



## "Don't Wake the Rávga of Repparfjord"

Sámi Storytelling to Discuss Nussir ASA's Mining Waste Disposal

Apostolos Tsiouvalas

Faculty of Social Sciences, Humanities and Education

Master's Thesis in Indigenous Studies

IND-3904 Spring 2020





*"Don't Wake the Rávga of Repparfjord"*  
*Sámi Storytelling to Discuss Nussir ASA's Mining Waste Disposal*

Apostolos Tsiouvalas  
Master of Philosophy in Indigenous Studies

Faculty of Humanities, Social Sciences and Education  
UiT The Arctic University of Norway

*Spring 2020*

Supervised by  
*Else Grete Broderstad (Senter for samiske studier)*  
&  
*Torjer Andreas Olsen (Senter for samiske studier)*

Cover paint: Theodor Kittelsen, '*Sjøtroll*', illustration (Nasjonalmuseet Oslo 1887).



## Acknowledgements

Writing a master's thesis in the times of confinement due to the COVID-19 outbreak has certainly not been a cakewalk for me, nor the most pleasant and productive time of my life. Too much free time abruptly made me afraid of ending up doing nothing. Particularly, when this quarantine period was followed by losing my full-time job and one of the hardest winters ever recorded in Tromsø, the whole writing process became rather challenging. Fortunately, I was not alone in this endeavor and I would like to express my sincere gratitude to the people, without whom it would not have been easy to complete this thesis.

First of all, I would like to thank my supervisors Else Grete Broderstad and Torjer Andreas Olsen for offering to supervise this project just two months before the submission deadline. Your comments and guidance have been crucial for finalizing this project and reaching the desirable result.

Additionally, I would like to thank the Centre for Sami Studies (SESAM) and its staff for their advice, material, and seminars, as well as all my fellow-students for sharing the journey in Indigenous Studies for the last two years. I am so much looking forward to reading your projects!

Great thanks to Ánde Somby for introducing me to the world of Sami storytelling and sharing with me the story discussed in Chapter 5.

I would like to say thank you also to my neighbors Tamara and Mona for their help with the translation of some Norwegian texts as well as for their delicious goodies throughout this journey.

I would also like to express my gratitude to my friend Chloe for the final proof-reading of my thesis.

Not least, I would like to thank my friends in Tromsø, and my family and friends in Greece for their love and support. I hope we will be able to see each other soon again!

My partner Daniela, for her love, support and mostly patience during this thesis, especially for managing to work in the same room with me 24/7 for the last few months.

Finally, I would like to thank my parents Dimitris and Domna, my brother Grigoris and my dog Klio for their love and ongoing support to everything I do in my life.

*This thesis is dedicated to all coastal communities around the globe that fight for their waters and resources.*



## **Abstract**

Over the last few decades, mineral resource extraction has been rapidly growing in the Arctic, often taking place within indigenous territories. One of the most controversial project developments in Northern Fennoscandia is the Nussir copper mine. Since its conception, the project has faced opposition, and different actors have voiced their concerns and actively protested, arguing that the mine will disturb reindeer herding activities and damage the local environment, in particular polluting Repparfjord in which the mining tailings will be deposited. The implications of the project on the marine environment of Repparfjord have given rise to questions as to the project's compliance with Norway's international commitments toward environmental law and indigenous peoples' rights. Accordingly, this master's thesis follows the course of the ongoing mining developments in Kvalsund and attempts to approach the issue of mineral waste disposal in Repparfjord from an indigenous rights-based, an environmental law and a pluralistic perspective of law and resource management that critically interrogates the existing legal system's ability to accommodate traditional knowledge systems. For this purpose, aside from doctrinal analysis of legal domains which is widely used in projects relevant to law and resource management, this thesis presents three Coastal Sámi stories as a starting point of research in order to articulate legal discourses related to the case study. As long as this thesis focuses on the marine-related issue of mining waste disposal in Repparfjord, it was considered useful to touch upon the case study through the paradigm of Sámi stories from the region. The selected stories refer to Sámi spirits known as *rávga* which live in the sea and often interact with fishermen and coastal communities. Each of the three selected stories has been used in a different legal approach and, methodologically, is interpreted in a different way to discuss the case and the fields of law that revolve around it. The thesis concludes with recommendations for further research and policy-making.





# Table of Contents

Acknowledgements .....	iii
Abstract .....	v
1 Introduction .....	1
1.1 Project Summary .....	1
1.2 Research Objectives .....	4
1.3 Background of Study Area: The Nussir Case in a Nutshell .....	4
1.4 Relevance .....	8
1.5 Positionality, Reflexivity and Preliminary Results .....	9
1.6 Definitions of Concepts and Terminological Preferences.....	11
1.6.1 (Coastal) Sámi .....	11
1.6.2 Mining Waste Disposal .....	13
1.6.3 Rávga.....	14
1.6.4 Traditional Knowledge.....	16
1.7 Thesis Outline .....	18
2 Methodological Concerns and Chosen Methods.....	19
2.1 Indigenous Research Paradigm .....	19
2.2 Storytelling as Source of Knowledge.....	20
2.2.1 Storytelling in Sámi Societies .....	21
2.2.2 Coastal Sámi Stories .....	22
2.3 Research Methods: A Law in Context Approach.....	23
2.3.1 Storytelling as Analytical Tool.....	23
2.3.2 Legal Doctrinal Analysis.....	25
2.3.3 Literature.....	26
3 An Indigenous Rights Approach to Mineral Waste Disposal in Repparfjord.....	27
3.1 Introductory Remarks and Methodological Reflections .....	27

3.2	Discussion: Tailings Disposal within a Sámi Territory .....	29
3.2.1	<i>Sámi Rights in Norwegian Mining Law</i> .....	30
3.2.2	<i>Consultations</i> .....	34
3.2.3	<i>Finnmark Act</i> .....	36
3.2.4	<i>Coastal Sámi Rights in Repparfjord?</i> .....	38
3.3	Analysis .....	41
3.4	Conclusory Remarks .....	43
4	An Environmental Law Approach to Mining Waste Disposal in Repparfjord .....	45
4.1	Introductory Remarks and Methodological Reflections .....	45
4.2	Discussion: Mining Waste Disposal in Norwegian Law .....	47
4.2.1	<i>Minerals Act</i> .....	47
4.2.2	<i>Plan and Building Act</i> .....	48
4.2.3	<i>Pollution Control Act</i> .....	50
4.2.4	<i>Nature Diversity Act</i> .....	52
4.2.5	<i>Marine Waste Disposal in Environmental Law</i> .....	52
4.3	Analysis .....	55
4.4	Conclusory Remarks .....	58
5	A Pluralistic Approach to Mineral Waste Disposal in Repparfjord .....	59
5.1	Introductory Remarks and Methodological Reflections .....	59
5.2	Discussion .....	60
5.2.1	<i>From Sámi Storytelling to Ancient Greek Tragedy: Use of Knowledge to Prevent Unpleasant Incidences</i> .....	61
5.2.2	<i>Prevention and Precaution in Environmental Law</i> .....	62
5.2.3	<i>Traditional Knowledge through the Spectrum of International Law</i> .....	64
5.2.4	<i>Traditional Knowledge in Resource Management Planning in Repparfjord</i> ..	66
5.3	Analysis: Towards Legal Pluralism .....	68

5.3.1	<i>Reconsidering the Fundamentals of Law</i> .....	69
5.3.2	<i>Away from the Westphalian Model</i> .....	70
5.4	Conclusory Remarks .....	74
6	Conclusions .....	77
6.1	Findings from the Study .....	77
6.2	Final Remarks .....	79
	List of Figures .....	81
	List of References.....	85
	Table of Treaties.....	85
	United Nations.....	85
	International Labour Organization .....	85
	Others .....	85
	Table of Cases .....	85
	Table of Other Documents .....	85
	United Nations.....	85
	National Documents .....	86
	Others .....	86
	Secondary Sources .....	87
	Articles and Research Papers .....	87
	Books and Reports .....	90
	Conference Proceedings .....	91
	Contributions to Edited Books .....	91
	Websites .....	92



# 1 Introduction

## 1.1 Project Summary

Over the last few decades, mineral resource extraction has been rapidly growing in the Arctic, often taking place within indigenous territories. One of the most controversial project developments in Northern Fennoscandia<sup>1</sup> is the Nussir copper mine. The Nussir copper deposit is located in the region of Kvalsund (Northern Sámi: *Fálesnuorri* and Kven: *Valasnuora*), part of the Hammerfest Municipality, one of the 39 municipalities of Troms and Finnmark County, the northernmost county of Norway.<sup>2</sup> The Nussir deposit was discovered in the 1970s and was initially exploited for seven years.<sup>3</sup> Since 2005, the Nussir ASA company has been active in the region, aiming to develop the copper deposit of the same name, as well as the adjacent Ulveryggen deposit.<sup>4</sup> During the past few years, Nussir ASA has acquired all the operating licenses and permits needed for the development of the site.<sup>5</sup> The deposit is located within a Sámi traditional territory,<sup>6</sup> including both reindeer herding Sámi and Coastal Sámi<sup>7</sup> communities, as well as former settlements of Kven immigrants.<sup>8</sup> Since its conception, the project has faced opposition, and different actors such as the Sámi Parliament, the Sámi Council, and several NGO's have voiced their concerns or actively protested, arguing that the

---

<sup>1</sup> Fennoscandia (Finnish: Fennoskandia; Swedish: Fennoskandien; Norwegian: Fennoskandia; Russian: Фенноскандия Fennoskandiya) or the Fennoscandian Peninsula is defined as the geographical peninsula comprising the Scandinavian Peninsula, Finland, Karelia, and the Kola Peninsula. The northern parts of Fennoscandia belong to the Sápmi, the cultural region traditionally inhabited by the Sámi people; See Charlotte Damm and Lars Forsberg, 'Contacts in Northern Fennoscandia' in Vicki Cummings and others (eds), *The Oxford Handbook of the Archaeology and Anthropology of Hunter-Gatherers* (Oxford University Press 2014) 838.

<sup>2</sup> This area belongs to the Sápmi, the cultural region traditionally inhabited by the Sámi people. Kvalsund was a municipality of Finnmark from 1869 until its dissolution in 2020. Finnmark was also dissolved on 1 January 2020 when it was merged with the neighbouring county of Troms to form the new Troms og Finnmark county.

<sup>3</sup> 'Nussir' (*Nussir*) <[www.nussir.no/en\\_about\\_nussir.php](http://www.nussir.no/en_about_nussir.php)> 3 April 2020.

<sup>4</sup> Molly Lempriere, 'Copper, fjords, reindeer and controversy: inside Norway's new arctic mine' (*Mining Technology*, May 2019) <[www.mining-technology.com/features/inside-norways-new-arctic-mine/](http://www.mining-technology.com/features/inside-norways-new-arctic-mine/)> accessed 1 June 2020.

<sup>5</sup> These included the Finnmark County Governor's support of Nussir's zoning plan application in 2012, the tailings permit approved from Environmental Directorate in 2016 and the pre-feasibility study being completed by Golder Associates in 2017; see 'Media 2019' (*Nussir*, 2019) <[http://www.nussir.no/en\\_media\\_2019.php](http://www.nussir.no/en_media_2019.php)> accessed 1 June 2020.

<sup>6</sup> See section 1.5.1

<sup>7</sup> *Sjøsamer* in Norwegian.

<sup>8</sup> The Kven people are descendants of early Finnish-speaking immigrants from the northern part of Sweden and Finland to Northern Norway; see Siv Kvernmo and Sonja Heyerdahl, 'Ethnic Identity and Acculturation Attitudes Among Indigenous Norwegian Sami and Ethnocultural Kven Adolescents' (2004) 19(5) *Journal of Adolescent Research* 512, 512.

mine will disturb reindeer herding activities and damage the local environment, in particular polluting Repparfjord in which the mining tailings will be deposited.<sup>9</sup>

Prior to the development of the project, and according to Norway's international and domestic legal commitments toward indigenous peoples, consultations<sup>10</sup> have taken place between Nussir ASA and representatives of Sámi herding districts, as well as with the Sámi Parliament.<sup>11</sup> The consultation processes did not lead to an agreement between the involved parties, and the Sámi Parliament appealed the government's decision to license Nussir ASA for mining, to the King at the Council of State, asking the cancellation of the licensing.<sup>12</sup> Nussir ASA's plan was finally approved with some amendments, while the Sámi Parliament's appeal was rejected in November 2019.<sup>13</sup> The Nussir project is estimated to be in operation for 25-30 years and is predicted to bring approximately 150 jobs and investment to the Municipality of Kvalsund. In addition, a press release of the Ministry of Trade, Industry and Fisheries mentioned that the 'Green Shift' of Norwegian economy depends on increased extraction of many kinds of metal that are used in new technologies.<sup>14</sup> However, the digging could damage reindeer summer pastures and a plan to dump tailings in the fjord would destroy spawning grounds for the coastal cod (*Gadhus morhua*) and other species.<sup>15</sup> The fjord is listed as specially protected to conserve the wild salmon (*Salmo salar*) that populates it, along with stocks of cod, pollock (*Pollachius virens*), Atlantic herring (*Clupea harengus*), haddock (*Melanogrammus aeglefinus*), and Atlantic halibut (*Hippoglossus hippoglossus*).<sup>16</sup> It has been argued that this

---

<sup>9</sup> Terje Solsvik and Gwladys Fouche, 'Norway gives go-ahead to disputed Arctic copper mine' (*Reuters*, February 2019) <[www.reuters.com/article/us-norway-mining-sami/norway-gives-go-ahead-to-disputed-arctic-copper-mine-idUSKCN1Q30J8](http://www.reuters.com/article/us-norway-mining-sami/norway-gives-go-ahead-to-disputed-arctic-copper-mine-idUSKCN1Q30J8)> accessed 1 June 2020.

<sup>10</sup> The main Consultation Agreement is part of the fulfillment of ILO Convention No. 169, mandating a state obligation to consult indigenous peoples; see Kommunal- og moderniseringsdepartementet, 'Avtale om prosedyrer for konsultasjoner mellom statlige myndigheter og Sametinget' (2005); an English translation is available at <[www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtspalte/PROCEDURES-FOR-CONSULTATIONS-BETWEEN-STA/id450743/](http://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtspalte/PROCEDURES-FOR-CONSULTATIONS-BETWEEN-STA/id450743/)> accessed 1 June 2020.

<sup>11</sup> Olav Hallset, 'Uverdige PR-kamp fra Sametinget' (*Bergindustri*, May 2019) <[www.nussir.no/media/2019/2019-05-07%20-%20GEO365%20-%20Uverdige%20PR-kamp%20fra%20Sametinget.pdf](http://www.nussir.no/media/2019/2019-05-07%20-%20GEO365%20-%20Uverdige%20PR-kamp%20fra%20Sametinget.pdf)> accessed 1 June 2020.

<sup>12</sup> Sametinget, 'Press release 7 March 2019' <[www.sametinget.no/Nyhetsarkiv/PRM-Sametingets-klagepaa-Nussir-vedtaket-sendt-til-regjeringen](http://www.sametinget.no/Nyhetsarkiv/PRM-Sametingets-klagepaa-Nussir-vedtaket-sendt-til-regjeringen)> accessed 1 June 2020.

<sup>13</sup> See, Chapter 3.

<sup>14</sup> 'Næringsministeren om Nussir: – Det blir ikke noe grønt skifte uten norsk industri' (*iFinnmark*, May 2019) <[www.nussir.no/media/2019/2019-04-12%20-%20iFinnmark%20-%20Det%20blir%20ikke%20noe%20grønt%20skifte%20uten%20norsk%20industri.pdf](http://www.nussir.no/media/2019/2019-04-12%20-%20iFinnmark%20-%20Det%20blir%20ikke%20noe%20grønt%20skifte%20uten%20norsk%20industri.pdf)> accessed 1 June 2020.

<sup>15</sup> Thomas Nilsen, 'With tailings to be dumped at sea, copper mine gets approval' (*The Barents Observer*, February 2019) <<https://thebarentsobserver.com/en/industry-and-energy/2019/02/tailings-be-dumped-sea-copper-mine-gets-approval>> accessed 1 June 2020; Solsvik and Fouche (n 9).

<sup>16</sup> *ibid.*

development would be one of the most environmentally damaging industrial projects in Norwegian history.<sup>17</sup>

The implications of the project on the marine environment of Repparfjord have given rise to questions as to the project's compliance with Norway's international commitments toward environmental law and indigenous peoples' rights. Accordingly, this master's Thesis follows the course of the ongoing mining developments in Kvalsund from the beginning of the project to February 2020,<sup>18</sup> and attempts to approach the issue of mining waste disposal in Repparfjord from an indigenous rights-based, an environmental law and a critical perspective that interrogates the existing legal system's ability to accommodate traditional knowledge systems and beliefs.<sup>19</sup> Developed within the conceptual framework of legal pluralism, the project places emphasis on the coexistence of indigenous and state conceptions of law and resource management, highlighting their importance for the sustainable use of the ocean and the resources that it contains. For this purpose, aside from doctrinal analysis of legal domains which is widely used in projects relevant to law and resource management, this Thesis uses three Coastal Sámi stories as a point of departure, in order to articulate legal discourses related to the issue of mining waste disposal in Repparfjord. As long as this Thesis is looking at the marine-related issue of mining waste disposal in Repparfjord, it was considered useful to touch upon the case study through the paradigm of Sámi stories of the region. The selected stories refer to Sámi spirits known as *rávga* which live in the sea and often interact with fishermen and coastal communities.<sup>20</sup> Each of the three selected stories has been used in a different legal approach and, methodologically, is interpreted in a different way to discuss the case and the different fields of law that revolve around it.<sup>21</sup> The thesis concludes with recommendations for further research and policymaking.

---

<sup>17</sup> *ibid.*

<sup>18</sup> In February 2020 the data collection process for this Thesis was completed.

<sup>19</sup> See, correspondingly, Chapters 3, 4 and 5.

<sup>20</sup> See below section 1.5.3.

<sup>21</sup> For a more comprehensive discussion of the chosen research methods as well as the methodological concerns revolved around them, see Chapter 2.



*Figure 1 The Nussir Project: Nussir ASA*

## 1.2 Research Objectives

The main research objective in this master's thesis is to use the paradigm of Coastal Sámi stories from Repparfjord as a point of departure for addressing the most prominent indigenous rights and environmental law discourses around the issue of mining waste disposal in the region.

In exploring this question, the project:

- describes the course of the ongoing Nussir mine project from 2005 (when Nussir AS was established) to February 2020 (when the data collection process for this Thesis was finalized);
- argues for a pluralistic understanding of law and resource management and critically interrogates the existing legal system's ability to accommodate traditional knowledge systems.

## 1.3 Background of Study Area: The Nussir Case in a Nutshell

The copper deposits in the inner Repparfjord are the largest known copper deposits in Norway, estimated at 74 million tons of copper ore, located under the surface of the mountains Ulveryggen (Sámi: Gumpenjunki) and Steinfjellet (Sámi: Nussir). Mining in the region dates



back to the 1970s, when the deposit was initially discovered. Mining was initially developed in Ulveryggen by the company Folldal Verk and was permitted based on promises of long-term jobs and additional municipal income.<sup>22</sup> However, due to falling copper prices, the mine's operation was short-lived, and was only active from 1972 to 1978.<sup>23</sup> During the seven years of operation, Folldal Verk disposed the excess waste from the open-pit mining as sea tailings in the Repparfjord.<sup>24</sup> The impacts of this project on the marine environment of Repparfjord are still unclear as of 2018 reporting.<sup>25</sup>

In order to develop both Nussir and Ulveryggen, the Nussir AS was established in 2005 and soon prepared for listing and made into ASA (Public Limited Company).<sup>26</sup> In 2011, after almost four years of investments, test drilling and exploration of the Nussir deposit,<sup>27</sup> an Environmental and Social Impact Assessment was conducted, and alongside with the zoning plan was submitted by Nussir ASA to the Municipal Council of Kvalsund.<sup>28</sup> The zoning plan and 17 impact assessments were combined in one document of 178 pages.<sup>29</sup> Soon after the submission of the zoning plan, an application for tailings disposal was submitted to the Norwegian Climate and Pollution Agency (Klima- og forurensningsdirektoratet) of the Ministry of Climate and Environment.<sup>30</sup> To ensure that the mining tailings would deposit without particle spreading, and that the fresh water would be recycled, the chemical substance Magnafloc 10 will be used.<sup>31</sup> Consequently, the waste is expected to cover 8 km<sup>2</sup> of Repparfjord which corresponds to 10-15 % of the total area, and the tailings will be deposited on the fjord bottom through a pipeline connected to the processing plant.<sup>32</sup>

---

<sup>22</sup> Sweco, Reguleringsplan med konsekvensutredning for planlagt gruvedrift i Nussir og Ulveryggen i Kvalsund kommune (SWECO 2010) 17.

<sup>23</sup> *ibid.*

<sup>24</sup> Einar Eythórsson, *Konsekvenser for sjøsamisk bruk av Repparfjorden og sjønære arealer* (NIKU Oppdragsrapport 70/2011) 23.

<sup>25</sup> Anita Evenset and others, *Fate and Impact of Mine Tailings on marine Arctic ecosystems – FIMITA* (Fram senteret 2018).

<sup>26</sup> 'Milestones' (Nussir, 2020) <[www.nussir.no/en\\_about\\_milest.php](http://www.nussir.no/en_about_milest.php)> accessed 1 June 2020.

<sup>27</sup> From 2007 - 2011 Nussir ASA drilled Nussir and Ulveryggen. Together more than 30,000 meters drilled on more than 200 drillholes; *ibid.*

<sup>28</sup> The legal framework of mineral resource extraction and waste disposal in Norway is sketched in Chapters 3 and 4.

<sup>29</sup> 'Zoning Plan' (Nussir, 2020) <[www.nussir.no/en\\_enviro\\_zoning.php](http://www.nussir.no/en_enviro_zoning.php)> accessed 1 June 2020.

<sup>30</sup> Nussir (n 26).

<sup>31</sup> Guttorm N Christensen and others, 'Konsekvenser for det marine miljøet i Repparfjorden ved etablering av sjø- eller landdeponi for gruveavgangen fra Nussir og Ulveryggen i Kvalsund kommune, Finnmark' (AkvaplanNiva 2011) 48-49.

<sup>32</sup> *ibid.*

In May 2012, the Municipal Council accepted the zoning plan,<sup>33</sup> leading the Sámi Parliament to several objections, especially regarding the repercussions of the mining project on the reindeer herding activities in Kvalsund and the marine environment of Repparfjord. In March 2014, after reviewing the objections of the Sámi Parliament, the same plan with some amendments was finally accepted by the Ministry of Local Government and Modernization with input from the Ministry of Agriculture, Ministry of Trade, Industry and Fisheries, and the Ministry of Climate and Environment.<sup>34</sup> The approval of the tailing disposal application by the Norwegian Environmental Agency followed in 2016.

According to Norwegian law, after the approval of the zoning plan an operational license is needed before beginning a project,<sup>35</sup> as well as a pre-feasibility study that examines the economic potentials and profitability of a project. On May 6, 2016 Nussir ASA applied for an operating license and the next year a pre-feasibility study was conducted by Golder Associates.<sup>36</sup> On February 14, 2019, after unsuccessful consultations of Nussir with the Sámi Parliament, representatives from the reindeer herding industry, and locals from the Municipality of Kvalsund, the Ministry of Trade, Fisheries and Industry approved Nussir ASA's operation and gave the green light to mining in the region.<sup>37</sup> Soon after, the Sámi Parliament appealed the government's decision to license Nussir ASA for mining to the King at the Council of State, asking for the cancellation of the licensing. Their appeal was rejected in November 2019.<sup>38</sup>

As of February 2020, mining operations have not yet started, however it seems that the project may begin soon. The permission for disposal of mine tailing in Repparfjord continues to be strongly questioned by the scientific community, as well as by activists and environmental organizations. This issue has been the main focus of research of this thesis. Besides environmental discourses, several human rights concerns arise with regard to the mining waste

---

<sup>33</sup> In May 2012, the Kvalsund Municipal Council voted 12 against 3 in favour of Nussir. The minority was concerned about depositing mining waste in the Repparfjord; see Kvalsund Municipal Council, 'Meeting 3/2012, 8 May 2012, issue 34/12'.

<sup>34</sup> The Ministry of Agriculture initially opposed the project but changed its position with the new government after the national election in 2013; see Kommunal- og moderniseringsdepartementet, *Reguleringsplan for Nussir og Ulveryggen er godkjent*. (Ministry of Local Government and Modernisation 2014) <<http://bit.ly/1Vs11JP>> accessed 1 June 2020.

<sup>35</sup> Lov 2009-06-19 nr. 101 Lov om erverv og utvinning av mineralressurser (mineralloven) art 43.

<sup>36</sup> Nussir (n 26).

<sup>37</sup> Nærings- og fiskeridepartementet, *Vedtak om driftskonsesjon for Nussir og Ulveryggen kobberforekomst*. Tiltakshaver: Nussir ASA (February 2014) <[www.regjeringen.no/globalassets/departementene/nfd/dokumenter/nussir-asa---driftskonsesjon-for-repparfjord-kobberforekomst.pdf](http://www.regjeringen.no/globalassets/departementene/nfd/dokumenter/nussir-asa---driftskonsesjon-for-repparfjord-kobberforekomst.pdf)> accessed 1 June 2020.

<sup>38</sup> Statsministerens kontor, *Offisielt frå statsrådet 29. november 2019* (Regjeringen 2019).

disposal in Repparfjord, which is located within the Sámi cultural region. This Thesis incorporates an interdisciplinary methodology, combining discussion on Coastal Sámi stories with doctrinal analysis of legal domains and literature analysis, and attempts to address the most prominent indigenous rights and environmental law issues pertained to the issue of mining waste disposal in the region.

**THE CHRONICLE OF NUSSIR MINE**

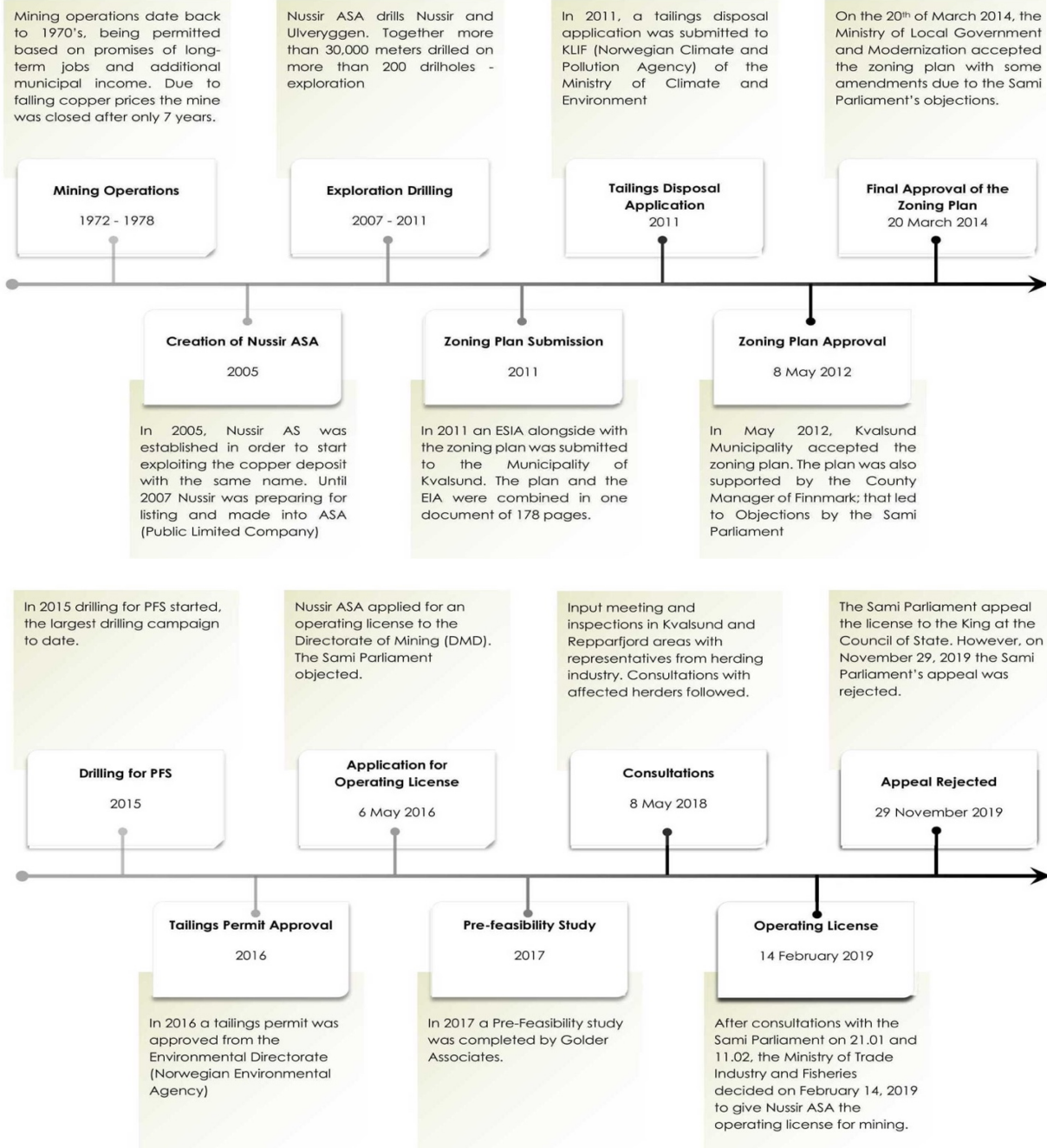


Figure 2 The Chronicle of Nussir Mine: Apostolos Tsiouvalas

## 1.4 Relevance

The end of the WWII and the establishment of the UN system led to the gradual consolidation of universal human rights, and more recently to the development of indigenous rights. While legal progress on indigenous land claims has recently been fostered around the globe, sea claims still lag behind. In Norway, significant progress has undoubtedly taken place when it comes to Sámi cultural, procedural and land rights. However, the Norwegian government has been hesitant to apply the Indigenous and Tribal Peoples Convention of the International Labour Organization (hereinafter: ILO 169 Convention),<sup>39</sup> the UN Declaration on the Rights of Indigenous Peoples (hereinafter: UNDRIP),<sup>40</sup> or other international law instruments such as Article 27 of the International Covenant on Civil and Political Rights (ICCPR)<sup>41</sup> to Sámi coastal livelihoods and fisheries.<sup>42</sup> While land rights have been continuously developed within Norwegian law, there are no explicit references in Norwegian legislation concerning the Sámi use of the marine space. Similarly, in the case of Nussir, the majority of the human rights advocates that deal with the impacts of the project on the Sámi people, prioritize addressing the implications of the mine on reindeer herding activities over Sámi activities related to the ocean and Nussir ASA's marine disposal is mainly seen as an environmental issue rather than a human rights issue. Indeed, this is understandable if someone takes into account the long Norwegianization policy that the Sámi of the region have experienced.<sup>43</sup> According to Henry Minde, the policy of Norwegianization took place between 1850 up to roughly 1980 and mostly affected the Coastal Sámi and the Kven people.<sup>44</sup> To date, it is estimated that while 90% of the population of Kvalsund are Sámi descendants, only 15% speak or understand the Sámi language.<sup>45</sup> Next to that, lack of job opportunities in the region

---

<sup>39</sup> Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 Jun 1989, entered into force 5 September 1991) 1650 UNTS 383 (ILO No. 169).

<sup>40</sup> Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007) UNGA Res 61/295 (UNDRIP).

<sup>41</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>42</sup> Svein Jentoft, 'Governing tenure in Norwegian and Sámi small-scale fisheries: from common pool to common property?' (2013) 1 Land Tenure Journal 91.

<sup>43</sup> Norwegianization (*fornorskningspolitikk* in Norwegian) is defined by Steinar Pedersen as 'the range of official measures taken from the middle of the 19th Century to the second half of the 20th Century aimed at undermining Sámi language and culture and assimilating the Sámi into the Norwegian population'; see Steinar Pedersen, 'The Coastal Sámi of Norway and their rights to traditional marine livelihood' (2012) 3(1) Arctic Review on Law and Politics 51, 55.

<sup>44</sup> Henry Minde, 'Assimilation of the Sami - Implementation and Consequences' (2005) 3(1) *gáldu čála* – journal of indigenous peoples rights 1.

<sup>45</sup> Kathrine Ivsett-Johnsen, 'Land-use conflicts between reindeer husbandry and mineral extraction in Finnmark, Norway: contested rationalities and the politics of belonging' (2016) 39(1) *Polar Geography* 58, 64.

has led to ongoing outmigration of fishermen from Kvalsund.<sup>46</sup> As of 2014, approximately 40% of the economically active population in Kvalsund have jobs outside the municipality.<sup>47</sup>

By choosing Sámi stories that stem from the coastal culture of Finnmark and mainly touching upon the issue of mining waste disposal in a traditional Sámi fjord, this project attempts to highlight an ocean-centered perspective of the Nussir case. The sea has always been a core element of the lives of coastal communities, having cultural and spiritual ties that shape these communities as well as the individual identities within them. Such a relationship is often opposed to contemporary understandings of law and resource management which tend to look at the sea as an exploitable and profitable source.<sup>48</sup> It is hoped that the results of this project will sketch a pluralistic understanding of ocean governance and would add an alternative and valuable contribution to the published literature regarding the issue of mining waste disposal in Repparfjord that Nussir ASA is expected to start soon.

### 1.5 Positionality, Reflexivity and Preliminary Results

I am not a Sámi person, nor a Norwegian, rather I am Greek and come from Alexandroupolis, a coastal city in the north-eastern part of Greece, which is the most populated city in the administrative region Eastern Macedonia and Thrace. It is generally accepted that the proto-Thracian people residing in my homeland originated from a mixture of indigenous peoples and Indo-Europeans from the time of Proto-Indo-European expansion in the Early Bronze Age.<sup>49</sup> The region where I come from was objected to colonization campaigns since the Archaic period.<sup>50</sup> With the passage of time, any distinct cultural or linguistic features that could have led to the characterization of the contemporary residents of the region as ‘indigenous’ have faded out. Therefore, I would not consider myself an indigenous person, nor would I claim that I come from a family with indigenous origins. I am cognizant of the fact that doing research within the field of indigenous studies as a non-indigenous person can be seen as controversial.<sup>51</sup>

---

<sup>46</sup> Vigdis Nygaard, ‘Do indigenous interests have a say in planning of new mining projects? Experiences from Finnmark, Norway’ (2016) 3 *The Extractive Industries and Society* 17, 17.

<sup>47</sup> Ivsett-Johnsen (n 45) 64.

<sup>48</sup> Melissa Nursey-Bray and Chris Jakobsson, ‘Which way? The contribution of Indigenous marine governance’ 6(1) *Australian Journal of Maritime and Ocean Affairs* 27, 27.

<sup>49</sup> Ralph F Hoddinott, *The Thracians* (Thames & Hudson 1981) 27.

<sup>50</sup> See Simon Hornblower and Antony Spawforth, *The Oxford Classical Dictionary* (Oxford University Press 1996) 1515; The authors mention that in the 8th century BC the coast of Thrace was colonized by Greeks.

<sup>51</sup> See, for instance, Torjer A Olsen, ‘Privilege, Decentring and the Challenge of Being (Non-) Indigenous in the Study of Indigenous Issues’ (2017) 47(2) *The Australian Journal of Indigenous Education* 206; Rebecca Lawrence and Kaisa Raitio, ‘Academia and activism in Saami research: negotiating the blurred spaces between’ in Anna-Lill Drugge (ed), *Ethics in Indigenous Research: Past Experiences - Future Challenges* (Umeå University 2016).

In the past, non-indigenous researchers were conducting research on indigenous communities, considering only their ethnographic interests and thus contributing to the research's colonial legacy.<sup>52</sup> It has recently become clear that doing research within indigenous studies implies doing something useful for the needs of an indigenous community, and mutually beneficial to all parties involved.<sup>53</sup> This project, while it does not directly contribute to a Sámi community's needs, attempts to shed light on the legal discourses over one of the most important ongoing cases within Sápmi, and through the paradigm of Sámi stories to advocate for a pluralistic understanding of law and resource management.

I have previous professional and academic background related to indigenous rights and resource management, with particular research focus on customary marine tenure and legal pluralism. During the academic year 2018-2019, I was employed with the Faculty of Law of the University of Tromsø where I was engaged in a temporary project that aimed to illuminate a Coastal Sámi conceptual framework of living marine resource management. While I have worked before in a Coastal Sámi context mainly focusing on marine property rights and customary tenure, this thesis has been my first contact with mining law in Norway, and definitely my first endeavor to touch upon Sámi stories as source of knowledge. From these stories selected elements have been drawn in order to discuss different legal discourses revolved around the issue of mining waste disposal in Repparfjord. Storytelling is an indivisible part of the intellectual property of the Sámi communities and has always been a popular tradition amongst all Sámi peoples.<sup>54</sup> Although I have chosen the paradigm of Sámi stories aiming to develop my case study based on them, I would not feel comfortable to argue that my project deploys an indigenous methodology or other research tools derived from a Sámi epistemology.<sup>55</sup> However, I have attempted to incorporate methodological concerns, which, whether developed by indigenous or non-indigenous researchers, are founded on theoretical and legal pluralism.

In addition, some of the ideas illustrated in this project might be rather critical towards the Norwegian legal order regarding indigenous people's rights. While I am questioning the

---

<sup>52</sup> Lawrence and Raitio (n 51) 118.

<sup>53</sup> Torjer A Olsen, 'Responsibility, reciprocity and respect. On the ethics of (self-)representation and advocacy in Indigenous studies' in Anna-Lill Drugge (ed), *Ethics in Indigenous Research: Past Experiences - Future Challenges* (Umeå University 2016)38;

<sup>54</sup> Matti Morottaja, 'The storytelling tradition' (*Sámi musea Siida & Anarâškielâ servi*, 2006) <[www.samimuseum.fi/anaras/english/kieli/kertomaperinne.html](http://www.samimuseum.fi/anaras/english/kieli/kertomaperinne.html)> accessed 1 June 2020.

<sup>55</sup> Chapter 2 of this project articulates the chosen methodological tools and methodological reflections of the author.

way that the contemporary legal frameworks evaluate systems of traditional knowledge and beliefs,<sup>56</sup> I do not mean to silence those who acknowledge the existing developments in the Norwegian legal system and are supportive of the way that participatory rights for the Sámi people have been acknowledged. For instance, Chapter 5 of this thesis argues that the current anthropocentric rationale of international (and Norwegian) law is reluctant to become receptive to traditional systems of knowledge and indigenous understandings of law and resource management. I certainly do not deny, though, that law, whether through legislative action or litigation, could become a well promising arena for such developments.

## 1.6 Definitions of Concepts and Terminological Preferences

Before looking closer at the methodological framework applied in this study, a presentation of key concepts is necessary, in order to avoid misinterpretations and misconceptions.<sup>57</sup> Accordingly, a few clarifications need to be taken into account prior to the development of this study, as well as some explanations about the terminological preferences of the author. Definitions are provided below for the terms ‘Sámi’, ‘mining waste disposal’, ‘*rávga*’ and ‘traditional knowledge’, all of which frequently appear in this thesis.

### 1.6.1 (Coastal) Sámi

The Sámi Act of June 12, 1987<sup>58</sup> (hereinafter: the Sámi Act) was adopted by the National Parliament of Norway three years prior to the ratification of the ILO 169 Convention. The Sámi Act rests largely on the notion that Norway as a state is established on the territory of two Peoples, the Norwegian and the Sámi, who have lived within the territory of modern Norway prior to the establishment of the Norwegian State.<sup>59</sup> Currently, there is no formal definition for the term ‘Sámi’, apart from the criteria listed in Section 2-6 of the Sámi Act,<sup>60</sup> which confer the right to participate in the elections for the Sámi Parliament. Although these criteria have no formal legal relevance and significance outside the Sámi Act’s area of application,<sup>61</sup> these criteria, nevertheless, indicate who is formally considered to be a Sámi in Norway.<sup>62</sup> Section 2-

---

<sup>56</sup> See below 1.6.4.

<sup>57</sup> Jelena Porsanger, ‘An Essay about Indigenous Methodology’ (2004) 15 *Nordlit* 105, 112.

<sup>58</sup> LOV 1987-06-12 nr 56: Lov om Sametinget og andre samiske rettsforhold (sameloven).

<sup>59</sup> Birgitte Feiring and Programme to Promote ILO Convention No. 169, *Indigenous & Tribal People's Rights in Practice - A Guide to ILO Convention No. 169* (International Labour Standards Department 2009) 19.

<sup>60</sup> sameloven (n 58) s 2-6.

<sup>61</sup> Feiring and Programme to Promote ILO Convention No. 169 (n 59) 19.

<sup>62</sup> *ibid.*

6 of the Sámi Act stipulates the following criteria for the right to participate in the Sámi Parliament elections:

‘All persons who make a declaration to the effect that they consider themselves to be Sámi, and who either

- a. have Sámi as their domestic language, or
- b. have or have had a parent, grandparent or great-grandparent with Sámi as his or her domestic language, or
- c. are the child of a person who is or has been registered in the Sámi electoral register

may demand to be included in a separate register of Sámi electors in their municipality of residence.’<sup>63</sup>

According to an International Labour Organization’s analysis,<sup>64</sup> the Sámi Act provides one subjective and one objective criterion when identifying who can be considered a Sámi. The subjective criterion is the self-identification as Sámi: that a person considers herself/himself to be a Sámi and therefore belonging to the Sámi people.<sup>65</sup> The objective criterion is related to the Sámi language; that the person himself/herself, or their parents, grandparents or great-grandparents have or had Sámi as their first language or domestic language.<sup>66</sup> Based on this linguistic criterion, the area of the former County of Finnmark where the case study has been taking place is a part of the Sápmi,<sup>67</sup> the traditional land of Sámi people stretched over the four sovereign states of Fennoscandia. Additionally, the region of Finnmark together with the rest of Northern Norway is included in the area designed for consultations between the State authorities and the Sámi Parliament.<sup>68</sup>

In the former Municipality of Kvalsund where the study area of this project is located, the Coastal Sámi historically comprise the majority of the population.<sup>69</sup> The Coastal Sámi have historically inhabited the coastal fjord areas of northern Norway, with the majority of them living in the County of Troms and Finnmark.<sup>70</sup> Traditionally, they have relied on subsistence activities such as fishing, hunting, farming, gathering and limited trading relationships.<sup>71</sup> When

---

<sup>63</sup> Sameloven (n 58) s 2-6.

<sup>64</sup> Feiring and Programme to Promote ILO Convention No. 169 (n 59) 19-20.

<sup>65</sup> *ibid.*

<sup>66</sup> *ibid* 20.

<sup>67</sup> For the officially defined Sámi regions of Norway; see Sameloven (n 58) s 2-4.

<sup>68</sup> See Consultations Agreement (n 10) Section 2 ‘The Scope’.

<sup>69</sup> Nygaard (n 46).

<sup>70</sup> Angelika Lätsch, ‘Coastal Sami revitalization and rights claims in Finnmark (North Norway) - two aspects of one issue? Preliminary observations from the field’ (2012) 18 *Fávllis. Innblikk i et forskningsprosjekt om lokal fjordkunnskap* 60, 63.

<sup>71</sup> Lars I Hansen, ‘Sámi Fisheries in the Pre-modern Era: Household Sustenance and Market Relations’ (2006) 23(1) *Acta Borealia* 56, 59.



it comes to the Coastal Sámi, there are no formal criteria or definitions provided by law recognizing them as a distinct people within the rest of the Sámi population. The entire Sámi area of Norway, is subject to regulations concerning activities practiced by the Sámi, including fisheries or other activities at the coasts. Furthermore, the STN area<sup>72</sup> has been established as the core area of Sámi settlement in Norway, underlining it as a target area for special policy measures determined by the Sámi Parliament to subsidize schemes for entrepreneurship development.<sup>73</sup> As of 2015, of the 19 municipalities in the former Finnmark County, 13 belong to the STN area, one of which is the municipality of Kvalsund, where the Nussir case takes place.<sup>74</sup> While business schemes within the STN area are provided to both reindeer herding and Coastal Sámi activities, the definition of STN does not explicitly mention the Coastal Sámi as a group.

### 1.6.2 Mining Waste Disposal

It is a well-known fact that nearly 70% of the planet is filled with water in the form of different kinds of water bodies such as oceans, lakes, rivers and others.<sup>75</sup> Around the world, mining companies dump 220 million tons of mine waste directly into oceans, rivers and lakes every year.<sup>76</sup> Ocean dumping can be defined as ‘the dumping of materials like garbage, construction and demolition debris, sewage sludge, dredge material, and waste chemicals in the ocean.’<sup>77</sup> Mine processing wastes, also known as tailings, can contain as many as three dozen dangerous chemicals including arsenic, lead, mercury and processing chemicals such as petroleum by-products, acids and cyanide.<sup>78</sup> Among all sorts of activities that pollute the ocean, dumping sewage in the ocean has always been considered the cheapest and the easiest way of

---

<sup>72</sup> The STN area stands for the Norwegian phrase ‘*virkeområdet for Sametingets tilskuddsordninger til næringslivet*’ referring to the group of municipalities in which the Sámi Parliament subsidizes schemes for business development. For a list of the regions that the STN area covers; see ‘Sami’ (*Statistics Norway*) <[www.ssb.no/en/befolkning/statistikker/samisk/hvert-2-aar](http://www.ssb.no/en/befolkning/statistikker/samisk/hvert-2-aar)> accessed 1 June 2020.

<sup>73</sup> Else G Broderstad and Einar Eythórsson, ‘Resilient communities? Collapse and recovery of a social-ecological system in Arctic Norway’ (2014) 19(3) *Ecology and Society* <[www.ecologyandsociety.org/vol19/iss3/art1/](http://www.ecologyandsociety.org/vol19/iss3/art1/)> accessed 1 June 2020.

<sup>74</sup> Statistics Norway (n 72).

<sup>75</sup> ‘How much water is in the ocean?’ (*NOAA*) <<https://oceanservice.noaa.gov/facts/oceanwater.html>> accessed 1 June 2020.

<sup>76</sup> ‘Dumping by the Numbers?’ (*Earthworks*) <<https://earthworks.org/cms/assets/uploads/2018/02/DOD-FactSheet-DumpingByNumbers.pdf>> accessed 1 June 2020.

<sup>77</sup> ‘Ocean Dumping Law and Legal Definition’ (*USLegal*) <<https://definitions.uslegal.com/o/ocean-dumping/>> accessed 1 June 2020.

<sup>78</sup> Scott Cardiff and others, *Troubled Waters: how mine waste dumping is poisoning our oceans, rivers, and lakes* (Earthworks and Mining Watch Canada, 2012).

disposing of wastes.<sup>79</sup> There are three different types of submarine waste disposal: the coastal shallow-water disposal or land reclamation; the submerged disposal in water shallower than 100 m; and the disposal in deeper water.<sup>80</sup>

To date, while most nation states have adopted laws that restrict ocean dumping, Norway remains the only country in Europe and one of the last in the world to allow solid mine waste dumping into the ocean.<sup>81</sup> In January 2018, the Norwegian Government also placed a four year ban on the issuing of new permits to dump mine waste in the ocean in order to develop a better understanding of the economic and environmental consequences of this practice.<sup>82</sup> However, two proposed mines escaped this moratorium on submarine dumping permits, one of which is the Nussir mine.<sup>83</sup> Consequently, it is expected that Nussir ASA would annually dump an estimated between 1 and 2 million tons of mine waste into Repparfjord at 30-60 m depth,<sup>84</sup> posing new risks to the already affected marine environment.<sup>85</sup> In addition to the deposit of mining waste, the environmental interferences associated with accessing the minerals, the industrial activities to process the minerals, and the necessary transportation infrastructure have also raised questions.<sup>86</sup>

### 1.6.3 Rávga

As of 2016, the Nussir ASA company has been permitted to dump tailings from its underground copper mine into the waters of Repparfjord, which is recognized as a national salmon area, and has historical economic and spiritual value for the Sámi people of the region. According to the Sámi folklore, not only humans, but also sea spirits known as ‘*rávga*’ live in Repparfjord. Dealing with the issue of mining waste disposal in the marine environment of Repparfjord, this thesis presents three Sámi stories that are related to the sea and illustrate

---

<sup>79</sup> Shamseer Mambra, Ocean Pollution: 6 Things That Make It Marine Environment (*Marineinsight*, 4 October 2019) <[www.marineinsight.com/environment/causes-and-effects-of-ocean-dumping/](http://www.marineinsight.com/environment/causes-and-effects-of-ocean-dumping/)> accessed 1 June 2020.

<sup>80</sup> Ola Magne Sæther and others, Roundness of mineral particles in subsea tailings from copper mining (Fram senteret 2019).

<sup>81</sup> ‘PRM: Gruveeventyret i Repparfjord går mot slutten’ (*Sametinget*, January 2018) <[www.sametinget.no/Nyhetsarkiv/PRM-Gruveeventyret-i-Repparfjord-gaar-mot-slutten](http://www.sametinget.no/Nyhetsarkiv/PRM-Gruveeventyret-i-Repparfjord-gaar-mot-slutten)> accessed 1 June 2020.

<sup>82</sup> ‘New Campaign Seeks End to Ocean Mine Waste Dumping’ (*Earthworks*, March 2018) <<https://earthworks.org/media-releases/new-campaign-seeks-end-to-ocean-mine-waste-dumping/>> accessed 1 June 2020.

<sup>83</sup> *ibid.*

<sup>84</sup> Jens Skeil, *Mining industry and tailings disposal: Status, environmental challenges and gaps of knowledge* (Norwegian Environment Agency 2019) 123.

<sup>85</sup> Atle Staalesen, ‘Government gives thumbs up for mining company, will be allowed to dump wastes in Arctic fjord’ (*The Barents Observer*, December 2016) <<https://thebarentsobserver.com/en/ecology-industry-and-energy/2016/12/government-gives-thumbs-mining-company-will-be-allowed-dump>> accessed 1 June 2020.

<sup>86</sup> *ibid.*

interactions of humans with ‘*rávga*’. Stories are a valuable source of knowledge for the Sámi people<sup>87</sup> and they incorporate natural and spiritual conceptions of the world.<sup>88</sup> Aiming to articulate a pluralistic perspective of law and resource management related to the case study, it was deemed reasonable for the purposes of this project to use *rávga* stories from the region as a point of departure for discussing law related to the issue of mining waste disposal in Repparfjord. Accordingly, three stories that describe interactions of human beings and *rávga* have been selected and are being discussed throughout this project. The following chapter dedicated to the chosen research methods delves deeper into the way that these stories are used and analyzed in relation to the case study, while each introductory section of the main chapters of this thesis provides additional details.

The word *rávga* is used by both the Norwegian and Finnish Sámi to refer to a wandering dead soul, a disembodied soul.<sup>89</sup> This disembodied soul represents a drowned spirit hovering at the water level above the earth.<sup>90</sup> This led the Norwegians to use the word *draug* for *rávga*, while the Kvens used the word *Meriraukka* meaning a sea wraith or a water ghost.<sup>91</sup> The *rávga* is usually described as a long-haired and large-mouthed creature with a human form and is regarded as the soul of a drowned person.<sup>92</sup> Death by drowning - when the body has not been found and properly buried - is generally regarded in the folk tradition as causing a state of displacement until the required rite of passage (burial and, in the Christian era, a funeral service) is performed.<sup>93</sup> A *rávga* is not always dangerous, but it sometimes comes from the sea to inflict retribution for an injury or sin committed by humans.<sup>94</sup> The *rávga* are always associated with the water, particularly the sea, and most often are represented with a frightening and dangerous guise.<sup>95</sup> The *rávga* sometimes appear to have genders while they mostly interact with Sámi men.<sup>96</sup> A *rávga* could harass sailors or people on the shore, after calling them out, or imitating

---

<sup>87</sup> Morottaja (n 54).

<sup>88</sup> Judy Iseke, ‘Indigenous Storytelling as Research’ (2013) 6(4) *International Review of Qualitative Research* 559, 568.

<sup>89</sup> Torun Olsen Wernberg, ‘Draug – Rávga’ (*Senter for nordlige folk*) <<https://nordligefolk.no/sjosamene/fortellinger-sagn-og-myter/draugen>> accessed 1 June 2020.

<sup>90</sup> Anders Larsen, ‘Om sjøsamene’ (1947) 70(2) *Tromsø museums årshefter* 1, 40-41; for a visual illustration of Sami folklore related to ‘*rávga*’ see the documentary ‘Draugen - havets hevngjerrige vokter’ (NRK, December 1991) <<https://tv.nrk.no/program/FTRO14000091>> accessed 1 June 2020.

<sup>91</sup> Kari Yli-Kuha, *Sámi Mythology* (Lysator, 1998).

<sup>92</sup> Risto Pulkkinen, ‘Rávga (engl. ver.)’ (*The Saami: A Cultural Encyclopaedia*) <[http://senc.hum.helsinki.fi/wiki/Rávga\\_\(engl.\\_ver.\)#tab=English](http://senc.hum.helsinki.fi/wiki/Rávga_(engl._ver.)#tab=English)> accessed 1 June 2020.

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*

<sup>95</sup> *ibid.*

<sup>96</sup> Jo Ann Conrad, *Contested Terrain: Land, Language, and Lore in Contemporary Sami Politics* (UC Berkeley 1999) 288.

the speech of the living.<sup>97</sup> The tradition says that a *rávga* could be driven away by reading out the funeral service to it.<sup>98</sup> Unlike the *rávga*, a *Čahcerávga* water wraith is not thought to be a real being; historically it has been an imaginary creature used to scare children.<sup>99</sup> All three Sámi stories discussed in this thesis are geographically placed within or adjacent to the seascape of Repparfjord and involve different interactions of Sámi individuals with one or more *rávga*. Methodological reflections regarding the origins and use of these stories in the project are illustrated in Chapter 2.

#### 1.6.4 Traditional Knowledge

Stories are a valuable source of traditional knowledge in indigenous societies,<sup>100</sup> and often reflect indigenous understandings of the natural and spiritual world.<sup>101</sup> Like most indigenous peoples, traditional knowledge has a great value for the Sámi people for the management of the natural environment and the resources within.<sup>102</sup> Not a single widely accepted definition exists about what the term ‘traditional knowledge’ comprises, and its meaning is often contested. Therefore, it was considered useful for the purposes of this Thesis that deals with Sámi stories and knowledge embedded in them to provide a definition for the term ‘traditional knowledge’. Among others, it is worth highlighting the references to traditional knowledge contained in the Convention on Biological Diversity (CBD)<sup>103</sup> and the definition provided by the World Intellectual Property Organization (WIPO).<sup>104</sup> However, while most of the definitions provided by international instruments are mainly focusing on the empirical aspect of knowledge of indigenous and local communities, this thesis is treating traditional knowledge holistically, looking not only at the practical value of this knowledge but

---

<sup>97</sup> Pulkkinen (n 92).

<sup>98</sup> *ibid.*

<sup>99</sup> *ibid.*

<sup>100</sup> The Secretariat of the Convention on Biological Diversity, ‘What is Traditional Knowledge?’ (CBD, June 2011) <[www.cbd.int/traditional/intro.shtml](http://www.cbd.int/traditional/intro.shtml)> accessed 1 June 2020.

<sup>101</sup> Margaret Kovach, *Indigenous methodologies: Characteristics, conversations, and contexts* (University of Toronto Press 2009).

<sup>102</sup> For the Sámi, traditional knowledge has great value for the management of the natural environment and the resources within; see Jan Åge Riseth, ‘Can Traditional Knowledge Play a Significant Role in Nature Management? Reflections on Institutional Challenges for the Sami in Norway in Jelena Porsanger and Gunvor Guttorm (eds), *Working with Traditional Knowledge: Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbiediehtu Project on Sami Traditional Knowledge* (Nordisk samisk institutt 2011) 128.

<sup>103</sup> While CBD highlights traditional knowledge as a crucial tool for the conservation of biodiversity, WIPO mainly focuses on the protection of traditional knowledge as part of genetic resources; See Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD) 8(j).

<sup>104</sup> ‘Traditional Knowledge’ (World Intellectual Property Organization) <[www.wipo.int/tk/en/](http://www.wipo.int/tk/en/)> accessed 1 June 2020.

also at the moral, ethical, and spiritual background that traditional knowledge systems may have. Such an understanding of knowledge can be traced from the ‘*Árbediehtu* Pilot Project on Documentation and Protection of Sámi Traditional Knowledge’, edited by Jelena Porsanger and Gunvor Guttorm.<sup>105</sup> According to this report, *Árbediehtu* is an independent knowledge system deeply rooted in Sámi culture and the Sámi view of life.<sup>106</sup> *Árbediehtu* can be defined as the ‘collective wisdom, practical skills and theoretical competence evolved and acquired by Sámi people through centuries in order to subsist economically, socially, and spiritually’.<sup>107</sup> Therefore, next to empirical observations of the world, spiritual beliefs should be considered as constitutive value of this knowledge system.<sup>108</sup> This project, dealing with stories that involve sea spirits and calling for an ontologically pluralistic approach to resource management in Repparfjord,<sup>109</sup> has intentionally adopted such an approach of traditional knowledge. However, while scholars argue that the basic principle of indigenous methodologies is to use indigenous concepts when arguing about indigenous knowledge systems and forms of resource management, the project uses the term ‘traditional knowledge’ instead of *Árbediehtu*, since it is broader and can be attributed, beyond the Sámi communities, also to the ethnic Norwegian residents of the coastal areas of Northern Norway. As mentioned, due to the historical loss of the Sámi language and the assimilation of the Coastal Sámi into mainstream Norwegian society in many coastal areas, it is quite difficult to define the producers or the holders of this knowledge.<sup>110</sup> Therefore, it was considered more reasonable and safe for the project’s purposes to use the more inclusive term ‘traditional knowledge’ instead of ‘Sámi knowledge’ or *Árbediehtu*, taking into account that a part of this knowledge might be produced or held by ethnically Norwegian individuals that coexisted with the Sámi in the coastal regions of Northern Norway.

---

<sup>105</sup> See Jelena Porsanger and Gunvor Guttorm (eds), *Working with Traditional Knowledge : Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbediehtu Project on Sami Traditional Knowledge* (Nordisk samisk institutt 2011).

<sup>106</sup> Riseth (n 102) 113.

<sup>107</sup> Jelena Porsanger, ‘The Problematisation of the Dichotomy of Modernity and Tradition in Indigenous and Sami contexts’ in Jelena Porsanger and Gunvor Guttorm (eds), *Working with Traditional Knowledge : Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbediehtu Project on Sami Traditional Knowledge* (Nordisk samisk institutt 2011) 242.

<sup>108</sup> The authors further argue that a holistic approach of knowledge should be adopted, including ‘language, culture, practices, spirituality, mythology, customs and habits, as well as the social organization of the community’; Åsa Nordin Jonsson, ‘Ethical guidelines for the documentation of árbediehtu, Sami traditional knowledge’ in Jelena Porsanger and Gunvor Guttorm (eds), *Working with Traditional Knowledge : Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbediehtu Project on Sami Traditional Knowledge* (Nordisk samisk institutt 2011) 103.

<sup>109</sup> See Chapter V.

<sup>110</sup> Lätsch (n 70) 60-61; Eythórsson (n 24).

## 1.7 Thesis Outline

In an attempt to discuss the issue of mining waste disposal in Repparfjord through the paradigm of Sámi stories, this thesis is organized into six chapters. This first introductory chapter provides a description of the research topic and a short statement of the issue and the objectives of this study. It further reflects upon the position of the author and clarifies some terminological preferences regarding crucial terms that would be widely used in the project. The second chapter presents the methodological approaches chosen and the inquiry strategies used. It further highlights the value of storytelling as intellectual tool in indigenous societies, while it also addresses why and how three Sámi stories will be discussed in this project. It also touches upon the ethical responsibilities of an indigenous research approach. Chapters 3, 4, and 5 comprise the main body of this project. They start with a presentation of a selected Coastal Sámi story and through its discussion they address different legal discourses revolved around the issue of mining waste disposal in Repparfjord. In particular, Chapter 3 discusses human-rights issues related to the case study, Chapter 4 touches upon environmental law concerns, while Chapter 5 critically interrogates the existing systems ability to adequately accommodate traditional knowledge systems and beliefs. It calls for a pluralistic approach of law and resource management in Norway, highlighting the value of indigenous law for the sustainable management of the marine environment. The final part of this thesis concludes with a summary of the key findings and analytical insights generated during this study. The attached appendix contains duplicates of all figures presented in this thesis.

## 2 Methodological Concerns and Chosen Methods

In an attempt to address different legal discourses around the issue of mining waste disposal in Repparfjord through Sámi stories, interdisciplinary research has been conducted within the fields of law and social sciences. The objective of this chapter is to briefly outline the methodological concerns and research methods associated with this thesis. Below, the main research tools chosen for this project are presented, as well as some methodological reflections of the author.

### 2.1 Indigenous Research Paradigm

There is no single definition of what constitutes an indigenous research approach, since it varies around the world due to the different conditions that indigenous communities temporarily and spatially face.<sup>111</sup> The term ‘research’ has been strongly criticized by both indigenous and non-indigenous scholars engaged in the field of indigenous studies.<sup>112</sup> Linda Tuhiwai Smith argues that “the term ‘research’ is itself inextricably linked to European imperialism and colonialism.” She adds that “the word ‘research’ is probably one of the dirtiest words in the indigenous world’s vocabulary.”<sup>113</sup> Indeed, the concept of ‘research’ in the early 20<sup>th</sup> century was influenced by theories of racism and Social Darwinism.<sup>114</sup> In the past, non-indigenous scientists gathering data on physical anthropology used to take measurements of skulls and other physical features, as well as to photograph indigenous individuals.<sup>115</sup> Researchers at this time in Norway were clearly focused on racial hierarchy between Norwegian and Sámi people,<sup>116</sup> while ethical considerations in indigenous research were essentially non-existent.<sup>117</sup>

---

<sup>111</sup> Makere Steward-Harawera, ‘Challenging Knowledge Capitalism: Indigenous Research in the 21st Century’ (2013) 9(1) *Socialist Studies* 39, 40.

<sup>112</sup> See, for instance, Marilys Guillemin and others, ‘We’re checking them out: Indigenous and non-Indigenous research participants’ accounts of deciding to be involved in research’ (2016) 15(8) *International Journal for Equity in Health* 1, 9; Linda T Smith, *Decolonizing Methodologies - Research And Indigenous Peoples* (Zed Books 1999) 1; Kim Humphery, ‘Dirty questions: Indigenous health and ‘Western research’ (2001) 25(3) *Australian and New Zealand Journal of Public Health* 197, 197.

<sup>113</sup> Smith (n 112) 1.

<sup>114</sup> ‘Social Darwinism’ can be defined as the application of the evolutionary concept of natural selection to human society; see The Editors of Encyclopædia Britannica, ‘Social Darwinism’, *Encyclopædia Britannica* (1998) <[www.britannica.com/topic/social-Darwinism](http://www.britannica.com/topic/social-Darwinism)> accessed 1 June 2020.

<sup>115</sup> Bjørg Evjen, ‘Measuring Heads: Physical Anthropological Research in North Norway’ (1997) 14(2) *Acta Borealia* 3, 16.

<sup>116</sup> *ibid.*

<sup>117</sup> *ibid.*

Since at least the early 1970's,<sup>118</sup> scholars engaged in the field of indigenous studies have developed approaches to research that assert the fact that human societies have been progressively structured in an ontologically pluralistic world and there is rarely one single truth about what constitutes knowledge.<sup>119</sup> Using traditional research methods to explore Indigenous perspectives has often been felt by indigenous people themselves to be inappropriate and ineffective in gathering information and promoting discussion.<sup>120</sup> According to Rauna Kuokkanen, there is a need for indigenous peoples to become independent from Western intellectual structures since a significant part of colonialism is being dependent on modes, structures, epistemologies, and approaches of the West.<sup>121</sup> In these terms, methodologies for researching issues relevant to indigenous communities must take into account indigenous cosmologies, worldviews, epistemologies, and ethical beliefs.<sup>122</sup> This project by discussing the issue of mining waste disposal in Repparfjord through the paradigm of Sámi stories does not try to intrinsically deploy an indigenous epistemology in order to approach knowledge. Neither it endeavors to produce data unbiased and unaffected by conventional data production methods. However, it has attempted to incorporate methodological concerns, which, whether developed by indigenous or non-indigenous researchers, are founded on theoretical and legal pluralism.

## 2.2 Storytelling as Source of Knowledge

From time immemorial, oral traditions were the main form of transmitting and sharing knowledge with individuals and between groups.<sup>123</sup> Storytelling has always been an important source of knowledge for indigenous peoples around the world.<sup>124</sup> In the form of stories and songs, information was passed down through the generations.<sup>125</sup> Storytelling has also been a

---

<sup>118</sup> Smith (n 112) 142; see also Christina Allard and Susann Funderud Skogvang, 'Introduction' in Christina Allard and Susann Funderud Skogvang (eds), *Indigenous Rights in Scandinavia: Autonomous Sámi Law* (Routledge UK 2017) 4.

<sup>119</sup> Tim Ingold, *The Perception of the Environment: Essays on Livelihood, Dwelling and Skill* (Routledge New York 2000) 42.

<sup>120</sup> See Ranjan Datta, 'Traditional storytelling: an effective Indigenous research methodology and its implications for environmental research' (2018) 14(1) *Alternative* 35, 35.

<sup>121</sup> Rauna Kuokkanen, 'Towards an "indigenous paradigm" from a Sami perspective' XX(2) *The Canadian Journal of Native Studies* 411, 415.

<sup>122</sup> Porsanger (n 57); Martin N Nakata and others, 'Decolonial goals and pedagogies for Indigenous studies' (2012) 1(1) *Decolonization: Indigeneity, Education & Society* 120, 124.

<sup>123</sup> Robyn Ober, 'Kapatí Time: Storytelling as a Data Collection Method in Indigenous Research' (2017) 22LCJ: Special Issue: Decolonising Research Practices 8, 10.

<sup>124</sup> Mary K Dennis and Michael Minor, 'Healing Through Storytelling: Indigenising Social Work with Stories' (2019) 49(6) *The British Journal of Social Work* 1472.

<sup>125</sup> *ibid.*



central focus of indigenous epistemologies, pedagogies, and research approaches,<sup>126</sup> since it has always been a practice in indigenous cultures that sustains communities, validates experiences and epistemologies, expresses experiences of indigenous peoples, and nurtures relationships and the sharing of knowledge.<sup>127</sup> Within most indigenous societies there are longstanding traditions of employing stories as tools for thinking and teaching.<sup>128</sup> In that context, storytelling is an important feature of indigenous societies that reveals how communities have been creating intergenerational understandings of experiences and knowledge that explain the holistic worlds of their people.<sup>129</sup> According to Linda Smith, sharing new stories in indigenous societies contributes to a collective story in which every person has a place, becoming gradually part of an indigenous culture.<sup>130</sup>

### 2.2.1 *Storytelling in Sámi Societies*

Similarly to many indigenous communities around the globe, storytelling has a strong foothold inside Sámi culture and has always been a very popular tradition amongst all Sámi peoples.<sup>131</sup> Storytelling is a valuable source of wisdom for the Sámi people, aiming to teach traditional knowledge needed in the everyday life.<sup>132</sup> A Sámi story may have several themes and subject areas. Some Sámi stories can be related to beliefs, the most common of which are stories of nature spirits, treasure guardians, sacred sites, as well as ghost stories, stories of premonitions, and doppelgangers.<sup>133</sup> Some other stories are fairy tales, some are narratives of folk beliefs, some are tales about persons, or admonitory stories, emphasizing on what happens when someone does the wrong thing.<sup>134</sup> Generally, the framework for a Sámi story is often similar from place to place but the social environment and other details vary amongst different places.<sup>135</sup>

---

<sup>126</sup> Iseke (n 88) 560.

<sup>127</sup> *ibid.*

<sup>128</sup> Hadley Friedland and Val Napoleon, 'Gathering the threads: Developing a methodology for researching and rebuilding indigenous legal traditions' (2015-2016) 1(1) *Lakehead Law Journal* 17, 22.

<sup>129</sup> Dennis and Minor (n 124) 1476.

<sup>130</sup> Smith (n 112) 145.

<sup>131</sup> Line Melbøe and others, 'Ethical and methodological issues in research with Sami experiencing disability' (2016) 75 *International Journal of Circumpolar Health* 1, 3.

<sup>132</sup> *ibid.*

<sup>133</sup> Morottaja (n 54).

<sup>134</sup> *ibid.*

<sup>135</sup> *ibid.*

### 2.2.2 Coastal Sámi Stories

Aiming to discuss the issue of mining waste disposal in Repparfjord through the paradigm of Sámi stories, this thesis is using three Coastal Sámi stories set on a marine or coastal environment. For coastal communities, the understanding of marine space is often governed by a mental map, connecting and identifying different land and sea areas via song-lines, stories, genealogical connections, uses, and the seasons.<sup>136</sup> Therefore, stories have a rather special value for these people. Stories, traditions and knowledge surrounding the existence of water, earth-based and coastal living have been used by coastal people all around the world and developed through intergenerational knowledge transfer.<sup>137</sup> Similarly to most coastal communities around the globe, the Coastal Sámi have a rich tradition of storytelling.<sup>138</sup> Like most Sámi stories, stories pertained to the ocean have a wide range of themes, often reflecting mythical, personal, or sacred narratives about the water, fish, humans, mythical elements and legends, and any other domain related to the marine environment.<sup>139</sup> The Coastal Sámi use stories to entertain themselves, to help society, to raise children or even to make the audience feel scared or safe.<sup>140</sup> Coastal Sámi stories describe persons, and their interactions with elements of nature such as hills, rocks, places, trails or even understandings of the world that are not rationally conceived by the mind such as the underworld and mysteries within it.<sup>141</sup> All three stories that have been selected for the purposes of this project refer to Sámi sea spirits (*rávga*)<sup>142</sup> and describe incidences that occur in a marine or coastal environment.

The stories discussed in Chapters 3 and 4 of this thesis stem from the region of Kvalsund where the case study takes place. These stories were traced from different volumes of Just Qvigstad's collection '*Samiske beretninger*'.<sup>143</sup> The ethnographer Just Knud Qvigstad (1853-1957) contributed to research in Sámi language and folklore with an outstanding collection of data. His publications cover a broad range of topics, such as language, place names, storytelling,

---

<sup>136</sup> Nursey-Bray and Jakobsson (n 48).

<sup>137</sup> For a definition of 'intergenerational knowledge transfer' see Kerstin Kuyken, 'Knowledge communities: towards a re-thinking of intergenerational knowledge transfer' (2012) 42(3) VINE 365, 365-381.

<sup>138</sup> 'Stories, Legends and Myths' (*Nordligefolk*, 2020) <<https://nordligefolk.no/hjem-2/fortellinger-sagn-og-myter/?lang=en>>.

<sup>139</sup> Iseke (n 88).

<sup>140</sup> *ibid.*

<sup>141</sup> *ibid.*

<sup>142</sup> See below section 1.5.3.

<sup>143</sup> The four volumes of *Samiske beretninger* cover five geographic regions: Varanger, Troms, Finnmark, Lyngen and Nordland.

traditions, worldviews, and social norms.<sup>144</sup> However, taking into account the unfavorable to Sámi political and ideological context of the late nineteenth to early twentieth century when these stories were collected, Qvigstad's interest was solely focusing on documenting and decontextualizing these samples of stories, rather than discussing them, or analyzing them.<sup>145</sup> As a result, except for the documentation of the text of these stories, limited information exists regarding their recording process, their use and communication context, as well as Qvigstad's collaboration with his informants.<sup>146</sup>

The last story of this project discussed in Chapter 5 was narrated to the author by Ánde Somby, traditional Sámi joik artist, storyteller, and associate professor at the Faculty of Law at the University of Tromsø. Ánde Somby was provisionally determined as advisor of this thesis and contributed to the collection of the last Coastal Sámi story. According to Somby, this story does not originate from a specific location of Northern Norway, but it can be identified across the Sámi communities of the coast of the former Finnmark, including Kvalsund. While the version of this story presented in Chapter 5 was narrated by Somby, the story was also found in a few variations in Qvigstad's collections, as well as in several online sources, including an ethnographic animation film. Chapter 5 looks beyond the case study of Nussir and is generally assessing how contemporary legal frameworks are accounting for traditional knowledge systems. Therefore, it was deemed reasonable to select a story widely used in several different communities of Northern Norway.

## 2.3 Research Methods: A Law in Context Approach

The main research methods deployed during this project are outlined below, including discussions of Sámi stories, doctrinal analysis of legal domains, and literature analysis.

### 2.3.1 *Storytelling as Analytical Tool*

Methodologically, storytelling can be used as a possible way to build a bridge between Sámi and Western concepts of knowledge and provide valuable answers to Western ways of thinking.<sup>147</sup> This project does not deploy a Sámi epistemology to approach knowledge but discusses them through conventional content analysis. In particular, it uses the three Sámi

---

<sup>144</sup> Coppélie Cocq, *Revoicing Sámi narratives. North Sámi storytelling at the turn of the 20th century* (Umeå University 2008) 46.

<sup>145</sup> *ibid* 47.

<sup>146</sup> *ibid* 46-47.

<sup>147</sup> Melbøe and others (n 131).

stories as point of departure in order to address the main legal discourses law related to the issue of mining waste disposal in Repparfjord. Bringing a discussion to indigenous stories and using them to address a specific research question does not mean those stories are frozen or exclusively reduced to only one simplistic and immutable ‘answer’ or rule.<sup>148</sup> Nor does it mean the stories can no longer be interpreted in different ways or accessed as a resource for different social or research needs.<sup>149</sup> According to Copp lie Cocq, from Just Qvigstad’s collections of S mi stories important information is missing regarding Qvigstad’s fieldwork methods as well as details about the context and use of these stories.<sup>150</sup> In her PhD dissertation, Cocq further argues that S mi folkloric and mythological narratives such as these of the *r vga*, the *St llu* or the * udit* can be always contextualized to address different needs of a community, changing meaning and content, addressing different enemies and different roles.<sup>151</sup>

Indeed, being non-S mi and a community outsider, I see things through a different lens than those who live in Repparfjord or who have narrated the *r vga* stories. Therefore, I may not interpret the stories in the same way as a local from Kvalsund. Certainly, the original inspirators of these stories did not have in mind the case study of this project, when they came up with these plots. For this reason, throughout this project, I avoid delving deeply into the historical or communication context of these stories. Nor do I make assumptions about their use in Kvalsund, as long as such information about them is missing. Beginning with this limitation in mind, this thesis is not generalizing what these stories can add to the research question. In contrast, the reasoning behind this project is limited only to the clear facts that can be traced from the plot of the stories and, by using these facts as a point of departure, I have freely developed the discussion and analysis of the case study.

At the beginning of each of the main chapters of this project the chosen story is presented, followed by a description of how and which elements of this story are going to be addressed and discussed. In summary, Chapter 3 uses a S mi story as metaphor to discuss indigenous rights discourses around the issue of mining waste disposal in Repparfjord. Metaphors are efficient storytelling tools, aiming to bring across abstract concepts in an original and unique way.<sup>152</sup> As research tools, metaphors are using something familiar in the world to explain and

---

<sup>148</sup> Friedland and Napoleon (n 128) 25.

<sup>149</sup> *ibid.*

<sup>150</sup> Cocq (n 144) 127.

<sup>151</sup> *ibid* 234.

<sup>152</sup> *ibid.*

describe an abstract phenomenon to others.<sup>153</sup> That way, the chapter reads selected elements of the plot of the story analogically to the case study and addresses indigenous rights discourses relevant to the issue of mining waste disposal in Repparfjord. Chapter 4 presents a story that illustrates a living marine environment that hosts a *rávga* with distinct voice and behavior that interacts with a fisherman. At first, the chapter uses the story to unfold the environmental law framework regarding mining and waste disposal in Norway. Subsequently, the chapter attempts to discuss broadly the main principle of a personified nature generated from the chosen story and suggests an alternative approach to resource management planning in Repparfjord. Finally, Chapter 5 uses a Sámi story as an analytical framework in order to apply a critical approach to the way that resource management policies in Norway take into account traditional knowledge systems as well as non-positivistic conceptions of the natural world. As described by Wodak and Meyer a critical approach implies that social theory should be oriented in an interdisciplinary way towards critiquing and changing society.<sup>154</sup> While Chapters 3 and 4 use the stories to discuss existing human rights and environmental law discourses as they stem from the dominant legal framework of Norway as a sovereign state,<sup>155</sup> Chapter 5 criticizes the conventional understanding of law and the way that it regulates resource management in contemporary societies. It looks further than the case study and questions the capability of Western legal frameworks to adequately integrate traditional knowledge systems and beliefs of the natural world. Chapter 5, which is also the last chapter of this thesis prior to the conclusions, advocates for an ontologically pluralistic understanding of the world, highlighting the importance of indigenous forms of law for its sustainable management.

### 2.3.2 *Legal Doctrinal Analysis*

Doctrinal legal analysis of the regulatory framework revolved around the issue of mining waste disposal has been used as the dominant research method in legal studies. Traditional legal scholarship has been deployed throughout this project, systematically organized in legal domains such as international law, environmental law, indigenous rights and public administrative law, including discussions of rules, case law, and developments in the Norwegian jurisdiction as well as in international legal domains.<sup>156</sup>

---

<sup>153</sup> Ober (n 123) 12.

<sup>154</sup> Ruth Wodak and Michael Meyer, *Methods of critical discourse analysis* (Sage 2009) 6.

<sup>155</sup> For further discussions on the concept of 'State sovereignty' see Chapter 5.

<sup>156</sup> See Philip Langbroek and others, 'Methodology of Legal Research: Challenges and Opportunities' (2017) 13(3) *Utrecht Law Review* 411, 411.

Besides discussions on positive law, this project discusses different legal subjects broadly, using materials from other social sciences, articulating a law in context approach. The ‘law in context’ method has recently emerged in legal science and helps to treat law and legal phenomena critically in their social, political and economic contexts from a variety of perspectives.<sup>157</sup> The law in context as methodological approach seeks to give an explanatory and clarifying account of law as a complex social and political institution with a rule-governed aspect.<sup>158</sup>

### 2.3.3 Literature

While this thesis does not include a chapter exclusively dedicated to literature review, literature has been used throughout this project in various ways. First of all, literature stemmed from the field of Indigenous Studies has been used as guide for the methodological choices of this research. Literature was also used for the theoretical background of this thesis, and for analyzing the collected data. In addition, literature aligned with the field of legal history and legal philosophy<sup>159</sup> has been explored in Chapter 5 in an attempt to critically interrogate the existing system’s ability to accommodate systems of traditional knowledge and beliefs. Main examples of literature used in the project are scholarly published articles, the Just Qvigstad’s collections of Sámi stories, online sources related to indigenous storytelling, newspapers and commentaries, as well as an ethnographic animation film that illustrates one of the three selected stories. Conference proceedings were also taken into account.

---

<sup>157</sup> William Twining and others, *Law in Context: Enlarging a Discipline* (Oxford 1997).

<sup>158</sup> *ibid.*

<sup>159</sup> For reflections on legal philosophy as methodological tool see Erhard Oeser, ‘Legal Philosophy as Methodology’ (2003) 37 *TDLA* 29.

### 3 An Indigenous Rights Approach to Mineral Waste Disposal in Repparfjord

*In winter, a woman in Repparfjord was collecting driftwood beached off the shore and was carrying it up to the cowshed, where she was preparing food for the cattle. One day, her mother went to the cowshed, and there she saw a man who was setting the cows free. The cowshed was on fire, and the doors were open. She came closer and saw him setting free all the cows, and then he went past her. He was wearing a fishing suit and a fishing hat. She turned back and walked to the house and shouted at her daughter: 'Come out! All the cows went free!' Then she came too, and both saw that the cows were unleashed and running free. That must have been a rávga, they thought! Then, the housewife passed out and she was taken to Hammerfest to the doctor, where she got a little better. However, she was soon sent back to Hammerfest, and now she has been transferred to a mental hospital in the south.<sup>160</sup>*

#### 3.1 Introductory Remarks and Methodological Reflections

The aforementioned story titled 'Rávga in the Cowshed'<sup>161</sup> was traced from Just Qvigstad's collection 'Samiske beretninger I-IV' and was originally recorded by Per Mattisen Lien in 1891 in Repparfjord.<sup>162</sup> Besides the text of the story and the name of the person that recorded it, no additional information has been published about Qvigstad's methods, relationship with his informant, or details about the context and use of this story. This can be explained, taking into account that the story was recorded in 1891, an era when the politics of minority assimilation were in force and Qvigstad's main focus was the ethnographic documentation of Sámi stories.<sup>163</sup> As mentioned in the previous chapter though, drawing principles through indigenous stories and using them in a way to address a specific question does not mean that those stories are solely reduced to only one simplistic and immutable interpretation. Sámi narratives such as these of the rávga can be contextualized to address different needs of a community and accomplish different social or research needs.<sup>164</sup> For the

---

<sup>160</sup> The story was originally published in Northern Sami and Norwegian. The translation into English has been conducted by the author.

<sup>161</sup> Originally the story in Qvigstad's collection is titled 'Draugen I Fjøset'.

<sup>162</sup> Brita Pollan, *Samiske beretninger: I utvalg fra J.K. Qvigstads Samiske eventyr og sagn I-IV, 1927-1929* (H. Aschehoug & Co 1997) 456.

<sup>163</sup> Cocq (n 144) 127.

<sup>164</sup> *ibid* 234.

purposes of this Chapter the story of the ‘*Rávga* in the Cowshed’<sup>165</sup> has been used as a conceptual metaphor in order to discuss different human rights discourses pertained to the issue of mineral waste disposal in Repparfjord.<sup>166</sup>

Like all three selected stories of this project, the story presented above leaves the reader with several unanswered questions in mind regarding its plot, such as why the *rávga* set free the cows or why the woman did not try to stop the *rávga* and only observed its actions. This Chapter will not attempt to draw answers to the questions related to the context of the story. Being a community outsider, I would not feel comfortable to do such an analysis. In contrast, the following discussion and analysis will only focus on discussing in parallel main events of the story and the issue of mineral waste disposal in Repparfjord that this thesis is touching upon. Methodologically, the fact that the *rávga* of the story is encroaching upon the cowshed and the fact that Nussir ASA is planning to dispose mineral waste tailings within a Sámi traditional territory are interpreted analogically. The reasoning has been freely determined by the author, and based on symptomatic reading,<sup>167</sup> this chapter is doing an analysis of Nussir ASA in the role of the *rávga* that is acting within a Sámi community, the woman in the role of the Sámi people legitimately represented by the Sámi Parliament, and the cowshed in the role of the marine environment of Repparfjord which is exposed to an imminent risk. The following Figure 2 illustrates the rationale of this methodology, as it analogizes the Sámi story to the case study. Indeed, the aforementioned analogy is not the only possible or plausible way to interpret the story. For instance, putting Nussir ASA in the role of a *rávga* that is harassing a Sámi community would certainly not represent a big part of the population of Kvalsund that is strongly supporting the ongoing mining developments in the region. However, from an observer’s angle who discusses human rights issues that emerge from the issue of mineral waste disposal in Repparfjord, the above-mentioned analogy was deemed rather useful. Consequently, selected elements of the Sámi story are discussed below in relation to the main human rights issues that arise out of the decision of mineral waste disposal in Repparfjord. An analysis in relation to the main lesson drawn from the story is following.

---

<sup>165</sup> The original title given to the story by Per Mattisen Lien is ‘*Draugen I Fjøsset*’.

<sup>166</sup> While the next chapter will focus on the environmental aspect of the framework related to the case, this section will discuss solely provisions related to Sámi rights.

<sup>167</sup> Symptomatic reading is a mode of reading and textually analyzing literary or historical works aiming to construct meaning through a perceived process of deconstructing the implicit meanings of a text; see Perry Budd, ‘Symptomatic reading vs Surface Reading’ (2015) 2-3 *Methods of Literary and Cultural Studies*.



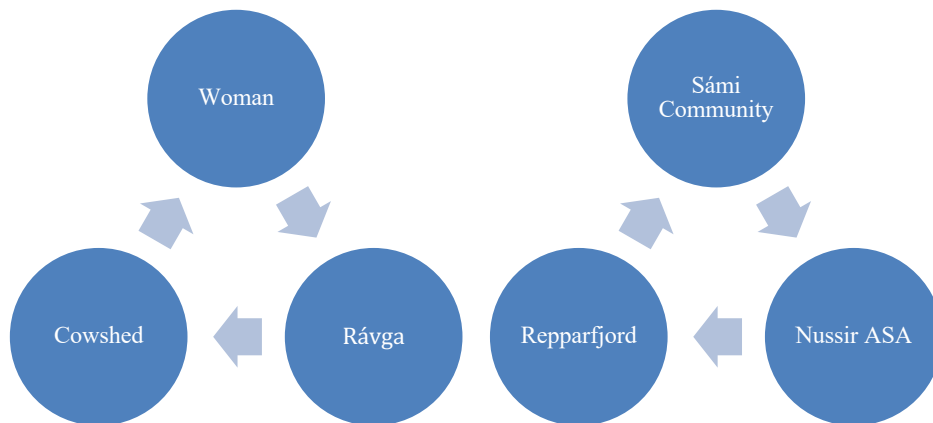


Figure 3 Analogic Reasoning for Interpretation of the Story

### 3.2 Discussion: Tailings Disposal within a Sámi Territory

In February 2019, the Norwegian government gave the final permit to Nussir ASA<sup>168</sup> to begin mining operations that would dump 30 million tons of highly toxic mine waste into Repparfjord a protected salmon fjord located in a Sámi indigenous territory.<sup>169</sup> Since the conception of the project the Sámi Parliament has consistently argued that the forthcoming project is infringing upon fundamental rights of the Sámi, as an indigenous people, as well as an ethnic minority in Norway. Soon after the government's permit, the Sámi Parliament appealed the decision to the King at the Council of State,<sup>170</sup> however its appeal was declined in November 2019 and it is expected that the operations will begin soon.

Between the ongoing situation in Kvalsund and the Sámi story that was presented above, an important comparison has been articulated by the author. The Sámi story illustrates a *rávga* that is encroaching upon a Sámi community and is harming a cowshed by setting free the cattle and most likely starting also the fire, although the latest fact is unclear in the plot. For the purposes of this chapter, it has been assumed that the story follows a relevant rationale to the case study. Although different actors are involved in both plots, similar to the way the *rávga* of

---

<sup>168</sup> Nærings- og fiskeridepartementet, *Gir Nussir ASA driftskonsesjon* (Regjeringen 2019) <[www.regjeringen.no/no/aktuelt/nussir/id2629241/](http://www.regjeringen.no/no/aktuelt/nussir/id2629241/)> accessed 1 June 2020.

<sup>169</sup> Ellen Moore, 'Norway approves mine project that will destroy fjord and Indigenous Sámi livelihoods' (*Earthworks*, 2019) <<https://earthworks.org/blog/norway-approves-mine-project-that-will-destroy-fjord-and-indigenous-saami-livelihoods/>> accessed 1 June 2020.

<sup>170</sup> Sametinget, 'Klage på vedtak om driftskonsesjon til gruve drift i Nussir og Gumppejuni' (Sametinget 2019).

the Sámi story is harming the community, this chapter interprets Nussir ASA's policy towards the Sámi use of Repparfjord. Indeed, while the woman of the story observes the whole situation without trying to halt the *rávga*'s action, the Sámi Parliament of Norway as the legitimate voice of the Sámi community has been trying to influence the ongoing developments in the region since the beginning of the project. The Sámi Parliament (Sámediggi) was established in 1989, to represent the Sámi across Norway, advise the Norwegian government on Sámi affairs, and exercise non-territorial jurisdiction over matters relating to Sámi culture.<sup>171</sup> In an attempt to prohibit the start of mining in Nussir or mitigate its potential impacts, followed by mining waste disposal in Repparfjord, the Sámi Parliament has several times addressed indigenous rights issues related to the ongoing project. The following four sections examine how the rights of the Sámi people have been addressed by the Sámi Parliament and how can they be protected against adverse impacts of waste disposal activities in Repparfjord. An analysis in relation to the Sámi story follows.

### 3.2.1 *Sámi Rights in Norwegian Mining Law*

In implementation of international legal instruments that provide indigenous peoples with cultural, procedural and land rights, Norway has enacted several provisions within its national jurisdiction related to the rights of the Sámi people as an indigenous group or as national ethnic minority. Norway was the first country in the world that ratified the ILO 169 Convention,<sup>172</sup> while it has also ratified the International Covenant on Civil and Political Rights (ICCPR),<sup>173</sup> and the Convention on Biological Diversity (CBD).<sup>174</sup> Norway has also signed the United Nations Declaration on the Rights of Indigenous Peoples,<sup>175</sup> which, even non-binding, is considered a milestone in the development of indigenous rights. In accordance with the above-mentioned international agreements, cultural, property and procedural rights in relation to the Sámi people have been gradually incorporated within Norwegian law. By extension, in the geographical area of the former County of Finnmark where the case study has been taking place additional land rights are provided by Norwegian law.<sup>176</sup> However, the implementation of

---

<sup>171</sup> Aaron John Spitzer and Per Selle, 'Claims-Based Co-management in Norway's Arctic? Examining Sami Land Governance as a Case of Treaty Federalism' (2019) 52 *Canadian Journal of Political Science* 723, 726.

<sup>172</sup> ILO No. 169 (n 39).

<sup>173</sup> ICCPR (n 41).

<sup>174</sup> CBD (n 103).

<sup>175</sup> UNDRIP (n 40).

<sup>176</sup> See below section 3.2.3.

international law within domestic jurisdiction in Norway raises several questions, particularly when it comes to mining vis-à-vis Sámi rights in marine areas.<sup>177</sup>

In Norway, mining is regulated by the latest Norwegian Mineral Act,<sup>178</sup> together with other laws (the Pollution Control Act of 1981,<sup>179</sup> the Planning and Building Act of 1985<sup>180</sup> and the Nature Diversity Act of 2009).<sup>181</sup> The authority involved in the management of mining is the Directorate of Mining.<sup>182</sup> The Minerals Act regulates the ownership of, and searching for minerals, as well as the subsequent permits to explore and mine. The objective of the Act is to ‘promote and ensure socially responsible administration and use of mineral resources in accordance with the principle of sustainable development’.<sup>183</sup> Amongst others provided rights, the Act includes several references to the Sámi people. Section 2 of Chapter 1 of the Mineral Act ensures that mineral activities should always safeguard the foundation of Sámi culture, commercial activity and social life in the process of using mineral resources.<sup>184</sup> In Chapter 4 section 13 of the Mineral Act, which regulates the requests of exploration permits, it is established that ‘in Finnmark, the Directorate of Mining shall inform the landowner, the Sámi Parliament, the relevant area board and district board for reindeer management, and the Municipality of the permit’.<sup>185</sup> As derived from section 6, the Act shall be applied in accordance with the rules of international law related to indigenous peoples and minorities.<sup>186</sup> Finally, section 17 of the Act, which regulates the exploration of natural resources in the Finnmark area, establishes that the parties involved in the mining process must take all the possible measures in order to assess whether the exploitation of the resources in the Sámi indigenous area will possibly affect the Sámi interests.<sup>187</sup> Once the application is granted, conditions may be imposed to safeguard these interests.<sup>188</sup> The same section establishes that such permission may be refused if the exploitation of natural resources seems to be against the interests of the Sámi

---

<sup>177</sup> Susann F Skogvang, ‘Legal Questions Regarding Mineral Exploration and Exploitation in Indigenous Areas’ (2013) 22 *Mich. St. Int’l L. Rev.* 321.

<sup>178</sup> *mineralloven* (n 35).

<sup>179</sup> Lov 1981-03-13 nr 06 Lov om vern mot forurensninger og om avfall (*forurensningsloven*).

<sup>180</sup> Lov 2008-06-27 nr 71: Lov om planlegging og byggesaksbehandling (*plan- og bygningsloven*).

<sup>181</sup> Lov 2009-06-19 nr 100 Lov om forvaltning av naturens mangfold (*naturmangfoldloven*).

<sup>182</sup> *mineralloven* (n 35) section 3.

<sup>183</sup> *ibid* section 1.

<sup>184</sup> *ibid* section 2.

<sup>185</sup> *ibid* section 13.

<sup>186</sup> *ibid* section 6.

<sup>187</sup> See *ibid* section 17: ‘If the application is granted, conditions may be imposed to safeguard these interests...An exploring party shall take reasonable steps to obtain information about directly affected Sami interests in the area that is to be explored.’

<sup>188</sup> *ibid* para 3.

people living in that area.<sup>189</sup> According to the Act, when processing the application, the Directorate of Mining shall give the landowner, the Sámi Parliament, the Municipality, and the relevant area and district boards for reindeer management an opportunity to comment.<sup>190</sup> As provided by section 17 of the Mineral Act, the Sámi Parliament opposed the granting of an exploratory application in Nussir, and the Ministry had to decide.<sup>191</sup> The Ministry finally granted an application for mining in Kvalsund.

Mining activities in Norway cannot be carried out unless they are in accordance with existing municipal land use plans regulated by the Plan and Building Act.<sup>192</sup> According to the Act, the Municipality is the planning authority that determines whether an area should be regulated for mineral extraction.<sup>193</sup> The act includes also provisions that secure Sámi interests in matters concerning mineral activities. As provided by sections 3-1 and 5-4 of the Plan and Building Act, the Sámi Parliament of Norway has the right to make objections to proposals for the land-use element of the municipal master plan and zoning plans in issues that are of significant importance to Sámi culture and commercial activities.<sup>194</sup> In that context, in accordance with section 5-4 of the Plan and Building Act, the Sámi Parliament also objected to the proposed plan by Nussir ASA in respect of issues that are of significant importance to Sámi culture.<sup>195</sup> The Municipality of Kvalsund passed the plan, and the case was first brought to the County Governor level.<sup>196</sup> As these mediations also failed, the objections were raised to the level of the Ministries for decision.<sup>197</sup> Four different Ministries considered the case, when finally, in March 2014 the Ministry of Local Government and Modernisation accepted Nussir ASA's Zone Plan<sup>198</sup> with some amendments due to the Sámi Parliament's objections. Interestingly, the Ministry explicitly stated:

---

<sup>189</sup> *ibid.*

<sup>190</sup> *ibid* para 4.

<sup>191</sup> *ibid* para 5.

<sup>192</sup> plan- og bygningsloven (n 180).

<sup>193</sup> *ibid* Part I: General provisions.

<sup>194</sup> *ibid* sections 3-1, 5-4.

<sup>195</sup> The Sámi Parliament objected to the proposal with reference to the law of cultural monuments and the protection of Sámi cultural monuments; and with reference to the PBA and the negative effects on reindeer herding. The letter also highlights that the zoning plan lacks an overall discussion of ILO-169 over the effects on Sámi culture, businesses and society.

<sup>196</sup> Timo Koivurova and others, 'Legal Protection of Sami Traditional Livelihoods from the Adverse Impacts of Mining: A Comparison of the Level of Protection Enjoyed by Sami in Their Four Home States' (2015) 6(1) *Arctic Review on Law and Politics* 11, 32.

<sup>197</sup> *ibid.*

<sup>198</sup> Next Chapter illustrates environmental law issues regarding Nussir's project and provides an in-depth discussion of Nussir ASA's zoning plan.

‘A basis for the decision is that the developer, in consultation with the reindeer-herding industry, agrees on mitigation measures that render possible the continuation of reindeer husbandry and the practicing of Sámi culture in the area’<sup>199</sup>

Accordingly, due to the Sámi Parliament’s objections the company compromised on certain conditions attached to the project, including the prohibition of mining activities during certain times of the year to avoid reindeer being disturbed in the calving season.<sup>200</sup> In addition to that, it is expected that by using existing mining infrastructure and areas, keeping operations underground and depositing tailings in the fjord, Nussir ASA will limit the impact of the mine on Sámi activities.<sup>201</sup> However, the Sámi Parliament has insisted that the mitigations measures will not work, while the underground tailings disposal will pose crucial risks to the marine environment of Repparfjord and to Sámi traditional activities on it.<sup>202</sup>

Provisions related to Sámi activities and indigenous rights regarding resource management processes are also included in the Natural Diversity Act, adopted in implementation of the Convention on Biological Diversity (CBD).<sup>203</sup> The Act includes a general clause which states that nature and its biological and ecological processes are protected through sustainable use and conservation, also as the foundation for Sámi culture.<sup>204</sup> Resource management policies in Norway should always be read in light of this act. While mining law in Norway provides the Sámi people with several rights, its efficiency to serve Sámi interests when it comes to mining processes has been widely contested.<sup>205</sup> The Sámi Parliament, since the conception of the Nussir project, has been maintaining that the Mineral Act of Norway has been adopted without the consent of the Sámi people and does not meet Norway’s obligations under international law towards the Sámi.<sup>206</sup> It also argues that the current legislation does not

---

<sup>199</sup> Kommunal- og moderniseringsdepartementet, decision ‘Kvalsund kommune – innsigelse til regulering-splan for Nussir og Ulveryggen’ 20th of March 2014, 7.

<sup>200</sup> Øystein Rushfeldt, *Natural Resource Development, Business and the Rights of Indigenous Peoples Report* (Norwegian National Human Rights Institution and Norway’s National Contact Point for Responsible Business Conduct 2019) 21.

<sup>201</sup> *ibid.*

<sup>202</sup> Torvald Falch, *Natural Resource Development, Business and the Rights of Indigenous Peoples Report* (Norwegian National Human Rights Institution and Norway’s National Contact Point for Responsible Business Conduct 2019) 19.

<sup>203</sup> CBD (n 103) art. 8(j) and 17 para 2.

<sup>204</sup> See naturmangfoldloven (n 181) sections 1 and 14.

<sup>205</sup> Falch (n 202) 18.

<sup>206</sup> Silje K Muotka, ‘Citigroup’s relationship with Nussir ASA and Sámi indigenous rights in Norway’ (Sametinget 2016).

provide predictability for all parties, nor the possibility of coexistence between traditional and contemporary industries.<sup>207</sup>

On the other hand, state instruments have been arguing that Nussir ASA's planning has been in accord with the mining legislation. Next to that, during the final evaluation process for the operation license, the Ministry of Trade, Industry and Fisheries concluded that the positive impacts of the project outweighed the negative ones and were justified in accordance with the Mineral Act.<sup>208</sup> Indeed, the Ministry stressed how considerable weight should be given to the impact on the Sámi people's lives and culture, and how the project could mitigate negative effects.<sup>209</sup> After the Ministry approved the opening of the copper mine in Kvalsund in February 2019, the Sámi Parliament appealed the decision to the King at the Council of State according to paragraph 6 of Article 17 of the Mineral Act. The King rejected the appeal in the following November, greenlighting the beginning of the project.<sup>210</sup>

### 3.2.2 Consultations

As provided by the Mineral Act, with respect to the procedural side of indigenous rights, consultations have taken place between representatives of the affected Sámi reindeer districts, reindeer herders and the Sámi Parliament.<sup>211</sup> Consultations of indigenous groups by a state can be seen as a key element in ensuring successful merging between indigenous communities and state instruments. In accordance with international law,<sup>212</sup> the procedural right of consultation is affirmed in Norwegian law and ensures participation for the Sámi people in decision-making processes. The legal basis for the duty to consult the Sámi in Norway lies in two consultation agreements.<sup>213</sup> A basic Consultation Agreement, in translation 'Procedures for Consultations between State Authorities and the Sámi Parliament', was signed in May 2005 between the Ministry of Local Government and Modernisation and the Sámi Parliament.<sup>214</sup> The Sámi Parliament formally accepted the Agreement the following month.<sup>215</sup> Subsequently, it was

---

<sup>207</sup> *ibid.*

<sup>208</sup> Falch (n 202) 19.

<sup>209</sup> *ibid* 16.

<sup>210</sup> Statsministerens kontor (n 38).

<sup>211</sup> Hallset (n 11).

<sup>212</sup> The cornerstone of the Consultation Agreement in Norway has been the 1989 ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

<sup>213</sup> For a comprehensive study of the consultation process in Norway, see Christina Allard, 'The Rationale for the Duty to Consult Indigenous Peoples: Comparative Reflections from Nordic and Canadian Legal Contexts' (2018) 9 *Arctic Review on Law and Politics* 25.

<sup>214</sup> Kommunal- og moderniseringsdepartementet (n 10).

<sup>215</sup> Allard (n 213).

extended to the whole of the Norwegian Government, including regional governments and State enterprises, through Royal Decree.<sup>216</sup> A second specific agreement was negotiated concerning consultations on nature conservation matters in traditional Sámi areas, the Consultation Agreement on Conservation between the Ministry of Environment and the Sámi Parliament in January 2007.<sup>217</sup> The Consultation Agreement is the single most important undertaking for Sámi rights in Norway and gives the Sámi the right to participate and influence decision-making processes at all stages where Sámi interests and culture are directly affected.<sup>218</sup> Indeed, the two agreements foster the collaboration between state authorities and the Sámi Parliament, providing the Sámi with the right to raise their concerns and participate in decision-making. However, state authorities have always the last word and legal competence in any matter.<sup>219</sup>

In keeping with the 2005 Consultation Agreement, consultations with the Sámi herding districts in question, as well as the Sámi Parliament have been conducted for the Nussir case. In May 2018, there was an open input meeting and an inspection in the area of Kvalsund and Repparfjord, with participants from the reindeer herding industry as well as relevant authorities.<sup>220</sup> On the same day there were also consultations between the affected reindeer herding districts and the Ministry.<sup>221</sup> Unsuccessful consultations with the Sámi parliament, were also conducted on 29 January 2019 and 11 February 2019 as part of the finalizing of the decision.<sup>222</sup> In addition, according to a 2019 report on a seminar arranged by the Norwegian National Human Rights Institution and Norway's National Contact Point for Responsible Business Conduct in Karasjok, Nussir ASA has held many meetings with Sámi reindeer herding groups throughout the project aiming to ensure that the project does not disturb reindeer husbandry in the area.<sup>223</sup> In that report, the CEO of Nussir ASA, Øystein Rushfeldt emphasized that after the consultation processes, Nussir ASA has committed to a number of further mitigation measures and will limit the impact of the mine by using existing mining

---

<sup>216</sup> *ibid.*

<sup>217</sup> Avtale mellom Sametinget og Miljøverndepartementet om retningslinjer for verneplan arbeid etter naturvernloven i samiska områder.

<sup>218</sup> Allard (n 213).

<sup>219</sup> *ibid.*

<sup>220</sup> Hege Eiletrzten, 'Nussir Gets Operating License – Environmental Organisations Rage' (*High North News*, February 2019) <[www.highnorthnews.com/en/nussir-gets-operating-license-environmental-organisations-rage](http://www.highnorthnews.com/en/nussir-gets-operating-license-environmental-organisations-rage)> accessed 1 June 2020.

<sup>221</sup> *ibid.*

<sup>222</sup> Hallset (n 11).

<sup>223</sup> Rushfeldt (n 200) 21.

infrastructure and areas, keeping operations underground and depositing tailings in the fjord.<sup>224</sup> References in the report to Coastal Sámi marine activities in Repparfjord have been minimal.

It seems that consensus has not yet been reached between the involved authorities, and the mine's operations will soon start without the consent of the Sámi Parliament. Undoubtedly, Norwegian law limits the participation of the Sámi people to consultation, while free prior and informed consent as provided by the ILO C169 has not yet been enacted within national jurisdiction. Both the Mining Act and the Consultation Agreement ensure only the consultation of the Sámi in mineral extraction projects, without granting adequate rights to free, prior, and informed consent. Accordingly, while consultations are always ensured when it comes to mining activities within Sámi territories, the Sámi people cannot exercise veto power against decisions that affects them, and State authorities always have the final say. This remains amongst the most significant shortcomings of the Norwegian legislation when it comes to indigenous rights and has been numerously addressed before international instruments by the Sámi Parliament.<sup>225</sup> As of June 2019, the Sámi Parliament has estimated that neither the mitigation measures that Nussir committed to implement, nor the consultations regarding the socioeconomic consequences of this project seem to be sufficient.<sup>226</sup>

### 3.2.3 *Finnmark Act*

As long as the ongoing developments occur in the administrative unit of the former Finnmark,<sup>227</sup> the Finnmark Act of 2005<sup>228</sup> is also applicable to the case. The Finnmark Act is a land code for the region of the former Finnmark County and has initiated an ongoing process of surveying and recognizing existing rights of use and ownership in Finnmark on areas previously considered to be state owned.<sup>229</sup> This identification process is performed by a body called the Finnmark Commission,<sup>230</sup> while a special court, the Land Tribunal for Finnmark has

---

<sup>224</sup> *ibid.*

<sup>225</sup> See, for instance, Else G Broderstad and Camilla Brattland, *Consultations, Indigenous Peoples and Industry: Report on the conference arranged by the Centre for Sami Studies* (UiT 2012) 2-3 referring to UNCHR 'Report of the Special Rapporteur on the rights of indigenous peoples' (2016) UN Doc A/HRC/33/42/Add.3.

<sup>226</sup> Falch (n 202).

<sup>227</sup> The Finnmark area is the northernmost part of Norway, where around 74,000 persons live, most of whom are Sámi.

<sup>228</sup> Lov 2005-06-17 nr 85: Lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark (Finnmarksloven)

<sup>229</sup> Prior to the establishment of the Finnmark Estate Agency, 96% of the land in Finnmark (about 45,000 km<sup>2</sup>) was state owned. This land was transferred to local tenure, defined as a joint ownership, shared by all Finnmark residents.

<sup>230</sup> Finnmarksloven (n 228) section 29.



been established to settle any disputes arising after the Commission has investigated a ‘field’ or specified area.<sup>231</sup> In accordance with the Finnmark Act, the government decided to transfer the land to an ownership body called the Finnmark Estate (FeFo)<sup>232</sup> to which the Sámi Parliament elected three board members, the Finnmark County Council three members, and the State one non-voting member.<sup>233</sup> The Finnmark Estate is an independent legal entity whose task it is to administer the lands and natural resources in the Finnmark area. In total, about 95% of the area in Finnmark was transferred to the Finnmark inhabitants represented by the Finnmark Estate.<sup>234</sup>

According to section 10 of the Mineral Act, the party involved in the research of ore deposits must inform the landowners at the latest one week before the beginning of the research.<sup>235</sup> In that case, if the research will be in the Finnmark area, the seeking parties must inform the Sámi Parliament, the Finnmark Estate and, if it is possible, also the Sámi local administrative units (so-called ‘siida’,<sup>236</sup> which can be seen as the basic organizational unit for large-scale herding). Hence, this act is important for the management of the Sámi lands and natural resources in Finnmark. According to the Finnmark Act sections 4 and 10, FeFo has to make an independent resolution regarding changed use of uncultivated lands if this is to happen.<sup>237</sup> That implies that all cases that change the use of uncultivated lands that matter to Sámi interests require an endorsement, an approval from FeFo. In the case of Nussir, the Commission has not yet begun surveying property rights in the former Kvalsund Municipality,<sup>238</sup> but it seems that national and local authorities are willing to allow private activity with permanent environmental effects that may influence Sámi activities even though their land rights are not yet clarified in the region. While the Sámi Parliament has been strongly against mining in the Coastal Sámi area of Kvalsund, FeFo, as well as the Kvalsund

---

<sup>231</sup> *ibid* section 36.

<sup>232</sup> *Finnmarkseiendommen* in Norwegian and *Finnmárkkuopmodat* in Northern Sámi; see *ibid* section 6.

<sup>233</sup> *ibid* section 7.

<sup>234</sup> The rest 5% of Finnmark is private property; see ‘About Finnmark estate’ (*FeFo*) <[www.fefo.no/english-menu/about-finnmark-estate/](http://www.fefo.no/english-menu/about-finnmark-estate/)> accessed 1 June 2020.

<sup>235</sup> *mineralloven* (n 35) section 10.

<sup>236</sup> *ibid*; historically, the *siida*, in addition to herding rights, determined also the management of the marine environment and its resources; *Cocq* (n 144) 30.

<sup>237</sup> *Finnmarksloven* (n 228) sections 4 and 10.

<sup>238</sup> See Øyvind Ravna, ‘The First Investigation Report of the Norwegian Finnmark Commission’ (2013) *International Journal on Minority and Group Rights* 443; see also Einar Eyborsson and Alma E Thuestad, ‘Incorporating Traditional Knowledge in Environmental Impact Assessment - How Can It Be Done?’ (2015) 6(2) *Arctic Review on Law and Politics* 132, 136-137.

Municipality and the Finnmark County Council have been in favor of the industry.<sup>239</sup> Next to that, Sámi activities related to the use of the marine environment of Repparfjord do not underlie the area of application of the Act.

### 3.2.4 Coastal Sámi Rights in Repparfjord?

Permitting mining waste disposal is a key element in Norway's mining policy and its impacts may pose risk on Sámi marine activities in Repparfjord such as traditional small-scale fjord fishing which depends highly on access to local resources as well clean water and clean environment.<sup>240</sup> Repparfjord is a place in which cross-cultural relations have been important for centuries.<sup>241</sup> Historically, the majority of the population residing in Kvalsund have been Coastal Sámi. Norwegians and Coastal Sámi have coexisted alongside the migrating mountain Sámi reindeer herders, who still use the area in spring and in the summer.<sup>242</sup> As a result of the Norwegianization process and the lack of opportunities in the region, the traditional Coastal Sámi livelihood of fishing and farming in Kvalsund has decreased over a long period and led to outmigration.<sup>243</sup> This has weakened the Sámi identity in the local community.<sup>244</sup> Today the region of the former Municipality of Kvalsund has around 1000 inhabitants and both Sámi and non-Sámi residents have been suffering from depopulation.<sup>245</sup> The reality is that the Repparfjord area has been very marginal as a fishing area, as long as it does not host any large fisheries.<sup>246</sup> The Municipality of Kvalsund has, therefore, supported the mining project because they believe it will generate opportunities for economic development and local employment, which will help to restore confidence in the community about their future.<sup>247</sup> Interestingly, Nussir ASA's plan contained provisions on environmental issues regarding existing contaminated soil, noise and dust into Repparfjord, however references to Sámi rights related to the marine environment have been minimal compared to discussions over mining

---

<sup>239</sup> Elisabeth Angell and others, 'Industrial development in the North – Sámi interests squeezed between globalization and tradition' (2020) *Acta Borealia* 1, 5-6.

<sup>240</sup> *ibid.*

<sup>241</sup> Halvor Dannevig and others, 'The Nussir Case and the Battle for Legitimacy: Scientific Assessments, Defining Power and Political Contestation' in Brigit Dale and others (eds), *The Will to Drill - Mining in Arctic Communities* (Springer 2018) 162.

<sup>242</sup> *ibid.*

<sup>243</sup> Aileen A Espiritu, 'Kautokeino and Kvalsund Compared: Rejection and Acceptance of Mining in Communities in Northern Norway' (2015) 39 *The Northern Review* 53, 53.

<sup>244</sup> *ibid.*

<sup>245</sup> *ibid.*

<sup>246</sup> Lempriere (n 4)

<sup>247</sup> Espiritu (n 243) 53.

consequences on the land-based reindeer herding activities.<sup>248</sup> During interviews that were conducted for the impact assessments of the project, some residents of Kvalsund expressed their concerns over the impacts of ocean dumping to local and Sámi small-scale fisheries.<sup>249</sup> However, the discussions over Sámi rights pertinent to the use of the fjord in the actual debate that has taken place have been almost absent.

The previous three sections dealing with mining law and indigenous rights in Norway demonstrated that Norwegian law whether addressing Sámi rights in general, or explicitly referring to Sámi activities conducted on the land such as reindeer herding. Indeed, copper mining in the case of Nussir is an activity that also physically occurs on the land, however according to the Sámi Parliament as well as environmental organizations it will cause direct implications on Coastal Sámi activities in the marine environment of Repparfjord, where the tailings will be disposed.<sup>250</sup> Despite Norway's initiatives to reinforce indigenous rights and its commitment to implement corresponding domestic and international law mechanisms, there is still a reluctance to formalize Sámi rights to the marine space, and by extension, traditional fisheries or systems of customary marine tenure. This is a general shortcoming of the Norwegian legal system when it comes to the Coastal Sámi. It seems that the Norwegian government remains hesitant to apply the ILO 169, the UNDRIP, or other international law instruments such as Article 27 of the ICCPR to Sámi use of the marine environment.<sup>251</sup> In these terms, domestic law ensures different cultural, property and procedural rights for the Sámi people, without explicit references though to Sámi rights on the marine space. Similarly, there are no special provisions on safeguarding Sámi rights to marine environment in the Norwegian Mineral Act.

Over the last few decades, there have been continuous struggles for the recognition of Sámi fishing rights, a watershed moment of which was the 2006 report of the Coastal Fisheries Commission (CFC) on the situation of Sámi fisheries, claiming that Sámi fishing rights are distinct indigenous rights, gained through customary use and exercised since time

---

<sup>248</sup> This Thesis prioritizes addressing Coastal Sámi rights to Repparfjord over reindeer herding rights in Kvalsund; for a deeper analysis on reindeer rights related to the case study see Susann F Skogvang, 'Extractive Industries in the North – What about Environmental Law and Indigenous Peoples' Rights?' (2014) 1 Nordisk miljørettslig tidskrift 13.

<sup>249</sup> Eyþorsson and Thuestad (n 238) 142.

<sup>250</sup> Silje K Muotka 'Språklig og kulturell lokal utsulting' (*iFinnmark*, August 2017) <[www.ifinnmark.no/debatt/kvalsund/nussir/det-er-kanskje-det-man-mener-nar-man-sier-man-er-tungt-i-ryggen-pa-ett-industriprosjekt-at-man-vingler-og-overser-de-problemene-debattene-reiser-i-saken/o/5-81-568777](http://www.ifinnmark.no/debatt/kvalsund/nussir/det-er-kanskje-det-man-mener-nar-man-sier-man-er-tungt-i-ryggen-pa-ett-industriprosjekt-at-man-vingler-og-overser-de-problemene-debattene-reiser-i-saken/o/5-81-568777)> accessed 1 June 2020.

<sup>251</sup> Jentoft (n 42) 107.

immemorial.<sup>252</sup> The CFC's pressure led to exclusionary rights to some freshwater fishing grounds in Finnmark for local communities. However, cultural or property rights for the Sámi use of marine areas are not yet recognized by Norwegian law. In that context, the issue of mining waste disposal in the waters of Repparfjord is framed by Norwegian law mainly as an environmental issue, and not a cultural matter for the Coastal Sámi people. However, the Sámi Parliament has been insisting that the decision of the Ministry of Trade and Industry to give an operating license for copper mining in Kvalsund overruns not only the Sámi rights to reindeer herding, but also the Sámi rights to the marine space which are vulnerable and under considerable pressure.<sup>253</sup>

With regards to indigenous rights in marine areas, international case law has demonstrated prominent examples when indigenous communities secured measures to protect traditional activities on the sea under article 27 of the International Covenant on Civil and Political Rights (ICCPR). For instance, in the case *Apirana Mahuika et al. v New Zealand*,<sup>254</sup> the Human Rights Committee concluded that while legislative limitations on Maori fishing rights did restrict the communities concerned from enjoying their culture, the state party had engaged in broad consultation and taken the necessary steps to ensure the sustainability of *Maori* fisheries, thus complying with article 27. Thus, the Committee evaluated both the process and the substantive balance between majority and minority interests in the region. Indigenous freshwater fishing rights have been also secured in the *Lubicon Lake Band v Canada*<sup>255</sup> case which found that the Canadian state was in violation of article 27 as both 'historical inequities' and 'certain more recent developments' were threatening the way of life and culture of the indigenous peoples concerned. Another significant case dealing with mining and minority rights is the *Ángela Poma Poma v Peru*,<sup>256</sup> according to which there was a clear breach of article 27 because the Peruvian state authorities had approved water-diversion and

---

<sup>252</sup> The Coastal Fisheries Commission was appointed by the Norwegian government in order to investigate coastal fisheries in Finnmark County and to suggest new law proposals as well as discuss how they would relate to existing fisheries management practice; for the Commission's report see Kystfiskeutvalgets utredning, 'Retten til fiske i havet utenfor Finnmark' (18 Februar 2008) NOU 2008:5.

<sup>253</sup> Aili Keskitalo and Silje K Muotka, 'Regjeringen tar ikke hensyn til reindrift, fiske og miljø i Nussir-saken' (*Sametinget*, 2019) <[www.sametinget.no/Nyhetsarkiv/Regjeringen-tar-ikke-hensyn-til-reindrift-fiske-og-miljo-i-Nussir-saken](http://www.sametinget.no/Nyhetsarkiv/Regjeringen-tar-ikke-hensyn-til-reindrift-fiske-og-miljo-i-Nussir-saken)> accessed 1 June 2020.

<sup>254</sup> *Apirana Mahuika et al v New Zealand*, Communication No. 547/1993, CCPR/C/70/D/547/1993 <<https://juris.ohchr.org/Search/Details/897>>.

<sup>255</sup> *Lubicon Lake Band v Canada* Communication No. 167/1984, CCPR/C/38/D/167/1984 <<https://juris.ohchr.org/Search/Details/665>>.

<sup>256</sup> *Ángela Poma Poma v Peru* Communication No. 1457/2006, CCPR/C/95/D/1457/2006 <<https://juris.ohchr.org/Search/Details/1495>>.

well-drilling projects on the Aymara people's farmlands for decades without conducting any impact studies or consultations. For the Sámi people, cultural rights have been acknowledged by the Human Rights Committee in the *Lansman* cases,<sup>257</sup> in the case *Sanila-Aikio v Finland*,<sup>258</sup> and *Ivan Kitok v Sweden*.<sup>259</sup> For Sámi fishing rights, the most recent *Girjas* case has been also of crucial importance.<sup>260</sup> In January 2020 the Swedish Supreme Court granted the Girjas Sámi village exclusive rights to issue licenses for hunting and fishing in its management area. Indeed, the abovementioned case has granted the Sámi exclusive rights to fresh water fisheries and not to fishing activities on the sea.

### 3.3 Analysis

The ongoing developments in Nussir have demonstrated that Sámi rights discourses is a way to resist against industrial development and minimize potential impacts of forthcoming projects. The Sámi Parliament as the legitimate voice of the Sámi people has overwhelmingly voted against the proposed mine since its conception, highlighting several different legal provisions that seem to be infringed upon by Nussir ASA's plans. It has brought forward Sámi rights in different planning stages of the Nussir project and, to one extent, it has influenced the process. However, it seems that the existing legal arsenal for the Sámi people is not adequate to disrupt the accomplishment of the project. Indeed, regarding the impacts of Nussir ASA's activities on reindeer herding, the Sámi Parliament's arguments have been taken into account at least in a way that mitigates the potential impacts of the mine. When it comes to the issue of mining waste disposal in Repparfjord though, the existing framework of Sámi rights in marine areas seems to be insufficient to challenge the ongoing processes.

Bringing the question back to the Sámi story, the female protagonist of the story seems to be irreparably impacted by the *rávga* that encroached upon her cowshed. Besides the direct implications of the *rávga*'s action on the cowshed, the incidence mentally impacted the woman of the story. She was first taken to Hammerfest, where she received treatment twice, however,

---

<sup>257</sup> *Ilmari Lansman et al v Finland*, Communication No. 511/1992, CCPR/C/52/D/511/1992 <<https://juris.ohchr.org/Search/Details/722>>; *Jouni E. Lansman et al v Finland*, Communication No. 1023/2001, CCPR/C/83/D/1023/2001 <<https://juris.ohchr.org/Search/Details/1157>>.

<sup>258</sup> *Sanila-Aikio v Finland*, Communication No. 2668/2015, CCPR/C/124/D/2668/2015 <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR\\_C\\_124\\_D\\_2668\\_2015\\_28169\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR_C_124_D_2668_2015_28169_E.pdf)>.

<sup>259</sup> *Ivan Kitok v Sweden*, Communication No. 197/1985, CCPR/C/33/D/197/1985 <<https://juris.ohchr.org/Search/Details/543>>.

<sup>260</sup> See Øyvind Ravna, 'A Sámi Community Wins Case against the Swedish State in the Supreme Court' (2020) 11 *Arctic Review on Law and Politics* 19, 19-21.

the actions of the *rávga* had such long-term impacts for the woman that she was finally transferred to a mental hospital in the south of Norway. Long-term impacts of Nussir ASA's project on Sámi activities and culture in the region cannot yet be predicted, however the previous sections demonstrated that the existing framework of Sámi rights in Norway is not adequate to secure rights as affirmed by international law and may pose risks to traditional activities in Kvalsund. Indeed, such implications may not be significant for the part of the local population who have supported the project and its promises for economic development.

However, an interesting lesson that could be derived from the story, is that the impact of Nussir ASA's activities on the Sámi use of Repparfjord may turn out to be irreparable. While the project is expected to provide jobs and economic benefit to the municipality for the short term, its consequences on the already affected Sámi marine activities in the region may turn out to be permanent. Scientists have been arguing that the consequences of mining waste disposal in Repparfjord from Folldal Verk's endeavour in 1970's are still present, although over 40 years have passed since the mine closed. The long-term implications of Nussir ASA's waste disposal in Repparfjord could further affect traditional activities and damage the local environment. According to James Anaya, mineral resource extraction within indigenous territories can be interpreted as a model of colonial overtones, in which indigenous peoples see their territories again encroached upon by outsiders who control aspects of their habitats and gradually take from them.<sup>261</sup> Anaya suggests that resource development in indigenous lands should always be based on models that are more conducive to indigenous peoples' self-determination and their right to pursue their own priorities of development.<sup>262</sup> Indeed, reality has shown that offering economic prosperity and job opportunities in a small community affected by depopulation has been a way for Nussir ASA to acquire community trust and make the government as well as the local Municipality and population side with them. The above-mentioned shortcomings of the Norwegian Mineral Act, the Finnmark Act and the Consultation Agreement seem to provide the appropriate avenue for such policies. As long as the question of beginning the project is no more legal but political and meets all the necessary preconditions provided by Norwegian law, political engagement and local manipulation is a way for Nussir ASA to move forward.

---

<sup>261</sup> James Anaya, 'Session II: International framework and standards applicable to resource extraction on indigenous peoples' lands' in Else G Broderstad and Jørn Weines (eds), *Extractive industries and indigenous peoples* (Centre for Sámi Studies 2012) 16.

<sup>262</sup> *ibid.*

### 3.4 Conclusory Remarks

It is generally difficult to tell how traditional Sámi livelihoods can coexist with the development of extractive industries and predict how the Nussir mine will finally affect the Sámi use of Repparfjord. Mining is only one of the several challenges for the future of the area, as there are plans for windmills, new power lines and expansion in the number of recreational cabins that may also affect the fjord in question.<sup>263</sup> This chapter, inspired by a Sámi story addressed the potential danger that the Nussir mine followed by waste disposal in Repparfjord could pose to Sámi culture, and discussed how Sámi rights are secured in Norwegian mining law. However, when it comes to the Sámi use of Repparfjord, the chapter demonstrated that Sámi rights in marine areas are essentially non-existent. Therefore, while this project is looking at the issue of mining waste disposal in Repparfjord, the human rights discussions that this chapter identified are primarily focusing on the Sámi use of the land. Implementing the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) into Norwegian law would foster a step further the reinforcement of the Sámi rights in marine areas. In particular, article 25 and 32 paragraph 2 of UNDRIP explicitly ensure the cultural and spiritual relationship of indigenous peoples with coastal and marine areas and reaffirm their protection by state authorities.<sup>264</sup>

The Sámi Parliament and other Sámi rights advocates have consistently raised concerns related to the adequacy of the Mineral Act to secure the rights of the Sámi people. The Mining Act of Norway has been strongly criticized also at the UN level by the Special Rapporteur on Rights of Indigenous Peoples who called Norway to revise the Act in order to ensure that it conforms to relevant international standards, including those requiring adequate consultations with the affected Sámi communities and their free, prior and informed consent, mitigation measures, compensation and fair and equitable benefit-sharing.<sup>265</sup> As long as there is no institutionally anchored right for the Sámi people to exercise a veto against decisions that directly affect them, the final decisions about resource development projects in indigenous lands and waters would always lie unilaterally with state authorities. Indeed, the final word for the Nussir case might not have been yet said, and undoubtedly the contested dialogues over the northernmost upcoming mine on mainland Europe would continue for the coming year. As long

---

<sup>263</sup> Ingunn Vistnes and Christian Nellemann, 'Avoidance of Cabins, Roads, and Power Lines by Reindeer during Calving' (2001) 65(4) *Journal of Wildlife Management* 915.

<sup>264</sup> UNDRIP (n 40).

<sup>265</sup> UNCHR (n 225) para 79.

as a big part of the population of the local Municipality remains in favor of the mine, indigenous rights seem to be an inadequate means to resist industrial development in the region. As the Sámi story demonstrated, while the long-term impacts of the arrival of the *rávga* to the cowshed turned to be irreparable for the protagonist woman, it is difficult to predict the long-term impacts of the Nussir mine on Sámi activities and culture, particularly on marine activities which are not yet protected by Norwegian law. Aside the Sámi use of the marine space, fundamental concerns raise also regarding the implications of the mine on the marine environment of Repparfjord. The chapter that follows is inspired by another Sámi story that illustrates interactions between coastal people and *rávga* and attempts to discuss the most prominent environmental discourses pertinent to the case.



## 4 An Environmental Law Approach to Mining Waste Disposal in Repparfjord

*Once, there was a boat that never stayed for a long time on shore when it was pulled up; it was a fembøring<sup>266</sup> boat. The boat was always placed on the shore in a way that its stern was pointing downwards every night. Once a man laid under the front part of the boat and took a big hook for halibut fishing<sup>267</sup> in his hand. Then, a rávga appeared and began to move the boat downwards to the sea; it was moving the boat first with the bow of the boat in the front, then with the stern in the front, saying: Why is this boat so heavy now? Yesterday it was very light. Still, the rávga managed to move the boat to the sea. Then, it went to the back side of the boat and started rowing, saying again: something is wrong here and it moved to the back seat of the boat and rowed there for a while, saying the same again.*

*The rávga tried to row from every possible seat of the boat and said the same. Then, the rávga came to the bow of the boat and said: Now it feels good. The man said: it feels good for me too and he attacked the rávga with the big hook. The rávga jumped to the sea with the hook attached to it. The man rowed back to the shore and then a strong wind started. The next morning, the man went back to the boat and he found the big hook with a shoulder blade attached to it.*

### 4.1 Introductory Remarks and Methodological Reflections

The story of the ‘Rávga in the Fishing Boat’<sup>268</sup> originates from the region of Kvalsund and was recorded in 1902 by the Sámi teacher, editor, and author Anders Larsen. Anders Larsen (1870-1949) was originally from Seglvik in Kvænangen fjord and was one of the first Sámi writers. Larsen’s main research interests revolved around the way of life and traditions of the Coastal Sámi. Amongst other coastal regions, Larsen lived and worked in Kvalsund from 1902 to 1918. He closely collaborated with Just Qvigstad and contributed to his collections on Sámi folklore. The above-mentioned story was traced from Qvigstad’s collection ‘*Lappiske eventyr*

---

<sup>266</sup> A *Fembøring* is an open, clinker-built, wooden boat traditionally produced in Nordland and Åfjord; for more information on *Fembøring* boats see Gunnar Eldjarn, ‘Fembøring’ (*Store Norske Leksikon*, November 2019,) <<https://snl.no/femb%C3%B8ring>> accessed 1 June 2020.

<sup>267</sup> The original Norwegian term as used by Just Qvigstad referring to this instrument is ‘*kveiteklepp*’. The term cannot be in one word translated in English.

<sup>268</sup> The original title of the story in Norwegian is ‘*Draugen I Fiskerbaten*’. The translation has been freely determined by the author; for the original version of the story see Just K Qvigstad, *Lappiske eventyr og sagn. 2 : Lappiske eventyr og sagn fra Troms og Finnmark* (Aschehoug 1928) 374-375.

*og sagn fra Troms og Finnmark* where it is presented with the title ‘A *rávga* in the fishing boat’. The story depicts a *rávga* that is approaching a fisherman’s boat, dragging it to the sea, and then checking the different positions from where someone could pilot the boat. The fisherman seems to be annoyed with the behavior of the *rávga* and decides to hit it with the big hook. As long as the story is set on the marine environment of Kvalsund and involves human interactions with *rávga*, it was deemed useful to be discussed in this chapter, aiming to illuminate environmental law issues related to Nussir ASA’s mining waste disposal in Repparfjord.

While the previous story was discussed analogically to the case study and was analyzed through symptomatic reading, this chapter will focus on drawing one main principle from the story and discussing it in relation to the case study. Like the story discussed in the previous chapter, the interpretation of this story has been freely determined by the author, in accordance with the goals of this study. Not being from Kvalsund makes it difficult to draw specific conclusions regarding the symbolism behind the actors of this story and the actors in the case of Nussir. Similar to the story discussed in the previous chapter, significant information is missing from Qvigstad’s collection regarding the context of this story. The plot leaves the reader with several unanswered questions in mind, such as why the *rávga* came to control the fisherman’s boat or how the next day the big hook returned back to the boat with a shoulder blade attached to it. The following discussion and analysis will not focus on looking at any of these questions. Behind the interaction between the fisherman and the *rávga* one interesting conclusion has been constructed for the purposes of this Chapter. The story illustrates the interaction of a fisherman with a *rávga* with distinct voice and behavior that came from the marine environment. This concept of a living marine environment that hosts spirits with voice is used in this chapter as a starting point of discussion in order to illuminate the Norwegian environmental law framework regarding mining waste disposal in the seas, and to suggest an alternative concept of ocean governance from this, that is now provided by Norwegian law. Consequently, this chapter addresses the main legal instruments that regulate mining waste disposal in Repparfjord and attempts to build a bridge between the main principle generated through the Sámi story and the legal framework that regulates mining waste disposal in Repparfjord. Below, an overview of the Norwegian environmental law framework concerning mining and marine waste disposal is presented, followed by an analysis in relation to the above-mentioned story.

## 4.2 Discussion: Mining Waste Disposal in Norwegian Law

The history of mineral resource extraction in Norway dates back to the 17<sup>th</sup> century with the Røros copper mine and the Kongsberg silver mine being the most prominent examples.<sup>269</sup> Following the development of mining projects across the Norwegian coast, environmental concerns related to mining projects have been gradually incorporated within Norwegian mining law, in accordance with Norway's international commitments. Environmental consequences of mining activities are obvious, and the existing legal framework often raises questions as to its capacity to respond to the ongoing challenges that mining activities have been posing.<sup>270</sup> As this thesis previously addressed, the main instruments that regulate resource extraction in Norway are the Minerals Act, the Planning and Building Act and the Pollution Control Act, as well as the principles set out in the Nature Diversity Act, and in relation to marine waste disposal several other instruments are applicable.<sup>271</sup> The legal framework that addresses environmental concerns related to the case study follows, along with the author's analysis in relation to the above-mentioned Coastal Sámi story.

### 4.2.1 *Minerals Act*

The bible of mining law in Norway is the Minerals Act of 2009,<sup>272</sup> which was established in order to regulate the exploration and exploitation of mineral resources in terms of sustainable development.<sup>273</sup> According to section 2 of the Act, the administration and use of mineral resources pursuant to this Act shall ensure that several interests are safeguarded, listing amongst others 'the surroundings and nearby areas while operations are being carried out, and the environmental consequences of extraction'.<sup>274</sup> Failure to take into account such consequences must be regarded as an error that could lead to the annulment of a decision that granted an exploration permit.<sup>275</sup> Section 2 makes clear that the preparatory works of a mining project shall be interpreted in light of this section.<sup>276</sup> However, according to Ole Fauchald, while the Act

---

<sup>269</sup> Stefan Leknes, 'The more the merrier? Evidence on quality of life and population size using historical mines' (2014) 1 NTNU Working Paper Series 1, 8.

<sup>270</sup> Ole K Fauchald, 'Regulating Environmental Impacts of Mining in Norway' (2014) 1 Nordisk miljörättslig tidskrift 53.

<sup>271</sup> See below 4.2.5.

<sup>272</sup> mineralloven (n 35).

<sup>273</sup> *ibid* section 1.

<sup>274</sup> *ibid* section 2.

<sup>275</sup> This principle is provided by the Norwegian Public Administration Act; see Lov 2018-06-22 nr 83: Lov om behandlingsmåten i forvaltningssaker (forvaltningsloven) sections 17, 25, 34 and 42.

<sup>276</sup> Fauchald (n 270) 55.

provides that the preparatory works of a mine project shall be interpreted based on section 2, that does not involve obligations of result, in the sense that a permit allowing serious deterioration of the surrounding environment can be invalidated as being contrary to section 2.<sup>277</sup> Fauchald further problematizes section 9 and 19 of the Act, arguing that while owners and users of the property on which search and exploration of minerals is planned have the possibility of denying activities that ‘may cause damage of significance’, they are also free to accept such activities, and nothing would prevent those who want to search and explore from entering into agreements whereby compensation is paid for being allowed to carry out the activities.<sup>278</sup> Based on that argument, Nussir ASA’s relationship with local stakeholders can be controversial from the preliminary level of exploration.

#### 4.2.2 *Plan and Building Act*

Indeed, mining activities in Norway cannot be carried out unless they are in accordance with existing municipal land use plans. This is regulated by the Plan and Building Act (PBA),<sup>279</sup> which ensures the devolution of decision-making power for mining projects to municipal authorities. Municipal plans can be general ‘municipal master plans’ or specific ‘zoning plans’.<sup>280</sup> For mining projects most often a zoning plan needs to be drafted, and is usually designed by the mining company. A zoning plan must be in place for all ‘major building and construction projects and other projects which may have substantial effects on the environment and society’.<sup>281</sup>

When drafting a zoning plan for mining that involves extraction of more than 2 million m<sup>3</sup> of matter or that affects a surface area of more than 0.2 km<sup>2</sup>, an Environmental Impact Assessment (EIA) is mandatory.<sup>282</sup> As EIA<sup>283</sup> is determined the ‘evaluation of the likely environmental impacts of a proposed project or development and takes into account, besides environmental, inter-related socio-economic, cultural and human-health impacts, both

---

<sup>277</sup> *ibid.*

<sup>278</sup> *ibid.*

<sup>279</sup> plan- og bygningsloven (n 180).

<sup>280</sup> *ibid* Chapters 11 and 12.

<sup>281</sup> *ibid* 12–1.

<sup>282</sup> Forskrift om konsekvensutredninger, FOR-2009- 06-26-855, § 2 and annex I, section A.3

<sup>283</sup> The International Association for Impact Assessment (1999) defines such an assessment as “the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made”; see Agriculture & Environment Research Unit, ‘Environmental Impact Assessment (EIA)’ (*University of Hertfordshire*, 2017) <[http://sitem.herts.ac.uk/aeru/sustainability/environmental\\_impact\\_assessment.htm](http://sitem.herts.ac.uk/aeru/sustainability/environmental_impact_assessment.htm)> accessed 1 June 2020.

beneficial and adverse'.<sup>284</sup> An EIA aims to predict environmental impacts at an early stage in project planning and design, find ways and means to reduce adverse impacts, shape projects to suit the local environment and present the predictions and options to decision-makers.<sup>285</sup> Impact assessments are intended to ensure that knowledge regarding impact on environmental and societal interests is integrated in all phases of planning and development issues, thereby providing a sound base of knowledge for the decision-makers.<sup>286</sup> In Norway, the Parliament adopted the first general legislation on EIA in 1990, as part of the Planning and Building Act.<sup>287</sup> The most recent EIA provisions were adopted in 1999, when the field of application was expanded and a corresponding decentralization of tasks to local authorities was introduced.<sup>288</sup> To date, the PBA regulates the EIA process and the contents of an Impact Assessment report.<sup>289</sup> Accordingly, EIAs and the planning decisions are closely linked to pollution permits and waste treatment issues, since they are generally used as a base for identifying pollution and waste issues, as well as options for dealing with them.<sup>290</sup> Indeed, coordination between EIAs, zoning plan and pollution permits decided by governmental authorities can be rather challenging.<sup>291</sup>

In the case of Nussir, the draft planning program was presented by Nussir ASA in 2010, and public authorities as well as other interest groups had the chance to comment on the document during the process of scrutiny and impact assessment.<sup>292</sup> The comments were incorporated into the final planning program with a list of requisite EIA-reports in order to be developed and adopted by the Kvalsund Municipal Council.<sup>293</sup> The Municipal Council supported the mining plans from the very beginning, and there was little debate on the possible adverse environmental effects of the mine.<sup>294</sup> The Sámi Parliament and other stakeholders not

---

<sup>284</sup> Convention on Biological Diversity, 'What is Impact Assessment?' (CBD, April 2020) <<https://www.cbd.int/impact/whatis.shtml>> accessed 1 June 2020.

<sup>285</sup> *ibid.*

<sup>286</sup> Eyþorsson and Thuestad (n 238) 140.

<sup>287</sup> Norwegian Ministry of Environment, *Environmental Impact Assessment* (Gazette 2003) <[www.regjeringen.no/globalassets/upload/kilde/md/bro/2003/0001/ddd/pdfv/182783-t-1428\\_e.pdf](http://www.regjeringen.no/globalassets/upload/kilde/md/bro/2003/0001/ddd/pdfv/182783-t-1428_e.pdf)> accessed 1 June 2020.

<sup>288</sup> The process of EIA in Norway has included provisions in implementation of the EU Directive on Environmental Impact Assessment and the requirements of the Espoo Convention; see Convention on Environmental Impact Assessment in a Transboundary Context (adopted 24 April 1992, entered into force 10 September 1997) C104 (Espoo Convention).

<sup>289</sup> *ibid.*

<sup>290</sup> Fauchald (n 270) 60.

<sup>291</sup> *ibid.*

<sup>292</sup> Twenty-seven different stakeholders sent their comments to the municipality; Nygaard (n 46) 22.

<sup>293</sup> *ibid.*

<sup>294</sup> *ibid.*

satisfied with the plan<sup>295</sup> had an opportunity to send written objections.<sup>296</sup> The zoning plan, and the EIA were combined in one document of 178 pages and were presented to the Municipal Council, which accepted the plan on May 8, 2012.<sup>297</sup> Interestingly, the Municipality, while transferring the objections of the Sámi Parliament and local reindeer herders to the Ministry of Local Government and Modernization,<sup>298</sup> decided not to consider an objection from the Directorate for Fisheries regarding the EIA of marine waste deposits in Repparfjord since it was submitted after the deadline.<sup>299</sup>

The existing established framework demonstrates problems that may arise when municipalities make planning decisions in mining cases. While municipalities have broad discretion when adopting plans, it may not be easy to use such discretion to effectively safeguard environmental interests in major mining cases. Such concerns can include controversies related to impacts for the local environment and existing economic and cultural activities, how to deal with complex assessments of environmental and social impacts, and the responsibility of taking into account national interests.<sup>300</sup>

#### 4.2.3 *Pollution Control Act*

While the Mineral Act defines the exploration and extraction process of a mining project and the Plan and Building Act ensures the administrative prerequisites for a mining operation, the Pollution Control Act (1981)<sup>301</sup> is the instrument that has been established in order to determine the pollution permits for resource development projects<sup>302</sup> (including mining) and regulate waste disposal.<sup>303</sup> The Government Regulation on Pollution (Pollution Regulation) was adopted under the act and contains additional chapters on noise and dust that determine the acceptable limits of pollution.<sup>304</sup> However, the Pollution Act does not explicitly contain specific

---

<sup>295</sup> Such as the Reindeer Herding Association.

<sup>296</sup> See, previously, section 3.2.1.

<sup>297</sup> Ministry of Municipalities and Modernization, 'Nussir and Ulveryggen's zoning plan has been approved' (*Regjeringen*, March 2014) <[www.regjeringen.no/no/aktuelt/Reguleringsplan-for-Nussir-og-Ulveryggen/id753353/](http://www.regjeringen.no/no/aktuelt/Reguleringsplan-for-Nussir-og-Ulveryggen/id753353/)> accessed 1 June 2020.

<sup>298</sup> As mentioned, the Ministry of Local Government and Modernization finally accepted the plan.

<sup>299</sup> Fauchald (n 270) 60.

<sup>300</sup> The approximately 15 km long Repparfjord has 'national salmon fjord' status in Norway, which means that it enjoys special protection for local species of endangered Atlantic salmon. Among other things, it means that aquaculture (fish farming) is not permitted in the fjord. The Repparfjord River has its estuary in the fjord, and similarly has a 'national salmon river' status affording it special protection against environmentally damaging activities.

<sup>301</sup> *forurensningsloven* (n 179).

<sup>302</sup> *ibid* sections 7 and 11.

<sup>303</sup> *ibid* Chapter 5.

<sup>304</sup> Forskrift om begrenning av forurensning (*forurensningsforskriften*) FOR-2004-06-01-931, chapters 5 and 7.

rules on pollution or waste from mineral activities.<sup>305</sup> Likewise, Chapter 22 of the Act regulates dumping at sea from ships, and is not applicable to dumping through pipelines like the one planned in the Nussir case,<sup>306</sup> while Chapter 30 regulates quarries and is not applicable to mining.<sup>307</sup>

In addition to the direct environmental consequences from mining activities such as noise and dust, mineral activities may require the establishment of processing plants to extract the minerals, in particular in cases of large mining operations such as the case of Nussir. These processing plants may use chemicals (e.g. flotation chemicals) and large quantities of water during processing.<sup>308</sup> Such processing generally results in large quantities of mining waste, consisting of rock in various qualities, chemicals, and water.<sup>309</sup> For that reason, the Government Regulation on Waste (Waste Regulation)<sup>310</sup> has been adopted under the Pollution Act which contains a separate chapter on mining waste. In addition, Norway has implemented the EU Directive on the management of waste from extractive industries (2006/21/EC)<sup>311</sup> by adding the chapter on mining waste to the Waste Regulation on 15 June 2012,<sup>312</sup> while has also adopted the Water Regulation which includes environmental quality standards that are highly relevant to marine waste.<sup>313</sup> However, environmental authorities have decided to continue the practice of regulating waste issues through pollution permits and not issue separate decisions on waste treatment and disposal.<sup>314</sup> Due to significant lack of knowledge concerning marine waste issues and long-term effects of deposits, which are more difficult to monitor, public authorities have been relying heavily on information obtained from mining companies regarding compliance with the requirements and conditions set out in pollution permits.<sup>315</sup> That has led to controversies regarding the quality of information included in Nussir's assessments of marine waste issues in Repparfjord.<sup>316</sup> Taking into account that the fjord has a protected status and is listed as a fjord of national interest, such controversies become more serious.

---

<sup>305</sup> Fauchald (n 270) 61.

<sup>306</sup> forurensningsloven (n 179) Chapter 22.

<sup>307</sup> *ibid* Chapter 30.

<sup>308</sup> Fauchald (n 270) 61.

<sup>309</sup> *ibid*.

<sup>310</sup> Forskrift om gjenvinning og behandling av avfall (avfallsforskriften), FOR-2004-06-01-930, chapter 17.

<sup>311</sup> See article 13.4.

<sup>312</sup> The Waste Regulation does not address issues of particular importance to marine waste facilities; see Fauchald (n 270) 63.

<sup>313</sup> Forskrift om rammer for vannforvaltningen, FOR2006-12-15-1446

<sup>314</sup> Fauchald (n 270) 61.

<sup>315</sup> *ibid*.

<sup>316</sup> Dannevig and others (n 241) 151.

#### 4.2.4 *Nature Diversity Act*

Another instrument that is applicable to the case is the Nature Diversity Act of 2009.<sup>317</sup> The Act has been incorporated into Norwegian law in implementation of the Convention on Biological Diversity and lists the principles that concern knowledge regarding impacts on ecosystems and species. It incorporates several environmentally-oriented principles such as the precautionary principle, the ecosystem approach and cumulative effects, the user-pays principle, and environmentally sound techniques and methods of operation.<sup>318</sup> The objectives and principles of the Nature Diversity Act coordinate all other relevant legal instruments when it comes to resource management and should be applied regardless of the legislation according to which decisions are made.<sup>319</sup> In these terms, decisions under the Minerals Act, the Planning and Building Act, and the Pollution Control Act must always make reference to relevant principles of the Nature Diversity Act and indicate how they have been considered.

#### 4.2.5 *Marine Waste Disposal in Environmental Law*

As derived from sections 11 and 16 of the Pollution Control Act, Norwegian environmental authorities have broad discretion regarding the requirements and conditions that may be included in pollution permits.<sup>320</sup> That rises particular problems associated with permits that allow marine waste deposits, concerning lack of control of where the waste is deposited, lack of knowledge regarding environmental impacts of the waste, and problems associated with monitoring and restoration.<sup>321</sup> While requirements and conditions in pollution permits generally contain comprehensive regulation of land-based deposits of waste, according to Fauchald, there are so far few traces of requirements or conditions based on the Water Regulation in those parts of the permits that concern marine waste facilities.<sup>322</sup>

In 2011, soon after the zoning plan submission, a tailings disposal application was submitted to KLIF (Norwegian Climate and Pollution Agency) of the Ministry of Climate and Environment.<sup>323</sup> According to Nussir's plan, it is estimated that two million tons of heavy metal

---

<sup>317</sup> naturmangfoldloven (n 181).

<sup>318</sup> See *ibid* Chapter 2.

<sup>319</sup> *ibid* section 7.

<sup>320</sup> forurensningsloven (n 179) sections 11 and 16.

<sup>321</sup> Fauchald (n 270) 62.

<sup>322</sup> *ibid*.

<sup>323</sup> Nussir (n 26).



waste will be dumped every year by Nussir ASA - the equivalent of 17 lorry loads every hour.<sup>324</sup> Nussir ASA received the discharge permit from the Environmental Directorate in 2016. The company claims that thanks to the use of the chemical substance Magnafloc 10, the waste will sit within a very small area of the fjord, just a kilometer squared while they are planning to adopt a new technology which introduces sea water in the tailings before it is pumped out to the exact exit location of the tailings.<sup>325</sup> According to that, the mixing in of sea water makes the tailings fall to the bottom instead of rising up and mixing with the sea.<sup>326</sup> This limits the spread of fine particles and also the spread of the deposit itself.<sup>327</sup> While it is widely accepted that use of chemicals in such processes can also pose risks to the marine environment, the Norwegian Environment Agency has decided that mining companies shall have relevant flexibility to introduce new chemicals.<sup>328</sup>

In relation to the decision of the Municipality and the Ministry, several concerns exist regarding the way public authorities address the issue of mining and marine waste disposal in Norway as derived from the state's commitments to international environmental law frameworks. Norway has joined international treaties and EU directives that are relevant to the treatment of tailings disposal, including the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989),<sup>329</sup> the Directive 2006/21/EC on the management of waste from extractive industries, the Directive 2000/60/EC establishing a framework for Community action in the field of water policy as annexed to the Agreement on the European Economic Area (1993), and the OSPAR Convention for the Protection of the Marine Environment of the North- East Atlantic (1992).<sup>330</sup> Several international legal instruments, such as the Convention on Biological Diversity (CBD), the OSPAR convention, and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other

---

<sup>324</sup> Aled Dilwyn Fisher, 'Norway to allow new mine waste dumping in national salmon fjord' (*Naturvernforbundet*, February 2019) <<https://naturvernforbundet.no/repparfjord/norway-to-allow-new-mine-waste-dumping-in-national-salmon-fjord-article38878-3800.html>>\_8 April 2020

<sup>325</sup> Christensen and others (n 31).

<sup>326</sup> *ibid.*

<sup>327</sup> Lempriere (n 4)

<sup>328</sup> Fauchald (n 270) 62.

<sup>329</sup> Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57 (Basel Convention).

<sup>330</sup> Convention for the Protection of the Marine Environment of the North-East Atlantic (adopted 22 September 1992, entered into force 25 March 1998) (OSPAR Convention).

Matter of 1972 (London Convention),<sup>331</sup> with its 1996 Protocol (London Protocol)<sup>332</sup> are all calling for ‘precautionary approach’ in resource management processes. Similarly, Principle 15 of the Rio Declaration explicitly mentions

‘Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.’

Therefore, governments and mining companies should dedicate the necessary time to discover all possible negative impacts and listen to environmental experts in this regard. However, as mentioned above, there have been significant controversies also related to the quality of such information included in the assessments of marine waste issues in EIAs.<sup>333</sup> Moreover, marine deposits raise challenges when it comes to their monitoring process.<sup>334</sup> As a consequence, public authorities have been relying heavily on information obtained from mining companies regarding compliance with the requirements and conditions set out in pollution permits.<sup>335</sup> The Norwegian Institute for Marine Research, The Directorate of Fisheries, and The Norwegian Environment Agency have warned against allowing Nussir ASA to spill poisonous copper-waste in Repparfjord.<sup>336</sup> The Norwegian Environment Agency, for instance, has argued that the proposed activity of sea tailings placement is against superior principles of the Convention of Biological Diversity such as sustainable use, precautionary principle, and ecosystem approach.<sup>337</sup> However, their warnings have not been heeded by the Norwegian government, while scholars problematize the time that local authorities have dedicated to the impact assessments of the project.<sup>338</sup> According to Susann Skogvang, the implementation of the above-mentioned international instruments within Norwegian law seems to be relatively weak when it competes with commercial interests from mining activities.<sup>339</sup>

---

<sup>331</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (adopted 13 November 1972, entered into force 30 August 1974) (London Convention).

<sup>332</sup> 1996 Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters; the London Convention and Protocol does not apply to internal waters and is therefore not applicable to the Repparfjord case, according to the London Convention article III (3).

<sup>333</sup> Fauchald (n 270) 63.

<sup>334</sup> *ibid.*

<sup>335</sup> *ibid.*

<sup>336</sup> Skogvang (n 248) 16.

<sup>337</sup> Mads Løkeland, *Submarine Tailings Disposal violates the Water Framework Directive* (Naturvernforbundet 2015) 25.

<sup>338</sup> Skogvang (n 248).

<sup>339</sup> *ibid.* 16.

### 4.3 Analysis

The case shows that still several facts related to the upcoming project are unclear and both scholars and environmental instruments have criticized the way that public authorities are considering the status of the marine environment of Repparfjord throughout this project. While the decentralization of resource management planning to local municipalities often empowers local and indigenous voices,<sup>340</sup> the sections above demonstrated that the Norwegian regime's reliance on local authorities raises doubts as to its adequacy to respond to the growing and complicated needs of mining. Small communities have only limited ability to handle complex cases with long-term impacts in a manner that takes appropriately into account all relevant interests. Particular problems are associated with marine waste deposits. The case of Nussir demonstrates that public authorities may be willing to make decisions based on weak knowledge regarding ecosystems and long-term impact of waste deposits.<sup>341</sup> Similarly, the case shows that local authorities are not reluctant to make decisions that can cause significant damage to ecosystems recognized as being of national importance, such as Repparfjord which is considered a fjord of national interest.<sup>342</sup> Disposal of large amounts of mining waste into the fjord undoubtedly goes against its protected status.

The current reality has shown that, despite the aforementioned environmental concerns, it is most possible that the extraction in Nussir will start soon, followed by mineral waste disposal in Repparfjord. Attempting to discuss the main principle generated through the Sámi story in relation to the issue of mineral waste disposal in Repparfjord, a fundamental conceptual divergence between the story and the case study has been constructed: In the story 'Rávga in the fishing boat', the sea appears to host spirits with distinct personality and behavior that constantly interact with human beings. While the story sketches a reciprocal interaction between a living marine environment and human beings, the legal framework illustrated above treats the sea solely as an object of policy-making, area of exploitation and waste disposal, unilaterally managed by humans. State policies often surrender the viability of the marine environment in the pursuit of resource extraction to maintain industrial societies.<sup>343</sup> Undoubtedly, the legal system constitutes an essential forum for advocates seeking to resist the

---

<sup>340</sup> See, for instance, Jérémie Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* (Brill Nijhoff 2016) 236.

<sup>341</sup> Fauchald (n 270) 65.

<sup>342</sup> See above (n 300).

<sup>343</sup> David A Lertzman and Harrie Vredenburg, 'Indigenous Peoples, Resource Extraction and Sustainable Development: An Ethical Approach' (2005) 56(1) *Journal of Business Ethics* 239, 240.

tide of ecological collapse of the marine environment. However, environmental law, whether through legislative action or litigation, has rested upon an anthropocentric worldview, aiming on the use and enjoyment of the seas by human beings.<sup>344</sup>

Interestingly, indigenous peoples do not usually differentiate land, coast and sea as separate estates,<sup>345</sup> but conceive them as complementary domains, part of an environmental whole to which humans are connected and to which they are a part.<sup>346</sup> According to Tim Ingold, indigenous communities do *not*, as a rule, approach the natural environment as an external world of physical objects; the separation of human mind and nature has no place in their thought and practices.<sup>347</sup> For coastal people the ocean has always been extremely important having not only economic but also cultural and spiritual value, as it is connected with language, identity and culture.<sup>348</sup> Subsequently, the use of ocean for subsistence activities is deeply connected to history, tradition and culture of coastal people, as opposed to the contemporary state understandings that most closely relate the marine environment to commercial activities.<sup>349</sup> Like other indigenous peoples, the Coastal Sámi have been spiritually connected to their marine environment, while the Sámi perception of nature and attitude toward natural resources traditionally springs from their own distinct cosmology.<sup>350</sup> In that context, man-made

---

<sup>344</sup> Matthew Miller, 'Environmental Personhood and Standing for Nature' (2019) 17(2) *The University of New Hampshire Law Review* 355, 358.

<sup>345</sup> The indigenous relationship to, and use of, the land manifested itself through a 'complex interrelational network with all of creation which sees humans as simply a part of creation and not above it, and which has as its goal balance and harmony, and accomplished through constant renewal.' see Little Bear Leroy and the Royal Commission on Aboriginal Peoples, *The Relationship of Aboriginal People to the Land and the Aboriginal Perspective on Aboriginal Title Vol.1* (Supply and Services Canada, 1992) 7.

<sup>346</sup> For further indigenous conceptions of nature, part of which human is see; Nursey-Bray and Jakobsson (n 48) 27; Kenneth Ruddle and others, 'Marine Resources Management in the Context of Customary Tenure' (1992) 7(4) *Marine Resource Economics* 249, 251; Monica E Mulrennan and Colin H Scott, 'Mare Nullius: Indigenous Rights in Saltwater Environments' (2000) 31(1) *Development and Change* 681, 683; Janis B Alcorn, 'Indigenous Peoples and Conservation' (1992) 7(2) *Conservation Biology* 424, 425.

<sup>347</sup> Ingold (n 119) 42.

<sup>348</sup> Jon M Van Dyke, 'The role of indigenous peoples in ocean governance' in Peter B Payoyo (ed), *Ocean governance: Sustainable development of the Seas* (The United Nations University 1994) <<http://www.nzdl.org/gsdllmod?e=d-00000-00---off-0hdl--00-0---0-10-0---0---0direct-10---4-----0-11--11-en-50---20-about---00-0-1-00-0--4---0-0-11-10-0utfZz-8-00&cl=CL1.13&d=HASH01b227958fb9ceca3b767c77&gt;2>> accessed 1 June 2020.

<sup>349</sup> For another example of differing conceptions of the value and use of the ocean between State entities and indigenous communities; see Julie Raymond-Yakoubian and Raychelle Daniel, 'An Indigenous approach to ocean planning and policy in the Bering Strait region of Alaska' (2018) 97 *Marine Policy* 101, 103.

<sup>350</sup> The spiritual value that the sea has for the Sámi people is presented in Barbara H Miller, 'Dynamics of Naming: Examples from Porsanger' in Barbara H Miller (ed), *Idioms of Sámi Health and Healing* (University of Alberta Press 2015) 80-81; see also Valmaine Toki, 'Indigenous Peoples' Fisheries Rights – A comparative perspective between Maori and the Sami' (2010) 1(1) *Arctic Review on Law and Politics* 54, 69; a more comprehensive illustration of Sámi conceptions of the natural environment is sketched in next Chapter.

environmental degradations of the marine environment in Sámi areas may also be comforted with such conceptions of the ocean.

In an attempt to orientate the legal focus away from the anthropocentric nature of environmental law and give voice to nature-centered conceptions of the world, such as the one reflected in the Sámi story, the concept of ‘rights of nature’ has emerged during the last few decades in Western legal thought.<sup>351</sup> There have been several recent cases where designating parts of nature have been recognized as ‘legal persons’ entitled to independent regard and consideration.<sup>352</sup> The concept of environmental personhood, which assigns nature (or aspects of it) certain rights, concurrently provides a means to individuals or groups such as indigenous peoples to reflect their own distinct relationship with the environment, contributing to the legal reinforcement of concrete bodies of nature. In that context, environmental entities from objects of rights and policy-making become subjects and can fight for their interests against more powerful state or private actors. The nascence of the concept of legal personhood dates back to 1970’s when the idea that environmental bodies, such as trees, should have rights emerged. In these terms, legal entities with standing (*locus standi*) have obtained the right or capacity to bring action or appear in court, without being attributed to any ownership claims.<sup>353</sup> Indeed, granting legal personality to water bodies is so far applicable to rivers or lakes, rather than saltwater entities. However, such an approach to ocean governance, according to which the sea becomes a subject of rights besides an object of exploration and exploitation, could contribute to the protection and preservation of the marine environment.<sup>354</sup> To date, prominent examples of water entities with granted personhood and legal standing are the *Whanganui* river in New Zealand the river *Atrato* in Peru, the *Ganges* and *Yamuna* rivers in India.<sup>355</sup> In September 2017, a lawsuit of the Colorado River Ecosystem was filed against the State of Colorado, seeking declaratory and injunctive relief from State action that violated the River’s ‘right to exist, flourish, regenerate, be restored, and naturally evolve’. However, in a Norwegian context, the concept of environmental personhood is generally absent from the legal focus in pursuit of the protection of nature. Although such a solution does not seem realistic at the moment, granting

---

<sup>351</sup> Renata Colwell and others ‘Legal Personality of Natural Features: Recent International Developments and Applicability in Canada’ (2017) *The Environmental Law Centre Society* 1, 5.

<sup>352</sup> Gwendolyn J Gordon, ‘Environmental Personhood’ (2018) 43(1) *Colum. J. Env’tl. L.* 49, 56.

<sup>353</sup> *ibid.*

<sup>354</sup> Vito de Lucia, ‘Ocean Commons, Law of the Sea and Rights for the Sea (2019) 12(1) *Canadian Journal of Law & Jurisprudence* 45, 57.

<sup>355</sup> Gordon (n 352).

to some degree independent regard to Repparfjord could give the fjord a certain amount of rights, seeking relief against disproportion and pollution from dumping.

#### 4.4 Conclusory Remarks

The Norwegian regulatory and administrative regime established to address environmental concerns pertinent to mining projects does not seem to be adequate to respond to challenges posed by the increased interest in mineral resources and is often questioned. This chapter demonstrated that, while municipalities have broad discretion when adopting plans, it might not be easy to use such discretion to effectively safeguard environmental interests in major mining cases, particularly in relation to marine waste disposals, as more difficult to be monitored and evaluated. The sections above showed that, despite the important environmental consequences of mining and the broad international law framework, the domestic legislation in Norway has provided a high degree of flexibility and freedom to local authorities to take decisions regarding the ongoing developments in Repparfjord. On the basis of this Chapter, it can be concluded that the existing decision-making framework favors to some extent political freedom of decision-makers and prioritizes industrial development over environmental concerns. In the case of Nussir, the state seems to be reluctant to consider the needs of environmental protection of Repparfjord as an important issue and has instead opted to focus on the project's role in facilitating local job creation and immigration to the Municipality. On the other hand, there has been a near-unanimous consensus in the scientific community that the impacts of human beings on the natural environment have been accelerating and are having a major and continuing impact on the seas. The interpretation of the *rávga* story of this chapter teaches us that nature has also a voice and should be taken more into account in resource management policies. The urgency of recognizing the rights of nature in law and courts is becoming imperative, although still absent from Norwegian law. A general shift in the rationale of legal thought needs to be done, treating human beings and nature on an equal footing. As long as the ocean remains an object of policy-making and source of exploitation, maybe the '*rávga* of Repparfjord' raise also their own concerns about the Nussir case. A critical approach to the way that the existing framework is accounting for traditional knowledge systems and beliefs about the natural world is sketched in the following chapter, and, through the example of another Sámi story, this thesis attempts to delve deeper into such discourses.

## 5 A Pluralistic Approach to Mineral Waste Disposal in Repparfjord

*In the old times, it was said that if you shoot something with a silver bullet, the bullet scathes also its spirit.*

*Once upon a time, there was a young boy called Garral. Garral was a hunter. One day he was dreaming of having a new black leather jacket and seal meat cooked on the fire. So, he left his goahti and went to the coast close to his community to hunt seals. He decided to take with him a silver bullet. While he was hunting, suddenly a boat appeared full of rávga. The boat was slowly coming closer, when a female rávga who was standing in the front of the boat started to joik. ‘Don’t row closer rávga’ she was singing ‘our brother Garral is here’. The other rávga looked at the coast but they could not see anyone. Then, they transformed into seals and went closer to Garral. Garral did not know that the rávga were friendly and he fired his gun with the silver bullet, injuring one of the rávga. Then the girl looked at the rest of the rávga and started joiking again ‘I told you...I told you’.*

### 5.1 Introductory Remarks and Methodological Reflections

While the previous two chapters of this thesis focused on using the paradigm of Sámi stories to examine Norwegian law and policy pertinent to the issue of mineral waste disposal in Repparfjord, this fifth chapter will discuss the story of Garral in an attempt to illustrate a critical approach to Norway’s policy towards traditional knowledge systems and beliefs of Sámi and local communities. As long as this chapter is looking both at the case study of Repparfjord and beyond of it, it was deemed reasonable to discuss a more popular Sámi story widely used all across the coast of Northern Norway. The story of Garral was narrated to the author by Ánde Somby provisionally determined as advisor of this thesis. According to Somby, the story of Garral does not originate from a specific location of Northern Norway, but it can be identified all across the Sámi communities of the coast of the former Finnmark. Just Qvigstad also presents a variation of the same story titled ‘*En Sjølapp på Jakt*’ in the collection ‘*Lappiske eventyr og sagn*’ from Varanger, Finnmark.<sup>356</sup> This story was first recorded in 1927 by Johan Johnsen Aikio. Aikio was born in Inari, however grew up in Nesseby on the south side of

---

<sup>356</sup> Just Qvigstad, *Lappiske eventyr og sagn: Lappiske eventyr og sagn fra Varanger* (Aschehoug 1927) 352-353

Varangerfjord where he recorded Coastal Sámi stories for Qviqstad from 1888-1895.<sup>357</sup> Similar to the previous two stories that this thesis addressed, limited information exists regarding Qvigstad's relationship with his informant, as well as the context and use of the story.

As mentioned, the *rávga* stories are not intrinsically reduced to one simplistic interpretation but they can be used to address different research or societal needs. For instance, the same story was also visually illustrated in 2010 through the ethnographic animation film named *Cujaju*.<sup>358</sup> *Cujaju* was produced in a wish to make a traditional form of singing and storytelling accessible and understandable for young children.<sup>359</sup> The film was directed by Rachel Andersen, developed by Gustav Kvaal in collaboration with the Sámi Parliament and was screened in several kindergartens all across Norway.<sup>360</sup> It is a multimedia story that makes use of traditional yoik and enhances, besides the melody, the narrative aspects of the yoik.<sup>361</sup>

This chapter, through content analysis first addresses the main fact that has been traced from the plot of the story of Garral. This interpretation of the story has been determined by the author and focuses on discussing the female *rávga*'s ability to know an imminent danger, although her warnings went unheeded. Through that discussion, the chapter attempts to unfold how traditional knowledge is addressed in international and Norwegian law and how it is taken into account in resource management planning in Repparfjord. Subsequently, based on this discussion, the chapter looks beyond the case study and provides a critical assessment of how Western legal frameworks are dealing with traditional systems of knowledge and beliefs, highlighting the need of legally pluralistic societies for the sustainable management of the marine environment and its resources.

## 5.2 Discussion

The story presented above describes a Sámi hunter named Garral getting ready for hunting and leaving his *goahhti* (traditional Sámi dwelling) in order to reach the coast and hunt seals. A boat of *rávga* is approaching the coast when a female *rávga* appears to warn the rest

---

<sup>357</sup> *ibid* preface.

<sup>358</sup> For a visual illustration of the story of Garral see the ethnographic animation *Cujaju*; Gustav Kvaal, *Cujaju* (2010) <[www.youtube.com/watch?v=2sneliK2J04&list=FLXDzh3OHfA\\_1bcqG1wJXDGA&index=135&t=0s](http://www.youtube.com/watch?v=2sneliK2J04&list=FLXDzh3OHfA_1bcqG1wJXDGA&index=135&t=0s)> accessed 1 June 2020.

<sup>359</sup> James Barrett and Coppélie Cocq, 'Indigenous Storytelling and Language Learning: Digital Media as a Vehicle for Cultural Transmission and Language Acquisition' in Coppélie Cocq and Kirk P H Sullivan (eds), *Perspectives on Indigenous Writing and Literacies* (Brill 2019) 95.

<sup>360</sup> See, for instance, Marit Rein, 'Joiketoner i barnehagen' (*Nordlys*, October 2010) <[www.nordlys.no/kultur/joiketoner-i-barnehagen/s/1-79-5345976](http://www.nordlys.no/kultur/joiketoner-i-barnehagen/s/1-79-5345976)> accessed 1 June 2020.

<sup>361</sup> Barrett and Cocq (n 359) 95.



of the *rávga* to stay away because Garral could potentially harm them. The *rávga* attempts to protect the other spirits from the young hunter using a *joik*, a traditional Sámi chant. Without being informed about the silver bullet that Garral was planning to use, she knows the forthcoming danger, anticipating the injury of the *rávga*. The Norwegian educational website *Minstemme* in a variation of the story of Garral directed to kindergarteners argues that the female *rávga* was judged by the gods to know for thousands of years what comes, but nobody would believe her.<sup>362</sup> However, from the plot of the story presented above, no clear information is derived about how the *rávga* acquired this knowledge or if this knowledge is also grounded on spiritual or moral beliefs of the natural world. Starting from this point, the following sections shed light on the concept of knowledge in indigenous societies and assessing the way that traditional knowledge and beliefs are taken into account in the case study of Repparfjord, as well as in contemporary resource management systems in general.

### 5.2.1 *From Sámi Storytelling to Ancient Greek Tragedy: Use of Knowledge to Prevent Unpleasant Incidences*

Indigenous systems of knowledge have often been inseparable from their understandings about the land, the plants and animals and the ways that people live and relate to each other and the natural environment.<sup>363</sup> All around the world, and long before the beginning of colonization, indigenous communities used to apply their systems of knowledge and beliefs in their conduct of life and in an attempt to prevent unpleasant forthcoming incidences.<sup>364</sup> In missionaries for Christianization of the Sámi in the 17<sup>th</sup> century, this ability of the Sámi to interpret phenomena was linked to witchcraft, magic, and to power asymmetries.<sup>365</sup> The term ‘prophecy’ was used by educated Europeans of the early modern age to describe the ability of Sámi shamans (*noaidi*) to tell fortunes and predict future events, combining empirical data and spiritual beliefs.<sup>366</sup>

Besides indigenous storytelling, the use of knowledge and spiritual beliefs in an attempt to prevent imminent incidences can be encountered in several other forms of oral literature. In

---

<sup>362</sup> Per S Lyngstad, ‘Historien om Cujaju’ (*Minstemme*) <[www.minstemme.no/om-nettstedet](http://www.minstemme.no/om-nettstedet)> accessed 1 June 2020.

<sup>363</sup> Robin M Wright, ‘Wise People of Great Power: Indigenous prophetic visions in the Northwest Amazon Little Bear’ (2009) 2 *Journal for the Study of Religion Nature and Culture* 170, 170.

<sup>364</sup> See Fran Trippett, ‘Towards a Broad-Based Precautionary Principle in Law and Policy: A Functional Role for Indigenous Knowledge Systems (TEK) Within Decision-making Structures’ (LL.M Thesis Dalhousie University 2000).

<sup>365</sup> Konsta I Kaikkonen, ‘From, into, and back: translations of the Sami words noaidi and noaidevuohta in context’ (2019) 49(4) *Religion* 539, 553.

<sup>366</sup> Rune Hagen and Sigmund Nasset, ‘Notions of Sami Witchcraft’ in Sigmund Nasset (ed), *The Northern Lights Route* (UiT 1999).

a similar way to the story of Garral that was sketched above, the role of a female character who attempts to prevent a situation can be widely observed in ancient Greek literature, particularly in the masterpiece of the famous trilogy of Aeschylus' *Oresteia*. Dating back to the 5<sup>th</sup> century BC, the Greek tragedian Aeschylus illustrates the story of Cassandra, a girl who had the ability to know forthcoming events as the fall of Troy and the death of Agamemnon.<sup>367</sup> Like the female *rávga* in the story of Garral, Cassandra's warnings to protect their surroundings went unheeded and failed to prevent the fall of Troy as well as the humiliating death of Agamemnon that followed. Interestingly, the narration of the story included in the website *Minstemme* uses also the name 'Cassandra' to call the female *rávga*.<sup>368</sup> Indeed, between the story of Garral and the story of Casandra substantial differences arise as to the cultural, spatial and temporal background behind these stories. However, in both pieces of literature, the main character appears to have knowledge about an imminent danger, and unsuccessfully attempts to prevent it.

Indigenous peoples have always used their knowledge to respond to forthcoming situations, often combining empirical data with emotional and spiritual conceptions of the natural world.<sup>369</sup> While contemporary societies focus mainly on using empirical or scientific data in order to find meaning and interpret natural events, indigenous peoples have also used data that cannot be positivistically interpreted to reason individually and collectively.<sup>370</sup> Therefore, next to practical knowledge, spiritual beliefs have been a valuable intellectual tool in indigenous societies that enables people to respond to new situations, and to bring in useful new knowledge and practices in a way that is understandable to the community, and thus reconcilable with familiar empirical data and normative commitments.<sup>371</sup> An interesting question in international law is how contemporary legal frameworks are accounting for such systems of knowledge and how truly can they reflect non-positivistic conceptions of the world.

### 5.2.2 *Prevention and Precaution in Environmental Law*

Use of knowledge to predict and prevent forthcoming events has been embedded in environmental law within the principles of prevention (preventive approach) and precaution

---

<sup>367</sup> Δήμητρα Γιωτοπούλου, Η μορφή της Κασσάνδρας στην Αρχαία Ελληνική και Νεοελληνική Λογοτεχνία (Πανεπιστήμιο Πατρών Σχολή Ανθρωπιστικών και Κοινωνικών Επιστημών Τμήμα Φιλολογίας 2012) 49.

<sup>368</sup> Lyngstad (n 362).

<sup>369</sup> *ibid.*

<sup>370</sup> Val Napoleon and Hadley Friedland, 'An inside job: engaging with indigenous legal traditions through stories' (2016) 61(4) McGill LJ 725, 743.

<sup>371</sup> Trippett (n 364) 81.

(precautionary approach). The preventive approach is a concept in international law that tries to anticipate possible (probable) negative effects based on scientific knowledge and uses instruments to avoid that damage will occur.<sup>372</sup> The precautionary principle (or precautionary approach) enables decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and the stakes are high.<sup>373</sup> The main difference between prevention and precaution is that the calculation of the risk is much more difficult in the precautionary situation because of the lack of scientific knowledge.<sup>374</sup>

The precautionary principle is a core principle in impact assessments and emphasizes caution, pausing or review before leaping into new innovations that may prove disastrous for the natural environment or the human.<sup>375</sup> As the previous chapter addressed, major international law instruments are calling for precautionary approach in resource management processes.<sup>376</sup> However, a crucial difference can be observed between the use of knowledge in indigenous societies and the use of knowledge in the precautionary approach that environmental law incorporates in an attempt to predict forthcoming incidences.<sup>377</sup> As the discussion based on the story of Garral demonstrated, indigenous communities have been using knowledge to predict forthcoming events through a combination of empirical data and spiritual beliefs of the natural world, while the concept of ‘prediction’ in environmental law is a cognitive, rational process, using mainly present scientific knowledge.<sup>378</sup> In that context, environmental law often excludes traditional knowledge or beliefs of indigenous communities and prioritizes addressing scientific environmental data.<sup>379</sup> According to Dale Turner, spiritual beliefs of indigenous communities cannot be understood apart from their holders, nor can they be decontextualized.<sup>380</sup> Nor can they be ‘translated’ into the language of law or policy-making and be framed within it.<sup>381</sup> The

---

<sup>372</sup> European Commission, ‘Workshop on EU Legislation: Principles of EU Environmental Law’ (European Commission 2012) 13.

<sup>373</sup> For a definition of the precautionary approach, see ‘The precautionary principle: Definitions, applications and governance’ (*European Parliament*, 2015) <[www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_IDA\(2015\)573876](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2015)573876)> accessed 1 June 2020.

<sup>374</sup> European Commission (n 271) 30.

<sup>375</sup> ‘The precautionary principle: Definitions, applications and governance’ (*European Parliament*, September 2015) <[www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_IDA\(2015\)573876](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2015)573876)> accessed 1 June 2020.

<sup>376</sup> See, for instance, OSPAR Convention (n 330); London Convention (n 331).

<sup>377</sup> Trippett (n 364).

<sup>378</sup> *ibid.*

<sup>379</sup> *ibid.*

<sup>380</sup> Dale Antony Turner, *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy* (University of Toronto Press 2006) 110, 116.

<sup>381</sup> *ibid.*

following two sections present a brief overview of how international and Norwegian law account for traditional knowledge systems and beliefs, and how such knowledge is taken into consideration in the assessments of the impacts of Nussir project on Repparfjord.

### *5.2.3 Traditional Knowledge through the Spectrum of International Law*

Since the development of indigenous rights, the international ‘legal’ arena has been an important area for the protection of traditional knowledge systems especially as associated to biodiversity and resource management. The protection of traditional knowledge and its inclusion in resource management policies belong, together with their right to be consulted, to the procedural side of the rights of indigenous peoples.<sup>382</sup> Preliminary efforts for the reinforcement of traditional knowledge under international law were initiated by the UN Food and Agriculture Organization, which was focusing on the protection of traditional knowledge as an element of genetic resources.<sup>383</sup> Finally, the Convention on Biological Diversity (CBD) explicitly recognized in article 8(j) the central role of traditional knowledge of indigenous and local communities in protecting and enhancing biodiversity and required government instruments to ‘respect, preserve and maintain knowledge, innovations and practices’ of these communities.<sup>384</sup> It also required the approval and involvement of the holders of such knowledge and the need to share benefits equitably with them.<sup>385</sup> Similarly, Principle 22 of the Rio Declaration on Environment and Development provided that:

Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.<sup>386</sup>

The development of specific international instruments dealing with the rights of indigenous peoples further fostered the protection of traditional knowledge. The ILO 169 Convention, while it does not explicitly mention the term ‘traditional knowledge’, ensures in various

---

<sup>382</sup> Funderud Skogvang (n 10).

<sup>383</sup> Gurdial S Nijar, ‘Traditional Knowledge Systems, International Law and National Challenges: Marginalization or Emancipation?’ (2013) 24(2) *The European Journal of International Law* 1205, 1209.

<sup>384</sup> CBD (n 103) art. 8(j); see also art 17 para 2.

<sup>385</sup> *ibid*; that was further reinforced with the Nagoya Protocol of 2010; see 2014 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity UNEP/CBD/COP/DEC/X/1.

<sup>386</sup> Rio Declaration on Environment and Development (adopted June 14, 1992) 31 ILM 874 (Agenda 21) principle 22.

provisions the protection of knowledge and ways of life,<sup>387</sup> listing amongst others, traditional preventive care and healing practices,<sup>388</sup> as well as spiritual values, knowledge and technologies.<sup>389</sup> Of crucial importance for the development of traditional knowledge has also been the adoption of the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) which, even-non binding, is considered a milestone in the development of indigenous rights.<sup>390</sup> Article 31 of UNDRIP recognizes the right to maintain, control, and protect traditional knowledge systems, including all its manifestations.<sup>391</sup> In implementation of international law, States have enforced national laws that reaffirm the protection of traditional knowledge and its incorporation in resource management policies.

However, there is not a single widely accepted definition of traditional knowledge or what the term traditional knowledge comprises, and its meaning has been widely contested.<sup>392</sup> It is often argued that traditional knowledge may be treated only as a subset of scientific knowledge, appropriated or partially used,<sup>393</sup> as long as international law prioritizes to address knowledge produced by cognitive, rational processes that use mainly present scientific data.<sup>394</sup> For instance, Principle 15 of the Rio Declaration (Agenda 21) on sustainable development, mentions that ‘Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.’<sup>395</sup> While the Agenda 21 explicitly advocates for the protection and acknowledgement of traditional knowledge systems, this provision calls policy-makers for a precautionary approach exclusively grounded on scientific evaluations, excluding traditional knowledge systems or non-positivistic understandings of the natural world. By treating the use of traditional knowledge mainly as a human rights issue, this knowledge tends to be marginalized from discussions within international environmental law forums where the

---

<sup>387</sup> ILO No. 169 (n 39) preamble and article 2 para 2(c).

<sup>388</sup> *ibid* art 25 para 2.

<sup>389</sup> *ibid* art 27.

<sup>390</sup> See UNDRIP (n 40) preamble and article 31.

<sup>391</sup> *ibid* art 31.

<sup>392</sup> For instance, the word ‘traditional’, places emphasis on the transmission of knowledge along a cultural continuity, but it may ignore the ability of traditional societies to adapt to changing circumstances. Another widely used word in that sense is the term ‘indigenous’ to characterize knowledge. However, it is meant to highlight the autochthonous nature of this knowledge, but it might overlook knowledge from populations who are not officially recognized as indigenous. For further reflections on the terminological interpretation of TK see Fulvio Mazzocchi, ‘Western science and traditional Knowledge’ (2006) 7(5) *EMBO reports* 463.

<sup>393</sup> *ibid*.

<sup>394</sup> *ibid*.

<sup>395</sup> Agenda 21 (n 386) principle 15.

meaning and operation of the precautionary principle are being negotiated.<sup>396</sup> State policies often ignore traditional knowledge, or accept only specific elements of this knowledge that can be positivistically understood and insert them into a dominant framework of scientific knowledge.<sup>397</sup> In that sense, the idea of ‘coexistence’ has recently emerged as a concept which recognizes that state policies need to ‘accommodate’ traditional knowledge systems as a whole rather than ‘integrate’ selected elements of this knowledge.<sup>398</sup> Recognizing a knowledge system holistically could help to safeguard against appropriating selected parts of traditional knowledge, depriving them of their contextual meaning.<sup>399</sup> In order to provide guidance on how traditional knowledge should be taken into account in environmental law, particularly in impact assessment processes, the *Akwé: Kon* Guidelines have been established by the Convention on Biological Diversity.<sup>400</sup> The guidelines emphasize the holistic nature of this knowledge involving different cultural, empirical and spiritual characteristics.<sup>401</sup>

#### 5.2.4 *Traditional Knowledge in Resource Management Planning in Repparfjord*

Traditional knowledge systems of indigenous and local communities have been of immense value over millennia. For the Sámi people traditional knowledge has great importance for the management of the natural environment and the resources within.<sup>402</sup> In implementation of CBD within Norwegian law, an obligation to consider traditional knowledge in planning, resource and land management, particularly in Sámi areas has been formalized through Section 8 of the Nature Diversity Act.<sup>403</sup> This obligation was further elaborated in guidelines drafted by the Sámi Parliament in 2007,<sup>404</sup> based on the 2006 Finnmark Act<sup>405</sup> and the 2008 Plan and Building Act (PBA).<sup>406</sup> However, according to Einar Eypórsson and Alma Thuestad, the

---

<sup>396</sup> Trippett (n 364) viii.

<sup>397</sup> Inkeri Markkula and others, ‘Traditional and local knowledge in land use planning: insights into the use of the Akwé: Kon Guidelines in Eanodat, Finnish Sápmi’ (2019) 24(1) *Ecology and Society* 20.

<sup>398</sup> Giuliana Casimirri, ‘Problems with Integrating Traditional Ecological Knowledge into Contemporary Resource Management’ (XII World Forestry Congress, Quebec, 21-28 September 2003) <[http://www.fao.org/3/XII/0887-A3.htm#P24\\_2299](http://www.fao.org/3/XII/0887-A3.htm#P24_2299)> accessed 1 June 2020.

<sup>399</sup> Trippett (n 364) viii.

<sup>400</sup> Secretariat of the Convention on Biological Diversity, *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities* (CBD 2004).

<sup>401</sup> *ibid.*

<sup>402</sup> Riseth (n 102) 128.

<sup>403</sup> naturmangfoldloven (n 181) section 8.

<sup>404</sup> Sametinget, Sametingets planveileder. Veileder for sikring av naturgrunnet for samisk kultur, næringsutøvelse og samfunnsniv ved planlegging etter plan- og bygningsloven (plandelen).

<sup>405</sup> finnmarksloven (n 228).

<sup>406</sup> plan- og bygningsloven (n 180).

existing legal framework and guidelines contain only a few clarifications of what traditional knowledge is, how to approach it, or how to appropriately include it in impact assessment and resource management processes.<sup>407</sup>

In Norway, a precautionary approach in environmental law demands the conduct of Environmental Impact Assessments.<sup>408</sup> Regarding the implications of mineral waste disposal in Repparfjord that Nussir ASA has planned, impact assessments were submitted alongside the zoning plan to the Municipality of Kvalsund which finally adopted the plan. As mentioned previously, while most of the assessments predicted significant environmental impacts on the flora and fauna that Repparfjord hosts and addressed potential issues to the Sámi use of the marine environment, they were not considered important enough to cancel the planned process neither by municipal authorities, nor by the state instruments that reviewed the appealed case. Indeed, the Impact Assessments that focused on the social dimension of the issue of mining waste disposal in Repparfjord included various scientific as well as qualitative data (e.g. interviews) and observations. For instance, as part of the planning process for opening the Nussir mine in 2011, NIKU conducted one of the IAs regarding the ‘Coastal Sámi use of the fjord and coast’.<sup>409</sup> In an attempt to incorporate traditional knowledge in this assessment, according to the Sámi Parliament’s guidelines,<sup>410</sup> NIKU interviewed local fishermen sketching their opinions about the forthcoming placement of mine tailings in the sea.<sup>411</sup> The assessments focused on gathering empirical data such as ecological conditions, fishing spots and fish habitation, and the economic situation for the Sámi people.<sup>412</sup> Interestingly, references to moral, emotional, and spiritual beliefs or elements of knowledge that stem from the Sámi ontological world<sup>413</sup> such as these illustrated in the *Árbediehtu* Project, that section 1.6.4 of this thesis touched upon were not included in these assessments. In these terms, questions may arise as to the way that traditional knowledge has been taken into account in the impact assessments

---

<sup>407</sup> Eyþórsson and Thuestad (n 238) 132.

<sup>408</sup> According to Norway’s international commitments, the precautionary principle has been incorporated within the Norwegian Constitution in article 112; see Riksforsamlingen på Eidsvoll, ‘Kongeriket Norges Grunnlov’ (adopted 17 May 1814, most recently amended 1 June 2018) LOV-1814-05-17.

<sup>409</sup> According to the area plan of the municipal plan and zoning plans, changed land use in Sámi coastal and fjord areas should ensure that does not cause irreversible damage or destruction of local fisheries of significant importance to the population of this area.

<sup>410</sup> Sametinget, Sametingets retningslinjer for vurderingen av samiske hensyn ved endret bruk av meahcci/utmark i Finnmark (Guidelines for Assessment of Sami interests in cases of changes in land use in Finnmark) 2007; Sametinget (n 404).

<sup>411</sup> Eyþórsson and Thuestad (n 238).

<sup>412</sup> *ibid* 142.

<sup>413</sup> For such concepts, see below 5.3.2.

processes of the case study. The Sámi Parliament as well as several NGO's and environmental organizations have been insisting on arguing that Sámi knowledge in impact assessments and resource management planning in the region is still not seriously taken into consideration, while precautionary approach is absent from resource management planning in Kvalsund.<sup>414</sup>

The assumption that science is excluding or electively treats particular elements of traditional knowledge goes beyond the case study. This is a general shortcoming of state policies that tend to fail to incorporate traditional knowledge systems or accept only specific parts of them that can be positivistically explained.<sup>415</sup> Such an attitude may reduce the real value of indigenous thinking and could make state policies unilaterally surrender the viability of the natural environment in the pursuit of resource extraction to maintain industrial societies. In these terms, traditional observations of nature and conceptions between humans and the environment may be stripped of their original content and significance or even remain in obscurity.<sup>416</sup>

### 5.3 Analysis: Towards Legal Pluralism

Inspired by the story of Garral, the discussion of this chapter illustrated a brief presentation of the concept of traditional knowledge in international law, while it questioned the way that it has been evaluated in the impact assessments of the project regarding the use of Repparfjord. It further argued that international law, and not least Norwegian, is grounded on knowledge systems that are mainly based on scientific positivistic interpretations of natural phenomena and empirical data, often leaving traditional knowledge and conceptions of nature out of this dichotomy.<sup>417</sup> Indeed, as the previous chapters of this thesis demonstrated, the legal system and particularly the field of indigenous rights might be the most essential forum for advocates seeking to obstruct the ongoing developments in Kvalsund and resist the tide of ecological collapse in Repparfjord.<sup>418</sup> However, as long as law remains strictly rested upon scientific interpretations of the natural world and excludes or electively treats particular elements of traditional knowledge and belief systems, it will continue to boost the existing anthropocentric rationale of the commercial competition over access and exploitation of natural

---

<sup>414</sup> Øystein Hage, 'Sametinget klager Nussir-vedtaket til Kongen. Truer også med rettssak mot staten' (*Fiskeribladet*, March 2020) <<https://fiskeribladet.no/nyheter/?artikkel=65729>>.

<sup>415</sup> Mazzocchi (n 392) 464.

<sup>416</sup> Lertzman and Vredenburg (n 343) 240.

<sup>417</sup> James S Anaya, *Indigenous Peoples in International Law* (Oxford University Press 2004) 20.

<sup>418</sup> See Chapters 3 and 4.



resources.<sup>419</sup> The following sections illustrate a critical assessment of the way that Western law accounts for traditional systems of knowledge and beliefs and looks beyond the case of Nussir.

### 5.3.1 *Reconsidering the Fundamentals of Law*

The anthropocentric nature of legal thought dates back to the beginning of colonization and the dawning of international law.<sup>420</sup> The Peace of Westphalia (1648), which ended the Thirty Years' War is considered the dawning of modern international law and fostered the concept of 'state sovereignty'.<sup>421</sup> Sovereignty is a fundamental pillar of international law and is grounded on the conceptual premise of a superiority of humans over nature,<sup>422</sup> generating top-down regulatory patterns, where at the top level stand the sovereign states, and on the bottom stand the exploitable natural resources.<sup>423</sup> According to that, societies have been structured on the principle that only recognized Nation-States are subjects of international law, while individuals are subjects of rights, particularly rights related to the concept of private property<sup>424</sup> leaving traditional conceptions of law and resource management out of this dichotomy.<sup>425</sup> The occupation of indigenous territories constituted a legitimate means of acquisition of sovereignty, wherein indigenous territories were treated as *terra nullius*,<sup>426</sup> similarly, the waters attached to them were treated as *mare nullius*.<sup>427</sup> In doing so, settlers ignored the fact that indigenous communities have been governing their lands, waters and resources, using their

---

<sup>419</sup> Shankar Aswani and others, 'Marine resource management and conservation in the Anthropocene' (2018) 45(2) *Environmental Conservation* 192, 196.

<sup>420</sup> Andreas Osiander, 'Sovereignty, International Relations, and the Westphalian Myth' (2001) 55(2) *International Organization* 251, 251-287; Jonas Perrin, 'Legal Pluralism as a Method of Interpretation: A Methodological Approach to Decolonising Indigenous Peoples' Land Rights under International Law' (2017) XV(26) *Universitas* 23, 26.

<sup>421</sup> The concept of sovereignty was first used by the jurist Jean Bodin (1530–1596) who conceived it as a supreme, perpetual, and indivisible power, marked by the ability to make law without the consent of any other; Sovereignty can be defined as the authority to govern a State or a State that is self-governing; 'Sovereignty' (*Webster's New World Law Dictionary*, 2010) <<http://law.yourdictionary.com/sovereignty>> accessed 1 June 2020.

<sup>422</sup> Sovereignty in legal science can be defined as the authority to govern a State or a State that is self-governing; 'Sovereignty' (*Webster's New World Law Dictionary*, 2010); The concept of 'sovereignty' was first developed by the jurist Jean Bodin (1530-1596) who conceived it as a supreme, perpetual, and indivisible power, marked by the ability to make law without the consent of any other.

<sup>423</sup> Benno Teschke, 'Theorizing the Westphalian System of States: International Relations from Absolutism to Capitalism' 8(1) *European Journal of International Relations* 5, 5-48.

<sup>424</sup> Arturo Escobar, 'Latin America at a Crossroads' (2010) 24(1) *Cultural Studies* 1, 34.

<sup>425</sup> Anaya (n 417).

<sup>426</sup> Robert Hamilton, 'Indigenous Legal Traditions, Inter-societal Law and the Colonisation of Marine Spaces' in Stephen Allen and others (eds), *The Rights of Indigenous Peoples in Marine Areas* (Hart Publishing 2019) 37.

<sup>427</sup> Mulrennan and Scott (n 346) 682.

knowledge and legal traditions since time immemorial, and long before the arrival of settlers and the establishment of sovereign states.<sup>428</sup>

Indeed, in Norway colonialism was not characterized by transoceanic settlement. The concept of establishing sovereignty in offshore areas attached to the land, however, had the same basis as the European colonies in America or Oceania. In this context, across the world the notion of nature has been developed in relation to property rights, while the exploitation of nature has been highly encouraged, despite the pre-existing established relations between indigenous peoples and the natural environment.<sup>429</sup> The anthropocentric rationale of international law was further consolidated with the creation of the UN system. In compliance with international and domestic environmental regulations, states have established their environmental policies and manage their mineral and living resources accordingly. Nowadays, in the era widely known as ‘Anthropocene’, the commercial competition over access and exploitation of natural resources continues to perpetuate social and environmental injustices.<sup>430</sup> The rapid development of mineral projects such as the Nussir copper mine in Northern Norway and the Gallok iron ore mine in Sweden has been the apogee of these policies in Scandinavia, posing critical challenges to the natural environment and the Sámi communities of the region.

### 5.3.2 *Away from the Westphalian Model*

It has become crucial, nowadays, that the legal rationale should shift away from the Westphalian model of state sovereignty which characterizes international law, and become receptive to plural legal systems, capable to accommodate different legal orders, aiming for the sustainable management of the environment.<sup>431</sup> Although indigenous homelands and seas present noticeable physiographic and environmental contrasts, there is none the less a strong basis for instructive comparison among coastal indigenous communities across the world.<sup>432</sup> Indigenous communities have deep cultural attachments to the coastal and marine environment.<sup>433</sup> Rich ethnographic documentation of human uses of seascapes provides

---

<sup>428</sup> Georgia Lloyd-Smith, *An Ocean of Opportunity: Co-Governance in Marine Protected Areas in Canada* (West Coast Environmental Law 2017) 3.

<sup>429</sup> The terms ‘nature’ and ‘natural environment’ are used in the text interchangeably.

<sup>430</sup> Aswani and others (n 419).

<sup>431</sup> Gordon Christie, ‘Aboriginal Nationhood and the Inherent Right to Self-Government - Research Paper for the National Centre for First Nations Governance’ (National Centre for First Nations Governance 2007) 2 <[http://fngovernance.org/ncfng\\_research/gordon\\_christie.pdf](http://fngovernance.org/ncfng_research/gordon_christie.pdf)> accessed 1 June 2020.

<sup>432</sup> Mulrennan and Scott (n 346) 683; The authors discuss comparatively the examples of Torres Strait Islanders, Cree and Inuit in Northern Québec, highlighting the vast physiographic contrasts that indigenous landscapes are characterized from.

<sup>433</sup> *ibid* 683.

tangible examples where indigenous and local community-based laws and systems of tenure have helped over generations in the use and sustainable management of the natural environment.<sup>434</sup> However, the crystallization of state sovereignty over territorial seas<sup>435</sup> and internal waters<sup>436</sup> provided by the United Nations Convention on the Law of the Sea (UNCLOS) significantly affected the traditional relation of indigenous and coastal people with the marine environment, securing states' right to exclusively control these areas<sup>437</sup> for protective purposes<sup>438</sup> and for the exploitation of natural resources.<sup>439</sup> Based on UNCLOS, States have established their own policies and regulated the management of the marine environment and its resources accordingly.<sup>440</sup> This deeply impacts the pre-existing indigenous legal traditions<sup>441</sup> and local conceptions of nature.<sup>442</sup> As seascapes in the Anthropocene become nowadays increasingly humanized, fractional and encroached upon by industrial development, particularly in coastal areas, it is fundamental to recognize the past relation of peoples with the marine environment. Such a development could contribute to the protection of the marine environment of Repparfjord and the sustainable management of its resources. In a Sámi context though, while legal progress on Sámi land claims has recently been fostered, the recognition of Sámi rights in marine areas or traditional systems of marine tenure is still absent from Norwegian law and policy.<sup>443</sup>

In contrast to the current system of resource management in Norway which is based on the assumption that the sea is an exploitable resource and can be utilized to facilitate mineral development projects such as marine waste disposal in the case study, many indigenous and

---

<sup>434</sup> Georgia Lloyd-Smith, *An Ocean of Opportunity: Co-Governance in Marine Protected Areas in Canada* (West Coast Environmental Law 2017) 3; Michael Christie, 'Generative and "Ground-Up" Research in Aboriginal Australia' (2013) 13 *Learning Communities* 3, 3-4; Ruddle and others (n 346) 249-273; Skogvang (n 10) 140.

<sup>435</sup> Territorial sea is defined by UNCLOS as the belt of coastal waters, extending at most 12 nautical miles (22.2 km; 13.8 mi) from the baseline (usually the average low-water mark) of a coastal state; see UNCLOS (n 18) art 3.

<sup>436</sup> *ibid* art 2 para 1.

<sup>437</sup> Including the air space over it as well as the seabed and subsoil; *ibid* art 2 para 2.

<sup>438</sup> Part XII of UNCLOS is expressly dedicated to the protection and preservation of the marine environment.

<sup>439</sup> UNCLOS (n 29) art 192 and 193; the desire of coastal states to project sovereignty from lands towards the sea has been demonstrated in historical disputes long before the establishment of UNCLOS; see, for instance, the *Bering Fur Seals Arbitration*; *Bering Sea (Fur Seal) Arbitration (1893)* 1 *Moore Intl Arbitrations* 755.

<sup>440</sup> Nele Matz-Lück and Johannes Fuchs, 'Marine Living Resources' in Rothwell and others (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press 2017) 493-494; Jon L Jacobson, 'Managing Marine Living Resources in the Twenty-First Century: The New Level of Ocean Governance?' in Myron H Nordquist and John N Moore (eds), *Entry into Force of the Law of the Sea Convention* (Martinus Nijhoff Publishers 1994) 311.

<sup>441</sup> Val Napoleon defines indigenous legal orders as 'law that is embedded in social, political, economic, and spiritual institutions of indigenous peoples', distinguishing them from state-centered legal systems.

<sup>442</sup> Lloyd-Smith (n 31) 3.

<sup>443</sup> Apostolos Tsiouvalas, 'Mare Nullius or Mare Suum? Using Ethnography to Debate Rights to Marine Resources in Coastal Sámi Communities of Troms' in Nigel Banked and others (eds) *The Yearbook of Polar Law XI* (Brill Nijhoff 2020).

local coastal communities have been focusing on the essential and integrated components of the ocean, designing their legal orders in harmony with it.<sup>444</sup> In that respect, pluralism should be understood as a constitutive value of the Western legal systems.<sup>445</sup> A pluralistic resource management framework could accommodate, besides the dualistic legal orders that define the relations between states, laws that ensure mutualistic interactions between nature and human beings grounded on the idea of intergenerational responsibility and environmental sustenance. Starting from that point, it is worth mentioning that in Northern Sámi (*davvisámegiella*), the most common of all Sámi languages, there is no traditional word equivalent to the term ‘resource management’, at least in the sense in which it is used in Western legal systems. The term *resursahálddašearpmi* is the contemporary Sámi term for resource management, however, it etymologically originates from the Norwegian word *ressursforvaltning* which means ‘resource management’.<sup>446</sup> A traditional Sámi understanding for natural resource management could stem from the dichotomy that Barbara Helen Miller sketches through her research with Coastal Sámi communities in the municipality of Porsanger in Finnmark County.<sup>447</sup> She explains that traditionally, in the Sámi ontological world, two different terms refer to nature: *luondu* and *meahcci*.<sup>448</sup> The first is used to describe human nature, the nature of a landscape, or the nature of the sea.<sup>449</sup> The term *meahcci* defines the resources that nature includes, as well as the materials used for sustenance.<sup>450</sup> In that sense, the term *birgejupmi* has been also traditionally used, to be understood as livelihood, survival capacity, or the way Sámi people sustain themselves in a certain area with its respective resources, maintaining a balance between the natural environment and human society.<sup>451</sup> *Birgejupmi* ties together human-beings and natural environment, ecosystems, social and spiritual development, and identity.<sup>452</sup> Therefore, it involves economic, as well as social and spiritual aspects of resource management.<sup>453</sup> This multidimensional meaning and the spiritual value of natural resource management has been highlighted in a 2016 report by the Sámi Parliament, which calls State instruments to integrate

---

<sup>444</sup> Grazia Borrini-Feyerabend, *Indigenous and local communities and protected areas: rethinking the relationship* (World Commission on Protected Areas, 2013); see also, previously (n 81).

<sup>445</sup> Koskenniemi (n 4) 491-493; Paul Schiff Berman, ‘A Pluralist Approach to International Law’ (2007) 32 *The Yale Journal of International Law* 301, 329.

<sup>446</sup> ‘Ressursforvaltning’ (*Neahttadigisánit*) <<http://sanit.oahpa.no/nob/sme/>> accessed 1 June 2020.

<sup>447</sup> Miller (n 347).

<sup>448</sup> *ibid* 79.

<sup>449</sup> *ibid*.

<sup>450</sup> *ibid*.

<sup>451</sup> Porsanger and Guttorm (n 105) 21.

<sup>452</sup> *ibid*.

<sup>453</sup> *ibid*.

*meahcci* in resource management policies, focusing on the holistic meaning of the term.<sup>454</sup> However, as long as state law only confines the understanding of traditional knowledge into specific scientific frames of reference, then the conception of *meahcci* by state instruments can be easily contested.<sup>455</sup>

While the underlying idea of the contemporary concepts of sovereignty and property is inextricably connected to power of control over and disposal of nature, many local and indigenous communities have traditionally designed their legal systems based on a human-nature relationship guided by values such as solidarity, reciprocity, and complementarity.<sup>456</sup> The relationship of coastal and indigenous communities to the sea differs fundamentally from the relationship of nation-states to the oceans, but nevertheless, the basic concept that norms exist regulating the relation between human beings and the natural environment on which they live, is common to both conceptual understandings.<sup>457</sup> Admittedly, translating nature-centered concepts into the Western language of law is challenging since indigenous legal orders are not compatible to the current concept of rights that is traditionally accepted in Western state-centered legal systems,<sup>458</sup> nor can they be transcribed within the contemporary conception of indigenous rights.<sup>459</sup> Indigenous legal orders stem from epistemologies of indigenous communities and are usually employed at the micro level.<sup>460</sup> Research on indigenous legal traditions has been relatively recently initiated<sup>461</sup> and is preliminary in terms of ocean governance and marine resource management. Incorporating indigenous legal orders and

---

<sup>454</sup> Sametinget, *Meahcci - et grunnlag for identitet, kultur og birgejupmi* (Sametinget 2016) 8.

The Sámi Parliament's guidelines for the changed use of *meahcci* (outcrop) in Finnmark county provides recommendations on how to safeguard the interests of Sámi interests through the planning work. The guidelines (section 5) impose public authorities and the Finnmark Estate to assess what effects a measure or plans could have on Sámi culture, reindeer husbandry, land use, industries and social life. It is further clarified that respect for and consideration of the Sámi traditional knowledge related to the use of *meahcci* should be a central part of the basis for decisions taken.

<sup>455</sup> Stine Rybråten, "This is not a wilderness. This is where we live." Enacting nature in Unjárga-Nesseby, Northern Norway (Ph.D. degree, Faculty of Social Sciences, University of Oslo).

<sup>456</sup> Perrin (n 420) 37.

<sup>457</sup> *ibid* 47.

<sup>458</sup> Natalia Loukacheva, 'Indigenous Inuit Law, "Western" Law and Northern Issues (2012) 3(2) Arctic Review on Law and Politics 200, 207-208.

<sup>459</sup> John Borrows and Leonard I Rotman, 'The Sui Generis Status of Aboriginal Rights: Does It Make a Difference?' (1997) 36(1) Alberta Law Review 9, 37.

<sup>460</sup> Boaventura de Sousa Santos, 'The Resilience of Abyssal Exclusions in Our Societies: Toward a Post-Abyssal Law' (2017) 22(1) Tilburg Law Review 237, 258.

<sup>461</sup> See, for instance, Mark A Michaels, 'Indigenous ethics and alien laws: native traditions and the United States legal system' (1997) 66 Fordham L. Rev. 1565, 1565-1584; James W Zion and Robert Yazzie, 'Indigenous law in North America in the wake of conquest' (1997) 20(1) BC Int'l & Comp. L. Rev. 55, 55-84; Eduard T Durie, 'Will the Settlers Settle' (1996) 8(4) Otago L. Rev. 449, 449-466; Kim Akerman, 'The renaissance of Aboriginal Law in the Kimberleys' in Ronald M Berndt and Catherine H Berndt (eds), *Aborigines of the West* (University of W.A. Press 1980).

conceptions of the marine environment into Western law and policy on an equal and respectful basis is a challenging task that demands long commitment, research, and action. Undoubtedly, in Norway significant efforts have been devoted to the study of unwritten customary Sámi legal traditions.<sup>462</sup> Case law such as the Selbu and Svartskog cases have also acknowledged to a certain degree the Sámi relationship with the natural environment and the pre-existing Sámi legal orders that regulate it.<sup>463</sup> However, Sámi customary law pertained to the use of the marine space is still not recognized by Norwegian law and policy.

#### 5.4 Conclusory Remarks

The Coastal Sámi story that this chapter touched upon illustrated a female *rávga* that knew an imminent danger and tried to protect the rest of the *rávga* from a hunter. Inspired by this fact, this chapter endeavored to unfold the concept of traditional knowledge in international and Norwegian law and discussed how traditional knowledge systems and beliefs are conceived by state legal frameworks. In the case of Nussir, traditional knowledge seems to have been discussed during both the decision-making processes and the preliminary impact assessments. However, as this chapter demonstrated, impact assessments often exclude traditional knowledge or partially incorporate only its elements that can be scientifically framed. That may impart certain restrictions on the application of this knowledge, while the self-legitimizing nature of the ‘scientific way of thinking’ may devalue traditional knowledge systems. From decision-making processes is often missing crucial information about how to combine scientific knowledge with traditional knowledge systems and beliefs about the natural world in order to anticipate the effects of human activity.<sup>464</sup> As long as law remains strongly grounded on the concept of state sovereignty, the future is envisaged to perpetuate the status quo of the same fragmented system which predominantly looks at nature in terms of its consumptive and exploitable value. A traditional Sámi understanding of nature and resource management such as this incorporated in the notion of *birgejupmi* could radically challenge existing State policies and contribute to what is nowadays called sustainable development.<sup>465</sup>

---

<sup>462</sup> See, for instance, Øyvind Ravna, ‘Sámi Legal Culture – and its Place in Norwegian Law’ in Jørn Øyrehaugen Sunde and Knut E Skodvin (eds), *Rendezvous of European Legal Cultures* (Fagbokforlaget 2010) 149-165; Susann Funderud Skogvang, *Samerett* (Oslo Universitetsforlaget 2009).

<sup>463</sup> For a comprehensive discussion on the reflection of Sámi customary law throughout these cases, see Mattias Åhren, *Indigenous Peoples' Culture, Customs, and Traditions and Customary Law - The Saami People's Perspective* (2004) 21 *Arizona Journal of International & Comparative Law* 63.

<sup>464</sup> Rybråten (n 455).

<sup>465</sup> Jelena Porsanger and Guttorm (n 105) 21.

An alternative approach to resource management planning is imperative, aiming to move away from the legal focus of the traditional paradigm of sovereign states, and treat nature and human beings on an equal footing. In order to ensure a higher degree of environmental protection in Repparfjord, a general shift in the legal rationale of state instruments needs to be adopted. The coexistence of both local and indigenous social and legal instruments with wider political and economic networks deriving from state law is necessary, contributing to the formation of legally pluralistic societies.<sup>466</sup> Therefore, indigenous legal orders should be acknowledged in contemporary societies,<sup>467</sup> contributing to a more comprehensive conception of nature. Only a plural legal order could truly situate indigenous ways of thinking and conceptions of the natural environment within state law and policy, mitigating decision-making processes that can be disastrous for nature. In the meantime, state practices might continue to prioritize economic development over environmental protection in Sámi areas, posing further dangers to the natural environment and the communities within.

---

<sup>466</sup> Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'The Dynamics of Change and Continuity in Plural Legal Orders' (2006) 38(53-54) *The Journal of Legal Pluralism and Unofficial Law* 1, 2.

<sup>467</sup> Christie (n 431) 2.





## 6 Conclusions

Through the paradigm of three Coastal Sámi stories, this thesis has sought to conceptualize different legal and political discourses around the issue of mining waste disposal in Repparfjord. The project articulated a multidisciplinary research approach, merging legal doctrinal analysis along with indigenous storytelling and literature analysis. This final chapter summarizes the main observations that were distilled, and makes suggestions based on what has been identified during this project. The following two sections conclude the main findings and analytical insights gained during this study and subsequently prescribe suggestions for future research and policy-making.

### 6.1 Findings from the Study

The results of this project contributed to the main research goal, to use the paradigm of Coastal Sámi stories in order to address the most prominent legal discourses around the issue of mineral waste disposal in Repparfjord. The project, through the three selected stories, developed a human rights-based, an environmental law and a pluralistic perspective of law and resource management in relation to the case study. To summarize, the outcomes of the project point to the following main aspects:

Chapter 3 of this thesis starting with the Sámi story ‘*Rávga in the Cowshed*’ articulated the indigenous rights framework in Norway related to mining and mineral waste disposal. It also determined the role of the Sámi Parliament as the legitimate voice of the Sámi people and discussed its efforts to mitigate the potential impacts of the Nussir project. The chapter acknowledged that undoubtedly for the last few decades indigenous rights have been developing in Norway and providing the Sámi with different cultural, procedural and land rights. However, it highlighted that there are still several shortcomings in Norwegian mine law concerning the rights of the Sámi people as an indigenous group and national minority. It also observed that developments in Norwegian law regarding indigenous rights in marine areas have been minimal. Another important conclusion that was drawn through this chapter is that, while Sámi participation in resource management systems is strongly encouraged and affirmed in Norwegian law in the form of consultation, formalizing indigenous participation can be at times insufficient to challenge existing power structures that inhibit indigenous stakeholders from defending their interests in natural resources against those of more powerful state or private actors. The chapter’s analysis in relation to the story ‘*Rávga in the Cowshed*’ argued that the impact of Nussir ASA’s activities on the Sámi use of Repparfjord may turn out to be irreparable.

Without implementing the principle of free, prior, and informed consent within national jurisdiction, the participation of the Sámi in decision-making processes will remain limited to their right to be consulted. In contrast, state authorities may continue to unilaterally make the final decisions for projects within Sámi territories.

Chapter 4 of this project, through the story ‘*Rávga in the Fishing Boat*’, discussed the environmental law framework pertained to the issue of mineral waste disposal in Repparfjord. It concluded that the existing regulatory and administrative regime established to address environmental concerns relevant to resource development projects does not seem to be adequate to respond to challenges posed by the increased interest in mineral resources. The chapter questioned the way that municipalities in Norway use their discretion to effectively safeguard environmental interests in major mining cases, particularly in relation to marine waste disposals, as they are more difficult to be monitored and assessed. The case of Nussir demonstrates that, despite the important environmental consequences of mining and the broad international law framework, the domestic legislation in Norway provides a high degree of flexibility and freedom to local authorities to take decisions regarding mining waste disposition. On the basis of this chapter, it was concluded that the existing decision-making framework favors to some extent political freedom of decision-makers and prioritizes industrial development over environmental concerns. In the case of Nussir, the state seems to be reluctant to consider the needs of environmental protection of Repparfjord as an important issue and has instead opted to focus mainly on the project’s role in facilitating local job creation and immigration to the municipality. On the other hand, there has been a near-unanimous consensus in the scientific community claiming that the impacts of human beings on the natural environment have been accelerating and are having a major and continuing impact on the seas. Through the analysis based on the Sámi story, the chapter argued that nature also has a voice and should be taken more into account in resource management policies. It concluded that recognizing the concept of ‘rights of nature’ in law and courts is becoming imperative, although still absent from Norwegian law. Such a development could provide a higher degree of environmental protection to the already affected marine environment of Repparfjord.

Chapter 5, through the story of Garral, illustrated a critical approach to the way that the existing legal framework is accounting for traditional knowledge systems and beliefs, and advocated for a pluralistic approach to law and resource management. It pointed out that traditional knowledge is addressed within Norwegian law and has been taken into consideration during the preliminary impact assessments of resource management projects, as the ongoing processes in Kvalsund have demonstrated. However, the chapter argued, that as long as

contemporary legal frameworks remain strictly based on scientific interpretations of the natural world, they may exclude or electively treat particular elements of traditional knowledge. The chapter raised questions beyond the case of Repparfjord and delved into the fundamentals of the contemporary Western legal frameworks, arguing that international and not least Norwegian law needs to be reorganized to better include and safeguard plural conceptions of nature. The chapter advocated for a legally pluralistic society wherein traditional knowledge and belief systems should not be excluded or only partially be taken into account, but they should coexist in harmony with Western legal frameworks. A pluralistic understanding of law and resource management could contribute to the legal protection of Repparfjord and the reinforcement of the position of the advocates against mining in the region. It could also ensure the right for the Sámi people to participate in decision-making processes effectively, pursuing their own status and interests in line with their inherent right to self-determination.

## 6.2 Final Remarks

There is a growing global need for mineral resources, and much of the remaining unexploited ores, in sufficient concentration to be attractive for modern commercial exploitation, lie under indigenous lands. While mining can empower remote depopulated communities, it can also deprive indigenous peoples of their territories and traditional activities and pose multiple environmental risks. This project has shed some light on the most prominent legal discourses regarding the northernmost mine on mainland Europe, focusing on the implications of the project on the marine environment of Repparfjord and the Sámi activities on it. As long as a big part of the local population remain in favor of the mine, and the Sámi Parliament's appeal was rejected in November 2019, it is likely that extractions will begin soon. Undoubtedly, Sámi rights and environmental law have been two ways of resisting against the ongoing developments in Repparfjord. However, the future of the project seems not to depend no more on legal debates but on political decisions, since state authorities are convinced that the positive impacts of the project exceed the negative ones. Indeed, the final word for the Nussir project might not have been yet said, and the contested dialogues over the project will continue for the coming year.

By using the paradigm of Sámi stories, this project has called for a pluralistic approach to law and resource management in Repparfjord. Through such an approach, traditional knowledge and beliefs could be holistically acknowledged and coexist with state law. This thesis placed emphasis on the value of the sea as an economic, spiritual, and cultural entity for indigenous and coastal communities, often underestimated by Western legal frameworks

compared to land-based activities. While the project touched upon the conceptual framework of legal pluralism and its value for the sustainable use of the marine environment, its results are rather theoretical. There is a need for further studies and research with coastal communities across the Norwegian coast, in an attempt to sketch concrete conceptual understandings of law and resource management amongst Sámi and local stakeholders. As the discussions of this thesis demonstrated, while significant efforts have been devoted to the study and recognition of unwritten customary Sámi legal traditions, the existing legal and policy framework has not yet accommodated Sámi marine tenure or legal orders pertained to the use of the marine environment. This is a field of research that needs to be further explored. Scholars, as well as legislators and policy-makers need to delve into such conceptions and operationalize them. Incorporating traditional knowledge and indigenous legal orders within Western law and policy on an equal and respectful basis is an arduous task that demands further commitment, research, and action. Yet, it could be a valuable tool for reorienting the rationale of contemporary societies towards nature-centered governance systems. It could also ensure a higher degree of protection to vulnerable environmental entities within indigenous lands such as the marine environment of Repparfjord that this study touched upon. Until then, State policies might continue to unilaterally surrender the viability of the marine environment in the pursuit of resource extraction, while the '*rávga* of Repparfjord' might raise their own concerns in response to human activities in the region.

## List of Figures



*Figure 1 The Nussir Project: Nussir ASA*

## THE CHRONICLE OF NUSSIR MINE

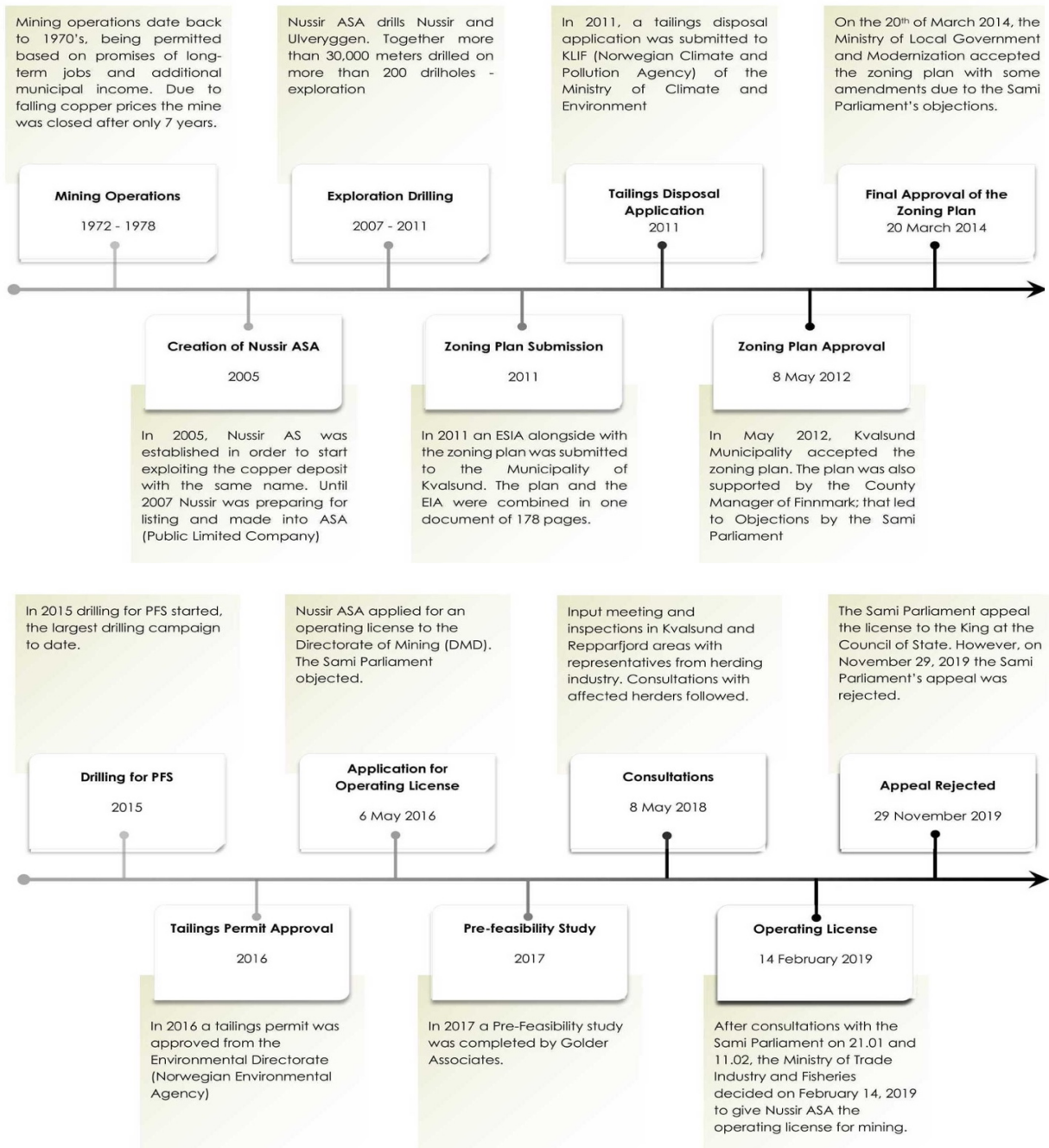
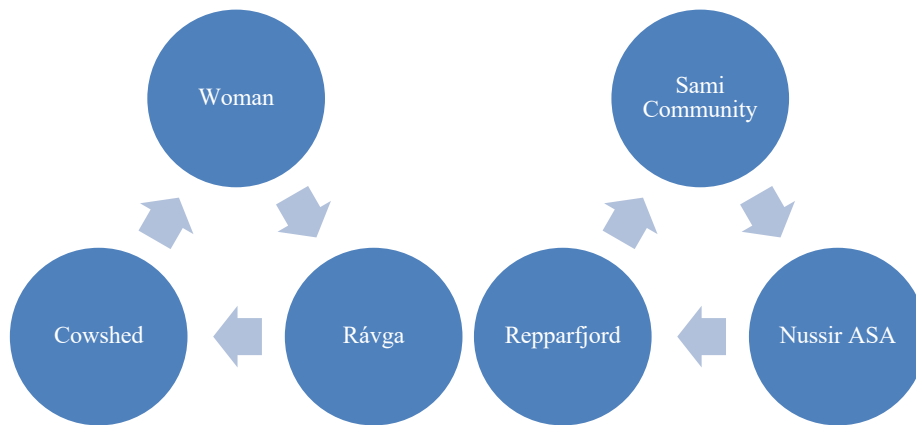


Figure 2 The Chronicle of Nussir Mine: Apostolos Tsiouvalas



*Figure 3 Analogic Reasoning for Interpretation of the Story*





## List of References

### Table of Treaties

#### United Nations

Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD).

Convention on Environmental Impact Assessment in a Transboundary Context (adopted 24 April 1992, entered into force 10 September 1997) C104 (Espoo Convention).

Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57 (Basel Convention).

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (adopted 13 November 1972, entered into force 30 August 1974) (London Convention).

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

#### International Labour Organization

Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 Jun 1989, entered into force 5 September 1991) 1650 UNTS 383 (ILO No. 169).

#### Others

Convention for the Protection of the Marine Environment of the North-East Atlantic (adopted 22 September 1992, entered into force 25 March 1998) (OSPAR Convention).

### Table of Cases

*Ángela Poma Poma v Peru*, Communication No. 1457/2006, CCPR/C/95/D/1457/2006.

*Apirana Mahuika et al v New Zealand*, Communication No. 547/1993, CCPR/C/70/D/547/1993.

*Bering Sea (Fur Seal) Arbitration (1893)* 1 Moore Intl Arbitrations 755.

*Ilmari Lansman et al v Finland*, Communication No. 511/1992, CCPR/C/52/D/511/1992.

*Ivan Kitok v Sweden*, Communication No. 197/1985, CCPR/C/33/D/197/1985.

*Jouni E. Lansman et al v Finland*, Communication No. 1023/2001, CCPR/C/83/D/1023/2001.

*Lubicon Lake Band v Canada* Communication No. 167/1984, CCPR/C/38/D/167/1984.

*Sanila-Aikio v Finland*, Communication No. 2668/2015, CCPR/C/124/D/2668/2015.

.

### Table of Other Documents

#### United Nations

1996 Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters.

2014 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity UNEP/CBD/COP/DEC/X/1.

Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007) UNGA Res 61/295 (UNDRIP).

Rio Declaration on Environment and Development (adopted June 14, 1992) 31 ILM 874 (Agenda 21).

Secretariat of the Convention on Biological Diversity, *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take*

*Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities* (CBD 2004).

UNCHR ‘Report of the Special Rapporteur on the rights of indigenous peoples’ (2016) UN Doc A/HRC/33/42/Add.3.

## **National Documents**

### *Laws*

Forskrift om begrensning av forurensning (forurensningsforskriften), FOR-2004-06-01-931.

Forskrift om gjenvinning og behandling av avfall (avfallsforskriften), FOR-2004-06-01-930.

Forskrift om rammer for vannforvaltningen, FOR2006-12-15-1446.

Forskrift om konsekvensutredninger, FOR-2009- 06-26-855.

Kommunal- og moderniseringsdepartementet, ‘Avtale om prosedyrer for konsultasjoner mellom statlige myndigheter og Sametinget’ (2005).

LOV 1981-03-13 nr 06: Lov om vern mot forurensninger og om avfall (Forurensningsloven).

LOV 1987-06-12 nr 56: Lov om Sametinget og andre samiske rettsforhold (sameloven).

LOV 2005-06-17 nr 85: Lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark (Finnmarksloven).

LOV 2008-06-27 nr 71: Lov om planlegging og byggesaksbehandling (plan- og bygningsloven).

LOV 2009-06-21 nr 100: Lov om forvaltning av naturens mangfold (naturmangfoldloven).

LOV 2009-06-19 nr 101: Lov om erverv og utvinning av mineralressurser (mineralloven).

LOV 2018-06-22 nr 83: Lov om behandlingsmåten i forvaltningssaker (forvaltningsloven).

Miljøverndepartementet, *Avtale mellom Sametinget og Miljøverndepartementet om retningslinjer for verneplan arbeid etter naturvernloven i samiska områder* (2007).

Riksforsamlingen på Eidsvoll, ‘Kongeriket Norges Grunnlov’ (adopted 17 May 1814, most recently amended 1 June 2018) LOV-1814-05-17.

### *Sámi Parliament of Norway*

Muotka S K, ‘Citigroup’s relationship with Nussir ASA and Sámi indigenous rights in Norway’ (Sametinget 2016).

Sametinget, Sametingets planveileder. Veileder for sikring av naturgrunnlaget for samisk kultur, næringsutøvelse og samfunnsliv ved planlegging etter plan- og bygningsloven (plandelen) (The Sami Parliament’s Planning Guidelines) 2010.

Sametinget, Sametingets retningslinjer for vurderingen av samiske hensyn ved endret bruk av meahcci/utmark i Finnmark (Guidelines for Assessment of Sami interests in cases of changes in land use in Finnmark) 2007.

Sametinget, ‘Klage på vedtak om driftskonsesjon til gruvedrift i Nussir og Gumppejuni’ (Sametinget 2019).

Sametinget, ‘Press release 7 March 2019’ <[www.sametinget.no/Nyhetsarkiv/PRM-Sametingets-klagepaa-Nussir-vedtaket-sendt-til-regjeringen](http://www.sametinget.no/Nyhetsarkiv/PRM-Sametingets-klagepaa-Nussir-vedtaket-sendt-til-regjeringen)>.

## **Others**

Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

European Commission, ‘Workshop on EU Legislation: Principles of EU Environmental Law’ (European Commission 2012).

Kommunal- og moderniseringsdepartementet, decision ‘Kvalsund kommune – innsigelse til reguleringsplan for Nussir og Ulveryggen’ 20th of March 2014.

Kommunal- og moderniseringsdepartementet, *Reguleringsplan for Nussir og Ulveryggen er godkjent*. (Ministry of Local Government and Modernisation 2014).

Kvalsund Municipal Council, ‘Meeting 3/2012, 8 May 2012, issue 34/12’.

Kystfiskeutvalgets utredning, 'Retten til fiske i havet utenfor Finnmark' (18 Februar 2008) NOU 2008:5.

Nærings- og fiskeridepartementet, *Gir Nussir ASA driftskonsesjon* (Regjeringen 2019) <[www.regjeringen.no/no/aktuelt/nussir/id2629241/](http://www.regjeringen.no/no/aktuelt/nussir/id2629241/)>.

Nærings- og fiskeridepartementet, *Vedtak om driftskonsesjon for Nussir og Ulveryggen kobberforekomst. Tiltakshaver: Nussir ASA* (February 2014).

Statsministerens kontor, *Offisielt frå statsrådet 29. november 2019* (Regjeringen 2019).

## Secondary Sources

### Articles and Research Papers

Åhren M, Indigenous Peoples' Culture, Customs, and Traditions and Customary Law - The Saami People's Perspective (2004) 21 *Arizona Journal of International & Comparative Law* 63.

Alcorn J A, 'Indigenous Peoples and Conservation' (1992) 7(2) *Conservation Biology* 424.

Allard C, 'The Rationale for the Duty to Consult Indigenous Peoples: Comparative Reflections from Nordic and Canadian Legal Contexts' (2018) 9 *Arctic Review on Law and Politics* 25.

Angell E and others, 'Industrial development in the North – Sámi interests squeezed between globalization and tradition' (2020) *Acta Borealia* 1.

Aswani S and others, 'Marine resource management and conservation in the Anthropocene' (2018) 45(2) *Environmental Conservation* 192.

Borrows J and Rotman L I, 'The Sui Generis Status of Aboriginal Rights: Does It Make a Difference?' (1997) 36(1) *Alberta Law Review* 9.

Broderstad E G and Eypórsson E, 'Resilient communities? Collapse and recovery of a social-ecological system in Arctic Norway' (2014) 19(3) *Ecology and Society* <[www.ecologyandsociety.org/vol19/iss3/art1/](http://www.ecologyandsociety.org/vol19/iss3/art1/)>.

Budd P, 'Symptomatic reading vs Surface Reading' (2015) 2-3 *Methods of Literary and Cultural Studies*.

Christensen G N and others, 'Konsekvenser for det marine miljøet i Repparfjorden ved etablering av sjø- eller landdeponi for gruveavgangen fra Nussir og Ulveryggen i Kvalsund kommune, Finnmark' (AkvaplanNiva 2011).

Christie G, 'Aboriginal Nationhood and the Inherent Right to Self-Government - Research Paper for the National Centre for First Nations Governance' (National Centre for First Nations Governance 2007).

Christie M, 'Generative and "Ground-Up" Research in Aboriginal Australia' (2013) 13 *Learning Communities* 3.

Colwell R and others, 'Legal Personality of Natural Features: Recent International Developments and Applicability in Canada' (2017) *The Environmental Law Centre Society* 1.

Datta R, 'Traditional storytelling: an effective Indigenous research methodology and its implications for environmental research' (2018) 14(1) *Alternative* 35.

De Lucia V, 'Ocean Commons, Law of the Sea and Rights for the Sea (2019) 12(1) *Canadian Journal of Law & Jurisprudence* 45.

De Sousa Santos B, 'The Resilience of Abyssal Exclusions in Our Societies: Toward a Post-Abyssal Law' (2017) 22(1) *Tilburg Law Review* 237, 258.

Dennis M K and Minor M, 'Healing Through Storytelling: Indigenising Social Work with Stories' (2019) 49(6) *The British Journal of Social Work* 1472.

Durie E T, 'Will the Settlers Settle'(1996) 8(4) *Otago L. Rev.* 449.

Escobar A, 'Latin America at a Crossroads' (2010) 24(1) *Cultural Studies* 1.

Espiritu A A, 'Kautokeino and Kvalsund Compared: Rejection and Acceptance of Mining in Communities in Northern Norway' (2015) 39 *The Northern Review* 53.

- Evenset A and others, 'Fate and Impact of Mine Tailings on marine Arctic ecosystems – FIMITA' (Fram senteret 2018).
- Evjen B, 'Measuring Heads: Physical Anthropological Research in North Norway' (1997) 14(2) *Acta Borealia* 3.
- Eyþórsson E, 'Konsekvenser for sjøsamisk bruk av Repparfjorden og sjønære arealer' (NIKU Oppdragsrapport 70/2011).
- Eyþórsson E and Thuestad A E, 'Incorporating Traditional Knowledge in Environmental Impact Assessment - How Can It Be Done?' (2015) 6(2) *Arctic Review on Law and Politics* 132.
- Fauchald O K, 'Regulating Environmental Impacts of Mining in Norway' (2014) 1 *Nordisk miljörättslig tidskrift* 53.
- Friedland H and Napoleon V, 'Gathering the threads: Developing a methodology for researching and rebuilding indigenous legal traditions' (2015-2016) 1(1) *Lakehead Law Journal* 17.
- Gordon G J, 'Environmental Personhood' (2018) 43(1) *Colum. J. Envtl. L.* 49.
- Guillemain M and others, 'We're checking them out: Indigenous and non-Indigenous research participants' accounts of deciding to be involved in research' (2016) 15(8) *International Journal for Equity in Health* 1.
- Hansen L I, 'Sámi Fisheries in the Pre-modern Era: Household Sustenance and Market Relations' (2006) 23(1) *Acta Borealia* 56.
- Humphery K, 'Dirty questions: Indigenous health and 'Western research' (2001) 25(3) *Australian and New Zealand Journal of Public Health* 197.
- Iseke J, 'Indigenous Storytelling as Research' (2013) 6(4) *International Review of Qualitative Research* 559, 568.
- Jentoft S, 'Governing tenure in Norwegian and Sámi small-scale fisheries: from common pool to common property?' (2013) 1 *Land Tenure Journal* 91.
- Johnsen-Ivsett K, 'Land-use conflicts between reindeer husbandry and mineral extraction in Finnmark, Norway: contested rationalities and the politics of belonging' (2016) 39(1) *Polar Geography* 58.
- Kaikkonen K I, 'From, into, and back: translations of the Sami words noaidi and noaidevuohta in context' (2019) 49(4) *Religion* 539.
- Koivurova T and others, 'Legal Protection of Sami Traditional Livelihoods from the Adverse Impacts of Mining: A Comparison of the Level of Protection Enjoyed by Sami in Their Four Home States' (2015) 6(1) *Arctic Review on Law and Politics* 11.
- Kuokkanen R, 'Towards an "indigenous paradigm" from a Sami perspective' XX(2) *The Canadian Journal of Native Studies* 411.
- Kuyken K, 'Knowledge communities: towards a re-thinking of intergenerational knowledge transfer' (2012) 42(3) *VINE* 365.
- Kvernmo S and Heyerdahl S, 'Ethnic Identity and Acculturation Attitudes Among Indigenous Norwegian Sami and Ethnocultural Kven Adolescents' (2004) 19(5) *Journal of Adolescent Research* 512.
- Langbroek P and others, 'Methodology of Legal Research: Challenges and Opportunities' (2017) 13(3) *Utrecht Law Review* 411.
- Larsen A, 'Om sjøsamene' (1947) 70(2) *Tromsø museums årshæfter* 1.
- Lätsch A, 'Coastal Sami revitalization and rights claims in Finnmark (North Norway) - two aspects of one issue? Preliminary observations from the field' (2012) 18 *Fávllis. Innblikk i et forskningsprosjekt om lokal fjordkunnskap* 60.
- Leknes S, 'The more the merrier? Evidence on quality of life and population size using historical mines' (2014) 1 *NTNU Working Paper Series* 1.
- Lertzman D A and Vredenburg H, 'Indigenous Peoples, Resource Extraction and Sustainable Development: An Ethical Approach' (2005) 56(1) *Journal of Business Ethics* 239.
- Loukacheva N, 'Indigenous Inuit Law, "Western" Law and Northern Issues (2012) 3(2) *Arctic Review on Law and Politics* 200.

Markkula I and others, 'Traditional and local knowledge in land use planning: insights into the use of the Akwé: Kon Guidelines in Eanodat, Finnish Sápmi' (2019) 24(1) *Ecology and Society* 20.

Mazzocchi F, 'Western science and traditional Knowledge' (2006) 7(5) *EMBO Reports* 463.

Melbøe L and others, 'Ethical and methodological issues in research with Sami experiencing disability' (2016) 75 *International Journal of Circumpolar Health* 1.

Michaels M A, 'Indigenous ethics and alien laws: native traditions and the United States legal system' (1997) 66 *Fordham L. Rev.* 1565

Miller M, 'Environmental Personhood and Standing for Nature' (2019) 17(2) *The University of New Hampshire Law Review* 355.

Minde H, 'Assimilation of the Sami - Implementation and Consequences' (2005) 3(1) *gáldu čála – journal of indigenous peoples rights* 1.

Mulrennan M E and Scott C H, 'Mare Nullius: Indigenous Rights in Saltwater Environments' (2000) 31(1) *Development and Change* 681.

Nakata M N and others, 'Decolonial goals and pedagogies for Indigenous studies' (2012) 1(1) *Decolonization: Indigeneity, Education & Society* 120.

Napoleon V and Friedland H, 'An inside job: engaging with indigenous legal traditions through stories' (2016) 61(4) *McGill LJ* 725.

Nijar G S, 'Traditional Knowledge Systems, International Law and National Challenges: Marginalization or Emancipation?' (2013) 24(2) *The European Journal of International Law* 1205.

Nursey-Bray M and Jakobsson C, 'Which way? The contribution of Indigenous marine governance' 6(1) *Australian Journal of Maritime and Ocean Affairs* 27.

Nygaard V, 'Do indigenous interests have a say in planning of new mining projects? Experiences from Finnmark, Norway' (2016) 3 *The Extractive Industries and Society* 17.

Ober R, 'Kapati Time: Storytelling as a Data Collection Method in Indigenous Research' (2017) 22LCJ: Special Issue: Decolonising Research Practices 8.

Oeser E, 'Legal Philosophy as Methodology' (2003) 37 *TDLA* 29.

Olsen T A, 'Privilege, Decentring and the Challenge of Being (Non-) Indigenous in the Study of Indigenous Issues' (2017) 47(2) *The Australian Journal of Indigenous Education* 206.

Osiander A, 'Sovereignty, International Relations, and the Westphalian Myth' (2001) 55(2) *International Organization* 251.

Pedersen S, 'The Coastal Sámi of Norway and their rights to traditional marine livelihood' (2012) 3(1) *Arctic Review on Law and Politics* 51.

Perrin J, 'Legal Pluralism as a Method of Interpretation: A Methodological Approach to Decolonising Indigenous Peoples' Land Rights under International Law' (2017) XV(26) *Universitas* 23.

Porsanger J, 'An Essay about Indigenous Methodology' (2004) 15 *Nordlit* 105.

Ravna Ø, 'A Sámi Community Wins Case against the Swedish State in the Supreme Court' (2020) 11 *Arctic Review on Law and Politics* 19.

Ravna Ø, 'The First Investigation Report of the Norwegian Finnmark Commission' (2013) *International Journal on Minority and Group Rights* 443.

Raymond-Yakoubian J and Daniel R, 'An Indigenous approach to ocean planning and policy in the Bering Strait region of Alaska' (2018) 97 *Marine Policy* 101.

Ruddle K and others, 'Marine Resources Management in the Context of Customary Tenure' (1992) 7(4) *Marine Resource Economics* 249.

Schiff Berman P, 'A Pluralist Approach to International Law' (2007) 32 *The Yale Journal of International Law* 301.

Skogvang S F, 'Extractive Industries in the North – What about Environmental Law and Indigenous Peoples' Rights?' (2014) 1 *Nordisk miljörettslig tidskrift* 13.

Skogvang S F, 'Legal Questions Regarding Mineral Exploration and Exploitation in Indigenous Areas' (2013) 22 *Mich. St. Int'l L. Rev.* 321.

- Spitzer J A and Selle P, 'Claims-Based Co-management in Norway's Arctic? Examining Sami Land Governance as a Case of Treaty Federalism' (2019) 52 *Canadian Journal of Political Science* 723.
- Steward-Harawera M, 'Challenging Knowledge Capitalism: Indigenous Research in the 21st Century' (2013) 9(1) *Socialist Studies* 39.
- Teschke B, 'Theorizing the Westphalian System of States: International Relations from Absolutism to Capitalism' 8(1) *European Journal of International Relations* 5.
- Toki V, 'Indigenous Peoples' Fisheries Rights – A comparative perspective between Maori and the Sami' (2010) 1(1) *Arctic Review on Law and Politics* 54.
- Vistnes I and Nellemann C, 'Avoidance of Cabins, Roads, and Power Lines by Reindeer during Calving' (2001) 65(4) *Journal of Wildlife Management* 915.
- Von Benda-Beckmann F and von Benda-Beckmann K, 'The Dynamics of Change and Continuity in Plural Legal Orders' (2006) 38(53-54) *The Journal of Legal Pluralism and Unofficial Law* 1.
- Zion J W and Yazzie R, 'Indigenous law in North America in the wake of conquest' (1997) 20(1) *BC Int'l & Comp. L. Rev.* 55.

### **Books and Reports**

- Anaya J S, *Indigenous Peoples in International Law* (Oxford University Press 2004).
- Borrini-Feyerabend G, *Indigenous and local communities and protected areas: rethinking the relationship* (World Commission on Protected Areas, 2013).
- Cardiff S and others, *Troubled Waters: how mine waste dumping is poisoning our oceans, rivers, and lakes* (Earthworks and Mining Watch Canada 2012).
- Cocq C, *Revoicing Sámi narratives. North Sámi storytelling at the turn of the 20th century* (Umeå University 2008).
- Conrad J A, *Contested Terrain: Land, Language, and Lore in Contemporary Sami Politics* (UC Berkeley 1999).
- Damm C and Forsberg L, 'Contacts in Northern Fennoscandia' in Cummings V and others (eds), *The Oxford Handbook of the Archaeology and Anthropology of Hunter-Gatherers* (Oxford University Press 2014).
- Falch T, *Natural Resource Development, Business and the Rights of Indigenous Peoples Report* (Norwegian National Human Rights Institution and Norway's National Contact Point for Responsible Business Conduct 2019).
- Feiring B and Programme to Promote ILO Convention No. 169, *Indigenous & Tribal People's Rights in Practice - A Guide to ILO Convention No. 169* (International Labour Standards Department 2009).
- Gilbert J, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* (Brill Nijhoff 2016).
- Hoddinott R F, *The Thracians* (Thames & Hudson 1981).
- Hornblower S and Spawforth A, *The Oxford Classical Dictionary* (Oxford University Press 1996).
- Ingold T, *The Perception of the Environment: Essays on Livelihood, Dwelling and Skill* (Routledge New York 2000).
- Jelena Porsanger and Gunvor Guttorm (eds), *Working with Traditional Knowledge : Communities, Institutions, Information Systems, Law and Ethics. Writings from the Arbediehtu Project on Sami Traditional Knowledge* (Nordisk samisk institutt 2011).
- Koskenniemi M, *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law* (UN Study Group of the International Law Commission 2006).
- Kovach M, *Indigenous methodologies: Characteristics, conversations, and contexts* (University of Toronto Press 2009).
- Little Bear L and the Royal Commission on Aboriginal Peoples, *The Relationship of Aboriginal People to the Land and the Aboriginal Perspective on Aboriginal Title Vol.1* (Supply and Services Canada, 1992).

Lloyd-Smith G, *An Ocean of Opportunity: Co-Governance in Marine Protected Areas in Canada* (West Coast Environmental Law 2017).

Løkeland M, *Submarine Tailings Disposal violates the Water Framework Directive* (Naturvernforbundet 2015).

Norwegian Ministry of Environment, *Environmental Impact Assessment* (Gazette 2003).

Pollan B, *Samiske beretninger: I utvalg fra J.K. Qvigstads Samiske eventyr og sagn I-IV, 1927-1929* (H. Aschehoug & Co 1997).

Qvigstad J, *Lappiske eventyr og sagn: Lappiske eventyr og sagn fra Varanger* (Aschehoug 1927).

Qvigstad J K, *Lappiske eventyr og sagn 2 : Lappiske eventyr og sagn fra Troms og Finnmark* (Aschehoug 1928).

Ruddle K and others, 'Marine Resources Management in the Context of Customary Tenure' (1992) 7(4) *Marine Resource Economics* 249.

Rushfeldt Ø, *Natural Resource Development, Business and the Rights of Indigenous Peoples Report* (Norwegian National Human Rights Institution and Norway's National Contact Point for Responsible Business Conduct 2019).

Rybråten S, 'This is not a wilderness. This is where we live.' *Enacting nature in Unjárga-Nesseby, Northern Norway* (Ph.D. degree, Faculty of Social Sciences, University of Oslo).

Sæther O M and others, 'Roundness of mineral particles in subsea tailings from copper mining' (Fram senteret 2019).

Sametinget, *Meahcci - et grunnlag for identitet, kultur og birgejupmi* (Sametinget 2016).

Skeil J, *Mining industry and tailings disposal: Status, environmental challenges and gaps of knowledge* (Norwegian Environment Agency 2019).

Smith L T, *Decolonizing Methodologies - Research And Indigenous Peoples* (Zed Books 1999).

SWECO, *Reguleringsplan med konsekvensutredning for planlagt gruvedrift i Nussir og Ulveryggen i Kvalsund kommune* (SWECO 2010).

Trippett F, *Towards a Broad-Based Precautionary Principle in Law and Policy: A Functional Role for Indigenous Knowledge Systems (TEK) Within Decision-making Structures* (Dalhousie University 2000).

Turner D A, *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy* (University of Toronto Press 2006).

Twining W and others, *Law in Context: Enlarging a Discipline* (Oxford 1997).

Wodak R and Meyer M, *Methods of critical discourse analysis* (Sage 2009).

Yli-Kuha K, *Sámi Mythology* (Lysator, 1998).

Γιωτοπούλου Δ, *Η μορφή της Κασσάνδρας στην Αρχαία Ελληνική και Νεοελληνική Λογοτεχνία* (Πανεπιστήμιο Πατρών Σχολή Ανθρωπιστικών και Κοινωνικών Επιστημών Τμήμα Φιλολογίας 2012).

### **Conference Proceedings**

Anaya J, 'Session II: International framework and standards applicable to resource extraction on indigenous peoples' lands' in Broderstad E G and Weines J (eds), *Extractive industries and indigenous peoples* (Centre for Sami Studies 2012).

Broderstad E G and Brattland C, *Consultations, Indigenous Peoples and Industry: Report on the conference arranged by the Centre for Sami Studies* (UiT 2012).

Casimirri G, 'Problems with Integrating Traditional Ecological Knowledge into Contemporary Resource Management' (XII World Forestry Congress, Quebec, 21-28 September 2003).

### **Contributions to Edited Books**

Akerman K, 'The renaissance of Aboriginal Law in the Kimberleys' in Berndt R M and Berndt C H (eds), *Aborigines of the West* (University of W.A. Press 1980).

Allard C and Skogvang S F, 'Introduction' in Allard C and Skogvang S F (eds), *Indigenous Rights in Scandinavia: Autonomous Sámi Law* (Routledge 2017).

Barrett J and Cocq C, 'Indigenous Storytelling and Language Learning: Digital Media as a Vehicle for Cultural Transmission and Language Acquisition' in Cocq C and Sullivan K P H (eds), *Perspectives on Indigenous Writing and Literacies* (Brill 2019).

Dannevig H and others, 'The Nussir Case and the Battle for Legitimacy: Scientific Assessments, Defining Power and Political Contestation' in Dale B and others (eds), *The Will to Drill - Mining in Arctic Communities* (Springer 2018).

Eythórsson E, 'The Coastal Sami: a 'Pariah Caste' of the Norwegian Fisheries? A Reflection on Ethnicity and Power in Norwegian Resource Management' in Jentoft S and others (eds), *Indigenous Peoples Resource Management and Global Rights* (Eburon Publishers Delft 2003).

Hagen R and Nettet S, 'Notions of Sami Witchcraft' in Nettet S (ed), *The Northern Lights Route* (UiT 1999).

Hamilton R, 'Indigenous Legal Traditions, Inter-societal Law and the Colonisation of Marine Spaces' in Allen S and others (eds), *The Rights of Indigenous Peoples in Marine Areas* (Hart Publishing 2019).

Jacobson J L, 'Managing Marine Living Resources in the Twenty-First Century: The New Level of Ocean Governance?' in Nordquist M H and Moore J N (eds), *Entry into Force of the Law of the Sea Convention* (Martinus Nijhoff Publishers 1994).

Jonsson Å N, 'Ethical guidelines for the documentation of árbediehtu, Sami traditional knowledge' in Porsanger J and Guttorm G (eds), *Working with Traditional Knowledge : Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbediehtu Project on Sami Traditional Knowledge* (Nordisk samisk institutt 2011).

Matz-Lück N and Fuchs J, 'Marine Living Resources' in Rothwell D R and others (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press 2017).

Miller B H, 'Dynamics of Naming: Examples from Porsanger' in Miller B H (ed), *Idioms of Sámi Health and Healing* (University of Alberta Press 2015).

Porsanger J, 'The Problematisation of the Dichotomy of Modernity and Tradition in Indigenous and Sami contexts' in Porsanger J and Guttorm G (eds), *Working with Traditional Knowledge : Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbediehtu Project on Sami Traditional Knowledge* (Nordisk samisk institutt 2011).

Ravna Ø, 'Sámi Legal Culture – and its Place in Norwegian Law' in Øyrehagen Sunde J and Skodvin E K (eds), *Rendezvous of European Legal Cultures* (Fagbokforlaget 2010) 149-165; Susann Funderud Skogvang, *Samerett* (Oslo Universitetsforlaget 2009).

Riseth J Å, 'Can Traditional Knowledge Play a Significant Role in Nature Management? Reflections on Institutional Challenges for the Sami in Norway' in Porsanger J and Guttorm G (eds), *Working with Traditional Knowledge : Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbediehtu Project on Sami Traditional Knowledge* (Nordisk samisk institutt 2011).

Lawrence R and Raitio K, 'Academia and activism in Saami research: negotiating the blurred spaces between' in Drugge A-L (ed), *Ethics in Indigenous Research: Past Experiences - Future Challenges* (Umeå University 2016).

Olsen T A, 'Responsibility, reciprocity and respect. On the ethics of (self-)representation and advocacy in Indigenous studies' in Drugge A-L (ed), *Ethics in Indigenous Research: Past Experiences - Future Challenges* (Umeå University 2016).

Tsiouvalas A, 'Mare Nullius or Mare Suum? Using Ethnography to Debate Rights to Marine Resources in Coastal Sámi Communities of Troms' in Bankes N and others (eds) *The Yearbook of Polar Law XI* (Brill Nijhoff 2020).

Van Dyke J M, 'The role of indigenous peoples in ocean governance' in Payoyo P B (ed), *Ocean governance: Sustainable development of the Seas* (The United Nations University 1994).

Wright R M, 'Wise People of Great Power: Indigenous prophetic visions in the Northwest Amazon Little Bear' (2009) 2 *Journal for the Study of Religion Nature and Culture* 170.

## Websites

'About Finnmark estate' (*FeFo*) <[www.fefo.no/english-menu/about-finnmark-estate/](http://www.fefo.no/english-menu/about-finnmark-estate/)>



‘Draugen - havets hevngjerrige vokter’ (NRK, December 1991) <<https://tv.nrk.no/program/FTRO1400091>>.

‘Dumping by the Numbers?’ (*Earthworks*) <<https://earthworks.org/cms/assets/uploads/2018/02/DOD-FactSheet-DumpingByNumbers.pdf>>.

‘How much water is in the ocean?’ (*NOAA*) <<https://oceanservice.noaa.gov/facts/oceanwater.html>>.

‘Media 2019’ (*Nussir*, 2019) <[http://www.nussir.no/en\\_media\\_2019.php](http://www.nussir.no/en_media_2019.php)>.

‘Milestones’ (*Nussir*, 2020) <[http://www.nussir.no/en\\_about\\_milest.php](http://www.nussir.no/en_about_milest.php)>.

‘Næringsministeren om Nussir: – Det blir ikke noe grønt skifte uten norsk industri’ (*iFinnmark*, May 2019) <[www.nussir.no/media/2019/2019-04-12%20-%20iFinnmark%20-%20Det%20blir%20ikke%20noe%20grønt%20skifte%20uten%20norsk%20industri.pdf](http://www.nussir.no/media/2019/2019-04-12%20-%20iFinnmark%20-%20Det%20blir%20ikke%20noe%20grønt%20skifte%20uten%20norsk%20industri.pdf)>.

‘New Campaign Seeks End to Ocean Mine Waste Dumping’ (*Earthworks*, March 2018) <<https://earthworks.org/media-releases/new-campaign-seeks-end-to-ocean-mine-waste-dumping/>>.

‘Nussir’ (*Nussir*) <[www.nussir.no/en\\_about\\_nussir.php](http://www.nussir.no/en_about_nussir.php)>.

‘Ocean Dumping Law and Legal Definition’ (*USLegal*) <<https://definitions.uslegal.com/o/ocean-dumping/>>.

‘PRM: Gruveeventyret i Repparfjord går mot slutten’ (*Sametinget*, January 2018) <[www.sametinget.no/Nyhetsarkiv/PRM-Gruveeventyret-i-Repparfjord-gaar-mot-slutten](http://www.sametinget.no/Nyhetsarkiv/PRM-Gruveeventyret-i-Repparfjord-gaar-mot-slutten)>.

‘Ressursforvaltning’ (*Neahttagisánit*) <<http://sanit.oahpa.no/nob/sme/>>.

‘Sami’ (*Statistics Norway*) <[www.ssb.no/en/befolkning/statistikker/samisk/hvert-2-aar](http://www.ssb.no/en/befolkning/statistikker/samisk/hvert-2-aar)>.

‘Sovereignty’ (*Webster's New World Law Dictionary*, 2010) <<http://law.yourdictionary.com/sovereignty>>.

‘STN areas in Norway North of Saltfjellet’ (*Statistics Norway*) <[www.ssb.no/en/befolkning/statistikker/samisk/hvert-2-aar/2016-02-05](http://www.ssb.no/en/befolkning/statistikker/samisk/hvert-2-aar/2016-02-05)>.

‘Stories, Legends and Myths’ (*Nordligefolk*, 2020) <<https://nordligefolk.no/hjem-2/fortellinger-sagn-og-myter/?lang=en>>.

‘The precautionary principle: Definitions, applications and governance’ (*European Parliament*, 2015) <[www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_IDA\(2015\)573876](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2015)573876)>.

‘Traditional Knowledge’ (*World Intellectual Property Organization*) <[www.wipo.int/tk/en/](http://www.wipo.int/tk/en/)>.

‘Zoning Plan’ (*Nussir*, 2020) <[www.nussir.no/en\\_enviro\\_zoning.php](http://www.nussir.no/en_enviro_zoning.php)>.

Agriculture & Environment Research Unit, ‘Environmental Impact Assessment (EIA)’ (*University of Hertfordshire*, 2017) <[http://sitem.herts.ac.uk/aeru/sustainability/environmental\\_impact\\_assessment.htm](http://sitem.herts.ac.uk/aeru/sustainability/environmental_impact_assessment.htm)>.

Convention on Biological Diversity, ‘What is Impact Assessment?’ (*CBD*, April 2020) <<https://www.cbd.int/impact/whatis.shtml>>.

Eiletrzen H, ‘Nussir Gets Operating License – Environmental Organisations Rage’ (*High North News*, February 2019) <[www.highnorthnews.com/en/nussir-gets-operating-license-environmental-organisations-rage](http://www.highnorthnews.com/en/nussir-gets-operating-license-environmental-organisations-rage)>.

Eldjarn G, ‘Fembøring’ (*Store Norske Leksikon*, November 2019) <<https://snl.no/femb%C3%B8ring>>.

Fisher A D, ‘Norway to allow new mine waste dumping in national salmon fjord’ (*Naturvernforbundet*, February 2019) <<https://naturvernforbundet.no/repparfjord/norway-to-allow-new-mine-waste-dumping-in-national-salmon-fjord-article38878-3800.html>>.

Hage Ø, ‘Sametinget klager Nussir-vedtaket til Kongen. Truer også med rettssak mot staten’ (*Fiskeribladet*, March 2020) <<https://fiskeribladet.no/nyheter/?artikkel=65729>>.

Hallset O, ‘Uverdige PR-kamp fra Sametinget’ (*Bergindustri*, May 2019) <[www.nussir.no/media/2019/2019-05-07%20-%20GEO365%20-%20Uverdige%20PR-kamp%20fra%20Sametinget.pdf](http://www.nussir.no/media/2019/2019-05-07%20-%20GEO365%20-%20Uverdige%20PR-kamp%20fra%20Sametinget.pdf)>.

Keskitalo A and Muotka S K, ‘Regjeringen tar ikke hensyn til reindrift, fiske og miljø i Nussir-saken’ (*Sametinget*, 2019) <[www.sametinget.no/Nyhetsarkiv/Regjeringen-tar-ikke-hensyn-til-reindrift-fiske-og-miljoe-i-Nussir-saken](http://www.sametinget.no/Nyhetsarkiv/Regjeringen-tar-ikke-hensyn-til-reindrift-fiske-og-miljoe-i-Nussir-saken)>.

- Kvaal G, 'Cujaju' (*Youtube*, 2010) <[www.youtube.com/watch?v=2sneliK2J04&list=FLXDzh3OHfA\\_1bcqG1wJXDGA&index=135&t=0s](http://www.youtube.com/watch?v=2sneliK2J04&list=FLXDzh3OHfA_1bcqG1wJXDGA&index=135&t=0s)>.
- Lempriere M, 'Copper, fjords, reindeer and controversy: inside Norway's new arctic mine' (*Mining Technology*, May 2019) <[www.mining-technology.com/features/inside-norways-new-arctic-mine/](http://www.mining-technology.com/features/inside-norways-new-arctic-mine/)>.
- Lyngstad P S, 'Historien om Cujaju' (*Minstemme*) <[www.minstemme.no/om-nettstedet](http://www.minstemme.no/om-nettstedet)>.
- Mambra S, 'Ocean Pollution: 6 Things That Make It Marine Environment' (*Marineinsight*, 4 October 2019) <[www.marineinsight.com/environment/causes-and-effects-of-ocean-dumping/](http://www.marineinsight.com/environment/causes-and-effects-of-ocean-dumping/)>.
- Moore E, 'Norway approves mine project that will destroy fjord and Indigenous Sámi livelihoods' (*Earthworks*, 2019) <<https://earthworks.org/blog/norway-approves-mine-project-that-will-destroy-fjord-and-indigenous-saami-livelihoods/>>.
- Morottaja M, 'The storytelling tradition' (*Sámi musea Siida & Anarâškielâ servi*, 2006) <[www.samimuseum.fi/anaras/english/kieli/kertomaperinne.html](http://www.samimuseum.fi/anaras/english/kieli/kertomaperinne.html)>.
- Muotka S K, 'Språklig og kulturell lokal utsulting' (*iFinnmark*, August 2017) <[www.ifinnmark.no/debatt/kvalsund/nussir/det-er-kanskje-det-man-mener-nar-man-sier-man-er-tungt-i-ryggen-pa-ett-industriprosjekt-at-man-vingler-og-overser-de-problemene-debattene-reiser-i-saken/o/5-81-568777](http://www.ifinnmark.no/debatt/kvalsund/nussir/det-er-kanskje-det-man-mener-nar-man-sier-man-er-tungt-i-ryggen-pa-ett-industriprosjekt-at-man-vingler-og-overser-de-problemene-debattene-reiser-i-saken/o/5-81-568777)>.
- Nilsen T, 'With tailings to be dumped at sea, copper mine gets approval' (*The Barents Observer*, February 2019) <<https://thebarentsobserver.com/en/industry-and-energy/2019/02/tailings-be-dumped-sea-copper-mine-gets-approval>>.
- Olsen Wernberg T, 'Draug – Rávga' (*Senter for nordlige folk*) <<https://nordligefolk.no/sjosamene/fortellinger-sagn-og-myter/draugen>>.
- Pulkkinen R, 'Rávga (engl. ver.)' (*The Saami: A Cultural Encyclopaedia*) <[http://senc.hum.helsinki.fi/wiki/Rávga\\_\(engl.\\_ver.\)#tab=English](http://senc.hum.helsinki.fi/wiki/Rávga_(engl._ver.)#tab=English)>.
- Rein M, 'Joiketoner i barnehagen' (*Nordlys*, October 2010) <[www.nordlys.no/kultur/joiketoner-i-barnehagen/s/1-79-5345976](http://www.nordlys.no/kultur/joiketoner-i-barnehagen/s/1-79-5345976)>.
- Solsvik T and Fouche G, 'Norway gives go-ahead to disputed Arctic copper mine' (*Reuters*, February 2019) <[www.reuters.com/article/us-norway-mining-sami/norway-gives-go-ahead-to-disputed-arctic-copper-mine-idUSKCN1Q30J8](http://www.reuters.com/article/us-norway-mining-sami/norway-gives-go-ahead-to-disputed-arctic-copper-mine-idUSKCN1Q30J8)>.
- Staalesen A, 'Government gives thumbs up for mining company, will be allowed to dump wastes in Arctic fjord' (*The Barents Observer*, December 2016) <<https://thebarentsobserver.com/en/ecology-industry-and-energy/2016/12/government-gives-thumbs-mining-company-will-be-allowed-dump>>.
- The Editors of Encyclopædia Britannica, 'Social Darwinism', *Encyclopædia Britannica* (1998) <[www.britannica.com/topic/social-Darwinism](http://www.britannica.com/topic/social-Darwinism)>.
- The Secretariat of the Convention on Biological Diversity, 'What is Traditional Knowledge?' (*CBD*, June 2011) <[www.cbd.int/traditional/intro.shtml](http://www.cbd.int/traditional/intro.shtml)>.

