Essay

Sustainable environmental vs. sustainable social development

Tendencies of carbon colonialism and green authoritarianism when implementing renewable energy strategies on indigenous peoples' territories

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Abstract

The intention with this essay is to illustrate the conflicts that might occur when states implement renewable energy strategies on lands that have traditionally belonged to indigenous peoples. To do so I have analysed case studies from Sweden as well as Latin America regarding renewable energy projects in areas that could be claimed to belong to indigenous groups and compared the conclusions from these studies to what the existing legal framework on the topic of the rights of indigenous peoples dictates. The results show that the main international legislation on the topic is very clear in expressing that states should grant indigenous peoples access to lands and territories that have traditionally been occupied by them, as well as granting them participation in the exploitation of natural resources. The analysis of the case studies shows that there exists a tendency among states to bypass what is stipulated in the international regulations when executing renewable energy projects, as well as using the term "sustainable development" as a cover-up when violating the rights of indigenous peoples. Although the international legislation on the topic is very precise, the majority of the world's countries have not ratified the main legally binding convention. I conclude that one reason for this could be that states would find it hard to reach environmental objectives while at the same time complying with the legislation on the rights of indigenous peoples, i.e. states face difficulties in fulfilling sustainable environmental and economic objectives with sustainable social objectives.

Keywords

Indigenous peoples, renewable energy, ILO 169, UNDRIP, Sami people, wind power

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Background

Climate change and the strive for sustainable development might be one of the most important questions of our generation, and it is without doubt one of the most prominent topics on the global political agenda of today. This becomes evident not only due to the fact that it is one of the most vividly discussed topics in society as a whole, but also when considering that sustainable development constitutes the foundation of the United Nation's 2030 Agenda. Goal number 7 in the 2030 Agenda states that universal access to affordable, reliable, sustainable and modern energy should be ensured by 2030.[1] Hence, the development of renewable and clean energy systems plays an important role in fulfilling these particular goals set by the UN, as well as in the global need for tackling climate change on a whole. The term "renewable energy" refers to different energy sources, the main ones being hydro power, wind power, solar power, and biomass power.[2] What all these different types of clean energy sources have in common are that they all demand land resources to a wider or lesser extent. Sometimes the geographical locations where the renewable energy sources can be harvested are located on or near to lands which could be claimed to belong to different indigenous groups. According to the UN Declaration on the Rights of Indigenous Peoples (hereby referred to as the UNDRIP) as well as other acknowledged international conventions like the Indigenous and Tribal Peoples Convention from the International Labour Organization (hereby referred to as the ILO 169), states should protect the rights of indigenous peoples, of which one such right is the access to their lands. This might cause a conflict, where states try to fulfil objectives of transitioning their energy systems towards more sustainable ones – in accordance with what is stipulated in the 2030 Agenda – but at the same time having to violate the rights of indigenous peoples. Hence, my intention with this essay is to investigate to what extent these types of conflicts occur, under what circumstances they occur and how these conflicts are dealt with in relation to the existing legal framework on the rights of indigenous peoples; with the underlying interest of

[1] The United Nations. *Sustainable Development Goals*. https://www.un.org/sustainabledevelopment/energy/ – (Downloaded 2020-05-26).

[2] Swedish Board of Agriculture. Matproduktionen kräver energi. Jordbruksverket. 2020-04-22. https://djur.jordbruksverket.se/amnesomraden/konsument/hallbarmatforalla/energi.4.16087e53157acde908e1ec37.html – (Downloaded 2020-05-25).

exploring if sustainable energy development can go hand in hand with a sustainable social development.

Definitions and legal framework

Sustainable development and the link to human rights and indigenous peoples

The term sustainable development can be defined in many ways. A common definition of sustainable development is the one stated by the Brundtland Commission in the report *Our Common Future* in 1987:

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[3]

One of the principal efforts of the Brundtland commission was to try to find ways to combine economic development without compromising with environmental stability. Hence, when initially defining the term sustainable development the main focus was concentrated on sustainable economic development in conjunction with sustainable environmental development. Later on, the meaning of the term sustainable development has been expanded to now also include a social aspect, and today it is common to divide sustainable development into three different parts: economic, environmental and social sustainable development. These three dimensions are usually referred to as the three pillars of sustainable development, sometimes also expressed as the protection of the planet, the people and the profits.[4] The 17 goals stipulated in the UN's 2030 Agenda for Sustainable Development all aim to strengthen these three pillars. In addition to this, other functions with the UN also strive towards a more sustainable world. One of these is the UN Global Compact, the world's largest corporate social responsibility initiative that encourage companies across the globe to conduct their businesses in a sustainable manner. The UN Global Compact comprises 10 fundamental principles which derive from conventions like

[3] World Commission on Environment and Development. Our common future. Great Britain, Oxford Univ. Press, 1987. Available at: https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf – Downloaded 2020-05-28

[4] Hansmann, Ralph; Mieg, Harald A; Frischknecht, Peter. Principal sustainability components: empirical analysis of synergies between the three pillars of sustainability. International Journal of Sustainable Development & World Ecology. Vol. 19, Nr. 5, 10/2012: p. 451.

the Universal Declaration of Human Rights and the Rio Declaration on Environment and Development. The first and second principle focus on the human rights aspect and stipulates that businesses "should support and respect the protection of internationally proclaimed human rights" and "make sure that they are not complicit in human rights abuses". In particular, the first principle urge companies to pay special attention to vulnerable groups, naming indigenous peoples as one such group. Continuing, principles number seven, eight and nine are concerned with environmental issues, stating that business should also "undertake initiatives to promote greater environmental responsibility" and "encourage the development and diffusion of environmentally friendly technologies".[5]

The main legal framework behind the rights of indigenous peoples

In the global perspective, the rights of indigenous peoples are regulated through two internationally renowned legal instruments: the Indigenous and Tribal Peoples Convention from 1989 (ILO 169) and the UN's Declaration on the Rights of Indigenous People from 2007 (UNDRIP). The more recent UNDRIP resolution builds on its predecessor ILO 169 and both instruments are similar in many aspects, for example in how they regulate indigenous peoples right to access their lands and natural resources and how a state should provide indigenous peoples consultation, participation and free and informed consent when undertaking any project that might infringe these rights.[6]

The ILO 169 and indigenous peoples' rights to lands and natural resources

The ILO 169 is comprised of 44 different articles and is divided into 10 separate divisions. The second section regulates the indigenous peoples' rights to land. Article 14 states that governments should recognise the rights of ownership and possession of the lands traditionally occupied by indigenous peoples. These lands do not have to be occupied exclusively by the indigenous peoples in question; governments should

[5] The United Nations. The Ten Principles of the UN Global Compact. https://www.unglobalcompact.org/what-is-gc/mission/principles – (Downloaded 2020-05-26).

[6] See for example ILO 169 article 14.1 or UNDRIP article 32.2

also take appropriate measures to protect lands that indigenous peoples traditionally have had access to for their subsistence and their traditional activities.
Continuing, article 15 regulates what rights indigenous peoples have to access natural resources located on their lands. According to this article, governments should make sure to specifically safeguard indigenous peoples' rights to natural resources pertaining to their lands. Examples of what these rights consist of are the participation in the use, management and conservation of these natural resources. Furthermore, if a government happens to be the owner of some natural resource found on lands that belong to an indigenous group, this government must make sure to consult the indigenous group in order to ascertain that the exploitation of the natural resource will not cause any harm to the interests of the indigenous group in question. Moreover, the indigenous group will have the right to participate in the benefits that the exploitation of the natural resource might render, and do also have the right to receive a fair compensation for any damage that the exploitation of the natural resource might cause on the indigenous peoples' interests.

Following this, article 16 clarifies that indigenous peoples should not be removed from lands that they occupy, and if a relocation is considered unavoidable, this can only take place with the free and informed consent of the indigenous peoples. If a relocation take place the indigenous peoples affected have the right to return to their lands as soon as possible, and if this is does not happen, they should be provided with some other lands of equal quality and suitable for their present and future development. However, instead of returning to their traditional lands there exists a possibility for the indigenous group to claim a monetary compensation instead if they prefer.

Lastly, article 18 of the ILO 169 indicates that governments shall enact adequate penalties through the law in order to prevent unauthorised intrusion upon lands that are occupied by indigenous peoples.[7]

[7] ILO 169: C169 Indigenous and Tribal Peoples Convention, 1989. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 – (Downloaded 2020-05-26).

The UNDRIP and indigenous peoples' rights to lands and natural resources

The UNDRIP is comprised of 23 preambular clauses and 46 articles, with a content that has many similarities with that of the ILO 169. First and foremost, an important part of the resolution is the indigenous peoples' right to self-determination which is dictated in article 3 and grants the right to freely pursue their economic, social and cultural development. After that, article 8 poses that states should make sure to prevent and redress for "any action which has the aim or effect of dispossessing them of their lands, territories or resources". Following this, in a very similar way to what is expressed in the ILO 169, article 10 of the UNDRIP states that indigenous peoples should not be removed from their lands without a free, prior and informed consent and that they have the right to a fair compensation. Furthermore, article 26 prescribes that indigenous peoples should be granted the rights to lands, territories and resources which they have traditionally owned or occupied and that they have the right to use, develop and control these lands.

Moreover, article 28 clarifies that indigenous peoples have the right to a compensation if lands that they have traditionally occupied have been confiscated or taken in some form.

Continuing, article 29 poses that states must make sure that the environment and the productive capacity of the lands, territories and resources belonging to indigenous peoples are conserved and protected.

Lastly, article 32 regulates how a state should behave when it comes to exploiting natural resources pertaining to the lands of indigenous people, and prescribes that if a state wants to exploit these lands, territories or resources they must "consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to realising any project; particularly in regard to projects concerning the exploitation of minerals, water or other resources.[8]

[8] The United Nations. United Nations Declaration on the Rights of Indigenous Peoples, 2007. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf – (Downloaded 2020-05-26).

Similarities and differences between the ILO 169 and the UNDRIP

To conclude, the ILO 169 and the UNDRIP have many similarities in the way that the rights of indigenous peoples are expressed, and they could be viewed as two legal instruments that are complementary and mutually reinforcing.[9] Both the ILO 169 and the UNDRIP clearly declare that indigenous peoples have the right to access lands that are traditionally occupied by them, the right to take part in the use of natural resources found on their lands as well as to participate in the benefits of the exploitation of these resources. In addition to this, governments cannot force a removal of indigenous peoples from their lands without a free and informed consent and if a relocation take place anyway indigenous peoples have the right to be compensated in the form of new lands or in the form of a monetary compensation.

However, an important distinction between the two is that the UNDRIP is not a legally binding instrument, while the ILO 169 on the other hand is legally binding when ratified by a state. Furthermore, the implementation of the ILO 169 also comes with a mechanism for supervising that the state in question follows the regulations stipulated in the legal instrument.[10] Thus, the ratification of the ILO 169 might have more direct political consequences for a state, which could cause resistance among states when it comes to ratifying this convention. This is the case for some states, among them Sweden, who up until this date has rejected a ratification of the ILO 169, despite being one the most active states in elaborating the content of the convention some thirty years ago.[11]

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[9] Candelaria, Sedfrey M. Comparative analysis on the ILO Indigenous and Tribal Peoples Convention No. 169, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Indigenous Peoples' Rights Act (IPRA) of the Philippines. International Labour Organization. Manila: ILO, 2012, p. 1.

[10] Candelaria, Sedfrey M. Comparative analysis on the ILO Indigenous and Tribal Peoples Convention No. 169, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Indigenous Peoples' Rights Act (IPRA) of the Philippines. International Labour Organization. Manila: ILO, 2012, p. 2.

[11] Fröberg, Jonas; Dahlberg, Joel. Hemlig utredning göms av regeringen: "Sprängstoff". *Svenska Dagbladet*. 2018-07-17. https://www.svd.se/hemlig-utredning-goms-av-regeringen-sprangstoff – (Downloaded 2020-05-25).

Indigenous peoples and wind power in Sweden

The northern parts of Sweden are inhabited by the indigenous group called the Sami people, who have been settling this part of the country since before Sweden's borders were drawn. Legally speaking, the Sami people has been recognised as an indigenous people by the Swedish parliament since 1977, but it was not until 2011 that they were recognised as a people in the Swedish constitution.[12]

The Swedish government has set ambitious goals for transitioning the country's fossil-based energy system into a renewable energy system. For this year 2020 an overall goal of at least 50 % renewable energy of the total energy consumption was set, a goal that was reached already in 2013. The next overall goal is set for the year 2040, when 100% of Sweden's energy production should be renewable, although this goal is not energy source specific; the target does not indicate what percentage of the total energy production that should come from wind power for example.[13] However, particular targets for the development of Swedish wind power do exist. A joint goal together with Norway of a yearly energy production of 28.4 TWh in 2020 was reached one and a half year before the deadline and according to the Swedish Energy Agency the next goal of another 18 TWh wind power on Swedish ground in the year 2030 could possibly be reached much sooner than so if all the announced projects continue according to the plan.[14]

The northern parts of Sweden, home of the Sami people, is one of the country's most important geographical areas when it comes to harvesting wind power. In 2019, 44% of Sweden's installed wind power effect, 39% of the total electricity production from wind power and 35% of the country's wind power plants were located in the counties

[12] Swedish Sami Parliament. Background: The State and the Sami Parliament. *Sametinget*. 2019-03-14. https://www.sametinget.se/9688 – (Downloaded 2020-05-25).
[13] Axelsson. Svante. DN Debatt: "Politikerna underskattar möjligheten nå klimatmål". *Dagens Nyheter*. 2015-11-14. https://www.dn.se/debatt/politikerna-underskattar-mojligheten-na-klimatmal/ – (Downloaded 2020-05-25).
[14] Swedish Energy Agency. 2020-målet i elcertifikatsystemet är uppnått. *Energimyndigheten*. 2019-05-28. http://www.energimyndigheten.se/nyhetsarkiv/2019/2020-malet-i-elcertifikatsystemet-ar-uppnatt/ – (Downloaded 2020-05-25).

of Norrbotten, Västerbotten, Västernorrland and Jämtland; the counties that constitute the Sami lands and the place where the Sami people keep their reindeers.[15]

Hence, one can conclude that the Swedish government has very ambitious energy political targets, not least the goal of 100% renewable energy production by 2040. It is still unclear how much of this production that will be assigned to wind power, but wind power has been expanding rapidly lately and it is likely that this sector will continue to grow until 2040 as well. If this is the case, it is possible that an important part of this development will happen on Sami lands; territories that traditionally belong to the Sami people and that are of importance for their reindeer husbandry.

[15] Swedish Energy Agency. Vindkraftsstatistik. *Energimyndigheten*. 2019-02-28. http://www.energimyndigheten.se/statistik/den-officiella-statistiken/statistikprodukter/vindkraftsstatistik/ – (Downloaded 2020-05-25).

Case studies

Wind power development on traditional Sami lands

There has been an ongoing conflict between the Swedish state and the Sami people over lands and the right to territories that by tradition have pertained to this indigenous group for centuries. According to Persson et al. [2017] this has largely been driven by the state's intention to secure the access to the resources in the area such as a mining and forestry.[16] This conflict is still current up until this day, which not least became evident in the start of 2020 when the so called "Girjas case" concerning a dispute between the Swedish state and the Sami people regarding hunting and fishing rights draw a lot of attention in the media.[17]

Various research on the topic have been conducted, amongst these studies on the effects of wind power development on traditional Sami lands. In one study by Lawrence from the Stockholm University [2012], the Swedish state's strategies in planning the development of a wind power plant in the mountainous area of Stekenjokk in the very north of Sweden, part of traditional Sami lands, was investigated.[18] The case study starts with a critique against how the Västerbotten Administrative Board (Länsstyrelsen i Västerbotten) – by the author referred to as solely the County Board – acted during the tender process of a planned wind power plant in Stekenjokk. The County Board signed a letter of intent with a Norwegian company called Fred Olsen Renewables (FOR) who won the tender regarding wind power development in the area. The Stekenjokk area is located on traditional Sami territory and although the local Sami community did not enjoy full ownership rights to this area, they had constitutionally protected rights for reindeer grazing. In addition to this, a cultural and spiritual tie between the Stekenjokk area and the local Sami community existed. Although no official support to claim full ownership rights over

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[16] Persson, Sofia; Harnesk, David; Islar, Mine. What local people? Examining the Gállok mining conflict and the rights of the Sámi population in terms of justice and power. *Geoforum*. Vol. 86, 11/2017, p. 21.
[17] Lagerwall, Katarina. Högsta domstolen ger samebyn Girjas rätt i uppmärksammat mål. *Dagens Nyheter*. 2020-01-23. https://www.dn.se/nyheter/sverige/hogsta-domstolen-ger-samebyn-girjas-ratt-i-uppmarksammat-mal/ – (Downloaded 2020-05-25).
[18] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014.

their traditional lands exists, the Sami community still claimed ownership rights of the Stekenjokk area. Despite this, the County Board never informed the Sami community of the letter of intent regarding the wind power plant in Stekenjokk, nor did they involve the Sami community in the negotiations concerning the conditions of the development. This led to the Sami community protesting in local media and they later appealed to the District Court.[19] In the end the project was stopped after a vote in the city council.[20] The intention of that study was not only to convey this particular event, but to use it as a mean to contextualise the long lasting conflict between the Sami people and the Swedish state in regard to the rights of lands and resources. The author used a qualitative approach as research method and conducted anonymous interviews with state representatives on both the regional and the national levels as well as members of the Sami community.[21] Using the concept of internal colonisation as the starting point – internal colonisation referring to the unresolved conflicts between Western societies and indigenous peoples occurring after both groups came to inhabit the same lands[22] – the author argues that the Sami people are being outmanoeuvred from their traditional territories not only by the continuous industrialisation of this area, but also through the promotion of green development.[23] The author suggests that this process is being fuelled by the Swedish state in conjunction with the wind power industry. For example by showing that the state representative in this case, the County Board, justified their signing of the letter of intent with the wind power company FOR by claiming that they did so as landowners rather than a public authority; as a public authority they would have to protect the interests of the Sami people, but not as landowners.[24] This argument is deepened

[19] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014, p. 1036-1037.
[20] Swedish Radio. Nej till vindkraft i Stekenjokk. *SR P4 Västerbotten*. 2010-06-15. https://sverigesradio.se/sida/artikel.aspx?programid=109&artikel=3786149 – (Downloaded 2020-05-25).
[21] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014, p. 1050.
[22] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014, p. 1039.
[23] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014, p. 1047.
[24] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014, p. 1047.

further, where the author suggests that this problem might stem from an overall neoliberal trend in society where the state tends to reconstitute itself as a "market actor" and as such the state would not have to respect the rights of the Sami people to the same extent. The author claims that the reason for the state taking on this new market approach is primarily financial; the state sees a potential profit source in letting these wind power projects happen.[25] By negotiating directly with the wind power developers and bypassing the Sami people, the state can make sure to procure revenues that potentially could be claimed by the Sami people instead.[26] Lastly, the author further suggests that the wind power industry is abusing the positive connotations of the concept of renewable energy and sustainable development to get their interests through, in this particular case by appealing to renewable energy as being a more important societal interest than reindeer husbandry.[27]

Findings, concepts and experiences from similar projects abroad

Several other studies on the topic of renewable energy development in connection with the rights of indigenous peoples have been conducted in other countries than Sweden. Particularly in Latin America, where researchers have been investigating how wind power development might affect the life of indigenous peoples in Mexico. For example, a study analysing a wind power project in the Isthmus of Tehuantepec indicated how the overall neoliberal trends in Mexican politics could be traced also to the wind power sector, where strong markets factors have had a major influence on the deployment of clean and sustainable energy which has led to social, political and cultural dimensions being disregarded. This has left indigenous peoples with uneven outcomes and reiterated historical struggles with the Mexican state not only over lands and resources, but also identity and autonomy.[28]

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[25] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014, p. 1049.
[26] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014, p. 1048.
[27] Lawrence, Rebecca. Internal colonisation and Indigenous resource sovereignty: wind power developments on traditional Saami lands. *Environment and Planning D: Society and Space*. Vol. 32, Nr. 6, 12/2014, p. 1046.
[28] Avila-Calero, Sofia. Contesting energy transitions: wind power and conflicts in the Isthmus of Tehuantepec. *Journal of Political Ecology*. Vol. 24, Nr. 1, 09/2017, p. 1006.

However, these studies should not be seen as negative towards wind power as such; the enormous potential that wind power has as an energy resource and the importance that it plays as a brick in the puzzle in the overall mitigation of climate change is recognised and it is suggested that ways to reconcile the negative impacts that wind power development might have upon the rights of indigenous groups should be prioritised. Examples of such means of reconciliation could be to make sure that indigenous peoples benefit from the economic profits that wind power generation brings; these incomes could be invested in securing basic needs such as food, education and healthcare for the indigenous groups in question, and could also serve as a mean to create jobs for indigenous individuals. Encouraging small-scale decentralised wind power projects among indigenous communities is another suggestion that has been put forth; by allowing for and encouraging small producers to produce and sell their own energy, indigenous peoples could be granted a mean to earn a profit from natural resources located on their lands.[29]

The issue of harvesting renewable energy on indigenous soil in Latin America has been studied not only in regard to wind power development. Mary Finley-Brook and Curtis Thomas at the University of Richmond [2011] have made attempts to reveal how the implementation of renewable energy strategies through the use of the Clean Development Mechanism (CDM) reforms can have a harmful impact on the life of indigenous peoples. A CDM is an instrument for trading emissions that was established in the 2007 Kyoto Protocol; in order to reduce GHG emissions, developed countries have the possibility to invest in clean energy projects in developing countries as a substitute to implementing carbon offsets in the own country.[30] By studying the construction of two hydro power projects on indigenous lands in Panama, Finley-Brook and Thomas [2011] illustrate the risk of how project developers as well as governments in developing countries can use low-carbon objectives as a mean to justify social oppression against indigenous peoples, as a result of foreign investments by developed countries under the CDM regime. These practices are described as "carbon colonialism" and "green authoritarianism"; carbon

[29] Hamister, Laura. Wind development of Oaxaca, Mexico's Isthmus of Tehuantepec: energy efficient or human rights deficient? *Mexican Law Review*. Vol 5, Nr. 1, 2012, p. 175-178.
[30] Lloyd, Bob; Subbarao, Srikanth. Development challenges under the Clean Development Mechanism (CDM)—Can renewable energy initiatives be put in place before peak oil? *Energy Policy*. Vol. 37, Nr. 1, 2009, p. 240.

colonialism referring to how "emission trading become an instrument by means of which the current world order, built and founded on a history of colonialism, wields a new kind of 'carbon colonialism'"[31]and green authoritarianism referring to "a process where the state and the private sector join forces to defend renewable energy sources and market-valorised ecological processes, while, at the same time, limiting local resource access and disempowering indigenous people".[32]

[31] Dehm, Julia. Carbon colonialism or climate justice? Interrogating the international climate regime from a twail perspective. *Windsor Yearbook of Access to Justice*. Vol. 33, Nr. 3, 05/2017, p. 137.
[32] Magnani, Natalia. The Green Energy Transition - Sustainable Development or Ecological Modernization? *Sociologica*. Vol. 2, Nr. 2, 2012: DOI: 10.2383/38270, p. 13.

Analysis and main argumentation

The study by Finley-Brook and Thomas [2011] is important since it emphasises various points that could serve as an analytical tool when planning for renewable energy projects on or in the vicinity of Sami communities in Northern Sweden.

Firstly, it is important to think from a cost-benefit perspective; in a renewable energy project on indigenous territory, who is really paying the costs in terms of ecological damage, limited access to surrounding resources such as grazing areas or perhaps even forced resettlement? On the other hand, who gets to actually enjoy the benefits that such a project will render in terms of profits from electricity as well as the access to this cheap electricity?[33] It is probable that the majority of the costs will have to be carried by the indigenous peoples, while the majority of the benefits flow outbound towards investors and market actors.

Secondly, the study serves for illustrating how carbon offset projects implemented on indigenous territories can have effects that are adverse on local self-governance, land tenure and subsistence practices;[34] aspects that are central topics in the ILO 169 as well as the UNDRIP when it comes to protecting the rights of indigenous peoples.[35] Hence, awareness of these conclusions is of utterly importance for people responsible of planning similar projects in the future.

Thirdly, and perhaps most importantly, the study by Finley-Brook and Thomas [2011] unveils that in our general strive for transitioning from a fossil-based energy system to a clean one, renewable energy projects conducted on indigenous territories could lead to state agencies and private firms using the positive connotations of the concept of sustainable development as a cover-up for pursuing neoliberal agendas that further weakens and marginalise indigenous groups.[36]

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[33] Finley-Brook, Mary; Thomas, Curtis. Renewable Energy and Human Rights Violations: Illustrative Cases from Indigenous Territories in Panama. *Annals of the Association of American Geographers: Geographies of Energy*. Vol. 101, Nr. 4, 07/2011, p. 864.
[34] Finley-Brook, Mary; Thomas, Curtis. Renewable Energy and Human Rights Violations: Illustrative Cases from Indigenous Territories in Panama. *Annals of the Association of American Geographers: Geographies of Energy*. Vol. 101, Nr. 4, 07/2011, p. 869.
[35] See ILO 169 Part II, in particular Articles 14-16, and UNDRIP Articles 3, 29 & 32.
[36] Finley-Brook, Mary; Thomas, Curtis. Renewable Energy and Human Rights Violations: Illustrative Cases from Indigenous Territories in Panama. *Annals of the Association of American Geographers: Geographies of Energy*. Vol. 101, Nr. 4, 07/2011, p. 864.

Clearly, applying these findings analogously straight onto the situation in Northern Sweden is not a feasible practice. The situation for indigenous peoples in Latin America compared to Sweden, and the respect for their rights and human rights in general might not be the same. However, the conclusions made by Lawrence [2012] in regard to the planning of a wind power plant in Stekenjokk show similarities with the Latin American experiences. For example; a state agency – the Västerbotten Administrative Board – turning directly to a private company in its attempts to implement renewable energy objectives and thus rounding the requirements of free and informed consent as expressed in the international jurisdiction. Lawrence [2012] further shows that a tendency of framing the quest for a renewable energy system as superior to the rights of indigenous peoples is present in Sweden as well; Lawrence [2012] shows how the wind power company in question applied this argument in the Stekenjokk case. Moreover, the study by Lawrence [2012] illustrates how the general trend towards an increased marketisation in society influences the behaviour of state agencies in such as the execution of renewable energy strategies; Lawrence [2012] describes how the County Board tended to reason more as a market actor rather than a governmental body when arguing that they signed the letter of intent regarding wind power development as landowners and not as a public authority. This is reminiscent of the conduct of the authorities in the Latin American cases where the journey towards a sustainable future in general and the implementation of a clean energy system in particular tends to be regarded as a pure market-rationale action where other values such as social, cultural and ethical dimensions are put aside; protecting the rights of indigenous peoples being one such thing. Lawrence [2012] does not apply the concepts of carbon colonialism and green authoritarianism in her analysis of the effects of wind power development on Sami territories, but does instead use the concept of internal colonisation as a starting point in her argumentation which is not connected to sustainable development per se. However, it is arguable that the findings that Lawrence [2012] unveils in her study of wind power on Sami territories are evocative of practices such as carbon colonialism and green authoritarianism – although maybe not to the same extent as in the Latin American cases.

The content found in the international legislation dealing with the rights of indigenous peoples, namely the above described ILO 169 and the UNDRIP, are very

clear and precise in affirming how states should behave when it comes to the treatment of indigenous peoples settled within a country's borders. As has been described previously, both legal instruments are very similar in how clearly they specify how indigenous peoples should be granted access to their traditional lands and how they should be allowed to benefit from natural resources located on these territories. This becomes specifically evident through articles 14 and 15 in the ILO 169 and article 32 in the UNDRIP. Although the development of renewable energy sources in general and wind power plants in particular is not mentioned explicitly in neither the ILO 169 nor the UNDRIP, it is reasonable to argue that these types of resources could be interpreted as "other resources pertaining to lands" (as described in the ILO 169, article 15) or "other resources" (as described in the UNDRIP, article 32). Following this, the behaviour of the state agencies that were surveyed both in the Swedish and the Latin American cases could be considered as violating the ILO 169 as well as the UNDRIP.

However, the reason for this being so, is obviously is the fact that states are not necessarily obliged to strictly follow these legal instruments. The ILO 169 is a binding convention for states that ratify it – something that far from all countries have done.[37] The UNDRIP on the other hand is a not-legally binding resolution and has less judicial weight, but it was however voted through in 2007 by a majority of 144 countries, with only 4 countries against and 11 abstentions.[38]

Sweden voted in favour of the UNDRIP but is one of the countries that has not signed the ILO 169, which is still frequently criticised in the media up until this very day.[39] One can only speculate about why the Swedish government has never taken the step to ratify the ILO 169, despite being one of the more active countries in

[37] ILO. Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314 – (Downloaded 2020-05-28).
[38] The United Nations, Department of Economic and Social Affairs. United Nations Declaration on the Rights of Indigenous Peoples. https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html – (Downloaded 2020-05-26).
[39] Fröberg, Jonas. Experten: "Regeringen borde ta mer hänsyn till samerna". Dagens Nyheter. 2020-04-20. https://www.dn.se/nyheter/sverige/experten-regeringen-borde-ta-mer-hansyn-till-samerna/ – (Downloaded 2020-05-25).

compiling the convention during the 80's.[40] One such speculation that is circulating in the media is that a ratification of the ILO 169 would imply that the government's plans when it comes to developing the mining and the wind power sector in Northern Sweden would be much harder to execute. There are no academic findings confirming these speculations, but one could just plainly reflect the content of the ILO 169 and try to analyse what it would really mean for the Swedish government having to adapt to regulations such as:

"The rights of the peoples [read indigenous peoples] *concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources."* [41]

It is reasonable to argue that a ratification of the ILO 169 would not pass by unnoticed and without complications when the government is issuing public tenders for wind power projects on traditional Sami land; or other renewable energy projects for that sake such as biofuel production. A general resistance against wind power plants already exists, and by having to consult the Sami population before each project would obviously slowdown the construction process and make wind power projects in the north more costly. It is thus probable that such a situation would make it harder for the government to fulfil its overall energy strategy, as well as making it harder to attract investors and wind power developers.

The rights of the Sami people regarding other issues than just wind power development is a recurrent topic in the general political debate in Sweden. In the beginning of 2020, the Supreme Court of Sweden treated a case regarding the Sami people's hunting and fishing rights in relation to the rights of the Swedish state, on a territory traditionally occupied by a group of Sami people. The Supreme Court pronounced a sentence in favour of the Sami people, concluding that they should be granted exclusive rights to conduct fishing and hunting in the area in question, meaning that the Swedish state cannot claim any such right.[42] An interesting point

[40] Motion 2004/05:K330 av Gustav Fridolin m.fl. (mp): En svensk anslutning till ILO 169. https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/en-svensk-anslutning-till-ilo-169_GS02K330 – (Downloaded 2020-05-26).
[41] ILO 169: *C169 Indigenous and Tribal Peoples Convention, 1989*, article 15.1.
[42] Supreme Court of Sweden. *Sentence number T 853-18*, paragraph 166.

with this sentence is that the Supreme Court turns to both the ILO 169 and the UNDRIP in its judgement. In particular, the Supreme Court turns to article 8.1 in the ILO 169, which states the following:

"In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws." [43]

The Supreme Court acknowledges that Sweden has not yet ratified the ILO 169, but despite this being so, they argue that the ILO 169 in this particular aspect pronounced in article 8.1 should be regarded as "a general principle of international law" and concludes that this principle should be taken into consideration in disputes over the rights of lands that concern the Sami people, when the dispute involves their particular customs.[44]

Moreover, in its argumentation the Supreme Court also turns to the UNDRIP, and in particular article 26 which convey that:

"Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." [45]

In addition to this, the Supreme Court also emphasises article 27 of the UNDRIP, which is a similar regulation to that of the ILO 169 in clarifying that states shall give "due recognition to indigenous peoples' laws, traditions, customs and land tenure systems". Here the Supreme Court concludes that if it is a requirement for being able to maintain their specific culture, it could be necessary to secure the Sami people access to lands that they have traditionally exerted.[46]

This is an interesting fact, since a sentence from the Supreme Court is automatically regarded as a precedent in Swedish law, and the conclusions from the sentence described above could potentially be taken into consideration in future disputes between the Sami people and the Swedish state regarding the construction of wind

[43] ILO 169: *C169 Indigenous and Tribal Peoples Convention, 1989*, article 8.1.
[44] Supreme Court of Sweden. *Sentence number T 853-18*, paragraph 130.
[45] The United Nations. *United Nations Declaration on the Rights of Indigenous Peoples, 2007*, article 26.1.
[46] Supreme Court of Sweden. *Sentence number T 853-18*, paragraph 131.

power plants; if development of wind power plants could be seen as obstructing the Sami people from maintaining their traditional customs, such as reindeer grazing. Recent research from the Swedish University of Agricultural Sciences (SLU) indicates that this could be the case; operating wind power mills in the vicinity of reindeer colonies has an impact on the reindeers' behaviour. By collecting GPS data from 50 reindeers, the researchers at SLU found that the reindeers' tended to choose their calving site further away from operating wind farms compared to before the wind farms were constructed. They further found that the reindeers tended to select their home ranges in places where the wind farms became invisible due to the surrounding topography, compared to home ranges where the wind farms were visible. Given these findings, the researchers interpreted this change in the reindeers' behaviour as a direct consequence of the establishment of the wind farms per se.[47]

Hence the results of this study suggest that wind farms impact reindeers' normal grazing patterns, which potentially could be regarded as negatively and harmful for reindeer colonies. A consequence of this could be that it becomes harder for the Sami people to maintain their specific customs and traditions, namely reindeer grazing in this case. If so, the conclusions from the recent precedent from the Supreme Court of Sweden could have to be taken into account amongst both state authorities as well as wind power developers when planning for future wind power projects in the proximities of traditional Sami territories.

[47] Skarin, Anna; Sandström, Per; Alam, Moudud. Out of sight of wind turbines – Reindeer response to wind farms in operation. *Ecology and Evolution*. Vol. 8, Nr. 19, 10/2018.

Concluding discussion

The reason for writing this essay has been to highlight conflicts that might occur along the path when trying to transition our society into a more sustainable one. One such conflict that might occur is when the implementation of countries' renewable energy strategies lead to violations on the indigenous peoples' rights. In this paper I have demonstrated that this is a critical topic not only on a local scale here in Sweden, but also on a global scale by showing how this is a recurrent problem in renewable energy projects in Latin America as well. Thereafter I have showed how the international legislation regulating the rights of indigenous peoples is very clear when it comes to how states should protect indigenous peoples' lands and secure their participation in the exploitation of natural resources found on their lands. However, despite the international legislation being very precise conflicts still occur. The first and most obvious reason for this is of course the fact that the main binding legal document regulating the rights of indigenous peoples – the ILO 169 – has still not been ratified by the majority of the countries; meaning that although the rules and regulations are there, a country like Sweden does not actually have to follow it. And – as have been pointed out – the second legal document on the topic, the UNDRIP, is not a legally binding document for states although they have voted it through, and thus acts more as a judicial guideline for states rather than strictly binding law.

However, my intention with this paper has not only been to discuss the conflicts that the implementation of renewable energy policies can have upon the rights of indigenous peoples, but also to put emphasis on the core problem that this issue serves to illustrate, namely: what is really sustainable development? Just because a project is ecologically sustainable, as in this case with clean and renewable energy projects, is it fair to label the project as "sustainable development" although it might not be sustainable from a social perspective? As mentioned, when the concept of sustainable development was born it initially only encapsulated two perspectives, namely the economical and the environmental side. Although these days, the major institutions like the UN acknowledges that sustainable development is a three-dimensional concept, where the social perspective constitutes the third pillar beside its economic and environmental counterparts. Nonetheless, as the cases described reveals, there are situations when one could be tempted to compromise on the social

pillar in order to reach economic and environmental objectives. This raises the obvious question: are there situations where one could legitimise the violations of for example human rights regulations in order to be able to fight of climate change? Or put in a more metaphorical way: is it possible to construct a house whose layout plan says the foundation needs three pillars in order to stand stable, but then decide to try to build the house on only two pillars anyway, silently hoping it will not collapse although it is wrongly constructed? This is definitely a tough question to answer. Seen in the light of the alarming reports of the escalating problems that climate change is causing in terms of irreversible damage to our nature, leading to one natural disaster after the other, it is understandable that one could argue that there could be situations when it is necessary to let the social pillar stand back in order to fulfil environmental musts. In order to tackle climate change, everybody must change their living patterns, and one could argue that also indigenous peoples would have to adapt to the new reality. For example, in the case of Sweden; wind power will constitute an important part of our energy supply in the future, and the northern parts of the country receive the most wind and therefore it could be necessary to take the decision to expand wind power development in these areas, at the expense of the Sami peoples' access to lands.

It is not my personal viewpoint that it is right to do so, but my intention is to illustrate that it could be a logical reasoning. However, it is also important to point out that it might be a dangerous reasoning; as the Latin American cases reveal there exists a tendency among both governmental and private actors to use the term sustainable development as a cover-up in order to pursue certain interests, which could for example take the form of continuous repression of indigenous groups. This is of course an alarming development that needs to be addressed. Nevertheless, the most obvious answer to how this problem can be solved is clearly spelled out in the international legislation discussed in this paper; states must guarantee that indigenous peoples have the rights to access resources located on their lands. Historically, indigenous peoples have always lived in close harmony with nature, and the quick advancement within the field of renewable energy could potentially make this be the case also in the future. I suggest that states encourage indigenous peoples to participate in the exploitation of renewable energy resources to a much higher extent than today, and that state authorities actively work to develop new revenue models

that could make it profitable for both states, companies and indigenous peoples to all profit from what the nature has to give; which I argue is a valid way to interpret what the international legislation such as the ILO 169 and the UNDRIP express. A practical example of this would be that Sami communities are guaranteed a fair percentage of the revenue stream that a wind farm on their lands would generate, a percentage that would reflect the losses that the wind farm would incur on their reindeer grazing activity. In this way it should be possible to find win-win situations where indigenous groups could actually benefit from an increased implementation of renewable energy strategies.

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