Green colonialism, wind energy and climate justice in Sápmi

One year after the Norwegian Supreme Court rendered a land-mark decision in favor of Saami reindeer herders against wind energy developer Fosen Vind, the Norwegian government fails to act on its responsibility to safeguard Indigenous Peoples’ rights and ensure a just energy transition.

The green shift is nothing more than a continued extraction of resources in Sámi areas (…)
The difference is that resource utilization has been given a nice color, green; we call it “green colonization”.

Gunn-Britt Retter - Arctic Today

By Eva Maria Fjellheim - October 1st 2022

In October 2021, the Norwegian Supreme Court concluded that the construction of two of Fosen Vind’s projects, Storheia and Roan, violates the rights of the Saami reindeer herders in Fosven Njaarke, in Trøndelag County. The verdict builds on reindeer herding knowledge and research that warn about the negative impacts from wind energy infrastructure on ancestral Saami reindeer herding during both construction and operation. 151 turbines, 131 km of connecting roads and power lines have destroyed winter pastures and migration routes crucial for maintaining sustainable reindeer herding in the area.

The Court concluded that the project threatens Southern Saami reindeer herding culture, in violation of Article 27 of the International Convention on Civil and Political Rights (ICCPR) which states: “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”.

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Contrary to the Court of Appeal, the verdict established that artificial feeding of the reindeer herd to compensate for the lost winter pastures significantly differ from ancestral reindeer herding which is based on free and natural pastures. The historic ruling further established that the Saami reindeer herders’ right to practice their culture through ancestral reindeer herding is absolute, and that the provision does not open for a proportionality assessment where a minority’s interest is balanced against the interests of the majority society – even if this interest is to produce renewable energy. The Supreme Court particularly emphasized that other and less intrusive options to produce wind energy had been available.

Wind energy and human rights violation

Following the historic Supreme Court decision, the Norwegian asset manager Storebrand announced in their periodic report for the second quarter of 2022 that they will put Swedish wind energy developer Eolus Vind AB on their observation list due similar violation of the rights of Jillen Njaarke reindeer herding community from the Øyfjellet project in Nordland County of Norway. The wind energy plant interrupts an ancestral migration route and access to one of Jillen Njaarke’s winter pastures. The license to construct the project was issued by the Ministry of Petroleum and Energy on the condition that the wind energy company would reach an agreement with the Jillen Njaarke concerning mitigation measures that would safeguard the migration route.

But when Eolus Vind finally broke ground and started to construct a road in 2020, no agreement had been reached. The first spring migration through the construction site became a nightmare for both reindeer and herders, as they were forced to chase the herd, including pregnant female animals who are especially vulnerable to disturbance and stress. Instead of following the natural pace of animals, humans, and nature, the Jillen Njaarke were given a time frame of 3 days to carry out the migration, and not 2 months as they argued was necessary.

Like the historical Supreme Court verdict, Storebrand’s decision to put Eolus Vind on their list of observation constitutes a unique precedent. While the human rights record
of the private sector is of growing concern globally, the Nordic countries tend to defend an image of being “best in the world” concerning both human rights and sustainability. There is simply a perception that human rights violations only occur elsewhere, and not in a democratic well-fare state, such as Norway. It is equally unthinkable that Nordic companies can be the perpetrators of rights violations, home or abroad.

Norway was the first country to ratify the ILO Convention No. 169 concerning the Rights of Indigenous and Tribal Peoples and adopted the UN Declaration on the Rights of Indigenous Peoples in 2007. The Norwegian Constitution and International Human Rights Law protect the Saami’s right to enjoy their culture, also through ancestral reindeer herding. Despite advanced legal protection, however, the implementation of these rights has proven to be extremely difficult. In both the Fosen and Øyfjellet case, the wind energy companies had been issued pre-approvals to construct the entire infrastructure before the validity of the license could be tried in the legal system.

**Green colonialism and the double burden of climate change**

The Fosen and Øyfjellet wind energy projects are linked to the Norwegian state’s “green transition” policies and commitments under the Paris Agreement, the European Union’s renewable energy development goals and demands to electrify transport, industry, and society in general.

“Green colonialism” is frequently used by the Saami to critique hegemonic climate change policies and in particular the expansion of the wind energy industry in Sápmi - the ancestral lands of the Saami. Colonization and capitalist expansion on Indigenous lands have caused the current climate and ecological crisis. The Arctic has the highest rise of temperature due to climate change, posing severe threats to Saami health, livelihood, and culture.

Recently, Saami reindeer herders have suffered from frozen and inaccessible winter pastures, as well as instable and unsafe ice to cross during migration. At the same time, further encroachments on reindeer herding lands from so-called “green” industries
reduce the flexibility on which sustainable reindeer herding depends. As such, Saami reindeer herders face a double burden from climate change and its mitigation measures, while Saami knowledge, practices, and stewardship are disregarded and ignored in climate change mitigation efforts.

Conflicts between wind energy and Indigenous Peoples’ rights in Sápmi is not an isolated case. A global Indigenous Peoples’ movement question the “green growth” premise and demand a rights-based approach to climate justice. While “green colonialism” is used to describe ongoing colonialism in Sápmi, similar concepts are applied elsewhere; such as “energy colonialism” in Mexico.

Like in Sápmi, Indigenous Peoples are increasingly achieving recognition of the rights violations they suffer from wind energy in courts. A recent verdict from the Agricultural Court in Oaxaca (Mexico) recognized the communal land rights of the Zapotec Indigenous communities in Juchitán Zaragoza, by annulling the alleged legal acquisition of private lands by a wind energy project owned by the company Demex. In Kenya, a historic judgement by the Environmental and Land Court in Meru ruled the Lake Turkana project as “irregular and unlawful”, as it lacked the Free, Prior and Informed Consent of the impacted Indigenous communities.

A country that respects indigenous rights?

One year after the land-mark verdict from the Supreme Court, the Norwegian government insists that co-existence between wind energy and Saami reindeer herding is possible. The Ministry of Petroleum and Energy refuses to comply with the impacted reindeer herding community’s demand to deconstruct and repatriate the wind farm, and restore the appropriated winter pastures. No case dealing with encroachment on Sami reindeer pasture lands has been so thoroughly investigated. Nevertheless, the Ministry of Petroleum and Energy believes it is possible find a lasting "solution" through dialogue and further investigations of impacts and mitigation measures.
It is worrying when the state demands a greater burden of proof than what the Supreme Court provides, rendering Sami reindeer herding culture without any legal protection in Norway. Leif Arne Jåma, reindeer herder in Fovsen Njaarke, responds to the Norwegian government’s assessment plan by calling it “absurd” and that “If the Government continues its attempts to wriggle around the verdict in order to protect capital interests, it will probably result in a serious weakening of international trust in Norway as a pioneering country in terms of indigenous rights”.

While investors such as Storebrand take steps in the right direction, the Ministry of Petroleum and Energy shows little willingness to act. It is serious, considering that the state-Saami relation is facing one of the largest breaches of trust in history. In less than a year, the Jillen Njaarke will face Eolus Vind in Helgeland District Court, and the question of the validity of the license may be pending in the legal system for several years to come - as in the Fosen case. The Saami Council encourages and fully supports efforts to combat the climate and ecological crisis. But mitigation measures cannot be implemented at the expense of fundamental Saami rights, as previously warned.

In 2018, the Saami Council sent a complaint to the UN Committee on the Elimination of Racial Discrimination (CERD) on behalf of the Fovsen Njaarke, whose conclusion in favor of the reindeer herding community was disrespected by Norway. In 2020, the Saami Council sent a communication to the UN Special Rapporteur on the Rights of Indigenous Peoples, and a letter to the majority investor in the project, German Aquila Capital, to inform about the lack of respect the Jillen Njaarke’s rights in the Øyfjellet project. In a statement concerning Storebrand’s decision to put Eolus Vind under observation, the Saami Council «urges investors to withdraw from the Øyfjellet wind power project and the Government of Norway to follow up on their human rights obligations».

While Saami reindeer herders, Saami organizations, researchers, the Norwegian Supreme Court, international human rights mechanisms, and even investors warn about violations of Saami rights by wind energy, the Norwegian government fails to act on its human rights obligations. It is about time Norway takes its ‘strong human
“rights record” and claim to support a just energy transition seriously. Respecting the Supreme Court decision and putting a stop to further rights violations against Fovsen Njaarke and Jillen Njaarke would be a start.

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