Environmental Restorative Justice and the Green Transition: Examining Intergenerational Equity for Sámi Rights under the Norwegian Constitution

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This article applies the concept of Environmental Restorative Justice (ERJ) to examine how constitutional law can reconcile environmental protection with Sámi collective rights within Norway's legal framework. It centres on intergenerational equity to show how land, culture, and development rights are deeply connected for Indigenous Peoples. Positioned within the context of the green transition, the article highlights how emerging environmental policies, while aimed at ecological restoration, can produce systemic tensions and cultural displacement when imposed without Indigenous participation. It argues that environmental justice requires recognizing Indigenous Peoples as rights-holders, whose customary norms and relationships with land must inform legal and environmental systems. In this context, environmental restorative justice offers a pathway to rebalancing legal systems in ways that honour Indigenous sovereignty and the continuity of their lifeways. The paper analyses the Fosen Vind dispute in Norway to illustrate the conflicts that may arise when environmental policies disregard Indigenous cultural survival. It proposes three evaluative criteria – distributed-management of natural resources, community engagement, and the inclusion of Indigenous perspectives in environmental impact assessments – to assess the enforcement of core international environmental principles into constitutional frameworks. The article demonstrates how constitutional law can serve as an interface between international obligations and the domestic protection of Indigenous rights, advocating for participatory governance models that align ecological sustainability with the preservation of Indigenous heritage.

Introduction: Green Transition and the need for Restorative Environmental Justice

The accelerating green transition presents a paradox for Indigenous Peoples. While it seeks to respond to urgent ecological challenges through renewable energy projects and environmental conservation, its implementation often disregards Indigenous rights and lifeways. Large-scale renewable initiatives, such as wind farms, hydroelectric facilities, and conservation zones, have increasingly affected ancestral territories without meaningful consultation or consent. For instance, in the Fosen case in Norway, the Supreme Court found that the construction of wind turbines on Sámi grazing land violated their rights under Article 27 of the ICCPR, emphasizing the lack of

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adequate consultation and the disproportionate burden placed on reindeer herding practices (Mósesdóttir, 2024: 3–5). These developments, although environmentally motivated, risk reinforcing historical patterns of exclusion and cultural erosion. The UNFCCC's Katowice Committee also notes that response measures can exacerbate vulnerability and inequality when Indigenous and local communities are excluded from planning processes (UNFCCC KCI, 2023: 6–7). Normann (2021: 78) discusses this phenomenon as a form of "green colonialism," where environmental policy is leveraged to justify new waves of land dispossession in the Nordic Sámi context. Likewise, McGregor et al. (2020: 36-37) warns that sustainability transitions, if not grounded in justice and self-determination, may perpetuate settler colonial dynamics. As such, the green transition itself becomes a site of legal tension, raising important questions about how environmental goals can be pursued in a just and inclusive manner. At the same time, the present analysis reveals a dual contradiction within contemporary environmental governance. On one hand, there is growing recognition of the need to involve Indigenous Peoples through participatory mechanisms and rights-based approaches. On the other, these mechanisms are often undermined by policies that prioritize national environmental targets over Indigenous territorial and cultural rights. Similarly, conservation regimes grounded in restrictive moratoria frequently fail to acknowledge differentiated cultural responsibilities, reinforcing a one-size-fits-all model of environmental justice (Fitzmaurice, 2017: 199-200). These contradictions underscore the need for constitutional frameworks to recognize culture as a justiciable and enforceable category in environmental law.

This article advances Environmental Restorative Justice (ERJ) as an analytical framework for assessing how Norwegian constitutional system mediates these tensions between global environmental commitments and Indigenous rights (Forsyth et al., 2021: 19-20). As developed by Forsyth et al. (2022), ERJ is an emerging interdisciplinary framework that applies restorative principles to ecological harm. Grounded in restorative and social-ecological theory, ERJ provides normative guidance for legal and institutional systems to integrate environmental and social justice (pp.3-6). In this article, ERJ is used as a normative-analytical framework to evaluate how constitutional law can integrate principles of restoration, participation, and equity. Its procedural dimension guides the assessment of participatory rights, while its substantive dimension informs the analysis of how constitutional and legislative provisions distribute environmental benefits and burdens across peoples and generations. This study reinterprets Forsyth et al.'s ERJ's structure in three criteria – *distributed management, community engagement, and environmental impact assessment (EIA)* – to examine how Norwegian constitutional law protects environmental and Indigenous rights through Articles 108 and 112. Drawing on intergenerational equity, ERJ reinterprets constitutional law as a reconciliatory framework linking ecological protection and Sámi cultural continuity.

To structure this analysis, the article proceeds as follows. Section 1 introduces the methodological and analytical foundations of the study, including a detailed explanation of the ERJ framework and its relevance within the green transition. Section 2 explores international legal principles underpinning intergenerational equity and their application to Indigenous Peoples' rights, particularly the right to development and collective interests. Section 3 examines the constitutional dimensions of Indigenous land claims in Norway, highlighting the role of the Sámi Parliament in environmental governance. Section 4 applies the ERJ framework to the Fosen case in Norway, assessing how domestic legal responses align with or depart from restorative environmental justice. Section 5 reflects on spiritual harm and epistemic injustice as unresolved challenges in

environmental jurisprudence, before concluding with a call for a constitutionally grounded, participatory model of ecological justice.

1. Methodology

1.1 Environmental Restorative Justice as Analytical Framework

This article adopts a qualitative doctrinal methodology, combining legal analysis of constitutional jurisprudence, international legal instruments, and Indigenous rights frameworks. The approach is grounded in the normative intersections between environmental constitutionalism (Boyd, 2012), intergenerational equity (Brown Weiss, 1989), and environmental restorative justice (ERJ) (Forsyth et al., 2021). Within this framework, ERJ is not treated as a legal doctrine but as a structured analytical lens for evaluating the cultural inclusivity of constitutional environmental law (Wessels, 2022:101–103). It serves to critically examine how constitutional law can strengthen the cultural dimensions of environmental protection, with a focus on Norway. The research addresses two central questions: (1) How does environmental protection intersect with the rights of Indigenous Peoples, particularly their right to development and intergenerational knowledge transmission? (2) How can constitutional law facilitate the domestic incorporation of international environmental obligations in a culturally inclusive and legally enforceable manner?

At broader levels, this article also aims to illustrates how Norwegian constitution either supports or constrains Indigenous Peoples' ERJ and their rights to intergenerational equity within the framework of the Green Transition.

1.2 Evaluation Criteria: Distributed-management, Community Engagement, and EIA

To operationalize the ERJ framework, the article employs three interrelated evaluation criteria drawn from Forsyth's conceptual formulation of environmental restorative justice:

- Distributed management of Natural Resources: Decentralisation of state control in environmental regulation through collaborative mechanisms involving government, industry, and Indigenous community actors (Forsyth et al., 2021, p. 20).
- Community Engagement: The recognition and protection of Indigenous Peoples' participatory rights in environmental law-making and administrative procedures. This includes access to consultation, procedural justice, and culturally sensitive negotiation processes (Ibid.).
- Environmental Impact Assessment (EIA): The inclusion of Indigenous cultural knowledge and values in assessing the socio-environmental effects of state-led projects. This criterion evaluates whether EIAs are merely technical or also address cultural impacts (Ibid: 21).

ERJ evaluates justice through two complementary dimensions: procedurally, it examines whether institutions ensure inclusiveness, access to information, and meaningful consultation; substantively, it assesses whether constitutional or legislative frameworks redistribute power, protect collective rights, and recognise environmental degradation as a form of cultural harm. Applying these criteria to constitutional law serves a dual purpose: (1) it enables the reinterpretation of existing legal domestic instruments in light of restorative and intergenerational principles, and (2) it provides a normative guide to assess whether constitutional frameworks endorse or invalidate governance mechanisms that fail to achieve reconciliation. In this sense, constitutional law provides an *adaptive* structure through which legal and institutional mechanisms can respond to environmental

degradation and cultural loss. Comparative experiences reinforce this analytical approach. In South Africa, judicial review, rights interpretation, and structural judgments have been used to redress historical exclusion, particularly in cases involving customary land and environmental governance (Claassens & Budlender, 2014: 75–78). These judgments often recognise collective rights and integrate international legal principles—such as sustainable development and the right to a healthy environment—into domestic constitutional frameworks. Similarly, Ozoemena (2014: 105–108) highlights the role of living customary law as a conduit for procedural protection, notably through free, prior, and informed consent (FPIC), and as a foundation for constitutional reform that incorporates community knowledge systems. Within this restorative framework, constitutional justice becomes an anticipatory tool of interpretation, distinguishing between governance models that perpetuate harm and those that advance repair. ERJ thus foregrounds participatory rights, encourages culturally responsive legal processes, and promotes flexible mechanisms capable of addressing the enduring legacies of colonialism and land dispossession (Barra & Jessee, 2024: 212–219). Empirical evidence supports this view: conservation initiatives led or co-managed by Indigenous Peoples and Local Communities (IPLCs) yield better ecological and social outcomes than top-down models, while exclusion reproduces both environmental and cultural loss (Dawson et al., 2021: 19–22).

1.3 Green Transition as a Source of Legal Tension

The green transition introduces new dynamics of exclusion and cultural displacement for Indigenous Peoples. Although pursued in the name of climate mitigation and sustainability, green transition policies often replicate colonial patterns of land appropriation and legal marginalization (Sun et al., 2023: 5–7). Large-scale wind farms, conservation zones, and emissions trading schemes may encroach upon Indigenous lands without respecting consent protocols or participatory governance mechanisms (Loginova et al., 2025: 2–4). These conflicts are not merely political or economic—they are legal. As documented in Arctic and sub-Arctic contexts, communities frequently report that consultation mechanisms remain extractive or symbolic, failing to substantively incorporate Indigenous legal traditions or decision-making frameworks (Loginova et al., 2025: 6–8). Then, the relationship between ERJ and the green transition lies in its shared objective to repair ecological harm while ensuring procedural and distributive fairness. For Indigenous Peoples, whose ties to land have long been marginalized, ERJ promotes recognition of their knowledge systems and legal traditions in environmental governance (Killean, 2022: 4–6). It reinforces intergenerational equity by safeguarding constitutional rights across generations (Pali, Forsyth, & Tepper, 2022: 12–14) and operationalizes these rights through procedural safeguards that shape judicial mechanisms (Hazrati & Heffron, 2021: 4–6).

2. International Legal Principles on Intergenerational Equity and Indigenous Rights

2.1 Reframing Intergenerational Equity for Indigenous Peoples

Intergenerational equity, when applied to Indigenous Peoples, must go beyond environmental preservation to account for collective rights and the right to development. By failing to fully recognize the central role of land in Indigenous identity and governance, historical legal systems have often narrowed the scope of self-determination, thereby constraining meaningful pathways to decolonization (McDonnell & Regenvanu, 2022: 237-8). In 1987, the Brundtland Report,

entitled "Our Common Future" finally emerged as first potentially transformative legal ground, emphasizing meeting present needs without compromising the ability of future generations to meet theirs (World Commission on Environment and Development [WCED], 1987:43). The current sustainable development framework, intended as interdependence of environmental protection, economic growth, and social equity, offers a set of guiding principles for balancing competing state priorities, while creating normative space for "responsive, inclusive, participatory and representative decision-making at all levels" (United Nations, 2015: SDGs 13,15–17). In this perspective, integrating sustainability with justice requires reorienting legal obligations to recognize historical harm and support culturally specific, future-oriented forms of governance, especially by shifting beyond state-centric models of intergenerational responsibility. (Yap & Watene, 2019: 145-9). In this analysis, intergenerational equity is not treated as a purely temporal concept but rather emerges from the convergence of two foundational elements: the right to development and the principle of collective interest. When interpreted in tandem, these elements articulate a sophisticated vision of justice that is both forward-looking and relational, linking the temporal duties owed to future generations with the spatial justice claims of Indigenous Peoples whose identities and livelihoods are intimately tied to land (Farchakh, 2003: 3–4; Yap & Watene, 2019: 3–5). This approach reflects a dual shift: first, from individual to collective entitlement; and second, from instrumental resource access to a recognition of Indigenous Peoples as active agents of sustainability (Corntassel, 2008: 116–121; Daes, 2004: 4–5; UNPFII, 2007). Instruments such as the Faro Convention (2005) and the UN Declaration on the Rights of Indigenous Peoples (UN General Assembly, 2007: arts. 3, 23, 32(1)) reinforce this expanded understanding by affirming the right to shape development according to one's cultural heritage and legal traditions, while international instruments like the Stockholm Declaration (Principle 21) the 1992 Rio Declaration (Principle 2), and UN Watercourses Convention provide supporting obligations to prevent significant harm.

2.2 International Environmental Law and Principles

International legal frameworks increasingly confirm how intergenerational equity for Indigenous Peoples must be founded in collective rights and the right to development. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes development as a fundamental right for Indigenous communities, with a strong focus on self-determination and responsibilities to future generations, as outlined in Articles 8, 9, and 26. Further, article 3 guarantees the right of Indigenous Peoples to determine their political status and pursue economic, social, and cultural development, free from external interference. Articles 20 and 23 also support this by ensuring that development aligns with Indigenous values and priorities and is based on Free, Prior, and Informed Consent (FPIC). The International Labour Organization (ILO) Convention No. 169 (1989) strengthens these protections by specifically addressing Indigenous Peoples' rights to development, requiring states to consult Indigenous communities on development projects affecting them and to protect their cultures and knowledge systems. The Convention on Biological Diversity (CBD, 1992: 8) further supports Indigenous development by recognizing the importance of traditional knowledge in biodiversity conservation, ensuring equitable benefit-sharing for Indigenous Peoples. Other international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) affirm the right to self-determination, reinforcing that development must respect Indigenous identities and aspirations.

These treaties contribute to a broader understanding of the right to development, ensuring that Indigenous communities can engage in development processes that do not undermine their rights. The inclusion of Indigenous knowledge in environmental governance, reinforced by frameworks like the Ramsar Convention (Resolution XIII.15) and the Convention on International Trade in Endangered Species (CITES: Module 3),specifically its Module 3, further exemplifies the crucial role that Indigenous Peoples play in preserving ecosystems for the benefit of future generations (e.g. Guidance Document to Ramsar Convention, 2022).

2.3 Case Law Relevant to Intergenerational Equity

Intergenerational equity for Indigenous Peoples is recognized in international jurisprudence as a principle of distributive justice. The UN System "Common Principles on Future Generations" frame intergenerational equity as a legal duty of fairness across time, emphasizing equitable distribution of benefits and burdens, and the institutionalization of long-term stewardship in governance (UN HLCP, 2024: 4). This shift has moved intergenerational justice beyond environmental sustainability, integrating it into rights-based and development frameworks. Legal scholarship reflects this pluralization (Bertram,2023: 129–130). An example is Minor Oposa v. Factoran (1993), where the Philippine Supreme Court affirmed the standing of children representing future generations. The Court ruled that the constitutional right to a balanced and right to a healthy environment was enforceable across generations, marking a foundational articulation of intergenerational legal standing. In Saramaka People v. Suriname (2007), the Inter-American Court of Human Rights held that the Saramaka's right to collective land ownership could not be overridden without their free, prior, and informed consent. The Court grounded its reasoning in the principle of cultural survival across generations, recognizing that land and resources are integral to transmitting traditions, language, and identity (Ibid: paras. 82,86,121). The Court reaffirmed this logic in Kichwa Indigenous People of Sarayaku v. Ecuador (2012), where it found that unauthorized oil exploration on Sarayaku territory violated their collective rights. The intrusion into sacred sites disrupted ceremonial and ecological relationships that underpin intergenerational knowledge systems. By emphasizing the significance of FPIC and spiritual continuity, the ruling positioned procedural rights as essential mechanisms of intergenerational justice (para. 165, 167-8). Similarly, in Endorois Welfare Council v. Kenya (2010), the African Commission on Human and Peoples' Rights found that the forced displacement of the Endorois people from ancestral lands violated rights to culture. It stressed that severing land ties disrupts the transmission of cultural identity and weakens intergenerational coherence (African Commission, 2010, para. 250).

3. Constitutional Dimensions of ERJ in Indigenous Land Claims

Before examining the Norwegian constitutional framework, Bixler et al. (2015: 169–170) explain why participatory governance should be analyzed across constitutional law with other two interconnected levels: collective choice, and operational. According to them, at the constitutional level, states must recognize substantive environmental rights that embed cultural and spiritual dimensions, providing the legal foundation for restorative claims (Ibid., 2015: 172). At the collective choice level, legislative frameworks must establish procedures, such as distributed-management agreements, culturally grounded environmental impact assessments, and Indigenous consultation mechanisms that enable affected communities to participate in governance and decision-making processes (Ibid., 2015: 174–175). Finally, at the operational level, community-led

initiatives must be empowered to manage, monitor, and restore their territories in ways that reflect traditional knowledge systems and relational worldviews. However, while some constitutions incorporate principles of environmental justice or intergenerational equity, Indigenous Peoples were often absent from early constitutional frameworks. Their inclusion has typically emerged through political negotiation or post-conflict reform, rather than as a foundational legal commitment (Holzinger et al., 2019: 1776–1779). Even when constitutional language exists, it may fall short in practice. Palmer (2006), using a framework of "constitutional realism," shows that the effectiveness of Indigenous rights protections depends not just on written provisions, but on how these are interpreted and implemented. In Canada, a judicialized constitution has enabled courts to advance Indigenous claims, whereas in New Zealand, political negotiation and public accountability have played a more central role (Palmer, 2006: 2–4, 14–15). Alaska thus serves as a further example of constitutional omission: despite the inclusion of references to ecological and intergenerational equity in Article VIII of the Alaska Constitution, judicial interpretation has not extended these provisions to Indigenous land claims (Fusco, 2024).

3.1 Constitutional Foundations of Environmental Rights in Norway

Environmental principles rooted in the 1814 Constitution reflect a deep commitment to popular sovereignty and democratic legitimacy. Unlike post-Napoleonic European models that framed constitutions as monarchical grants or elite contracts, Norway's founding document was conceived as a delegation of authority from the people to state institutions (Holmøyvik, 2018: 275–278). This democratic foundation enabled Norway to pioneer judicial review in Europe, with the Supreme Court asserting constitutional supremacy over legislation and administrative acts (Holmøyvik, 2018: 295). While lacking a specialized constitutional court, Norwegian courts, especially the Supreme Court, exercise constitutional review within ordinary proceedings, and their decisions, though formally *inter partes*, are broadly respected and functionally binding. Through a dualist system, Norway incorporates international human rights treaties through domestic legislation, granting them precedence over conflicting national laws (Kierulf, 2011: 24; Human Rights Act 1999, § 3). This dualist approach is essential because it situates the Constitution as the link between international obligations and domestic implementation. Within this constitutional framework, Article 112 of the Constitution embody both substantive and procedural guarantees, affirming every person's right to a healthy and productive environment and mandating state action to preserve it for future generations (May, 2020: 1). In practice, however, the interpretation of Article 112 has been tested. The Supreme Court has recognised both positive and negative State obligations from article 112, while maintaining a high threshold for judicial intervention, particularly where Parliament has acted. As a result, Article 112 functions as a constitutional safeguard more than a directly enforceable right (Norwegian Human Rights Institution, 2021: ch.4). This tension emerged particularly in the Nature and Youth (Young friends of the Earth Norway) and Greenpeace Nordic v. Norway (hereinafter, "Arctic Oil" case), where environmental organizations challenged the government's issuance of oil production licenses in sensitive Arctic regions, arguing that these licenses violated constitutional rights to a healthy environment. The courts ruled in favour of the state, concluding that existing regulations fulfilled the government's obligations under Article 112 despite potential environmental harm (Ibid., 2020: 3–6). Norwegian courts demonstrate a jurisprudential preference for a flexible, principle-based approach that prioritizes balancing economic development with environmental and intergenerational concerns over strict, enforceable rights (Sjåfjell & Halvorssen, 2016: 58).

3.1.2 Judicial Reluctance

This interpretative stance reflects broader structural tensions within Norway's transition strategy as well, as noted by Korsnes et al. (2023: 2–3, 9–10), which simultaneously promotes climate leadership and sustains oil and gas production. Such an approach has the potential to marginalize intergenerational and distributive justice in policy processes, revealing a judicial reluctance to enforce hard rights that would otherwise constrain extractive economic activities. In fact, as seen in the Arctic Oil case, courts have historically hesitated to enforce these rights robustly when they conflict with economic or development interests. This cautious approach has also characterized the judiciary's treatment of Sámi rights, constitutionally recognized in Article 108 since 1988. Although supporting legislation such as the Sámi Act (1987), Reindeer Husbandry Act (2007), and Finnmark Act (2005) provide a legal framework for Indigenous autonomy, jurisprudence has often constrained Sámi self-determination. In cases like HR-2018-456-P (Nesseby) and HR-2016-2030-A (Stjernøya), the Supreme Court upheld administrative authority over Indigenous land claims and declined to interpret ILO 169 as an independent source of rights (Ravna, 2021:10–13). Even pivotal moments like the Alta case (1982), which acknowledged Article 27 of the ICCPR, resulted in deference to state interests in hydropower development (Henriksen, 2008: 104–106). Earlier cases like Selbu and Svartskogen recognized immemorial use as a basis for Sámi property rights, but these remained exceptions rather than the norm (Ravna, 2020). Before the 2021 Fosen judgment, which found a breach of Sámi cultural rights due to wind energy development, Norway's judiciary had largely refrained from enforcing FPIC or intergenerational equity. Consequently, the Arctic Oil litigation's invocation of Article 112 not only tests the enforceability of environmental rights but also marks a critical juncture for aligning constitutional practice with international Indigenous and ecological norms (May, 2020: 6–8).

3.2 The Role of the Sámi Parliament in Green Transition

In the context of this article, it is important to note how Norway's green transition now defines its economic and environmental policy, positioning it as a global sustainability leader. With approximately 98% of its electricity generated from renewable sources, primarily hydropower, Norway has long been at the forefront of clean energy (IEA, 2022). This commitment is further demonstrated by Statkraft, the state-owned utility and Europe's largest producer of renewable energy, which plans to expand its capacity by 2.5–3 GW annually through 2025 and 4 GW by 2030 (Reuters, 2024). The Norwegian Climate Act enshrines the nation's commitment to reducing greenhouse gas emissions by 55% by 2030, aiming for a low-emission society by 2050 (SGI, 2024). Economically, this transition aligns with a positive outlook. However, while these economic signals continued prosperity, it also raises critical questions about how economic development intersects with legal obligations and Indigenous rights. In Norway, the protection of Sámi rights and environmental governance is intertwined across diverse legislative frameworks. Article 108 of the Norwegian Constitution commits the state to facilitate conditions that enable the Sámi to preserve and develop their language, culture, and *way of life* (Constitution of Norway, 1814/2018: §108). While this symbolic commitment is foundational, its realization often depends on sector-specific legislation. For example, the Planning and Building Act (2008: § 4(2); 14(2)) includes provisions for Environmental Impact Assessments (EIA) but has been criticized for inadequately incorporating Sámi knowledge systems and failing to ensure early, meaningful consultation

(EMRIP, 2025: 21–22). At the same time, the Sámi Parliament (hereafter, *Sámediggi*) has persistently advocated for strengthened rights of participation, especially through the legal principle of FPIC (Joona, 2023: 10). Generally speaking, Sámediggi has taken a proactive role in Norway's green transition as its approach has been described as *"breaking in",* integrating Sámi perspectives into mainstream Norwegian policy and legislation (Josefsen & Saglie, 2024: 115–117). This includes influencing environmental laws and decisions, such as those related to land use, resource extraction, reindeer husbandry, and wind power development (Ibid.). A clear example is the Sámediggi's influence on the Finnmark Act (2005: §5), which recognized Sámi land use as the basis for legal rights, and formalized distributed-management through shared governance of the Finnmark Estate (ibid: §120–121). Distributed-management models, such as those applied to reindeer husbandry and fisheries, have been heralded as promising, yet still face challenges regarding equitable power-sharing (Kuokkanen, 2024: 159). The Norwegian Truth and Reconciliation Commission, established in 2018, highlighted the historical marginalization of Sámi voices in natural resource governance, recommending legal reforms to embed Indigenous perspectives across public decision-making (TRC, 2023: 111).

4. Applying ERJ in Norway: Environmental Law and Indigenous Cultural Preservation

This final section situates the evaluative criteria of Environmental Restorative Justice (ERJ) – *distributed management of natural resources, community engagement, and environmental impact assessment* – within Norwegian environmental law and constitutional justice. In a dualist system where constitutional law mediates between domestic and international norms, these criteria gain normative force through constitutional interpretation, proportionality review, and judicial mechanism (e.g. act annulment). Norwegian constitutional law can thus uphold ERJ's substantive and procedural dimensions by ensuring that environmental governance aligns with international obligations, such as ILO Convention No. 169. Substantively, this entails safeguarding Sámi cultural survival and land-based practices through constitutional guarantees of equality (art.98), sustainability (art. 112(1)), and intergenerational equity (art. 112(2)). Procedurally, it requires meaningful participation and access to information, reflected in mechanisms such as environmental impact assessments and the recognition of free, prior, and informed consent. The following analysis of the Fosen case demonstrates how the failure to uphold these safeguards leads to systemic harm and how restorative justice mechanisms can support reparation and structural reform.

4.1.1 Distributed-management of Natural Resources

The Finnmark Act of 2005 represents Norway's most significant attempt to recognize Sámi land rights and distributed-management within the territory of Finnmark County. Adopted following Norway's ratification of ILO Convention No. 169 (1989), it transferred ownership of approximately 95% of Finnmark's land to the Finnmarkseiendommen (FeFo), a land management body jointly governed by the Sámi Parliament and the Finnmark County Council. The Act acknowledges Sámi land rights through recognition of collective ownership and traditional usage (Government of Norway, 2005). It also created the Finnmark Commission to investigate land tenure and the Utmarksdomstol (Outland Court) to adjudicate disputes (Ibid.) Despite these intentions, the Act faces major limitations. Key criticisms include the delayed implementation of land clarification, FeFo's conflicting roles as both trustee and developer, ethnic deadlock in board decisions, and the lack of guaranteed financial support from the state (Spitzer & Selle, 2023: 292-

295). The Karasjok Case (2023) illustrates these tensions: the Finnmark Commission affirmed local Sámi ownership of land, but FeFo rejected this finding, escalating the matter to the Supreme Court (Spitzer & Selle, 2023: 300–304). In its 2024 ruling (HR-2024-982-S), the Supreme Court concluded by majority that the population of Karasjok does not collectively own the unregistered land in the municipality. While acknowledging that Sámi individuals and *siidas*[1] possess traditional usage rights, the Court found insufficient evidence of collective land management over time to establish ownership through immemorial use. It also ruled that ILO Convention No. 169 does not compel recognition of collective ownership unless specific groups have exercised de facto control as owners. A dissenting minority of justices argued that Sámi customary practices did meet this threshold and warranted collective ownership (Supreme Court of Norway, 2024). Complementary provisions in the Norwegian Constitution (Article 108) and the Sámi Act (Act of 12 June 1987 No. 56) aim to support Sámi cultural preservation, particularly in relation to land-based practices. However, the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has urged Norway to strengthen protections through improved legislation, such as the Minerals Act and Reindeer Husbandry Act (Act of 15 June 2007 No. 40), and to institutionalize Sámi FPIC in domestic governance structures (EMRIP, 2025: paras. 4–9).

4.1.2 Community Engagement

Established under the Sámi Act, the Sámediggi serves as the democratically elected representative body of the Sámi people, with a formal mandate to protect and promote Sámi linguistic, cultural, political, and economic interests. Following a major amendment to the Sámi Act in 2021, the Norwegian legal system now includes a dedicated consultation chapter, Chapter 4, which codifies the state's obligation to consult with the Sámi Parliament and other relevant Sámi bodies in any matter that may directly affect Sámi interests (Norway, 1987: Ch. 4). Section 4(2) of the Act provides that consultation must occur at an early stage and be conducted in good faith to obtain FPIC. This provision builds on Norway's obligations under ILO Convention No. 169 and UNDRIP, both of which affirm FPIC as a fundamental procedural and substantive right for Indigenous Peoples.

However, despite this progressive legal framework, the actual influence of Sámediggi in environmental and resource governance remains limited. While Sámediggi is consulted on broad legislative and regulatory issues, in project-specific contexts, such as wind power or mineral extraction, consultations are typically carried out with local reindeer herding siidas rather than with the Parliament itself (Ravna, 2023:169). However, these consultations are often limited in scope and duration, sidelining broader Sámi political structures and knowledge systems. In the case of Southern Sámi resistance to Fosen wind energy projects, affected communities have criticized state-led processes for their lack of meaningful dialogue and the exclusion of Indigenous perspectives. As Normann (2021: 88–89) notes, the Truth and Reconciliation Commission, established to address historical injustices, has also been critiqued for failing to sufficiently address ongoing land conflicts and environmental dispossession, thus undermining efforts toward genuine reconciliation. Even in this context, EMRIP has expressed concern that Norwegian authorities often treat consultation as a procedural formality rather than a pathway to meaningful consent. In particular, the use of "advance possession" rules, which allow for resource permits to be granted before consultations are concluded, has been identified as incompatible with FPIC principles (EMRIP, 2025: paras. 48–52, 66–67). Moreover, environmental legislation such as the Minerals Act (Act of

19 June 2009 No. 101) and Reindeer Husbandry Act does not incorporate binding consent requirements, nor do recently revised instruments like the Energy Act (Act of 29 June 1990 No. 50) or Planning and Building Act (Act of 27 June 2008 No. 71), which have delegated some licensing powers to municipalities without ensuring a strengthened role for Sámi governance institutions (EMRIP, 2025, paras. 15, 84–85)

4.1.3 Environmental Impact Assessment (EIA)

Regarding EIAs, Norway's domestic legal framework mandates their use primarily through the Planning and Building Act (2008). Under Section 4-2, an EIA is required for projects likely to have significant effects on the environment, natural resources, or society. Section 33-4 further stipulates that the project developer must bear the cost of preparing the EIA. This framework applies broadly to large-scale initiatives such as infrastructure, industrial activities, and energy development. Additionally, sector-specific legislation reinforces EIA obligations: the Energy Act (1990) mandates environmental assessments for energy facility licenses (Section 3-1); the Minerals Act (2009) requires EIAs for exploration and extraction projects under Sections 2-1 and 7-1; and the Reindeer Husbandry Act (2007) emphasizes the need to consider reindeer herding rights, especially under Sections 2 and 4, when evaluating land use proposals that may affect Sámi territories. Despite this legal foundation, Sámi participation in EIA processes remains insufficiently institutionalized. Research shows that Sámi perspectives are often marginalized, with public consultations occurring late in the process and rarely shaping core decisions (Eyþórsson & Thuestad, 2015: 134–138). From a Sámi standpoint, meaningful engagement requires not only early involvement but also sustained dialogue that respects seasonal rhythms such as reindeer migration, fishing, and berry gathering (Arctic Economic Council, 2020: 1–2). Moreover, conventional EIAs frequently fail to address cumulative impacts, the compounded effects of multiple projects across space and time, which is critical for safeguarding Sámi cultural landscapes and the ecological basis of traditional livelihoods (Blom, 2023: 6–7). To address these gaps, innovative Indigenous-led methods are emerging. The Indigenous-Led Participatory and Cumulative Impact Assessment (IPCIA) model developed by *Protect Sápmi* employs participatory mapping and Sámi community-defined criteria to analyse how industrial activities affect Sámi territories in cumulative and culturally relevant ways (Ibid.: 38–41). By centring Traditional Ecological Knowledge (TEK) within formal EIA processes, IPCIA offers a practical mechanism to align Norway's legal duties, under instruments like ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples, with Indigenous rights to land, culture, and self-determination (Eyþórsson & Thuestad, 2015:144–146; Larsen et al., 2019:16–18).

4.2 The Fosen Wind Case

Rather than representing an example of Environmental Restorative Justice (ERJ) in practice, *Fosen* offers a useful case through which ERJ's evaluative criteria can be applied to assess the constitutional framework. Analysing the case through ERJ's substantive and procedural dimensions reveals how constitutional law either enables or fails to ensure reparation, participation, and intergenerational protection. The case concerns the construction of wind farms on the Fosen Peninsula, a region traditionally used by the Sámi for reindeer herding and developed by the Norwegian state and private companies since the early 2000s. The largest project, the Fosen Vind project, includes multiple wind farms that span thousands of hectares of land. The case was brought by the South-Fosen sijte and North-Fosen siida, concerning the loss of winter grazing lands due to the Roan and Storheia wind farms. They argued that the construction and operation of these wind

farms would severely disrupt their traditional livelihoods, particularly their ability to move their herds across the land, as wind turbines and associated infrastructure occupy large areas that are critical for grazing (Ravna, 2022: 157). The Supreme Court found that this amounted to a "substantive negative impact" on reindeer herding under Article 27 ICCPR, even without a total denial of cultural practice (HR-2021-1975-S, paras. 83–84, 111, 119; Ravna, 2022: 168). Moreover, the Court emphasized cumulative impact and ruled that consultation never override a serious rights violation (HR-2021-1975-S, para. 121; Ravna, 2022: 169). In fact, the Supreme Court ruled that general benefits from the "green shift" cannot justify violations of Article 27 ICCPR, as the provision does not allow for a proportionality test (HR-2021-1975-S, para. 119; Ravna, 2022: 171). It also emphasized that cultural sustainability depends on economic viability, making reindeer herding unfeasible may itself breach rights (Ravna, 2022: 172). Substituting traditional practices, like replacing natural grazing with winter feeding, could amount to cultural displacement (HR-2021-1975-S, paras. 84–85; Ravna, 2022: 173). The Court affirmed the siidas' standing as collective rights-holders and stressed the need for direct engagement in decisions impacting their land (HR-2021-1975-S, para. 110; Ravna, 2022: 170).

The Supreme Court articulated a multi-factor test for assessing violations of Article 27 ICCPR, focusing on:

1. The severity and cumulative impact of the interference;
2. The level of consultation and influence given to affected minorities;
3. Whether the practice remains economically viable;
4. Whether mitigation measures respect cultural integrity (Ravna, 2022: 174).

As a result, the Court invalidated the wind farm licenses due to non-compliance with Norway's obligations under international human rights law (HR-2021-1975-S, para. 174). However, as of late 2023, the wind farms continue to operate, raising concerns about state compliance with the ruling (Ravna, 2022: 175).

4.3 Discussion: Where Fosen Failed—A Missed Opportunity for ERJ?

When examined through the evaluative frame of Environmental Restorative Justice (ERJ), the *Fosen* wind farm case, despite affirming Sámi cultural rights, highlights persistent gaps in Norway's green energy governance, especially concerning procedural Sámi inclusion and intergenerational safeguards. First, in terms of *distributed management of natural resources*, Sámi participation was largely symbolic. Despite formal consultations, the Sámi had no decisive influence over land-use outcomes, and key decisions were shaped by central authorities, who simultaneously acted as license grantor, project stakeholder, and rights arbiter (Mósesdóttir, 2024: 8). This concentration of power undermines the aims of ERJ, which require genuine *engagement of* affected *communities* rather than mere advisory participation. Second, the *Environmental Impact Assessment (EIA)* process was structurally deficient. Though mandated under the Planning and Building Act and implemented by the Norwegian Water Resources and Energy Directorate (NVE), the EIA for the Fosen project failed to account for cumulative impacts, ignored Sámi Traditional Ecological Knowledge (TEK), and was outsourced to private consultants with limited community input (Mósesdóttir, 2024: 4–5). The Supreme Court later found that these failures materially undermined the reindeer herding culture, affirming that Article 27 ICCPR had been breached notably due to inadequate recognition of the cultural and ecological dimensions of Sámi land use (Supreme Court of Norway, 2021: para

119). Third, the project illustrates how economic bias within the green transition can cause cultural and spiritual harm. The Fosen wind farms were justified under the "green shift" narrative, prioritizing national climate goals and economic efficiency over Indigenous rights (Mósesdóttir, 2024: 6). The government's dismissal of Sámi objections, and its framing of the project as environmentally progressive, masked deeper structural inequalities. The Court rejected this utilitarian logic, emphasizing that human rights violations cannot be legitimized by broader societal gains (HR-2021-1975-S: para. 119). Lastly, the case demonstrates a failure of intergenerational equity. The Finnmark Act's limited territorial scope excluded areas such as Fosen, creating a legal and epistemic gap: while its co-management model embodies ERJ principles of co-governance and procedural equity, these safeguards were unavailable to the affected herders. Following the Supreme Court's ruling, 2023 agreements granted compensation and temporary veto rights until 2043 and 2045, yet the turbines remain, and the cultural harm may be irreversible for the future Sámi generations in Fosen area (Mósesdóttir, 2024: 7).

Could the Fosen case have delivered a more transformative outcome, one that extended beyond the affirmation of Article 27 rights, if had ERJ been fully embraced through constitutional adjudication? Maybe. A genuinely transformative approach would have required the Court not only to recognize the rights violation, as it did, but also to mandate structural remedies, such as the dismantling of the wind farms, institutional reform of consultation procedures, and the integration of Sámi Traditional Ecological Knowledge (TEK) into all future Environmental Impact Assessments (EIAs). Such measures would have operationalized key ERJ criteria, which, as Forsyth et al. (2021: 21–22) note, depend on direct participation, distributed accountability, and responsive flexibility. Yet the Norwegian framework reveals a further structural paradox: the Finnmark Act (2005) introduced Sámi land co-management only in Finnmark region, leaving the Sámi communities in Fosen area outside its scope and thereby creating both spatial and intergenerational inequities in Sámi rights protection. The Supreme Court's ruling not only failed to reinforce Article 112 of the Constitution but also deepened the paradox between Norway's regionalized approach to Indigenous governance and its broader constitutional commitments to environmental *and* cultural sustainability.

This cautious constitutionalism mirrors earlier judicial tendencies, as earlier explained in chapter 4. For example, in HR-2018-456-P (*Nesseby*), the Supreme Court upheld the Finnmark Estate's authority over lands claimed by the Sámi, despite evidence of immemorial use, limiting collective Sámi control. In HR-2016-2030-A (*Stjernøya*), the Court ruled that ILO Convention No. 169 could not be used independently to expand Sámi rights beyond the internal limits of the Finnmark Act. Even in the *Alta* case (1982), a turning point for Sámi political activism, the Court acknowledged Article 27 of the ICCPR but permitted a hydropower project to proceed, citing insufficient harm (Henriksen, 2008: 104–106). Only in *Selbu* and *Svartskogen* (2001) did the Court recognize immemorial Sámi land use as a basis for property rights, but even these were exceptional and limited in scope (Ravna, 2020). Taken together, these cases suggest that Norwegian courts have historically recognized Sámi rights only within the narrow confines of existing administrative frameworks. In this light, Fosen was not a failure of constitutional law per se, but rather a missed opportunity to use constitutional justice as a vehicle for embedding ERJ in Norway's green transition. To fill this gap, Article 112 should be reinterpreted as an enforceable constitutional norm that not only ensures a healthy environment but also advances intergenerational equity within the green transition. A possible reinterpretation would apply Archibald's (2023: 17–20) relational

theory of rights, construing rights not merely as individual protections but as legal constructs delineating relationships among the state and the Sámi future generations. This construction would enable Article 112 to function as a dynamic constitutional provision, facilitating the incorporation of Sámi perspectives and ensuring that Sámi can challenge environmental decisions that violate constitutional rights.

5. Conclusion: A Greener Future: But Will Justice Be Green Too?

This analysis begins by asking a fundamental question: how does environmental protection intersect with the rights of Indigenous Peoples, specifically in relation to their right to development and the continuity of intergenerational knowledge systems? While Environmental Restorative Justice conceptualises environmental protection and Indigenous rights as mutually reinforcing, the political aftermath of the *Fosen* case demonstrates that, in practice, the absence of restorative mechanisms can render these domains temporarily competing. For Indigenous Peoples, development is not merely economic; it is cultural, ecological, and spiritual. Their right to development encompasses the capacity to maintain traditional livelihoods but also to contribute and share to current scientific knowledge. These collective interests are explicitly recognized in international legal frameworks such as ILO Convention No. 169, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and Article 27 of the ICCPR, which together articulate a normative commitment to intergenerational equity grounded in cultural survival and territorial integrity.

The Fosen case in Norway illustrates the profound consequences of failing to fully operationalize these norms. Despite a landmark ruling recognizing the violation of Sámi reindeer herders' rights, the case ultimately fell short of achieving ERJ. Procedural inclusion did not equate to substantive empowerment, as the only establishment of institutional mechanisms for Indigenous participation doesn't necessarily translate into genuine involvement or decision-making power. The consultation process lacked co-decision authority, the EIAs ignored cumulative cultural harm, and the project's justification under the "green shift" masked a deeper economic bias that displaced traditional practices. Though the Court upheld Article 27 rights, its decision deferred practical enforcement to political negotiations, thereby reinforcing the very structural asymmetries that ERJ seeks to correct. Had constitutional justice in Fosen been mobilized to its full potential, it could have served as a model for introducing Indigenous legal orders into environmental governance.

This brings us to the second question: How can constitutional law serve as a bridge between international environmental standards and domestic implementation in a culturally inclusive and legally enforceable manner? The answer lies in reconceptualizing constitutional law not merely as a static repository of national values, but as a dynamic interface capable of integrating transnational obligations with local and Indigenous epistemologies. As shown in comparative contexts like Selbu, Svartskogen, and in the Fosen judgment, constitutional courts have the capacity, though not always the political will, to recognize Indigenous rights in relation to land, culture, and environmental integrity. When courts engage with international recognised principles like FPIC, intergenerational equity, and TEK, they do more than interpret law as they shape the normative infrastructure of environmental justice.

However, for this potential to be realized, several conditions must be met. Norwegian constitutional justice offers a partial foundation for ERJ in the green transition, particularly through Article 112, which obligates the state to protect the environment for future generations. This

provision aligns conceptually with ERJ by recognizing ecological integrity and intergenerational responsibility. Still, its effectiveness is limited by lack of enforceability, as courts have been hesitant to interpret Article 112 as a basis for legal action against environmentally harmful state policies. Moreover, the constitution lacks specific procedural guarantees for reconciliatory processes, especially for Indigenous and local communities affected by such developments. As a result, while Norway's constitutional framework expresses environmental and cultural concern, it provides insufficient legal mechanisms to implement restorative aims in a meaningful or binding way during the energy transition.

As the world moves toward a greener future, we must ask: will justice be green too? The answer depends on whether environmental transitions are grounded not only in carbon metrics but also in ethical frameworks that address historical and ongoing harms. Within this context, constitutional law is adaptive and sufficiently potent to operate through the framework of Environmental Restorative Justice (ERJ), reframing environmental harm as cultural harm and extending protection to culturally embedded forms of degradation

Notes

1. *Siida* (North Sámi, plural *siiddat*) and *sijte* (South Sámi) refers to a traditional Sámi social and economic unit based on collective use and management of land and resources. Historically, each *siida* comprised families cooperating in reindeer herding, fishing, or hunting within a defined territory. Today, the concept continues to inform Sámi governance structures.

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