



Discursive Realignments in the Fosen Supreme Court Case:

A discourse analysis of the conflict between wind energy and Sami self-determination in Norway

Ronja Stubbe

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Ronja Stubbe

Supervisor: Patrik Oskarsson, Swedish University of Agricultural Sciences, Department of Urban and Rural Development

Assistant supervisor: Melanie Pichler, University of Natural Resources and Life Sciences Vienna, Institute of Social Ecology

Examiner: Harry Fischer, Swedish University of Agricultural Sciences, Department of Urban and Rural Development

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Swedish University of Agricultural Sciences

Faculty of Natural Resources and Agricultural Sciences

Department of Urban and Rural Development

Abstract

The green transition in Norway involves the development of renewable energy sources with a focus on wind power. However, this pursuit often leads to conflicts between wind energy development and the Sami people's right to self-determination. As wind farms are often constructed on traditional Sami land, tensions arise regarding land use, cultural heritage, and environmental impacts.

The purpose of this thesis is to examine the realignments of discourses surrounding the Fosen wind power project in Norway following a groundbreaking Supreme Court ruling and its impacts on Sami rights. This is achieved by employing the "What's the Problem Represented to Be" approach in a discourse analysis. The thesis uncovers how various actors justify or oppose the project, revealing significant realignments in discourses after the Supreme Court ruling. Dominant discourses often prioritise renewable energy over Sami rights, with the Norwegian government and wind companies emphasising co-existence and focusing on economic efficiency. In contrast, the Sami community stresses the threat to their cultural heritage and expresses dissatisfaction with proposed solutions, challenging existing power dynamics and dominant knowledge regimes.

By illuminating these discursive realignments, this thesis contributes to the understanding of the complex relationships between Indigenous peoples' rights and environmental policy within the context of renewable energy development projects. Given that these projects are integral to sustainability transitions, the Fosen case can serve as an example of how the rights of Indigenous peoples are commonly overlooked in sustainability projects. Ultimately, the conflicting representations of the issue highlight the continuous conflicts and difficulties in striking a balance between economic growth and environmental and cultural preservation.

Keywords: Discourse analysis, Wind energy, Sami rights, Norway

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Abbreviations

CDA	Critical Discourse Analysis
EJ	Environmental Justice
ICCPR	International Covenant on Civil and Political Rights
OED	Ministry of Petroleum and Energy (<i>olje- og energidepartementet</i>)
PE	Political Ecology
UN	United Nations
WPR	What's the Problem Represented to Be?

1. Introduction

Given the increasing urgency to combat climate change, green energy development to reduce carbon emissions has become a symbol of sustainability and progress, promising a cleaner and more sustainable future based on renewable resources. While renewable energy sources may be lower in emissions than their fossil alternatives, the pursuit of green energy often comes at a cost - a cost that has been shown to often disproportionately be borne by marginalised communities and Indigenous Peoples around the world (Fairhead et al. 2012; Levenda et al. 2021; Sovacool 2021). This is no different in the Nordic countries, where Sami communities are significantly affected by renewable energy development, particularly wind energy projects nowadays (Cambou 2020), as well as hydro power projects in the past.

The Fosen wind energy project in Norway is a stark reminder of this uncomfortable truth. This project is at present the second biggest onshore wind power development in Europe with 277 turbines and a capacity of 1 GW. Due to its impacts on the traditional lands of the Sami people it is controversial and has led to years of legal disputes. In a significant legal decision, the Supreme Court invalidated the permits for two of the wind farms, marking the first instance where the Norwegian Supreme Court ruled against a project developer for breaching the right to self-determination as outlined in Article 27 of the UN Covenant on Civil and Political Rights (ICCPR¹) (Syring 2022). What was intended as a symbol of sustainability and progress when inaugurated in the year 2021 is now evidence of the complexity and contradictory nature of our pursuits in the field of green energy where marginalised groups continue to bear a large part of the burden. The Supreme Court's decision was followed by protests, which highlighted the ongoing tensions. Agreements have since been reached, but these are primarily focussed on economic compensation and the allocation of new grazing land.

The construction of one of Europe's largest wind power projects on Sami land raises interesting questions in itself. However, the Supreme Court's ruling that this project is unlawful opens up a more nuanced perspective and offers the opportunity to approach the controversy with more consideration for the rights

¹ The International Covenant on Civil and Political Rights (ICCPR) is an international convention aimed at guaranteeing the protection of civil and political rights (United Nations n.d.)

of the Sami (Szolucha 2018; Ravna 2022; Fjellheim 2023a; Karam & Shokrgozar 2023).

The Sami are an Indigenous people traditionally inhabiting a region covering mid and northern parts of Norway, Sweden, Finland, and Russia called Sápmi (see map in Appendix 1: Map of Sápmi). There are about 80-100 000 Sami altogether, of which around 40 000 live in Norway (Council of Europe 2014). Traditionally, the Sami sustained themselves with hunting, fishing, farming and reindeer herding. Reindeer herding is still an essential part of Sami culture even though only 10-15% of the Sami population participate in this practice (Nøsterud 2018). Recognised as Indigenous Peoples by the United Nations, among others, the Sami have the right to self-determination and specific claims to their ancestral lands, water, and natural resources (United Nations (General Assembly) 2007). These claims frequently clash with other claims to land, forests, minerals and other resources generating conflicts². As reindeer herding depends on large areas of good pastures able to support the animals across seasonal changes, it is “vulnerable to environmental, socioeconomic and land use changes” (Kuokkanen 2022, p.6). These challenges are exacerbated by climate change, which poses new risks to the Sami way of life in an Arctic region to date experiencing larger than the global average of temperature change. Against this context, the targeting of Sami groups by large-scale projects such as the Fosen wind farm creates a current injustice on top of historical injustices. This is happening despite strict legislation designed to protect this group in Norway.

The Sami have a historical, colonial relationship with Norway and the other Nordic states³. The so called Norwegianization policy beginning in the mid-19th century further exacerbated this system, by aiming to erase Sami culture and language and ultimately facilitate the assimilation of the Sami people into the wider Norwegian population. These historical interventions had profound impacts, such as land dispossession, suppression of the language and a dilution of the Sami cultural identity, as acknowledged by the Norwegian Truth and Reconciliation Commission (Sannhets- og forsoningskommisjonen 2023). And despite the formal end of Norwegianization in the year 1968, and although Norway is now internationally recognised as a protector of Indigenous Peoples' rights, certain attitudes and practices continue to shape interactions between Norwegian society and

² Over the past century, there has been a cumulative encroachment of traditional Sami land due to various infrastructure projects such as mining, forestry, hydropower and tourism. This has substantially reduced and fragmented the areas crucial for reindeer herding, thereby adversely affecting the livelihoods of the Sami community (Kuokkanen 2022).

³ For 500 years, Norway itself was under quasi-colonial political domination by Denmark and Sweden and only became fully independent in 1905. In the 16th century, the dynamic between Sami and non-Sami shifted from mutual interactions to a system of open control, resulting in the claim and settlement of Sápmi by non-Sami people (Hossain et al. 2018)

institutions and the Sami community today (Hossain et al. 2018). This continuity is evident in the way in which wind power is developed in the Nordic countries, which is renewing historical colonial patterns and has therefore been described as “green colonialism” (Normann 2021; Fjellheim 2023a). One apparent example is recent land use decisions over the Fosen wind power project wherein national energy agendas took precedence over the interests of the Sami community.

To combat climate change, the Norwegian government is making efforts to reduce carbon emissions and shift to renewable energy in accordance with the Paris Agreement⁴. The development of large-scale wind farms is part of this commitment to a green energy transition (Normann 2021). Sustainability transitions, such as the shift to renewable energy, present complex challenges. While these projects contribute to national and global sustainability goals, they can disrupt local ecosystems and violate the rights and cultural practices of the Indigenous peoples. Wind farms require huge land areas for energy generation (unless done offshore) (Fjellheim 2023a) and because Norway has large spaces due to a low population density and good wind conditions it is geographically attractive for wind power development (Hovland 2018). This increasingly leads to conflicts over land use and raises questions of whether these projects are truly sustainable.

In matters that might affect them directly, consultation with the Sami is obligatory, which means that their consent must be sought after, although this consent is not mandatory in order to carry out development projects (Solberg & Nystø 2018). This has resulted in about half of all Norwegian wind power construction taking place in important reindeer herding areas, mostly without prior consent of the affected Sami community (Kuokkanen 2022).

Despite the threat posed to traditional Sami practices and livelihoods by energy infrastructure construction, wind energy development is generally supported by the Norwegian state and the negative impacts on reindeer herding are downplayed (Karam & Shokrgozar 2023). This prioritisation reflects a broader societal desire for renewable energy and often overlooks the complex environmental and cultural considerations that come with it. Despite the Norwegian grid being almost exclusively based on renewable sources in Norway, there are efforts for further electrification and the export of electricity to other European countries. Norway thus does not appear to need more renewable energy at present and yet Sami lands can be occupied. Paternalistic discourses

⁴ At the same time Norway is one of the world's largest exporters of oil and is planning to provide a framework for a long-term profitable production of oil and gas, recognising its important role in the Norwegian economy (Norwegian Ministry of Climate and Environment 2021).

reproduce and reinforce this notion by urging reindeer herders to give up their land for the general benefits of wind energy development (Fjellheim 2023a). They are often voiced by authority figures such as government officials or industry leaders and convey a sense of superiority and control over the Sami and their land. These discourses, underpinned by notions of progress or development, ignore or diminish indigenous objections and concerns, marginalise Sami agency and perpetuate colonial narratives that prioritise wider societal interests over traditional practices.

It is clear that mitigation measures for climate change are necessary, but those measures lead to injustices themselves as the Sami Peoples have to bear a double burden from both climate change and the energy transition measures despite having a low impact on the climate themselves (Fjellheim 2023b).

In this thesis, I will examine the discursive realignment between the government, the wind companies and the Sami surrounding the Fosen conflict, focussing on the intersection of renewable energy development, Sami rights and environmental justice in Norway. The introduction is followed by the theoretical framework of discourse analysis and the methods, which include the WPR approach used to analyse the data, as well as the limitations. I then provide background information on Sami rights, the renewable energy transition in Norway and my case study Fosen Vind, which serves to better understand the topic. In the data chapter, I analyse how the different stakeholders perceive and present the problems of the wind project, especially in relation to the Supreme Court's landmark ruling on the Fosen Vind project. In the discussion, I examine both the discursive shifts from before to after the Supreme Court judgement and the implications of the court ruling on Indigenous rights and their recognition. I further place the insights gained from the Fosen project within the larger context of sustainability transitions. Finally, I provide a brief summary with a future outlook.

1.1 Aim and Research Questions

The aim of the thesis is to analyse discursive realignments after the Supreme Court ruling on the Fosen Vind project to understand how different actors realigned their positions they took before the ruling. This aim is further specified in the following research questions:

1. How did the different actors justify or oppose the development of the Fosen project?

2. How have the discourses of the actors for and against the Fosen project changed after the Supreme Court ruling?
3. What insights do the discursive realignments evident in the Fosen case provide into the possibilities of securing legal rights for the Sami in Norway?

2. Theory

This thesis is situated in the field of political ecology (PE), an area of research that focuses on the study of human interaction with, and management of, the environment, considering aspects such as use, conservation, and distribution. PE provides a framework equipped with approaches and analytical methods to examine the complex interplay between human society and the natural world (Benjaminsen & Svarstad 2021). Key concerns include examining power dynamics and questioning the prevailing assumptions and circumstances that determine the interactions between people and their environment (Benjaminsen & Svarstad 2021). PE typically addresses local contexts within broader national or global phenomena and emphasises the power hierarchies and decision-making that are intertwined in these contexts (Adger et al. 2001). An important tool of PE is discourse analysis, which provides the possibility to examine these issues by revealing the underlying assumptions and ideologies that shape resource management decisions and environmental governance while considering the exercise of power through non-coercive means.

The following sub-sections explain the concepts and theoretical approaches used in this study. They are divided into three parts, discourses on the environment, power, and governance and policy, which are explained independently of each other but influence each other. As this study is a discourse analysis, environmental discourses are used as the central concept. I present the concept of discourse used in this thesis and explain how discourse shapes environmental understanding and decision-making. The concept of discourse helps to reveal how different narratives and knowledge systems influence which perspectives are valued and recognised. Understanding power dynamics is crucial for analysing environmental discourses, conflicts and governance, as power plays a critical role in shaping public opinion and policy. The role of discursive power is particularly important for discourses, as it influences which voices dominate and how they impact decision-making. Power is also a crucial concept for understanding the broader socio-political context of environmental management and the specific challenges faced by Indigenous communities. The sub-section on governance and policy provides insight into how governance structures, policies, and legal frameworks shape resource management practices and decision-making processes, as well as how they influence and are influenced by prevailing discourses. Together, these sub-

sections provide a comprehensive theoretical foundation for analysing discursive realignments surrounding the Fosen Vind project and their implications for Indigenous rights by offering insights into the interplay between discourses, power dynamics, and governance and policy in environmental management.

2.1 Discourses on the environment

Discourses are “socially shared perspective[s] on a topic” (Svarstad et al. 2018:356) or “knowledge regimes” (Adger et al. 2001:683) that construct meanings and relationships within society, define common sense and legitimise particular forms of knowledge. In the context of the Fosen Vind project and Indigenous rights, the discourses influence which types of knowledge are valued and recognised in decision-making processes. This shows that understanding discourse goes beyond just linguistic expressions. Adger et al. (2001) broadly define discourse as a shared meaning of a phenomenon. This phenomenon can vary from local to global scale and can be shared by a small group or widespread across a larger population (Adger et al. 2001).

In this thesis I adopt the understanding of Bacchi and Goodwin (2016:35), who view discourses as “socially produced forms of knowledge that set limits upon what it is possible to think, write or speak about a ‘given social object or practice’ (McHoul and Grace 1993:32)”. This perspective is influenced by Foucault’s work and emphasises the importance of examining the boundaries of knowledge and accepted truths in the context of discourse analysis. It further acknowledges that discourses depend on historical, cultural and institutional contexts which are essential to the way discourses shape social ideas and practices. Understanding discourses in this way serves to reveal how certain narratives become dominant while others are marginalised. In the context of wind energy and Sami self-determination, this approach shows how discourses on renewable energy and Indigenous rights are constructed, contested and maintained. Analysing these discourses can reveal the power relations and ideological foundations that influence political decisions, public perception and the legitimacy of different forms of knowledge. This perspective leads to an examination of whose knowledge is considered valid and whose voices are included in the decision-making process and how institutional contexts, such as legal frameworks reinforce or challenge dominant discourses and which implications this can have.

Discourses play a crucial role in shaping our understanding of nature by establishing the boundaries of what is considered knowledge about the natural world. Castree & Braun (2009) discuss the complexity of understanding nature and how knowledge about it is constructed through discourse and language. Drawing

from poststructuralist theories of language, they argue that claims about nature are intertwined with various social constructs like gender, race, colonialism, and nationality. According to them there is no objective way to perceive nature outside of these discourses as different groups use different discourses to interpret nature. By influencing power dynamics, shaping how problems are perceived, and mobilising collective action, discourses have a significant impact on environmental conflicts. Different narratives about environmental challenges and conflicting interpretations of the problem lead to diverse approaches to addressing environmental issues.

Additionally, discourse reflects and reinforces power dynamics within society, with dominant actors using narratives to advance their own interests and maintain control over environmental resources and policy. As Castree & Braun (2009) express it, “whose discourse is accepted as being truthful is a question of social struggle and power politics”. In this context, it can be difficult for marginalised groups to make themselves heard and have their views recognised. Indigenous communities, possessing valuable traditional knowledge about the environment, often struggle to have their voices heard in environmental decision-making processes. These processes are typically dominated by mainstream scientific and economic narratives, making it challenging for these communities to assert their own perspectives. Consequently, their insights on sustainable land management or conservation practices are frequently marginalised or disregarded. At the same time, there is increasing recognition of the value of Indigenous knowledge and efforts towards knowledge co-production, however, primarily in the field of social sciences (Yih-Ren Lin 2021; Panda et al. 2023). This shift towards valuing different forms of knowledge production opens up opportunities for more inclusive and equitable approaches to environmental governance, where “non-academic actors [are acknowledged] as legitimate producers and carriers of knowledge as an alternative to Western knowledge” (Castree & Braun 2009).

In the context of wind energy, discourses influence how wind energy developments are perceived, whether as environmentally sustainable solutions or as threats to local landscapes and cultures. Dominant discourses in this regarding the green transition often emphasise renewable energy as a solution to climate change and energy security. Proponents highlight the environmental benefits of wind energy, such as reducing greenhouse gas emissions and the dependency on fossil fuels. This discourse portrays wind power as a progressive and sustainable alternative to traditional energy sources. However, when wind energy projects are proposed on Indigenous land, additional discourses come into play, particularly those related to Indigenous rights, environmental protection and energy justice. Energy justice advocates for the equitable distribution of environmental benefits and burdens related to energy, emphasising meaningful consultation, consent,

and participation of Indigenous peoples in decision-making processes (Bombaerts 2020). Those discourses emphasise the importance of meaningful consultation, consent and participation of Indigenous peoples in decision-making processes that affect their territories. They challenge the prevailing narrative of wind energy as universally positive and emphasise the need to recognise and respect Indigenous peoples' land rights and self-determination.

In the Nordic countries, discourses surrounding wind energy development intersect with issues concerning Sami rights. This means that different narratives or conversations overlap and influence each other within a particular context or topic. When these discourses intersect, discussions about wind energy development cannot be separated from considerations of how these projects may impact Sami territories, traditional ways of life, and governance structures. This can lead to conflicts, as different stakeholders may hold competing interests and perspectives. Understanding the discourses surrounding wind energy and Sami self-determination reveals how power dynamics and societal values are negotiated. One of the key challenges arises from a longstanding discourse that marginalises reindeer herding “as a nomadic activity doomed to die out” (Lawrence 2014). This reflects historical conflicts over land ownership in the north, where traditional Indigenous practices were and still are disregarded in favour of industrial and commercial development (Lawrence 2014). The dominant narrative often portrays wind energy as a sign of environmental advancement and economic prosperity, disregarding the concerns and viewpoints of Indigenous communities. Consequently, decisions regarding wind energy development are frequently made without meaningful engagement or consent from the affected Indigenous communities. The discursive realignments show how prevailing perspectives can change in response to legal decisions and social pressures, redefining common sense and legitimising new forms of knowledge. This emphasises the dynamic nature of discourses and their power to influence policy and social attitudes.

2.2 Power

Power is a multi-layered concept that manifests itself in various forms in different areas of human interaction. To understand power dynamics, one must recognise its operating through both formal structures and informal relationships rooted in cultural norms (Pettit 2013). At its core, power embodies a dispositional concept that denotes an inherent ability or capacity that may or may not be exercised (Lukes 2005).

An actor-oriented view emphasises the exercise of power by individuals, focusing on agency and accountability (Svarstad et al. 2018). An important contribution to

an actor-oriented theory of power is Max Weber's definition of power as the ability of individuals to assert their will despite opposition (Svarstad et al. 2018).

In recent years, the use of the distinction between three different notions of power has intensified. Power to focuses on the capacity of individuals or groups to achieve their goals and aspirations, power over encompasses control over others through hierarchical structures and coercion, exemplifying domination and hegemony, and power with emphasises collaboration and alliances among individuals or groups (Pettit 2013).

Power does not only manifest itself in material struggles regarding the environment, such as land disputes, pollution or water rights, but also in discursive struggles (Svarstad & Benjaminsen 2020). By producing discourses and managing "to get other groups to adopt and contribute to the reproduction of their discourses" (Svarstad et al. 2018:354) discursive power is exercised by actors. The construction of discourses not only shapes public opinion, but also shapes decision-making processes, showing their central importance in governance (Svarstad et al. 2018). Exercising discursive power involves strategic framing and narrative construction to advance particular interests or ideologies. Hegemony, the dominance of certain discourses over others, plays a crucial role in shaping societal norms and values and thereby "ways of thinking and doing in a society" (Svarstad et al. 2018:359). Discourse analysis can be used to unveil power relations by identifying discursive strategies, exposing hidden assumptions and ideologies, tracing the evolution of discourses, highlighting marginalised voices, and analysing the impact of legal and institutional changes.

The unequal distribution of power has serious implications for marginalised communities such as the Sami, whose land and livelihoods are disproportionately affected by decisions made by more dominant actors. This is because hegemonic discourses may marginalise Indigenous perspectives by prioritising economic interests or state agendas over Indigenous rights and environmental concerns.

2.3 Governance and policy

Environmental governance encompasses the complex processes by which societies manage their natural resources and address environmental problems. Benjaminsen & Svarstad's (2021) categorisation of environmental governance into three aspects - use, conservation and distribution - provides a framework for understanding its multifaceted nature. Use refers to the use of natural resources to satisfy human needs and desires which includes activities such as agriculture, forestry, and resource extraction. The term conservation covers strategies that

aim to maintain or improve certain natural conditions to ensure the sustainability of ecosystems and biodiversity for future generations. Distribution focuses on the allocation of the benefits and costs associated with environmental resources to the various interest groups and emphasises the socio-economic dimension of environmental governance decisions. An unequal distribution of economic gains and losses often reflects power asymmetries between different actors that affect policy outcomes and resource management practices.

Governance is not only about decision-making processes, but also about the dynamic interactions between actors, knowledge systems, technologies and practices that shape resource management projects (Nightingale & Ahlborg 2018). These interactions co-constitute power relations and resource governance projects and thereby influence access to resources, control over decision-making processes and the distribution of benefits and costs.

Governance, on the one hand, provides the structure in which policies are developed, implemented, and assessed. It encompasses the broader context of decision-making processes, which includes the distribution of power, the role of institutions, and the involvement of stakeholders. Policies, on the other hand, are the measures taken by political actors and authorities, as well as the results of governance processes. They are the concrete actions, programs, or regulations that are established to address specific issues or achieve specific objectives.

Policy and law are closely linked and form the basis of governance systems. Kammerer & Estrella-Luna (2020) highlight how policy and law influence and shape each other by working in both conjunction and opposition. Courts, as central institutions in the field of law, play a crucial role in the realm of policy and decision-making, particularly in matters concerning the interpretation and application of laws and regulations. As courts possess the authority to adjudicate disputes and resolve conflicts related to the interpretation and application of laws they have ultimate power. This power extends to the assessment of the legality of government actions through judicial review, in which the courts scrutinise the legality and constitutionality of executive actions, regulations and decisions.

In democratic societies, discourse is a fundamental mechanism through which environmental governance operates. Public debates, media narratives, and stakeholder dialogues shape and are shaped by governance decisions. This reflects the dynamic interplay between societal values, power structures, and institutional frameworks. These factors also influence discursive shifts or realignments which are changes in public narratives and frameworks (Ekman & Krzyżanowski 2021). Legal decisions and institutional changes can similarly cause discursive

realignments by reshaping what is considered legitimate in public discourse. In these cases, if their discourse conflicts with a court judgement, actors may feel compelled to adapt their discourse to legal decisions in order to regain legitimacy. At the same time, discursive realignments can be used to maintain and justify previous positions.

The theory section discusses discourse, power, and governance and policy as lenses for understanding human-environment interactions and decision-making. Applied to the discourses surrounding the Fosen project, the theory serves to understand how the discourses are constructed, contested, and legitimised, and how power dynamics and legal frameworks influence governance decisions.

3. Methodology

In this chapter, I outline the methodology I have used to explore the discursive shifts and conflicts surrounding the Fosen Vind project. I introduce the research design, explain the collection and analysis of the data and discuss the limitations of the study. The analysis is guided by Bacchi's "What's the Problem Represented to be" (WPR) approach for a post-structural analysis inspired by Foucault's insights on power and discourse. The approach serves to uncover problem statements, assumptions and the implications of the discourses.

3.1 Research Design

The analytical framework through which I interrogate the discursive changes shaping the controversy over the Fosen Vind project, is the WPR approach from Bacchi.

I seek to examine how different actors and stakeholders frame as well as re-frame and interpret issues related to renewable energy production and Indigenous rights. Fosen Vind serves as exemplifying case study for the conflict of interests between traditional Sami lifestyles and the imperative for more wind farms, highlighting the tensions inherent in sustainable development agendas. Despite the debates about the generalisability of the results of individual case studies to broader population groups (Priya 2021), such studies offer considerable value as they authentically reflect real-life scenarios. Widner (2022) argues that generalisation is possible in certain cases when the findings can be applied to similar contexts and contribute to theory-building. This is achieved by identifying common patterns, causal mechanisms, or explanatory factors that extend beyond the individual case.

I chose the Fosen wind energy project as a case study for the thesis for several reasons. Firstly, a case study allows me to analyse in depth the discourses that specifically deal with the project. Since similar conflicts between wind energy and Sami rights are common in Scandinavia, I would like to use the Fosen Vind case to represent and illustrate this more general conflict. This is possible because the discourses dealing with the Fosen Vind project reflect the general conflict in that

they are based on assumptions and values regarding indigenous rights and renewable energy and the trade-offs between them.

Furthermore, the case is well known and significant due to the Supreme Court decision. The court's decision that the rights enshrined in Article 27 of the ICCPR had been violated is the first of its kind in Norway and „should in any case have a significant impact on any planned, future incursions into Sami pastures and other areas of use“ (Syring 2022). The importance of the Fosen Vind case also led to widespread media coverage and press releases, which, together with the court documents, allow me to carry out a discourse analysis without conducting interviews myself.

As my research is not neutral but influenced by myself and the research context, it is crucial that I position myself, reflect and make the production of knowledge transparent in order to maintain my ethical integrity (Darwin Holmes 2020). Therefore, I question my own assumptions and positions within a broader discourse framework when conducting the research and discuss my findings. I believe in the inherent value of Indigenous cultures, traditions, and land rights, as well and I am committed to addressing historical injustices and promoting social equity. I see the need for sustainable energy solutions, but I am convinced that this cannot happen at the expense of marginalised communities. In the Fosen case I am convinced that the Norwegian state did not fulfil its role as protector of indigenous rights, which is why my stance towards the state as well as the wind companies is critical. My research therefore aims to critically examine the complexity of the Fosen conflict, challenge the dominant discourses and explore alternative perspectives that prioritise Sami voices and rights. I am addressing my positionality further in my limitations in 0.

3.2 Data Collection

In conducting my analysis, I relied on existing textual material. The material is qualitative, secondary data sources including court documents, reports, websites and newspaper articles to conduct my research.

For the problem representations before the Supreme Court ruling, I particularly analysed the Supreme Court case HR-2021-1975-S. The document compiles information derived from various stages of the legal proceedings, including hearings held during the court case, the official decision regarding the license of the Fosen wind parks, and judgements rendered by both the District Court and the Court of Appeal before the case reached the Supreme Court. As one of the few officially translated documents, it served as a central resource for understanding

the legal dimensions of the conflict as well as a basis for analysing the argumentation of the various actors. From the Supreme Court I also received complementary documents of which I analysed the closing statements, which are summaries of the parties' arguments that they must submit to the court (and each other) two weeks before the appeal hearing. Those closing statements are between 2 and 10 pages long and contain arguments and key evidence to persuade the jurors to adopt a favourable interpretation of each party's position. Since they are given in Norwegian, I had to translate them.

Additionally, I sought out press releases and public statements on the websites of relevant actors associated with the Fosen Supreme Court Case. These documents offered perspectives from key stakeholders, such as governmental bodies, energy companies, and Indigenous representatives. Furthermore, I incorporated newspaper articles into my analysis. These articles provided insight into public opinion and media representations surrounding the Fosen project. Since I was less interested in media debates, I tried to include a wide range of newspapers in order to cover as many interviews as possible with different actors and opinions. With this and by excluding the opinion of the authors I am trying to minimise a media bias. These kinds of documents were also mostly in Norwegian, however, the websites and international newspapers about the energy industry provided information in English.

I chose to use both online translation services DeepL and Google Translate for translating all non-English texts and compare the outcome. Both machine translation services have a similar accuracy for full text translations with DeepL being slightly more accurate due to a larger vocabulary (Reber 2019). In general, I also found that the results are very similar. While the wording differed often, probably due to the larger vocabulary of DeepL, the content and the meaning were the same. With this approach I expect my translations to closely resemble the original meaning.

Lastly, I searched for research papers that are about the conflict between wind energy and Sami reindeer herding and preferably about the Fosen project. These papers often included interviews with right- and stakeholders, providing rich qualitative data for my discourse analysis and helping with the contextualization, and interpretation.

Table 1: Overview over the key actors of the Fosen project

Overarching term	Key actors
The Norwegian Government	Ministry of Petroleum and Energy (OED) Norwegian Directorate of Water Resources and Energy (NVE) Norwegian Prime Minister
The Wind Companies	Fosen Vind DA (joint venture company owned by Statkraft, Aneo and Nodic Wind Power DA) Roan Vind DA
The Sami	Norra Fosen siida Sør-Fosen sitje Sami parliament Sami reindeer herder

3.3 Discourse Analysis

The aim of discourse analysis, as outlined by Gottschlich et al. (2022), is to critically analyse and question the emergence of knowledge systems, supposedly objective 'truths', and interpretations. In order to uncover the underlying perspectives and power dynamics, various forms of communication, including messages, narrative structures, and political guidelines, are typically analysed using discourse analysis (Adger et al., 2001). Central to this approach is understanding that discourses are "socially shared perspectives" or "knowledge regimes" that construct societal meanings, define common sense, and legitimise specific forms of knowledge.

In this thesis I adopt the understanding of Bacchi and Goodwin (2016:35), who view discourses as "socially produced forms of knowledge that set limits upon what it is possible to think, write or speak about a "given social object or practice" (McHoul and Grace 1993:32)". I use this understanding of discourse because it provides a solid framework for analysing the ways in which knowledge and accepted truths are constructed and maintained in society. This perspective is influenced by Foucault's work and emphasises the importance of examining the boundaries of knowledge and accepted truths in the context of discourse analysis.

Discourse theory is based on the assumption that there is no single truth, but that knowledges are forms of truths (Bacchi & Goodwin 2016) that are socially constructed and thus closely linked to power dynamics (Gottschlich et al. 2022).

This means that in discourse analysis, discursive power plays a crucial role as it shapes the desires of actors and perpetuates the dominance of particular discourses (Svarstad et al. 2018). These dominant discourses thus form the accepted ways of thinking and acting in a society (Svarstad et al. 2018).

As a second layer of analysis, I am using the environmental justice (EJ) framework to underpin the discourse analysis. Similar to PE, EJ is not just a theory but a field of study and action. Svarstad and Benjaminsen (2020) have argued that there are many synergies between PE and EJ which can be utilised to address weaknesses in both fields and so develop a more comprehensive understanding of social relations to nature. Given that “these two fields share an explicitly normative focus on justice (Svarstad & Benjaminsen 2020:8), EJ can complement discourse analyses by revealing the structural, historically evolved causes that produce environmental justice (Gottschlich et al. 2022).

To understand how different actors justified or opposed the development of the Fosen project, I will conduct a discourse analysis of various textual sources, including court documents, reports, press releases, and public statements from key stakeholders such as the Norwegian government, wind companies, and Indigenous representatives. This entails examining the discursive realignments and contestations that have emerged in response to the Supreme Court ruling. To understand the implications of discursive realignments in the Fosen case for securing legal rights for the Sami in Norway, I will evaluate the extent to which changes in problem representations and discourses translate into tangible policy outcomes and institutional practices that affect Indigenous rights.

3.3.1 Analysis Software and Themes

For the qualitative analysis of the data, I used the programme MAXQDA, which is a qualitative data analysis software. Its primary function for me was to assist in coding the data and retrieving the coded segments. I employed an inductive approach by manually coding phrases that represent important (and recurring) themes by assigning labels and actors to them. The themes I identified are “the need for wind energy”, “impacts of the wind farms on reindeer herding”, and “Sami rights violations”. These themes guided my examination of the data and informed my discourse analysis.

While the court cases primarily focus on the legal implications of the Fosen project and its potential violations of Sami rights, the underlying goal of the project, which is the transition to sustainable energy, is not explicitly discussed. To provide a more comprehensive understanding of the actors’ motivations for the project, I included “the need for wind energy” as a theme in my analysis.

The theme "impacts of wind farms on reindeer herding" captures the discussion about the potential environmental and socio-economic effects of the Fosen project on traditional Sami livelihoods. For example, concerns about habitat disruption, conflicts over land use, and the preservation of cultural heritage are discussed because of the significant overlap between the project area and the traditional reindeer herding areas. By examining this theme, my goal was to reveal the complex relationship between renewable energy development and Sami land rights.

The theme "Sami rights violations" highlights the legal and ethical aspects of the Fosen project's impact on Sami communities. The discussion surrounding this theme focuses on Sami land rights, self-determination, and cultural autonomy, with a particular emphasis on the implications of the project for Norway's obligations under international law. Analysing this theme provided insights into environmental justice considerations inherent in the project.

Another important topic that I did not include as a section is "knowledge", more specifically the juxtaposition of scientific versus indigenous and practical knowledge and the recognition and valuation of it. The reason for this is that knowledge is intertwined with other themes and is often used as a basis for argumentation, which is why I will discuss this aspect through the other themes.

Table 2: Analytical themes and their identification

Analytical themes	How to identify the theme?
Need for wind energy	To identify the theme, I looked for arguments related to why the Fosen project was built and whether and why wind energy is necessary in general as well as for concerns related to wind energy projects.
Impacts of the wind farms on reindeer herding	For this theme I focused on contestations about concrete impacts of the wind farms, on whether these impacts can be balanced against other interests and on proposed mitigation measures and the reasoning for their acceptance and rejection.
Sami rights violations	I analysed how the actors portrayed when the rights of the Sami in general are violated and whether, according to the actors, there was a violation in the Fosen case. I also looked for arguments as to how a violation is or can be prevented.

3.3.2 Analytical Framework: The WPR Approach

The analytical framework used in this study includes three main themes extracted from the empirical material: the perceived need for wind energy, the impact of

wind farms on reindeer herding, and violations of Sami rights. These themes serve as focal points for analysing the discourses surrounding the Fosen Vind project, using Bacchi's "What's the Problem Represented to be?" (WPR) approach as analytical lens. Bacchi's WPR approach (Bacchi & Goodwin 2016) is based on a post-structural perspective inspired by Foucault.

Since poststructuralism views language as a medium of communication as flawed (Norton & Morgan 2012), the conclusion is that the 'truth' and 'knowledge' we gain through language cannot be determined objectively. Moreover, language is not seen as neutral, but as a construct that is characterised by power dynamics, social structures and individual prejudices. Any attempt to decode meaning must therefore take these complex influencing factors into account. This approach takes nothing for granted, rather the "singular reality, as assumed in critical realism, is seen as a political creation and not as an ontological given" (Bacchi 2016:8).

The WPR approach argues that "policies do not address problems that exist; rather, they produce 'problems' as particular sorts of problems" (Bacchi & Goodwin 2016:16). This means that the formulation of a policy solution is based on assumptions that are inherent to the problematisation process, and that thus the "problems" are co-created by the policymaking process. Such problematisations or problem representations are central to this analytical strategy as they are a crucial part of how governance takes place through the constitution of problems (Riemann 2023). The idea behind this approach is that proposals to improve a situation can be traced back to their assumption of what the "problem" is that needs to be solved (Bacchi & Goodwin 2016). This initial identification of the "problem" is followed by suggestions of the measures that should be taken to resolve it.

Essentially, the political decision-making process becomes a dynamic interplay between the definition of a "problem" and the solutions proposed to solve it. This means that the policy arena is not a neutral space, but rather a site of contestation where different actors compete to define "problems" in a way that aligns with their interests and goals. By understanding policymaking through the lens of problem construction, the WPR approach offers insights into how governance unfolds and how power operates in decision-making processes.

The WPR approach is therefore used to examine how these "problems" are presented and what meaning is attached to them, taking into account their presuppositions, limits and effects. To do this, Bacchi and Goodwin (2016:20) have created a framework for questioning and analysing problematizations that I adopt to structure my discourse analysis:

Question 1: What's the problem (e.g., of "gender inequality", "drug use/abuse", "economic development", "global warming", "childhood

obesity”, “irregular migration”, etc.) represented to be in a specific policy or policies?

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the “problem” (problem representation)?

Question 3: How has this representation of the “problem” come about?

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualized differently?

Question 5: What effects (discursive, subjectification, lived) are produced by this representation of the “problem”?

Question 6: How and where has this representation of the “problem” been produced, disseminated and defended? How has it been and/or can it be disrupted and replaced?

I structured the analysis in two parts, before and after the Supreme Court judgement and applied the relevant WPR questions to each theme to systematically analyse the discourses surrounding the Fosen project. This allows me to clearly compare the problem representations of the actors and their shift in response to the judgement. I have chosen to exclude question 3 which is about the historical, social, and political contexts that have shaped the current representation of the problem and question 6 which examines how and where problem representations have been created, contested, and upheld over time. My rationale for that was that by focusing on the remaining questions I can go into more depth of the discourses. Discussing these contexts would go beyond the scope of this study and for answering question 6 a longitudinal study of policy and discourse developments would have been necessary which was not possible given that the Supreme Court ruling, and the agreements were quite recent.

Question 1 is the first step of the WPR approach and serves to identify how the problems are represented and characterised by the key actors and how the problem ought to be understood. In the representations, “the desirability of some condition” (Bacchi & Goodwin 2016) stated by the actors gives insights into what the problem is according to them. I explained how I identified the problem representations in **Fehler! Verweisquelle konnte nicht gefunden werden..**

Question 2 examines the underlying beliefs and assumptions shaping the problem representation. For the analysis I looked at the implicit values, norms, and ideologies informing the problem representation and proposed solutions.

Question 4 has the objective to promote critical thinking about the problem representations by focussing on the silences and unproblematised aspects within the representations (Bacchi & Goodwin 2016). For identifying silences, I analysed criticism of actors opposing the problem representations and scientific literature.

By considering alternative ways of framing the problem, it encourages a broader perspective on the issue. I mostly based the alternative representations on the silences and used them to highlight how the current framing could be limiting or biased.

Question 5 examines the effects and outcomes produced by the representation of the problem. These effects can be discursive, subjectivising or lived (Bacchi & Goodwin 2016). The question therefore enables the uncovering the broader implications of the problem representations and their influence on both discourse and practice. For this part of the analysis, I examined how the problem representations influenced public perception, policy decisions, the lives of those affected by the Fosen project, and broader societal attitudes towards wind energy and Indigenous rights.

If I were not using the WPR approach, I could have considered Critical Discourse Analysis (CDA) as another analytical framework. CDA focuses on the analysis of language use to uncover power relations, ideologies and social inequalities embedded in discourse (Fairclough 2013). While CDA can provide valuable insights into the construction of meaning and representation, it tends to focus more narrowly on linguistic features and rhetorical strategies that may not fully capture the broader context and underlying assumptions that shape political discourse.

This approach thus differs from critical discourse analysis (CDA) in that it focuses on uncovering deeply rooted assumptions underlying particular understandings of issues and events, whereas the focus of CDA is based on content and specific language use such as rhetoric and language patterns (Bacchi 2018). The WPR approach is particularly suitable for my thesis because it goes beyond analysing language and rhetoric which would have been difficult to do with translated data. By using the WPR approach, I can critically examine how the actors represented the problems related to the need for wind energy, the impact on reindeer herding, and violations of Sami rights and how these representations shifted following the Supreme Court ruling. This approach also highlights the power dynamics and interests that shape these constructions. WPR is also well-suited for examining the themes because it offers a systematic framework for questioning and analysing problem representations. It helps identify not only what is explicitly stated, but also what is left unaddressed, thereby revealing the gaps and omissions in the problem representations. By delving into the process of problematisation, WPR facilitates a critical exploration of why certain issues are given priority over others and how particular solutions are justified.

3.4 Limitations

In addressing the limitations of this thesis, several factors must be considered. Firstly, since this is a master thesis the time is very limited which makes it difficult to go in depth into the material. It also hindered me in potentially travelling to the location of the Fosen project to conduct interviews and see the location in person.

Secondly, I also want to reflect on my positionality. As a foreign researcher I am neither impacted by the conflict nor do I have connections to actors affected by it which could make it easier for me to take an 'idealistic' stance in support of Indigenous rights over compromise solutions. My outsider perspective might also lead me to overlook the benefits of wind energy, such as the provision of electricity, jobs and economic growth in Norway, as I do not live in the country. These issues of positionality are relevant as they influence my discourse analysis. In my discourse analysis I am therefore speaking for the actors without having local information about who they are and what histories they have. While I am trying to include many direct citations for a better transparency, they could be taken out of context and not convey the intended meaning.

Most of the research on the conflict between wind energy and Sami reindeer herding that I read has a strong normative approach focusing mainly on the Sami side. These studies have sparked my interest in the topic, but probably also created a bias towards Sami perspectives given the potential impacts wind energy projects can have on their traditional way of life. To address this bias, I looked for research that examines the issue from multiple angles and tried to understand the complexities and trade-offs involved to help me develop a more nuanced understanding of the issue.

Third, as I neither speak Norwegian nor Sami and Southern Sami, I had to translate some of the documents and articles. This creates some uncertainty because I can only to some extent verify the quality of the translation. As I am using Bacchi's approach, which is not based on linguistics, I am confident that the differing wording of the translation outcomes does not negatively affect my analysis. The uncertainties in translation not only impact my own translations, but also the official translation of newspaper articles. In these cases, I am unable to verify the accuracy and must accept the results as valid. Another language barrier might have been the court cases themselves and published interviews with Sami since they are usually handled in English. Therefore, the Sami could probably not express their thoughts and feelings like they would in their native language even if some Sami and Southern Sami terms were used in the documents.

Lastly, generalising the outcomes of this study must be approached cautiously, as the case study serves primarily as an illustrative example of various problem representations rather than drawing universally valid conclusions. Specifically focusing on the conflict between wind energy development and Sami self-determination in the Fosen region provides tangible insights into this particular context. While similarities may be found in other conflicts between Indigenous communities and renewable energy projects, the dynamics and results can differ significantly. Furthermore, an examination of the links with national policy and the national discourse on renewable energy would have gone beyond the scope of this thesis but could be useful for future research aimed at a more comprehensive understanding of the topic.

4. Background

4.1 Indigenous Peoples' Rights in Norway

The historical background of the Sami is deeply intertwined with colonialism but in recent decades, Norway has taken significant steps to acknowledge and protect Sami rights. Because international and Norwegian law are two different legal systems, Norway has to incorporate international rights for them to be directly effective. In 1972 Norway ratified the ICCPR and later incorporated it into the Human Rights Act. Article 27 of the ICCPR is still important for the implementation of Indigenous rights as it protects the culture, language, and religion of minorities (Norwegian National Human Rights Institution n.d.). It also takes precedence over other Norwegian legislative provisions in cases of conflict with national law.

Increased awareness and political support for Sami rights emerged in the 1970s and 1980s, notably during the Alta protests against the construction of a hydroelectric dam that would disrupt a Sami village and reindeer pastures (Hossain et al. 2018). Following these events, the constitutional recognition of the Sami as the only protected minority in Article 110a of the Norwegian constitution in 1988 was a decisive legal recognition of their special status within Norwegian society. In 2014, it was moved to Article 108 because of the constitutional reform.

The Norwegian government created the first Sami parliament in 1989, which signalled a symbolic step towards Indigenous representation in decision-making processes. The Sami parliaments however are only consultative in nature and not self-governing bodies and are subordinate to national parliaments. In practice, the interests of the Sami, who are formally and symbolically privileged by the Sami parliaments, do not even necessarily take precedence over those of other consulted groups (McGuire 2022). Furthermore, Norway being the first state to ratify the ILO Convention No 169 in 1990 affirmed its commitment to Indigenous Peoples' right to self-determination, providing a legal framework for the protection of Sami culture, language, and livelihoods (International Labor Organization 1989). The ILO Convention No 169 is partially incorporated into Norwegian law in Section 3 of the Finnmark Act (Norwegian National Human Rights Institution n.d.).

Another central document regarding Indigenous law is the UN Declaration on the Rights of Indigenous Peoples, which was adopted at the United Nations General Assembly in 2007. Despite not being legally binding, the declaration reflects internationally recognised norms. Given its significance to Sami culture and sustenance, reindeer herding is safeguarded under the Norwegian Reindeer Herding Act of 2007 based on the historical land use of the areas.

Norwegian policy recognises the importance of human rights and indigenous Peoples' rights, which is reflected in its laws and treaties. Norway is also committed to defending Indigenous rights beyond its borders, which has led to international recognition⁵. However, there is a discrepancy between the official commitment to the protection of indigenous rights and the actual realisation of these rights. Particularly in the area of land and resource management, there are still challenges in fully recognising the rights of the Sami. The UN Special Rapporteur's criticism emphasises the ongoing struggle for Sami land rights and highlights the need for more robust implementation and better legal protection (United Nations (General Assembly) 2016).

4.2 Climate Change Mitigation and the Green Energy Transition in Norway

Climate change and greenhouse gas emissions have been on Norway's political agenda since the late 1980s. Meanwhile, the country continues to be a major oil exporter, but such emissions do not count towards the national, Norwegian contribution. Today, Norway's climate strategy is based on international framework agreements such as the Paris Agreement. To achieve the objectives set by those agreements, Norway is committed to reducing carbon emissions by at least 55% by 2030 and 90-95% by 2050 compared to 1990 (Norwegian Ministry of Climate and Environment 2023).

Norway has gained an outstanding position in the field of renewable energy, as it relies almost exclusively on sustainable energy sources for its electricity production and has since the early 20th century utilised hydropower on a large scale. Hydropower plants produce 90 per cent of all power in Norway (Statkraft

⁵ For instance, Norway actively participates in international forums and organizations dedicated to Indigenous rights, such as the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Arctic Council. Norway also provides financial support and technical assistance to Indigenous communities in other countries. (Ministry of Foreign Affairs 2007)

n.d.a). This reliance on abundant hydropower resources usually provides Norway with surplus electricity, which is successfully exported to the European continent and the UK thanks to recent power grid connections (Inderberg et al. 2019). The country is also at the forefront of global climate policy, participating in the EU Emissions Trading Scheme and strictly taxing carbon (Norwegian Ministry of Climate and Environment 2021).

In 1998, wind power became a new energy type (Vasstrøm & Lysgård 2021), and grew strongly to contribute approximately 9% to the electricity supply in 2022 (Norwegian Ministry of Climate and Environment 2023). Wind energy has a significant growth potential both onshore and offshore and is making an increasingly important contribution to electricity generation (Norwegian Ministry of Climate and Environment 2021). However, public opposition regarding “environmental and nature values, local participation and transparency, and the distribution of burdens and goods” (Vasstrøm & Lysgård 2021, p.9) is expected to limit onshore wind growth in the short term.

The licensing process for wind farms in Norway is not carried out by local authorities as in many other countries but is controlled by the state. The Norwegian Water Resources and Energy Directorate (NVE) is mainly responsible for issuing licenses that grant companies “the right to build and run power installations and accessories as specified in the license” (Norwegian Water Resources and Energy Directorate 2023). The NVE is a directorate under the Ministry of Petroleum and Energy (OED). All license decisions made by the NVE can be contested by parties with a legal interest in the case in question. If a license decision is contested, the OED makes the final decision (Norwegian Water Resources and Energy Directorate 2023). The OED may decide to uphold or amend the NVE's decision or recommend additional mitigation measures (Inderberg et al. 2019).

For all projects above 10MW, an Environmental Impact Assessment (EIA) is mandatory which has to be conducted by the wind project developer (Inderberg et al. 2019). Since the developers select the consultants, there is a general lack of trust among the parties concerned, such as the reindeer herders, as they believe that the consultants would judge in the interests of the wind companies and not neutrally (Fjellheim 2023a). The mandatory consultation of the Sami in all matters concerning them based on the ILO Convention on Indigenous and Tribal Peoples has also been criticised by the affected communities in connection with wind power. This consultation is perceived as having only limited emancipatory effect due to miscommunication and a lack of inclusion of traditional knowledge (Fjellheim 2023b).

4.3 Case Study: Fosen Vind

The Fosen Vind project, consisting of six wind farms operated by different companies (see overview of the wind farms in Appendix 2), is located in Trøndelag County in central Norway. With a capacity of 1 GW, it is the second biggest onshore collection of wind farms in Europe. After appeals against four of the wind farms, the Norwegian Water Resources and Energy Directorate granted final licenses for all in 2013 (Syring 2022). The building started in 2016 and was done in 2020 (see timetable of the Fosen Vind project in Appendix 3).

Since the licenses were granted, Sami reindeer herders “claimed that the construction interfered with their right to enjoy their own culture” (Ministry of Energy 2023a) since a substantial part of their main winter pastures could not be used anymore which was rejected by the OED in 2013. Following court rulings by the Innrøndelag District Court 2017 and Frostating Court of Appeal 2020 acknowledged negative impacts on reindeer herding but did not see a violation of Article 27 of the ICCPR and therefore only issued financial reparations toward the affected Sami siidas⁶. Fosen Vind DA⁷ as the owner and developer of the wind project and Statnett SF as the installer of the power line were ordered to pay higher damages, which they both refused to do, as they considered the amounts to be too high and Statnett did not consider itself responsible for the project (Syring 2022). The affected siidas, Norra Fosen siida and Sør-Fosen sitje, also rejected both court rulings, as they insisted that their rights under Article 27 of the ICCPR had been violated, which was not recognised by the two courts (Syring 2022).

On 11 October 2021, the Supreme Court of Norway ruled that the licenses of two of the six wind farms, Storheia and Roan⁸, were invalid as they “did not include satisfactory mitigating measures to prevent a violation of human rights” (Ministry of Energy 2023b) and therefore violate the Sami reindeer herders right to enjoy their own culture under Article 27 of the ICCPR. The Supreme Court ruled that

⁶ Siida is the term used in North Sami to refer to a collective of reindeer herders engaged in reindeer husbandry within designated territories, as outlined in Section 51 of the Reindeer Husbandry Act of 15 June 2007, No. 40. In South Sami, this group is known as sitje. (Ravna 2022)

⁷ Fosen Vind DA is a joint venture company owned by Statkraft (52.1%), Europe’s largest renewable energy producer fully owned by the Norwegian State, Aneo (7.9%), a Norwegian renewable energy company, and Nordic Wind Power DA (40.0%), a European investor consortium owned by EIP (Energy Infrastructure Partners) and the Swiss power company BKW (Fosen Vind n.d.)

⁸Roan wind farm was spun off into a separate company, Roan Vind DA, in February 2021 and sold to Aneo, with Statkraft carrying out the development and operation on behalf of Aneo (Fosen Vind n.d.). In this thesis, I consider Roan Wind Farm to be part of the Fosen Vind project.

“Article 27 does not allow the States to strike a balance between the rights of Indigenous Peoples and other legitimate purposes” (Rt. 2021:22 para. 124) because otherwise the rights of minorities could no longer be protected effectively. Also winterfeeding, which was proposed by the other courts since no alternative winter pastures exist, was ruled to be an unacceptable solution as it “deviates considerabl[y] from traditional, nomadic reindeer husbandry” (Rt. 2021:27 para.149).

However, even after the Supreme Court judgement, the wind farms continued operating until present day, and no follow-up has been implemented. This led to widespread protests in the Government Quarter in Oslo in front of the Statkraft building in February 2023, 500 days after the court verdict. The OED initiated a mediation process in April 2023 which led to financial agreements with both affected Sami siidas, in December 2023 with the Sør-Fosen sitje and March 2024 with the Norra Fosen siida. The wind farms Storheia and Roan will remain operating at least until the end of the concession period in 2043 and the siidas have the right to veto the further operation beyond this date. During this time the siidas will receive NOK 7 million each as annual compensation from the respective owners of the wind farms and additional land for winter grazing has to be made available 2026/27 (Ørnhaug et al. 2023; Opsal et al. 2024). With the recent agreements reached, it does seem that the lengthy conflict surrounding the Fosen Vind project has finally come to a close. There are, however, questions regarding the implementation and enforcement of the agreement since it might take years until new grazing areas can be found which would have further negative impacts on the reindeer herding.

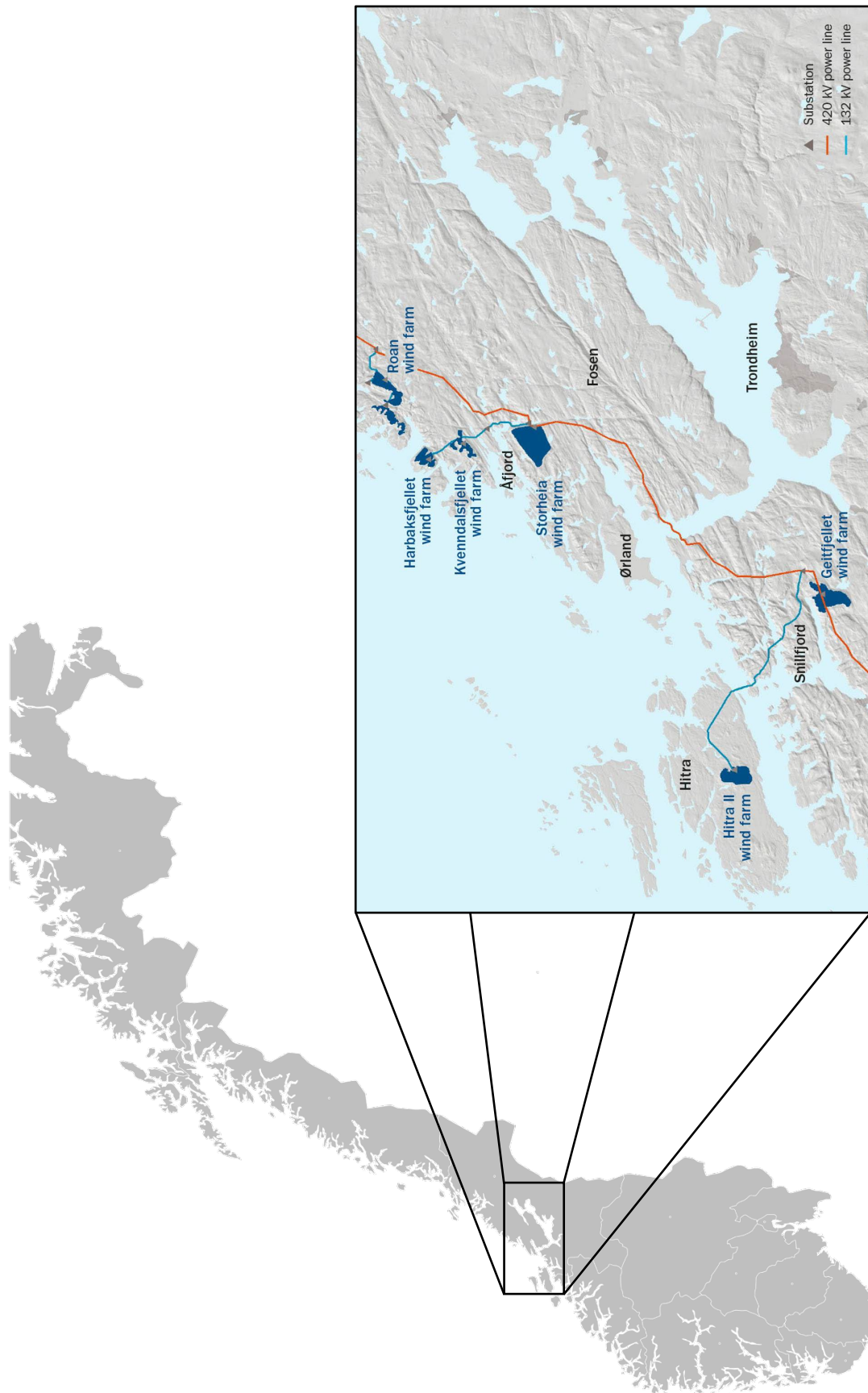


Figure 1: Map over Hitra II, Geitfjellet, Storheia, Kvenndalsfjellet, Harbaksfjellet, and Roan wind farms. (Fosen Vind n.d.; Simplemaps 2024)

5. Data and Analysis

In this section, I depart from a conventional, actor-based structure and instead adopt a thematic approach to improve readability and focus on the nuances of the key actors' reasoning and justification. The analysis revolves around three prominent themes that emerged from the data and highlights the multiple perspectives surrounding the court case.

At the centre of the analysis are the different points of view expressed by various actors involved in the case, in particular government agencies such as the Norwegian Directorate of Water Resources and Energy (NVE), the Ministry of Petroleum and Energy (OED) and the wind energy companies, including Fosen Vind DA, Roan Vind and Aneo. I also look at the perspectives of the affected Sami communities, supported by the advocacy of the Sami Parliament.

The thematic analysis aims to uncover the underlying reasoning and justifications behind the positions taken by these actors both before and after the judgement. By structuring the analysis around key themes, I aim to analyse the subtleties of these arguments and identify any development or divergence in the reasoning over time. This approach will provide a comprehensive understanding of the complexity of the court process and its impact on the actors involved.

5.1 Problem representations made before the Supreme Court judgement

This chapter examines how the actors presented the three themes “the need for wind energy”, “the impacts of the wind farms on reindeer herding”, and “Sami rights violations” surrounding the Fosen Vind project before the Supreme Court judgement. The analysis focuses on understanding how stakeholders initially framed the key issues surrounding the project. By closely examining these prejudicial discourses, I aim to uncover the underlying motivations, silences and strategic narratives of both proponents and opponents of the project. This investigation forms the basis for understanding how these initial representations

influenced subsequent legal and public debates. It also provides a basis for analysing the realignments in discourses that occurred after the court's decision.

5.1.1 The need for wind energy

This sub-section highlights the broader climate change problem and the steps taken by various actors to arrive at the necessity for wind energy, as well as the consideration of alternative solutions. The necessity for new wind farms is a topic of discussion in various interviews in Norwegian newspaper articles, sparking debate among stakeholders. While all parties agree on the urgent need to address climate change and recognise the important role of renewable energy in reducing greenhouse gas emissions and meeting climate goals, there are differing views on the necessity of new wind farms in Norway. This discrepancy is primarily due to the fact that Norway's power generation is already almost exclusively based on renewable sources, with some questioning the urgency of developing more wind farms.

Question 1: What's the problem represented to be?

The government is prioritising efforts to achieve a green transition in Europe. Prime Minister Solberg emphasises the importance of developing wind energy in Trøndelag and stressed that Norway is contributing to the green transition in Europe by supplying renewable energy in 2016 (Kringstad 2016). Similarly, in 2018, Per Sanderud, head of the NVE, highlights Norway's position to help European countries achieve their climate targets by exporting renewable energy (Andersson et al. 2018). While each country is primarily responsible for its own emissions reductions under international agreements, such as the Paris Agreement, there's also recognition of the interconnectedness of global efforts to combat climate change. In this context, Norway's contribution to supplying renewable energy to Europe can be viewed as part of a collaborative effort to transition towards a greener and more sustainable energy system across the continent. This perspective suggests that Norway, with its abundant renewable energy potential, has the opportunity to produce energy at a competitive cost which positions Norway as a key player in Europe's transition to renewable energy sources. This shows that the problem represented by the Norwegian government, namely climate change, is not considered at a national but at a European level. Even if the fight against climate change or the achievement of climate targets are not explicitly mentioned, the emphasis on the expansion of renewable energies indicates this. The development of new wind farms is therefore proposed as a solution to this problem.

The main arguments put forward by wind companies at the proposal stage in favour of wind energy development encompass economic benefits, job creation, and also contributions to renewable energy goals. Knut Fjeringstad, a spokesperson for Statkraft, said that “renewable production of energy will be increasingly important in the future when fossil fuels are gradually replaced” (Løsnes 2016). Even though almost all the electrical power used in Norway today comes from renewable sources, there will be an increased demand in the future due to electrification in sectors such as transportation and heating. So, the climate argument is made on a national level here. In terms of Europe, the benefit from the wind farms is not focused on the green transition, but rather on selling electricity from the wind farms (Løsnes 2016).

However, according to the wind companies, the main reason why the Fosen project is needed is to boost local economic development. The wind companies are closely collaborating with the municipalities to promote the project and highlight the local benefits that make the area more attractive. These benefits include infrastructure and industrial development, property taxes that the municipalities will receive from the farms, and the creation of new jobs (Szolucha 2018). Concretely, Fosen Vind DA “argues that the development will create jobs in maintenance and machine work, and in the hospitality sector, to the benefit of the local economy” (Løsnes 2016). The focus on local development indicates that poor economic conditions and limited job opportunities in rural areas. This narrative, while compelling for local communities, overlooks the broader environmental and social impacts. While both the government and wind companies support the green transition, the latter focuses their argumentation on future national energy demands rather than on contributing to the transition beyond Norway's borders. At European level, the government is focussing on responsibility, while the wind power companies are concentrating on commercialisation.

While the government and wind companies advocate for wind energy development, citing economic benefits and contributions to the green transition, the Sami reindeer herders raise significant concerns. Although Sami people generally support green energy because climate change has a significant impact on reindeer herding, such as unpredictable weather and ice covers, as well as an increase in parasites affecting reindeer (Nordic sámi youth conference 2021), the deployment of wind farms is often criticised. This criticism arises from the fact that wind farms are often being built on land that is traditionally used for reindeer herding. Reindeer herder Arvid Jama highlights this dilemma of supporting green energy while also feeling that it is robbing the land and compromising the prospects of future generations in an interview about his lifelong fight for the pastures of his reindeer (Winzenried 2018). Aili Keskitalo, the president of the Saami Parliament in Norway, elaborates the concept of “green colonialism,” which

refers to the imposition of wind farms on Indigenous territories without adequate consultation or consideration of indigenous rights. At a panel on Indigenous self-governance in 2018, she expresses her concerns:

“I’d like to speak about the paradox of green colonialism, when colonialism has dressed up in nice, green finery and we are told that we have to give up our territories and our livelihoods to save the world because of climate change. We are told that we have to have wind power plants – they even call them wind parks, but they are really industrial power plants – in our reindeer herding areas, because the world needs clean energy,” she continued. “So, as an Indigenous people, we do not only carry the burden of climate change, but we also carry the burden of mitigation, or the world’s reaction to climate change, and it’s a pretty heavy burden.” (Reid-Collins 2020)

These quotes indicate that wind farms are being represented as equally much of a problem as climate change itself. Both could lead to the end of traditional reindeer herding. The siidas affected by the Fosen project fear that the farms will disrupt their traditional way of life and threaten their livelihoods (Sør-Fosen sitje 2012). They worry about the loss of grazing lands and the impact on reindeer populations, which are essential for their cultural identity and economic sustenance and emphasise the particular vulnerability of the South Sami culture (Rt. 2021:7 para.35). This perspective challenges the narrative of renewable energy as a solution to climate change and underscores the need for a more inclusive and equitable approach.

This problem representation of a double burden prompts Eva Fjellheim, a South Sami researcher, to criticise the sole focus on the expansion of renewable energies by pointing out that “there is no discussion about the consumption of energy” (Reid-Collins 2020). She emphasises that “as much as we do require renewable energy sources, we also need to reduce our energy usage” (Reid-Collins 2020) to mitigate the effects of climate change.

The complexity of managing and mitigating the climate crisis is highlighted by the contrasting problem representations. On one side, the Norwegian government and wind companies support wind energy development, emphasising its economic benefits and contributions to the green transition. This positions Norway as a key player in Europe's renewable energy transition. On the other side, the Sami people express significant concerns about the negative impact of wind farms on their traditional way of life. The affected siidas argue that the deployment of wind farms on the Fosen peninsula encroaches upon lands traditionally used for reindeer herding, and this threatens their cultural identity.

This perspective challenges the narrative that renewable energy development is a straightforward solution to climate change.

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the “problem”?

Both the government and the wind companies assume that the benefits of wind energy development, the contribution to the green transition, job creation and boosting the local economy, outweigh the potential negative impact on the environment and Sami reindeer herding. By solely focussing on technological solutions to address climate change, expanding renewable energy infrastructure, particularly wind farms are seen as necessary for reducing greenhouse gas emissions and achieving sustainability goals. This representation reflects the dominance of Western views⁹ held by the Norwegian government and wind power companies, which prioritise economic interests and technological solutions over the concerns of Indigenous peoples regarding their rights. While the government could have promoted other measures to combat climate change, like cutting down oil and gas extraction, air travel, or changing consumption habits, they chose wind energy. This might be because implementing wind power projects may seem more feasible and less disruptive to existing infrastructure and industries and because of lobbying interests that influence the government's decision-making.

The Sami argue against the development of the Fosen project based on the threat it poses on their culture. To make this argument, a deep connection between their traditional land, reindeer herding, and their cultural identity is presupposed. This presupposition is necessary to claim that the loss of the land and the consequential discontinuation of reindeer herding is equivalent to a loss of identity, which reindeer owner Meerke from the South sitje makes in court (Fjellheim 2023a p.154). This sentiment is similarly shared in other interviews with Sami reindeer herders. It follows the assumption that preserving traditional practices, such as reindeer herding, is crucial for the survival and prosperity of Sami culture. Consequently, the development of wind energy, especially when implemented without meaningful Sami consultation or prioritisation of Indigenous rights, is seen as a danger to cultural preservation.

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualised differently?

⁹ Even though both Western and Indigenous knowledge share similarities in their methods of verification (such as repetition and prediction), Indigenous knowledge is often not treated as being legitimate because it can lack empirical evidence and does not align with the reductionist and categorisation-dependent nature of Western understanding (Pullanikkatil & Hughes 2023)

As Fjellheim highlighted, one of the silences in the problem representation of the government and the wind companies is the lack of addressing energy consumption patterns alongside renewable energy development (Reid-Collins 2020). By focussing on technological solutions, existing economic and social structures, that significantly contribute to climate change, are not challenged. Alternative conceptualizations could emphasise the need for broader societal changes that promote sustainability and reduced consumption. Concepts such as degrowth or encouraging lifestyle changes, particularly in areas like transportation or dietary habits could be advocated. This would reduce the need for additional renewable energy production. The discourse of the need for wind energy also largely neglects the actual impacts on Sami reindeer herding and potential violations of Indigenous rights. While acknowledging negative consequences of the Fosen project, they are downplayed (Rt. 2021:9 para.51) to justify the construction of the wind farms. In general, Sami voices are kept silent when promoting wind energy projects. For example, at a press conference in 2016, it was not mentioned in a word that the development affects Southern Sami interests (Winge 2016).

In the problem representation by the Sami, several aspects are left unproblematic. While the Sami rightfully advocate for their rights and express concerns regarding wind energy development, there may be limited acknowledgment of the perspectives and needs for renewable energy projects that would contribute to a coherent picture of the problem representation. In the representation by the Sami, the significant land use for reindeer herding, with over 40% of land in Norway being utilised for this purpose (Ministry of Agriculture and Food 2023; Reid-Collins 2020), is silenced. This does not consider that it is difficult to nearly impossible to find suitable locations for the development of wind farms that do not affect Sami territory at all. However, it is important to carry out thorough assessments for each project individually and to involve the indigenous people's knowledge in order to avoid violations of the indigenous people's rights in renewable energy projects.

Question 5: What effects are produced by this representation of the “problem”?

The problem representation of the government and the wind companies that reinforces the idea that technological solutions such as wind energy are sufficient to tackle complex environmental problems such as climate change. However, this can result in a dependence on technological fixes while neglecting wider systemic issues such as consumption patterns, resource depletion, and social inequalities (Gillard et al. 2016). The government and wind power companies further reinforce dominant narratives that prioritise economic growth and technological advancement. Consequently, these narratives also serve to legitimise the actions of both the Norwegian government and wind power companies. This can garner

public support and streamline decision-making processes related to project approval and implementation.

The Sami's problem representation concerning wind energy development has several significant effects. Firstly, it has brought increased visibility and acknowledgment to the struggles faced by Indigenous peoples. In cases like the Fosen project, which has received attention in national and international newspapers, the representation has shed light on these challenges. By giving voice to Indigenous perspectives, it has ignited public debate on the violation of Sami rights and prompted discussions on the ethical and legal implications of renewable energy projects on Indigenous lands. Additionally, the Sami representation has gained international support, with organizations such as the UN advocating for their rights. In 2018, the UN Committee on the Elimination of Racial Discrimination requested a halt of the construction at Fosen until they could investigate a complaint that the project would disrupt traditional Sami reindeer herding activities. (Business and Human Rights Resource Centre 2018). However, there remains a question of whether these efforts will ultimately influence the development of wind farms and the broader approach to combating climate change.

When comparing the perspectives on the need for new wind farms, different priorities and values become clear. While the government and wind power companies focus on the potential economic benefits and contribution to the green transition in Europe, Sami reindeer herders prioritise the protection of their cultural identity and land rights. The former tend to prioritise technological solutions and economic growth, often overlooking the wider societal changes needed to address climate change, while the latter emphasise the preservation of traditional practices and point to the negative impacts of wind farm development on their communities.

5.1.2 Impacts of the wind farms on reindeer herding

The Supreme Court case revolved around the impacts of the Roan and Storheia wind farms on reindeer herding and whether they are so severe as to deny the Sami their right to self-determination. The reindeer herders argue that wind farms have a negative effect on reindeer during construction and operation, and scientific evidence supports this claim (Karam & Shokrgozar 2023). While all parties involved in the Fosen project acknowledge negative impacts, there are different interpretations of the extent of these impacts. These interpretations are influenced by different knowledges and a lack of acknowledgement of cumulative effects (Mósesdóttir 2024), which raises questions about whose knowledge carries weight in public discourse and the court's decision-making process. Additionally,

since there are varying assumptions about the cultural significance of reindeer husbandry among the actors, there are different interpretations of whether indigenous rights are being violated, what countermeasures should be implemented, and whether the compensation offered is enough to prevent a violation of rights. In its final ruling, the Supreme Court considers both the findings on the impact of wind farms and the proposed measures to mitigate these impacts, resulting in the invalidation of the wind power permits.

Question 1: What's the problem represented to be?

In its decision from 2013 on expropriation and granting a license to the Storheia and Roan wind power plants, the OED acknowledges negative impacts during both the construction and operation phases. However, the ministry implies that reindeer husbandry could still continue in the area, albeit with increased effort from the herders. The ministry emphasises the area of the Roan wind farm could "be used for reindeer husbandry also after the development, even if it [would] demand more from the reindeer herders in the form of increased work". As far as the Storheia wind farm is concerned, the Ministry assumed that a development would "be negative" for reindeer husbandry, but that the area would not "be lost as winter pasture". The Ministry found that the wind power project would not "prevent continued operation for the south group" (Rt. 2021:4 para.10).

In its closing statement, the government contradicts the findings of the Court of Appeal when it considers appropriate compensation for the impact of the wind farms. According to the government, how much the property's net return will be reduced as a result of the intervention should be the basis for calculating the compensation instead of what it would cost to maintain the number of animals and meat production at the same level as before the intervention (Staten v/Olje-og energidepartementet 2021).

The Ministry's acknowledgment of the negative impacts during both the construction and operation phases of the Storheia and Roan wind power plants indicates an awareness of the potential harm to reindeer herding activities. However, this acknowledgment also implies a level of acceptance of these negative impacts as unavoidable consequences of development. The problem representation of the government regarding the impacts of the wind farms thus is not an end to reindeer herding at Fosen but rather a reduction in the number of reindeer, which results in a loss of income that can be compensated.

Fosen Vind DA, which also represents Roan Vind DA in the Supreme Court trial, makes similar arguments to the government regarding the impacts of the wind farms. Negative impacts of the wind farms are presented to be losses and

inconveniences mainly in form of additional labour for the reindeer herders (Fosen Vind DA 2021). The potential reduction in the number of reindeer is not considered a significant impact, as the wind companies suggest that “meaningful reindeer husbandry may be practiced with a much lower number of reindeer” (Rt. 2021:25 para. 139). Moreover, from an economic standpoint, this would not pose a problem, as “the production income from reindeer husbandry has never been enough to make a living, and that it never would, regardless of the interference” (Rt. 2021:25 para. 138). The reindeer herding industry relies heavily on government subsidies (Rt. 2021:25 para. 138).

The wind companies also attempt to downplay the severity of the situation presented by Sami by questioning the findings of the Court of Appeal and the claims made by the siidas. The impacts on the pasture areas of the Storheia wind farm in particular are considered to be overestimated. In their closing statement Fosen Vind argues that Sør-Fosen sitje will still be able to use the area where the wind turbines have been built as winter grazing if the reindeer herders make an extra herding effort. Furthermore, Fosen Vind argues that Storheia only constitutes a limited part of Sør-Fosen sitje's available winter pastures and that the consequences of the development can be reduced by utilising these more (Fosen Vind DA 2021). The wind farms support this claim by stating that because the reindeer herding community “had not used the area for grazing every year, it could hardly be essential” (Johansson et al. 2023:18). This challenges the importance placed on these areas by the Sami.

With regard to the impacts of the wind farms on reindeer herding and the resulting compensation, Fosen Vind DA repeatedly refers to the reindeer herder's duty to adapt under general expropriation-law principles (Rt. 2021:6 para. 22) and that “a balance should be struck against other interests of society” (Rt. 2021:10 para. 52). This problem representation by the wind companies reflects the broader conflict between economic development goals and the protection of Indigenous rights and the trade-off between them. It is indicated that the impact on reindeer husbandry should be weighed against the overall societal benefits of renewable energy production, which should also reduce the appropriate compensation. The wind companies plan to compensate the negative impacts in the usual way (Fosen Vind DA). With this statement, Fosen Vind DA emphasises that these kinds of impacts are not exceptional, and it even questions the need for a court case by suggesting that existing compensation mechanisms can adequately address such impacts. Additionally, Fosen Vind DA aims to present itself as a responsible and cooperative stakeholder in the development process by expressing its willingness to compensate for these impacts in the usual manner.

The Sør-Fosen sitje and the Nord-Fosen siida argue that the construction of the wind power plants results in the loss of essential winter grazing areas for reindeer herding. These areas are historically significant and are vital for sustaining the reindeer population during the winter months. In the Supreme Court judgement, Storheia was of special interest, and it was highlighted that Storheia is Sør-Fosen sitje's best and safest late winter pasture and a late winter pasture that Sør-Fosen sitje is dependent on being able to utilise. A statement from the Court of Appeal by reindeer herder Jåmal was used for assessing the development's consequences for reindeer husbandry: "Storheia, due to the climatic conditions, is the only secure winter pasture in so-called years of crisis. Both Leksvik and Rissa may be exposed to icing with winter temperatures around zero degrees centigrade. However, Storheia is snowless along the mountain ridges and therefore much less exposed" (Rt. 2021:15 para.83). According to the Sør-Fosen sitje the area will be lost as a reindeer grazing area for practical purposes which contradicts the statements made by the government and the wind companies.

The Sør-Fosen sitje explains the impacts of the Storheia wind farm in their closing statement. The loss of Storheia, comprising 44% of available late winter pastures, would force Sør-Fosen sitje to halve their reindeer herd. This reduction makes it difficult, if not impossible, for the sitje to generate sufficient profit to sustain their livelihoods. As a result, one of the three operational units within South Fosen may need to shut down. This closure not only disrupts the affected families but also creates logistical challenges for the remaining units, as a minimum of three operating units is typically required for activities such as slaughter and collection. Ultimately, this cascade of impacts poses a significant threat to the continued existence of reindeer husbandry in the area (Sør-Fosen sitje 2021). In addition, the sitje emphasises the need to consider the "particularly vulnerable South Sami culture" (Rt. 2021:7 para. 35) which would suffer under the loss of reindeer herding at Fosen. Ellinor Marita Jåma, the director of the Reindeer Herders' Association of Norway and a member of the Saami Parliament affirms this view that "limiting the size of the winter pastures will make reindeer herding unsustainable. She explained that people impacted will be forced to give up their cultural heritage, basis of income and lifestyle" (Løsnes 2016).

In order not to have to drastically reduce the number of reindeer, it would be necessary to winter feed about half the reindeer herd. This is acknowledged by the Court of Appeal and an important part for its determined compensation for the siidas (Rt. 2021:26 para. 145). However, the Sami reindeer herders see winter feeding as far removed from traditional reindeer herding and also costly which is why the development would therefore still have a significant negative impact on cultural practice (Sør-Fosen sitje 2021).

“Loss of land threatens the preservation and existence of the Sami culture. Such a loss cannot be compensated financially, as is the case for interference with the rights of others. If the Sami reindeer herders’ right to pastures are dealt with in same manner as other people's rights to property, we are in practice not dealing with equality, but discrimination.” (Rt. 2021:7 para.36). This statement from the Sør-Fosen site emphasises the existential threat that the development of the wind farms poses to Sami culture, the problem represented by the siidas. The main issue being discussed is the loss of land. The Sami community feels that there is a discrepancy in how their grazing rights are considered in comparison to other people's property rights. This leads to feelings of being undervalued and a sense that their cultural heritage and way of life are not adequately protected in light of the Fosen project.

The problem representations illustrate a fundamental disagreement over the nature of the impacts and the adequacy of compensation measures. While the statements of the government and the wind companies imply that the losses are economic ones which can be compensated, the Sami reindeer herders reject financial compensation claiming it is insufficient. In their understanding the loss of the grazing areas threatens Sami culture which cannot be remedied by compensation.

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the “problem”?

There's a shared belief among all actors in the inevitability and necessity of wind power development for the green transition and economic growth, leading the government and the wind companies to view the negative impacts on reindeer herding activities as acceptable trade-offs. The government and the wind companies also assume that reindeer herders can adapt to these changes and coexist with wind farms through an increased effort or alternative practices like winter feeding. A consultant of Fosen Vind DA replied that: “I think that the issue of threatened existence has to do with reindeer herders not liking an area and not because it is a threat to reindeer as such. The reindeer herders have to account for this.” (Fjellheim 2023a:151), when asked if future reindeer herding is threatened by the wind turbines. This shows that the wind companies suppose that the challenges faced by reindeer herders are primarily due to personal preferences or choices rather than inherent threats posed by wind turbines.

To validate their positions regarding reindeer not avoiding wind turbines as much as claimed by the reindeer herders, the wind companies rely on the studies carried

out by their consultants for the impact assessment. They also challenge the expertise of the Sami reindeer herders and their traditional and practical knowledge by insisting “that summer grazing was the ‘minimum factor’ determining the viable size of the herd” (Johansson et al. 2023:22). In court, they showed “video material video recordings from the now completed windfarm supposedly demonstrating that not even reindeer cows with calves avoided the turbines” (Johansson et al. 2023:19). The wind companies trust in the scientific expertise of their consultants while dismissing the insights of the Sami community. This could be attributed to an underlying belief that scientific methodologies hold greater validity and reliability compared to traditional knowledge systems. This assertion of a “positivist position as neutral scientists while warning about the subjective role of reindeer herders in knowledge production” (Fjellheim 2023a) is also echoed by the same research team in a scholarly paper examining the status of knowledge regarding the impacts of wind energy infrastructure on reindeer herding.

Lastly, it is assumed that financial compensation can adequately mitigate the impact of wind energy development on reindeer husbandry. This is based on the understanding that reindeer herding is a business and not a cultural practice or identity. Being a reindeer herder is therefore seen as an occupation and not an identity which is contrary to how Sami reindeer herders describe themselves.

For their part, the siidas' consultants try to discredit the results of Fosen Vind DA's studies. They claim that these studies “are invalid as they were carried out on a local scale and ignored the reindeer that were already avoiding the area” (Fjellheim 2023a:151). Unlike the other studies presented in court, they also incorporate in-depth interviews with Sami reindeer herders, considering their knowledge to be equally relevant (Fjellheim 2023a). The Sami also emphasise the difficulty of explaining their practical knowledge in a legal setting, as it may not be fully understood by those unfamiliar with reindeer herding (Fjellheim 2023a). They recognise the practical context in which the herders' knowledge exists and argue for the equal value of scientific researchers and reindeer herders' knowledge. Through these presuppositions and assumptions, the Sami challenge the prevailing narratives that prioritise scientific expertise over Indigenous knowledge.

The Sami perceive the wind power development as an existential threat to their way of life and cultural survival. In court, the vulnerability of Sami culture is emphasised, with reindeer herding being considered an important part of maintaining Sami culture and preserving the Sami language (Sør-Fosen sitje 2021). The siidas argue that the loss of land and grazing areas cannot be adequately compensated for financially, as it undermines the foundation of their livelihoods.

With this stance they reveal underlying assumptions about the importance of Indigenous knowledge and the cultural value of traditional practices.

They further argue that “Indigenous peoples’ connection to the land must be included in the assessment.” (Rt. 2021:7 para. 34). As Meerke, a reindeer herder from the Sør-Fosen sitje, tells the Court: ““To me, reindeer herding is the most important identity marker. If I cannot continue, I would struggle to know who I am.”” (Fjellheim 2023a:154). This sentiment is nicely summed up by one of the Sami reindeer herders in Vesfn, Ole Henrik Kappfjell, who is affected by another wind project in Norway. He explains that by placing a monetary value on the Samis losses, the wind companies and the courts show their misunderstanding of what is at stake. ““It’s not just an occupation,” says Kappfjell. “It’s a livelihood. It’s a culture and it’s an identity. It’s everything that I live and breathe for.”” (Reid-Collins 2020). According to Fjellheim (2023a:142), the disagreements between the government, the wind companies and the reindeer herders “reflect struggles over what kind, and whose knowledge determine impacts”. The Sami attitude to the Fosen development assumes that their cultural survival is at risk, with reindeer herding being a crucial aspect of preserving their identity and language. They perceive that financial compensation will not be sufficient to compensate for the loss of land and grazing areas and emphasise the need to consider Indigenous connections to the land in project assessment. revealing underlying assumptions about the importance of Indigenous knowledge and the cultural value of traditional practices.

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualised differently?

The reliance of both the government and wind companies on research conducted by consultants of their own choosing raises concerns about the objectivity of the evidence presented. These commissioned studies, conducted by consultants with ties to the energy industry, conclude that human activity, rather than infrastructure like wind turbines, is the primary disturbance to reindeer (Fjellheim 2023a). Therefore, it supports their claims that wind farms do not significantly impact reindeer herding. Despite this potential bias, in court, this research is presented as neutral and objective evidence, shaping a narrative that supports the interests of the government and wind companies while disregarding alternative perspectives. This disregard for Indigenous knowledge and interests is evident in interviews with Sami reindeer herders. Ada, a Sami reindeer herder, criticises that “our traditional knowledge about this, and how the reindeers react and how they are, is not taken into account” (Karam & Shokrgozar 2023) in decision-making processes. Additionally, there is a widespread unawareness among politicians and

local inhabitants regarding the presence and rights of Sami reindeer herding communities (Szolucha 2018). For instance, during a press conference announcing the wind development project, there was no mention of how it would impact Sami interests, despite the significant consequences for their winter pastures (Hanssen 2016). This shows that the dominance of scientific expertise over Indigenous knowledge is unquestioned, with Sami traditional knowledge being dismissed in favour of scientific studies without examining the validity or relevance of Indigenous perspectives.

The Sør-Fosen site claims that reindeer herding units might have to stop herding because it would not be profitable anymore due to the reduced number of reindeer. In their explanations they don't mention the government subsidies, which according to Fosen Vind DA play a crucial role in sustaining the industry. The subsidies could possibly keep reindeer herding going even with a smaller number of reindeer. However, according to Mathiesen et al. (2024:7), the subsidies only make out "less than 14-18% of the reindeer herder's income" and reindeer herding is only perceived as being highly subsidised.

While the Sami often assume the research of the government and the wind farms being biased, they don't clarify that this could also be the case for their own research. In interviews, they rely heavily on their own perspectives perceptions and may overlook aspects that could influence conclusions in a direction that would not benefit them. In their research presented to the court, they couple their traditional knowledge with the independent academic knowledge of reindeer husbandry researchers that supports their claims. This ultimately allows them to establish an epistemic base to successfully question the knowledge of their opponents (Johansson et al. 2023) but doesn't mean that the studies are impartial.

Question 5: What effects are produced by this representation of the "problem"?

By emphasising the feasibility of continued reindeer husbandry despite acknowledging negative impacts, the OED presents a narrative that downplays the significance of these impacts and the potential hardships faced by indigenous communities. This narrative aligns with a common discourse in development projects, where the benefits of economic growth are often emphasised while environmental and social costs are marginalised or dismissed. Ignorance by the government and the wind companies is "actively and strategically produced to promote capitalist and colonial interests" (Fjellheim 2023a:142) and "controversy taking place in the courtroom [] not only concerns knowledge gaps or friction between different knowledge systems, but also strategic ignorance of all knowledges supporting the reindeer herders' claims." (Fjellheim 2023a:153). This approach perpetuates epistemic injustice and hinders the promotion of genuine

dialogue and collaboration between different knowledge systems. It reinforces the division between traditional and Western knowledge and fails to recognise the valuable contributions that Indigenous knowledge can make to solving environmental problems.

It also had a significant impact on the outcome of the Fosen trial, even though the siidas ultimately won it. Calls for halting the construction by reindeer owners and the UN High Commissioner for Human Rights until the committee considers a complaint from reindeer herders about the Storheia wind power plant have been rejected (Bergesen 2018).

The political decision to grant the licences, despite the opposition from the Sámi herders, was driven by Fosen Vind DA's need to ensure the wind power farms became operational by 2021 to fully capitalize on the advantages offered by the state-sponsored electricity certificates program (Mósesdóttir 2024:8)

Furthermore, construction work has already begun without adequately involving the reindeer herders. The plan is to operate the plant continuously without any downtime, even during periods when reindeer herding is at risk. This goes against the recommendations made in the report on reindeer herding (Opoku 2017). The only concessions made by the wind power companies were a 20% reduction in the planned area for the development of Storheia in addition to financial compensation (Hernes et al. 2018). The effect is that the Fosen project was built in the first place by relying on the accuracy of its own research and ignoring alternative findings - and now the wind turbines will remain standing for several years. This damage could have been mitigated or avoided if the concerns of the reindeer herders would have been adequately considered in the first place.

The Sami successfully resist and challenge “state and corporate perceptions of what constitutes legitimate knowledge and what has a significant impact on Saami reindeer herding and culture” (Fjellheim 2023a:142). By raising the question of whether wind farms violate the cultural rights of Sami reindeer herders, the discourse has evolved into a broader social and ethical discussion. Initially, developers had an advantage as the District Court favoured their expertise in impact assessments. However, in the Court of Appeal, the RHC introduced its own expertise, including testimony from reindeer herders, leading to a re-evaluation of the impact of the windfarm. This shifted the dynamics, making it difficult for developers to revert to their original stance (Johansson et al. 2023). Originally framed as an “ordinary matter of measuring damages to a marginal business, it became a national controversy over whether the impact infringed on the Sami

reindeer herders' right to enjoy their culture as a minority protected by international human rights law" (Johansson et al. 2023:20). Through its media attention, the Fosen case leads to Sami concerns gaining more visibility and their perspectives being legitimised.

The representations of the impact of wind farms on reindeer herding show opposing perspectives. While the government and wind power companies prioritise economic development and technical solutions and assume that reindeer herders will be able to adapt, the Sami see wind power as an existential threat to their culture. They emphasise the importance of their connection to the land and reject financial compensation as inappropriate. These differing views characterise the legal disputes and project implementation and trigger a broader discussion about the rights of Indigenous peoples and the preservation of their culture in the development of renewable energies.

5.1.3 Sami rights violations

The rights of Sami people, particularly their right to self-determination, is a focal point both in the Supreme Court case and in discourses related to it. Central to this discourse is the threshold for a violation of Article 27 of the ICCPR¹⁰, which safeguards minority groups' rights to enjoy their own culture, practice their own religion, or use their own language. The impact of wind farms on reindeer herding in Sami areas raises concerns about possible violations of these rights. The threshold for a violation is interpreted differently by the actors involved. Together with the different problem representations of the impacts of the wind farms, this therefore leads to different assumptions as to whether a violation has occurred.

Question 1: What's the problem represented to be?

The government claims that there is no violation of Article 27 of the ICCPR as the authorisation process for the wind energy projects complies with Norwegian human rights law (Staten v/Olje- og energidepartementet 2021). However, the government does not give any reasons of its own for this statement, but agrees with the argumentation of Fosen Vind DA.

The Government further argues that the siidas are collective entities rather than individuals. From this perspective, the government contends that because Article 27 refers to the rights of individuals and not groups, the siidas are not able to represent their members in court proceedings or advocate for their rights before

¹⁰ Article 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." (United Nations 1966)

international bodies such as the UN Human Rights Committee. Therefore, the government claims that the siidas' application for inadmissibility of the appraisal cannot be considered (Rt. 2021:10 para.57). With this position, the government appears to be discrediting the entire legal process, regardless of whether Sami rights have been violated or not. From a legal point of view, this type of formal objection is justification to dismiss a lawsuit if it gets accepted by the court, in this case, however, the government's claim is rejected by the Supreme Court.

The wind companies argue as well that there is no violation of Article 27 of the ICCPR concerning the wind energy projects' impact on reindeer husbandry. They acknowledge the cultural significance of reindeer herding to the Sami people but assert that the crucial question is whether the reindeer owners in the southern group are effectively 'denied' the right to practice their culture (Fosen Vind DA 2021). This is the threshold written in the Article 27 of what would constitute a violation. They therefore emphasise a high threshold for determining a violation, suggesting that "the interference must be so intrusive that it equals a total denial" (Rt. 2021:10 para. 52) of cultural practice. Additionally, they highlight the duty for reindeer herders to adapt reasonably, arguing that the implementation of measures like winter feeding could mitigate any perceived infringement on their cultural rights (Johansson et al. 2023).

Overall, the wind companies' narrative on the violation of Sami rights tends to prioritise economic considerations and downplay the cultural significance of grazing areas for Sami communities. Their approach reflects a broader conflict between economic development objectives and the protection of Indigenous peoples' rights, with a focus on mitigating impacts through compensation rather than recognising and addressing the underlying violations of Sami rights.

The siidas' main concern before the Supreme Court is that the human rights protected by Article 27 of the ICCPR are being violated due to the impact of the Fosen project on their cultural practice of reindeer herding. Therefore, they have appealed the Court of Appeal's judgement. The court of Appeal has granted them compensatory measures, such as winter feeding and increased financial compensation, but finds that a violation of Article 27 "may be avoided by the award of compensation for winter feeding" (Rt. 2021:26 para. 146). The Sami argue that while a reduction in the reindeer herd size may be avoidable, the necessary adaptations would force reindeer herding into a non-traditional mode of operation, therefore still significantly impacting cultural practice and constituting a violation of Article 27 (Sør-Fosen sitje 2021).

Furthermore, the siidas argue that Article 27 is violated not only in cases of complete denial of cultural enjoyment as claimed by the wind companies but also when there is a substantial impact on cultural practices, especially those already vulnerable (Rt. 2021:7 para. 34). They emphasise that even a significant land loss alone may constitute a violation and must be a critical consideration in evaluating the intervention's impact on cultural protection. Regarding consultation with the affected minority, the siidas emphasise that it is essential, but that it cannot prevent a violation if the intervention impedes cultural practice to such an extent that it is denied (Sør-Fosen sitje 2021).

These problem representations illustrate a fundamental conflict between legal interpretations concerning the right to self-determination of Sami reindeer herders enshrined in Article 27 of the ICCPR. On the one hand, the government and the wind power companies argue that they are not violating these rights because they are complying with Norwegian law and the article sets a high threshold for a violation. The Sami, on the other hand, argue that the wind energy projects have a significant impact on their cultural practice of reindeer herding, which in their view constitutes a violation of Article 27 and that this violation cannot be remedied by compensatory measures.

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the “problem”?

Both the government and the wind companies assume that the development of the Fosen project complies with the Norwegian laws and regulations as they assessed it for granting the license for the development. As they consider their own investigations for the environmental impact assessment to be correct, they see no reason for a court hearing. This can also be seen from the fact that the government is trying to stop the court case through a formal error, and which would also have the effect to complicate future lawsuits.

Since the government and the wind companies already assume that financial compensation measures are sufficient to minimise the impact of wind turbines on reindeer husbandry, they also believe that there is no infringement of rights if compensation measures are taken. This presupposes a certain degree of technological adaptability on the part of the Sami which is only not realised due to their unwillingness to adapt (Fjellheim 2023a).

In their problem representation, the Sami presuppose that their cultural heritage, such as their traditional reindeer herding and connection to the land, are non-negotiable and cannot be compromised for economic development.

They believe that Article 27 should not be interpreted as narrowly as the government and the wind power industry portray it, as otherwise its effectiveness would be jeopardised. According to this interpretation, adaptation through winter feeding, even if technically feasible, would still be a violation because it deviates significantly from the traditional way of life.

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualised differently?

The power dynamics underlying the licensing process remain unaddressed and unchallenged by both the government and the wind energy companies. Fosen Vind DA, responsible for preparing the environmental impact assessment, selected and paid the consultants, so the credibility of their findings is not in question. The ultimate authority to approve or deny the construction of wind turbines rests with the OED. However, although Sami involvement in the legal compliance process is mandatory, the authenticity and effectiveness of this consultation is presented in different ways.

Fosen Vind DA presents the consultation process as cooperative. However, the Sami voices illustrate a completely different reality. In interviews, they express feelings of being disrespected and the research findings contradict their first-hand knowledge. Toamma from the Norra Fosen siida says: “I do not recall any other collaboration than making the animals available to them. The [GPS] marking began with them doubting whether we have actually made use of the areas we claim” (Fjellheim 2023a:152). This illustrates that the wind companies and the government are representing the decision-making process as less problematic and more suitable than it really is.

The wind companies repeatedly emphasise the balancing of Sami rights with the interests of society but fail to mention that this could be very problematic. According to the Supreme Court ruling, no proportionality assessment of Article 27 may take place in this case because “the protection of the minority population would be ineffective, if the majority population were to be able to limit it based on its legitimate needs” (Rt. 2021:23 para. 129). Although a healthy and intact environment could theoretically be considered a fundamental right, which would allow for a balancing of interests, it is noteworthy that alternative locations for the wind project could have been chosen to minimise the impact on Sami reindeer farming. The absence of consideration for such alternatives renders the argument regarding the balancing of interests invalid (Rt. 2021:25 para. 143).

The Sami have a notable lack of trust in environmental impact assessment processes, a widespread problem in Norway according to (Fjellheim 2023a). This

lack of trust creates scepticism in the Sami community, which finds the assessment inadequate and biased. One aspect that remains unproblematic is the assumption that compensatory measures, such as winter feeding and increased financial compensation, are insufficient to address the violation of their rights under Article 27 of the ICCPR. Moreover, while the Sami accuse wind companies of poor cooperation, they themselves offer no potential alternative solutions or compromises, which may hinder effective communication and collaboration between the Sami and other stakeholders. The Sami also offer no potential alternative solutions or compromises that could mitigate the impact while still allowing for economic development.

The problem representation of wind energy development on Sami rights can be seen from a different perspective by reframing it as a broader issue of environmental justice and Indigenous rights. Instead of solely concentrating on the negative effects of wind farms on reindeer herding, a different approach could focus onto the power dynamics and historical injustices that influence the decision-making processes regarding energy development. This could involve advocating for better recognition of Indigenous land rights, implementing meaningful consultation and consent procedures, and exploring alternative energy solutions prioritising environmental sustainability and cultural preservation.

Question 5: What effects are produced by this representation of the “problem”?

The government's attempt to divert attention by claiming that siidas cannot make an appeal for their members serves to obscure the concerns of the Sami community regarding potential rights violations. This strategy not only undermines the collective representation of Sami interests but would also create barriers for individual reindeer herders to seek legal recourse, making it more difficult and costly to address grievances. In the Fosen case, however, this representation did not have the intended effect as the court decided that the siidas do indeed have the right to make an appeal on behalf of its members.

The Sami's assertion of their cultural rights challenges dominant narratives and interrupts Western presumptions. It highlights the existential significance of Sami knowledge, practices, and landscapes, reshaping public perceptions and their understanding (Fjellheim 2023a). This has the potential to reshape public perceptions and understanding of Indigenous rights, potentially influencing opinions on the legitimacy of wind energy projects and the adequacy of compensatory measures. Moreover, the representation influences legal proceedings and decisions, shaping how courts interpret Indigenous rights under

international human rights laws such as Article 27 of the ICCPR. The Supreme Court judgement invalidating two licenses due to a violation of Article 27 underscores the impact of the problem representation of the Sami, invalidating previous problem representations of the government and the wind companies. As a result, these actors must reshape and adapt their problem statements to reflect the Court's findings in order to be valid.

The portrayals of violations of Sami rights due to the impact of wind farms on reindeer herding show clear differences in perspectives. While the government and wind power companies claim that Norwegian laws are respected and a high threshold is required for a violation of Article 27 of the ICCPR, the Sami community claims that the projects significantly affect their cultural practices and thus constitute a violation. These differing views emphasise the fundamental differences of opinion regarding the interpretation of Article 27 and the appropriateness of compensatory measures. Furthermore, the problem representations highlight the unaccounted for power dynamics in the approval process and emphasises the need for a broader discussion on environmental justice and indigenous rights in energy development decisions.

Table 3: Key points from before the judgement

Theme	The Norwegian government	The wind companies	The Sami siidas
The need for wind energy	<ul style="list-style-type: none"> • addressing climate change at a European scale • economic benefits • future energy demand • focus on technological solutions 	<ul style="list-style-type: none"> • meeting national and European renewable energy targets • significant economic benefits • generating returns through electricity sales 	<ul style="list-style-type: none"> • acknowledging the importance of addressing climate change • focus on the local impacts of wind energy projects • concerns about the environmental and social impacts
Impacts of the wind farms on reindeer herding	<ul style="list-style-type: none"> • negative impacts on reindeer herding • herding can continue with increased effort • balancing impacts against broader societal benefits of renewable energy projects • financial compensation 	<ul style="list-style-type: none"> • economic and environmental benefits outweigh negative impacts on reindeer herding • herding can adapt to wind farms • financial compensation 	<ul style="list-style-type: none"> • reindeer herding is not just an economic activity but a vital cultural practice integral to their identity • wind farms disrupt their relationship with the land • loss of grazing areas makes it challenging to maintain traditional practices
Sami rights violations	<ul style="list-style-type: none"> • compliance with Norwegian human rights laws • dismissing the ability of siidas to represent their members' rights • total denial as threshold for a violation • financial compensation and winter feeding prevents violation 	<ul style="list-style-type: none"> • a violation of Article 27 of the ICCPR requires a complete denial of cultural practice which is not given • legally sound environmental impact assessments and licensing processes • portraying consultation process with the Sami as cooperative • Sami reindeer herders can adapt to wind farms through measures like winter feeding 	<ul style="list-style-type: none"> • Sami rights are protected both nationally and internationally • cultural significance of reindeer herding and their connection to the land • their concerns have been disregarded, and the consultation process has not been meaningful • measures like winter feeding are inadequate to preserve their cultural heritage • violation of Article 27

5.2 Problem representations made after the Supreme Court judgement

This section delves into the media discourse that unfolded following the Supreme Court ruling, analysing various articles and interviews. Similar to the findings of Mósesdóttir (2024), I observed that the majority of articles following the court ruling in October 2021 featured interviews with or articles written by the Sami and their supporters, while the voices of the wind farm owners were comparatively rare. The lack of statements from representatives of the wind power companies after the judgement poses a challenge to recognising their problem statements and drawing comprehensive conclusions from them. The prominence of the Sami perspective in media discourse signals a shift in public attention and empathy towards indigenous viewpoints, indicating evolving societal attitudes towards Indigenous rights and environmental justice. Consequently, this section highlights shifts in post-trial discourses characterised by an increased emphasis on the Sami perspective and a notable absence of input from wind farm owners.

5.2.1 The need for wind energy

The overarching discussion about the necessity of wind energy in Norway has hardly changed following the Supreme Court's decision, a development that comes as no surprise. The ongoing tension between promoting economic growth and protecting the natural environment continues to dominate discussions about the expansion of wind energy in the country. However, the inclusion of energy justice emerged as a new dimension in the wider debate about the rationale for wind energy development in Norway. In this discourse, the interdependence of the interests of the wind energy companies and the government is once again evident, as both parties formulate the realisation of green electricity justice in a similar way (Mósesdóttir 2024).

Question 1: What's the problem represented to be?

In a speech to the Norwegian parliament in 2023, the minister of the OED, Terje Aasland, emphasises that Indigenous rights are not optional. But because he wants to have the northern parts of Norway to have the same opportunities for settlement, business development and security of energy supply as the rest of the country, issues relating to energy facilities in Sami areas are not avoidable (Ministry of Energy 2023c). Therefore, his focus is on a better dialogue with affecter reindeer herding communities, a sentiment that is shared by the former state secretary of the OED Amund Vik. In an interview Vik claims that Norway “need[s] to produce more energy and build more grids, to allow for industrial

activity, employment opportunities, reasonable electricity prices all over the country, and to meet our climate targets” (Nugent 2023).

The new state secretary of the OED, Elisabeth Sæther, adds that “Norway must pave the way for more onshore wind because it creates more jobs” (Filbert 2022a). It is further emphasised that getting support from local authorities for windfarms is crucial for new projects. One step in this direction is the implementation of a new license application system that gives “municipalities substantially more power than previously, such as veto power and municipal production levies imposed on turbines, so that municipalities see financial gains when they give the go-ahead for onshore wind” (Filbert 2022a). In addition, also Sami reindeer herders will benefit from this as “half of the generated revenue earmarked for supporting the impacted reindeer husbandry community” (Mósesdóttir 2024:6).

With their statements Norwegian authorities in the post Supreme Court period frame the problem in the same manner as previously: as wind developments being needed for the industrial transformation and generation of more jobs. Although the contribution to the European energy transition is still cited as a reason for the expansion of wind energy, the focus of the argumentation has shifted so that the representation of the problem is now more in line with that of the wind companies. In particular, the government is now emphasising the economic benefits and industrial transformation associated with the development of wind energy at the local level, echoing the arguments often put forward by the wind power industry. This convergence points to a common narrative that emphasises economic growth and the goals of the energy transition, possibly indicating a strategic alignment between the authorities and wind power companies. The interests and rights of the Sami are included in the discourse following the court ruling, but the focus is on communication and dialogue with the Sami and not on whether wind turbines in their traditional reindeer grazing areas are at all appropriate or legitimate.

The problem representation by the wind companies revolves around balancing economic considerations with operational realities and fostering collaborative partnerships for successful project implementation. In an interview about the agreement between Roan Vind DA and the Norra-Fosen siida, Stig Tore Laugen, Director of Communications at Aneo, told the online newspaper EnergiWatch about how a demolition of the wind turbines was not an option for them to address the human rights violations as “the cost of demolishing turbines would have been enormous, not least in terms of lost electricity production for Central Norway and lost production revenue” (Sandvik 2024) for the wind company. This attitude reflects a pragmatic approach that focuses on minimising financial

burdens and maximising operational efficiency and underlines the importance of the Fosen project for Norwegian power generation.

The problem representation regarding the need for wind energy by the Sami community centres around the protection of their traditional way of life, the preservation of nature, and the pursuit of sustainable land use practices. The green transition is called into question by Nystad, a Sami herder, by the exclamation that “capital gains cannot come at the expense of nature” (Nelson 2022). Vice president of the Sami Council, Åsa Larsson Bild elaborates that Sami communities feel pressured “give up their culture and their children’s possibilities to continue their way of life” (Nugent 2023) in order to facilitate the decarbonization efforts of other societies with high-consumption lifestyles. This reflects the criticism of Fjellheim who discussed the failure by the government to address the problem of energy consumption.

An important aspect that is repeatedly highlighted by Sami reindeer herders is their sustainable land use for meat production which becomes more and more threatened by encroachments and which they see as more relevant than green energy production (Mósesdóttir 2024). That is why many Sami representatives also support the call for taking down the Roan and Storheia wind farms. The Sami hope for a shift in perspective on this matter and seeks recognition from both the public and the government for their sustainable land practices.

The Norwegian government is promoting the expansion of wind energy while considering economic growth, environmental sustainability, and Indigenous rights. They are emphasising the importance of increasing energy production and engaging in dialogue with affected communities. Wind companies are prioritising operational efficiency while collaborating with the affected reindeer herders. Despite winning the Supreme Court case, the Sami community expresses concerns about the potential threats to their traditional way of life and sustainable land practices caused by wind energy development. The Sami still feel the need to advocate for the recognition and support of their culture and land use practices in the face of increasing pressure from wind energy development.

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the “problem”?

The discursive shift by the government away from the European energy transition in favour of local benefits shows that the Norwegian authorities assume that this is more persuasive in garnering support and acceptance for wind power developments. This assumption reflects the belief that it is important to address

the immediate concerns and priorities of local communities rather than focussing exclusively on broader, abstract concepts such as European energy transition targets. The local benefits are not only communicated more thoroughly but with the new tax the municipalities also get a monetary incentive to support wind power projects. By emphasising a better dialogue with Sami reindeer herders, the government presupposes that communication can build trust, mitigate conflicts, and ultimately secure the social license needed for wind power developments to proceed smoothly. However, as the Sami have not been given more decision-making power in the licensing process, the government apparently continues to assume that consultation and dialogue are sufficient to address the concerns of the indigenous population.

The only point that stands out about the wind companies is their refusal to dismantle the wind turbines in order to address human rights violations. This reluctance to take action implies that they prioritise cost and energy considerations over ethical responsibilities. It also suggests that the wind companies believe they can determine which measures are necessary to put an end to the human rights violations.

In the Sami problem representation, the same special connection to nature is presupposed as in the representation before the Supreme Court ruling. Nystad explains that “nature has been our home for thousands of years. We never take more than what we need, and we never deplete nature’s resources – we always leave something to allow room for growth again next year” (Nelson 2022). The wind turbines are seen as a destruction of nature which is why Sami reindeer herders assume that Norwegians approach for the green transition is fundamentally flawed. Nystad expresses this by adding “that she finds it difficult to understand how the destruction of untouched nature and denial of sustainable primary industry could be deemed to be part of the green transition efforts in the Norwegian state’s view (Nelson 2022).

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualised differently?

In their problem representation, the government's focus on local benefits and dialogue with affected communities is emphasised, while the potential conflict with Sami reindeer herding is still left unproblematic. The representation also overlooks power imbalances, particularly in decision-making processes, where the Sami community lacks significant influence despite being directly affected. Furthermore, the topic of energy consumption is still not addressed As expressed by a Sami reindeer herder from Fosen advocating for the demolition of wind

turbines, there is a choice between wind energy and reindeer herding as they cannot co-exist: “Should we throw away a culture that has been here for a long time because society constantly wants more energy. Can we not look at the energy consumption. Set up wind turbines where you yourself live” (Mósesdóttir 2024:7). This implies that the prioritisation of wind energy over Sami reindeer herding represents a disregard for cultural heritage and environmental sustainability and that this problem is being downplayed by the government.

The Sami's concerns about leaving the wind turbines standing are silenced by the wind power companies. By ruling out this option from the outset, they present this conflict as less problematic than it is. The narrative of wind power companies tends to minimise their ethical obligations and instead focuses primarily on revenue. Furthermore, the power imbalances in the decision-making processes, over which the Sami have little to no influence, are not sufficiently emphasised.

The Sami representation of the problem often focuses on the immediate impact of wind turbines on their traditional way of life. While they are committed to preserving their culture and land use, there is little discussion of possible solutions or alternative approaches to reconcile their concerns with the broader goals of environmental sustainability and the energy transition.

Question 5: What effects are produced by this representation of the “problem”?

The implementation of a new tax on power production with revenues allocated to municipalities and Sami reindeer herders serves to incentivise local support and mitigate potential conflicts. The government aims to promote “the connection between new power and new jobs” (Filbert 2022a) to garner more support for wind energy projects. By framing wind energy as a source of economic opportunity and jobs, the government is trying to appeal to a wider range of stakeholders, including local residents and industry. This increased local support for energy projects is needed by the government following the temporary halt and subsequent restraint on the granting of wind energy licences following the Supreme Court ruling.

The wind companies frame the situation as a balance between benefits and burdens, focusing on operational efficiency and financial considerations. This representation enables them to divert attention from the social and environmental consequences of their projects and instead emphasise the economic advantages they bring. The goal is to reduce resistance and opposition to their projects, making their implementation easier and maximising profitability.

The Sami manage to receive more attention and publicity for their concerns. Negative impacts of wind farms on their traditional way of life are more recognised which is why their reindeer husbandry will be supported by the revenues of the tax on power production. This will be a tangible benefit for the reindeer herders. However, their concerns about the cultural and environmental impacts of wind energy development may still be marginalised in the decision-making process as it seems that the government wants to focus on communication rather than giving the Sami more rights.

The analysis reveals various shifts in the discourses and problem statements following the Supreme Court's judgement on the expansion of wind energy in Norway. While the overarching discourse on the necessity of wind energy for economic growth, job creation and the European energy transition continues, there is a notable development of energy justice as a new dimension of the discourse, pointing to a greater emphasis on local benefits and community dialogue. The Norwegian authorities emphasise the importance of local dialogue and benefits but downplay potential conflicts with Sami reindeer herding. The wind power companies emphasise operational efficiency and financial considerations, while the Sami community continues to express concern about threats to their traditional way of life and sustainable land use. Although the Sami are making their concerns known, their influence on decision-making remains limited, highlighting the ongoing power imbalance. Overall, while there are attempts to address local concerns and promote dialogue, the deeper issues of cultural preservation and environmental sustainability in wind energy development remain unresolved.

5.2.2 Impacts of the wind farms on reindeer herding

The main cause of the policy failure in the Fosen case was the failure of the authorities to accurately assess the detrimental impact of the wind farms in Storheia and Roan on reindeer herding (Mósesdóttir 2024). While these impacts were discussed and assessed by the Court of Appeal prior to the judgement, there is now an increased focus on justifying the positions by both the government and the wind power companies. There is a notable shift towards more explicit discussions about knowledge, rather than it being a subliminal issue. The discursive shift involves a more explicit acknowledgment of different forms of knowledge, particularly the practical and cultural knowledge of the Sami, alongside technical and scientific expertise. The prevailing discourse centres on how to proceed in light of the court's findings to effectively mitigate the impacts to ensure compliance with human rights standards.

Question 1: What's the problem represented to be?

After the Supreme Court ruling, both the Norwegian government and the wind companies are seeking to justify and defend their positions regarding the impacts of the wind farms. They often refer to the knowledge they had at the time of the license decision. OED minister Terje Aasland addresses the government's follow-up on the Fosen case in a statement to the Parliament in March 2023. The government's defence hinges on the assumption that reindeer herding could continue and therefore Article 27 is not violated, thus justifying their assessment of proportionality between the need for the measure and the disadvantages for reindeer husbandry (Ministry of Energy 2023c).

As Aasland emphasises, there is no legal basis for the interpretation that the wind parks must be demolished, and the Supreme Court has not decided whether there are sufficient mitigation measures. Therefore, the ministry must follow up the judgement by making new decisions (Ministry of Energy 2023c).

In his statement, Aasland recognises that reindeer husbandry is an important cultural carrier for Sami identity. He states that it is an industry that creates food production in outlying areas and that everyone, regardless of Sami origins, can be proud of. According to him, it is an integral part of Norway as they want it to be (Ministry of Energy 2023a).

In addition, Aasland emphasises the need for a solid and trusting dialogue with the reindeer herding community in Fosen and stresses the importance of initiating knowledge acquisition in a planned and cooperative manner, where reindeer herding expertise plays a central role. At the same time, the Minister is endeavouring to find solutions that allow wind power initiatives and reindeer herding to co-exist in the region (Ministry of Energy 2023a), reflecting the government's overall aim of creating a balance between development needs and the preservation of culture and the environment.

Aasland also has no plans to change pre-emption as the main rule in expropriation law. He considers it a practically important arrangement that ensures progress in the construction of necessary infrastructure measures. It provides predictability for those who need to make investment decisions (Ministry of Energy 2023a).

Statkraft represents the problem in a similar way. A thorough review of potential impacts on the indigenous people of Fosen that was undertaken as part of the original licence process including extensive dialogue and engagement with Sør-Fosen sijte and Norra-Fosen siida is highlighted to explain the belief that the licences awarded in 2013 did not violate the indigenous rights of the Sami groups (Statkraft n.d.b). Furthermore, Statkraft argues that while an agreement was

reached between the siidas for the construction phase of the projects, no agreement was made for the operation phase. Therefore, the issue of compensation for this phase was brought before the courts for clarification (Statkraft n.d.b). Still, Statkraft claims that “the ruling has come as a big surprise to the developer, which until Oct. 11 was believed that it had given its utmost attention to honoring all affected parties” (Filbert 2021b).

Like the government, the wind companies also advocate for a solution that accommodates both wind farm owners and reindeer herders. A representative from Statkraft underscores their commitment to this issue, stating: “We take this very seriously, and we want a good dialog with the reindeer herders, and to figure out how to improve the license conditions for them so as to enable continued operation while at the same time allowing the reindeer free passage and preserving herders' livelihoods in a way that's defensible for them” (Filbert 2021b). This underlines Statkraft's commitment to working with the reindeer herders to find mutually beneficial solutions that protect both their interests and the operation of the wind farms.

However, the Sami community refuses to participate in the OED's proposed investigation into “whether mitigating measures could be launched to ensure the reindeer herding near the turbines going forward” (Filbert 2022b). Citing the judicial process's determination that no relevant mitigating measures exist, the Nord-Fosen siida asserts that suggestions like keeping reindeer within wind facilities or fenced-in winter herding are irrelevant. Lawyer Knut Helge Hurum, representing a group of herders, advocates for the complete removal of turbines, lamenting the unproductive nature of consultations between the government and herders since the 2021 verdict (Nugent 2023).

The local Sami of Nord-Fosen perceive the process as a "rematch" on settled matters, highlighting the perceived bias favouring OED and wind companies (Filbert 2022b). Furthermore, proposals from Roan Wind to widen reindeer areas and conduct research, which would allow for the turbines to remain standing, are met with criticism from the Nord-Fosen siida. The siida writes that “Roan Vind's proposal comes across as cynical and disrespectful towards the two siidas that have fought a long and hard battle and won in supreme court. In reality, the proposal means that verdict is completely overlooked and that a research project is launched” (Filbert 2022b).

After a long mediation and negotiation process agreements have been reached with both siidas there are still Sami voices who are not content with the outcome. Terje Haugen from Nord-Fosen articulates a sense of reluctance to settle,

reflecting a desire to continue fighting for justice and to win again in the Supreme Court. But he thinks that in the meantime the reindeer herding industry would have perished (Opsal et al. 2024). This statement shows that the impact of wind turbines on reindeer husbandry is too strong to continue for long without mitigation. For the Sami reindeer herders, it is therefore more feasible to accept the compromise of the agreements than to continue fighting for their rights for an indefinite period of time.

Both the government and wind companies defend their decisions based on available knowledge, aiming to balance wind power development and Sami culture. However, the Sami reject proposed investigations into mitigating measures, viewing them as unfruitful and disrespectful. Despite agreements reached after mediation, some Sami voices remain dissatisfied, reflecting a desire to continue fighting for justice against the significant impact of wind turbines on reindeer herding.

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the “problem”?

The government and wind companies both presuppose that Sami reindeer herding and wind energy can co-exist. They also believe that they can solve the problem in a similar way as they planned to do prior to the Supreme Court ruling. Both aim to do this by implementing compensation measures and maintaining the existing wind turbines. The issue is therefore seen as a matter of determining fair compensation for any inconveniences the reindeer herders may experience. Additionally, both parties assume that by working together with the siidas, engaging in dialogue, and negotiating with them, they can find a compromise solution that satisfies all actors.

Conversely, the Sami community presupposes that co-existence between reindeer herding and wind energy is not possible. As the Supreme Court found that no mitigation measures prevent a violation of their rights enshrined in Article 27, the siidas assume that the Supreme Court ruling implies the removal of the wind turbines. However, the judgement did not specify what measures should be taken to prevent an infringement. Additionally, because they emerged victorious in the legal case, the Sami community believes that no compromise should be sought, presupposing that their legal victory entitles them to an uncompromising resolution in their favour. This explains their rejection of proposed investigations into mitigating measures and viewing them as futile and disrespectful to their legal victory. Furthermore, there is an assumption that initiating a new legal case to settle mitigation measures would result in more harm than benefits for reindeer

herding, primarily due to the extended duration of legal proceedings. This assumption suggests a pragmatic consideration of the potential drawbacks of prolonged legal battles and the associated uncertainties and risks involved.

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualised differently?

The government and wind companies portray the licensing process and the authority of the OED in the process as unproblematic. The government argues that the pre-emption rule is crucial for the industry, and while the actors did apologise for the human rights violations, their approach to addressing the issue relies on new bureaucratic procedures and assessments of impacts and mitigation measures to promote co-existence (Mósesdóttir 2024). Mósesdóttir (2024) sees this as the Norwegian state strategically producing ignorance which reflects the doubt creation of Fosen Vind DA regarding knowledge that conflicts with its commercial interests before the Supreme Court ruling. In the reconsideration of the impacts of wind farms, there is also no explicit acknowledgment of the necessity to incorporate the traditional knowledge of Sami herders (Mósesdóttir 2024). This approach potentially perpetuates a cycle of marginalisation and neglect of Sami perspectives in decision-making processes related to land and resource management. Instead of actively engaging in the process of determining mitigation measures or seeking alternative solutions, the herders' representation portrays a passive stance, expecting the resolution to be determined solely by external actors.

There are certain shortcomings in the Sami reindeer herders' representation of the problem, particularly when it comes to their understanding of legal procedures and the implication of the court decision. One shortcoming is their simplistic view of how laws and court rulings work in dealing with their complaints. The Supreme Court found a violation, but it has not provided specific remedies or courses of action. Instead, it assigned responsibility to the government, wind power companies and reindeer herders to determine appropriate measures to remedy the offence. In the Samis view, however, the ruling provided enough information to deduce a demolition of the wind parks. This suggests a potential misunderstanding or oversight on the part of the Sami herders regarding. Nevertheless, it is possible that the Sami could have been able to enforce their demands for the removal of the wind turbines in further court proceedings. However, this was not evident from this ruling alone.

Question 5: What effects are produced by this representation of the “problem”?

By emphasising legal processes and government decisions, this representation reinforces existing power structures that prioritise state and corporate interests over those of marginalised communities like the Sami. It legitimises the authority of the government and wind companies in determining the course of action regarding wind energy development. The government's attempt to shape public understanding by presenting their justifications has the power to influence public perception and opinion on the issue. This, in turn, can impact the level of public support for the solutions and measures proposed by the government, as well as enhance its credibility in the eyes of the wider population.

The Sami exert pressure on decision-makers and stakeholders to reconsider their actions and policies by expressing dissatisfaction and resistance to proposed solutions. The Sami also draw attention to their case and the issues they face, raising awareness among the public about how Indigenous rights are dealt with in Norway. Representatives of the Sami community express frustration and feelings of betrayal as the process to find agreements has taken years and was initiated only protests. This dissatisfaction extends beyond the Sami community, generating concerns among the wider population regarding the government's approach to the transition to green energy and its treatment of Indigenous rights.

In summary, both the Norwegian government and the wind power companies emphasise the justification of their actions by presenting the issue as a question of balancing development needs with the preservation of culture. The government emphasises dialogue and cooperation with reindeer herders to find compromise solutions that suit both parties. The wind power companies are also in favour of cooperation and emphasise that they are trying to take the reindeer herders' concerns into account while maintaining operational efficiency. The Sami community, on the other hand, questions the co-existence of wind energy and reindeer herding and sees the Supreme Court's judgement as an affirmation of the removal of wind turbines. They reject the proposed mitigation measures emphasising their legal victory.

5.2.3 Sami rights violations

The issue of the violation of Sami rights due to the impact of wind farms is exacerbated by differing interpretations of the court judgement and approaches to resolving the human rights violations. This discrepancy in interpretation reflects deeper disagreements over how to address the root causes of the human rights violations. The government and wind power companies prioritise negotiation and mediation, while the Sami community pushes for the immediate removal of the wind farms. The agreements between the wind power companies and the Sami communities emphasise the different points of view: Some see them as a positive

step towards remedying human rights violations, others are dissatisfied and consider them insufficient.

Question 1: What's the problem represented to be?

Despite acknowledging the importance of addressing these violations, the government does not take immediate action following a Supreme Court ruling stating that the impacts of wind farms only pose a long-term threat to Sami reindeer herding (Johansson et al. 2023). Instead, the government opts to find a compensation solution that does not require dismantling turbines. Minister for Petroleum and Energy Terje Aaslund aims to achieve this through “dialog with reindeer herders, permit holders and a thorough reading of case documents” (Heltine 2022). He adds that potential solutions could include “changes to operations, design or number of turbines, and the related facilities, including an investigation of roads, speed limits and turbine transport ” (Heltine 2022). To shape the process and ensure that any decisions comply with human rights standards, the Ministry seeks further input from reindeer owners including relevant mitigation measures and proposals for a study programme and professional environments to carry out the studies (Ministry of Energy 2022). The agreements that have been reached in December 2023 and April 2024 are seen as safeguarding the rights of reindeer herders and ending the human rights violations by Prime Minister Jonas Gahr Støre (Opsal et al. 2024).

Following the Supreme Court ruling, the wind companies emphasise their commitment to respecting human rights and following the UN Guiding Principles on Business and Human Rights (Statkraft n.d.b). The Statkraft Chief Executive expresses in an interview that they “at Statkraft have a philosophy of respecting, of course, all humans, cultures and minorities” (Filbert 2021b). Therefore, Statkraft takes the issue seriously and wants to “figure out how to improve the license conditions for them [the reindeer herders] so as to enable continued operation while at the same time allowing the reindeer free passage and preserving herders' livelihoods in a way that's defensible for them" (Filbert 2021b). This process involves discussions and negotiations with the help of a mediation team aimed at finding mutually acceptable solutions that balance the interests of all stakeholders involved. The recent agreements are also seen as a significant achievement that gives the reindeer owners security for continued operations, also for future generations (Statkraft 2023).

With their problem representations, both the government and the wind companies present themselves as defenders of human rights. They point out that they acted in their best conscience which is why they are surprised of having

violated human rights and want to resolve this issue in cooperation with the affected reindeer herders. They further apologise for the long process for reaching agreements with the siidas and the associated burdens (Ministry of Energy 2023a) but excuse this by attributing it to the complexity and challenging nature of the situation. Overall, the two actors seem satisfied with the agreements and consider the case resolved and the human rights violations to have ceased.

As highlighted before, the Sami community interprets the ruling as requiring the demolition of wind farms (Ministry of Energy 2023c). They argue for the demolition because no other mitigation measures comply with their traditional reindeer herding and they are already using all grazing areas which is why they cannot move to another grazing area. Taking down the turbines is therefore the only measure they see as ending the human rights violations. On the two year anniversary of the Supreme Court ruling Sami protest together with human and environmental rights activists in front of the building in Oslo of Statkraft to express their frustration over the prolonged process and the failure of the government to respect their Indigenous rights (Johansson et al. 2023).

There are conflicting opinions within the Sami community regarding the recent agreements reached between wind companies and the siidas. While the Sami parliament views these agreements as a positive step towards repairing human rights violations, others, like Ella Marie Hætta Isaksen, remain dissatisfied, considering the agreements a reminder of past injustices and flaws in the legal system (Opsal et al. 2024). According to Isaksen the state has forced the Sami to negotiate with the wind power companies even though the siidas won the court case which makes her question the fairness of the process. She further elaborates that the human rights violations will only stop once the siidas are granted new grazing areas as stated in the agreements, but this might take several years (Opsal et al. 2024).

In line with this, there is debate among Saami activists about the government's approach to wind farm construction. Some argue in favour of a policy of halting construction to allow the legal disputes to run their course, as otherwise the rights of the Sami will undoubtedly be violated again in the future. However, OED Minister Vik cites practical reasons against this implementation, as otherwise progress in the development of green energy would be hindered (Nugent 2023).

The Sami community for a long time insists on the demolition of the wind farms as a solution to address the human rights violations. However, the agreements, which provide for additional grazing areas, financial compensation, and a right of veto after the concession period of the wind parks, have led to a shift in this

sentiment. While the government and wind power companies believe the agreements solve the problem, there are differing views in the Sami community, with some pointing to ongoing and potential future violations.

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the “problem”?

The government considers these agreements as a resolution to the issue, reflecting the belief that diplomatic negotiation and consensus-building are essential in addressing complex matters, even if they require time. This approach involves seeking a resolution through mediation, with the involvement of all relevant parties, reflecting confidence in the genuine desire of all actors to participate in the process (Opsal et al. 2024). It is further assumed that to solve this issue careful considerations and comprehensive strategies are required, which reflects a commitment to finding sustainable long-term resolutions rather than quick fixes (Filbert 2021a). The terms of the agreements are seen as sufficiently mitigating the impacts of the wind farms on the Sami reindeer herding practices. Consequently, the government considers the outcome as putting an end to the human rights violations. The satisfaction with the agreements implies a belief that the negotiated outcomes are fair and beneficial.

The wind companies' perspectives on the problem reveal that they assume that the agreements adequately address the concerns of all involved parties. Like the government, the wind companies appear confident in the effectiveness of diplomatic negotiation and mediation processes in resolving complex issues related to wind energy projects.

The Sami problem representation shows that they believe in a different interpretation of the Supreme Court's judgement. They view the judgement as an order to dismantle the wind farms without delay, as they consider the ongoing operation of the turbines to be a violation of their rights. Additionally, the Sami assume that the government and the wind companies are not adequately addressing their concerns, which is why they are frustrated and continue advocating for their rights. Regarding the agreements between the Siidas and the wind power companies, there are differing opinions on whether they represent progress in recognising and addressing Sami rights in relation to renewable energy projects. Some still have reservations about whether the agreements adequately protect their rights and address their concerns.

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualised differently?

Several aspects are left unproblematised in the problem representation by the government and the wind companies. First, the communication and cooperation with the Sami is presented as fruitful and reciprocal, while the Sami community expresses that it feels pressured to negotiate. While the government and wind power companies express regret for the human rights violations, they seem unwilling to seriously consider the demands for demolishing the turbines, which indicates a prioritisation of economic interests and future development over the rights of the Indigenous population. The presentation also lacks a discussion of alternative solutions beyond the agreements reached. Furthermore, the effectiveness of the agreements in addressing the root causes of the human rights violation is questioned by Sami as while the agreements are an important step towards ending the violations for the current case, they have not significantly improved their participation in the licensing processes. Finally, the power dynamics between the government, wind power companies and the Sami community that could significantly influence the outcomes and effectiveness of the agreements are not addressed.

The Sami first refuse an exploration of alternative solutions beyond the immediate demand for demolition of the turbines. While the focus is understandably on rectifying the human rights violations, there is little discussion of potential compromises or alternative approaches that could address both the concerns of the Sami community and the economic interests of the government and wind companies. By having won the court case they claim that the turbines must be demolished, a position that was later rejected by the Supreme Court. This suggests a lack of clarity regarding the legal implications of the court ruling. Moreover, there is little acknowledgment of the practical challenges associated with demolition, such as the need for further potentially lengthy legal proceedings and the logistical complexities involved.

The Sami call for halting construction if there are court cases until an agreement is reached is understandable and would provide more protection against rights violations. However, as OED Minister Vik explained, such an approach could potentially result in significant delays and disruptions to future developments due to the prolonged legal disputes.

Question 5: What effects are produced by this representation of the “problem”?

The government's dealings with the Supreme Court ruling are deepening mistrust in the Sami community (Heltine 2022). The fact that the government did not take action for 500 days until the protests forced a consultation process suggests to the Sami that the government does not take their case seriously. However, the

government presents the outcome as a successful resolution, signalling that justice has been achieved.

The wind companies also present themselves as advocates for Indigenous rights, emphasising their dedication to respecting human rights and Indigenous communities. Through engagement in negotiations and agreements, they strive to show their genuine commitment to addressing the concerns expressed by the Sami community. They too promote the agreements as significant achievements that safeguard the rights of all parties involved.

The representation of the problem by the government and the wind companies leaves the Sami community feeling unheard and marginalised. Their interpretation of the Supreme Court's ruling differs from that of the government and wind companies, leading to frustration over the perceived lack of progress in addressing their rights violations. The Sami's trust in the government is further eroded by what they perceive as a predetermined outcome, where the OED appears to prioritise maintaining the operation of wind farms over respecting Sami rights (Heltine 2022).

The Sami representation of the problem enables a mobilisation of protests and highlights ongoing concerns about the fairness of the licensing process and the government's commitment to Indigenous rights.

Following the Supreme Court ruling, the government and wind power companies emphasise negotiation and consensus building and seek to address the human rights violations through mediation and agreements. They see these agreements as important steps towards solving the problem and emphasise their commitment to respecting the Sami concerns. However, because the siidas interpret the judgement as requiring the immediate removal of the wind farms they express frustration at the perceived lack of progress and the ongoing rights violations. While some in the Sami community view the agreements positively, others remain sceptical and question the fairness of the process and the effectiveness of the outcomes. The portrayal of the problem by the government and wind power companies makes the Sami feel marginalised and unheard which is deepening mistrust and frustration. The resistance and mobilisation of the Sami underscores the ongoing concerns about the fairness of the approval process and the government's commitment to the rights of the Indigenous population.

Table 4: Key points from after the judgement

Theme	The Norwegian government	The wind companies	The Sami siidas
The need for wind energy	<ul style="list-style-type: none"> • economic growth, job creation, and energy transition • shifted emphasis towards local benefits • dialogue with Sami reindeer herding communities is now a priority 	<ul style="list-style-type: none"> • balancing economic considerations with operational realities • minimising financial losses and maintaining energy production efficiency 	<ul style="list-style-type: none"> • threat to cultural heritage and natural environment • incompatibility of wind turbines with reindeer herding and sustainable land use
Impacts of the wind farms on reindeer herding	<ul style="list-style-type: none"> • justification of former discourse as it was based on the belief that reindeer herding could continue • solutions that allow both wind power and reindeer herding to coexist • need for a trusting dialogue with the reindeer herders 	<ul style="list-style-type: none"> • extensive engagement with Sami communities during the licensing process • dialogue with reindeer herders and finding ways to mitigate impacts • continuing wind farm operations 	<ul style="list-style-type: none"> • reject the government's proposed investigation into mitigating measures • only acceptable solution is the removal of wind turbines • any proposed compromise is disrespectful to their legal victory
Sami rights violations	<ul style="list-style-type: none"> • committed to human rights and sustainable solutions • no legal basis for demolishing the wind farms • resolving Sami rights violations through negotiation, mediation, and compensation 	<ul style="list-style-type: none"> • prioritising negotiation and operational adjustments over turbine removal • commitment to finding mutually acceptable solutions • balancing all stakeholders' interests 	<ul style="list-style-type: none"> • demanding immediate dismantling of wind farms • no other mitigation measures are compatible with traditional reindeer herding practices • feeling pressured by the government and companies • disagreement over success of agreements

6. Discussion

The thesis examines the discursive realignments of the Norwegian government, the wind companies and the Sami following the Supreme Court judgement. In this chapter I answer the research questions and present comparisons and conclusions from the results and analysis. While the results and analysis section already address the first research question regarding the initial justifications and opposition to the Fosen project, I will provide a brief overview and summary of it before delving into the second research question about the discursive changes of the actors following the ruling. My third research question integrates the findings from the case-specific analysis with more general considerations on the possibilities of securing legal rights for the Sami in Norway. With this I intend to underline the importance of the Supreme Court's judgement not only for reshaping the discourses of the parties involved, but also for the evolving dynamics of legal recognition and implementation of Indigenous rights in Norway.

6.1 Discursive changes after the Supreme Court judgement

Overall, the discourse after the judgement shifted from a focus on legal compliance and economic interests to a more inclusive and dialogue-oriented approach after the judgement. Initially, the Norwegian government and wind power companies emphasised the legality of the Fosen project and its economic benefits such as job creation, energy production and contribution to national and regional development. However, after the Supreme Court ruling recognising the violation of Sami rights, there was a remarkable shift in the discourse. The discourses now focus more on preserving traditional Sami livelihoods by actively involving the Sami community in discussions and decision-making processes and recognising the value of Indigenous knowledge. Building trust, promoting open communication and finding mutually acceptable solutions are central to these new discourses.

These discursive realignments happened because the question of the impact of the Fosen project on reindeer husbandry and the violation of the rights in Article

27 of the ICCPR was clarified with the judgement. With the judgement providing a clear stance on these matters, there is no room for subjective interpretation. Therefore, the discourses after the judgement focus more on addressing the human rights violations and which measures are appropriate and feasible. In addition, the media attention is very high after the Supreme Court judgement and the protests and the media discussions include more interviews with, or articles written by the Sami and their supporters, highlighting their perspectives and concerns regarding wind energy development (Mósesdóttir 2024). This has also led to an increased focus on Sami rights by the government and the wind companies who repeatedly emphasise their commitment to respecting human rights and engaging in dialogue with the affected communities.

Before the judgement, the government and the wind companies primarily argued that their actions complied with Norwegian law because of the high threshold for a violation of Article 27 of the ICCPR. They emphasised considerations for the green shift and economic development for which the benefits would outweigh the disadvantages for Sami reindeer herding. The government's initial attempts to dismiss the case through formal objections underscored a reluctance to address the underlying human rights issues. Additionally, both the government and the wind companies tried to downplay the impacts on Sami reindeer herding by strategic ignorance and discreditation of their traditional knowledge. The insistence that reindeer herding, and wind parks can co-exist and the proposed monetary compensation for artificial winter feeding as a remediation measure was criticised by the Sami and scholars for disrespecting their culture and reducing reindeer herding to a business.

The Supreme Court's judgement became a defining moment that significantly strengthened the recognition of the rights of the Sami. The judgement emphasises the importance of upholding the rights of Indigenous peoples, thereby changing the discourses on wind energy development to include a deeper awareness of the Sami perspective. As a result, both the government and the wind energy companies emphasise their commitment to respecting human rights and their willingness to cooperate with the affected siidas. Their arguments shift towards negotiation and mediation to address the human rights violations identified by the court. However, the actors still did not change their narrative about the co-existence of wind energy developments and Sami reindeer herding but only considered measures to solve the human rights violations that did not include dismantling the turbines. This suggests that a balancing between economic interests and Sami rights is continuing, attempting to mitigate the impact while at the same time pushing ahead with energy development. Further, the significant negative impacts are mainly acknowledged for the Fosen case only but not in general and the government is cautious about extending the impact of the ruling to other conflicts (Ministry of Energy 2023c).

Although there has been a notable shift in the discourse towards recognising and considering the rights of Sami reindeer herders in relation to wind energy developments, there are still certain aspects that are under-discussed or overlooked. One key area is the underlying power dynamics that influence decision-making processes and shape the outcomes of negotiations between the government, wind energy companies and the Sami community. These power dynamics have a significant impact on the extent to which Sami rights are truly protected. This is evident in the mediation process and the resulting agreements, where the Sami have often felt pressured rather than being able to participate willingly.

The Sami discourse shows a deep-seated scepticism and mistrust of the government and the wind energy companies, which, according to the Sami, prioritise economic interests over the rights of the Indigenous population. In general, not much has changed in their argumentation, as the Supreme Court judgement has confirmed their view and their perspective on the conflict with the Fosen project. The reindeer herders feel burdened by the societal push for a green transition, as it disproportionately affects their traditional way of life. In the court and in interviews Sami representatives highlight the importance of their connection to the land and their understanding that reindeer herding is an identity. The Sami further argue that the construction of the Fosen wind park should have been halted until after the court ruling, and they express dissatisfaction with the financial compensation offered as inadequate to address the damage done.

Despite the efforts of the government and the wind companies to underline their commitment to respecting human rights after the Supreme Court judgement and engaging in dialogue, many within the Sami community remain unconvinced and continue to advocate for their rights through protests and public demonstrations. In interviews, reindeer herders complain that the construction of the wind farms should not have been authorised and therefore demand that the turbines be demolished.

Moreover, the discourse surrounding the Fosen project has expanded beyond its immediate impacts on the Sami community to encompass broader critiques of Norway's green transition and the energy consumption patterns of other societies. In addition, there are calls within the Sami community for fundamental changes to the licensing process to halt the construction when there are legal conflicts in order to prevent future violations of their rights. Some reindeer herders and their supporters argue that Norway's dedication to sustainability and green energy should not be achieved by sacrificing the rights and livelihoods of marginalised

communities, such as the Sami. Thus, the discussion surrounding the Fosen project not only encompasses local concerns about land use and Indigenous rights but also raises broader questions about the ethics and consequences of global initiatives to shift towards renewable energy sources.

After the ruling of the Supreme Court, the discourses surrounding the Fosen project underwent a significant shift, centring more around the perspective of the Sami community. Beforehand, the discussion primarily revolved around legal compliance and economic interests, often neglecting the concerns of the Sami reindeer herders. With the Supreme Court's decision, the project's impact on reindeer herding and the violation of the rights of the Sami are brought to the forefront, resulting in a more inclusive and dialogue-driven approach, however, without addressing the underlying structural inequalities.

The Supreme Court's judgement also brought about a significant shift in how the legitimacy of knowledge sources is perceived. Before the ruling, the assessments given by Fosen Vind DA took precedence over the concerns and traditional knowledge of the Sami community. However, the Supreme Court's decision elevated the status of reindeer husbandry experts and acknowledged the importance of considering a blend of scientific and traditional knowledge in decision-making (Johansson et al. 2023).

Despite an overall more inclusive approach by the government and wind companies, there are still fundamental disagreements and challenges within the discourses. Regarding the follow-up of the case and the outcomes of the agreements, Norwegian authorities, the wind companies, and the Sami parliament express satisfaction, while some Sami remain dissatisfied. This highlights the need for ongoing efforts to address the underlying issues and concerns that have led to this discrepancy in the perceived justice of the Supreme Court ruling and the agreements.

6.2 Insights into the possibilities of securing legal rights for the Sami

Under Norwegian law, the rights of the Sami people are explicitly protected in the constitution, with the constitution mandating the government to promote the preservation and development of the Sami language, culture, and way of life. Since its incorporation into Norwegian law in 1999, Article 27 has taken precedence over other legislations and has been used by Sámi communities to assert collective rights, particularly in defense of traditional livelihoods such as reindeer herding,

against development projects that threaten their culture and way of life (Cambou 2023).

However, Sami reindeer herders don't have much trust in the Norwegian state to protect their rights. They feel that Norway's promises to protect the Southern Sami as an Indigenous community are essentially meaningless, and voice apprehension about the wind turbines being the initial step towards the demise of reindeer herding on Fosen and the loss of Sami culture in the region. This attitude is in stark contrast to the legal obligations and international commitments that exist in Norway to protect the rights of indigenous peoples and to preserve cultural heritage.

The Fosen case is a vivid example of the complexity and discrepancy between the legal framework and the reality of life for the Sami. The intervention of the OED in the case has highlighted the imbalance of power, with the involvement of the state in favor of the interests of the wind power companies being perceived as a considerable impairment of the rights of the Sami rather than as protection, as should be its role (Johansson et al. 2023). The failure by Fosen Vind DA to engage in meaningful negotiations or offer fair compensation to the reindeer herders affected by the expropriation further exacerbated tensions and emphasised the asymmetric power dynamics between the parties (Holstad 2018).

The public discourse and activism most prominently in the protests in Oslo are significant in advancing Indigenous rights agendas. The increased media attention and public scrutiny following the Supreme Court judgement indicate a growing awareness and support for Sami rights among the broader population. In addition, the negotiations for the agreements were only initiated after the protests over the government's inaction. This suggests that public pressure and advocacy efforts can play a crucial role in influencing policy decisions and securing legal protections for Sami in Norway.

After the Supreme Court ruling Sami rights and their protection became an important topic in the discourses of the government and the wind companies. Previously, other interests like the green energy transition and economic development were used to balance against and downplay the impacts on Sami reindeer herding. However, the ruling emphasises the need to prioritise Indigenous rights, resulting in greater focus and dedication to protecting them. This shift towards a more inclusive and dialogue-based approach signifies an acknowledgment of the significance of Indigenous perspectives and knowledge in the decision-making process. By actively engaging the Sami community in

discussions and decision-making, there is a higher probability of formulating policies and implementing practices that honour and safeguard their rights.

However, despite changes in the discourse no immediate action was taken by the government. The ruling that the concessions and expropriation permits for two of the wind farms at Fosen violate the Sami reindeer herders' right to cultural practice and are therefore invalid indicates that the licensing system is flawed. But the OED rejected to make license law interventions and rather aimed to update the impact assessments related to reindeer husbandry and include new measures to reduce the impacts (Statkraft 2021). This would allow for a new license application and expropriation permit that ensures that Sami rights are respected.

The reliance on industry-led Environmental Impact Assessments perpetuates a lack of trust among Sami reindeer herders, who are marginalised from decision-making processes that affect their livelihoods and culture. This exclusion reflects broader power imbalances within state governance structures and market relations, which prioritise capitalist and colonial rationalities over Indigenous rights (Fjellheim 2023a). The Nordic states' ultimate authority in decisions over resource extraction further exacerbates this lack of recognition of Sami ancestral lands and waters, undermining efforts towards achieving genuine self-determination for Sami communities (Fjellheim 2023a). Therefore, Fjellheim (2023a:160) urges “for an integral approach, including assessments of social impacts, such as on economy, health, well-being, and Saami culture”. The Sami Parliament's call for an independent investigation into the Fosen case and its follow-up, which has been taken up by Nord-Fosen siida, emphasises the need for accountability and learning from past mistakes in order to prevent future violations of Sami rights (Opsal et al. 2024).

The Supreme Court's ruling recognising the violation of Sami rights underlines the effectiveness of legal means to hold authorities and companies accountable for actions that violate the rights of indigenous peoples. It emphasises the importance of legal recognition and enforcement mechanisms for the protection of Indigenous peoples' rights.

Scholars have pointed out notable advancements in the legal interpretation of Article 27 of the ICCPR (Ravna 2022; Cambou 2023; Mósesdóttir 2024). The Supreme Court's decision was a crucial milestone, as it acknowledged, for the first time, a violation of the cultural rights of the Sami people as outlined in Article 27. Prior to this, there were no established interpretations of this article in Norway. As a result, these developments offer a more defined framework for Sami individuals and communities to assert their rights and claim protection.

The state and wind companies have frequently invoked the transition to green energy as justification for balancing out the Sami's right to self-determination. As stated in the Supreme Court ruling "Article 27 ICCPR does not allow for a balancing of interests. As also mentioned, this may be different in the event of conflict between different basic rights. The right to a good and healthy environment may be relevant in such a context. However, no collision between basic rights has been demonstrated in the case at hand" (Rt. 2021:25 para.143). This is because also other areas were considered for the wind project that would have been less impacting on the siidas. The court ruling underscores that the government cannot prioritise economic development over the cultural rights of a minority group, irrespective of its broad societal significance or democratic backing (Cambou 2023). Only in cases where there is a conflict with other fundamental rights a balancing of those is justified.

The ruling by the Supreme Court has further clarified in which way the denial of the enjoyment of a culture should be interpreted. According to the ruling, even if there is not a complete denial of rights, "also interference that does not constitute a total denial may violate the right to cultural enjoyment" (Rt. 2021:19 para.111). However, any interference "must be 'considerable' or 'significant' in order to breach the threshold for violation" (Cambou 2023:58). Further, the ruling clarifies that also previous interventions must be considered, as it is the overall impact that determines whether a violation has occurred. With this the Fosen judgement emphasises the importance of assessing the cumulative negative effects, which applies to determining whether an intervention significantly disadvantages reindeer husbandry (Ravna 2022).

Moreover, the judgement established that the right to culture can be assessed with the economic profitability because "reindeer husbandry is a form of cultural practice while at the same time a way of making a living" (Cambou 2023:60). The tangible impact of a violation on the cultural rights of Sami communities can thus be shown by the decrease in income resulting from the reduction in the reindeer population caused by the loss or deterioration of grazing land (Cambou 2023). Not only must the profitability of reindeer herding be ensured, but also its traditional aspects. In this context Ravna (2022:173) states that "mitigation measures that entail operational reorganisation that deviates significantly from traditional, nomadic reindeer husbandry, such as permanent periods of feeding, can thus not make a measure that is offensive, legal. The same applies to measures that in other ways are incompatible with the reindeer owners' right to practice their culture, such as forced mechanical animal transport instead of traditional relocation." The Supreme Court's dissent with the Court of Appeal's ruling

highlights the inadequate consideration that was given to the traditional element of Sami reindeer herding. Following the ruling, it is affirmed that any assessment of the impact of policy interventions in Sami territories must consider both their cumulative effects and the economic losses incurred (Mósesdóttir 2024).

The consultation of Indigenous communities before making any decisions in matters of particular importance to them is a customary obligation in several human rights instruments (Cambou 2023). Fosen Vind DA argued that the court must place significant weight on their consultation and Sami involvement in the decision-making process when assessing a potential violation (Rt. 2021:10 para.52,53). Although the Supreme Court recognises the importance of consultation, it also emphasises that the views of the minority do not have to influence the decision-making process (Ravna 2022). The crucial recognition regarding consultation is however that “if the consequences of the interference are sufficiently serious, consultation does not prevent violation” (Rt. 2021:22 para.121). This means that the developers or the Norwegian state cannot prevent a violation by consultation alone.

Lastly, the Supreme Court ruling determined that siidas can “act as a party and invoke individual reindeer herders’ rights under Article 27 on their behalf” (Cambou 2023:58). According to the ruling, “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language” (Rt. 2021:17 para.98). This implies that both the individuals and the groups as a whole are protected by Article 27. As the siidas are holders of collective rights, they must of course also be able to act in cases of intervention and be part of the consultation process (Ravna 2022).

Overall, the Fosen case is a reminder of the ongoing struggle for the rights of Indigenous peoples within legal systems that often prioritise economic development over cultural preservation. The discussion shows that public discourse, activism and mobilisation in form of protests can put pressure on governmental bodies and cause them to take action. Further, the discursive realignments themselves were an important step for an improved collaboration with the Sami which can hopefully reduce the risks of rights violations. But most importantly there has been important legal progress which is not only meaningful for the Sami peoples but also other Indigenous communities worldwide. The interpretation of Article 27 of the ICCPR, as more precisely defined by the Supreme Court judgement, sets a precedent for the protection of cultural rights within the framework of international human rights law. The judgement has made it easier

to assert the rights of the Sami in legal proceedings, although it would be preferable to prevent such cases altogether, as it would benefit all parties involved. To achieve this, further efforts to uphold Sami rights by promoting meaningful consultation and addressing power imbalances in decision-making processes are urgently needed.

6.3 Insights of Fosen into sustainability transitions

Sustainability transitions encompass broad and systemic shifts aimed at addressing interlinked natural, social, and economic challenges. According to Markard et al. (2012), these transitions involve changes across various sectors, including energy, transportation, and agriculture. As they are driven by the recognition of the structural unsustainability of current societal natural conditions (Gottschlich et al. 2022), their objective is to transition towards more sustainable modes of production and consumption (Markard et al. 2012). By helping to preserve natural ecosystems and reduce environmental degradation, sustainability transitions are essential for ensuring human well-being also in the future. This notion aligns with the Brundtland Report that introduced the concept of sustainable development defined as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs” (Brundtland 1987).

The transition to green energy is a crucial part of the broader sustainability transition. Its primary objective is to move away from using fossil fuels and towards the utilisation of renewable energy sources. This shift is critical in reducing greenhouse gas emissions, combating climate change, and ensuring energy security. Due to the necessity of addressing climate change, land conflicts are anticipated to increase in Norway (Allard 2023). This is because wind farms and other measures often require significant amounts of land. These conflicts are shaped by power imbalances, as governments and large energy corporations typically possess more resources and influence compared to local communities. Consequently, decision-making processes often prioritise economic and environmental goals, potentially resulting in the “displacement and marginalisation of Indigenous communities that have been sustainably managing their lands and resources for generations.” (Allard 2023:184).

The Fosen project is a part of the green transition and has received support from the Norwegian government because it helps to meet Norway's renewable energy targets. However, as shown in this thesis, the green transition is not without controversy, as it results in unequal distribution of burdens. Specifically, renewable energy initiatives clash with the rights of Indigenous peoples and their

traditional livelihoods. This raises critical questions about the balance between renewable energy development and the rights and livelihoods of local and Indigenous communities. Therefore, it is important to pose the question how and in which direction societies can, should or must change (Gottschlich et al. 2022).

Here, discourses play a crucial role in “shaping social imagination, motivations, and the debate around development, sustainability and society’s future” (Feola & Jaworska 2019:1643) and opening ways for previously unimaginable alternatives. In relation to the Fosen project, discourses on renewable energies, Indigenous rights and environmental justice have had a decisive influence on the course and outcome of the project. The Norwegian government and wind power companies used the discourse on the green transition to legitimise their actions and gain support for the Fosen project by presenting it as an implementation of sustainability measures. However, the Sami people have questioned this one-dimensional understanding of sustainability, emphasising the importance of incorporating social aspects. While a green transition is essential, according to the Sami, it must also be fair and just and not rely on perpetuating colonial practices (Allard 2023). It has become clear that a transition must also take place in this regard, as the Norwegian government has so far failed to adequately incorporate the legal protection of the Sami in its pursuit of their green agenda (Cambou & Ravna 2023).

This reflects a fundamental problem of the prevailing transformation discourse, namely the focus on technological solutions, whereas most socio-ecological challenges result from the overexploitation of resources and labour due to the economic growth imperative of capitalism (Gottschlich et al. 2022). This is not to say that technological solutions, such as renewable energies, are not essential elements of a sustainable transition in the face of climate change, rather, that the strategy of portraying them as the only necessary measure and dismissing other approaches is problematic. It can lead to a simplified problem representation where social aspects are not sufficiently regarded, and possible far-reaching changes are overlooked.

The Supreme Court ruling on the Fosen case is in line with these concerns by highlighting this significant flaw in sustainable transition discourses of often overlooking the human rights of minorities and Indigenous groups (Cambou 2023). Therefore, the ruling is seen as a “valuable contribution for developing the interpretation of human rights to a healthy environment and the discourse on just sustainabilities” by Cambou (2023:66). The court also emphasised that the pursuit of environmental goals that are in the interest of society, such as promoting clean energy through wind farms, must not override the fundamental rights of Indigenous peoples. This principle reflects a broader acknowledgment that the

ends, no matter how beneficial for the environment, should not justify means that disregard or undermine Indigenous cultural practices (Cambou 2023). Moreover, this decision indicates that a rethinking of sustainability challenges is occurring in Norway.

Beyond that, the conflict surrounding the Fosen project has drawn attention to the role of Indigenous communities in sustainable development. They are no longer solely portrayed as victims of green transition efforts, but as vital contributors and stakeholders whose traditional knowledge and practices are essential for genuine sustainability (Allard 2023). The Sami's extensive knowledge of their local ecosystems, acquired through generations of close interaction with nature, makes their sustainable practices a valuable example for preserving biodiversity and ecological balance. Because the Supreme Court ruling is based on a combination of traditional and scientific knowledge, it underscores the importance of integrating diverse perspectives and knowledge systems in environmental decision-making processes. This contrasts with the discourses of the Norwegian government and the wind companies, which have attempted to marginalise Sami knowledge.

The shift in how sustainability challenges are being addressed in Northern countries primarily occurs within the judicial system (Cambou & Ravna 2023). This change is critical as it shapes the interpretation of environmental rights and supports the discourse on equitable sustainability practices. It also promotes environmental justice and the equitable distribution of benefits and burdens related with sustainability transitions. However, despite legal advancements driven by cases like the Fosen case, the implementation of court rulings remains a contentious issue mainly handled by the state. In the Fosen case, the state remained inactive for a long time after court judgement, leading to public protests and challenges, before the negotiation process even began. This reluctance to act promptly may be due to conflicting interests, such as economic priorities and political considerations, which sometimes overshadow the obligation to respect and protect the rights of Indigenous peoples. Urgency is needed to reconcile the legal protections provided to Indigenous communities with the practical actions required to uphold these rights. This urgency should be reflected not only in the follow-up of court judgements, but also in government action to prevent rights violations. The state's role as a decision-maker in large-scale development projects makes its commitment to implementing legal protections for Indigenous communities crucial. The state does not only set the policies that determine the implementation of these projects, but also exercises power in the authorisation, regulation and financing of these projects. This power extends to key decisions that can have a profound impact on Indigenous communities.

In conclusion, while legal advancements in sustainability and Indigenous rights are significant steps forward, their ultimate success depends on robust implementation. Addressing the gap between legal protection and implementation is essential for ensuring genuine environmental justice and equitable treatment of Indigenous communities in the context of sustainability transitions.

7. Conclusion

This thesis investigated the problem representations of the various actors involved in the Fosen case, their discursive realignments after the Supreme Court judgement and the effects of the realignments on securing the legal rights of the Sami in Norway. The aim of the thesis was to analyse discursive realignments following the Supreme Court decision on Fosen Vind to understand how different actors adjusted their positions on wind energy and Indigenous rights. Drawing on Bacchi's WPR approach it was possible to identify the underlying assumptions, silences and produced effects of the problem representations of the Norwegian government, the wind companies, and the Sami siidas. Through an examination of the discourses before and after the ruling, the thesis aimed to shed light on how various stakeholders justified or opposed the Fosen project, how their narratives changed post-ruling, and what these realignments reveal about the prospects for securing legal rights for the Sami in Norway.

Before the Supreme Court ruling, three distinct perspectives emerged regarding wind energy development in Sami areas. The discourses of both the wind companies and the government revolve around economic justification, legal compliance, and mitigation strategies while downplaying negative impacts to justify the Fosen project. As mitigation measures financial compensation is seen as sufficient. The government emphasises the necessity of wind energy for addressing climate change on a broader scale while downplaying its negative impact on reindeer herding. The wind companies, on the other hand, focus their arguments on the local benefits of wind projects. In contrast, the Sami oppose the Fosen project primarily by highlighting the negative impacts it would have on their traditional way of life, particularly reindeer herding, and by asserting their rights as Indigenous peoples. Their argumentation is mainly focused on the local impacts of wind farms on reindeer herding and the critique of proposed financial solutions. These representations reflect deep-seated conflicts between economic interests, environmental concerns, and Indigenous rights.

Following the Supreme Court ruling, there are notable realignments in the discourses surrounding the Fosen project and Sami rights. The government shifts its focus towards the importance of addressing the Sami rights violations but

instead of taking immediate action, it relies on negotiation and mediation. In addition, the government emphasises local benefits and dialogue with affected communities, aiming to promote future wind energy projects despite Sami concerns. The wind companies continue to prioritise financial considerations but increase their promotion of collaboration with Indigenous groups.

While the government and wind companies have made changes in their discourse following the ruling, indicating a greater recognition of the impact on reindeer herding, their focus on negotiation and mediation suggests that economic concerns remain the priority. The Sami community views the ruling as requiring the immediate removal of wind farms to put an end to human rights violations, expressing their frustration with the perceived lack of progress and distrust in government actions. The agreements that have been reached are viewed as a significant success in upholding rights, but they also highlight the ongoing tensions and different interpretations of the Supreme Court judgement within the Sami community. Concerns about the protection of Sami rights and the fairness of decision-making processes continue to persist.

The Fosen case highlights the complex relationship between legal frameworks, social discourse and the rights of Indigenous peoples, particularly in relation to the Sami community in Norway. The significant discrepancy between the legal framework and its implementation reveals systemic obstacles to the protection of Sami rights. Although legal measures such as the recent Supreme Court judgement represent progress, their effectiveness is hampered by time constraints and excessive costs, often disadvantaging affected communities. The case emphasises the crucial role of public discourse and activism in making Indigenous voices heard and pressuring for change. It also underlines the importance of recognising Indigenous knowledge and enabling meaningful participation to mitigate the risk of rights violations. The lack of consent and veto rights of the Sami in the development of wind turbines is an example of the ongoing challenges that they face in preserving their lands and livelihoods against the imperative of industrial progress and the green energy transition.

Examining how various actors support or oppose the development of the Fosen project provided valuable insights into the conflicting discourses surrounding economic growth, environmental conservation, and Indigenous rights. The analysis of the discursive realignments that occurred after the Supreme Court judgement on the Fosen Vind project revealed the intricate interplay of interests, values, and power dynamics related to Indigenous rights in Norway.

To complement the findings of this thesis, future research could focus on qualitative research methods, such as interviews and focus groups with affected communities and stakeholders. This could provide nuanced insights into the lived experiences and perceptions of those directly impacted by renewable energy projects and associated policy decisions. Further, comparative analyses with similar cases in other countries or regions could shed light on the effectiveness of different approaches to considering Indigenous peoples' rights in renewable energy development.

8. References

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Popular science summary

Norway's commitment to reducing its climate impact has led to the construction of wind farms with the aim of reducing carbon emissions in the energy sector. However, these projects have raised significant concerns among the Indigenous Sami population, particularly with regard to their traditional reindeer herding. This paper examines the discourses surrounding Norway's largest onshore wind development, the Fosen project, which was built on reindeer grazing areas. A lawsuit by the affected Sami communities led to a Supreme Court judgement in 2021, which found that the wind project violated their Indigenous rights.

The discourses of the government and the wind companies before the Supreme Court ruling promoted economic benefits such as job creation, new infrastructure and profits from selling the produced electricity and downplayed the impacts of the wind farms on Sami reindeer herding. These actors also claimed that they did not violate Sami rights and proposed financial compensation. The Sami opposed this view because they believed that the negative effects on reindeer husbandry were so harmful that they denied the Sami the right to their culture. After the ruling, the discourses of the government and the wind companies changed in that they now emphasise the importance of upkeeping Sami rights and their willingness in finding solutions through dialogue and negotiations that are mutually acceptable. This change reflects a broader recognition of the need to preserve cultural practices. The Sami initially called for a removal of the wind turbines and rejected proposed negotiations as they saw all other mitigation measures as insufficient and failing to address the fundamental issue of their disrupted way of life. Recently, however, they agreed to the continued operation of the wind farms in exchange for financial compensation and new grazing areas. These developments indicate a slow but crucial shift towards more inclusive and respectful approaches when it comes to development projects on Indigenous land but the emphasis on negotiation suggests that economic concerns still take priority. This thesis shows that recognising Indigenous knowledge and ensuring meaningful participation are essential to prevent rights violations. Public discourse and activism play a crucial role in amplifying Indigenous voices and driving change. But ultimately, only legal means can enforce the protection of Indigenous rights.

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Appendix

Appendix 1: Map of Sápmi (Samicultures n.d.)



Appendix 2: Overview of the individual wind farms of Fosen Vind (Fosen Vind n.d.)

Wind Farm	Installed capacity	Number of wind turbines	Owner	Operator
Storheia	288 MW	80	Fosen Vind (Statkraft, 52.1%, Nordic Wind Power, 40%, Aneo, 7.9%)	Statkraft
Roan	256 MW	71	Roan Vind (Aneo Roan Vind Holding 60%, Nordic Wind Power 40%)	Aneo
Geitfjellet	181 MW	43	Fosen Vind	Statkraft
Harbaksfjellet	126 MW	30	Fosen Vind	Statkraft
Kvenndalsfjellet	113 MW	27	Fosen Vind	Statkraft
Hitra II	94 MW	26	Fosen Vind	Statkraft

Appendix 3: Timetable of the Fosen Vind project

Date	Process
March 2008	License application
June 2010	License decision
2011	Appeals to OED
2013	Appeal decision for granting licenses by OED
2014	Legal complaints by reindeer herders
April 2016	Start of construction
2018-2020	Commission of the wind farms
October 2021	Fosen Supreme Court judgement
February 2023	Protests in Oslo for the 500 day anniversary of the court verdict
December 2023	Agreement between Sør-Fosen sijte and Fosen Vind DA
March 2024	Agreement between Norra Fosen siida and Roan Vind DA

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