised by the relevant authority.¹⁰¹ Importantly, the

court has also stated that the operator cannot be held accountable if the Sámi by counterparty refuses to participate in the consultation process.¹⁰²

The second protective measures concern the operating phase of the wind project. At the outset, these measures include the obligation of the companies to invite the concerned Sámi by “to consultation (*samråd*) for mutual information that may be important for avoiding disturbance to reindeer husbandry in the area”.¹⁰³ In the view of the courts, this consultation can also help to determine the nature and amount of compensation for disturbance caused by the wind project, when appropriate. This compensation may entail payment to erect fencing around the project area, compensation to contribute to the costs of transportation to ensure access to grazing lands and support for feeding reindeer.¹⁰⁴ While the amount of financial compensation is sometimes pre-defined, in several cases the courts have also afforded the CAB the authority to make further decisions, especially when the company and the Sámi villages do not agree on the need for support or the amount to be paid. However, in principle, it is for the companies to define what measures must be implemented to mitigate the impact of the wind projects, and only conditions of minor importance can be delegated to the decision of the supervisory authority.¹⁰⁵ In that regard, the definition of preventive measure has become one of the more contentious points in permit applications for wind projects.

4.2 The limited recognition of the status and rights of the Sámi reindeer herders as an Indigenous people

Whereas the courts require the adoption of mitigation and compensation measures to alleviate the impact of wind projects on reindeer husbandry interests, it can be questioned whether these remedies are adequate in protecting the right of the Sámi to engage in reindeer husbandry on the basis of their status as an Indigenous people. In providing justice for Indigenous peoples and Sámi reindeer herders, it is necessary to pay close attention to the specificity of the rights attached to the status of Indigenous peoples under international law.¹⁰⁶ Among other rights, the rights of Indigenous peoples include their right to access, use and develop their traditional land and resources and their right to be consulted in decision-making processes affecting them.¹⁰⁷ Most of the court decisions make specific reference to the status and rights of the Sámi as an Indigenous people. Repeatedly, the cases discussed above indicate that the Sámi and reindeer husbandry are covered by the protection provided by Article 27 of the International Covenant on Civil and Political Rights (ICCPR) and go on to conclude that Swedish law is considered to fulfil Sweden’s obligations under that instrument.¹⁰⁸ In other words, the court assumes that Swedish law, specifically the Environmental Code, complies with international law on the rights of Indigenous peoples. However, in light of the multiple human rights reports that have criticised Sweden for its lack of compliance with human rights and the rights of Indigenous peoples, as well as academic studies and recent national court decisions, this assumption needs to be questioned.

Furthermore, it clearly transpires from the court decisions that the status of the Sámi as an Indigenous people is often misrecognised. A case in point concerns the wording used in the court decisions referring to reindeer herding as a business right. As such the assessment made by the courts focuses on balancing the interests of two competing industries, wind energy companies on the one hand and the reindeer herding industry on the other. The problem with this discourse is that it is geared towards maintaining an industry that is economically viable,¹⁰⁹ without recognition of Sámi rights and cultural survival.¹¹⁰ For the court, as long as reindeer husbandry does not cease completely and remains economically viable, there is no need to revoke a permit. However, this approach is in opposition to recognition of the human rights of the Sámi to engage in reindeer husbandry. Such a right not only values reindeer husbandry as a business activity but also refers to the rights of the Sámi to maintain their traditional livelihoods and culture. Ultimately, this discourse is also reflected in the treatment of Sámi as stakeholders rather than rights holders. However, as correctly noted by Larsen, the stakeholder discourse creates a risk for the court and other public agencies “to treat reindeer herding as one land user among many, failing to see reindeer herders’ unique position as rights holders when making land use decisions”.¹¹¹ And, “this is important since, by ignoring Sámi rights to land and resources, the possibility for constructive intercultural relations aimed at genuine reconciliation between the majority society and the Indigenous Sámi society will, then, also be limited”.¹¹² Ultimately, the stakeholder discourse also further constrains the achievement of justice based on recognition in the wind energy context.

As a result, the court’s attempt to provide a remedy for the negative impacts of wind energy is misguided because it neglects the status and rights of the Sámi people as an Indigenous people and assumes that protective measures can ensure co-existence. The same is true of court ordered monetary compensation to secure feed for the reindeer, their transportation and to alleviate the cost of extra labour caused by the deployment of the wind projects. Although these measures may help to secure the future of the reindeer industry as a business, they remain questionable in terms of maintaining traditional ways of conducting reindeer husbandry. In fact, several decisions have indicated that “one of the basic prerequisites for the reindeer industry as a general interest is that the industry is practised in the traditional way of the Sámi, where the reindeer are fed by natural grazing on large contiguous lands”.¹¹³ However, several other court decisions conclude that feeding reindeer and moving them by truck is also considered to be a suitable remedy to ensure the protection of reindeer husbandry against the impact of wind projects. Thus, there is a tension in some of these decisions between economically viable reindeer husbandry and traditional reindeer husbandry. However, supporting an industry that is economically viable with a remedy that risks undermining the maintenance of traditional reindeer husbandry in the long term exacerbates the risks encountered by Sámi reindeer herders to maintain their traditional livelihood and culture, as acknowledged under Article 27 of the ICCPR. It also supports a conception of

justice that poorly reflects and misrecognises the specific status, interests, and values of the Sámi people.

Finally, it can also be seen that the courts support a truncated understanding of the rights of the Sámi as an Indigenous people. Not only does the court fail to address the rights of the Sámi to land and resources, it also fails to support their rights to effective consultation in compliance with their status as an Indigenous people. For example, the court decisions often speak about the obligation of companies to consult Sámi reindeer herders before and during the construction of wind energy projects. However, as argued by Allard, “it is important to note that this form of consultation is not equivalent to the duty to consult Indigenous peoples since it does not involve the state or stem from the Sámi as an Indigenous people”.¹¹⁴ By ignoring the lack of effective participation of the Sámi in the decision-making process based on the state duty to consult, the judiciary therefore supports a legal framework that is disrespectful of international standards on the rights of Indigenous peoples. Although it is beyond the scope of this analysis to question whether the courts should be more active in ensuring that national law truly protects the rights of the Sámi people as an Indigenous people, (understanding that such an approach has traditionally been constrained within the Swedish system due to its dualistic approach),¹¹⁵ it can be concluded that by supporting a system that misrecognises the specific status and rights of the Sámi reindeer herders as an Indigenous people, the judicial system limits opportunity to implement transformative remedies that would address some of the root causes of social injustices faced by the Sámi. Ultimately, the judicial system is therefore limiting rather than embracing the promotion of a transition to sustainable development that is just for all, including the Sámi people.

Conclusion

At a time when Sweden and the rest of the world are embarking on the transition to a sustainable energy future, this article aims to address the capacity of that transition to ensure fairness and social justice. By focusing on the impact of the development of wind energy on Sámi reindeer husbandry, this analysis has uncovered distributional, procedural and recognition injustices in the transition to sustainable development in Sweden. In this context, this analysis, which focuses on the promotion of a just and sustainable transition, demonstrates that the relationship between the promotion of sustainable development and the achievement of social justice is not always a virtuous one. From this perspective, it also becomes clear that a just transition is not only an energy transition, but also a transition to an inclusive society in which human rights are respected. Whereas an energy transition can be supported and advanced within the current legal and policy framework backed by technological progress, a just transition is articulated around alternative measures and an institutional framework that promote transformation away from current ecologically unsustainable patterns and social injustices. Thus, a just transition is not ‘business as usual’. It is a

new paradigm that promotes justice for all and requires institutional transformations across its key institutions and a fundamental shift towards greater equality between peoples and the fulfilment of human rights.

Yet, the absence of adequate policy or a legal and institutional framework that supports the human rights of Indigenous peoples represents a major obstacle in the promotion of a transition that is both green and just. In Sweden, it is clear that distributional injustices in the development of wind energy cannot be effectively remedied if the procedural and recognition injustices faced by Sámi reindeer herders which hampers the realisation of their human rights is not addressed. Through a procedural lens, the lack of recognition of the right of the Sámi to consultation is an important obstacle that prevents their effective participation in the development process of wind energy. Lack of adequate mechanisms to ensure their effective participation more generally creates institutional restrictions that limit Sámi inclusion in the transition to sustainable development. In addition, it is also insufficient to rely on the judicial system to remedy the adverse impacts that wind energy projects cause to Sámi reindeer herders. In weighing up the interests and providing remedies for mitigating the damages, courts appear to assess reindeer herders' claims from a truncated perspective that elides their distinct status and human rights as an Indigenous people. On this basis, the judiciary supports a status quo that benefits the development of wind energy and perpetuates inequalities, because the court decisions implement laws and policies that misrecognise the specific status and rights of Sámi reindeer herders. Ultimately, the lack of effective recognition of the distinct status and rights of the Sámi as an Indigenous people undermines the chance to adopt transformative remedies that will challenge existing hegemonic practices of subordination and resolve historical and persistent inequalities faced by the Sámi.

However, this conclusion calls to mind the governments' determination, as expressed in the 2030 Agenda for Sustainable Development "to take bold and transformative steps which are urgently needed to shift the world on to a sustainable and resilient path" and their pledge that "as we embark on this collective journey, ... no one will be left behind".¹¹⁶ Leave no one behind is the central, transformative promise of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs). It is grounded in a human rights based approach to sustainable development that puts emphasis on the rights of Indigenous peoples and other marginalized communities as an avenue to promote social justice. Now that we have uncovered injustice issues, the focus should be on what governments can do to move beyond mere rhetoric to concrete action in order to promote a transition to sustainable development that put justice and human rights for all at the forefront. Achieving such goals is challenging, especially at a moment in history where global warming places additional burdens on those most marginalised. However, promoting a human rights approach to sustainable development centred on the interests of Indigenous peoples and other marginalised groups provides a basis to promote a green and just transition. Through human rights, governments like Sweden's have an opportunity to make transformative

changes that could respond to distributive, procedural and recognition injustices, galvanise their commitments towards transformational actions in order to promote a just transition for all, and ultimately develop a pathway for a low-carbon future that secures the needs and livelihoods of all groups in our society.

NOTES

1. United Nations, 'Transforming Our World. The 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1', 2015, 19.
2. *Ibid.*, 9.
3. Paola Villavicencio Calzadilla and Romain Mauger, 'The UN's New Sustainable Development Agenda and Renewable Energy: The Challenge to Reach SDG7 While Achieving Energy Justice', *Journal of Energy & Natural Resources Law* 36, no. 2 (2018): 233–54; Mary Finley-Brook and Curtis Thomas, 'Renewable Energy and Human Rights Violations: Illustrative Cases from Indigenous Territories in Panama', *Annals of the Association of American Geographers* 101, no. 4 (2011): 863–72; Komali Yenneti and Rosie Day, 'Procedural (in)Justice in the Implementation of Solar Energy: The Case of Charanaka Solar Park, Gujarat, India', *Energy Policy* 86 (1 November 2015): 664–73; Troy A. Rule, *Solar, Wind and Land: Conflicts in Renewable Energy Development* (Oxon: Routledge, 2014); Alexander Dunlap, 'The "Solution" Is Now the "Problem:" Wind Energy, Colonisation and the "Genocide-Ecocide Nexus" in the Isthmus of Tehuantepec, Oaxaca', *The International Journal of Human Rights* 22, no. 4 (2018): 550–73.
4. Rebecca Lawrence, 'Internal Colonisation and Indigenous Resource Sovereignty: Wind Power Developments on Traditional Saami Lands', *Environment and Planning D: Society and Space* 32, no. 6 (2014): 1036–53; Dunlap, 'The "Solution" Is Now the "problem"'.
5. The Sámi population in Sweden is estimated at approximately 17,000. Fewer than 2,500 individuals pursue reindeer herding.
6. See next section's references.
7. See also next section's references.
8. United Nations, 'The 2030 Agenda for Sustainable Development'.
9. Nathan J. Bennett et al., 'Just Transformations to Sustainability', *Sustainability* 11, no. 14 (2019): 3881–99; Kirsten Jenkins et al., 'Energy Justice: A Conceptual Review', *Energy Research & Social Science* 11 (31 January 2016): 174–182. For other sources, see also the following section.
10. Heffron, R. J., McCauley, D., Sovacool, B. K., 2015. Resolving society's energy trilemma through the Energy Justice Metric. *Energy Policy* 87, 169.
11. Michelle Mascarenhas-Swan, 'The Case for a Just Transition', in *Energy Democracy: Advancing Equity in Clean Energy Solutions*, Denise Fairchild and Al Weinrub (Washington: Island Press, 2017), 38.
12. Christopher Foley, 'MDG Reports, CCAs, UNDAFs and Indigenous Peoples: A Desk Review 2010' (UN Permanent Forum on Indigenous Issues, 2010).
13. Galina Angavora and Roberto Borre, 'High Level Political Forum (HLPF): "Ensuring That No One Is Left Behind"' (Tebtebba Foundation and International Indian Treaty Council, 2016), 5.
14. UN Permanent Forum on Indigenous Issues, cited in Cultural Survival, 'What Do the Sustainable Development Goals Mean for Indigenous Peoples?', *Cultural Survival Quarterly Magazine*, 2017, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/what-do-sustainable-development-goals-mean-indigenous> (accessed 14 June 2020).

15. Inga T. Winkler and Carmel Williams, 'The Sustainable Development Goals and Human Rights: A Critical Early Review', *The International Journal of Human Rights* 21, no. 8 (2017): 1024.
16. See for instance Darren McCauley and Raphael Heffron, 'Just Transition: Integrating Climate, Energy and Environmental Justice', *Energy Policy* 119 (2018): 1–7; Benjamin K. Sovacool, 'Contestation, Contingency, and Justice in the Nordic Low-Carbon Energy Transition', *Energy Policy* 102 (2017): 569–82; Bennett et al., 'Just Transformations to Sustainability'; Darren A. McCauley et al., 'Advancing Energy Justice: The Triumvirate of Tenets', *International Energy Law Review* 32, no. 3 (2013): 107–10; Jenkins et al., 'Energy Justice'.
17. McCauley et al., 'Advancing Energy Justice'.
18. John Rawls, *A Theory of Justice: Original Edition* (Cambridge: Harvard University Press, 2005).
19. Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2008); Nancy Fraser, 'Recognition or Redistribution? A Critical Reading of Iris Young's Justice and the Politics of Difference', *Journal of Political Philosophy* 3, no. 2 (1995): 166–80; Nancy Fraser, *Reframing Justice* (Assen: Uitgeverij Van Gorcum, 2005).
20. Fraser, *Scales of Justice*, 15. See also Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, Participation', Discussion Papers, Research Unit: Organization and Employment (WZB Berlin Social Science Center, 1998); Nancy Fraser, 'Rethinking Recognition', *New Left Review* 3 (2000): 107–20.
21. Fraser, 'Social Justice in the Age of Identity Politics'. See also Fraser, 'Recognition or Redistribution?'; See also Iris Marion Young, *Justice and the Politics of Difference* (New Jersey: Princeton University Press, 2012).
22. Bennett et al., 'Just Transformations to Sustainability', 3881.
23. *Ibid.*, 3885.
24. United Nations, 'The 2030 Agenda for Sustainable Development'.
25. In 1977, the Swedish Riksdag declared the Sámi as an indigenous people of Sweden. Since 2011, the Sámi are also recognized as a people in the Constitution of Sweden. At the international level, the rights of the Sámi are protected, among other instruments, as part of the application of Article 27 of the International Covenant on Civil and Political Rights and the UN Declaration on the Rights of Indigenous Peoples.
26. See for instance Reindeer Husbandry Act 1971: 437; Protocol 3 in Sweden and Finland' conditions of accession to the Treaties on which the European Union is founded, Official Journal C 241 (1994). See also Torp, Eivind. 'The Legal Basis of Sami Reindeer Herding Rights in Sweden'. *Arctic Review on Law and Politics* 4, no. 1 (2013): 43–61.
27. James Anaya, 'The Situation of the People in the Sápmi Region of Norway, Sweden and Finland, UN Doc. A/HRC/18/35/Add.2', (Human Rights Council, 2011); Victoria Tauli-Corpuz, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples on the Human Rights Situation of the Sami People in the Sápmi Region of Norway, Sweden and Finland, UN Doc.A/HRC/33/42/Add.3' (Human Rights Council, 2016). See also the successive Girjas Cases in Sweden from 2016, 2018 and 2019: Case T323-09, Case T 241-16, Case T853-18.
28. See for instance Åsa Össbo and Patrik Lantto, 'Colonial Tutelage and Industrial Colonialism: Reindeer Husbandry and Early 20th-Century Hydroelectric Development in Sweden', *Scandinavian Journal of History* 36, no. 3 (2011): 324–48; Timo Koivurova et al., 'Legal Protection of Traditional Livelihoods from the Adverse Impacts of Mining: A Comparison of the Level of Protection Enjoyed by in Their Four Home States', *Arctic Review on Law and Politics Arctic Review on Law and Politics* 6 (2015): 11–51; Rebecca Lawrence and Matias Ahrén, 'Mining as Colonisation: The Need for Restorative Justice and Restitution of

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 31. Ibid.
 32. Johanna Liljenfeldt, 'Where the Wind Blows: The Socio-Political Geography of Wind Power Development in Finland, Norway and Sweden' (Umeå, Umeå University, 2017), 15.
 33. Ibid.
 34. The number of wind turbines in Norrbotten alone grew from 11 in 2003 to 372 in 2019 and in Västerbotten from 9 to 346 during the same period.
 35. In 2019, the largest increase in installed wind power capacity occurred in Norrbotten county, where installed power increased to a total of 1111 MW, which also accounted for the largest percentage increase in the entire country.
 36. This research status can be correlated with the fact that most of the environmental impact assessments conducted in Sweden between 2004 and 2010 did not reference the state of knowledge regarding the impact of wind energy projects on terrestrial mammals.
 37. Jan-Olof Helldin et al., *The Impacts of Wind Power on Terrestrial Mammals: A Synthesis* (Stockholm: Naturvårdsverket, 2012). Anna Skarin et al., 'Wind Farm Construction Impacts Reindeer Migration and Movement Corridors', *Landscape Ecology* 30, no. 8 (2015): 1527–40. See also subsequent references.
 38. Helldin et al., *The Impacts of Wind Power on Terrestrial Mammals*, 17–18. Skarin et al., 'Wind Farm Construction Impacts Reindeer Migration and Movement Corridors'; Anna Skarin and Moudud Alam, 'Reindeer Habitat Use in Relation to Two Small Wind Farms, during Preconstruction, Construction, and Operation', *Ecology and Evolution* 7, no. 11 (2017): 3870–82.
 39. In this context, research and interviews with reindeer herders also suggest that the building of new roads can lead to changes in migration routes and create a corridor effect, which can complicate management of the herd.
 40. Skarin et al., 'Wind Farm Construction Impacts Reindeer Migration and Movement Corridors'.
 41. There is an existing scientific debate on the question. See for instance Diress Tsegaye et al., 'Reindeer Spatial Use before, during and after Construction of a Wind Farm', *Applied Animal Behaviour Science* 195 (2017): 103–11; Jonathan E. Colman et al., 'Is a Wind-Power Plant Acting as a Barrier for Reindeer Rangifer Tarandus Tarandus Movements?', *Wildlife Biology* 18, no. 4 (2012): 439–45.
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 43. In the south, 2,855 approved wind turbines were registered and 985 rejected, while the numbers for the north are 1,772 approved and 26 rejected. Ibid.
 44. Liljenfeldt and Pettersson, 'Distributional Justice in Swedish Wind Power Development', 6.
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47. Ibid., 9.
48. Ibid., 2,3,9.
49. Lawrence, 'Internal Colonisation and Indigenous Resource Sovereignty', 1041.
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51. Ibid.
52. Reported statistics also provide evidence that rejection with regard to the reindeer industry was relatively high in 2014–2015, but had not been considered to be a significant contributor factor since 2016. Ibid., 22.
53. The Swedish Environmental Code, 2000:61, Chapter 1, Section 1.
54. For instance Cases M 6860-17 (Svea Hovrätt Mark- och miljööverdomstolen 2019) and M6974-17 (Svea Hovrätt Mark- och miljööverdomstolen 17 October 2018).
55. See Case. M 3051-15 (Umeå Mark- och miljödomstolen 2017).
56. The localisation requirement implies that an operator must ensure that the selected site to establish a project must be suitable with regards to the objectives of the Environmental Code and the most appropriate from an environmentally perspective. For further information on the localisation requirement see Patrik Söderholm, Kristina Ek, and Maria Pettersson, 'Wind Power Development in Sweden: Global Policies and Local Obstacles', *Renewable and Sustainable Energy Reviews* 11, no. 3 (2007): 388.
57. Swedish Environmental Code, Chapter 3 Sections 4–9.
58. This specific provision is considered to meet the commitments Sweden has under Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which protect the right of Sámi to conduct reindeer husbandry as part of their right to culture. Government of Sweden, DS 2001:10, (2001) 31.
59. Swedish Environmental Code, Chapter 3 Section 10.
60. Maria Pettersson, 'Renewable Energy Development and the Function of Law: A Comparative Study of Legal Rules Related to the Planning, Installation and Operation of Windmills' (Doctoral dissertation, Luleå University of Technology, 2008), 40.
61. Söderholm, Ek, and Pettersson, 'Wind Power Development in Sweden', 388.
62. For further information on the role of the municipalities in the permit process see Söderholm, Ek, and Pettersson, 'Wind Power Development in Sweden'.
63. Planning and Building Act, 2010: 900.
64. Vincent Wretling et al., 'Strategic Municipal Energy Planning in Sweden – Examining Current Energy Planning Practice and Its Influence on Comprehensive Planning', *Energy Policy* 113 (2018): 690.
65. See for instance cases M 9540-99, M 1391-01 and M 623-02 as mentioned in Söderholm, Ek, and Pettersson, 'Wind Power Development in Sweden'.
66. Therese Bjärstig et al., 'The Institutionalisation of Sami Interest in Municipal Comprehensive Planning: A Comparison Between Norway and Sweden', *International Indigenous Policy Journal* 11, no. 2 (2020): 13.
67. Söderholm, Ek, and Pettersson, 'Wind Power Development in Sweden', 392.
68. Rasmus Kløcker Larsen and Kaisa Raitio, 'Implementing the State Duty to Consult in Land and Resource Decisions: Perspectives from Sámi Communities and Swedish State Officials', *Arctic Review on Law and Politics* 10 (2019): 4–23.
69. National Minorities and Minority Languages Act, 2009:724.
70. Planning and Building Act, Chapter 3.
71. Söderholm, Ek, and Pettersson, 'Wind Power Development in Sweden', 394.
72. Bjärstig et al., 'The Institutionalisation of Sami Interest in Municipal Comprehensive Planning', 13.

73. Environmental Code, Chapter 6.
74. Rasmus Kløcker Larsen et al., 'Sámi-State Collaboration in the Governance of Cumulative Effects Assessment: A Critical Action Research Approach', *Environmental Impact Assessment Review* 64 (2017): 68.
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77. Interview of the author with a reindeer herder in Piteå, December 2016.
78. See in particular Jijnjevaerie case From Inga-Marja Steinfjell, "Marianne Persson: I've never felt so small", Sámi Radio & SVT News Sápmi, 21 August 2014, <http://sverigesradio.se/sida/artikel.aspx?programid=2327&artikel=5942608> (accessed 23 March 2020).
79. ECtHR, *Handölsdalen Sámi village and others v. Sweden*, Judgment, app. no(s), 39013/04, 2010.
80. The right to effective access to justice usually includes the following issues 1) effective access to court; 2) costs of justice and legal assistance; 3) access to a fair trial and enforcement of judgments.
81. *Handölsdalen Sámi village and others v. Sweden*, 15.
82. *Ibid.*, 20–23.
83. *Ibid.*, 23.
84. Although the ECHR had not ruled out the possibility that Sámi rights to land could be recognised, it has done so by deferring the responsibility to adjudicate this issue to the national courts while declaring inadmissible complaints about the alleged violation of their property rights under Article 1 of Protocol No. 1 to the Convention.
85. CERD, UN Doc. CERD/C/SWE/CO/18, (2008), para 19–20.
86. CERD, 'Observations on the combined twenty-second and twenty-third periodic reports of Sweden', UN Doc. CERD/C/SWE/CO/22-23, (2018), para 16; See also Council of Europe, Resolution CM/ResCMN (2018) 9 on the implementation of the Framework Convention for the Protection of National Minorities by Sweden, (2018).
87. See for instance UNDRIP, Article 32.2. *Poma Poma v. Peru*, Human Rights Committee, Communication No. 1457/2006, UN Doc CCPR/C/95/D/1457/2006 (27 March 2009); *Saramaka People v. Suriname*, Inter-American Court of Human Rights, Series C, No 172 (Judgment of 28 November 2007).
88. James Anaya and Sergio Puig, 'Mitigating State Sovereignty: The Duty to Consult with Indigenous Peoples', *University of Toronto Law Journal* 67, no. 4 (2017): 435–64.
89. Government of Sweden, 'Konsultation i frågor som rör det Sámska folket', Ds 2017:43, (2017); Larsen and Raitio, 'Implementing the State Duty to Consult in Land and Resource Decisions'; Christina Allard, 'The Rationale for the Duty to Consult Indigenous Peoples: Comparative Reflections from Nordic and Canadian Legal Contexts', *Arctic Review* 9 (2018): 25–43.
90. CERD, UN Doc. CERD/C/SWE/CO/22-23, (2018), para 16.
91. Since 2006, a survey of court decisions indicates that at least 29 lawsuits regarding separate wind permit applications concerned this issue. The listing includes in total 49 court decisions from the district and appeal courts of environmental law among which 22 decisions had been issued by the Umeå District Court, nine decisions by the Östersund District Court, and 18 decisions by the Svea Court of Appeal in Stockholm.
92. Case M1761-15 (Umeå Mark- och miljööverdomstolen 17 November 2017). Case M1724-13 (Umeå Mark- och miljööverdomstolen 2015); Case No. M75-16 (Umeå Mark- och miljööverdomstolen 20 January 2017); Case M10878-16 (Svea Hovrätt Mark- och miljööverdomstolen 24 November 2017); Case M2182-16 (Umeå Mark- och miljööverdomstolen 16 March

- 2018); Case M6419-16 (Svea Hovrätt Mark- och miljööverdomstolen 25 April 2018); Case M10984-16 (Svea Hovrätt Mark- och miljööverdomstolen 4 May 2018).
93. Case M10878-16; Case M10984-16.
 94. Case M10878-16.
 95. Case M10984-16.
 96. See for instance Case M 6860-17; Case M6974-17.
 97. Ibid.
 98. Case M6328-16 (Svea Hovrätt Mark- och miljööverdomstolen 13 March 2018); Case M6419-16 (Svea Hovrätt Mark- och miljööverdomstolen 25 April 2018).
 99. In some cases, the court has also prescribed that no major construction work – such as road construction, blasting or transport and construction of wind turbines – may be carried out during certain periods, which are essential for the good conduct of reindeer herding, unless the company and the affected Sámi village has agreed otherwise. Case No. M9528-17 (Svea Hovrätt Mark- och miljööverdomstolen 4 January 2019).
 100. Case M1167-12 (Umeå Mark- och miljödomstolen 3 December 2014).
 101. Ibid.
 102. Ibid.
 103. Case M6328-16 (Svea Hovrätt Mark- och miljööverdomstolen 13 March 2018).
 104. In addition, compensation can also include payment for additional workload and to allow the use of helicopters and snowmobiles as well as to finance the operation of GPS transmitters to monitor the movement of reindeer during the time they are in the area. Case M824-11 (Svea Hovrätt Mark- och miljööverdomstolen 23 November 2011); Case M2183-16 (Umeå Mark- och miljödomstolen 16 March 2018); Case M6328-16.
 105. Environment Code, Chapter 22, Section 25.
 106. For a comprehensive analysis see Mattias Åhrén, *Indigenous Peoples' Status in the International Legal System, Indigenous Peoples' Status in the International Legal System* (Oxford: Oxford University Press, 2016), 81–219.
 107. See UN Declaration on the Rights of Indigenous Peoples, UN Doc A/61/L.67 (2007); ILO Convention No. 169 concerning Indigenous and tribal people in independent countries, 1650 UNTS 383, (adopted 27 June 1989, entered into force 5 September 1991).
 108. For instance Case M6974-17, 72.
 109. Case M1475-15 (Östersund Mark- och miljödomstolen 2 March 2017); Case M824-11; Case M 6860-17.
 110. Bjartsig et al also argue that “reindeer herding is often seen by politicians as merely an industry among others, without the recognition to Sami rights and cultural survival”. In Bjärstig et al., ‘The Institutionalisation of Sami Interest in Municipal Comprehensive Planning’, 13.
 111. Larsen and Raitio, ‘Implementing the State Duty to Consult in Land and Resource Decisions’, 15–16.
 112. Ibid., 15.
 113. Case M3053-15; Case M 6860-17; See also Case M942-16 (Umeå Mark- och miljödomstolen 16 June 2017).
 114. Allard, ‘The Rationale for the Duty to Consult Indigenous Peoples’, 34.
 115. Joseph B. Board, ‘Judicial Activism in Sweden’, in *Judicial Activism in Comparative Perspective*, ed. Kenneth M. Holland (London: Palgrave Macmillan, 1991), 175–88. Bogdan, Michael. ‘Application of Public International Law by Swedish Courts’. *Nordic Journal of International Law* 63 (1994): 3–16.
 116. United Nations, ‘The 2030 Agenda for Sustainable Development’.