

Mr. Francisco Calí Tzay

Mandate of the Special Rapporteur on the rights of indigenous peoples,
OHCHR-UNOG, 8-14 Avenue de la Paix,
1211 Geneve 10,
Switzerland
indigenous@ohchr.org



Oslo 6.9.2020

The indigenous Sami people in Norway is supposed to be protected through the [Constitution of Norway § 108](#). The Constitution, laws and the ILO Convention No. 169 that are meant to protect the indigenous Sami people in Norway and their way of life, are now violated.

In addition to the Norwegian government on climate and environment, just 11,5 percent of Norway is still wilderness-like nature, meaning nature situated more than 5 kilometres from any heavy technical interventions. The Norwegian government has given its approval to build some of the biggest Wind energy turbine industrial constructions, in such areas, situated in Sami reindeer herding areas.

Wind industry companies from all over Europe and the world, and with faceless owners through international investment funds, like Blackrock (a subsidiary situated in Cayman Islands), which refused to tell the Norwegian Television channel TV2 who was the shareowners of the Tellnes wind industrial plant that is meant to serve energy to Google for the first 12 years, have got free access to the last of the Norwegian wilderness-like nature. That includes the areas where the indigenous Sami people live and have their way of life.

According to the ILO Convention No. 169 ratified by a parliament of Norway's decision on the 20th of June 1990, and entered into force on September 5th 1991, C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169) article 2, the **government shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.**

In spite of this, the Norwegian government is pulling back, letting multinational companies get free access to the Norwegian indigenous Sami people's habitats to exploit their areas in such a degree it will never be possible for them to live out their social and cultural identity, their customs and traditions in this areas again, also violating the ILO convention article 7.

Unfortunately, some habitats are already lost, and destroyed, by the wind energy industry, reducing the Sami indigenous people's habitats. In Kvaløya up north, with 67 forced wind turbines, the drinking water is now poisoned <https://www.nordlys.no/drikkevann-pa-kvaloya-forurenses/s/5-34-1299808>, despite the governments reassurance that this would not happen. Kvaløya is a reindeer grazing district, with up to 600 animals, drinking from the

Island water. In the event of loss of some areas, the entire basis for reindeer herding may be threatened.

Still more areas are planned for, like the huge area Davvi, in Finnmarksvidda, a case pending before the Norwegian authorities. That is Norway's second largest non-invasive area, a unique area with the mountain *Rásttigáisá* that is considered sacred by the indigenous Sami people. The area contains several reindeer grazing districts, with Sami cultural landscape with outfields, migration routes and hiking routes between the Tanadalen valley and the Laksefjord, the watercourse field to Storelva and Tana.

In another case, on the area Fosen, Storeheia Wind industry, a complaint was sent to The Committee on the Elimination of Racial Discrimination (CERD), that is the body of [independent experts](#) who monitors implementation of the [Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD) by its State parties. CERD then demanded that the development of the wind farm at Storheia in Fosen should be temporarily halted, after 21 reindeer herding operators in the Southern group in Fosen reindeer grazing district / Fovsen Njaarke complained about the development at Storheia for the committee. The complainants said that the wind power license violates international law. The request from CERD was denied by the government of Norway, represented by the oil and energy minister Kjell-Børge Freiberg, who pointed out that this was not legally binding for Norway, and was a case between the Sami people and the wind energy industry construction developer. ICERD, adopted by the UN General Assembly in 1965 and entered into force in 1969, is legally binding for Norway, that ratified the convention in 1970. The convention is incorporated into Norwegian law through [the Equality and Discrimination Act](#), from the 16th of June 207 no. 51, that states in [§ 5](#).FN's Racial Discrimination Convention that; "The United Nations International Convention of 21 December 1965 on the Elimination of All Forms of Racial Discrimination applies as Norwegian law." In [§ 4](#).Irrevocability, it says that; "The provisions of this Act, and regulations issued pursuant to the Act, may not be deviated from by agreement."

Reindeer herding was said to be a weighty consideration, during the licensing of Storheia. Despite this, the Norwegian directorate of energy (NVE)'s decision of 7 June 2010 on a license to Storheia wind energy industry was confirmed by the Ministry of Petroleum and Energy (OED)'s decision of 26 August 2013. [The UN Convention on Civil and Political Rights \(ICCPR\) Art 27](#), was not found to be violated. There was not an agreement according to the Sami people. The Sami people also lost their case in the Norwegian courts of justice.

Fosen Vind DA and Statnett met reindeer grazing districts from Fosen, Vestre- og Østre Namdal. Fosen Vind DA builds Europe's largest wind power plant to date, spread across Hitra, Snillfjord and the Fosen peninsula in Trøndelag. 278 wind turbines were supposed to be operational by 2020. According to reindeer herders, the most serious development is in the midst of the important winter grazing at Storheia and Roan, as well as the power line to be stretched north. Already during the impact assessment in 2008, the reindeer herders expressed concern and doubt whether the reindeer herding district would be able to survive the intervention in the reindeer grazing land. For the Sami, reindeer herding is a cultural pillar and much more than "just a business". For Statnett and Fosen Vind DA, it seemed,

according to lawyer Johan Fredrik Remmen's final proceeding, that the most important was to minimize the costs of a project that already cost NOK 11 billion.

Fosen vind DA is owned by Statkraft (more than 50 per cent), Nordic Wind Power and Trøndenergi. Nordic Wind Power is part-owned by Swiss Credit Suisse. Trønder Energy is owned by the Trøndelags municipalities. In addition, Statnett is responsible for the problematic power line. This means that the reindeer owners faced an alliance between state capital, finance capital and Norwegian local democracy in court. They were asked what was most indispensable between the winter and summer pastures, intending to build more on the "less indispensable" when it actually is prohibited blocking the entrance between the two, that is both necessary to feed the animals sufficiently.

Today Fosen vind DA power plant is the largest in Norway, and one of the largest in Europe [<https://www.power-technology.com/projects/fosen-vind-power-project/>], Roan, Storheia, Geitfjellet, Harbaksfjellet, Hitra 2, and Kvenndalsfjellet wind energy industry installations projects. Fosen Vind is a joint project owned by Statkraft, Trønderenergi and Credit Suisse.

It is known that for every wind turbine, 800 meters of road is needed. Its more than 241 kilometres of construction roads in untouched nature, in the mountains of Trøndelag. In addition, comes line development. Wind power development take place in Åfjord in Sør-Trøndelag. The wind turbines came by ship from the Vestas factory in Esbjerg, Denmark, and it took 568 trailer loads to get all the turbines from the quay and up the mountain, not very climate friendly. In addition, 90 trailers with crane parts and 40 trucks with other equipment. For example, Roan wind farm from Fosen counts 71 turbines, with the height of more than 200 metres, with a total of 70 kilometres of roads. The wind farm, was until Storeheia Norway's largest [<https://www.tu.no/artikler/norges-storste-vindpark-apnes-i-dag/465862>]. The Fosen wind industry areas affect a herd of up to 2100 reindeers in several herds, privately owned by Southern Sami indigenous people.

At the same time, there are other wind power projects at Fosen that are run by other companies, like Bessakerfjellet.

It was a national framework plan, involving many areas, and about 22 reindeer husbandry areas. There was a hearing in the autumn 2019, with [more than 5,000 responses against the wind energy industry](#). The government then just skipped the plan, and now there seems to be a practice of "no limits" on how much wind industry that can be built. If the plans are now completed, there will be more wind energy industry than any other industry, development, roads, cottages and housing all together across the country. This would also be a violation of [the Constitution § 112](#), as it could remove severe amounts of nature, either way.

The Ministry of Petroleum and Energy (OED) found it sufficient that that Southern Group and the Sami Parliament were consulted both in NVE's concession treatment and in the OED's complaint processing, offered agreements and terms regarding compensation and mitigation measures and restrictions in the wind power area. In February 2018, Fosen vind entered into an agreement with the reindeer husbandry on the construction phase. According to [the Norwegian law of contracts § 29](#), there can be no agreement if it has been achieved through coercion.

In response to our last complaint, for Øyfjellet (Vesterfjellan) Sami reindeer herding area, the NVE didn't find [the Norwegian law of contracts § 29](#) applicable. The violation of the article has been considered in the Supreme Court twice, concerning so-called voluntary agreements from the world war II made under duress and threat of expropriation (Rt.1951 s. 1035 and Rt.1954 s.907). NVE had in their decisions demanded the reindeer herding Sami people to come to an agreement with the German-Swedish developer Eolus vind, even though the Sami people said the wind turbines was incompatible with reindeer herding. Closing of the reindeer's moving areas between summer and winter pastures, is prohibited and punishable according to Norwegian law, [The reindeer Act § 22](#) cf. [§ 80](#), even when it's the result of negligence. It is enough to frighten the animals away from their moving paths, to be considered closing these moving paths, according to The Law Department in the Ministry of Justice's statement (JDLOV-2010-8294). The animals have suffered as the herd was divided, leaving 60 exhausted pregnant reindeers frightened back up in the winter pasture, without food after a long and extremely snowy winter. The Sami indigenous people had to collect several dead reindeer calves, left by their frightened mothers and partly eaten by predators, after the developer Eolus vind refused to stop their construction work as required in the approval, blaming high costs. That was even though it was said in the approval from the NVE of the Environmental, transport and construction plan/MTA-plan; "Construction activities that affect the movement of reindeer must be stopped during the relocation". NVE gave the reindeer herders one month for the spring moving of about 2100 reindeers, from the 10th of April to the 10th of May 2020. This was immediately appealed by the constructor Eolus vind's lawyer, directly to the department of oil- and energy (OED), without passing through The Norwegian Water Resources and Energy Directorate (NVE) as required by [the Norwegian law of administration § 32](#). That resulted in OED changing NVE's decision of the day before the Easter, the 8th of April 2020, two days after the Easter holiday, at the 16th of April 2020, giving delayed implementation of the NVE decision. At the same time, the complaints on the wind energy project was lying for 5 months in NVE, without being handled. The Sami indigenous people then only got three days to move the entire herd, as Eolus vind reluctantly lay down their work, otherwise it wouldn't be possible to move the animals at all. Three days were far from enough. Even though the Sami indigenous people worked day and night trying to lead the herd safely along the moving path, they did not manage to lead the whole herd down, as Eolus vind started up their work before they were finished.

The case concerning wind energy industry in Øyfjellet (Vesterfjellan) is not finally settled, as the complaints are handled in OED. In upholding the decision on the approved MTA-plan submitted to the ministry from NVE 19th of May 2020, NVE stated, according to the condition no. 15 in the license; "NVE believes that the decision from 18.12.2019 is not in conflict with the license as JN, Motvind and NFN claim. The follows from the construction license from 11.10.2018 item 15 that: «Eolus Vind Norge AS shall facilitate the conclusion of an agreement with Jillen-Njaarke reindeer grazing district on a proposal for mitigating measures for reindeer husbandry in the area for construction and the operational phase. The proposal will, among other things, ensure access to the winter pastures in the northwest by mitigation measures related to the relocation through the planning area. Measures to ensure movement to and from the winter pastures in northwest shall be submitted to the County Governor of Nordland for assessment in accordance with the Reindeer Husbandry Act. Suggestions for mitigating measures shall be presented in the detailed plan for the measure, cf. condition 12. The detailed plan shall be approved by NVE. If no agreement is reached

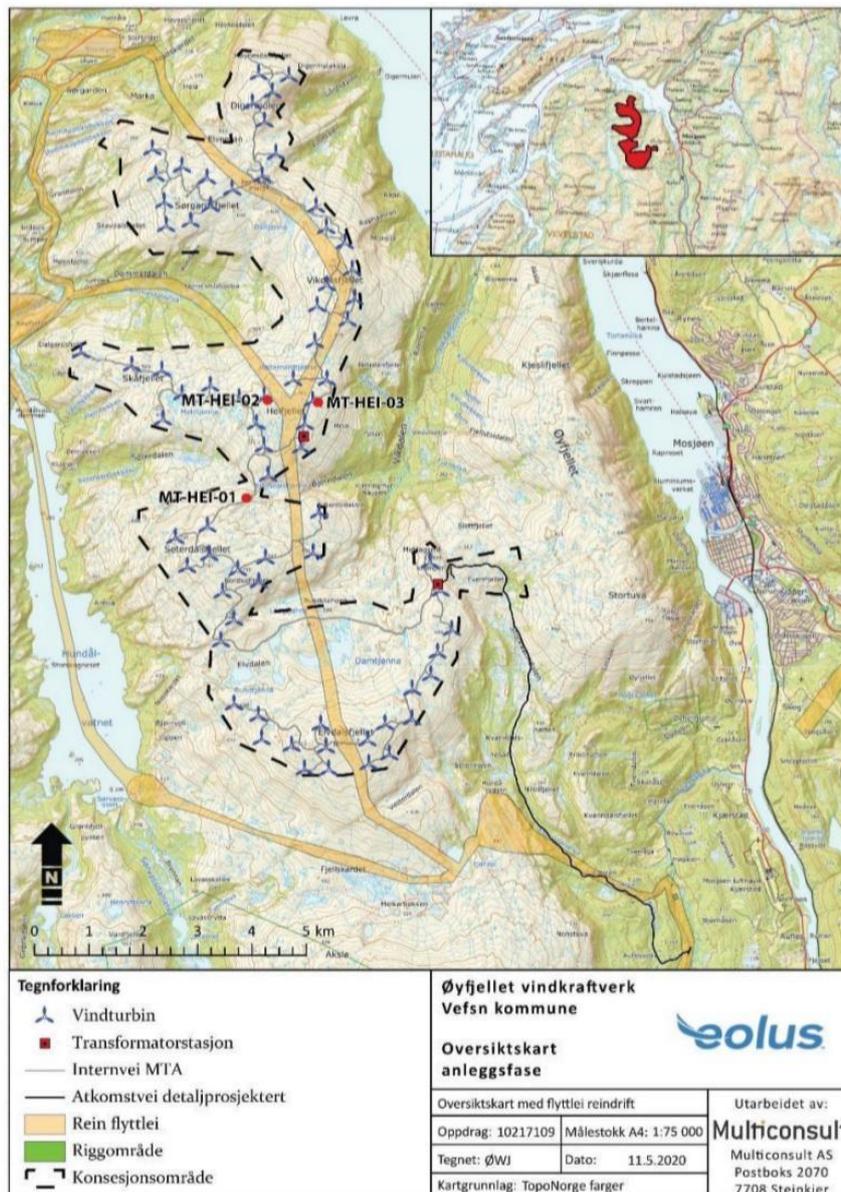
between the licensee and the reindeer grazing district on mitigation measures, NVE must consult the reindeer grazing district before the detailed plan can be approved. ... In NVE's assessment, the MTA and detailed plan, Chapter 11, describes relevant measures to reduce disadvantages for reindeer husbandry in the construction and operation phase in accordance with the terms of the license. NVE has assumed that the proposed mitigation measures presented in the MTA and the detailed plan are implemented in consultation with the reindeer grazing district, cf. the background for the decision on page 18. In NVE's decision from 18.12.2019 (MTA / detailed plan decision), the following conditions have also been set with regard to reindeer husbandry, which we believe is in accordance with the requirements of condition 15 of the license: «Access to the winter pastures in the northwest (winter pasture zone 5) shall be ensured in the form of arrangements for moving through the planning area. Plan for facilitation for moving through the planning area shall be sent to NVE. The licensee shall facilitate the conclusion of an agreement with Jillen-Njaarke reindeer grazing district on a plan for facilitating relocation through the planning area in construction and the operational phase. If no agreement is reached between the reindeer grazing district and the licensee shall the case be sent to NVE for approval by 10.03.2020.

Construction activities, which affect the relocation of reindeer, will be stopped during the relocation”. This stop was not complied with properly, neither by the developer nor OED.

The construction work, that is situated in the middle of the reindeer calving area and flyttlei, was even continued without the agreement required by NVE between the Sami people and Eolus' vind. Eolus vind's own terms in the MTA-plan to wait until the snow was gone to mark red-listed species to protect these, were also not complied with. Multiconsult doing the research for the MTA-plan in 2019, was using an old report of red-listed species from 2013, even though an updated report from 2018 was available. One earlier politician from the Social left party Heikki Holmås has later been criticized by a law professor Marcus Hoel Lie for conflicting roles, both being in a leading position in Multiconsult giving information about the consequences of the wind energy industry, and at the same time having a board position in the organization Norwea, that works to promote the wind power industry in Norway, [link](#).

At the same time, the consequence of OEDs decision was closing the migration path/the “flyttlei”, that is prohibited by [The reindeer herding Act § 22](#), and punishable according to [The reindeer herding act § 80](#). OED is not under any circumstance the right Authority to make such decisions, as it belongs under the authority of the Ministry of Agriculture and Food, even they can't decide to close the “flyttlei”, as it is prohibited. The developers additionally frightened the animals after leaving them in a helpless situation, by driving towards them with snowmobiles, drones and helicopters. That kind of actions towards animals is forbidden and punishable according [the Animal welfare Act § 37](#) cf. § 14 and § 3. This was also defined punishable according to [The Motor Traffic act § 4 a](#) cf. § 12 by The county governor of Nordland in a letter from May 2020 cf. the [Penal Code § 27](#). While residents of Norway were punished in the Supreme Court for motor traffic and felling of a tree with eagle nests (Rt. 2014 s. 907), the developer works fully with the wind industry facility in Øyfjellet throughout the breeding season, although endangered and red-listed peregrine falcons as well as golden eagles nest west of the facility. Closing the “flyttlei” also violates the ILO Convention No. 169, article 13.1 and 14.1.

A map from Multiconsult of the planned wind industry construction project in Øyfjellet (Vesterfjellan). Shows their blocking of the “Rein flyttlei” (in yellow). A complete map showing all the wind industry projects at different phases in Norway, is found in here; <https://temakart.nve.no/link/?link=vindkraftverk>.



Figur 1 viser et oversiktskart der lokaliseringen til de tre omsøkte situasjonene er markert.

Øyfjellet (Vesterfjellan) mountain area is one of the largest indigenous Sami reindeer herding areas in Norway where concession is given. In order to set up the large turbines, a road must be built to each wind turbine and space for large lifting cranes. It must be dug, blasted, filled in and planned crosswise in a gigantic plan area, which extends over 78 square kilometres. Øyfjellet (Vesterfjellan) mountain is planned to be bigger than Roan, with 72 Nordex MNI49 5, xW turbines at a total height of over 200 metres, more than 68 km of roads and a total area of 55 square miles. The project was sold from Øyfjellet vind, to Øyfjellet Wind to the

Swedish-German company Eolus vind, affecting a Sami reindeer herd of more than 2100 animals. The area is close to [the Lomsdal-Visten National park/Njaarken vaarjelimmiedajve](#), that will be affected, despite being protected area.

The people and the Norwegian parliament, is kept in the dark, not given any information as required in [the Constitution § 112](#), section two; *Citizens are entitled to knowledge about the state of the natural environment and about the effects of planned and implemented interventions in nature, so that they can safeguard the right they have under the previous paragraph.*

According to the [Environmental Data Act, § 8](#), information about the environment should be widely available, without asking for it, even though the parliament and the people of Norway is not fully aware of the extensive and unnecessary interventions of the wind industry.

The Sami indigenous people, the citizens of Norway or the Norwegian parliament have not received any explanation from NVE and OED on why they rejected the knowledge in a study from the Norwegian Technical University (NTNU) of the importance of upgraded hydropower, saying that it would provide more power than all the wind turbine industry all together, and would make all wind industry redundant;
<https://www.dn.no/innlegg/energi/vindkraft/fornybar-energi/vindmoller-overflodig-om-vi-forny-er-vannkraften/2-1-600733>

The Norwegian Minister of District and Digitization Linda Hofstad Helleland (H) is responsible for the governance of regional and district policy, IT policy, electronic communication, privacy and the policy towards Sami and national minorities in the Ministry of Local Government and Modernization. The minister just granted reduced electricity tax cryptocurrency, for using “clean” energy from the wind turbine industry, but haven’t spoken against the wind industry on the behalf of the Sami indigenous people’s rights.

In the ILO Convention Article 17 number 3 says that persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them. In the concessions it says that the builder of the wind “parks” should make an agreement to cooperate with the indigenous Sami people, while destroying their habitats for all future, that being like asking a lamb to make a deal with the wolf, while having its head inside the wolfs mouth. The balance of power between the parties in such an agreement, is not at all equitable. This brings us to the question of the Norwegian government role in this. As it is obvious that the relationship between the indigenous Sami people, and for that sake the population of Norway, and the wind turbine companies is not equal. The Norwegian governments task in this, according to our Constitution, and to the ILO Convention No. 169, is to protect from exploitation by e.g. multinational companies. Even though the process with a wind energy industry project starts with a Norwegian firm, it can be easily sold, often several times through the process. The ILO convention also resulted in amending the Norwegian law about how reindeer herding should be applied in accordance with the rules of international law on indigenous peoples. The legal provisions shall not be violated with any measures that are in conflict with the rights granted to Norway's indigenous Sami people in the ILO Convention. Despite this, it seems that the Norwegian

government has forgotten its constitutional role, as the protector of both the indigenous Sami population, the rights of the Norwegian population and nature's intrinsic value. Instead of preserving the rights of the indigenous people, their land and their way of life are sold to e. g. multinational companies, that will be able to have a catastrophic effect on reindeer herding. Reindeer herding is one of the most sustainable livelihoods there is and has minimal effects on nature. The costs of this is irreversible vandalism in our last areas of wilderness-like nature. The Norwegian people are forced to pay for the loss of nature and land against their will through the “green certificates”, both unnecessary and unprofitable for anyone but the investors. The Norwegian power customers must pay for power lines and cables of surplus power out of the country, and into the European union (EU), at the expense of Sami land areas.

It might seem sensational that the Norwegian prime minister Erna Solberg one year later in 2019 gained renewed confidence in leading the UN's work on poverty, climate change and inequality. The prime minister seems to think that wind energy industry is synonymous with saving the climate. The government of Norway, included the climate- and environment minister, the Crown prince and the prime minister are all getting the information about the wind energy industry from [the private organization Zero](#), that is urging to build wind energy industry. That happens among other things in their yearly [Zero conference](#), where all these persons attend. After “protection” was removed from the authority of environmental protection department, we are now left with the title climate and environment department, abbreviated KLD, without the environment being included in the abbreviation. That is despite the fact that climate is not protected in [the Constitution § 112](#), such as biodiversity and the environment. This is opening up to tolerate a bad environment, even though it violates the Constitution, both [§ 108](#) and [§ 112](#). We no longer have an authority that protect nature and the indigenous Sami people's areas, as the focus is mainly on climate.

That is contrary to the UNs Intergovernmental science-policy Platform on Biodiversity and Ecosystem Services ([IPBES](#)), on how reducing the areas where the species live are greatest threat to biodiversity.

The Supreme court of Norway ruled in Rt-2001-1229 in favour of the Sami people concerning a case that involved the question whether the state was the owner of an area of 116 square kilometers in Manndalen in the municipality of Kåfjord, Troms. The Supreme Court concluded, after a historical review of what use was exercised and how long it had been in progress, that the requirements for the scope and duration of the use met the requirements for users' acquisition of property rights. The requirement of good faith was also considered fulfilled and could give users a basis for legal rights through the use of age. It was not decisive that the right acquired by the population of Manndalen did not correspond to that of rural communities. The Supreme Court did not find it necessary to address the sources of international law cited, but pointed out in support of its position that it was in good compliance with the rules of the ILO Convention No 169 Article 14 (1), 1st sentence and the considerations this rule shall take into account. Now the wind industry has been starting up in Øyfjellet (Vesterfjellan), violating both the ILO conventions article 14.1, the part II of the ILO Convention, and the Supreme court decision.

In the decisions giving such concessions all over Norway, at a massive rate, there is not taken into consideration anything about the “polluter-pays-principle”, statutory in [the Norwegian diversity of nature act § 11](#). The costs today when it comes to removing just one exhausted wind turbine is estimated to be around \$ 80850, a cost that should be presumed to be higher when the wind turbines fade in 20 years from now, in addition to roads, fundaments.

The concessions given to build wind energy industry all over the Norwegian nature, islands, the ocean and mountains, don't seem to have taken into consideration natural diversity at all, as required according to [the Norwegian diversity of nature act § 7](#) cf. [§ 8 -§ 12](#). The purpose of the Norwegian diversity of nature act is according to the [§ 1](#) that nature, with its biological, landscape and geological diversity and ecological processes, is preserved through sustainable use and protection, also so that it provides the basis for human activities, culture, health and well-being, now and in the future, also as a basis for Sami culture. The article is linked to [the Constitution § 108](#), and [the Pollution act § 1](#). In spite of this, decisions concerning e.g. the wind energy industry at the Island Frøya now under construction concluded that the “precautionary principle”, statutory in [the Norwegian diversity of nature act § 9](#) was taken into account. The decision is a threat to species like eagles, endangered hubro owl and the smøla grouse (only living this one place on earth). Similarly, offshore wind is a threat to puffins (the Norwegian parrots), seabirds, fish banks and all migratory birds. Wind turbines are also a threat to insects. From § 8, section two, it follows that; “The authorities shall also emphasize knowledge that is based on generations of experiences through the use of and interaction with nature, including such Sami use, and which can contribute to sustainable use and protection of biodiversity.” In the Øy fjell wind “park”, Some of the last areas of Sami reindeer husbandry are being attacked by construction machinery, which is happening right now, at a rapid pace, and are threatening to industrialize the Sami habitats. Despite the Sami indigenous statements that the wind power industry is incompatible with reindeer husbandry, and the processing of the case has not been completed, irreversible interventions are being made.

The law department in the Norwegian Ministry of Justice stated about the interpretation of [the reindeer herding Act § 22](#) (JDLOV-2010-8294); In our opinion, there can be no doubt that section 22 of the Reindeer Husbandry Act generally protects reindeer herders against encroachment on relocation paths, which means that the reindeer cannot be led along the paths. Which interventions have such an effect depends on how the reindeer will react to the intervention. It is difficult to assume that power lines by their nature fall outside the protection of the relocation paths. The decisive factor is whether the power line (including masts, etc.) will give the reindeer a sensory impression which means that the reindeer cannot be led along the relocation paths. How difficult it must be to lead the reindeer past the intervention, before one can talk about a barrier, we do not go into detail. In our opinion, this is not a broad interpretation, but a natural understanding of the wording.

A Swedish study from 2017 states that reindeers avoid Wind turbines, making wind turbine industry incompatible with the indigenous Sami reindeer herding;
https://pub.epsilon.slu.se/14606/1/neumann_w_etal_171006.pdf.

The authorities decisions do not seem to emphasize knowledge that is based on generations' experiences through the use of and interaction with nature, including such Sami use, and which can contribute to sustainable use and protection of biological diversity, in [the](#)

[Norwegian diversity of nature act § 8](#) . [The Norwegian constitution § 112](#) is also meant to protect an environment that ensures health and the productive capacity and diversity of the nature, for future generations. In Report 28 to the Parliament «Wind power on land - Changes in the licensing process» which came on 19 June 2020, the Ministry of Petroleum and Energy largely admits that the licensing processes have been unjustifiable, both in general and especially in relation to reindeer husbandry [<https://www.regjeringen.no/no/dokumenter/meld.-st.-28-20192020/id2714775/>]. A new report on the experience with reindeer husbandry and wind power industry in Norway; <https://motvind.org/motvindrapportene/motvindrapport-nr-3/>, is available in both Sami and English. It also concludes with unsound practice in wind power cases.

A report on wind industry and reindeer herding from the directorate of energy (NVE) from 2004. http://publikasjoner.nve.no/oppdragsrapportA/2004/oppdragsrapportA2004_10.pdf says (page 19); "Sims staying in the calving country are very dependent on tranquility. Disturbance and traffic in these areas can lead to simla losing the calf or simla not getting affected the calf in the time after calving". The wind industry in Øyfjellet is planned to be situated in the flyttlei and calving area. One of the main terms to build this wind industry park, was an agreement with the Sami people. In the NVE report on wind industry and reindeer herding from 2004 it says (on page 33); "In addition to the language barrier that the developer will be able to meet in contact with reindeer husbandry, the developer must also be aware that the cultural difference can be as great as the linguistic one. As an example of this, we can bring it up familiar expression; "The one who stays silent agrees." Within the Sami, this will be able to work opposite so that; "He who is silent does not agree."" It has not been agreed on any terms concerning Øyfjellet wind industry, between the reindeer district and the wind industry constructors. In spite of the government being aware of such a lack of an agreement and these cultural differences, OED supported the constructor on following the project through, without an agreement. The terms in the concession is violated, without the government doing anything to stop this. The mitigating measures mentioned in the license as well as in NVE's report, cannot be enforced according to the new court ruling. The situation is urgent, as the building of wind energy industry are happening at a fast phase, being defined as a critical function during the corona crisis. We don't see how this can be saved in time without assistance from the UN requesting the Norwegian government authorities to stop the wind industry. That concerns Øyfjellet and all Sami areas.

The history between the Norwegian government and the Sami people, is a dark history, with assimilation policy and colonization, with the loss of land and water. It was the Norwegian government against a people who lived too scattered to organize themselves to provide enough resistance, and the Sami culture was degraded. In Alta hydro power was built despite protests and hunger strike from the Sami people, a conflict lasting for years.

The grounds for wind turbines are said to be to save the climate. Nevertheless, a carbon storage research report from Norwegian Institute of Natural Research (NINA); <https://brage.nina.no/nina-xmlui/handle/11250/2655580> tells us that the most carbon-bearing nature is mountains, then forest and wetlands. The UN Report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) [<https://ipbes.net/Diaz-et-al-response-science-investment-role-ecosystem-degradation>] tells us that pointed out that changed land use is the greatest threat to the

world's species, more than direct harvesting, with a changed climate in third place. The climate is better off when the nature is left alone, without any wind industry. So, what is the real grounds for wind turbines, if not financial gain. We have registered that the wind energy industrial projects are repeatedly turned over in the international financial markets. The Øyfjellet (Vesterfjellan) wind power plant has also changed owners several times.

Øyfjellet wind AS transferred 100 % of its shares to a company situated in Luxembourg, which calls itself "Raven Projects II Sarl" on December 20th 2019. The transfer was for 25,000 shares, each with a face value of NOK 100, - which includes the entire share capital of NOK 2.5 million. Confirmed on January 21 this year and signed by Per Witalisson on behalf of Eolus vind Norge Holding AS, and Jost Rodewald on behalf of Raven Projects II Sarl. This Jost Rodewald also figures as the director of Aquila Capital in Hamburg. Thus, the construction project was taken over by German investors. The ownership structure is confusing and changes frequently. This makes it even more difficult to find out who can be held responsible for removing the wind industry when it is no longer in operation, as NVE does not require financial security to clean up the wind industry on the basis of the polluter pays principle in the concession before after 12 years.

The experience of the actions of German investors in Norway, e.g. regarding Andmyran, indicates that such information should induce the greatest scepticism for the development of the Øyfjellet Wind Power Plant. In the beginning it was Øyfjellet vindpark AS. Then came Eolus, who then became Eolus Norge AS, Eolus vind Norge AS, or Eolus Wind AS. Then Eolus Vind Norge Holding AS appeared. Øyfjellet Wind AS, established in 2012, developing in the Tverådalen road plant until it was sold to Raven Projects in Luxembourg.

Øyfjellet Wind AS has an agreement with the contracting company Veidekke AS to build a full 70 km of road with pitches in the high mountain and with the German Nordex Group for the delivery and operation of 72 turbines for 400 MW. In the Nordic region, Nordex is best known for the scandal with the Hästkullen wind turbine in Viksjö in Härnösand municipality in Ångermanland in Sweden. In a forest area owned by Svenska Cellulosa AB, Svenska SCA, 100 km of road and an area larger than 7000 football pitches have been built. Loose masses have been moved and dumped in vulnerable natural areas, and a protected forest with 200-year-old trees has been destroyed. Nordex Group blames the subcontractors and avoids liability. The scandal is documented by SVT in an Assignment review "Uppdrag granskning". The County Administrative Board of Västernorrland has shut down the facility due to lack of documentation on follow-up of environmental requirements, lack of routines for monitoring and reporting. The County Administrative Board's conclusion: "The company has no control over its own operations". The County Administrative Board's handling of this scandal project and claims against Nordex is in severe contrast to the Norwegian authorities' handling of similar negligence and offenses. In Norway, NVE's environmental supervision allows most of the offences under the auspices of development companies to pass. Despite irregularities and documented violations of the Act on Natural Diversity, the Cultural Heritage Act and the Pollution Control Act, Norwegian environmental authorities have been conspicuously absent. Nordex is the company planning to deliver wind turbines to Øyfjellet (Vesterfjellan).

In a new judgment from the Frostating Court of Appeal early June 2020, the Court of Appeal states; "Following this, the Court of Appeal assumes that the reindeer will evade the existing wind turbines developed at Fosen, where Storheia and Roan (Haraheia) are by far the most

important. Avoidance will in the opinion of the Court of Appeal be so significant that the areas must be seen as lost as grazing areas.” It follows from the Equality and Discrimination Act [§ 4](#), that discrimination of the indigenous Sami people; “may not be deviated from by agreement”. The judgment clearly states that mitigation measures are not possible, because the reindeer husbandry area will be considered lost. Considered the close connection between the reindeer herding and the indigenous Sami people’s language, culture and way of life, such an agreement that NVE refers to in the concession would mean giving up their way of life. According to the Norwegian Equality and Discrimination Act [§ 4](#), that is something they are not obliged to. This means that NVE cannot demand an agreement on mitigating measures, because that would mean giving up their way of life, which would be discriminatory according to [§ 6](#) of the Equality and Discrimination Act. The statement from Frostating Court of law that the reindeer grazing areas turned into wind industry areas are considered lost to the reindeer grazing districts certainly put the [UN Convention on Civil and Political Rights \(ICCPR\) Art 27](#) back into force as well. [Article 27](#) was made into Norwegian law according to [the Norwegian law of Human Rights § 2](#) no. 2, and will when collision with other Norwegian laws (except the Constitution) take precedence cf. [§ 3](#), including the legal basis for concessions in [the Norwegian energy law § 3-1](#). This is legally binding to Norway.

It follows from [the Energy Act § 10-3](#) section four, that; “If the license has been granted on the basis of incorrect or incomplete information about matters of material importance, or the licensee violates this Act or provisions or orders issued pursuant to the Act, the license may be withdrawn.” Despite it’s said in the next section, that “If a license for a facility pursuant to Chapter 3 or Chapter 5 is withdrawn, a time limit shall be set to ensure that the facility is taken over by others who can legally operate it.” [The law of administration](#) states in [§ 35](#) first section c) cf. the third and fourth section that a decision that is considered void, can be reversed, even though it’s unfavourable, in this case for the licensee. In this case, the constructing developer has begun their construction work before all conditions in the license were met, which indicates that reversal of the decision is proportionate.

Financial earnings are not a valid reason to depart from the Sami peoples right derived from our constitution, internal laws, and the ILO convention, and need to be stopped for good.

We strongly and urgently request the United Nations Office of the High Commissioner for Human Rights (OHCHR) to request the Norwegian government to follow up on its obligations concerning the Sami indigenous people, and stop the building of wind energy project in Øyfjellet (Vesterfjellan) and wind energy projects in all Sami areas.

Kind Regards

Evind Salen
Styreleder

Copy: Sámiráđđi - Sami council - Samerådet
Jillen-Njaarke reindeer grazing district
Motvind Sweden