Global Campus Europe

UNIVERSITY OF LJUBLJANA

European Master's Programme in Human Rights and Democratisation
A.Y. 2023/2024

"*The green transition will be our death*"
– legal resistance by indigenous peoples against climate mitigation activities

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Word Count Declaration: 29 682

Abstract

In the era of global warming and climate change, the need to move towards a sustainable future is vital, which is often realised through the green transition. However, this shift frequently causes conflicts over competing land uses, particularly impacting indigenous peoples' rights to their ancestral lands and threatening their culture and identity. Additionally, there is a lack of political will to resolve these conflicts, prompting indigenous peoples to increasingly turn to courts to assert their rights. In turn, this thesis examines how indigenous peoples utilise legal litigation to claim their rights. Using the case study of the Sámi people in Sweden, data collected in interviews and analysed with the reflexive thematic analysis, the thesis illustrates that while the recognition of indigenous rights exists, their protection and practical implementation are lacking, driving the Sámi to increasingly seek judicial remedies. This thesis concludes that the existing legal framework requires significant improvement to ensure full effective protection of indigenous peoples' rights. This need for enhancement is evident at national, regional and global levels, but particularly at the European level, which is lacking effective paths and tools that would support its only indigenous people—the Sámi.

Keywords: indigenous peoples, green transition, legal litigation

Acknowledgement

First and foremost, my deepest appreciation and gratitude goes to my supervisor Ajda Hedžet, for her wisdom, guidance, patience, and kindness. I could not have completed this thesis without your support.

Furthermore, this endeavour would not have been possible without the participants in the interviews from both the Sámi community and the Swedish majority society. Thank you all for generously sharing your knowledge and experience with me.

Last but not least, I would like to thank my friends and family who were a part of this whole year in different forms. Your support and encouragement have been just what I needed to complete this journey.

Abbreviations

ACHR	American Convention on Human Rights
Act on Consultation	Act on Consultation in Matters of Special Importance to the Sami People
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
CJEU	Court of Justice of the European Union
the Commission	European Commission of Human Rights
CRMA	Critical Raw Materials Act
CSO	Civil Society Organisations
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
EMRIP	UN Expert Mechanism on the Rights of Indigenous Peoples
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU Council	Council of the European Union
FPIC	Principle of the free, prior, and informed consent
FRA	European Union Agency for Fundamental Rights
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court on Human Rights
ICCPR	United Nations International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights
ILO 169	International Labour Organisation 169 Indigenous and Tribal Peoples Convention
UN	United Nations
UNDRIP	Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UNPFII	United Nations Permanent Forum on Indigenous Issues

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Introduction

One of the 21st century's major political and social challenges is global warming, which is why the search for sustainable and renewable energy has become vital, especially so for European states and the EU, which have set ambitious climate goals (European Commission, n.d.c). A term commonly used to conceptualise this development is the "green transition," which describes the process of transforming today's society into a sustainable one with low-carbon emission economies and societies (UN, 2022b). However, the quest for renewable energy often infringes upon the lands of indigenous peoples, who have been using these lands and their resources for generations immemorial (Harnesk, 2023). Scholars have highlighted that the relationship between indigenous people, ancestral land, and resources is fundamental to the continuation of their identity, as the territory is integral to their culture, livelihood, and way of life. Consequently, indigenous people argue that access to traditional lands and territory must be preserved and protected (Allard, 2023, p. 184).

One illustrative example of this problem can be seen in Sweden's treatment of the Sámi people. Sweden has a long history of advocating for the environment and mitigating climate change. For instance, the first United Nations (UN) Conference on the Human Environment was hosted in Stockholm in 1972, resulting in the Stockholm Declaration, the first UN declaration to mention climate change as a problem requiring special attention (UN, 2007a). Since then, the Swedish government has made ambitious climate change commitments and aims to reach net-zero emissions by 2045 (Regeringskansliet, 2023a) with clean energy, mining, and forestry being important components of this plan. At the same time, NGOs, scholars (Cambou, 2020; Allard, 2023), and the Sámi people warn that the current policy implementation of the green transition negatively impacts the Sámi way of life. For example, wind power plants adversely affect reindeer herding (Cambou, 2020, p. 311) which is integral to their continued identity. Therefore, the state must develop alternative solutions that are just for everyone (Amnesty International Sverige, Civil Rights Defender and Greenpeace, 2024).

The Sámi people have lived in the territory of Sápmi since time immemorial and hence have the right to claim the lands as theirs. Traditional Sámi livelihood has been fishing, hunting, and gathering food and reindeer husbandry that is performed in a nomadic lifestyle (Akhtar, 2022, pp. 115–116). The Sámi relationship with their ancestral lands is therefore a crucial part of their culture since their way of life depends on access to the lands and its resources (Ibid. 2022, p.

118). Moreover, for the Sámi communities, reindeer husbandry is not only a form of livelihood but also a vital part of the culture, and through its practices the culture and language are passed on to the next generation (Raitio, Allard, and Lawrence, 2020, p. 3).

However, in the Swedish strategy for the Arctic region (Regeringskansliet, 2020), Sweden has established itself as an actor with a right to the land based on its long presence in the Arctic region by referring to explorers and researchers that went to the Arctic. Sweden even refers to "its" indigenous people as a justification for strengthening its right to the land (Ibid. 2020). Lawrence (2014, pp. 1045–1046) claims that the Swedish state therefore views Sámi interests as secondary to the public interest when it comes to renewable energy, such as wind power. To reach its climate goals, Sweden must invest in development projects like fossil-free mining, decarbonising steel production, and battery manufacturing, all of which require significant energy and lead to the expansion of clean energy infrastructure (Sandström, 2024, p. 132 ff). These projects are expected to create jobs and boost export opportunities, benefiting society as a whole. Thus, Sandström (2024, p. 132) argues that the Swedish government sees the green transition as an opportunity to position Sweden as a world leader, justifying the construction of renewable energy facilities on Sámi traditional lands. Nevertheless, these ambitions necessitate access to historical Sámi lands, which the Sámi people perceive as land-grabbing and an encroachment that threatens their way of life as an indigenous people. Moreover, they argue that the placement of clean energy infrastructure disrupts reindeer herding by disturbing the reindeer and cutting off different pastures from each other (Fjellheim, 2023b).

Sweden recognised the Sámi people as an Indigenous people in 1977 (Sveriges Riksdag, 1977), as a people in the Constitution since 2011 (Sveriges Riksdag, 2009; Regeringskansliet, 2023b), and identified them as a minority in the Minorities Act (Sveriges Riksdag, no date). This recognition means that the rights of Indigenous communities and their members need to be protected by the state, and their way of life and culture promoted (Truth Commission for the Sámi people, n.d.). The constitutional recognition of the Sámi people strengthens their right to self-determination, thereby enhancing their ability to influence exploitations on their traditional lands.[1] However, despite this legal recognition, the Swedish government's tendency to overlook the Sámi's recognised rights in climate policymaking is highly problematic. Indigenous people

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[1] The right to self-determination of indigenous peoples have been studied and examined extensively by scholars such as (Koivurova, 2008; Lâm, 2021). However, to delve further into this topic lies outside of the scope of this thesis.

are often invited to consultations regarding land use on their ancestral lands, but they lack actual influence over the decision-making process (Sandström, 2024, p. 131). These consultations align with the global trend of the Principle of Affectedness, which argues that affected people should have a say in decisions that impact them. (Schramm and Sändig, 2018, p. 668). However, despite these consultations, the actual influence of Indigenous people is non-existent, rendering them ineffective. Both the UN and the Council of Europe (CoE) have highlighted this lack of influence as a concern. The CoE recommends that consultations with the Sámi people be organised in a way that ensures the green transition does not negatively affect them (Council of Europe, 2023, p. 39 ff; UN, 2024a). Furthermore, the UN Committee on Economic, Social and Cultural Rights (CESCR), the UN Special Rapporteur on the Rights of Indigenous Peoples, and the UN Special Rapporteur on Human Rights and the Environment recommend that the state guarantee the use of Free, Prior, and Informed Consent (FPIC) regarding decisions that concern the Sámi people (UN, 2022a, 2024a, p. 3). Nevertheless, the realisation of this right is still awaiting full implementation.

Since Sweden has increasingly justified the construction of renewable energy projects on Sámi traditional lands while disregarding the Sámi people's rights, the Sámi have begun to refer to this development as "green colonialism" (Kårtveit, 2021, p. 171). With the concept of green colonialism contextualising the actions of the Swedish state, highlighting the kinds of powers the Sámi people are confronting and allowing scholars to connect their struggles with those of other indigenous peoples (Ibid. 2021, p. 174). Despite the problematic practices associated with green colonialism involving many powerful actors, such as states and multinational corporations with monopolies over decision-making and economic power, resistance practices and mobilisations from the Sámi people and civil society are identifiable (Harnesk, 2023). The Sámi have a long history of resistance and mobilisation, dating back to the adoption of the Reindeer Grazing Act of 1886, which included printing and sharing pamphlets and organising protests. Today, these resistance practices have evolved into more organised mobilisations involving political parties, associations, and sometimes cooperation with other NGOs or climate social movements (Ibid. 2023). The Sámi people have relied on different variations of resistance practices against green colonialism spanning from different art forms (Sandström, 2020) to more classical methods such as demonstrations and advocacy work (Harnesk, 2023). With growing pressure from the EU on Member States to develop green energy, land use conflicts are expected to rise in the future, compelling the Sámi people to continue using diverse forms of resistance to defend their land rights.

One important form of resistance that the Sámi people have been increasingly employing in the past decades is legal litigation. Scholars (Gilbert*, 2020; Cambou *et al.*, 2021) have noted that Indigenous people are increasingly using legal litigation to seek justice for violations of their rights, often stemming from land-grabbing due to a lack of recognition of indigenous rights. With very little political will to resolve these issues, legal litigation has become a last resort (Gilbert*, 2020, p. 301). This phenomenon has been observed in Sweden, Norway, and Finland, where the Constitutions and Supreme Courts have recognised Sámi rights, setting important precedents for future legal disputes (Cambou, 2023; Scheinin, 2023; Torp, 2023). One notable example is the Fosen case in Norway, where the Supreme Court ruled that a wind park built on Sámi grazing lands violated international human rights law (Fjellheim, 2023a, p. 158). This landmark verdict will affect future wind park licensing and is expected to strengthen Sámi rights in neighbouring states as well.

Based on a review of interdisciplinary scholarly literature on Indigenous resistance to green transition and colonialism, there is a gap in understanding why Indigenous people increasingly resort to legal litigation when other political actions fail to find a solution. Courts are often perceived as extensions of state power, benefiting conventional actors rather than state opponents. The politicisation of courts, both nationally and internationally, tends to strengthen certain political parties rather than rights holders. This is evident in Denmark's criticism of the European Court of Human Rights (ECtHR), driven by the government's need to secure support from the right-wing party (Madsen, 2020, p. 792). By exploiting the "long-standing tension between judicial control of parliamentary democracy and the doctrine of the supremacy of parliament" (Ibid. 2020, p. 733) the state politicised human rights for their gain. Moreover, legal litigation is costly, the processes are long, and the outcomes are uncertain (Gilbert*, 2020). Yet, Indigenous peoples are increasingly turning to courts to claim their human rights.

Research question and methodological framework

For this reason, this thesis aims to explore how indigenous communities are utilising legal litigation as a means of resistance against state land-grabbing driven by the so-called green transition, and their perspectives on these new forms of resistance. The research question motivating this thesis is: *In what way are Indigenous communities utilising legal litigation as a part of their resistance to claim their rights to their ancestral lands?* Through an exploration of

the case study of the Sámi people's resistance practices in Sweden, this thesis seeks to enhance our understanding of this emerging phenomenon.

It therefore aims to address an empirical gap in the scholarship on indigenous resistance, specifically focusing on legal litigation, within the Swedish context. However, as this thesis explores the tactics employed by Indigenous communities through legal litigation in their struggle for Indigenous rights, it also seeks to advance our understanding of how affected communities resist contemporary and neoliberal forms of colonialism in both national and international contexts (Schramm and Sändig, 2018). Thus, this thesis adopts a critical approach to conceptualise resistance practices as emerging from a blend of context, relationships, and subjectivity (Lilja, 2022, p. 5), while the more specific conceptual framework that builds on theories of resistance and power inspired by Foucault is presented in more detail below.

Foucault's theories of sovereign power and disciplinary power

Power is a multifaceted concept with various definitions. This thesis adopts Foucault's definition of sovereign power, which he describes as "*legislative, prohibitive, and censoring; a power that primarily makes use of the law and law-like regulations*" (Lilja, Baaz and Vinthagen, 2013, p. 208). Sovereign power is typically wielded by the state or other social groups asserting claims to authority. Resistance against sovereign power often manifests through actions such as revolutions, boycotts, or strikes (Baaz, Lilja, and Vinthagen, 2018, p. 44 ff). In contrast, disciplinary power aims to control individuals by deploying systems of knowledge and norms that punish and correct those who deviate from accepted behaviour. Discipline itself is a tool of power rather than power in its entirety (Lilja, Baaz, and Vinthagen, 2013, p. 208). Examples of sovereign power can be observed in practices of green colonialism where the Swedish state imposes on Sámi historical territory, using legislation and the green transition to justify land-grabbing. The state also employs disciplinary power to enforce compliance among the Sámi people, leveraging legal mechanisms to compel adherence or face consequences. However, it is through the exercise of power that resistance often emerges.

One of the most closely connected concepts to power is resistance (Baaz *et al.*, 2016, p. 138). To start, it needs to be pointed out that because there are so many definitions of resistance, scholars have so far failed to come up with one comprehensive definition (Lilja, Baaz, and Vinthagen, 2013, p. 210; Baaz, Lilja, and Vinthagen, 2018, p. 49). Nonetheless, two characteristics are commonly agreed upon: That resistance is an action and that it is in

opposition against a target (Hollander and Einwohner, 2004, p. 538), furthermore, resistance can be of a subaltern character meaning that resistance comes from below and is against someone with more power than the subaltern subject (Baaz *et al.*, 2016, p. 142). This thesis, therefore, takes up the conceptualisation of resistance, which is based on the key understanding that "*resistance can be interpreted both as a movement aimed at changing an oppressive situation, or a movement for fighting such oppression /.../ studies of resistance are concerned with the struggle for equality, the fight to end exploitation and achieve a more just and humane society*" (Athayde, 2014, p. 81). For example, the Sámi people are engaged in resistance against green colonialism perpetrated by the Swedish state, employing various methods to assert their rights as indigenous peoples.

Scholars have highlighted that resistance takes various forms, including reverse discourse, which aims to alter the meaning of dominant discourses that may differ from subaltern perspectives (Lilja, Baaz, and Vinthagen, 2013; Baaz *et al.*, 2016). Reverse discourse is particularly significant for Indigenous peoples when utilising legal litigation to substantiate their rights in courtrooms. Additionally, the significance of direct resistance cannot be overlooked. This form of resistance openly challenges the authority of states, institutions, or corporations through methods such as protests or boycotts, whether on a large scale through social movements or undertaken individually (Lilja, 2022, p. 9).

Indigenous communities' usage of legal litigation, as I would like to argue, can be understood as one form of breaking resistance since it challenges the current system openly and is often either conducted by a group or in individual cases. In addition, another element to consider is the constructiveness of resistance which aims to not only protest but to offer an alternative solution or discourse to create something new (Lilja, 2022, p. 9). Lilja (2022, p. 10) describes constructive resistance *"as a response to power; a practice, 'that might undermine different modes and aspects of power in their enactments, performances, and constructions of alternatives'"*. In essence, constructive resistance goes beyond opposition; it advocates for and actively promotes change. By offering alternative solutions, resistors gain agency over their circumstances, heightening the potential for transformative outcomes. After all, to produce a new solution, the resisting subject need creativeness and flexibility because power responds and adapts to resistance in the same way that resistance reacts to power (Baaz *et al.*, 2016, pp. 148–149).

Moreover, although legal litigation is often perceived as a last resort due to its high costs, lengthy process, and uncertain outcomes (Gilbert*, 2020, p. 301). However, bringing a case to court has the potential to challenge state power and establish new legal precedents, thereby shaping a new reality (Cambou *et al.*, 2021, p. 42), which is why it is important to examine in what ways Indigenous people are using legal litigation. In the context of the Sámi people in Sweden, the state has historically oppressed and exerted control over Sámi ancestral lands, using legal mechanisms to justify its actions (Lundmark, 2008, p. 65 ff). Using the state's own legal system against itself can thus be seen as a powerful strategy combining elements of both breaking and constructive resistance. This approach challenges sovereign and disciplinary power, as the Sámi people resist state authority and strive to establish a new societal framework.

Method of data collection and analysis

To better understand the tactics of Indigenous people behind the usage of courts as spaces where resistance takes place, I rely on empirical data collected via qualitative semi-structured interviews. This method helps open insights by collecting interpretations of the key actor's experience of their situation, resistance, and view of legal litigation.

I conduct interviews with participants who identify as a Sámi person or are advocating for Sámi rights. This method of data collection enables the views of the participant to be highlighted within the research process, and it can provide in-depth insights to answer the research question (Bryman, 2012, pp. 469–470). The selection of interviewees is made by generic purposive sampling which means that criteria are set based on the research question and participants are identified and chosen accordingly (Ibid. 2012, p. 422). In my case, I have decided to use the following criteria 1) A Sámi who is a representative of a Sámi community and/or an organisation; 2) A person who is a representative of an organisation/institution advocating for Sámi rights and/or interests. Focusing on organisational representatives is informed by scholarly insights indicating that major court cases in Sweden have been initiated by collective Sámi community efforts (Brännström, 2023).[2] This indicates that the Sámi people are organising themselves and it therefore becomes relevant to focus on representatives rather than individuals. Due to geographical distances, the interviews will be conducted online using Zoom digital platform. They will be recorded and subsequently transcribed for rigorous analysis.

[2] See Skattefjäll case, Nordmaling case and Girjas case (Brännström, 2023).

The data collected will be analysed using the method of reflexive thematic analysis, which is a method of data analysis through which researchers seek patterns that turn into themes. Simultaneously, it considers reflexivity - the researcher's prejudices and values that impact the research during the whole process: "*It contains the acknowledgment that knowledge is never free of researcher influence, that our assumptions and choices inevitably shape the knowledge we create (create, rather than 'discover')*" (Braun *et al.*, 2022, p. 22). It is therefore vital to reflect on these assumptions throughout the whole process because it affects what a researcher deems to be important or unimportant, what to include or exclude, and which direction the research takes.

Structure of the thesis

This thesis will be structured in five parts. In the first chapter, that follows introduction, my aim is to situate resistance practices conceptually and examine different types of resistance that Indigenous communities are utilising. This is done by reviewing literatures that engage with theories of power and resistance practices and examining how resistance practices have been used by indigenous people with a special focus on the case of the Sámi people in Sweden. My aim, in chapter one, is to better understand the power of resistance as responding to state power indigenous people are fighting against. In the second chapter, my focus is on the analysis of the existing legal framework that covers both national, regional, and international levels. In this way, the second chapter aims to highlight the possibilities and limitations of legal litigation as a tool that can be used by Indigenous people on three overlapping levels. In the third chapter, the result and analysis of the empirical data are presented and discussed with the aim to explore in what way the Sámi people in Sweden are using legal litigation in their resistance. The methodology commences the chapter consisting of a reflection on ethical considerations and positionality, which is followed by the chosen method of analysis and presentation of the findings. The thesis closes with a final analysis and a conclusion summarising the summary of key findings, reflection on existing literature, and limitations of the chosen research project.

Chapter 1 Conceptual framework: Indigenous peoples and legal resistance

The first chapter aims to explore the link between power and resistance to better understand how they influence Indigenous peoples' resistance and their claims to traditional lands.

Secondary literature on resistance and power, particularly in relation to the case study of the Sámi people in Sweden, is analysed and reviewed before broadening the focus to global Indigenous resistance. The chapter is structured into three subchapters: the first subchapter examines power and resistance as concepts, the second subchapter focuses on previous resistance efforts by Indigenous peoples and globally, and the final subchapter zooms in on analysis of legal litigation as a form of resistance.

Defining resistance

Whenever one intends to study resistance, power will inevitably come into question as it is one of the most closely connected concepts to resistance. Power represents a concept with many different definitions, and each comes with different connotations. Early definitions have emphasised the forceful power of a state or the power to make someone do something – that is the negative conceptualisation of power. However, lately, scholars have started to emphasise the relationship dimension of power, where power is thought of as the "*socialisation of the citizens*", which stems from Foucault's theories about the power that emphasise its productive and relational nature. The relational dimension of power, in particular, aims to "*shape what actors desire or are aware of*" (Lilja, 2022, p. 2). In other words, how to shape people's wills and perceptions to make them do what one wants.

Foucault argues that power can be both repressive and productive, hence something with the potential to be both good or bad depending on the perspective (Lilja, Baaz, and Vinthagen, 2013, p. 207). Power can come in different forms and Foucault divides them mostly into three categories: sovereign power, disciplinary power, or biopower (Baaz *et al.*, 2016, p. 145).[3] These types of power support each other, for instance, sovereign power overlaps with disciplinary power when it comes to controlling a population's behaviour (Lilja, Baaz, and Vinthagen, 2013, p. 208).

Sovereign power is commonly used by the state or by other groups that make claims about power, and it uses legislation that justifies force, violence, and punishments to control people, and it requires complete compliance. Resistance to sovereign power is therefore usually connected with revolutions, boycotts, or strikes but it can also be more subtle with strategic

[3] Biopower is a "*'technology of power', which organises human subjects as a population…The techniques of biopower function to 'incite, reinforce, control, monitor, optimise and organise'*" (Baaz, Lilja and Vinthagen, 2018, p. 50). Biopower will not be elaborated here because of the limited space and differently directed research focus of the conceptual framework. To learn more about it see e.g. Baaz, Lilja and Vinthagen (2018, p. 50).

power-play and counter-moves that undermine or resist compliance (Baaz, Lilja and Vinthagen, 2018, p. 44 ff).

Disciplinary power functions through a system of knowledge and norms that seek to punish and correct those that deviate from the accepted normal behaviour. Although discipline is an instrument to exercise power, it is not power in itself (Lilja, Baaz, and Vinthagen, 2013, p. 208). Resistance to disciplinary power can be seen when someone questions the normative discourse or acts in defiance of expected stereotypical behaviour. The functioning of these types of power can be very clearly seen in the example of the implementation of the so-called green transition policies in Sweden, which will be further examined in the following sections.

The case of the Sámi people in the era of the so-called green transition

Land and territory are the foundation for indigenous peoples because they form the basis for their culture, traditions, livelihood, and religion. To have the right to access and use ancestral lands protected is therefore vital for the continuing existence of Indigenous peoples (Skjævestad, 2008, p. 1). The Sámi people are no exception to this issue as they are living in the territory of Sápmi, better known nowadays as the states of Sweden, Finland, Norway, and Russia. The Sámi culture is closely connected to their ancestral lands and territory and a vital part of their cultural and spiritual identity (Brännström, 2020, pp. 174–175). Traditional Sámi livelihoods are fishing, hunting and gathering. Especially, reindeer husbandry is a vital part of the Sámi people's way of life and is therefore protected under international human rights law (Normann, 2021, p. 78).

Sámi reindeer herding is a form of pastoralism, which means that the reindeer are migrating or being moved between different grazing areas during different seasons. For this reason, access to traditional lands is crucial for the continuation of the Sámi way of life (Raitio, Allard, and Lawrence, 2020, p. 4). However, the Sámi people's right to their lands has been a contested issue since the mid-19th century (Lawrence, 2014, p. 1042). Although the Sámi people had been living in the northern part of Sweden long before the nation-state was established, the Swedish state took control of the lands through a colonialisation process (Brännström, 2020, p. 175). Today, the landgrabs continue in the form of forestry, mining, wind power, and all the infrastructure that follows (Lawrence, 2014, p. 1041). However, this process is now framed and regulated under a different name: the so-called green transition.

The green transition and its quest to implement new sustainable energy resources have started to be referred to as green colonialism, particularly by the indigenous Sámi people (Fjellheim, 2023b, p. 26). Green colonialism in this context refers to land grabs sanctioned by the state and justified by modernisation and development projects – in this case, the green transition (Kårtveit, 2021, p. 164). It is used to critically scrutinise policy-making and practices that sound positive, such as clean and renewable energy, when they in reality create a higher energy consumption which in turn creates a need for more wind power and thus mining, which for the Sámi people means encroachment of their lands (Sandström, 2024, pp. 127–128).

For instance, constructing green energy such as wind farms may sound harmless, however, through the lens of green colonialism, historical injustices such as dispossession condoned by the state come to light (Lawrence, 2014). Another issue is that green energy requires the extraction of minerals for the production and placement on lands and this typically happens on Sámi ancestral lands which causes "*destruction of indigenous livelihoods, environmental destruction, the desecration of sacred places and a Sámi cultural heritage*" as well as exploitation of Sámi lands and resources (Kårtveit, 2021, p. 165).

Furthermore, human activity usually in the name of the green transition causes grievances in finding fruitful pastures (Raitio, Allard, and Lawrence, 2020, p. 4). For instance, mining or wind power disturbs the reindeer and causes the reindeer to avoid pastures due to noise and dust pollution, related infrastructures shut off migration routes between pastures, and forestry decreases the amount of lichen which can make a pasture unusable (Harnesk, 2023). In addition, climate change poses for the reindeer to find lichen on the ground which limits the pastures that can be fruitful during the winter (Fjellheim, 2023a, p. 147). All of these land uses create a cumulative effect that shrinks the grazing areas and forces the Sámi herders to use artificial feeding, building fences, and using mechanical transportation instead of natural migration. These alternatives are more expensive and go against traditional cultural practices and may result in losing knowledge of traditional practices for the next generation (Fjellheim, 2023b, p. 37).

As can be seen, the cumulative effects of land encroachments and climate change, combined with natural predators such as wolves, bears, and wolverines, threaten the Sámi people's way of life. Scholars highlight the urgent need to preserve grazing areas and ensure that the Sámi people's voices and views are better considered in decisions about competing land uses to

protect their culture and livelihood (Raitio, Allard, and Lawrence, 2020, p. 4). However, in practice, when competing land-use interests arise between the Sámi people and powerful actors such as the state or multinational corporations, the Sámi people's views are rarely taken seriously and are commonly disregarded (Lawrence, 2014, p. 1044).

Limitations of Indigenous peoples' influence

Even though the possibility for indigenous peoples to influence decision-making processes is highlighted in international law, the implementation of effective influence is lacking (Anaya and Puig, 2017, p. 435 ff). As can be seen in the International Labour Organisation 169 Indigenous and Tribal Peoples Convention (ILO 169),[4] consultation and participation are recognised as important parts which emphasise that states should negotiate with concerned Indigenous peoples (ILO, 1989a; Sara, Rasmussen and Krøvel, 2021, p. 3). This is further elaborated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) that was adopted by the General Assembly in 2007, which emphasises the need for the FPIC in matters that concern Indigenous peoples (UN, 2007b). This is often seen as taking a central part during the whole decision-making process and having de facto influence over the result. However, it does not constitute a veto right unless a decision has an immense effect on the indigenous people's way of life and rights (Heinämäki, 2023, p. 87). Nevertheless, there is room for interpretation on how and when to consult which has resulted in the exclusion of indigenous people's opinions in the final decisions. Examples of failed consultation can be found globally for instance, in Bolivia where indigenous communities opposing a forest legislation reform were excluded from the consultations (Sara, Rasmussen, and Krøvel, 2021, p. 4).

Similar criticism of consultations can be found amongst the Sámi people. The idea that the Sámi people should have a final say in decisions that affect them is a contested one. The idea that they should be consulted is generally more accepted, however, it is also open for debate about what this entails (Kårtveit, 2021, pp. 166–167). Even in the cases where consultation did happen, they took place in the last stages of a process when it seemed as if a decision had already been made, or the Sámi community was only consulted to give an opinion between two options as opposed to the process as a whole. The Sámi people in Sweden further expressed that they were not allowed to consult on issues that were significant to them which made it seem

[4] The International Labour Organisation 169 Indigenous and Tribal Peoples Convention adopted in 1989, entry into force 1991 (ILO, 1989a, 1989b).

as if it was a "*tick the box*" consultation that did not matter in the end (Council of Europe, 2023, p. 40). This goes in line with the experiences of the Sámi people in Norway (Kårtveit, 2021, p. 166 ff), and Finland as well (Sara, Rasmussen, and Krøvel, 2021).

These concerns were echoed by the CoE (Council of Europe, 2023, p. 39 ff) and the UN that expressed "*concerned about the lack of adequate consideration of the impact on the Sámi people of the development of industries such as wind power and mining of critical minerals on Sámi land, which are being implemented in the context of the green transition, adversely affecting the Sámi people's right to an adequate standard of living and enjoyment of their culture*" (UN, 2024a). Furthermore, Sweden was also recommended to guarantee FPIC, when it comes to issues that concern the Sámi people. The international criticism resulted in 2022 in a new law – The Act on Consultation in Matters of Special Importance to the Sami People (Act on Consultation)[5] that stipulates the obligation to consultation with the Sámi people on issues that concern them (Civil Rights Defender, 2022a; Regeringskansliet, 2022). However, the new legislation was inter alia criticised for not being aligned with the standard of FPIC and the lack of de facto Sámi influence in decision-making processes (Civil Rights Defender, 2022a).

As can be seen from the discussed example, sovereign power is exercised by the state through legislation and enforcement of the law in which the Sámi people are given little or no influence over decisions that affect them. Although, there is generally no physical violence against individual Sámi involved, mining and building wind farms are causing huge damage to the lands and nature, which is why it can and has been argued that force and violence are done toward the Sámi ancestral lands in the state's action to fight the climate change and hence it is violence against the Sámi people's culture and way of life (Council of Europe, 2023, pp. 40–41).

Furthermore, disciplinary power can be seen in the way a state is shaping the public discourse by using words that are beneficial for the state. For instance, the way the state is using the concept of green transition can arguably be used as a tool for justifying its land-grabbing and encroachment of Sámi ancestral lands. This makes the Sámi people who want to preserve their lands, uncaring of climate change when they are unwilling to participate in the climate change mitigations the state is doing, arguing that they have everyone's best interest in mind. These

[5] The Act on Consultation in Matters of Special Importance to the Sami People, Law (2022:66).

sorts of demonstrations of power that oppress people and ultimately lead to resistance, will be further explored in the following sections.

What is resistance?

Resistance can transform and challenge the power and is thought of as successful when "*power is either (i) publicly challenged in a sustained way by key sectors/groups in society of which the de facto sovereignty depend; or (ii) so effectively undermined in real behaviour that sovereignty becomes non-effective due to widespread hidden/disguised non-compliance with the rules; or (iii) the capacity for and monopoly of violence is effectively undermined by challenging and competing armed groups that at least in certain geographic areas limits the control of sovereign power centers*" (Baaz, Lilja and Vinthagen, 2018, p. 45).

The fact that resistance can take on many different forms goes well in hand with the argument that resistance is a social construction and that it is formed and shaped by its participants (Hollander and Einwohner, 2004, p. 548). Baaz et al (2016, p. 148) argue that it is useful to understand resistance as an umbrella concept under which many forms of practices coexist and develop as needed depending on the context. For example, demonstrations, boycotts, and reverse discourses are different practices but all fit under the resistance umbrella.

There is an ongoing debate in scholarship, if it is possible to establish one definition of what resistance is, and so far there have been many attempts resulting in many definitions that correlate and overlap with each other (Baaz *et al.*, 2016, p. 138). Two key issues identified by scholars, concern *recognition* and *intent*. Some scholars argue that resistance must receive recognition from other actors to be seen as resistance,[6] others contest this idea by referring to small everyday acts that may not be recognised by the target but still is a form of opposition (Hollander and Einwohner, 2004, p. 539 ff).[7]

The same scholarly debate can be observed about the intent of the resistance where some scholars argue that it is the intent that is important for classifying an action as resistance,[8] whereas others contend that determining intent is nearly impossible (Hollander and Einwohner,

[6] E.g. (Rubin, 1995).
[7] E.g. (Scott, 1985)
[8] E.g. (Scott, 1985)

2004, p. 542 ff).[9] Nevertheless, two key characteristics of resistance that can be crystalised from this scholarship are that resistance is an *action* and it is in *opposition* to a target (Hollander and Einwohner, 2004, p. 538). The action is "*not a quality of an actor or a state of being, but involves some active behaviour, whether verbal, cognitive, or physical*" (Ibid. 2004, p. 538). In other words, resistance action needs to be more than an attitude or a trait, it needs to be an act that can be recognised by either oneself or somebody else. The opposition can come from individuals or groups, it can be directed against individuals, groups, institutions, or social structures.

Resistance can therefore be conducted by oppressed people wanting freedom or by people in power, wanting to uphold their domination, and it does not have any political affiliation but can be seen across the whole political scale (Hollander and Einwohner, 2004, p. 536). Resistance is broadly considered to have political reasons behind it, but can also stem from identity-based reasons such as a group opposing certain labels the general public is putting on them (Ibid. 2004, p. 537). For instance, there are a lot of negative stereotypes and prejudice against the Sámi people, which can be opposed by reporting it as hate speech (Lingaas, 2021).

Resistance can also be subaltern and Baaz et al (2016, p. 142) describe it as "*the kind of resistance that prevails as a response to power from "below"; a subaltern practice, which can negotiate and/or undermine power*". This definition includes an action by someone in a subaltern position or by someone acting in solidarity with the subaltern resister, and it usually comes as a reaction to power. It suggests that the resistor has less power and is reacting against the one with more power, indicating that it is a situation of domination and possibly oppression which is why resistance is created. For example, Indigenous peoples are more likely to live in poverty, marginalisation, and discrimination, furthermore, they have little to no influence over decisions made about their ancestral lands when it comes to the exploitation of resources (Amnesty International, n.d.; UN, n.d.a). These factors put them in a subaltern position when it comes to Indigenous people fighting for their land rights, as the opponent usually is the state or a multinational corporation with substantially more resources and power.

In resistance, there are three actors to be considered: resister, target, and observers. The resister is the one performing the active resistance in opposing the target which can be observed by

[9] E.g. (Lilja, 2022)

third-party actors such as the public or the media (Hollander and Einwohner, 2004, p. 541). Resistance is a response to power and power is a response to resistance. They exist in a symbiosis and as a reaction against each other, they develop, take on new forms, and grow simultaneously (Baaz *et al.*, 2016, pp. 148–149). In other words, power and resistance go hand in hand as they develop in response to each other, which is also why there are so many different forms of resistance. This can be seen in the way the state is developing and rephrasing its arguments to justify land-grabbing for the sake of the green transition, while simultaneously the Sámi people are calling this out as green colonialisation, which delegitimises the encroachments.

This thesis therefore relies on an understanding and definition of resistance, that emphasises that "*resistance can be interpreted both as a movement aimed at changing an oppressive situation, or a movement for fighting such oppression"* (Athayde, 2014, p. 81). Furthermore, this thesis builds on literature that studies resistance focusing on *"the struggle for equality, the fight to end exploitation and achieve a more just and humane society*" (Ibid. 2014). I find this conceptualisation to be especially useful for the framework of this thesis because it incorporates both the action, opposition, and the subaltern position against a target for equality and justice. This is important when engaging with the resistance of indigenous communities because they usually come from a subaltern position and need to resist more powerful actors such as a state or a multinational corporation. This resistance can be shaped in many different forms that include everything from revolutions to everyday invisible resistance because resistance can be found wherever there is power (Lilja, 2022, p. 1).

Different forms of resistance

One form is called breaking resistance which openly challenges the powers of states, institutions, or companies and they can conducted in social movements or by individuals (Lilja, 2022, p. 9). Breaking resistance does not comply with or accept laws or rules and is usually against something or someone, be that a state or a corporation (Ibid. 2022). Examples are boycotts or demonstrations which commonly is used against sovereign power. However, resistance can also be constructive and create new forms of system to fight the current one by replacing it with an alternative solution (Baaz *et al.*, 2016, p. 143). For instance, when it comes to indigenous peoples going to court to get recognition of their human rights, they hope to create an improved situation than the existing one.

Scholars have identified different examples of constructive resistance, such as reverse discourse, counter-memory, or counter-history that can be used in resisting disciplinary power (Lilja, Baaz, and Vinthagen, 2013; Baaz, Lilja and Vinthagen, 2018, p. 49). Foucault's concept of reverse discourse is "*used to describe how subalterns involve the categories and vocabularies of the dominating force or superior norm, precisely to contest it*". An individual is constantly producing itself however, this process happens in relation to other people and discourses. The usage of a reverse discourse can therefore represent an objection to the normative discourse and create something new (Lilja, Baaz, and Vinthagen, 2013, p. 210). One relevant example of this is visible in the way the Swedish state is using the term green transition whereas the Sámi people intentionally prefer using the term green colonialism to describe the same phenomenon but emphasise the underlying violence of this policy field.

In addition, counter-memory or counter-history focuses on which memories and histories are being told or forgotten and the ones with the power to control this phenomenon. In other words, how are memories used as a tool to control history and reproduce power relations within a society and who has the power to do so (Baaz, Lilja, and Vinthagen, 2018, p. 49). For instance, in court cases, indigenous peoples need to establish proof of long-term usage of the lands. However, many indigenous histories were either verbal or it was the colonial state who was the history writer, which is why it becomes important for the indigenous peoples to provide proof of their own stories and memories that usually contradict those of the state. One example of such practice can be identified in the mapping of a territory, which historically was used by colonisers to take control over an area but has now become a tool for Indigenous peoples to prove their ancestral connection to their lands (Gilbert and Begbie-Clench, 2018, p. 8).

In addition to these forms, using legal litigation as a form of resistance, or what is also known as legal resistance,[10] has during the 21st century become a growing trend across the globe amongst Indigenous peoples. It has become a last resort to solve an issue often related to indigenous claims of land rights in conflicts over the exploitations of their traditional lands (Gilbert*, 2020, p. 301). This alternative can become an option when there is a lack of political will to solve a conflict (Posner, 2006, p. 1925). However, using legal resistance is risky which

[10] The environmental movement has also started to use legal resistance and the UN Environment Programme (UNEP) defines climate litigation as ”*cases that raise material issues of law or fact relating to climate change litigation, adaptation, or the science of climate change. Such cases are brought before a range of administrative, judicial, and other adjudicatory bodies”* (UNEP, 2021, p. 6). However, to explore how this relates to indigenous resistance lies outside of the scope of this thesis.

will further be explored in the final subchapter. But first, we need to explore how indigenous peoples are using different forms of resistance more generally in their fight for their rights.

Indigenous communities and resistance

Globally, indigenous peoples have had to fight against colonialism, land-grabbing, and for their rights throughout history and have used resistance in their struggles in various ways (Stewart-Harawira, 2018, p. 159). There are many examples of resistance particularly when it comes to indigenous land rights based on customary usage. Since the 1970s, Indigenous resistance has become a global issue also due to a emergent international human rights law, the following establishment of protection mechanisms, and creation of an Indigenous rights framework (Ibid. 2018, p. 162), which Indigenous peoples can use to base their resistance on. However, due to a lack of response from states to politically solve conflicts over indigenous lands, many indigenous peoples have turned to the courts to get recognition of their rights. The following examples illustrate that land conflicts are a global phenomenon and that indigenous peoples are using different forms of resistance to claim their rights with varying results.

This was the case in Brazil where the Belo Monte dam was built on the Xingu River and negatively affected the indigenous peoples living along the river. (Ribeiro and Morato, 2020, p. 866). The mobilisation of social movements and protests could be seen both among Indigenous peoples, environmental actors, and the general public (Athayde, 2014, p. 83). In addition to the protests, a complaint of human rights violation was filed to the Inter-American Commission on Human Rights (IACHR), which is a principal and autonomous organ of the Organization of American States (OAS). The IACHR ruled that Brazil among other things had not adapted FPIC, and consequently, Brazil was to purchase the license and the construction of the dam. However, Brazil refused to adhere to the verdict and the construction continued (Jaichand and Sampaio, 2013).[11]

Another example can be identified in Canada, where the indigenous peoples have resisted the state since the 1960s using different forms such as occupations, blockades, and demonstrations to fight for their rights (Morden, 2015, pp. 256–257). The Anishinabek people in Ontario turned to the occupation of an army base that was built upon their ancestral lands, when it was clear

[11] This shows the weakness of the international human rights systems when it comes to enforcement. However, to further explore this would be outside of the thesis scope.

that there was no political will to find a solution for the land conflict. The occupation lasted from 1990 until 2007 when a new government agreed to give back the lands to the Anishinabek people (Ibid. 2015, p. 263 ff).

The third example can be identified in Loliondo, Tanzania where the Maasai people are currently fighting against forced displacement from their ancestral lands by the state. The Tanzanian state decided in 2022 that it would demarcate a large area for wildlife preservation where Maasai communities were residing. This meant that around 70,000 Maasai would have to be forcibly evicted (Amnesty International Ltd, 2023, p. 9). One part of the resistance was to seek international political support. In 2023, a Maasai delegation went on a tour in Europe, where they met the European Parliament (Survival, 2023) that subsequently adopted a resolution calling for a stop of the evictions of the Maasai people and that the rule of law and human rights must be respected (European Parliament, 2023).

The final example can be found in Australia, which started already in 1972, when four men set up an umbrella opposite the Parliament building calling it the Aboriginal Tent Embassy. This came as a reaction against the Australian Prime Minister stating that the government would not grant land rights to Aboriginal and Torres Strait Islander peoples (Iveson, 2017, p. 538). "*In naming their camp an Embassy, the activists drew attention to colonial dispossession, pointing out that without Land Rights, they were aliens in their land*" (Ibid. 2017, p. 543). The embassy still exists, and the demands have developed from land rights to issues of sovereignty and the right to self-determination (Aboriginal Embassy, n. d.).

As can be seen from the four discussed examples, firstly, the right to ancestral lands is a foundational issue for resistance practices of indigenous peoples that continues to be relevant to this day. Secondly, different forms of breaking resistance have been used such as occupation, sit-ins, advocating for rights, and demonstrations. Thirdly, one of the main obstacles faced by indigenous peoples is the lack of political will to solve the issue of land rights. Finally, because of a lack of response to other forms of resistance, it has been highlighted by scholars, that as a last resort, Indigenous communities have started to use legal litigation to have their rights recognised which can be understood as a form of constructive resistance. This trend can be seen globally and raises questions about how reliable legal resistance is (Gilbert*, 2020, p. 301). For this reason, in the next section legal litigation and its potential as a form of resistance are explored.

Legal litigation as resistance

The usage of legal litigation can give a person or a group recognition of their human rights, and compensation for losses or damages, and it can set important precedence for the future that can create social, legal, and political change (Duffy, 2018, p. 4). However, legal scholars disagree on whether courts can, or should settle human rights issues with arguments on the one hand claiming that courts can interpret the law and bring justice to subjects whose rights have been breached, while on the other hand, it has also been argued that courts are undemocratic, elitist, and disconnected from reality and thus should not meddle in human rights affairs (Ibid. 2018, p. 4).

Key issues highlighted by the researchers have been that the process is long, expensive, and includes a difficult process that does not guarantee any substantial improvements for the indigenous group. It may even end with a loss of the case, which can set an adverse precedent that could mean an even worse situation than before (Duffy, 2018; Gilbert*, 2020, p. 302). In other words, legal litigation is a tool and has the potential to reach the desired change, but the road to get there is uncertain and comes with a high price.

An additional factor that is relevant for Indigenous peoples, and therefore for this thesis to consider, is that critical scholars of human rights have argued that the international human rights paradigm comes from Western, liberal political ideas, which makes it inept in dealing with alternative forms of conflict management such as indigenous justice (Hendry and Tatum, 2016, p. 354). The spread of human rights as universal principles has transformed them into the only legitimate justice system between states and individuals in the international community. Hendry and Tatum (2016, p. 356 ff) therefore argue that this has turned the rights-based approach into a hegemonic model that presents itself as impartial, inclusive, and egalitarian, However, in reality, it is an exclusive, biased system that upholds the Western worldview.

Another side of this problem is that the state has claimed the role of a protector and an upholder of human rights in the past decades (Chowdhury, 2011, p. 36). Furthermore, the idea of turning human rights into a legal system is quite a new invention and the same goes for the view that human rights are a legal issue rather than a political one (Ibid. 2011, p. 37). This has turned the state into the main violator and upholder of human rights which makes claimants of human

rights dependent on the state violator as it is the only legitimate giver of human rights in the current system (Ibid. 2011, p. 38).

In other words, when a state is both the provider and the violator of human rights, it becomes difficult to find solutions for issues and conflicts. As Chowdhury (2011, p. 47) further argues, "*the risk to human rights does not stem from human rights being alien to certain cultures, because movements claiming human rights have mobilized across cultures. Rather, the risk to human rights is when they come as a set of universal juridical norms codified in advance and hence non-negotiable*". In other words, problems arise when the state becomes the only legitimate source of deciding what a human right is and how to interpret the existing rights. This can be seen when a state on the one hand utilises a discourse of human rights to seem legitimate but on the other hand refutes claims of human rights from other parties (Ibid. 2011, p. 48). This is what Chowdhury (2011, p. 49) describes as "*this choice that is not a choice, rather than the hypocrisy of great powers, that diminishes the power of human rights.*" Indigenous rights thus become whatever the state makes of them and challenging the state's power becomes almost impossible in such as system.

This view also goes in line with the claim of Celermajer and Dodson (2020, p. 80), who argue that indigenous peoples have been structurally excluded as full subjects of the human rights system because of its colonialist background. This is visible in the focus on individuals that the human rights law has, whereas Indigenous peoples often have a collective perspective for both human beings and nature, which in turn questions who is to be counted as a subject. For instance, for Indigenous peoples in Australia, land rights are an interwoven relationship between humans and nature, rather than mere property rights as the human rights system sees it (Ibid. 2020, p. 82). Therefore, on issues of land rights, the human rights law will automatically be in favour of the one who owns the land in the frame of the right to property, which means that Indigenous peoples would need a property deed rather than base their claim on long-time relational usage and traditions to win a legal case in court.

Despite all these challenges that the human rights regime poses for Indigenous peoples, there is a rising number of litigation processes initiated by Indigenous people to have their human rights recognised globally. One reason for this developing puzzling trend could be that contemporary human rights regimes are proving to be useful in protecting indigenous rights.

For example, Dodson (2020, pp. 92–93) argues, contrary to critical scholars, that there exists a need for a dynamic understanding of existing human rights, as they seem to be capable not only of accommodating different groups of rights-holders but also of transforming in the process to adjust to contemporary issues and needs. This can be seen in the UN, where indigenous peoples have used a politics of presence to insert themselves into the treaty-making processes, from which they have habitually been excluded (Celermajer and Dodson, 2020, p. 94). By recognising themselves and acting as subjects of rights, Indigenous peoples have been able to demand recognition from the international human rights system which resulted in the establishment of specialised protection mechanisms and has raised awareness of Indigenous peoples' struggles.[12] In other words, it is no longer possible to simply ignore indigenous rights (Ibid. 2020, p. 94).

Challenges faced by Indigenous peoples in the legal system

As we have seen, the road to justice in the court is a long and strenuous one. Scholars therefore highlight the importance of considering all possible options before choosing to go down the litigation route (Duffy, 2018; Gilbert*, 2020). However, once the decision has been made to use legal litigation there are many issues to navigate in the preparation of a litigation process. For instance, there is no guarantee that a court's ruling will apply to a community as a whole, it could, on the contrary, prioritise affecting the plaintiffs which means that the legal solution would exclude big parts of the Indigenous community (Gilbert*, 2020, pp. 304–305). This has been seen in the case of the San Community in Botswana, and in the Maya community in Belize, where the court's decision only applied to the listed plaintiffs, which excluded the rest of the indigenous peoples even though they were affected by the same issues (Ibid. 2020, p. 305). The same effect can be seen in the case of Girjas, where the Supreme Court's decision only affected Girjas and not the rest of the 50 samebyar in Sweden. As a result, four new lawsuits have been filed by four samebyar against the state to get the same rights recognised (DN, 2024).

Moreover, to prove that a violation of human rights has occurred or is occurring, the burden of proof lies on the indigenous group who filed the complaint. One of the key challenges is that within the legal processes, Indigenous peoples must "*prove 'ancestral' and 'customary' occupation on the concerned communities*" (Gilbert*, 2020, p. 308). This is problematic because Indigenous peoples usually do not have the formal documentation that the legal system

[12] These are further explored in chapter 2.

requires, while the oral agreements and memories of land use that they can provide are not equally valued (Gilbert, 2017b, p. 678). As a result, mapping has become an important tool for indigenous peoples to prove their right to their lands. This was visible in the example of the Batwa people's litigation process against the Ugandan state that aimed to get back their ancestral lands from where they were forcibly displaced because of the making of a national park. The case was brought up to the Constitutional Court and mapping the territory was an important part of their claim (Gilbert and Begbie-Clench, 2018, p. 11).

Another way of proving Indigenous rights is to use the support of advocates or experts who can explain Indigenous peoples' culture and way of life within the legal framework in a way that contributes to their legal standing. By explaining the cultural, historical, and thus traditional indigenous usage of a territory, scientists can support indigenous claims of customary and ancestral connection to the lands. This was the case for the Akawaio people who took their case against Guyana to the IACHR, where evidence from anthropologists was used to prove their rights to their ancestral land (Gilbert*, 2020, p. 309).

Moreover, scholars emphasise that there are challenges connected to different stages of the process such as the preparation before the legal process starts, the legal process itself, and the process after the court has given its decision. For example, it is crucial to ensure Indigenous communities' active participation during the whole process to prevent them from becoming passive bystanders while lawyers, experts, and judges decide upon their future (Gilbert*, 2020, p. 316). Key obstacles related to this are, that the legal language is often technical, it might be in another language than the native language of the indigenous community with few options for translations, and that the customs of a court are unfamiliar to many indigenous communities. This was the case for the Mapuche people in Chile, whose ancestral lands got flooded because of the construction of a hydroelectric dam and 500 people were displaced by force (Skjævestad, 2008, p. 2). The Chilean legal system took place in Spanish and combined with the legal language of a court language became a key obstacle, because Mapuche did not speak Spanish as first language and were also unfamiliar with the technical terms of the court (Ibid. 2008, p. 8). To overcome these challenges requires thorough preparations, education, and strategic usage of the voices of members of the Indigenous community so that legal empowerment increases amongst the community (Gilbert*, 2020, p. 310 ff).

In addition, when a court rules in the Indigenous groups' favour, the remedies can be seen as a failure because of the court's lack of mandate. For instance, in cases, concerning land-grabbing, economic compensation might seem like a solution, but if the lands have a vital importance such as a religious meaning, the only solution then is the return of the land, which is rarely the outcome. This was the situation for the Sioux Nation whose lands had been unlawfully taken by the USA. The Sioux brought their case before the U.S. Court of Claims and won, but the only remedy that could be offered was economic compensation, not the return of the lands (Hendry and Tatum, 2016, pp. 367–368).

Despite all the challenges, legal litigation can therefore still be a useful tool, however, it needs to be used as a complementary element within a bigger strategy of resistance, hence legal resistance (Gilbert*, 2020, p. 316). This is because, as Hendry and Tatum (2016, p. 385) argue, the best chance for a complaint to win in a courtroom, is if it can be reframed into the language of human rights. It is therefore essential to plan and use litigation with intent and knowledge so the Indigenous group can voice their claim during the whole process (Gilbert*, 2020, pp. 316–317). Successful cases can, for example, already be identified in a landmark case in Brazil,[13] where the Supreme Court, in 2023, ruled in favour of the Xokleng people and recognised their rights to their traditional lands from which they had been forcibly evicted by the state (Phillips, 2023). The Supreme Court's decision was to strengthen indigenous peoples' land rights and this move was consistent with the precedence set by the Inter-American Court of Human Rights (IACtHR), which is that IACtHR has recognised that Indigenous people have a right to their ancestral lands "*as long as their 'material, cultural, or spiritual connection' with the land persists*" (Carvalho, 2023).

Another example comes from Norway where the Supreme Court, in 2021, ruled that the state's licensing of the construction of a wind power farm was a violation of human rights law because it was built upon reindeer grazing land in Fosen, which is the ancestral lands of the Sámi people. The wind turbines were ruled as an obstacle for the Sámi people to herd reindeer and thus a violation of their right to culture under the UN International Covenant on Civil and Political Rights (ICCPR, article 27)[14] (UN, 1966; Johansson *et al.*, 2023, pp. 220–221). However, despite the Supreme Court's decision, the conflict continues even in 2024 as the state and the

[13] Case of the Sawhoyamaxa Indigenous Community v. Paraguay. (IACtHR, 2006)
[14] ICCPR adopted 1966, entry into force 1976 (UN, 1966).

corporation that built them want to find a solution for the continuation of the wind power park, whereas the Sámi people want them removed so they can use the lands (SVT Nyheter, 2023).

For the relevance of the above-explained reasons, such as the increasing land-grabbing and the limited possibility to influence decision-making processes for Indigenous peoples, we concluded this chapter by summarising the opportunities and limitations of legal resistance that Indigenous peoples, and particularly the Sámi people, can use to find a solution for their grievances. Indigenous peoples are resisting land-grabbing and encroachment globally through demonstrations, advocacy work, and increasingly, legal litigation. Claiming indigenous rights is more successful when framed as human rights violations rooted in international human rights law. This was evident in both Brazil and Norway, where important precedence regarding indigenous land rights has been decided by courts. This shift has the potential to support future disputes and lead to new national legislation and redress. However, legal litigation can also be risky due to the opponent's greater power and resources, the lengthy and costly legal process, and the Western legal system's incompatibility with indigenous customs. Additionally, verdicts may not apply to the entire Indigenous community, leading to unfair treatment even if the court's decision is favourable. Despite these challenges, many indigenous peoples continue to pursue legal resistance. The next chapter will therefore explore the human rights legal framework, its opportunities and limitations, and how it can be used by indigenous peoples. We will examine international, regional, and national legal frameworks to understand how legal litigation functions in Indigenous legal resistance.

Chapter 2 Legal framework: human rights law and Indigenous peoples

The purpose of this chapter is to examine the legal human rights framework that indigenous peoples base their claims on concerning land rights. The focus lies on analysing the existing legal framework to highlight how rights regimes nationally, internationally, and regionally overlap and relate to each other. Furthermore, this interaction of rights underscores the possibilities and limitations it offers indigenous peoples in their legal resistance. The first subchapter focuses on the case of the Sámi people in Sweden and the way they are using national legal litigation to resist the new green colonialism that comes in the wake of the green transition. The second subchapter examines the global framework, that indigenous people can

engage with, when raising their claims, both in national and international courts as well as in the UN system. Finally, the regional level is explored, where the examination zooms in on regional norms and courts and the development of jurisprudence that is useful, particularly in cases related to indigenous rights.

National framework

As a part of the complete revision of the Swedish Constitution (*Regeringsformen*)[15] in 2011 (Regeringskansliet, 2009, p. 188 ff), the Sámi people got recognised as a people. It stipulates that "*the opportunities of the Sami people…to preserve and develop a cultural and social life of their own shall be promoted*" (Sveriges Riksdag, 2023). Brännström (2023, p. 102) argues that it "*aims to express that the Sámi people are regarded as an Indigenous people, and that reindeer herding is a central part of the Sámi culture*". As previously mentioned, the continuation of reindeer husbandry is dependent on access to ancestral lands, however, most of the Sámi traditional lands are owned by private landowners which is why property rights have become a core issue.

The current law that is regulating reindeer husbandry in Sweden is the Reindeer Herding Act from 1971 (SFS (1971:437), 1971). It stipulates that reindeer herding can be performed by 51 Sámi reindeer herding communities called "sameby"[16] and it regulates where and when a sameby can use an area for reindeer grazing. Furthermore, it regulates the hunting and fishing rights of the Sámi people in a sameby (Raitio, Allard, and Lawrence, 2020, p. 4; Brännström, 2023, p. 105).[17] However, the regulation introduced by the Reindeer Herding Act in practice reduced the Sámi customary rights to their historical lands to a usufruct right on private and state-owned land (Lawrence, 2014, p. 1043). As such, the Reindeer Herding Act is a product of the historical colonialisation of the northern lands of Sweden that contributed to the Sámi people losing their customary land rights and Swedish settlers gaining ownership of the lands (Ibid. 2014, p. 1042).

[15] Regeringsformen Lag (2010:1408) (Sveriges Riksdag, n.d.a)

[16] A sameby is an economic association, a geographical area, a legal entity, and a social community with Sámi members who practice reindeer pastoralism together (Raitio, Allard and Lawrence, 2020; Brännström, 2023).

[17] The Sámi people who do not belong to a sameby does not have any of these rights (Raitio, Allard and Lawrence, 2020, p. 6). However, due to its limitations, this thesis is unable to elaborate further on this matter.

This has devastating consequences for the reindeer herding that today must be carried out on the same land as other land uses, such as forestry, mining, and wind power (Raitio, Allard, and Lawrence, 2020, p. 4), which consequently causes conflicts over competing land use (Brännström, 2023, p. 103). For instance, forestry harms the grazing lands through logging and soil scarification by destroying the lichen that the reindeer eats and its related infrastructure fragmentises the lands (Widmark, 2009, p. 49). However, it is considered to be an important industry since the forest covers 48 % of Sweden (Ibid. 2009, p. 43). The Forestry Act[18] states that a landowner has an obligation to adjust the harvest area and the construction of new roads to accommodate reindeer pastures as well as offer opportunities to the council in certain cases (Skogsstyrelsen, 2023). Nevertheless, as Brännström argues (2023, p. 106 ff), the Forestry Act does not adequately protect Sámi herding areas, and the possibilities of actual influence are scarce. Furthermore, it does not offer any opportunities for compensation nor the possibility to appeal a decision of logging which gives the Sámi people weak protection in comparison to that of the landowners (Ibid. 2023, p. 110).

An additional problem is that reindeer herding is often regarded by state agencies and conceptualised as an industry, just like forestry, which means that the public interest of their worth is to be weighed against each other, and since forestry is more economically beneficial and brings in higher profits, the reindeer husbandry often needs to give way for the logging (Brännström, 2023, p. 108). Moreover, the idea that reindeer husbandry is not a part of the culture and way of life for this community but an industry, makes the Sámi people into a corporation instead of indigenous rights-holders, and reindeer herding is reduced to an industry instead of a cultural part of the Sámi life. As a result, Indigenous protection diminishes in comparison to landowners and the forestry industry rights (Ibid. 2023, p. 111).

Another increasing area of conflict connected to Sámi ancestral territories is mining projects because the absolute majority of Sweden's active mines are located there and this is also where most of the critical minerals can be found (Raitio, Allard and Lawrence, 2020, p. 1). The Swedish Minister of Energy, Business, and Industry has expressed the need for Sweden to open more mines and refers to the green transition as a justification (SVT Nyheter, 2024c). This has resulted in an increasing number of planned mining projects, which would severely damage

[18] The Forestry Act is a Swedish legislation that regulates how forest owners manage and use their forest and reindeer husbandry needs special consideration. It was adopted in 1979 and entered into force in 1980. The last amendments entered into force in 2022 (Skogsstyrelsen, 2023; Sveriges Riksdag, n.d.b).

Sámi pastures and further fragmentise the lands. In these instances, the Sámi people face similar problems to what had been previously described. In the example of the Mineral Act[19], reindeer husbandry is again conceptualised as an industry and not as part of Indigenous culture, nor does the Mineral Act recognise the Sámi property rights, which gives the Sámi people a weak framework that proves especially inefficient in the process of opening up new mines (Raitio, Allard and Lawrence, 2020, p. 6). The Sámi people therefore fight the new mining projects by contesting the permit process in different stages of the legal process connected to the opening of mines, such as at the local Administrative Court (*Förvaltningsdomstolen*) and the Land and Environmental Court (*Mark- och Miljödomstolen*) (Ibid. 2020).

Nevertheless, even within these legal processes and institutions, different public interests are at play that need to be balanced against each other, and reindeer herding once again tends to come up short of the socio-economic benefits that the mining industry is predicted to have. This was most clearly illustrated in 2013, within the case of Rönnbäcken,[20] regarding an area where a corporation wanted to open up a nickel mine. The planned mine is estimated to be the largest deposit that has been found in Sweden, which would decrease Sweden's dependency on nickel import and has an estimated activity of 27 years (Regeringen, 2013, p. 9). However, the Supreme Administrative Court (*Högsta Förvaltningsdomstolen*) judged that mining and reindeer herding would be incompatible in that area. Nevertheless, the government decided that a new mine would have greater public benefits and should therefore be given priority (Raitio, Allard, and Lawrence, 2020, p. 9 ff). That the government overrules a court can be interpreted as a show of sovereign power, with the courts adhering to state power.

Another illustrative development project that causes competing land uses is wind power, which is increasingly promoted in Sweden, due to the state's determination to be a leading actor in the green transition and recently created a Green Acceleration Office to expedite permit processes and development projects (Regeringskansliet, 2024). The Environmental Code[21] is the main legislation that regulates new wind power plants and offers protection "*to the extent possible*" against activities that may "*significantly interfere*" with reindeer husbandry (Cambou *et al.*, 2021, pp. 42–44). However, it does not recognise Sámi rights to their traditional lands, on the

[19] The Mineral Act regulates the extraction of minerals. It was adopted in 1991 (Sveriges Riksdag, 1991).
[20] See CERD's opinion on the case in subchapter below.
[21] The Environmental Code (1999) aims to promote a sustainable development of the environment. It adopted in 1998 and entered into force in 1999 (Sveriges Riksdag, 1998).

contrary, it seems to give priority to renewable energy sources which makes the protection of Sámi rights weak because the legislation seems to deem it less important than green energy (Ibid. 2021, pp. 42–44). Cambou *et al* (2021, p. 55) even argue that the legislation *"favours national sustainable development but undermines the sustainability of Sámi reindeer husbandry at the local level*". In other words, the reindeer husbandry can be sacrificed at the expense of wind power, if necessary, which goes in line with the state's climate goals.[22]

The Forestry Act, the Mineral Act, and the Environmental Code all has the obligation to have the opportunity to counsel with affected communities. In practice, however, the establishment of a council for consultation with groups in the affected position does not equal with having a say in the final decision-making. Moreover, the consultations require a lot of resources from samebyar and there is no financial support for them either (Raitio, Allard, and Lawrence, 2020, p. 9). In addition, the lack of recognition of the landowner rights of the Sámi people makes it debatable if the Sámi people must be involved in negotiations regarding the exploitation of their ancestral lands such as wind power prospection (Lawrence, 2014, p. 1041). Still, to tackle this issue, in 2022, a new law - the Act on Consultation was adopted that stipulates that the government, state agencies, municipalities, and the County Administrative Board (*Länsstyrelsen*) have an obligation to consult the Sámi people in matters of special importance to them (Sveriges Riksdag, 2022).

The aim of the new Act on Consultation (2022) is meant to be to increase the Sámi influence over decisions that affect them. The legislation however, came as a response to the extensive international criticism by NGOs and the UN,[23] which Sweden has received in the past decades for not meeting adequately the standards of international Indigenous rights (Civil Rights Defender, 2022b). Problematically, references to FPIC are missing and the new Act on Consultation does not specify what the actual degree of influence the Sámi opinions should have in the final decision-making. Furthermore, it has been highlighted, that the Act on Consultation might even increase imbalances in consultations, where those with the most resources will have the upper hand in making their voices heard. In addition, there is a lack of knowledge regarding the Sámi people and their rights and needs at the state agencies which

[22] The EU's climate goals will be further discussed in the subchapter under in subchapter Regional human rights systems.
[23] See CERD's opinion about Rönnbäcken (CERD, 2020).

makes it difficult for decision-makers to fully comprehend the situation, which makes the consultations moot (Civil Rights Defender, 2022a; Svenska Samernas Riksförbund, 2022).

In the past three decades, the issues of who has the right to claim land and who has the right to the land have even increasingly grown in permanence due to the green transition, and the Sámi people have actively been contesting this through different methods such as protests, demonstrations, and advocacy work to push for a political change and have their rights recognised (Sametinget, 2017, p. 16). This can be seen in the example of Rönnbäcken where the Sámi people together with the civil society mobilised against the mine to preserve nature (Nätverket Stoppa gruvan i Rönnbäcken, 2015). As nickel is considered to be a critical mineral in the EU's green transition towards renewable energy, the new mine has a high public interest in the eyes of the government (Regeringen, 2013). Furthermore, conflicts over land use are likely to only grow because of the green transition policies that escalate the cumulative effects of multiple development projects (Allard, 2023, p. 184). The Sámi people have increasingly emphasised that "*while a green transition is needed, such a transition cannot be based on colonial practices and needs to be just and fair*" (Ibid. 2023, p. 192). As can be seen from the quote, the exploitations of Sámi lands within the process of the green transition, do not take the needs of this community into account, while it is recognised in the legal framework that they need to be included and have influence in the decision-making processes, this is currently still not the case. Moreover, this legal weakness has led to situations, where it has been clear that there has been a lack of political will or situations where politics has failed to protect Sámi interest, and resulted in the Sámi people having to turn to the judicial system for recognition of rights to their ancestral lands as an indigenous people (Brännström, 2020, p. 179). The following section therefore briefly examines and summarises key Swedish cases that have impacted the Sámi land rights in Sweden.

The Sámi people have been contesting the usufruct right and claim that they have property rights older than those of the current landowners based on immemorial usage of the lands (Brännström, 2023, p. 104). One way of realising this right has been through legal litigation. The first case of Sámi landowner rights tried in a Swedish court was Skattefjällsmålet in 1966,[24] in which Sámi representatives claimed landowner rights to a mountain area in Jämtland (Ibid. 2023, p. 177). Although the Swedish Supreme Court rejected the Sámi landowner claim in

[24] Skattefjällsmålet - NJA 1981 s. 1 (Nytt Juridiskt Arkiv, 1981).

1981, it clarified that Sámi land rights stem from their continuous use of the lands since time immemorial which meant that it recognised that Sámi land rights are based on immemorial prescription. Furthermore, it stated that Sámi land rights are property rights and thus have constitutional protection (Ibid. 2023, p. 178).

Sámi property rights were again the topic in the case of Nordmaling in 2011,[25] where around 100 landowners had taken legal actions against three samebyar in Västerbotten. They claimed that the reindeer had no right to graze on their private property during the winter. Nevertheless, the Supreme Court's decision stated that winter grazing in the area surrounding Nordmaling was a customary right of the Sámi due to the long-term use of the land. This was the first case in the Supreme Court that recognised that Sámi land rights could be recognised and protected within the legal system (Brännström, 2023, pp. 178–179).

A more recent case was the Girjas case that started in 2009 and finished in 2020, which was a lawsuit filed by Girjas sameby against the Swedish state (Brännström, 2023, p. 179 ff). The lawsuit intended to clarify who had the right to administer and decide on the fishing and hunting rights on Sámi ancestral lands (Torp, 2023, p. 74).[26] The Supreme Court's decision stated that it was Girjas sameby, who held the right to decide and administer the fishing and hunting rights on their ancestral lands due to their immemorial prescription (Ibid. 2023, p. 77). The verdict of the Supreme Court clarified that there are Sámi land rights that entitle them to decide on land use that is not yet codified in the current legislation and therefore there is a need for a revision of the current legislation to ensure these rights (Brännström, 2023, p. 106). Furthermore, in the judgement, the Supreme Court referred to the ILO 169, even though Sweden had ratified this treaty, as well as the UNDRIP, and the ICCPR article 27. Additionally, the decision shows the relevance of international human rights law in national decisions and for Sámi rights in Sweden.

This trend highlights how the Sámi people are using international human rights law to claim their rights in national courts. The recognition of indigenous people's right to their historical lands, territories, and resources in international human rights law should have a strong impact

[25] Nordmalingsdomen - T 4028-07 (Högsta Domstolen, 2019).
[26] Previously, the fishing and hunting decision and administration had been held by the state according to the first Reindeer Herding Act of 1886, and the Sámi people had the right to fish and hunt on their traditional land. However, this balance changed when the state as a landowner started to distribute more fishing and hunting rights to people other than the Sámi people in the area. This led to a high increase of new hunters which created conflicts between reindeer herders and hunters (Torp, 2023, p. 74 ff).

on national law. However, there exists a gap between declarative recognition of indigenous rights and practical implementation on the national level (Allard, 2023, p. 192). Because of insufficient national protection of indigenous rights, indigenous peoples are often forced to rely on international human rights law (Gilbert*, 2020, p. 302). Increasingly, this tends to be the case for many Indigenous peoples across the globe that turn to legal litigation when seeking justice. As can be seen, the international protection of Indigenous rights, as codified within ICCPR article 27, UNDRIP, and ILO 169, creates a foundation in international law for recognising Indigenous peoples' rights to ancestral lands, territories, and resources. The next subchapter will therefore examine the legal framework on the international level as well as codified global rights that indigenous peoples can use to claim their rights on all levels.

International human rights system

Since the end of the Cold War, Indigenous peoples' organisations have gained increasing access to international organisations such as the UN. Hasenclever and Narr (2018, p. 2 ff) argue that this is a sign that social mobilisation and resistance are working and that the world is moving towards democratisation and a more inclusive global society. On the other hand, critical scholars argue that the inclusion of indigenous peoples in the debate on the international human rights protection system is yet another form of colonialism. This is because the only way for indigenous peoples to participate in the UN is on the terms of the UN, which so far has only welcomed them at the margins with no real influence or power (Liljeblad, 2022, p. 99). Thus, the enabling of the indigenous peoples' participation can be understood as predominantly serving the justification and reproduction of the existing system of governance. This can be most clearly seen in the different mechanisms that the UN has created to include Indigenous voices, such as the UNPFII which functions mainly through soft law, such as recommendations, that can be disregarded by states (Hasenclever and Narr, 2018, p. 9). Wallbott and Recio (2018) further argue that Indigenous peoples can influence the decisions of the UN only if they adjust their arguments to fit the discourse of the system. For instance, when indigenous peoples sought recognition and protection under the United Nations Framework Convention on Climate Change, they framed their cause as an issue of human rights which gained them the right to consultation on issues concerning them. However, the representatives who gained access were Indigenous organisations considered to be moderate and the ones who were seen as too radical were excluded (Ibid. 2018, pp. 797–798). This shows that indigenous peoples are commonly only allowed to operate at the state's mercy, not on their terms.

Nevertheless, the engagement of indigenous communities on the global level has changed in the past three decades from the starting exclusion and not having a place to voice key concerns, to being provided with a dynamic platform within the international community in the UN (Liljeblad, 2022, p. 5 ff) where participation in enabled. This change was first seen in 2000, with the establishment of the UN Permanent Forum on Indigenous Issues (UNPFII) that provides advice on Indigenous issues rights (UN, n.d.c). Secondly, in 2001, the Special Rapporteur on the Rights of Indigenous Peoples was created, as an institution that works for the promotion of indigenous rights and investigates connected human rights violations (UN, 2024c). Thirdly, in 2007 the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established to advise the Human Rights Committee (HRC) on indigenous rights (UN, 2024b).

As can be seen there now exist several global institutions and protection mechanisms that are working on enabling Indigenous peoples' views and opinions to be heard. However, some scholars remain critical and highlight that an increase in these spaces and institutions still depends on the possession of funding, technical understanding, and language issues, which makes them inaccessible to those who do not have these resources at hand (Hasenclever and Narr, 2018, p. 11). In addition, these institutions and protection mechanisms commonly depend on political support as they are unable to enforce the opinions and recommendations they issue, which makes the enforceability ineffective (Iglesias Sánchez, 2016, p. 218). This further strengthens the argument that the international system of human rights protection is built for the benefit of the state and if indigenous peoples want to participate, they need to adjust to it (Chowdhury, 2011).

However, Indigenous peoples' rights have been in the past few decades recognised and codified in several international human rights binding documents, such as the ICCPR (article 27) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[27]. Moreover, there are specialised Indigenous rights codified in ILO 169 and UNDRIP which are instruments that directly protect and promote the rights of Indigenous peoples

[27] International Convention on the Elimination of All Forms of Racial Discrimination adopted in 1965, entry into force in 1969 (UN, 1969).

(OHCHR, 2007). These have provided for some of the seminal norms and will be further examined in the following sections.

Article 27 of the ICCPR states that minorities have a right to enjoy their own culture. It has become even more relevant to Indigenous peoples after General Comment No. 23 (HRC, 1994) made by the HRC, which elaborates that to enjoy one's culture could mean a lifestyle that is related to territory and resources. Furthermore, HRC states that to ensure full enjoyment, this right requires positive actions by states or other actors (HRC, 1994). Moreover, the scope of Article 27 contains the importance of states obtaining FPIC, "*when their culture is seriously at risk*" (Yupsanis, 2013, p. 361). In other words, a failure to obtain FPIC can be a violation of Article 27.

This right was defended by the HRC in the case of Ángela Poma Poma v. Peru,[28] where a woman from the Aymara people complained that the state's withdrawal of water from their land was a violation of their human rights. The lack of water made the Aymara people unable to enjoy their traditional way of life with grazing llamas. Furthermore, they did not have an effective participation in the decision which led to HRC's ruling that Peru was in breach of Article 27 (Barten, 2015, pp. 58–59). This important precedence led to the Norwegian Supreme Court's conviction of the state in the case of Fosen (Ravna, 2022, p. 167), where the judges unanimously concluded that the licensing and construction of a wind power plant on traditional reindeer pastures was a breach of ICCPR article 27 (Ibid. 2022, p. 157 ff). Moreover, this landmark case can set the course for future cases both nationally and internationally, especially for neighbouring countries that use wind power plants in their green transition (Ibid. 2022, p. 175).

Sweden has ratified ICCPR and its binding legal nature puts an obligation on Sweden to respect, protect and fulfil the obligations codified by the convention (OHCHR, 1996). However, the Swedish state has not yet incorporated the conventions into national law (Raitio, Allard, and Lawrence, 2020, p. 5), which means that while the state has an obligation to adhere to the convention they do not apply automatically to government agencies, and the judicial system directly (UN, 2003). This gives more leeway for the Swedish government when it comes to the interpretation and implementation of regulations that concern the Sámi people.

[28] Poma Poma v. Peru (OHCHR, n.d.)

In addition, ICERD (UN, 1969) and its monitoring body the Committee on the Elimination of Racial Discrimination (CERD)[29] have worked to ensure land rights for Indigenous peoples which can be seen in the General Comment no. 23 (HRC, 1994) that emphasises the right to control traditional lands and territories (UN, 1997). CERD has also pushed for states to recognise Indigenous peoples' customary land tenure and that non-recognition of land rights for Indigenous peoples is racial discrimination (Gilbert, 2017a). Furthermore, CERD has emphasised that mere consultations are insufficient when it comes to exploitations of resources on Indigenous lands and that FPIC must be the guiding principle.[30] This was reiterated in a communication filed by members of a sameby in 2013 (CERD, 2020), that claimed that Sweden violated their right to property when granting mining concession to a corporation on Sámi traditional pastures in Rönnbäcken without their consent. The Sámi people argued that their property rights came through customary use and that the mining would harm their traditional livelihood. Furthermore, the Sámi community claimed that the state violated their right to seek effective protection and remedies for the mining activities (Ibid, 2020). In 2020, CERD found a breach of both rights and recommended Sweden to change its legislation so that Sámi land rights are protected and ensure FPIC (Ibid. 2020, p. 16). This further emphasises the state's responsibility to ensure the Indigenous peoples' land rights and to use FPIC in decisions affecting the Sámi people.

In the above opinion, referral to UNDRIP was a recurring feature (UN, n.d.b). UNDRIP can therefore be argued to represent a historic breakthrough for Indigenous rights emphasising crucial aspects such as the right to traditional lands and FPIC (Mitchell and Yuzdepski, 2019, p. 1358 ff). This is visible from Article 26.2 of UNDRIP, which states that Indigenous peoples have land rights based on traditional use (OHCHR, 2007). Moreover, the UNDRIP Article 32.2 specifically emphasises that "*States shall consult… to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources*" (OHCHR, 2007). The two articles emphasise the UN's stance for states to

[29] CERD has highlighted that discrimination against indigenous peoples is racial discrimination (Gilbert, 2017a).
[30] This can be seen in the case of Belize where CERD urged the state to consult and obtain FPIC from the Maya people before they permitted oil leases and concession (Gilbert, 2017a). Moreover, if indigenous peoples consent to the extraction of resources on their territories, they should also get to benefit from it as "*independent entitlement*", not compensation which can be seen in the case of Ecuador where CERD highlighted "*equitable sharing of benefits*" is required (Gilbert, 2017a). In other words, CERD emphasised that indigenous peoples have the right to participate and influence decision-making processes so that they benefit from them as is their right as landowners.

use FPIC in issues that concern Indigenous peoples, specifically concerning their lands, territories, and resources. Moreover, UNDRIP puts a responsibility on states to legally recognise Indigenous land rights based on traditional land tenure in Article 26.3 (OHCHR, 2007). Although it is not legally binding, states are expected to take it into account in good faith (ILO, 2013, p. 10). In addition, Sweden voted in favour of the UNDRIP (UNGA, 2007a), however, the government emphasised that Sweden "*must maintain a balance between the competing interests of different groups living in the same areas of northern Sweden*"(UNGA, 2007b). This position highlights the complex dynamic when it comes to the economic interests of corporations, landowners, and the Sámi people's right to culture and livelihood (Brännström, 2023, p. 102).

Similarly, ILO 169 recognises Indigenous peoples' right to traditional lands, territories, and resources and that governments need to consult and ensure participation in matters affecting them.[31] Especially Article 14, states that "*the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised*" (ILO 169, article 14). The issue for the Sámi people is, however, that only Norway has so far ratified the convention, making it legally binding, while Sweden and Finland have only expressed interest in ratifying it. However, article 14 of ILO 169 is a concern that needs to be solved before it can become a reality for both states (Joona, 2012, p. 21) and at the moment the subject is mute in Sweden.[32]

Nevertheless, the ILO 169 may still have an impact on states even though they have not ratified it. This can be seen in the case of Girjas where the Swedish state argued that it did not have any obligations under ILO 169 since it had not ratified it. Girjas on the other hand, contended that Sweden had an obligation under international customary law and referred both to the ILO 169 and UNDRIP (Johansson *et al.*, 2023, p. 229). The Supreme Court did indeed refer to the ILO 169 regarding Sámi customary law which has made some scholars argue that this could mean that some parts of the ILO 169 might be applicable in Sweden. However, others contend that this interpretation might be too generous (Torp, 2023, p. 76). Furthermore, the Supreme Court did refer to both UNDRIP article 26 and ICCPR article 27, while it concluded: "*that it is*

[31] In Article 13, the concept of territories is used "which covers the total environment of the areas which the peoples concerned occupy or otherwise use" (ILO, 2013, p. 37).

[32] The UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence visited Sweden and Finland in March 2024 and strongly recommended the Swedish government to ratify it (SVT Nyheter, 2024d).

reasonable to interpret the regulations in the constitution in light of international law, 'even though there has been no formal incorporation'" (Ibid. 2023, p. 76). In other words, even though discussed obligations are not a part of national law, international human rights law must still be considered in matters concerning the Sámi people as they are indigenous people.

Alongside the discussed global norms and institutions that regulate the rights of indigenous peoples, there exists also another relevant Special Procedure of the Human Rights Council which has the mandate to report and advise on human rights issues and alleged violations. The Special Rapporteur on the Rights of Indigenous Peoples and the Special Rapporteur on Human Rights and the Environment are both part of the Special Procedures (UN, n.d.d). In 2022, the two current UN Special Rapporteurs, José Francisco Cali Tzay and David R. Boyd issued a joint statement, urging the Swedish government to not grant a mining license in Kallak, that would take place on the lands of the Sámi people because the mine would endanger protected ecosystems as well as the reindeer herding in the area (UN, 2022a). However, based on the statement of the Minister of Energy, Business, and Industry, the Swedish government is determined to see the opening of the mine because of its public interest and the national defence of Sweden (SVT Nyheter, 2024e). Furthermore, the Supreme Administrative Court recently gave its verdict in June 2024 which approved the mining concession (SVT Nyheter, 2024a). This shows the limited power of the Special Procedures as states can choose to ignore the recommendation without any consequences.

In addition to the global norms and human rights instruments for the protection and fulfilment of Indigenous rights, Indigenous peoples and judges in courts, can also reference regional human rights systems and norms. However, the implementation of codified international rights on the regional levels varies, especially when looking at the European context. This will be examined in the following subchapter where we examine how they influence and shape Indigenous rights on a national level.

Regional human rights system

As can be seen, Indigenous peoples' rights are continuously being developed under international human rights law, which is reflected on a regional level (Gilbert, 2011, p. 269). There are several institutions that indigenous peoples can turn to after the exhaustion of domestic remedies, which in many cases are legally binding for a state as opposed to certain UN mechanisms. In

connection to Indigenous people, the most prominent regional system exists in the context of the Americas within the framework established by the OAS. The Inter-American human rights system consists of a commission - IACHR and a court – IACtHR. It is especially the IACHR that plays a seminal role in the protection and promotion of human rights in the Americas (IACHR, n.d.), as well as concerning the interpretation of state implementation of the American Convention on Human Rights (ACHR)[33] (IACtHR, n.d.).

The IACtHR, which is an autonomous judicial institution whose purpose is the application and interpretation of the ACHR, has been the key actor in strengthening indigenous rights especially relating to the right to traditional lands and natural resources (Fuentes, 2017, p. 230). The court's role is seminal, because it was the first institution in the world to make a "*legally binding decision… to uphold the collective land and resource rights of indigenous peoples in the face of a state's failure to do so*" (Grossman and Anaya, 2002, p. 2), in the case Awas Tingni v. Nicaragua.[34] This landmark decision came after the Awas Tingni people in Nicaragua filed a petition to the IACHR because the state had given a concession to a company to log onto their traditional lands. The IACHR subsequently filed a complaint to the IACtHR which in 2001 decided that Nicaragua violated the Awas Tingni peoples' right to property and that the state needed to demarcate and recognise the land as theirs according to customary land and resource tenure (Ibid. 2002, p. 2). Furthermore, the state was recommended to create a system that recognised the land rights of Indigenous peoples to prevent future issues (Ibid. 2002, p. 2).

Although the Inter-American system jurisprudence might have been at the forefront of regional protection and promotion of indigenous rights, there has also been important development regarding this area of rights protection within other regional contexts (Gilbert, 2011, p. 270). This can be seen in the groundbreaking case of the Endorois peoples in Kenya who, in 1973, were evicted from their traditional lands because of the creation of a game reserve, and later on also the development of a ruby mine (Ibid. 2011, p. 246 ff). The Endorois people filed a complaint at the African Commission on Human and Peoples' Rights (ACHPR)[35] in the year of

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[33] American Convention on Human Rights adopted in 1969 and entered into force in 1978 (IACtHR, n.d.). However, the USA has not ratified the Convention (OAS, n.d.) and has not accepted the jurisprudence of the IACtHR (IACtHR, n.d.).

[34] Awas Tingni v. Nicaragua (IACtHR, 2001)

[35] The African human rights system consists of the African Commission on Human and Peoples' Rights (ACHPR) that was established in 1987 and the African Court on Human Peoples' Rights (AfCHPR) which was adopted in 1998 entered into force in 2004 (ACHPR, n.d.; AfCHPR, n.d.). Their mission is to complement each other while protecting human rights.

2003, which protects and promotes the African Charter on Human and Peoples' Rights (the African Charter)[36] (AfCHPR, n.d.). The ACHPR referred to the IACtHR jurisprudence in its judgement that found that Kenya had violated the Endorois people's religious and cultural rights, that states are obliged to recognise Indigenous peoples' collective customary land tenure as property rights, and that states have a duty to consult and obtain FPIC for development projects that majorly impacts Indigenous lands (Gilbert, 2011).

Furthermore, in 2022, the African Court on Human and Peoples' Rights (AfCHPR) gave its verdict on its first indigenous rights case. The Ogiek people brought Kenya before the court because they were evicted from their traditional lands in the Mau forest due to state preservation (Claridge and Kobei, 2023, p. 313). In a landmark decision, the court found state violations of the right to non-discrimination, religion, culture, property, natural resources, and development (Rösch, 2017, p. 245). In addition, the court gave a new decision in 2022, stating that Kenya had to restitute the lands and recognise them as Ogiek lands (Ibid. 2023, p. 313). This shows that court jurisprudence and international law influence and guide the rulings of regional courts which strengthens indigenous rights in different parts of the world.

An equivalent in Europe would be the CoE, which is the principal human rights protection organisation in Europe with member states that have signed the European Convention on Human Rights (ECHR) which is a key regional legally binding treaty that protects human rights, the rule of law, and democracy (CoE, n.d.). The ECHR connected European Court of Human Rights (ECtHR) rules on alleged violations of ECHR (Amnesty International, 2023). Although the ECHR is considered to be generally one of the world's leading protectors of human rights (Henrard, 2016, p. 158), contrary to its American and African counterparts, the ECtHR has been more ambiguous in its support of Indigenous rights, especially when it comes to recognising customary land rights. This is especially apparent in the cases of the Sámi people, who have had problems with admissibility, legal standing, and the interpretation of the ECHR (Koivurova, 2011; Iglesias Sánchez, 2016).

The ECHR does not mention indigenous rights; however, it is known to be a living instrument with the flexibility to be interpreted contextually (Iglesias Sánchez, 2016, p. 219 ff). One right

[36] African Charter on Human and Peoples' Rights (the African charter) adopted in 1981 and entered into force in 1986 (OAU, n.d.)

that is highly relevant to the examined case and could be used in this context is the right to property in Article 1 of Protocol 1 of ECHR, which states that "*every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*" (CoE, 1952, p. 33). Although property is not explicitly mentioned in this article, it has been argued that it falls under the definition of possession according to the ECtHR. However, Article 1 also gives states the right to expropriation and a wide margin of appreciation in classifying the balance of public interest and the protection of property rights (Gismondi, 2016, pp. 15–16). For this reason, Gismondi (2016, p. 17) also argues that the ECtHR "*disregards the significance of Indigenous peoples' relationship with their lands*", which means it, in contrast with the Inter-American and the African systems, does not recognise the importance of traditional lands for Indigenous peoples' continuation (Ibid. 2016, p. 17).

This restrictiveness of the interpretation of the ECtHR in this context can be seen in the case law that has so far been produced by the ECtHR. For instance, in the first Sámi case, the G. & E. against Norway also known as the Alta case,[37] in 1990, where the European Commission of Human Rights (the Commission)[38] dismissed the idea of Sámi property rights based on customary law and immemorial usage. Nevertheless, some progress could be seen in the Könkämä case against Sweden,[39] (1996) where the Commission said that the Sámi hunting and fishing rights "*could be regarded as possessions within the meaning of Article 1 of Protocol 1 to the Convention*" (Iglesias Sánchez, 2016, p. 224). In other words, property rights from immemorial usage could be included under the scope of Article 1. Moreover, in the case of Halvar From v. Sweden (Koivurova, 2011, pp. 25–26), where a Swedish landowner brought the state to court because it had granted the sameby the right to hunt on his property, the ECtHR found it inadmissible. However, it stated that it is of general interest to respect the Sámi cultural lifestyle, including reindeer husbandry and hunting which is what Sweden's judgement had done. This is similar to the protection of culture in ICCPR which in the future could have an

[37] Norway wanted to build a hydroelectric power plant on Sámi lands that would flood part of the Alta valley that would negatively impact the reindeer pastures (Iglesias Sánchez, 2016, p. 223).
[38] The European Commission of Human Rights supported the ECtHR until 1998 when the ECtHR was reformed, and the Commission was terminated (Refworld, n.d.).
[39] After a legal litigation process between several samebyar and the state regarding a new bill that aimed to enhance the fishing and hunting rights for a broader public, the case was brought before the ECtHR that found the case to be inadmissible (ECtHR, 1996).

impact on how the ECtHR will rule on Article 8 which protects the right to respect for private and family life (Ibid. 2011, pp. 25–26).

However, in 2010, within the Handölsdalen case against Sweden (2010),[40] the ECtHR stated that Sámi property rights "*could not be characterized as an 'existing possession' within the meaning of the Court's case law and that the claim to a right to winter grazing on the property at issue was not sufficiently established to qualify as an 'asset'*" (Iglesias Sánchez, 2016, p. 224). In other words, the Sámi claim to property rights was not sufficiently established and could thus not be viewed as a possession of an asset, which meant that obtaining non-existent property rights was not protected under Article 1. Consequently, the ECtHR dismissed the claim due to incompatibility with the scope of the ECHR. This rigid stance of the ECtHR shows that it is not prepared to take into consideration other international treaties such as the ILO 169 (art. 14), the UNDRIP, or the jurisprudence of other regional courts, which can make one also question the possibilities of the protection mechanisms that Indigenous peoples can engage with at the ECtHR.

Nevertheless, there exists some possibility that the ECtHR has the potential to become a stronger advocate for Indigenous rights, as some scholars have argued that if the ECtHR recognises traditional land tenure it would be obliged to fulfil the protection of property rights based on customary law (Kovács, 2016, p. 797). In other words, only time will tell which road the ECtHR will take in the future. At the time of writing, the ECtHR has declared a new Sámi case admissible. This case, known as the Saarivuoma sameby v. Norway, was filed by the Saarivuoma sameby against Norway in seeking compensation for loss of pastures and legal costs (SVT Nyheter, 2022) and is referring to the breach of rights, protected by Article 1 of Protocol 1 (ECtHR, 2022). [41] Based on the former case law the Norwegian state has a wide margin of appreciation to decide on compensation, however, this legal case before the ECtHR will certainly contribute to clarifying the matter of indigenous land rights and compensation and set a precedence for future legal proceedings on regional and national level.

[40] After a legal litigation process between four samebyar and landowners over rights to winter reindeer pastures that the samebyar lost, the case was brought before the ECtHR that found a violation of article 6 but did not process any property rights (ECtHR, 2010).
[41] Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted in 1952 and entered into force in 1998 (UNHCR, n.d.)

Alongside the CoE, it cannot be ignored that the European Union (EU) has also become an important player when topics of human rights are concerned on the European continent, due to the high level of integration of legal systems.[42] Connectedly, the Court of Justice of the European Union (CJEU) ensures compliance with EU law. Moreover, a national court in a member state can refer a preliminary ruling to the CJEU and individuals can use the annulment procedures to oppose the lawfulness of an EU act (Iglesias Sánchez, 2016, pp. 225–226). The Charter of Fundamental Rights of the European Union (the EU Charter)[43] establishes the rights and freedoms of the EU (European Commission, n.d.e). Furthermore, the EU is negotiating its accession to the ECHR which means that individuals will be able to take violations of rights triggered by the EU policy to the ECtHR in the future (EEAS, 2023). However, it is unlikely that it would be possible for Indigenous peoples to take a case to the CJEU because it processes issues related to EU law. After all, the EU law on indigenous rights is still underdeveloped. This could be seen in the case of Inuit Tapiriit Kanatami who tried to get certain EU regulations regarding seal trades annulled based on a violation of their human rights However, any attempts so far have been deemed inadmissible (Iglesias Sánchez, 2016, pp. 226–227).

Moreover, there are currently no existing internal policies for Indigenous peoples' rights that would guide EU law, even though EU legal regulations have an enormous impact on the Sámi people's lives (Keskitalo and Götze, 2023). This impacts the formulations of new EU regulations, for instance, the European Green Deal[44] that sets out ambitious goals for the EU to reduce 55% of its greenhouse gas emissions by 2030 compared to the levels of 1990 and be climate neutral by 2050 (European Commission, n.d.c). To reach these goals, the EU has created the Green Deal Industrial Plan,[45] which will make the EU into a leading manufacturer in green technologies by streamlining, simplifying, and expediting the processes for the establishment of green industries and energies such as solar power, wind power and batteries (European Commission, n.d.d). One part of this development is the Critical Raw Materials Act (CRMA), [46] which was adopted in 2024 and lists strategic raw materials that are critical for the

[42] The EU becomes relevant for the Sámi people as both Sweden and Finland are Member States and thus needs to adhere to EU regulations. One way of doing this is through the European Union Agency for Fundamental Rights (FRA) works for the protection and promotion of human rights within the EU mainly through raising awareness and spreading information about human rights within the EU (FRA, 2012).

[43] Charter of Fundamental Rights of the European Union adopted in 2009 and entered into force in 2009 (EUR-Lex, 2022).

[44] The EU Green Deal was presented in 2019 (European Commission, n.d.c).

[45] Green Deal Industrial Plan was presented in 2023 (European Commission, 2023)

[46] Critical Raw Material Act was presented in 2022 (European Commission, n.d.a) and adopted in March 2024 (European Council, 2024)

manufacturing of green energies. CRMA aims to increase the EU's internal production by streamlining, simplifying, and expediting the permit processes for critical raw materials projects and to reduce the EU’s import dependency (European Commission, n.d.b).

However, the CRMA has received extensive criticism from both environmental NGOs and Sámi organisations, who argue that green mining is a myth and that more than half of mineral deposits are found in or close to Indigenous traditional lands, a fact that the CRMA does not take into consideration (EBB European Environmental Bureau, 2023; SDG WATCH EUROPE, 2023). Before the adoption of the CRMA, the board of the Sami Parliament in Sweden, Finland, and Norway stated that “*we deny all attempts of exploitation on our lands, waters, and seas without our consent and safeguarding our culture, livelihoods and lifestyle*” (Sametinget, 2023b). This can be interpreted as a reminder that the Sámi people need to be included in the decision-making as the majority of the resources are located in Sámi ancestral territory, as well as an omen of future conflicts if this is not taken into account. Furthermore, the Sámi Parliament in Sweden stressed that the CRMA through more mines in Sámi traditional lands would have “*devastating consequences for the Sami people – for reindeer husbandry and all other traditional Sami livelihoods and Sami culture all over Sápmi*” (Sametinget, 2023a). Additionally, the Sámi Parliament even criticised the Swedish government for not consulting them before the CRMA was adopted, highlighting that Sweden and Finland weakened Indigenous rights protection by blocking a provision of FPIC in the original draft. Thus, in the adopted CRMA, no consultation or consent is mentioned or required, which is why the Sámi Parliament argued that Sweden and Finland are violating Protocol 3[47] and its commitment to Sámi rights (Ibid. 2023a).

While there are many limitations and identified negative developments in the European context, certain institutions have also been proactively engaging on the topic of Indigenous rights. The most improvement was seen in connection to the European Parliament (EP) that in 2021, underscored the need for FPIC in matters that affect indigenous peoples. Moreover, the EP has underlined the need for dialogue in the EU delegations in the Arctic states on national and regional levels. Furthermore, it also highlighted the need for improved consistency in the Arctic

[47] Protocol 3 to the accession treaty of Sweden and Finland to the EU specifically mentions the Sámi people. It states that Sweden and Finland want to preserve and develop Sámi livelihood, culture, language and way of life. Furthermore, the Sámi culture and livelihood is dependent on reindeer herding on their traditional lands (EUR-Lex, 1994). However, this section was designed to make a legal basis for an exception to the Sámi exclusive right to reindeer herding in the free trade regulations, not to strengthen their rights in the EU which is why it would be difficult for indigenous peoples to use it in EU internal affairs (Grote, 2006, p. 430).

policy between internal and external respect for indigenous peoples which was taken up in the Joint Communication on Arctic Policy in 2016 (Keskitalo and Götze, 2023). In addition, the EU Arctic Policy[48] was updated in 2021, to highlight the importance of UNDRIP and now also refers to ILO 169 and FPIC in decision-making processes (EEAS, 2021), which brought increased awareness to internal indigenous rights (Keskitalo and Götze, 2023). Nevertheless, to further strengthen Indigenous rights Keskitalo and Götze (2023) argue that there is a need for "*the development of an EU internal Indigenous Peoples Policy and a rightsholder concept could streamline Indigenous Peoples' rights into EU policies and policy-making*". In other words, there is a need to recognise and protect Indigenous rights in EU law to ensure their full enjoyment.

The lack of internal policies regarding Indigenous rights stands in stark contrast to the EU's external relations which have been actively engaged in strengthening and emphasising the importance of Indigenous rights since the 90s, especially in its relations with third countries (Grote, 2006, p. 429). In its external relations, the EU underpins the importance of the UNDRIP and regards the UNPFII as a vital platform for dialogue, as well as supports the ILO 169 (Scarpa, 2014, p. 435 ff).[49] Moreover, the EU Action Plan on Human Rights and Democracy 2020-2024, which dictates the EU priorities in its relations with third countries, refers to the UNDRIP and FPIC as two guiding principles (EEAS, 2020, pp. 12, 14). However, as they are related to the EU's external action and not Member States, the EU is unable to intercede in any internal affairs regarding indigenous rights (Grote, 2006, p. 429). Nevertheless, as has been shown from the discussed details, while the EU has some knowledge when it comes to indigenous rights, it could potentially be used for its internal policies in the future.[50]

As can be seen, indigenous peoples are facing many obstacles on the national, international, and regional levels. Even though there is a formalised international human rights framework, national systems are slow to use as is clear in the case of the Sámi people in Sweden. Both state

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[48] The EU Arctic Policy addresses issues of climate change, sustainability, and respecting indigenous rights.
[49] This has also been reiterated in 2016 the Council of the European Union (EU Council) conclusions that underscores the need to protect and reinforce indigenous rights and in 2017 in the EU Joint Staff Working Document: Implementing EU External Policy on Indigenous Peoples, that highlights how the EU can support indigenous rights in external policies and financing (Council of the European Union, 2017).
[50] For that reason, Scarpa (2014, p. 463 ff) for example, argues for the establishment of the EU Permanent Forum on Arctic Indigenous Peoples Issues that would give recommendations on issues relating to indigenous peoples in the Arctic. This would be one step closer to the recognition of the Sámi people's rights which could lead to a change within the EU's internal policies.

agencies, consultation practices, and courts that are meant to protect rights commonly do not work in the favour of the Sámi people as rightsholders. Furthermore, taking an issue to fundamental human rights institutions and courts, where criticism can be voiced, and breaches of rights recognised, requires a lot of resources and time which makes them inaccessible. Moreover, the intersection of the EU and its Member States and the implementation of its green policies makes it all that more difficult for indigenous communities to ensure that their lands remain liveable, and their culture protected which is why resisting in the processes of legal litigation has become crucial. In addition, the green transition is a space of various interests, as can be seen regarding policy and profitmaking, which prevents the rights protection of the Sámi people from being the primary value.

An alternative option would be the ECtHR; however, the case law and protection are underdeveloped. Nevertheless, in comparison to the Inter-American system and the African system, which has recognised and defended Indigenous peoples' rights in an elaborative way, the ECtHR has great potential to become an upholder of Indigenous rights. Sweden, on the other hand, has recognised Sámi rights as an Indigenous people but the implementation is lacking and their rights to traditional lands often must give way for development projects such as wind power, mines, and forestry. As a result, the Sámi people have turned to legal litigation to claim their rights because of inadequate protection and scarce political will to solve issues. In the next chapter we therefore turn to exploring the findings of the empirical study with a focus on, how the Sámi people in Sweden are using legal litigation in their resistance against land-grabbing motivated by the green transition.

Chapter 3 Thematic analysis of the collected data

This chapter presents the findings of the empirical analysis, examining the collected data and focusing on the Sámi people's situation and legal resistance in Sweden. The first subchapter begins by detailing the methodology of semi-structured interviews and thematic reflexive analysis, as well as ethical considerations. The subsequent three subchapters analyse the collected data, concentrating on the causes, targets, and spaces for resistance.

Methodology

This subchapter will first reflect on the ethical considerations related to the interviewees and my position as a researcher. It will then address the technical aspects of data collection, including the sample size and the definition of themes.

Ethical considerations

Researchers have an ethical responsibility towards participants, readers, academic colleagues, and society, making it imperative to consider ethics before commencing research (Mirza *et al.*, 2023, p. 441). A vital element for me as a researcher is to be respectful to the participants of the interviews, which seems obvious in theory, but might be harder in practice. This relates to cross-cultural representation and being open-minded so the participant can express alternative opinions (Cacciattolo, 2015, p. 68). "*Ethical research does not claim power over a participant's thoughts or actions. Instead ethical research attempts to unpack and examine the phenomena being explored to answer the question, 'What is going on here?'*"(Ibid. 2015, p. 70). Thus, it is crucial to ensure that the interview setting is a safe space, where I am attentive to both my words and those of the participants, avoiding any actions that might belittle or disempower them (Mirza *et al.*, 2023, p. 443).

Collecting data with interviews as the key method requires that informed consent is given voluntarily by the participants before the interviews start (Cacciattolo, 2015, p. 58).[51] Information about the aim of the thesis, used methodology, steps taken to ensure anonymity, and a consent form, were sent out, and a signature was requested before the interviews were conducted. Ensuring the privacy and confidentiality of the participants was, therefore, a crucial element of this study (Ibid. 2015, p. 64),[52] and the protection of both elements was also discussed, informed, and agreed upon using the provided consent form.

In addition, I believe it is important to maintain contact with participants after the interviews are completed, allowing them to review how their contributions are used and approve any quotes. After the interviews concluded and transcripts were created, I sent the transcripts back to the participants for their approval before finalising the results. This validation technique is

[51] Copy of informed consent form used in this project is provided in the appendix B.

[52] Privacy refers to the participant's anonymity and confidentiality concerns how the data is stored and handled. They both aims to protects the participant from exposure and any following risks or harms. Read more about this in (Cacciattolo, 2015, p. 64).

widely used in social sciences to ensure participants retain power over their contributions even after the interview concludes and addresses issues of translation (Mero-Jaffe, 2011). The relevance of this process is underscored by the fact that the interviews were conducted in Swedish and had to be translated into English, the language of the thesis. While I am fluent in both languages, some Swedish expressions could not be directly translated into English and required adaptation to maintain their meaning. This makes participant feedback crucial in ensuring accuracy and respect for their original expressions (Mirza *et al.*, 2023, pp. 444–445).

Reflexivity and positionality statement[53]

Before presenting my findings, it is important to clarify my position concerning the thesis topic. I identify as a woman from a middle-class background, and my worldview is shaped by critical theories such as constructivism and feminism, as well as Christianity. I grew up in a town, in the region of Norrland, called Örnsköldsvik, which is located in the territory of Sápmi and is a Sámi administrative area. [54] However, I am also a Swede thus part of the majority society in Sweden, which makes me an outsider in relation to the Sámi people's community (Darwin Holmes, 2020, p. 5). [55] As an outsider, I have observed the thought-provoking dynamics particularly regarding Sweden's handling of Sámi rights and the green transition. This observation sparked my interest in delving deeper into this thesis topic.

Although one might expect that growing up in Örnsköldsvik would result in a familiarity with the Sámi people, I had little actual knowledge about them and their situation before starting this thesis. This lack of prior knowledge impacts the thesis, as I do not claim to have deep insights into the Sámi community, nor do I consider myself an expert on this topic even after completing this research (Robinson and Wilson, 2022). Moreover, I find it important to acknowledge that my positionality influences this thesis, particularly in the interpretation of collected data, selection of theories, and analysis. Despite my good intentions in directing this research project,

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[53] "*The term positionality both describes an individual's world view and the position they adopt about a research task and its social and political context*" (Darwin Holmes, 2020, p. 1). "*Reflexivity is the concept that researchers should acknowledge and disclose their selves in their research, seeking to understand their part in it, or influence on it*"(Darwin Holmes, 2020, p. 2). However, critical scholars argue that positionality does not automatically function as redeeming and may even "*reproduce unequal, hierarchical power dynamics be- tween researchers hegemonically racialized as "white," and research subjects or fellow researchers who are racialized as "people of color*"(Gani and Khan, 2024, p. 2). Positionality should instead be applied consciously without any performance in mind to strengthen one's own standing, rather being humble and reflective(Gani and Khan, 2024, p. 11).

[54] A Sámi administrative area recognises the Sámi special rights, such as the right to use the Sámi language in administrative matters, which are handled by the municipality (Örnsköldsviks kommun, n. d.).

[55] Read more about the discussion of the concept of insider/outsider in (Darwin Holmes, 2020, pp. 5–7)

my predispositions, ignorance, or prejudices might lead to conclusions that could be insulting, patronising, or unsupported by the Sámi community. I have aimed to approach the collected data in a manner that minimises the influence of my position as a student, especially when interviewing representatives who possess much deeper knowledge than I do. This is why I chose to use reflexive thematic analysis as a method for analysing the collected data. Reflexive thematic analysis requires continuous reflection throughout the analysis process, ensuring that I, as a researcher, consistently evaluate how my assumptions affect the analysis and conclusions drawn (Braun and Clarke, 2019, p. 595).

Operationalisation, definition of a theme, and coding

The thematic reflexive analysis relies on themes to interpret data and thus draw conclusions. A theme is a pattern that I sought to find in the collected data, subsequently divided into sub-themes before finalising the actual themes (Braun and Clarke, 2006, p. 6). One challenge for me was to determine what was important enough to be considered a theme. This is related of course, more to making a connection to the research question, rather than for example, the number of times a piece of information has appeared in the data. For instance, the word *reindeer husbandry* was recurring in my collected data, however it did not constitute a theme, and rather it was part of giving the context to the themes. It is important to keep in mind that it is the researcher's judgement that determines the themes and this requires a certain level of flexibility and open-mindedness, to not draw conclusions based on predetermined biases rather than the data collected (Ibid. 2006, p. 6). However, no researcher is fully neutral, hence the interpretation will always also be a reflection of myself, which is important to acknowledge (Ibid. 2006, p. 12).

The analysis of the collected data therefore included creating codes and themes. The coding process involves assessing the data to decide on what the important emphasis is, and what generates meaning. This process can be repeated as necessary until the codes are sufficient and the researcher flowingly moves on to create themes (Braun *et al.*, 2022, pp. 29–30). Themes are developed through analysing and coding the data, which comes from a mixture of data analysis and the researcher's bias (Braun and Clarke, 2019). Braun and Clarke (2019, p. 593) "*conceptualise themes as patterns of shared meaning underpinned or united by a core concept*". Not to be confused with domain summary that focuses on topics and not shared meaning. Utilising reflexive thematic analysis therefore means that I organised the themes in the collected

data according to "*meaningful patterns*" that lead to a general account of the data to answer the research question (Braun *et al.*, 2022, p. 30).

Sample size

Using reflexive thematic analysis requires having datasets that enable the researcher to analyse and find patterns, in this case, within interviews. One issue is to know when one has enough data to which there is not one single answer. Braun et al (2022, p. 24) recommend 6-12 datasets for a master's thesis, while simultaneously stating that "*collecting the 'perfect' dataset is a myth*". Some scholars have also suggested that the limit is reached when there is a saturation of data, suggesting that new interviews would not contribute to any new information, changes, or new themes, which is also referred to as information redundancy (Braun and Clarke, 2021, p. 203). Data saturation suggests that meaning comes from inside the data which is why new meaning can end after enough sets of data (Ibid. 2021, p. 210). In contrast, Braun & Clarke (2021, p. 210) argue that meaning does not exist within the data itself, on the contrary, "*meaning resides at the intersection of the data and the researcher's contextual and theoretically embedded interpretative practices – in short, that meaning requires interpretation*". This suggests that depending on the researcher's perspective and previous experiences, new interpretations and meanings can always emerge from the data. Additionally, any themes identified within a dataset exist within a context and must be interpreted in relation to one another. Coding, therefore, is context-dependent and might be created and interpreted in one way based on current knowledge but could be understood differently in the future as new norms and contexts develop. Ultimately, it is the researcher's responsibility to decide when data collection and interpretation are sufficient (Braun *et al.*, 2022, p. 24).

This is supported by the theory named *information power,* which requires the researcher to decide when a sample is sufficient depending on *"(a) study aim, (b) sample specificity, (c) use of established theory, (d) quality of dialogue, and (e) analysis strategy*" (Malterud, Siersma and Guassora, 2016, p. 1754).[56] Malterud et al (2016, p. 1759) argue that "*/t/he more information the sample holds /…/ the lower number of participants is needed*". The data should continually be evaluated during the study to determine when the number of data is sufficient (Ibid. 2016, p. 1757).

[56] Read more about these steps in (Malterud, Siersma and Guassora, 2016).

To answer the research question, participants with specific expertise were chosen to gather as much relevant information as possible from each interview. Based on the summarised information, I believe that nine interviews are sufficient to empirically support my research project. This decision is grounded in several factors: the high relevance of the information provided by the interviewees, the recommended number of datasets according to Braun et al (2022, p. 24), and the repetition of key information observed during the interviews. While each participant contributes unique insights based on their expertise, their inputs collectively add to the overall picture.

Conduction of interviews[57]

The interviews were conducted via the Zoom platform in the form of digital meetings because the research took place while I was still finalising my studies and living in a different country. This digital format could potentially affect the outcomes negatively compared to in-person interviews. However, the widespread adoption of digital meetings resulting from COVID-19 has established a new culture that makes digital interviews viable (Oliffe *et al.*, 2021). Additionally, the video feature allowed us to see each other, facilitating the observation of body language and tone, which supports the argument that the results from these interviews are sufficiently useful and reliable for this thesis project.

Furthermore, it is important to highlight that the conversations were conducted through nine semi-structured interviews with two types of participants: 1) Sámi individuals who are representatives or members of a Sámi community or organisation, and 2) individuals representing organisations or institutions advocating for Sámi rights and interests.

Through the coding of the collected data and the identification of patterns, I have created the following themes to structure the subsequent discussion: causes for resistance, targets of resistance, and spaces for resistance. In the following subchapters, I will present and discuss some of the key findings of this study using the lens of thematic reflexive analysis.

[57] Appendix A lists the time and dates for the interviews.

Causes for resistance

"*/T/he green colonialism and the new industrialisation of the Northern parts of Sweden is yet again history repeating itself.*"[58]

The so-called green transition, or green colonialisation, as the Sámi people more commonly refer to this new wave of industrialisation, was mentioned several times by most participants who used it as an expression of marginalisation faced by the Sámi members.[59] To have lands taken in the name of development and having to resist and fight for their rights was as old as the start of the colonialisation of Sápmi itself. The usage of the narrative of green transition as the answer to climate change can be interpreted, according to Foucault's understanding of sovereign and disciplinary power theories, as a response to the way the state is justifying its actions by referring to the creation of new laws and norms on how to act in the era of the global warming. However, this narrative was heavily criticised by several interviewees. They pointed out how the state justifies climate change mitigation efforts, such as wind power and mining projects, by labelling them as green energy, green industry, or green transition.

For example, this was clearly emphasised also by one of the interviewees, who said: "*the green transition… affects us very much…it is a very important transition, and we must change society from fossil fuels because of the climate change, but it cannot happen at the expense of Indigenous peoples, neither in Sweden nor globally… Just because you put the word "green" to something, it feels like it becomes a justification. Now we have a green industry, but it's still an exploitation of nature.*"[60] Elaborating upon this further, another interviewee mentioned "*it is quite interesting that when the European states divided Africa in Berlin in 1884-85, one of Carl Bildt's relatives was there at the meeting as an observer. In Sweden, this was implemented, especially in the 1880s when we got the first Reindeer Husbandry Act… based on classic European colonial doctrine.* [61] *What is happening now is basically what I was saying – the same thing.*"[62]

[58] Interview 1
[59] The industrialisation of the northern parts of Sweden started in the late 1900th century with forestry and mining (Sundvall, 2023).
[60] Interview 2
[61] Carl Bildt is the former State Minister and former Foreign Minister of Sweden (Martinsson, 2013)
[62] Interview 3

By using a reversed discourse and referring to the green transition as green colonialisation, the Sámi people position the development projects in a context where hidden human rights violations become visible: "/*W/e have flagrant violations of human rights and Sámi rights in Sweden, this is being greenwashed under the pretext that we create green energy and climate change… Sweden is prepared to sacrifice the reindeer husbandry in favour of green energy.*"[63]

All participants shared the understanding that development projects such as wind power, mining, forestry, and related infrastructure caused competing land use of Sámi ancestral lands. For example, it was emphasised that "*we work to preserve the reindeer husbandry based on natural grazing and it becomes problematic when the green transition demands the lands that are reindeer pastures... More and more nature is being claimed, causing pastures to be fragmented and reduced.*"[64]

Competing land use is a huge cause for conflicts as can be seen both globally and nationally in Sweden. This has been highlighted by scholars to be an issue for the reindeer husbandry in Sweden because it reduces the fruitful pastures which the reindeer need to survive, especially the winter. Furthermore, it was expressed that if the green transition was allowed to continue unrestricted, it would be detrimental to the reindeer husbandry and thereby the Sámi culture, because "*it is a central foundation of the Sámi society and an important part of the Sámi culture, which means that if it is lost, we will have lost central and essential parts of the Sámi culture.*"[65] Already, "t*hree samebyar stand at the tipping point" and "it is uncertain if they will survive because soon, they will not have any lands left.*"[66]

The importance of reindeer husbandry for the Sámi culture is supported by the Fosen case, in which it was recognised that Article 27 of the ICCPR was violated by Norway (Ravna, 2022). Moreover, indigenous rights to traditional lands are also protected under UNDRIP as well as ILO 169 on the international level. This connects back to the issue of property rights of the Sámi people which were established in Skattefjällsmålet in the year 1981 (Brännström, 2023), During this case, as one of the interviewees highlighted, "*the Supreme Court stated that it was a strong right of use with the same protection as property rights. This property right is protected*

[63] Interview 9
[64] Interview 6
[65] Interview 9
[66] Interview 1

in our Constitution and the European Convention on Human Rights. Although the right is defined, the legislation has not followed suit… so a weak protection is the bottom line" *[of the Sámi property rights].*[67]

This weak protection has caused conflicts over the lands between the Sámi people, private landowners, and the state, and thus different forms of resistance were discussed during the interviews. Most expressed were different shapes of resistance practices such as advocacy work, influencing opinion formation of the majority society, dialogue, information work, and consultation with government agencies in permit processes. However, since 2018, the legal resistance in Sweden has increased remarkably, which means reliance on legal litigation (Sameradion, 2023b), as emphasised several interviewees.

For example, interviewee five emphasised how relevant legal tools can be when saying "*We don't want to do this, but we have to. If we do not pursue this legally, we do not stand a chance… We just want to live our lives in peace, to practice our culture and teach our children to live a traditional Sámi life, and to work with reindeer herding, but we are being forced to do this.*"[68] This position and argument, however, also align with the global trend noted by researchers that Indigenous peoples are increasingly taking conflicts over land rights to court, as they find that they can be useful as a last resort (Gilbert*, 2020). Furthermore, as another interviewee stressed, there is a lot of urgency felt by the members of the community, after all: "*We do not have much more to lose because we have nothing more to gain politically. There is no political courage or political will to work on these issues, thus our last resort becomes litigation.*"[69] This reflection shows the very difficult political situation that is faced by the Sámi people in Sweden, where the Minister of Energy, Business, and Industry, Ebba Busch in January 2023, explicitly stated that she loves mines and wants Sweden to be a great, proud, mining nation (Sameradion, 2023a).

Nevertheless, several obstacles obstruct the effective use of legal litigation, such as time, resources, and uncertain outcomes (Gilbert*, 2020), as was also echoed throughout the interviews. For example, one of the participants underscored the relevance of financial resources. After all, "*the first thing to worry about is the financial aspect, hiring legal help is*

[67] Interview 7
[68] Interview 5
[69] Interview 9

very expensive… so it is 'the big guy' with billions against a sameby… it is a very unequal battle."[70] Additionally, it was emphasised by a participant that the mental stress and pressure on a sameby that chooses to go to court is high: "*It is tragic that the legal processes take such a long time because they create tremendous stress in the sameby and the claimant party…Especially if you are a minority and an indigenous peoples and already exposed to racism and hatred, you become even more vulnerable because the justice system takes so long time.*"[71]

Despite all these difficulties, however, going to court, in the opinion of participants, still "*is, unfortunately, a necessary evil… it is not something you want to do because it is expensive, it requires enormous expertise and resources from the people of samebyar… but you have to do it.*"[72] The hope of gaining or having a right recognised in court, which the political elites or leaders of the state do not want to grant was a recurring feature in interviews, and this can be interpreted as a type of constructive resistance, which may lead to the creation of new protection mechanisms for Sámi rights. This was seen, in the recent Girjas case, where the Swedish Supreme Court decided that it was the sameby who held the hunting and fishing rights on their ancestral lands, not the state. The basis for this decision was immemorial prescription, which is protected in international law (Torp, 2023). This can be interpreted as the court also starting to recognise the ILO 169 as a part of the international customary law, which would give the Sámi people stronger protection in Sweden if that were the case.

However, critical scholars have emphasised that the human rights system is a product of the state and therefore biased and favours state interest (Hendry and Tatum, 2016). The interviewees also emphasised this limitation, with one of the participants pointing out that: "*/t/he legislation is written in a way that for example the Mineral Act, makes it easy to exploit the resources for the benefit of the state and the public.*"[73] Furthermore, it was also argued that "*the Environmental Code does not address issues relating to human rights, and the Land and Environment Court only look at what the Environmental code is protecting… I can't say that the state has been aware of this when designing the systems, but the effect is that the*

[70] Interview 8
[71] Interview 6
[72] Interview 6
[73] Interview 7

environmental assessment of a mine often excludes the assessment of human rights"[74]. In addition, the participants emphasised, "*there has been a politicisation of Sami rights, i.e. political considerations have been given too much importance when investigating legally established conditions for Sami rights… the political leaders we have today are not people who favour Sami rights.*"[75] All of the responses therefore further supports the argument that, although the court system can be biased, it often remains the only viable alternative for the Sámi people when political avenues are closed.

A final topic I wanted to reflect upon and highlight, before moving to the following subsection, is the negative view of the future. This is because the mentions of the prospect of decreasing conflicts in the interviews were relatively sparse. On the contrary, as one participant highlighted: "T*oday, I think you can see the outlines of two forces that seem to collide more sharply than before. On the one hand, we have all the pressure from the green transition… more mines, definitely more wind power, and an expansion of the electricity grid. On the other hand, you have the Sámi reindeer herders but also the local population… a growing resistance and a sense that enough is enough.*" [76] In other words, the participants expect that more conflicts will arise in the future between them, corporations, and the state because of competing land uses. This expectation is already evident in the four new lawsuits that samebyar had filed against the Swedish state during the time of writing this thesis (DN, 2024).

Having reviewed and reflected on various issues and grievances of the Sámi people, it is clear that different actors are involved in influencing the outcome of their legal resistance. The following subchapters will therefore discuss these key actors and the roles they play in the green transition.

Targets of resistance

The Sámi people interact with various actors in their resistance against development projects encroaching on their traditional lands, including the state, state agencies, municipalities, the County Administrative Board, and private corporations, all of which have varying interests.

[74] Interview 5
[75] Interview 9
[76] Interview 4

A principal actor in these interactions is the state, which focuses on becoming a leading force in the green transition by expanding industrialisation in northern Sweden. Resisting the state in practice often requires extensive interaction with various state agencies governed by different legislations, which control the implementation of these laws. Important laws impacting reindeer husbandry include the Mineral Act, the Environmental Code, and the Forestry Act, which govern the implementation processes of various development projects. Additionally, the County Administrative Boards and municipalities play significant roles in different permit processes. One participant expressed that a lack of understanding and awareness of Sámi rights and culture permeates these processes, stating: "*I think it should be the responsibility of the state agencies, the state, and the corporations to have a basic understanding of these issues, but it is almost always the Sámi communities who need to claim their rights and highlight a whole list of issues that they have not considered.*"[77]

This lack of understanding of Sámi rights and culture in Sweden aligns with the ruling view and neoliberal ideas seeing profits as the essential part. Reindeer husbandry is therefore regarded to be an industry and is thus compared to other industries in which trade-offs are being made based on the considered general interest which becomes problematic, because "*you lose the whole aspect of reindeer herding being rooted in the Sámi culture and the Sámi being an Indigenous people and the whole rights aspect when you reduce it to an industry or an interest that must be balanced against everything else. It also feels like a way of avoiding the greater responsibility that you have based on other commitments and regulations,*" as was reflected by one of the participants.[78] This claim is supported by research that has highlighted this limitation of the state agencies (Brännström, 2023), which is why many decisions are appealed in courts. The courts mentioned most in conversations were the Land- and Environmental Court and the Administrative Court where samebyar can contest different parts of the permit process. For instance, the securing environmental permit of a mine is governed by the Environmental Code and can, be appealed in the Land- and Environmental Court. However, the participants in the interviews primarily took a critical position, finding that that the court does not consider the situation as a whole in cases, but only the specific piece of legislation.

[77] Interview 2
[78] Interview 2

Nevertheless, going to court is still an alternative that the Sámi people are choosing more commonly because many do not believe there remain many other options. One of the participants in the interview highlighted this while emphasising "*I do not believe that the Sámi people will be able to get their rights the political way, only in isolated cases in municipalities…the Sámi people must go to court to claim their rights*"[79]. Even the chance of losing a case did not seem to deter "*no matter the outcome, at least the issue has been clarified.*"[80] One recent example of this, which interviewees pointed out as well, is the Girjas case, where the Supreme Court clarified that "*there are rights that have not been codified or mentioned in the Swedish Reindeer Herding Act, based on immemorial usage.*"[81] All participants emphasised that the Girjas case was of monumental importance for strengthening Sámi rights in Sweden. While one of the interviewees even emphasised it represents "*a landmark case that sets precedence so you should not need another case in the neighbouring sameby.*"[82]

However, the Girjas judgement has so far also not influenced much change in practice, at least as far as the current situation goes. This is because, following the verdict of the Supreme Court, the Swedish government initiated a new investigation led by a committee called Renmarkskommittén, to clarify what this case would mean for the rest of the samebyar and to create a new Reindeer Herding Act. Nevertheless, to this date, this process is still ongoing and has only led to issuing of an interim report, that includes "*small changes, only the absolute necessary",* which is connected *"to the fact that the politicians are not willing to recognise a Supreme Court decision, which makes one think – do we have a rule of law if the state does not adhere to the Supreme Court?*"[83]

The lack of response following the judgement has led to four new identical lawsuits against the state initiated by neighbouring samebyar to Girjas In addition, it has been emphasised the investigation is taking a far too long of a time and there is little political will that would solve such conflict to be found (DN, 2024). Furthermore, Renmarkskommittén has opened up for the opinion of politicians and the industry lobby, which may influence the final report. This change

[79] Interview 1
[80] Interview 2
[81] Interview 7
[82] Interview 8
[83] Interview 7

is problematic because of the high resources and power of the industry. With "/t/*he majority of politicians on a national level"* being *"heavily influenced by the industry lobby, they have enormous resources for lobbying and influencing the politicians that neither we, the environmental movement*[84]*, nor the movement working for human rights have*"[85] which again underscores the imbalance of power to effect change between different actors with competing interests.

Expectedly, another key actor in this context are the corporations behind the development projects. Most of the resistance discussed is directed also against corporations that plan to open new mines, wind power plants, or log the forest. The corporations, of course, justify their activities by arguing that mines or wind power create job opportunities and will help small municipalities in the north to blossom. However, the criticism against this narrative was well voiced by a participant, who highlighted that in the past "*a small village… called Fredrika, where Vattenfall,*[86] *has invested 5 billion SEK in wind farms,"* however*, "there is not a trace of this today in Fredrika. On the contrary, the latest thing they have done is to decide to close down the library, and the nursing home and to centralise the home care service to Åsele. So, amid this huge industrial investment, the situation for Fredrika is worse than ever. It is a paradox.*"[87] In this example, an act of disciplinary power where the corporation uses a narrative to turn themselves into heroes and a necessity for the development of small villages can again be seen, which is why the presence of dissenting voices, such as those of the Sámi people, is so important, as it gives the majority society a complete picture.

As was presented through the discussion of the key findings in this subchapter, the conflict is threefold, with the Sámi communities (sameby) opposing both the state and corporations, which have considerably more resources and power, making the fight uneven for the Sámi people. Although corporations are the main target, the resistance commonly occurs within the permit processes overseen by state agencies or municipalities. Consequently, the interviews focused

[84] A new cooperation between the environmental movement and samebyar has occurred that previously was problematic because of different opinions regarding some issue e.g. the predators. However, since many issues concerning the forest and biodiversity are connected to reindeer herding and the environment, new alliances has been formed. Nevertheless, due to the limitation or this thesis, this matter will not be further explored.

[85] Interview 5

[86] An energy company owned by the Swedish state (Vattenfall, n.d.)

[87] Interview 4

on these spaces of resistance. The next subchapter will explore the spaces for legal resistance and the preconditions for Sámi resistance.

Spaces of resistance

Resistance takes place in many spaces. However, two key spaces related to legal resistance in particular, that were highlighted by participants were: 1) before a decision is made in the permit process through consultation, and 2) after a decision is made by appealing it in a court or other legal settings.

Taking up resistance in both of these two spaces requires a lot of resources, time, and energy, which is something the samebyar are forced to prioritise, but also really cannot afford, due to insufficient support and the difficulties the reindeer husbandry as a livelihood is facing. Even though Sweden recently implemented a new Act on Consultation with the Sámi people, because of extensive international criticism, the imbalance is visible.[88]

Critical participants in the interviews noted that "*there was a lot of talk about FPIC again… and that became a rather watered-down part… this is a huge burden for the samebyar, today there is a lot of consultation... and in many cases, it becomes a bit cynical, it becomes a bit of a show. If you want to get anywhere, you have to... go the legal route.*"[89] In addition, this position aligns closely with arguments of scholars (Partridge, Maddison, and Nicholson, 2012; Kårtveit, 2021; Sara, Rasmussen, and Krøvel, 2021), who criticise consultations for not including Indigenous peoples in the final decision-making and the requirement of resources. This was echoed more widely also in other interviews, for example, one participant claimed "*I think that the legal and the political and the power balance between what the reindeer herders can achieve against corporations and politicians… they do this during working hours and are paid to process whereas reindeer herders have to take care of the reindeers in the forest and at the same time have to attend these meetings which are usually unpaid… if you have limited resources, it is easy for things to fall through the cracks.*"[90]

The lack of resources is forcing samebyar to prioritise which has caused them to adopt different approaches as to where they direct their time and efforts, as "*some participate in every meeting*

[88] This is further explored in chapter 2.
[89] Interview 3
[90] Interview 2

and consultation to try and influence the decisions, [while] others do not participate but have chosen to appeal decisions."[91] As previously described, courts can be spaces of legal resistance; however, it is not a guarantee the result will be positive. After all, "*when it comes to wind power, you almost always lose.*"[92] Furthermore, as previously mentioned, the legal system itself poses a challenge, for instance, the Supreme Administrative Court approved, in 2024, a concession permit for a potential mine in Gállok despite international urging from the UN Special Rapporteurs, for the permit not to be granted, because of the negative environmental impact (UN, 2022a). This example is also an illustration of how Sámi rights are commonly politicised as previously mentioned.

Furthermore, the Swedish legal system is a dualistic one, which means that it has not incorporated the ICCPR into national legislation, even though it has been ratified by Sweden, which means that "*you have to interpret the Swedish legislation in the light of Article 27, interpretation in conformity with the Treaty,*"[93] as described by one of the participants. Moreover, as Sweden has not ratified the ILO 169, it does not need to adhere to it even though the Supreme Court referred to it in the Girjas case. "*We regularly refer to these conventions, Swedish authorities and courts take no notice of it. I have a wind power decision from autumn 2023, where it is written that – 'samebyn argues convincingly regarding the protective sphere of these international conventions concerning reindeer husbandry land use.' But, in this case, the climate directives weigh more heavily… I think that after the Girjas judgement and the Supreme Court's ruling where they write that the 27th article of the ICCPR is in direct accordance with the purpose of the objective statute in the Constitution 1.2 sixth paragraph regarding the Sámi people and the protection of Sámi culture and society… There is no need for it to be transformed or incorporated because the Supreme Court has already said that these provisions are in direct conformity with the Constitution.*"[94] Thus, the Swedish legal system or state agencies can be a challenge to interact with and rely on, for the Sámi people.

And yet, when looking at the Sámi people in Norway and in particular at the recent decision of the Supreme Court in the Fosen case (Cambou, 2023), it is clear that claiming land rights in court will be increasingly a possibility for the Sámi communities. However, one difference

[91] Interview 7
[92] Interview 1
[93] Interview 7
[94] Interview 9

between the Swedish and Norwegian contexts that is important to note is that Norway has ratified ILO 169 and incorporated the ICCPR into its legal system, which influences what is possible in the legal space that is utilised for resistance. As a result, differing opinions of whether or not Sweden could have a similar court decision in the future could be discerned in the interviews. For example, as one of the participants emphasised: "*We have several wind farms that have been tried after the Girjas decision concerning the ICCPR with similar reasoning as the Supreme Court had in Fosen and Swedish courts do not take note of the ICCPR in the same way as the Supreme Court in Norway does. So, I would say - no, I don't think we will see such examples in Sweden.*"[95] However, other participants had dissenting opinions and argued, for example that "*it is not unlikely that a judgement similar to Fosen will eventually emerge.*"[96]

Even this slightly more positive prediction, however, still highlights that the members of Sami communities are increasingly aware of the difficulties connected to navigating legal processes and that the outcome of such practices is very uncertain. Nevertheless, if national courts at the highest level have given their final decision in a case, there are also relevant legal spaces and tools within regional and global institutions to turn to. These international institutions work in the area of protection of fundamental rights and international law and can enable Indigenous communities to take up their complaints through a judicial or quasi-judicial procedure, which we examine in the following section.

For the start, it seems important to emphasise that the opinions on whether or not regional or international human rights systems can be useful vary widely among interviewees. Some of the participants emphasised for example that "*/i/ndirectly it has become a little better, previously there was a lot of arguing in the various treaty bodies, it has created a kind of context… there has been a lot of fighting in the Inter-American Court, that's the one that has been most active [with litigation procedures] … the same can be seen in Africa, where things are also gaining momentum. As the treaty bodies have paved the way, it has become a kind of customary practice.*"[97]

[95] Interview 9
[96] Interview 7
[97] Interview 3

As for the European context and effectiveness of the ECtHR, for the Sámi people in resisting the green transition, the opinions of the participants were relatively divided. On the one hand, some thought it could be an alternative, after all other roads or options that could lead to recognition of the rights of the Sámi people were closed in Sweden. As one of the participants emphasised, /t/*his is a possibility, but it means that all legal remedies must be exhausted nationally. It requires a new issue to be raised with the ECtHR for it to be examined… you must have the right case and be lucky… Sweden does not always comply with these decisions, but that is another matter.*"[98] This was further elaborated, by a participant who added, "*So far, the ECtHR has not taken any case concerning that particular property protection. This is something that I know is being talked about in Sámi circles to try to find a case that they can pursue. It's a long road, but I think the time is perhaps ripe because it's about the courts or the judges to understand the problem and understand what reindeer herding rights are, but it takes a long time and requires a lot of resources for lawyers and so on. But it is possible, and you can also link it to discrimination if you argue in such a way that you see that property protection is not sufficiently protected compared to other groups in society.*"[99] As can be seen, an obstacle to using the ECtHR is time, resources, and the fact that the ECtHR does not fit or has been adapted to recognise the situation of the Sámi people fully and thus it would require first the recognition of the Sámi people's right of to culture, of which the reindeer husbandry is a part of, rather than look at it as an industry which would be a disadvantage for the Sámi people.

However, some of the participants also expressed concern related to the ECtHR. For example, one participant highlighted that while there is "*access to justice"* this also *"requires so much of the individual… It is highly uncertain whether it leads to anything. Firstly, whether your case will be heard, or what the real effect of an appeal to the ECtHR will be. As in our wind power cases, the ECtHR will never change an environmental permit for wind turbines, but in the best of worlds will conclude that this decision by the Swedish courts is contrary to the provisions of the ECHR. The impact of the requirements to even have the possibility of having a trial probably discourages many samebyar from making a complaint to the ECtHR or contacting other committees for violation of other conventions.*"[100] As seen from the interviewees' quote, in the process of utilising regional institutions and treaty protection mechanisms, limited resources

[98] Interview 5
[99] Interview 7
[100] Interview 9

and long processes also play an important role, as they lead to uncertainty of the sameby who filed the complaint, which makes the institutions inaccessible.

On the regional level, alongside the Council of Europe's ECtHR, the EU was also recognised by participants in the interviews as a potential space for resistance. However, the interviewees emphasised that the current usefulness of the institutional set-up of the EU for the protection of Sámi rights was relatively low, because of the non-existent internal policy protection of Indigenous people. After all, "*a lot is going on in the EU now, both Sweden and Finland are seen as important mining nations… there is little understanding so far that we have indigenous peoples and human rights to protect in this process as well. You see more that you have Indigenous peoples outside, you should support them outside the EU's borders, but you do not have a good understanding of the Arctic part of the EU,*"[101] as emphasised by one of the participants.

However, if the EU were to become more aware of the internal situation of Indigenous peoples it could have the potential to become an important of institutional space for resistance, as was highlighted by one of the participants, *"if you would get a better understanding from the EU's side what these different policies and legislation, about what they actually do. Because it's in the EU's own Charter of Rights, it's also protected, plus it's a party to the European Convention on Human Rights and is bound by the case law of the European Court of Human Rights.*"[102] From this, we can conclude that there is potential for the EU to become a space for resistance, however, this is only possible if it would become aware of the Sámi people's situation and conflicting interests with the EU's climate policies, and thus create policies to protect them in these processes. Since the EU law binds Sweden, it would also have to adhere to these potential policies, which could potentially strengthen Sámi rights nationally, however is something that Sweden is not yet ready to do.

However, it cannot be ignored that in Sweden, much of the political leadership does not truly want the Sámi people to have effective influence over the decision-making, be it either on a national, regional, or international level. This can be seen from the fact that the majority of participants criticised Sweden and Finland for being behind the removal of FPIC in CRMA,

[101] Interview 7
[102] Interview 7

which would have contributed to giving the Sámi people a strong case for negotiations and actual influence in opening up new mines on their ancestral lands. Nevertheless, as FPIC was not included in CRMA, nor the Swedish Act of Consultation, the consultation process became powerless. As one of the participants emphasised, "*A lot of those consultations become a bit like charades because you do not have any real influence.*"[103] This point, that the Sámi people do not have any actual influence, is further supported by the Swedish idea of becoming a mining nation and how the Sámi rights can be side-lined due to the urgent need for the green transition. This was even emphasised by the Swedish Minister of Energy, Business, and Industry, Ebba Busch, who in an interview in 2024, explained that "*in the event of difficult conflicts of interest, I think mines for green transition should be weighed in a little more heavily in the future*" (SVT Nyheter, 2024b).

As can be seen, from responses of participants in interviews, the legal spaces and systems for claiming and protecting Indigenous rights, on all levels, are difficult to navigate, as the legal processes from the start of the application to the publishing of a judgement, can take a very long time and requires a lot of, mainly financial, resources. However, it cannot be forgotten, that there is one last category of tools and spaces, which can be used by indigenous peoples on the global level: the international human rights protection mechanism that exists within the UN.

While several researchers look at how indigenous peoples use the global institutions and tools, however, the interviewees in my project expressed primarily several restrictions that tended to limit the effectiveness of the global protection mechanisms. For example, it was emphasised, that using global spaces can be a long and difficult road. While members of the Sámi people "*do have the opportunity to use these forums, /…/ I think we have to be realistic about how much it actually requires not only from samebyar but also individuals who have to turn to these forums. Perhaps this is also a question for the UN to bear in mind that it is not entirely simple… because it is not binding either, if it still can't change these projects, but in the best of worlds get to criticise the state… they are not quite accessible, so to speak.*"[104] This response underscores, yet again, the performative nature and unbalances that exists between an Indigenous community and a state in accessing UN forums. For instance, the process of

[103] Interview 3
[104] Interview 9

participation is long and expensive, and unless indigenous peoples manage to find the means to initiate and go through the process, engaging in such spaces becomes a non-option.

More importantly, the UN does not have a specific legally binding enforcement mechanism for the causes that Indigenous communities could use in the example of the new policy area related to green transition that they are trying to resist. However, they do nonetheless continue to participate also in UN protection mechanisms that are not legally binding, such as the universal periodical review and reviews of UN special rapporteurs. As one interviewee emphasised, "*I believe that it is still important for the Sámi people to contribute to these rapporteurs… to send in shadow reports when it is time to review Sweden based on various conventions that we have ratified. The Sámi people have been doing this for many years and it is not something that leads to immediate change, and unfortunately, Sweden ignores many of the recommendations made… eventually, there will be too many complaints about Sweden, and it will be embarrassing. It is difficult to maintain its reputation as a state that protects human rights, then maybe you do something about it*".[105] Moreover, this quote also shows that the Sami people recognise the importance of naming and shaming strategy, which is more commonly used by NGOs or states with a good human rights reputation, such as Sweden, to criticise those states that are implementing problematic human rights practices (Franklin, 2015). That Sweden receives criticism from the UN, because they are violating the Sámi people's rights, thus means their position as credible human rights defender is undermined, which could potentially make them act differently to address the criticism. Furthermore, such participation in the UN mechanisms can also be interpreted as reversal of the discourse, and resistance tactic, where the Sámi people are bringing Sweden's violator side to the light, using the technique that Sweden often relies on in the UPR and human rights regime.

A sharper criticism of the state was, however, expressed by another interviewee, who argued that "*we [Sweden] have a high opinion of human rights abroad and Sweden should be ashamed, but Sweden does no longer feel ashamed,*"[106] which indicates that the effectiveness of naming and shaming depends on the state's willingness to adapt to the criticism. This critique aligns with how Sweden has acted in the case of Rönnbäcken and the opinion of CERD and the pending plans of the opening of a new mine.[107] After all, this has been interpreted as "*a unique*

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[105] Interview 5
[106] Interview 1
[107] This is further explained in chapter 2.

statement from a human rights perspective" and as a sign that *"Sweden does not care."* While such statements were generally combined with disappointment, participants did also express that it is nonetheless *"good to be involved in those contexts",* because *"we can use it as an argument."* However, while *"nothing happens on the ground. It is the courts that make a difference*"[108]. This emphasis therefore shows that the Sámi people are active in the UN system to get recognition of their rights and to try and pressure Sweden into realising them in practice. However, because of the soft nature of international law connected to indigenous rights in the UN, their trust in the UN mechanism to make an actual change is low and they are mainly exhausting national systems such as courts to claim their rights.

As has been shown through the discussion of the collected information, the Sámi people are facing big issues due to competing land use, which is hurting the reindeer husbandry and thus their way of life. These competing land uses stem from the green transition and its demand to create renewable energy such as wind power or the mines needed for the construction of green energy. This is why different forms of resistance have risen, and in the past decade, legal litigation has become a primary form of resistance against targets such as the state or corporations. Moreover, while the international legal framework is important for the Sámi people to claim their rights and they engage in spaces they can access. However, these are long and often difficult processes, with uncertain or legally non-binding outcomes. In addition, there are possibilities to take up legal pathways, but the state can also decide to disregard a court decision. In those cases, one last option would be to use regional courts to claim Sámi rights. Nevertheless, as was highlighted, in the European context, this is still a relatively untested practice that needs further development to enable effective use for indigenous peoples, as will be a bit further discussed also in the concluding chapter.

Chapter 4 Conclusion

In the era of global warming and climate change, the transition from fossil fuels to renewable energy resources is increasingly seen by European states and the EU as a critical solution. Development projects, such as new mines and wind power installations, are supported by the state, as evidenced in Sweden. However, there these projects also require access to land, which encroaches on Sámi ancestral lands and territories. In turn, leading to competing land uses and

[108] Interview 1

rising conflicts between the Swedish state, corporations, and the Sámi people. This thesis this aimed to explore how indigenous communities use legal litigation to resist land-grabbing driven by the so-called green transition and to understand their perspectives on these new developments and forms of resistance.

For that reason, in the first chapter we explored the conceptual link between power and resistance, the various forms of resistance employed by indigenous peoples, and how legal litigation serves as a form of legal resistance. The chapter also introduced the situation of the Sámi people in Sweden as a case study, concluding that indigenous peoples globally are increasingly turning to courts to gain recognition of their rights. This long and difficult process is often chosen because other options have been tried and failed.

In the following chapter, we examined the legal framework that indigenous peoples use to achieve recognition of their rights, focusing first on the Swedish national level. Finding that while there is some recognition, practical protection of indigenous rights is weak, prompting the Sámi people to have to turn to international human rights law. However, in some cases, the state has chosen to ignore such decisions, thus making regional courts an alternative. The second chapter, however, also shows that the regional framework, the CoE, ECtHR and the EU are often inaccessible and lack specific context behind about indigenous peoples' rights and knowledges. Thus, further development is needed for the regional human rights framework in the European context to become viable protection infrastructure for struggles related to indigenous peoples. Using UN mechanisms can be another option for indigenous peoples, but participation in the UN spaces requires significant resources and time, which indigenous peoples commonly lack. Furthermore, key UN mechanisms related to indigenous rights lead to recommendations and are as such most commonly of non-binding nature, allowing states to disregard them, as was seen in the case of Rönnbäcken in Sweden.

Finally, in the third chapter we turn to the first-hand experiences, with the aim to better understand how utilisations of the legal system are used by members and allies of the indigenous communities, in particular the Sámi people. The results of the thematic data analysis are presented, which is based on the transcripts of nine in-depth interviews. The analysis shows a unanimous view that the green transition is increasing competing land uses detrimental to reindeer husbandry, a vital part of Sámi culture and way of life. Although the state has a responsibility to respect, protect, and fulfil Sámi rights, criticism expressed by interviewees

highlights the state's bias towards industry in development projects such as wind power and new mines. This bias makes the conflicts uneven and the resistance difficult for the Sámi people. Furthermore, it shows that the criticism of the human rights regime as universal and neutral can be found also in the Swedish context, where the legislation is formulated in a way to support state intention rather than the rightsholders such as the Sámi people. Furthermore,

As shown throughout the presented analysis, the case of the Sámi people in Sweden aligns closely with the struggles faced by indigenous peoples globally regarding land rights and competing uses of their ancestral lands. Indigenous peoples worldwide must now ensure the survival of their cultures and communities amid political leaders' reluctance to address these issues. An additional problem is the context of the global warming and the green transition with policies that further aggravates the situation as they become a justification for land-grabbing. This trend has led Indigenous peoples to increasingly turn to courts as a last resort to gain recognition and protection of their rights. However, legal resistance requires significant resources, the process is lengthy, and the outcome is uncertain, potentially exacerbating the situation for indigenous peoples.

In the case of the Sámi people, the context and popularity of the so-called green transition presents a momentous challenge for recognition of indigenous rights. Interview participants indicated that state agencies often view reindeer husbandry merely as another industry and fail to recognise its vital cultural significance. Consequently, Sámi rights are often overlooked, leading to frequent approval of permits for industrial projects. This oversight was attributed by interviewees primarily to a lack of understanding within state agencies, compounded by political interests. For instance, the Minister of Energy, Business, and Industry has publicly expressed favouritism towards mines, suggesting that reindeer husbandry should yield to the priorities of the green transition in cases of conflicting interests.

This challenging dynamic has led the Sámi people to label the green transition as green colonialism—a continuation of historical land grabs and industrialisation, serving as a rhetorical tool to highlight state infringements. However, as expressed by a majority of participants, in this situation courts have emerged as crucial institutions capable of effecting real change. Nonetheless, the court system and existing legislation often pose significant obstacles, exacerbated by the unequal distribution of resources and power favouring the state. Despite these challenges, the unanimous finding based on the data collected with the help of

insights of the participants was that legal litigation and court proceedings are essential avenues, particularly when other political spaces are inaccessible.

Furthermore, even a state like Sweden, globally recognised as a champion of human rights, has shown reluctance to comply with court decisions when they conflict with the interests of Indigenous communities. This was evident in the Girjas case, where the state has yet to implement the Supreme Court's decision into legislation, thus undermining the effectiveness of judicial rulings. Another option discussed by interviewees was turning to regional courts such as the ECtHR, but its accessibility was found to be limited due to the substantial time and resources required, which many Sámi communities lack. Moreover, there is a perceived lack of knowledge within the ECtHR regarding indigenous rights and their specific situations, highlighting a need for further development for the regional court to effectively protect Sámi rights.

In addition, the EU was also discussed to have a considerable impact on the Sámi peoples' situation with its climate policies such as the CRMA. However, the EU's understanding of the Sámi situation was deemed inadequate, resulting in insufficient protection of indigenous rights within its policies. This can at first glance seem odd, as the protection of indigenous rights in external relations of EU is often emphasised. However, the EU does not have an internal indigenous rights policy, which can be partly blamed on Sweden and Finland's stance against strengthening indigenous rights. As was evident and criticised, they both lobbied to exclude FPIC in the CRMA, which underscores the lack of political will to give the Sámi people enhanced rights. One last discussed alternative to be considered were the UN mechanisms, despite its challenges of lengthy processes and resource demands. Nonetheless, participants recognised the UN as an important platform for highlighting violations and advocating for adherence to indigenous rights, employing a form of naming and shaming against Sweden.

In conclusion, this thesis underscores how indigenous peoples utilise legal litigation at national, regional, and international levels as a critical component of their resistance, given the dearth of political will to address land rights issues. However, accessing justice through these avenues is fraught with challenges, albeit sometimes resulting in victories that bolster indigenous rights.

Before concluding, I would like to shortly address a key limitation of this research project. After all, I believe it is important to acknowledge that while the Sámi people's territory spans four

states, this thesis focused solely on the Sámi population residing in Sweden due to space and language constraints. I am aware that Sámi rights are more robustly protected in Norway, however, I believe that this argument only raises the importance of further research focusing on the Swedish context. After all, Sweden is often praised internationally as a human rights advocate; however, domestically it has been failing to strengthen indigenous rights, exemplified by its reluctance to ratify ILO 169.

Lastly, I would also like to highlight some avenues for further research related to the context analysed in this thesis. Based on a comprehensive review of the literature and supported by the insights of interviewed participants, I believe that one promising area is the role of the EU in the internal protection of indigenous rights. This is because I found that currently, there is limited scholarly literature on this topic, presenting a valuable opportunity for future research. Additionally, the research on the CoE, and the ECtHR and its effectiveness in protecting indigenous peoples' rights is also scarce, which warrants further exploration and study. After all, insights on regional institutions would not only enhance academic understanding of resistance practices related to legal and rights protection mechanisms but could also be beneficial for communities planning to engage with these legal frameworks in the future.

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Appendix A

Time and date	Code
10.00. 2024.05.23	Interview 1
15.00. 2024.05.29	Interview 2
13.00. 2024.05.30	Interview 3
10.00. 2024.06.04	Interview 4
09.00. 2024.06.05	Interview 5
08.30. 2024.06.07	Interview 6
09.00. 2024.06.11	Interview 7
20.00. 2024.06.12	Interview 8
16.00. 2024.06.18	Interview 9

Appendix B

Consent Form

Invitation to Participate: I am invited to participate in an interview as part of a master's thesis study conducted at the University of Ljubljana by Mariell Edblad in the European Master's Programme in Human Rights and Democratisation (EMA), currently studying at the Faculty of Social Sciences, University of Ljubljana, residing at Kardeljeva ploščad 5, 1000 Ljubljana, Slovenia. (Email: marielledblad@gmail.com), studying under the supervision of Ajda Hedzet, (Email: ajda.Hedzet@fdv.uni-lj.si).

Purpose of the Study: The purpose of the study is to explore in what way indigenous people are indigenous communities utilising the legal litigation as a part of their resistance to claim their rights to their ancestral lands? Using the case of the Sámi people in Sweden, empirical data will be collected in the form of semi-structured interviews to answer the above-mentioned research question.

Participation: My participation will consist essentially of one online interview for approximately 60—90 minutes during which I will be asked questions by the researcher about my experience and expertise using an interview guide that I have read beforehand.

The online interviews will take place on Zoom (place), XXX (date), __________ (time).
The interviews will be recorded on Zoom for accuracy of the transcript, but will be deleted from the researchers' laptop, where it will be stored protected with a password, as soon as the thesis has been submitted.

Benefits: My participation in this study will contribute to increasing scholarly understanding of practices that the Sámi are using in their resistance to claim their rights to their ancestral lands.

Identification: The participants will not be specifically identified in the thesis. Unless I explicitly confirm that I want to have my personal or organizational identity uncovered. I have received assurance from the researcher that my choice of how I want to be identified in the thesis will be honoured.

I grant the researcher my permission to identify me in the thesis:
a) By my organizational title only: __________________________________.
b) By my general area of professional knowledge: __________________________________.
c) I want to remain unidentified (anonymous) in the thesis: ____________________________.
d) Other (please specify): __________________________________.

Risks: My participation in this study will entail providing personal information and views about the experiences of the organization I represent/work with, experiences of people I represent or about my personal experiences and views on engaging with different decision-making procedures.

Confidentiality: I understand that the interview scripts will be used only for the creation of the master's thesis at the University of Ljubljana, and that my confidentiality will be protected by the fact that only the thesis researcher and thesis supervisor will have access to information linking my identity to the data.

Conservation of Data: The data collected, including recordings of interviews, electronic and printed versions of transcripts, and electronic and print notes will be kept in a secure manner. The electronic data will be stored on a laptop and both the laptop as well as the printed materials will be kept in the student's home.

Only the researcher and the supervisor will have access to the data, and it will be conserved for a minimum period of five years following the completion of data collection.

Voluntary Participation: I am under no obligation to participate and if I choose to participate, I can withdraw from the study at any time and/or refuse to answer any questions, without suffering any negative consequences. If I choose to withdraw, all data gathered until the time of withdrawal will be deleted or destroyed. If I change my mind after the interview (prior to 20.06.22) my contribution will not be included in the final thesis.

Acceptance: I, ____, agree to participate in the thesis study conducted by Mariell Edblad, master student in the European Master's Programme in Human Rights and Democratisation (EMA), Faculty of Social Sciences, University of Ljubljana, under the supervision of teaching assistant Ajda Hedžet, PhD student.

If I have any questions about the study or regarding the ethical conduct of this study, I may contact the researcher or her supervisor.

There are two copies of the consent form, one of which is mine to keep.

Participant's signature: *(Signature)* Date: *(Date)*

Researcher's signature: *(Signature)* Date: *(Date)*

CONSENT TO PARTICIPATE IN THE RESEARCH AND TO USE THE INFORMATION OBTAINED

I, the undersigned, confirm that I will participate in the research described herein.
YES / NO
I understand that my participation in the survey is entirely voluntary, that I may refuse to answer certain questions or terminate my participation at any time without consequences, and that I request the destruction of the personal data collected. If I change my mind after the interview (prior to 20.06.22) my contribution will not be included in the final thesis.
YES / NO
I agree that the anonymised data collected in the interview may be used for the purposes of this research (e. g. preparation of a thesis).
YES / NO
I have had the opportunity to ask questions about the research and have received satisfactory answers (date......................)
YES / NO

Name and signature of the participant Date

Name and signature of the researcher Date