Université du Québec en Abitibi-Témiscamingue

GOUVERNANCE CONJOINTE DU TERRITOIRE ENTRE AUTOCHTONES ET ALLOCHTONES : COMPARAISON ENTRE LES CAS NOVATEURS DU GOUVERNEMENT RÉGIONAL D'EEYOU ISTCHEE BAIE-JAMES (CANADA) ET DU FINNMARK ESTATE (NORVÈGE)

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Par
Louis-Joseph Drapeau

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SHARED GOVERNANCE OF THE LAND BETWEEN INDIGENOUS AND NON-INDIGENOUS PEOPLES: COMPARING THE GROUNDBREAKING CASES OF THE EEYOU ISTCHEE JAMES BAY REGIONAL GOVERNMENT (CANADA) AND THE FINNMARK ESTATE (NORWAY)

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AFR	Adapted Forestry Regime
AGEIJB	Agreement on governance in the Eeyou Istchee James Bay territory between the Crees of Eeyou Istchee and the Gouvernement du Québec
BSG	Beneficiaries of supply guarantees
EIJB	Eeyou Istchee James Bay
EIJBRG	Eeyou Istchee James Bay Regional Government
CGFA	Corporation de gestion de la Forêt de l'Aigle
CNG	Cree Nation Government
CQFB	Cree-Québec Forestry Board
CRA	Cree Regional Authority
CTMN	Tribal Council Mamuitun mak Nutashkuan
EPC	Eeyou Planning Commission
FeFo	Finnmark Estate
FPIC	Free, prior and informed consent
FRDP	Forest Regional Development Program
GCC	Grand Council of the Crees
HFTCC	Hunting, Fishing and Trapping Coordinating Committee
IBA	Impact and Benefits Agreement
IGR	Intergovernmental relations
JBACE	James Bay Advisory Committee on the Environment
JBDC	James Bay Development Corporation
JBNQA	James Bay and Northern Quebec Agreement
JBRZC	James Bay Regional Zone Council
JWG	Joint Working Group
LILRMP	Local Integrated Land and Resources Management Panels
MMAH	Ministry of Municipal Affairs and Housing
MJB	Municipality of James Bay
MELCCFP	Ministry of Environment, Fight against Climate Change, Fauna and Parks
MERN	Ministry of Energy, Mines and Natural Resources
MLG	Multilevel governance

MLP	Multilevel politics
MNRF	Ministry of Natural Resources and Forests
NRM	Natural Resource Management
NSR	National Sámi Association
OIFMP	Operational Integrated Forest Management Plan
PBA	Planning and Building Act
PLUP	Public Land Use Plan
RCEO	Regional Conference of Elected Officers
RCM	Regional County Municipality
RLNRC	Regional Land and Natural Resources Committee
RLRUP	Regional Land and Resource Use Plan
RPILRD	Regional Plan for Integrated Land and Resource Development
SFDA	Sustainable Forest Development Act
SLSJ	Saguenay – Lac-Saint-Jean
SRC	Sámi Rights Committee
TIFMP	Tactical Integrated Forest Management Plan
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WCMF	Waswanipi Cree Model Forest

RÉSUMÉ

Le partage du territoire et des ressources est un enjeu central des relations entre les Peuples Autochtones et allochtones. Au Canada comme en Norvège, la colonisation et l'exploitation des ressources ont conduit à la dépossession territoriale des Peuples Autochtones. Cette colonisation se poursuit aujourd'hui avec l'intensification des projets de développement et d'extraction, souvent sans consultation appropriée ni prise en compte des connaissances, des préoccupations et des intérêts des Peuples Autochtones. Parallèlement, les dernières décennies ont été marquées par l'augmentation des revendications et des mobilisations autochtones, remettant en cause les monopoles des États sur les territoires et les ressources. Depuis les années 1970, les relations renouvelées entre l'État et les Autochtones ont conduit à l'émergence d'espaces de gestion collaborative du territoire et des ressources. Ces espaces permettent notamment aux Peuples Autochtones de retrouver un pouvoir de participation dans la gestion de leurs territoires ancestraux.

Ce mémoire examine les cas uniques du Gouvernement régional d'Eeyou Istchee Baie-James (GREIBJ) et du Finnmark Estate (FeFo), deux institutions de gouvernance conjointe régionale qui gèrent respectivement les régions d'Eeyou Istchee Baie-James (nord du Québec, Canada) et du Finnmark (comté le plus septentrional de la Norvège). En se basant sur leurs contextes et leurs caractéristiques similaires, ce mémoire explore plus particulièrement l'expérience du GREIBJ et du FeFo en matière de gestion du territoire et des ressources, en mettant l'accent sur les relations entre les acteurs et sur l'influence autochtone dans la prise de décisions. Il est aussi question de déterminer si les deux cas peuvent tirer des enseignements l'un de l'autre et s'ils peuvent servir de modèles pour d'autres contextes similaires.

Des résultats mitigés concernant la gestion partagée du territoire et des ressources ressortent de cette recherche. D'une part, les tables locales chargées de la gestion du territoire et des ressources, gérées par le GREIBJ, sont devenues des forums importants pour rassembler les parties prenantes régionales et les utilisateurs du territoire, ainsi que faire valoir les préoccupations et les intérêts des participants autochtones. D'autre part, le comité ayant la responsabilité principale de la planification territoriale est resté relativement inactif et n'a pas été en mesure, jusqu'à présent, de remplir son mandat. Pour le FeFo, le manque de données sur le fonctionnement de l'institution, sa tendance naturelle à privilégier le développement plutôt que la protection du territoire et l'influence limitée des intérêts « traditionnels » des Sámi, ont participé à créer des tensions avec d'autres acteurs institutionnels Sámi.

Enfin, ce mémoire pose les bases pour davantage de travaux empiriques sur le GREIBJ et le FeFo. Des concepts peu mobilisés dans la littérature sont utilisés dans ce mémoire pour définir, expliquer et analyser les nouvelles configurations de gouvernance partagée du territoire entre Autochtones et allochtones. Ces concepts permettent de mieux saisir les particularités de ces institutions émergentes qui favorisent l'agentivité des Peuples Autochtones et qui bouleversent les paysages politiques du Canada et de la Norvège.

Mots-clés : Peuples Autochtones; relations Autochtones-Allochtones; Eeyou Istchee Baie-James; Finnmark; gouvernance partagée; cogestion; gouvernance multi-niveaux; relations interculturelles

ABSTRACT

The sharing of the land and resources is a core issue between Indigenous and non-Indigenous Peoples. In both Canada and Norway, colonization and resource development led to the territorial dispossession of Indigenous Peoples. Colonization remains ongoing with the intensification of development and extractive projects on Indigenous lands, often without appropriate consultation and inclusion of Indigenous knowledge, concerns and interests. Concurrently, the past decades have witnessed growing Indigenous claims and mobilizations, questioning the States' stranglehold on land and resources. Since the 1970s, the renewed relations between the States and Indigenous Peoples led to the emergence of joint spaces of land management, which re-empowered Indigenous Peoples in the management of their traditional lands.

This thesis aimed to look at two unique forms of regional collaborative governance, the Eeyou Istchee James Bay Regional Government (EIJBRG) and the Finnmark Estate (FeFo), which respectively manage the regions of Eeyou Istchee James Bay (northern Québec, Canada) and Finnmark (Norway's northernmost county). Based on their similar background and characteristics, this thesis explores the experience of the EIJBRG and FeFo with the management of land and resources, focusing on the relations between actors and on the Indigenous influence on decision-making. It also evaluates whether both cases can draw lessons from each other and whether they can serve as models for other similar settings.

This thesis shows mixed results regarding the shared management of land and resources. On the one hand, the local panels for land and resources management, overseen by the EIJBRG, became important forums to gather the regional stakeholders and land users and forward the concerns and interests of the Indigenous participants. On the other hand, the main committee tasked with land use planning has been dormant and unable to carry its mandate thus far. For the FeFo, the lack of data on the operations of the institution, its natural incline towards development over land protection, and the limited influence from a traditional-based Sámi perspective, have drawn tensions with other Sámi actors.

This thesis draws the contours for future empirical research on the EIJBRG and FeFo. Through both study cases, this thesis mobilizes concepts that have not been extensively used yet to define, explain and analyze the new configurations of shared governance of the land between Indigenous and non-Indigenous Peoples. These concepts allow to better understand the unique features of these institutions which disrupt the political landscapes of Canada and Norway and empower Indigenous Peoples.

Keywords: Indigenous Peoples; Indigenous – non-Indigenous relations; Eeyou Istchee James Bay; Finnmark; shared governance; co-management; multilevel governance; intercultural relations

INTRODUCTION

One of the most longstanding illustrations of relations between Indigenous[1] and non-Indigenous Peoples in North America is the two-row wampum, a Haudenosaunee (Iroquois) treaty belt exchanged with the Dutch in 1664 (Abele and Prince, 2006; McGregor, 2011; Stevenson, 2006). Indigenous legal academic Robert A. Williams Jr. describes the two-row wampum as follows:

> There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect. These two rows will symbolize two paths or two vessels, travelling down the same river together. […] We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessel. (Williams, 1998 as cited in Borrows, 1997, p. 164)

The two-row wampum thus symbolizes coexistence between two distinct peoples and non-interference in the internal affairs of the other. Centuries after it was first exchanged, the two-row wampum, as a metaphor, continues to highlight how the coexistence of Indigenous and non-Indigenous Peoples requires mutual respect of each other's autonomy (Borrows, 1997; Ledoux, 2017a).

While the two-row wampum is likely the most recognized wampum, many other wampum belts have been used over time by Indigenous Peoples to symbolize various agreements or treaties. The dish with one spoon wampum, for example, symbolized a land sharing agreement between the Anishnabek and Haudenosaunee peoples. The dish represented the land, and the spoon meant that both peoples would eat together while peace was maintained. It further symbolized the reciprocal relationship with the non-human environment based on responsible stewardship and sustainability (Jacobs and Lytwyn, 2020; Ledoux, 2017b; Nahwegahbow, 2014 in Scott Thomas, 2022).

Following colonization, wampum belts were gradually replaced by other kinds of treaties between Indigenous and non-Indigenous Peoples. These treaties, however, did not recognize power imbalances and the right of Indigenous Peoples to self-government (Sherwin, 2021). For the past 50 years in Canada, major legal and political developments have reshaped the political landscape. In particular, the Canadian *politics of recognition*, the practice of recognizing Indigenous self-

[1] The term "Aboriginal" has been used to designate Indigenous Peoples, mostly in Canada and Australia. In the context of the United Nations Declaration on the Rights of Indigenous Peoples, the term "Indigenous" is considered more respectful. Alfred and Corntassel argue that "'Aboriginalism'" is a legal, political and cultural discourse […] at the root of the colonial State itself, representing a "powerful assault on Indigenous identities" (2005, p. 598, 599). The term Indigenous will be used in this thesis, except for textual quotes or references to official documents.

determination and Rights within the limits of the State sovereignty, has redefined Indigenous-State relations and the place of Indigenous Peoples within the Canadian federation (see Coulthard, 2014[2]). A cornerstone of this politics of recognition is the legal and political events which enabled the negotiation of comprehensive land claims agreements (also known as modern treaties[3]) between Indigenous Peoples and the Crown (represented by provincial/territorial, and federal governments) (Alcantara, 2008; Leydet, 2007; Papillon and Lord, 2013; White, 2002). An important outcome of modern treaties has been the creation of collaborative management (co-management) institutions, which are advisory boards making recommendations on questions of land and resources management (Notzke, 1995; Rodon, 2003; White, 2002, 2020). Co-management boards vary a great deal but have in common the parity of members from Indigenous Nations/organizations and territorial/provincial/federal governments. Those established by the settled claims deal with wildlife management, environmental regulation and impact assessment, among other issues (White, 2020). In Canada, co-management institutions have also been created in response to crisis related to one or more resources and have been established by the provinces to meet the obligation to consult prescribed in the *Sparrow* decision[4] of the Supreme Court of Canada (Rodon, 2003).[5]

The *James Bay and Northern Québec Agreement* (JBNQA) was the first modern treaty signed in Canada in 1975 between the Eeyouch of Eeyou Istchee,[6] the Inuit of Nunavik, and the provincial/federal governments. The agreement traced the path for later agreements which redefined the Eeyouch-State relations (Scott, 2020). The most recent development in Eeyouch-State relations was the creation of the Eeyou Istchee James Bay Regional Government (EIJBRG)

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[2] Dene scholar Glen Coulthard's perspective is consistent with the Indigenous resurgence literature movement, which notably criticizes the treaty-making process of the past decades. According to Coulthard, the politics of recognition have been reproducing patterns of colonial domination and dispossession, disguised in liberal terms. Although his premise does not underlie this research, it is important to acknowledge that colonial violence is still ongoing in Canada (Coulthard, 2007, 2014).

[3] "Modern treaty" and "comprehensive land claims agreement" are used interchangeably in this thesis.

[4] While the *Sparrow* decision opened the door to the issue of consultation, the 2004 *Haida Nation* ruling is the landmark ruling on the duty to consult.

[5] A prominent example is the Beverly-Qaminirjuaq Caribou Management Board which is a multijurisdictional board involving parties from Canada, Nunavut, the Northwest Territories, Manitoba and Saskatchewan. The board was created in 1982 to address the declining caribou herds while making sense of cross-boundary migration and the caribou's cultural importance for Inuit, Cree, Dene and Métis (see Rodon, 2003; Spak, 2005).

[6] "Eeyou" (singular) and "Eeyouch" (plural) is how Cree people call themselves. The word means "a human being" in iyniw-ayamiwin (the Cree language). "Eeyou Istchee" means the land of the Eeyouch (Awashish, 2018). In this thesis, the terms "Eeyou" and "Eeyouch" are be preferred. The term "Cree" will only be used in appropriate contexts or direct quotations.

(Eenou Chishaauchimaau, in Eeyou), a regional institution implemented in 2014 following the 2012 *Agreement on governance in the Eeyou Istchee James Bay Territory between the Crees of Eeyou Istchee and the Gouvernement du Québec* (AGEIJB) (Craik, 2015; Motard, 2015; Simard and Brisson, 2020). The EIJBRG is unique in Canada for the consensual type of governance it supports and the decision-making powers it wields. It also is unique because it includes an equal number of representatives of Indigenous and non-Indigenous communities in a single regional governance structure which operates beyond the advisory role of co-management boards (Craik, 2015; Motard, 2015).

The major shifts of the past decades in Canadian Indigenous-State relations have also been observed in other English-speaking settler democracies such as Australia, New Zealand and the United States (Cornell, 2015; Mulrennan and Scott, 2005; Papillon, 2014). In northern Europe, the Sámi, the Indigenous People inhabiting Norway, Sweden, Finland and north-western Russia (Kola peninsula), has also challenged the authority of the States and asserted its distinctive rights and identity. In this thesis, the case of the EIJBRG will be compared to the Finnmark Estate (Finnmarkseiendommen, in Norwegian (FeFo); Finnmárkkuopmodat in Northern Sámi), a land-owning body and shared governance institution located in Norway's northernmost county of Finnmark[7] (Broderstad, 2015; Broderstad et al., 2020; Josefsen et al., 2016) (Table 1).[8] The Sámi's recent history, following over a century of assimilation policies from the Norwegian State, has featured decades of activism and legal investigations on Sámi Rights (Falch et al., 2016; Wilson and Selle, 2019). In Norway, this activity culminated with the establishment of the Sámi Parliament (Sámediggi, in Northern Sámi) in 1989 and the adoption of the *Finnmark Act* (sometimes referred to as the *Act* in this thesis) in 2005 (Falch et al., 2016; Wilson and Selle, 2019). This act established FeFo, the only case of co-management of traditional Sámi areas in Norway in which Sámi are not

[7] In Northern Sámi, Finnmark is "Finnmárkku". Through this thesis, I will use the term Finnmark because Sámi, at the county level, are a minority despite being in majority in some of the municipalities. When referring to municipalities, the Northern Sámi name of those specific municipalities will be used, with the Norwegian name in parenthesis.

[8] There are no similar shared governance institutions in Sweden and Finland, let alone Russia, hence the choice to use the FeFo as a case study for comparison with the EIJBRG. Even though the Sámi in Sweden and Finland have their own Sámi Parliament, the issue of Sámi land rights has lagged behind that of Norway, preventing further comprehensive institutional development such as FeFo (see section 5.3 for more details).

just a stakeholder among others, but rather an equal actor in a bilateral relation (Josefsen et al., 2016).[9]

Table 1
Overview of the main attributes of the EIJBRG and FeFo

Attributes	**Eeyou Istchee James Bay Regional Government**	**Finnmark Estate**
Year established	2014	2006
Board composition	11 Eeyou members/11 Jamesian[10] members (mayors of non-Indigenous communities) *One board member from the Québec government but has no voting right	3 members of the Sámediggi/3 members of the Finnmark County council *No board member from the Norwegian government
Legal and political background	JBNQA (1975), Paix des Braves (2002), Governance agreement (2012)	Sámi Rights Committee (1980), *Sámi Act* (1987), *Finnmark Act* (2005)
Jurisdiction	Exercises municipal management on 80% of the JBNQA territory (public lands) Subject to the laws and regulations enacted by the federal and provincial governments	Landowner of 95% of Finnmark Subject to the laws and regulations of the local and national governments
Decision-making mechanism	Special procedure for matters of land use and development	Special procedure for matters of land use and development
Functions	Regional County Municipality (Municipalité régionale de comté, in French) Regional Land and Natural Resource Committee (Commission régionale sur les ressources naturelles et le territoire, in French) *Both of these functions are in charge of land and resources management	Property, rights, and manager of non-renewable resources Industry and development Management of uncultivated land and renewable resources

[9] Josefsen et al. (2016) note that local boards managing national parks include various interest groups among which Sámi are represented.
[10] "Jamesian" is the demonym for the non-Indigenous inhabitants of EIJB.

Source: author (2025).

Both the EIJBRG and the FeFo have jurisdiction over the management of land and resources, which makes it a relevant point of comparison. To be sure, the sharing of land and resources is the greatest challenge to Indigenous – non-Indigenous relations, for the access to, use and management of the land and resources are subject to competition and competing perspectives (Ravna, 2016a; Teitelbaum et al., 2023; Beland Lindahl et al., 2024). Further underlying the challenge of land sharing is the colonial violence that is being carried out by the State and extractive industries towards Indigenous Peoples and their lands. On both ceded and unceded lands, the State and companies continuously engage in legislation and development projects entailing territorial dispossession, often without properly consulting or considering the concerns and knowledge of the Indigenous Peoples affected. Such situations inevitably draw tensions and demonstrations for land reappropriation by Indigenous Peoples.[11] Examining cases of co-management is thus critical to understanding the reciprocal dependency between Indigenous and non-Indigenous Peoples (Broderstad, 2011, 2014) but also the structural asymmetries plaguing the sharing of the land and resources. A better understanding of shared governance – and more particularly co-management – is key to determining whether such models meet Indigenous claims, needs and interests, in a spirit of giving back Indigenous Peoples influence and power on their traditional lands.

With this backdrop in mind, the objective of this research project was to compare the EIJBRG and the FeFo to have a better understanding of the operationalization of Indigenous and non-Indigenous shared governance, particularly in the field of land and resource co-management. Four research questions guided the comparative analysis: 1) what can be said about the nature of Indigenous – non-Indigenous relations within the EIJBRG and FeFo based on their respective functions and the issues they face with regards to land management?; 2) to what extent are the EIJBRG and FeFo fitting vehicles for Indigenous self-determination?; 3) what can both institutions learn from each other's experience?; 4) could these models be applied to other Indigenous – non-Indigenous settings? To answer these research questions, the settings, attributes and functions of the institutions are compared and analyzed based on the available literature and documents. Both cases

[11] At the time this thesis was on the brink of being done, the Government of Québec was trying to pass a bill aimed at modernizing the forestry regime in the province (Bill 97), arousing the anger of Indigenous Peoples, civil society and even the industry. Blockades are being carried out by First Nations as a mean of claiming back their lands and opposing Québec's unilateral, economic-driven and destructive legislation.

are compared against the concepts of co-management, multilevel governance and intercultural Indigenous – non-Indigenous relations, which are further discussed in chapters two and five of this thesis.

The comparison of the EIJBRG and FeFo is relevant since they both share important similarities. First, the roots of both institutions are found in State-led hydroelectric projects of the 1970s. In both the regions of EIJB and Finnmark, the projects caused social unrest leading respectively to the JBNQA and the creation of the Sámi Rights Committee (SRC). These institutions set the Eeyouch and the Sámi on an institutional path resulting in the cases studied in this thesis. Second, both cases display similar attributes in their structure, composition and functions. Third, both the EIJBRG and the FeFo manage boreal forest environments and face the pressures of similar resource-based economic development, notably mining.

On the other hand, core differences such as the domestic political system in which they are embedded, the legal framework, and the institutional development are key factors that are considered in the analysis of the EIJBRG and FeFo. Comparing two cases with a different experience, set in different contexts, yet presenting important similarities in their institutional design and sequence of events could inform other Indigenous and non-Indigenous Peoples experiencing similar proximity and interdependency.

This research aims to enable a better understanding of the structures, functions and responsibilities of the EIJBRG and FeFo. In particular, the larger body of knowledge on the FeFo could yield insights for the EIJBRG, which still is a recent innovation with no other equivalent in Québec or Canada. Conversely, the novelty of the EIJBRG could inform the FeFo on new ways to implement shared governance. More broadly, this research adds to the body of knowledge on Indigenous – non-Indigenous relations, shared governance, and the co-management of land and natural resources. It also contributes to refining the conceptual boundaries of Indigenous multilevel governance (MLG), a concept used recently to explain the relations between the State and Indigenous Peoples.[12] Furthermore, the limited number of international comparative studies on co-management makes a case for this type of research design (Spitzer and Selle, 2019, 2023).

[12] A more detailed definition is provided in the conceptual framework chapter.

The thesis is divided into seven chapters, including the introduction and the conclusion. The methodology chapter (1) explains the approach and the data used for the analysis. The conceptual framework chapter (2) introduces the concepts that will be used to explain and assess the structure and functions of both institutions, focusing on the collaborative governance of land and resources. The context chapter (3) provides a historical background of both institutions, emphasizing the recent history of Eeyouch and the Sámi in relation to Canada and Norway. The results chapter (4) presents a detailed picture of the characteristics of the EIJBRG and FeFo, as well as how they fit within their respective ethnopolitical settings. The discussion chapter (5) explains the main similarities and differences between the cases, drawing on the concepts introduced in chapter two.

1. METHODOLOGY

The comparative case study method of this research is inspired by the process-oriented approach of Bartlett and Vavrus (2017). This approach to comparison considers the linkages of actors and events across scales, spaces and time, refusing the idea that the study cases are bound to a fixed context and culture. By undertaking a comparative case study, one acknowledges the value of "horizontal, vertical and transversal" comparisons which reflect the integrated yet multilevel and network-based world we live in (Bartlett and Vavrus, 2017). For Bartlett and Vavrus, the value of comparison is that it:

> allows us to think how similar processes lead to different outcomes in some situations; how different influences lead to similar outcomes in others; and how seemingly distinct phenomena may be related to similar trends or pressures. Comparison may also allow us to better address how insights generated in one study transfer to other cases; in this way, comparison allows us to make stronger arguments for the significance of our research. (2017, p. 15)

This suits the design of this research which aims to capture processes and interactions operating at different levels, framed in different contexts and yet displaying similarities in their institutional design. It further makes sense of the moving and evolving nature of the cases and their contexts and the fact that the latter plays out as an explanatory factor rather than a causality.

Gerring defines the case study as "an intensive study of a single unit for the purpose of understanding a larger class of (similar) units" (2004, p. 342). The *unit* refers to any phenomenon such as a nation-state or an institution, examined once in time or spanning a given period of time. In the present case, the units are the EIJBRG and FeFo which are first described individually and then compared to reveal similarities and differences. The assessment spreads over a decade for the EIJBRG (2014-2024), whereas FeFo is examined from its inception (2005) to the present day.

The particularities of a unit make it less generalizable to other similar units (Gagnon, 2012). However, Gerring (2004) notes that researchers must be aware of features particular to the unit and features of the unit "typical of a larger set of units". The EIJBRG and FeFo, by their institutional design and functions, share similarities with cases of co-management elsewhere. However, their existence is tributary to the particular institutional and relational path the Eeyouch and the Sámi have respectively travelled with the Canadian and Norwegian authorities. Regarding the FeFo, an equivalent co-managing body could be established outside of Finnmark given the existing

framework for Sámi Rights and the presence of the Sámi south of Finnmark. Outside of Norway, the fact that the situation of Sámi Rights in other parts of Sápmi is more fragile complicates generalization in other parts of Fennoscandia. For the EIJBRG, the fact it builds on a modern treaty could lead other Treaty Nations across Canada to draw on the experience of the JBNQA. On the other hand, each modern treaty, despite displaying similar attributes, is unique to the context in which it is negotiated and is institutionalized differently, which can be an impeding factor to generalization. Nevertheless, both cases inform the larger social and political phenomenon that is Indigenous – non-Indigenous shared governance.

To conduct this comparative case study, scholarly secondary sources and official legal and governmental documents were analyzed through a deductive approach. Initially, the plan was to conduct a single case study using semi-structured interviews with individuals involved in the governance of the EIJBRG. However, following a refusal to participate in the study, mainly invoking political reasons,[13] there was little incentive to carry on the initial case study on the EIJBRG solely. A comparison with the FeFo based on a document analysis was deemed a suitable alternative to meet the research objectives. In the case of the EIJBRG, the publicly available minutes of the meetings of the EIJBRG, the minutes of the Local Integrated Land and Resources Management Panels (LILRMPs) (Tables de gestion intégrée des ressources et du territoire, in French) and the annual reports of the Cree Nation Government (CNG) were analyzed (see APPENDIX A – Institutional document used for the EIJBRG). For the minutes, the period covered was from 2014 to 2024; for the annual reports, the period covered was from 2013 to 2023. A few informal conversations I had with people in EIJB in the Winter of 2024 are evoked as well. The case of FeFo mainly builds on the relevant literature. The institutional documents of the FeFo, which are only available in Sámi and Norwegian, were not used to avoid an incorrect or altered interpretation due to translation. During a recent trip to Norway as part of the UArctic Congress, I extended my visit and went to Finnmark in the hope of chatting with people on the situation of the Sámi and their relations with non-Sámi. I had the opportunity to visit the office of FeFo in Lakselv,

[13] Since the EIJBRG is a new structure, a member told me they were undertaking negotiations with the Québec government at the time I sounded out their interest. They did not want to disclose sensitive information through the interviews that would have been conducted, even though I emphasized the confidentiality of the process. Even if I was told that some members were interested, the fact that others were not at ease prevented further discussions.

Finnmark, and met with Jan Olli, FeFo's Director for the past 12 years. Excerpts from this discussion, upon the approval of Mr. Olli, were included in the analysis.

The comparative case study of the EIJBRG and FeFo provides details on their institutional design and functions. The comparison draws on Spitzer and Selle's (2019) comparative research of FeFo and co-management claim boards in Canada.[14] Spitzer and Selle's (2019) framework is used because it draws on similar contexts as the study cases of this thesis and provides an encompassing view of the backgrounds, structures and operations of the institutions. However, without conducting interviews, limited information was available on the motivations behind decision-making and the internal dynamics of the EIJBRG and FeFo. Nevertheless, the in-depth look into both institutions will be useful to frame future research, hopefully in collaboration with the EIJBRG and FeFo.

1.1 Ethical considerations and statement of positionality

In *Decolonizing Methodologies: Research and Indigenous Peoples*, Māori scholar Linda Tuhiwai Smith argued that "research is not an innocent or distant academic exercise but an activity that has something at stake and that occurs in a set of political and social conditions" (Smith, 1999, p. 5). Academic research is not undertaken in a vacuum and it is still plagued with colonialism, either because research is conducted regardless of the needs and interests of Indigenous Nations and communities under the pretext of academic freedom (Alcantara et al., 2017), or because it conceives Indigenous Peoples as mere research objects rather than co-researchers (McGregor, 2018).

In past decades, research with Indigenous Peoples has been undergoing a decolonization process calling for approaches grounded in Indigenous knowledge, methodologies, epistemologies and ontologies (Asselin and Basile, 2012, 2018; McGregor, 2018; Menzies, 2001; Wilson, S., 2008; Younging, 2018). This transition, from harmful and unethical research to an increased control of Indigenous Peoples over research conducted on their traditional lands, has led to community-based and participatory research, as well as the enactment of principles for ethical research with

[14] Drawing on the framework of White (2002), Spitzer and Selle (2019) assessed three dimensions: governance innovation (legal basis, form, role), independence and Indigenous influence.

Indigenous Peoples (Asselin and Basile, 2012, 2018; Castleden and Stiegman, 2015; Davidson-Hunt and O'Flaherty, 2007).[15]

Since this research did not involve the participation of Indigenous Peoples, there was no need to include in the research design the ethical and methodological principles stipulated by the literature and the Indigenous and non-Indigenous organizations/governments. However, this does not mean that this research has been conducted amidst an ontological and cultural vacuum. On the contrary, it is necessarily situated by my experience as a non-Indigenous, white privileged cisgender man and the sociocultural background within which I grew up. In that respect, the biases I hold must be approached in an effort of empirical deconstruction. This will be reflected in the terminology and principles of Indigenous style, notably by using as much as possible the Indigenous names to the places and capitalization where relevant (see Younging, 2018).[16] I also acknowledge and refer to Indigenous scholars and their decolonial perspectives even though I chose not to assess the study cases of this thesis against these perspectives.

[15] Chapter nine of the Statement of Policy of the Tri-Council (TCPS2) outlines the three guiding principles of *respect, well-being* and *justice*. The Tri-Council is formed of the three main federal funding agencies: the Canadian Institutes of Health Research (CIHR), the Natural Science and Engineering Research Council (NSERC) of Canada and the Social Science and Humanities Research Council of Canada (SSHRC). The Assembly of First Nations Quebec-Labrador (AFNQL) also has a research ethics protocol fostering principles of *respect, equity and reciprocity*.

[16] In Norway, Sámi names have been invisibilized for a long time. Berg-Nordlie explains the importance of making space for Sámi toponyms: "the muting of Indigenous toponyms contributes to the alienation of Indigenous people from lands and communities in their own home territories, and to the erosion of Indigenous identity. Giving the toponyms "voice" by putting them on maps and signposts constitutes a reconstruction of the broken link between communities dominated by the majority ethnos and the Indigenous people; it can contribute to rebuilding both the Indigenous identity of the place and the place-identity of the Indigenous people who live there" (2021, p. 101).

2. CONCEPTUAL FRAMEWORK

The rationale behind the following conceptual framework is that the historical foundations, institutional design and functions of the EIJBRG and FeFo are best captured by multiple concepts which relate to more than one theory. Particularly, the aim is not to develop generalizations and confirm or reject a theory but rather to describe and analyze the contexts, mechanisms and operations of the two cases, in a comparative perspective.

The comparison between the EIJBRG and FeFo partly draws on *historical institutionalism*, a theory developed in Political Science and related disciplines to analyze institutional change (Capoccia and Kelemen, 2007; Hall and Taylor, 1996; Mahoney and Thelen, 2012; Peters et al., 2005; Thelen, 1999). Institutions are defined by historical institutionalists as the "formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy" (Hall and Taylor, 1996, p. 6).[17]

Both the EIJBRG and FeFo are dependent on the structures and institutions that evolved out of and in response to resource development projects in the 1970s. Identifying the critical junctures which gave rise to institutional change is a central element of historical institutionalism which is key to this research project. Capoccia and Kelemen define critical junctures as "relatively short periods of time during which there is a substantially heightened probability that agents' choices will affect the outcome of interest", adding that "choices during the critical juncture trigger a path-dependent process that constrains future choices" (2007, p. 348). This phenomenon of historical institutionalism is called path-dependency and can be defined as periods of relative stability constrained by prior choices amidst a particular institutional setting (Peters et al., 2005). This does not mean status quo as "institutions continue to evolve in response to changing environmental conditions and ongoing political maneuvering but in ways that are constrained by past trajectories" (Thelen, 1999, p. 387). It means that the path chosen, shaped and reinforced by the inceptive institutions and ideas, makes consequential change less likely to happen.

However, relying only on historical institutionalism could downplay other factors, hence the relevance to focus on concepts that make sense, notably, of the cultural challenge faced by the

[17] Since historical institutionalists also conceive institutions as the structures created to implement public policy or the legislatures, Peters et al. (2005) argue that such an inclusive definition limits from testing the theory.

EIJBRG and FeFo. The concepts that are introduced below better capture the unconventional design, governance dynamics and novelty associated with the EIJBRG and FeFo.

In addition to historical institutionalism, four main concepts were mobilized. First, the right to *self-determination* of Indigenous Peoples provides a background and a framework to conceptualize and operationalize Indigenous-State relations in Canada and Norway. Second, *multilevel governance* (MLG) positions Indigenous – non-Indigenous shared governance more specifically within the literature on comparative and Canadian federalism. Third, *co-management* addresses Indigenous – non-Indigenous shared governance in the context of land and resource management. Fourth, *intercultural relations* between Indigenous and non-Indigenous actors complements the institutional framework with a behavioural approach.

The research also draws on the literature on the *Indigenous resurgence movement* to situate the topic in a broader discussion about colonialism (Coulthard, 2014; Alfred and Corntassel, 2005; Ladner, 2010; Latta, 2018). Broadly speaking, the literature on Indigenous-State land and resource co-management is divided between academics who argue that co-management empowers Indigenous Peoples (White, 2002, 2020) and those who argue that Indigenous power is co-opted (Nadasdy, 2003; Stevenson, 2006). Both views overlap and are not mutually exclusive, as highlighted by Rodon's (2003) typology. Reflecting on my position as a non-Indigenous person of European descent, I first questioned the legitimacy of embracing concepts and standpoints carried by Indigenous authors who call for Indigenous self-recognition, and a disengagement from colonial structures and institutions. However, if done properly, that is by acknowledging that my privileged position to address such issues is facilitated by those structures and institutions, the elements of the Indigenous resurgence movement provide a necessary addition to the dominant, federalism-based analyses on collaborative governance. As Latta notes, the progress made in recent decades should not obscure the fact that colonialism continues to plague Indigenous self-determination:

> my hope is to ensure that these deeper questions about the colonial state remain in view, as there is always the risk that progress in state–Indigenous relations can become a source of legitimation for the colonial structures that remain in place […] The governments of those states need to be reminded that such collaboration is just a step along the way to truly decolonized relationships between peoples. (2018, p. 14)

2.1 Self-determination

The right to self-determination was initially asserted during decolonization in Africa and Asia where nations were claiming independence and territorial sovereignty from the colonial rule (Barelli, 2011; Rodon, 2013). During postcolonialism, multinational states grappled with pressing autonomy demands from sub-national groups, shifting away from an *external* form of self-determination[18] to an *internal* form of self-determination. The latter suggests the right for a people to exercise "cultural, linguistic, religious, territorial or political autonomy within the boundaries of an existing state" (Henriksen, 2008, p. 38).

2.1.1 The right of Indigenous Peoples to self-determination: the international context

Since the beginning of the colonial rule by the settler States, Indigenous Peoples around the world have been increasingly voicing their claims for self-determination as a response to past and ongoing colonialism (Papillon, 2014; Parsons and Fisher, 2020; von der Porten and de Löe, 2013). In reclaiming their inherent rights, Indigenous Peoples are not only affirming their distinct cultures but also their distinct political status (Cornell, 2015; von der Porten and de Löe, 2013). Particularly, Indigenous Peoples who have never signed a treaty are seeking to regain autonomy on their traditional lands – lands they never relinquished – following centuries of territorial dispossession (Cornell, 2015; Rodon, 2003; von der Porten and de Löe, 2013).

In 2007, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) marked progress towards the recognition and framing of Indigenous Rights at the international level (Barelli, 2011; Papillon, 2014). The Declaration recognizes the Indigenous right to self-determination (2007, art. 3), defined as a right to "autonomy or self-government in matters relating to their internal and local affairs" (2007, art 4) and a right to participate in the "political, economic, social and cultural life of the State" (2007, art 5). UNDRIP clearly states the right of Indigenous Peoples to self-determination within state borders.[19] This makes it a right that is conceived both internally and relationally, one that is negotiated with the State and under the terms of the State.

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[18] Referring to the possibility for a people to freely determine its international status (to form a state or integrate another) (Rodon, 2003; Tomaselli, 2016).

[19] Article 46(1) cautions that nothing in the declaration infringes on the territorial integrity of the States.

2.1.2 Towards shared rule through a relational understanding of self-determination

According to the UNDRIP, Indigenous internal self-determination manifests itself through both autonomy and participation (Barelli, 2011; Falch et al., 2016; Green, 2004; Tomaselli, 2016; Wilson and Selle, 2019). The right to autonomy is the right for Indigenous Peoples to exercise decision-making powers over areas of importance such as culture, lands and livelihood. This idea of Indigenous control free from State interference refers to *self-rule*, generally exercised by means of self-government (Cornell, 2015; Wilson and Selle, 2019). Self-government can be defined as the right for a people to freely chose its political and economic regime (Cassese, 1995, as cited in Tomaselli, 2016).[20]

Relational self-determination implies that since self-rule cannot make sense of complex interdependencies between Indigenous and non-Indigenous groups, *shared rule* spaces are necessary to tackle issues of shared concern while considering Indigenous differences (Broderstad, 2014; Green, 2004; Murphy, 2005, 2008; Marion Young, 2004). Shared rule extends the Indigenous influence to non-Indigenous spheres of decision-making and can be exercised through various mechanisms and arrangements (Murphy, 2008; Wilson and Selle, 2019). These range from the right of Indigenous Peoples to free, prior and informed consent (FPIC) regarding development projects on their lands (see Barelli, 2011; *Haida Nation v. British Columbia,* 2004; Papillon and Rodon, 2017; UNDRIP, 2007) to participation in natural resource co-management (White 2002,

[20] In Canada, the right to self-government for Indigenous Peoples is recognized and protected under Section 35 of the 1982 *Constitution Act*. There currently are 25 self-government agreements that have been negotiated with 43 Indigenous communities (CIRNAC, 2024). There exist numerous types of Indigenous self-government, which success in empowering the Indigenous Peoples varies a great deal. Abele and Prince (2006) refer to four "pathways" to Indigenous self-government. The "mini-municipality" model, which is the first stage, implies that an Indigenous Nation or community is delegated responsibilities from another level of government. The second model, "adapted federalism", refers to the creation of a public government resulting from the renegotiation of one Indigenous Nation's relation within the federation (Nunavut being the only case). The third model, the "third order" of government considers Indigenous governments as constituents equal to provinces and territories (no such model exists). The final stage is the Nation-to-Nation relation which acknowledges that the Indigenous legal and political values, traditions and practices predate those of the Canadian State, creating a dual federation with different coexisting legal bases. While this approach to Nation-to-Nation is utopic, that of the Royal Commission on Aboriginal Peoples, which builds on mutual respect, cooperation and rights recognition, has percolated in some rare cases (e.g. the Paix des Braves agreement). For some Indigenous Peoples, the self-government models embedded in the existing federal system suits their interests and needs; for others, it falls short of their conception of self-governance as full-fledged political autonomy, exercised through a Nation-to-Nation relation with the non-Indigenous governments (Abele and Prince, 2006; Ladner, 2001; Rodon, 2003). As noted by Papillon (2012), the most consequential cases of Indigenous self-government have been negotiated in conjunction with modern treaties before the two processes (land claims and self-government) came to be negotiated separately. The case of the Nisga'a Lisims Government (British Columbia) and that of the Cree Nation Government are unique in the way they enact the law-making capacity of the Indigenous authorities (see Rynard, 2000).

2020), by way of Indigenous representation in the parliament like in New Zealand (Hawkes, 2001; Murphy, 2008). This thesis emphasizes both self-rule and shared rule, acknowledging that they are two interrelated and interdependent concepts (Murphy, 2005; Wilson and Selle, 2019). The following concepts of multilevel governance and co-management are mobilized as they both capture a relational understanding of self-determination while taking a closer look on new governance dynamics and land and resource management.

2.2 Multilevel governance

In the 1980s and 1990s, the neoliberal shift and new public management reforms challenged the political and economic landscape of liberal democracies. The emergence of private and non-governmental actors, the expansion of the market economy, and the role of civil society introduced new dynamics challenging the dominant State-centered approach to policymaking (Wilson and Selle, 2019). These new dynamics produced growing interdependencies and interconnections, enabling the dispersion of authority from the central state to lower-level jurisdictions and decision-making spaces, parallel to the traditional sphere of *intergovernmental relations* (IGR) (Alcantara and Nelles, 2014; Alcantara et al., 2016; Farrelly et al., 2010; Hooghe and Marks, 2003; Rhodes, 1996, 2007). These horizontal and vertical transformations are rooted in what Rhodes (1996) called "governance without government", echoing the idea that *governance*, defined as a set of interactions between various actors and networks that produce policies, describes new spaces for power sharing that replace the idea of decision-making being exercised solely by the *government* (Rhodes, 1996; Berkes, 2010).

Multilevel governance (MLG) was first used to capture the fragmentation and migration of authority to different territorial levels within the European Union in the 1980s and 1990s (Bache and Flinders, 2004; Hooghe and Marks, 2003; Peters and Pierre, 2001). Governance scholar Gary Marks first defined MLG as "a system of continuous negotiation among nested governments at several territorial tiers" (1993, p. 392, as cited in Alcantara et al., 2016). B. Guy Peters and Jon Pierre remark that MLG "[…] challenges much of our traditional understanding of how the state operates […]" in respect to how vertical and horizontal relations are "seemingly bypassing the state" (2001, p. 131, 132). Nonetheless, Rhodes (2007), Jessop (2004, as cited in Bache and Flinders, 2004) and Peters and Pierre (2004, as cited in Bache and Flinders, 2004) argue that this new political landscape does not replace the democratic legitimacy and accountability of the State.

Rather, the role of the State is revisited, particularly the way institutions and formal frameworks are enmeshed with other flexible and informal governance networks.

2.2.1 Multilevel governance and federalism

Extending beyond and within the borders of the nation-state, MLG has been used as an alternate descriptive and analytical lens to the frameworks of federalism and IGR, whose rigid boundaries were ill-suited to encapsulate the complexities of growing multilevel interactions between governmental and non-governmental actors (Alcantara and Nelles, 2014; Alcantara et al., 2016). Papillon argues that MLG induces adaptations to federalism, "[lying] partly outside the formal rules and institutions of the existing federation without being completely separated from it" (2012, p. 294). Others suggested that federalism was being transformed into MLG systems (Bakvis et al., 2009 as cited in Alcantara et al., 2016; Hooghe and Marks, 2003). All of these different approaches highlight the transformations captured by MLG as both a concept and a phenomenon. However, clear conceptual boundaries distinguishing MLG from processes of federalism were necessary to highlight the descriptive and analytical value of the concept. Addressing this blindspot, Alcantara and Nelles defined MLG as a:

> policy process that engages a variety of *actors* (governmental, nongovernmental, and/or quasi-governmental) located at different territorial *scales*, the outcomes of which are the product of *negotiation* (decision-making processes or negotiated order) rather than traditional hierarchical orders such as delegation and devolution. (2014, p. 189)

Determining who is a government actor and who is not is crucial to understand and use MLG. Alcantara and Nelles (2014) consider that any actor that is being delegated powers from a constitutionally recognized authority can be considered a "governmental" actor.[21] The *scales* refer to the territorial/political levels at which the actors are embedded and *negotiation* refers to the complex interdependencies that reorganize power relations, entailing a non-hierarchical, consensus-based decision-making process. MLG is possible when at least one constitutionally recognized actor and one non-governmental actor, with at least one of them being from a different territorial or political scale, engage in a negotiation process (Alcantara and Nelles, 2014). Alcantara

[21] While Alcantara et al. (2016) argued that they used a broader definition by considering non-constitutional governments such as local governments or government agencies as "governmental" actors, it seems like it exactly is the precision that Alcantara and Nelles (2014) aimed to make. Despite their claim, it does not appear that Alcantara et al. (2016) expanded the "actors" parameter of MLG.

et al. (2016) broadened the possibilities by suggesting that MLG can occur when at least one governmental and one non-governmental actor are involved.

The main contribution of Alcantara et al. (2016) was to conceptualize MLG and IGR as instances of *multilevel politics* (MLP) which operate within a political *system*. Both instances – defined as "episodes or moment of interactions" (Alcantara et al., 2016, p. 38) – display different configurations yet can coexist within the same political system. The threshold for differentiating MLG and IGR is the nature of the decision-making process. In IGR, non-governmental actors can be involved in policymaking, but the government actors ultimately have the decision-making powers. In MLG, all actors wield influence, leading to the *co-production* of decisions (Alcantara et al., 2016). This thesis draws on this particular definition because it "provides the strictest test for determining whether meaningful authority is being shared through new and emerging Indigenous MLG arrangements in Canada" (Alcantara and Morden, 2019, p. 251).

2.2.2 Multilevel governance, Indigenous Peoples and power relations

At the turn of the 1970s, the growing Indigenous claims for self-determination and the emergence of new spaces of negotiation established unprecedented political dynamics between Indigenous Peoples and the Canadian State. Papillon, who first used MLG to explain these manifestations, specifies that "the response to indigenous challenges has been neither to restructure the federal system to incorporate indigenous governments more formally nor to fully recognize their sovereign status outside of the federation" (2012, p. 294). With the exception of the Nunavut land claims agreement, which redefined the boundaries of Canada, adaptations of the federal system to Indigenous claims occurred within the existing constituent units. These adaptations did not challenge the constitutional framework; they were incremental and established new spaces coexisting with the structures and processes of Canadian federalism (Papillon, 2012, 2015, 2020; Wilson et al., 2020).[22]

[22] References to the federal institutional flexibility throughout this thesis are made in comparison to the unitary and centralized political system of Norway. In fact, despite the federal structure being more adaptable within existing constituent units, there remains critical barriers to structural change, the reallocation of authority and the accommodation of Indigenous claims. Notably, as Papillon (2012) points out, the division of powers and responsibilities between the federal government and constituent units, which were then negotiated and now firmly embedded in the constitutional framework, are quasi-unchangeable.

Alcantara and Nelles (2014) defined criteria capturing more clearly the phenomena of MLG in the context of Indigenous self-governments, modern treaties and the constitutional negotiations of the 1980s. MLG in the Canadian context of Indigenous-State relations has also been applied to Indigenous feminism (Ladner, 2010), sector-specific Indigenous-provincial agreements (Papillon, 2015), Impact and Benefits Agreements (IBA) (Alcantara and Morden, 2019) and natural resource co-management (Latta, 2018). Papillon (2020) examined modern treaties, Supreme Court jurisprudence, Indigenous representation in IGR forums, and myriad trilateral and bilateral agreements to illustrate how the mosaic of MLG relations reshaped the Canadian federation. Yet, Indigenous MLG remains a new concept in need of further empirical evidence and conceptual clarification. For example, as explained below, Indigenous-State relations often conceal power asymmetries that MLG fails to fully capture.

The negotiated order criterion, which is the threshold to identifying MLG, comes short of capturing the power asymmetries underlying the Indigenous-State relations. As Latta puts it: "MLG can be read as an example of the way colonial institutions adapt to new political pressures in ways that insulate themselves from radical challenges" (2018, p. 5). To capture this blind spot, researchers have drawn on the concept of *shadow of hierarchy*. For Bakvis, "even in governance systems based on extensive collaboration, hierarchy is never absent; seemingly fluid cooperative arrangements often occur because they take place 'in the shadow of hierarchy'" (2013, p. 204). Alcantara and Morden explain how the shadow of hierarchy underlies the interactions between Indigenous Peoples and the State:

> When it comes to setting policy agendas and establishing the norms and rules of discourse and negotiations Indigenous and non-Indigenous actors frequently collaborate and interact in the shadow of hierarchy, given the vast array of state institutions that generally privilege the image of Canadian federalism over the treaty federalism one. (2019, p. 253, 254)

The structural hierarchies such as political and/or economic disparities, past and ongoing colonialism and capacity challenges (expertise, human and financial capital, etc.) continue to undermine the Indigenous ability to influence the processes and outcomes of MLG. One way of bridging the gaps would rest on the ability of disadvantaged actors to "deploy" resources "strategically" in targeted settings (see Alcantara and Morden, 2019; Latta, 2018). While Alcantara and Morden (2019) offered a first important take on the power asymmetries of MLG in the context of IBAs, they acknowledged that power needs to be assessed against other phenomena and

configurations of Indigenous MLG to have more empirical evidence on the influence of power on MLG processes and outcomes. They notably referred to the relevance of doing so across a range of federal and non-federal settler States, an exercise attempted here. In this thesis, MLG was used to capture both the innovative and changing nature of Indigenous-State governance, and the fact that it constrains Indigenous authority and influence in structures and institutions that are alien to Indigenous cultures (see Papillon, 2015).

2.3 Co-management

The concept of *co-management* stems from the conclusion that the State alone cannot with efficiency and legitimacy be the sole manager of complex social-ecological systems. In fact, one of the cornerstones of co-management is that local land users ought to have a voice in management decisions affecting their lands and livelihoods (Berkes, 2009, 2010; Lockwood et al., 2010). In the 1990s, the reduction in funding allocated to government agencies and environmental ministries in several States required the restructuring of institutions, enabling the devolution of responsibilities to local-level actors (Armitage et al., 2008; Berkes, 2010; Plummer and Fitzgibbon, 2004). Like MLG, the co-management of natural resources emerged in a context of decentralization brought about by a paradigm shift from government to governance (Rhodes, 1996).

Precisely, co-management lies at the intersection of *collaborative governance* and *natural resource management* (NRM). The former is described by Ansell and Gash (2007) as a governing arrangement involving State and non-State actors engaged in consensual public policymaking. Lockwood et al. define NRM as a "collective action problem requiring diverse actors—governments, farmers, business, communities, and nongovernmental organizations (NGOs)—to integrate their activities so that improvements in the condition of natural resources can be achieved" (2010, p. 989). The emphasis on natural resources within the collaborative governance literature makes it a relevant framework for assessing the management of competition and conflict over local resources (Ansell and Gash, 2007; Castro and Nielsen, 2001).

2.3.1 Co-management: a definition

For the past several decades, the co-management literature generated many definitions, approaches and typologies (see Armitage et al., 2008; Berkes et al., 1991; Carlsson and Berkes, 2005; Plummer and Fitzgibbon, 2004; Sandström, 2009). Research in fisheries (see Holm et al., 2000;

Chuenpagdee and Jentoft, 2007), forestry (see Wyatt et al., 2013, 2019) and wildlife management (see Feit, 2005; Nadasdy, 2003; Rodon, 2003), among others, generated important empirical evidence establishing the conceptual boundaries of co-management.[23]

Given the moving boundaries of co-management and the numerous contexts of application, many have used Arnstein's ladder to capture the level of public participation found in the co-management arrangements (Berkes et al., 1991; Carlsson and Berkes, 2005; Wyatt et al., 2013). For instance, Carlsson and Berkes (2005) ranged the possibilities of co-management from the exchange of information to community-nested systems, where private actors determine management priorities with less input from the State. These categories are not mutually exclusive and more often than not overlap (Carlsson and Berkes, 2005). Narrowed to Indigenous forestry in Canada, Wyatt et al. (2013) detailed four types of collaboration, from treaties and agreements to economic roles (employment in forest development activities, revenue sharing), by way of influence on decision-making (delegated authority, co-management, advisory tables). Again, more than one category can coexist.

Thus, there does not exist one definition of co-management but multiple, according to contexts (Berkes, 2010). For Berkes, co-management refers to "a range of arrangements, with different degrees of power sharing, for joint decision-making by the State and communities (or user groups) about a set of resources or an area" (2009, p. 1693). This definition is used in this thesis as it encapsulates the inherent institutional linkages and multiscale interactions of co-management, while providing a narrow enough lens to analyze phenomena.

Berkes' definition is telling of the central place of power (see also Nursey-Bray and Rist, 2009; Takeda and Røpke, 2010) and the building of relations and trust among and between the actors of co-management (see Berkes, 2009; Natcher et al., 2005). These aspects of co-management are particularly observed throughout this thesis. Drawing on the *governance* theory, power sharing is considered an outcome, not the starting point of co-management (Carlsson and Berkes, 2005; Sandström, 2009). While this premise recognizes the unequal relation in which the actors of co-

[23] The research on co-management through the prism of political science, however, remains scarce compared to that in other fields such as anthropology and environmental studies. Only Rodon (2003) and White (2020) have thoroughly examined the institutional and structural processes and outcomes of co-management in the context of Indigenous-State relations.

management engage, it further emphasizes the importance of the processes to mitigate the power asymmetries that often underlie arrangements involving actors of different cultures with different knowledge, resources, as well as structural and institutional levers (Ansell and Gash, 2007; Carlsson and Berkes, 2005; Stevenson, 2006).[24]

2.3.2 Co-management: intersecting Indigenous and western worlds

Indigenous Peoples have historically been excluded from State-controlled resource management systems. In past decades, however, issues of conservation, conflicts over resources and treaty obligations highlighted the legitimacy and importance of Indigenous knowledge, values and practices in environmental governance (Artelle et al., 2019; Bullock et al., 2020; Tipa and Welch, 2006).

Theoretically, Indigenous-State co-management aims to reconcile the Indigenous and State approaches to resource and land management. As Notzke puts it, this reality poses the challenge of merging "two systems [that] are based on and operate within two profoundly different social realities" (1995, p. 190). State management is based on the separation of human and nature and the compartmentalization of ecosystems, seeking productivity-oriented resource extraction and distribution. Indigenous Peoples engage in relationships of reciprocity and respect with animals and ecosystems, which translate into a holistic and self-regulated stewardship (Asselin, 2024; Feit, 1988; Motard, 2016; Notzke, 1995; Rodon, 2003; Stevenson, 2006).

The experience of modern treaty co-management boards, which has been studied more extensively, reveals the dominance of State management infused with Indigenous elements, rather than a system that is co-constructed (White, 2020). For some, co-management has highlighted a struggle for power (Rodon, 2003) or worse, the cooptation of Indigenous power within the dominant State management model (Nadasdy, 2003; Stevenson, 2006). While these perspectives are acknowledged and easily observed, the choice to use concepts such as MLG and co-management, which do not challenge the structures and institutions of the State, necessarily orient the analysis. In this regard, this thesis follows White's (2020) premise that co-management institutions are

[24] The concept of *adaptive co-management* was introduced to capture the constant adaptation of the social-ecological systems through learning-by-doing and problem-solving (Armitage et al., 2008).

meant to integrate the governance structure of the State, allowing Indigenous influence to be exerted within this structure.

Indigenous Peoples, the State and power dynamics. Indigenous-State co-management is grounded in *structural power*. Structural power refers to the organized structure of domination that is controlled by the State – power cannot be shared and underprivileged groups resist the economic, social and ideological order imposed by the State (Takeda and Røpke, 2010). A telling example is the boards' decision-making capacity that is confined to an advisory role in most cases (Rodon, 2003). In this thesis, structural power is conceived as the starting point to unveil power asymmetries and challenge the "structural bases of oppression" (Takeda and Røpke, 2010, p. 178). It is layered with *institutional power* – rules shaping norms, issues and interests, which influence negotiation and decision-making – and *agency power*, that is the capacity of actors to identify a political problem and address it by mobilizing resources (financial, human, among others) (Takeda and Røpke, 2010).

This integrative approach offers a framework to target and rebalance power asymmetries by acknowledging Indigenous perspectives and knowledge, defining shared rules and allocating resources equally, enhancing the agency of Indigenous actors and gathering conditions for true shared governance (Nursey-Bray and Rist, 2009; Clark and Joe-Strack; 2017). Power sharing is an important aspect of co-management in order to counteract the marginalization of certain actors and ensure the legitimacy of the decision-making process (Ulvevadet, 2012). Recognizing prior occupation of the land by Indigenous Peoples and the inherent rights that stem from it, including Indigenous knowledge and management practices and seeing them as *Nations* and not as any other *stakeholder*, are all steps towards power sharing in co-management (Stevenson and Webb, 2003; von der Porten and de Löe, 2013). In the words of one Indigenous participant involved in a research project on water governance in British Columbia:

> we have rights which were never extinguished, to the water, to use the water, to protect the water, […] It is part of what we feel is our title to the land, and the resources. And in no way is it something that we're just another interested party. (von der Porten and de Löe, 2013, p. 155)

Relations and trust between Indigenous Peoples and the State. Building relations and trust between stakeholders is inherent to the co-management process. The history of relations is an

important starting point, as Armitage et al. point out: “Experiences from earlier collaborative processes offer no recipe for trust building, but do reveal the need for repeated interaction among stakeholder groups and individuals, and a commitment to open communication” (2008, p. 97).

Nurturing *social capital*, which refers to the networks of reciprocity and relations of trust in enabling collective action (see Armitage et al., 2008; Berkes, 2009; Folke et al., 2005), is relevant for disentangling co-management boards embedded in conflict (Castro and Nielsen, 2001) or for arrangements lacking the legal obligations to organize and collaborate as is the case for claims boards (Motard, 2016). For example, in northern Queensland, Australia, the building of relations and collaboration was instrumental to the co-management experience of the Girringun Aboriginal corporation in the absence of strong Indigenous statutory rights (Zurba et al., 2012). On the contrary, in the case of the Ruby Range Sheep Steering Committee, a co-management body in Yukon (Canada), issues of coexistence between Indigenous and scientific knowledge led to mistrust between members and impeded consensus building (Nadasdy, 2003).

Establishing close working relations from the pre-implementation phase enables a mutual trust-based, long-term commitment (Chuenpagdee and Jentoft, 2007). Trust, defined as the “intention to accept vulnerability based upon positive expectations of the intentions of the behavior of another” (Rousseau, 1998, p. 35 as cited in Hotte et al., 2019, p. 2), is also a driving factor enabling the engagement of actors in building relations over time (Ansell and Gash, 2007; Berkes, 2009). For instance, dialogue and shared understandings are conditions for working arrangements (Ansell and Gash, 2007; Plummer and Fitzgibbon, 2004). On the other hand, inefficient communication and a lack of organization threaten the time and resources invested in the collaborative process (Borrini-Feyerabend, 2007 as cited in Ulvevadet, 2012). In this thesis, the influence of institutions – expectations from past interactions, the alignment of interests, the decision-making processes – on trust and relations to support collective action (see Ostrom and Ahn, 2009) will be considered in the comparative analysis.

2.4 Intercultural relations

The aim of including *intercultural relations* is to emphasize that “because co-management has more to do with managing human relationships than resources per se, underlying cultural conditions by which these [co-management] arrangements perform is critical to forecasting their

ultimate success or failure" (Natcher et al., 2005, p. 241). Intercultural understanding is a precondition to reaching workable intercultural relations to overcome what Savard (1981, as cited in Lathoud, 2005a) called "cultural deafness" (surdité culturelle, in French) – the inherent gap between two cultures that engage with one another. Oman talks about "sharing horizon", arguing that "sharing is not distinguished by the interchangeability of the experiences of partners […] but by the quality of invitation, and of possibility, that each brings to the relationship" (2004, p. 82). Engaging in dialogue, fostering the habit of active listening and recognizing the other in its own terms and traditions have the potential to foster mutual respect and shape mutually beneficial intercultural relations (Oman, 2004).

In the co-management literature, the intercultural challenge is often expressed by the collision of Indigenous and western environmental knowledge (Castro and Nielsen, 2001; Natcher et al., 2005; Nursey-Bray and Rist, 2009; Rodon, 2003). The structures, norms, and values of the dominant culture imprison co-management in a Euro-Canadian bureaucratic and scientific framework that hinders the capacity of Indigenous knowledge to inform the processes and decisions (Nadasdy, 2003; Rodon, 2003; Spak, 2005). As Stevenson suggests (2006), the practice of co-management through the lens of "white people" often imposes inappropriate terminology and concepts for Indigenous ontologies and epistemologies. This is particularly evident in the use of terms such as "management", "conservation" and "ownership", which diminish the value of Indigenous knowledge which are often dismissed as anecdotal.

The case of the Ruby Range Sheep Steering Committee, mentioned earlier, is a prime example (Nadasdy, 2003). On the other hand, the "Corporation de gestion de la Forêt de l'Aigle" (CGFA) in the Outaouais region of Québec (Anishnabe unceded territory) happened to be a rare positive example of regional collaboration in which the knowledge of the Anishnabe of Kitigan Zibi were included in forest management operations (see Andrew, 2013; Chiasson et al., 2005). According to Chiasson et al. (2005), the CGFA illustrates the value of sociodiversity in forest management, where the inclusion of diverse perspectives and knowledge promotes consensus building and conflict mitigation.

For shared governance to benefit from intercultural relations, the marginalized culture must permeate spaces of interaction shaped by the dominant culture. For White (2020), enhancing Indigenous influence in procedures not only entails including Indigenous interests but also

Indigenous modes of thought. This is echoed by Lathoud's (2005a) account of forest management in EIJB, where she suggests that integrating Eeyou modes of decision-making would balance bureaucratic and scientific non-Indigenous approaches, and raise cultural awareness among non-Indigenous managers. For Awashish (2018), a greater inclusion of the Eeyou modes of governance and decision-making would put Eeyou Istchee, the land, at the center of the process and decisions. The forestry regime established by the Paix des Braves is an important example to this extent that is later discussed (see subsection 3.3.5).

Cultural interactions participate to the building of relations and trust and have the potential to tone down power asymmetries (Moran, 2010). Nonetheless, Indigenous knowledge, practices, values and traditions, which lead to more power sharing, too often fail to be included in their own terms (Nursey-Bray and Rist, 2009; Spak, 2005). As White (2020) explains, the experience in Canada has shown that the bureaucratic and scientific framework in which co-management operates is often incompatible with Indigenous knowledge, despite the efforts and intentions of the non-Indigenous board members to foster their inclusion.

3. CONTEXT

The goal of this chapter is to provide background information and identify the structural and institutional factors underlying the creation of the EIJBRG and FeFo. The first two sections establish a picture of the Canadian Indigenous policy and treaty-making, from the Royal Proclamation until today. The third section introduces the region of EIJB and the Eeyou Nation, emphasizing the land regime and shared governance structures created by the JBNQA. This section ends by explaining the changes on the land regime of the JBNQA over time. The fourth section details the structuring factors that underlie the signature of the AGEIJB and the creation of the EIJBRG. Sections five and six introduce the situation of Sámi in Norway. Section five offers a background to the Norwegian Sámi policy and Sámi-State relations, focusing on the influence of the Norwegian political system and ethnopolitics in Finnmark. Section six addresses the recent political history of Sámi, from the Alta conflict to the *Finnmark Act.*

3.1 Indigenous policy in Canada

Indigenous Peoples are the descendants of the first inhabitants of what is today Canada, whose occupancy of the land predates the arrival of European settlers by many thousands of years (Abele and Prince, 2006; Rodon, 2003). “Being Indigenous” relates to multiple identities “constructed, shaped and lived” organically and in reaction to colonialism (Alfred and Corntassel, 2005). As much as Indigenous Peoples in Canada and former British colonies are culturally, socially and politically diverse, they all share the past and ongoing experiences of colonization (Alfred and Corntassel, 2005; Cornell, 2015).

In 1763, the Royal Proclamation, which marked the transfer of power from the French to the British Crown in North America, was the first document to define the place and status of Indigenous Peoples in Canada. Although the original intent was to protect Indigenous Peoples and their lands from encroachment, the Royal Proclamation signified the beginning of Indigenous tutelage by the Crown and State. The profound structural effects of the Royal Proclamation laid the foundations for the colonial policies of the Canadian State from 1867 until today (Rodon, 2003; Papillon, 2014).

Fleras and Elliott (1992) suggested three historical periods interspersed in what they coined Canada's "neo-colonial relationship". First are the assimilationist – and genocidal – policies, from the creation of the Confederation in 1867 to the Second World War. The *Indian Act*, enacted in 1876 and amended numerous times since, remains the principal legal instrument articulating the ascendancy of the Canadian State over First Nations. It provided the basis for the creation of reserves and band councils, the governance system officially recognized by non-Indigenous governments to oversee community affairs (Papillon, 2014). The creation of residential schools, where Indigenous children were sent to be assimilated, is a tragic part of Canadian history. The Truth and Reconciliation Commission of Canada, which produced its final report in 2015, had the mandate to

> reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools, in a manner that fully documents the individual and collective harms perpetrated against Aboriginal peoples, and honours the resilience and courage of former students, their families, and communities. (Truth and Reconciliation Commission, 2015, p. 23)

Second are the attempts to integrate Indigenous Peoples and dilute Indigenous Rights and identities into the larger Canadian society following the Second World War. In 1951, the *Indian Act* was amended to enable provinces to provide public services, such as education, to Indigenous Peoples. This new reality, which allowed Indigenous children to be educated in the provincial public system, contributed to the "Sixties Scoop", a colonial child-welfare policy which removed Indigenous children from their homes to place them in non-Indigenous institutions and families, perpetuating the State's cultural genocide (Truth and Reconciliation Commission, 2015). The third period is the revival of treaty-making starting with the JBNQA and the constitutional negotiations, in the 1980s, which repositioned Indigenous-State relations within a new domestic legal and political framework (see also Coulthard, 2014; Papillon, 2012, 2014).

The negotiation of the 1982 *Constitution Act* led to the inclusion of section 35 which recognizes three distinct ethnic groups as Indigenous: First Nations, Métis, and Inuit. Aboriginal and Treaty Rights were also recognized.[25] Prior to 2016, the federal government only had a fiduciary

[25] Aboriginal Rights are inherent rights which draw their legal source from the Indigenous occupation of the land prior to European settlement. Treaty Rights are positive law rights that exist by way of land claims agreements (Henderson, 1994).

responsibility over Status Indians living on reserves under the *Indian Act*.[26] Indigenous people living off-reserve in urban areas, non-Status Indians and Métis were under provincial jurisdiction (Abele and Prince, 2003).[27] However, in *Daniels v. Canada,* the Supreme Court of Canada ruled that federal responsibilities apply to all Indigenous Peoples, including non-Status Indians and Métis (Papillon, 2020). Inuit have never been subject to the *Indian Act* but the 1939 *Re Eskimos* ruling determined they are considered as Indians under article 91(24) of the 1867 *Constitution Act* (Abele and Prince, 2003; Rodon, 2013). The Department of Indian Affairs and Northern Development, which once oversaw all issues pertaining to Indigenous Peoples in Canada, was divided into two departments in 2017: Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) (dealing with treaty-making and constitutional negotiations) and Indigenous Services Canada (dealing with service delivery) (INAC, 2017; White, 2020).

Provinces and territories have constitutional jurisdiction over land and natural resources. Historically, however, territories have not had the jurisdiction over land and resources which remained in the hands of the federal government. In Yukon and Northwest Territories, powers over land and resources were devolved respectively in 2005 and 2014 (White, 2020). The devolution agreement in Nunavut was signed in 2024, with implementation continuing through 2027 (Tranter, 2024). In past decades, the question of land and resources has been a central source of competition and tension between the State seeking development projects and Indigenous Peoples defending their traditional lands. As explained in more detail in sections below, modern treaties, notably the JBNQA, have captured the complexity of negotiating and reconciling two different visions of using and managing the land.

3.2 Treaties: pillars of Indigenous-State relations in Canada

Long before European powers set foot in North America, Indigenous Nations engaged in treaties to regulate land sharing and manage their relations (Papillon and Lord, 2013). The institutionalization of treaty-making in Canada traces back to the 1763 Royal Proclamation and the assertion of the British rule (Miller, 2010). From 1726 to 1867, pre-Confederation historical treaties

[26] Status Indians appear on the Indian Register pursuant to the *Indian Act*. They are eligible to defined rights, programs and services.

[27] The absence of status may stem from various causes, notably the difficult localization of nomadic and remote Indigenous Peoples, and Indigenous women losing their status marrying a non-Indigenous person, a discriminatory provision of the *Indian Act* abolished in 1985 (Rodon, 2003).

mainly aimed to establish alliances, commercial partnerships, peace and friendship relations and clarify the occupation of the land, without providing much for the governing capacity of the First Nations involved (Henderson, 1994; Houde, 2011; Miller, 2010). The Peace and Friendship treaties, signed between the British and the Mi'kmaq, Wolastoqiyik, and Passamaquoddy in the 18th century, covered all of the Maritimes. Meanwhile, all of southern Ontario came under various treaties during the first half of the 19th century (Yellowhead Institute, 2025). Important to note is that pre-Confederation treaties signed before the Royal Proclamation did not have a territorial dimension. The Royal Proclamation provided for multiple "Indian clauses" aimed at securing lands for First Nations.[28] Although these clauses were intended to prevent further land fraud, such as that which generated conflicts west of the Thirteen Colonies, they instead "lay down a Crown-sanctioned procedure for making Crown-Aboriginal territorial treaties that would provide access for Europeans to First Nations lands" (Miller, 2010, p. 5). Most of pre-Confederation treaties were negotiated under First Nations' protocols – speeches, feasts and present-giving –, emphasizing relationship building. As the settler authority shifted in 1867, so did the rules of treaty-making (Miller, 2010).

Following the *British North American Act* marking the birth of the Canadian Confederacy, post-Confederation historical treaties (the so-called "numbered treaties") were signed in the Prairies and northern Ontario, with the main goal of extinguishing the Indigenous Title – the communal right to land that arises from prior occupation (*Delgamuukw v. British Columbia*, 1997) – and dispossessing Indigenous Peoples of their lands to enable settlement and colonization (Houde, 2011; Miller, 2010). Most of Canada, however, remained unceded land as no historical treaties were signed in present-day Nunavut, part of the Northwest Territories, most of British Columbia, Yukon, Newfoundland and Labrador, and Québec (Blackburn, 2007; Grammond, 2009).[29] As historical treaties negotiated after 1763 had ruled out most of the legal uncertainties regarding land ownership, and as settler authorities assumed that Indigenous Peoples would fully assimilate into

[28] Notably, the Royal Proclamation declared that all lands west of the Appalachian Mountains and south of Rupert's Land, which were not existing colonies, were to be reserved for the use of the First Nations as hunting grounds (Miller, 2010).

[29] However, pre-Royal Proclamation treaties that were not land-based also stretched to the Province of Québec. This applies to Peace and Friendship Treaties in the Maritimes, which covered the lands of the Mi'kmaq and Wolastoqiyik in Gaspésie, Québec's easternmost region (CIRNAC, 2025).

the mainstream society, there was a 50-year interruption in treaty-making, from the 1920s until 1975 (Houde, 2011; Miller, 2010).

3.2.1 Modern treaties: marking a new era of relations in Canada

Three critical moments or conjunctures marked the revival of treaty-making in Canada in the 1960s and 1970s. First, the 1969 White Paper, a governmental policy aimed at abolishing the *Indian Act* and assimilating Indigenous Peoples into the larger Canadian society, mobilized Indigenous Peoples across the country (Murphy, 2005; Papillon, 2014). As a response, the National Indian Brotherhood (the precursor to the Assembly of First Nations) was created to facilitate the organization and resistance at the national level (Coulthard, 2014). It also set the foundation for the global Indigenous movement that emerged in the Arctic and the Americas at the same time (Oksanen, 2020). The second critical moment was the *Calder* decision of the Supreme Court of Canada in 1973, which recognized that the Indigenous Title still existed where it had not previously been extinguished by a treaty. This legal precedent transformed the legal landscape around Indigenous Rights, giving Indigenous Peoples across the country leverage to assert their land claims. In this context, the federal government launched its Official Policy on Negotiation in 1973, allowing Indigenous Peoples which had not signed historical treaties to negotiate land claim settlements (Alcantara, 2013; White, 2019).[30] The third critical moment was the growing State and private interest in the natural resources of the Canadian North in the 1960s and 1970s. While development projects such as the James Bay hydroelectric project in northern Québec (see Desbiens, 2004; Savard, 2009) and the Mackenzie pipeline crossing the Northwest Territories (see Roburn, 2018) perpetuated the colonial enterprise of dispossessing Indigenous Peoples of their unceded traditional lands, the organized resistance to which they were confronted was taking place in a changing Indigenous Rights landscape that was less permissive for the State.

Comprehensive land claims agreements, or modern treaties, "establish principles for land ownership and use and for political-governmental relations between Aboriginal peoples and the

[30] The current policy dates from 1987 in response to recommendations made by the Comprehensive Claims Policy Study Group (Rodon, 2021). For some years now, Canada has been shifting away from its official policy framework to focus on an evolutive and co-developed rights-based approach to negotiation. This approach is operationalized through the numerous discussion tables between Indigenous groups and the government across the country (CIRNAC, 2026).

Canadian State" (White, 2002, p. 93).[31] Typically, in exchange for ceding their title to the land and "undefined" Indigenous Rights to the Crown, Indigenous Peoples receive parcels of lands carved out of the total settlement area (15-30%), on which they have "defined" Treaty Rights. They also receive sums of money to fund implementation costs and to compensate for past prejudice and lost land (Alcantara, 2013; White, 2019). The treaties also ensure exclusive wildlife harvesting rights and establish new political structures – which differ depending on the treaty –, most prominently co-management boards on which Indigenous Peoples have equal representation (Rodon, 2003; White, 2020).

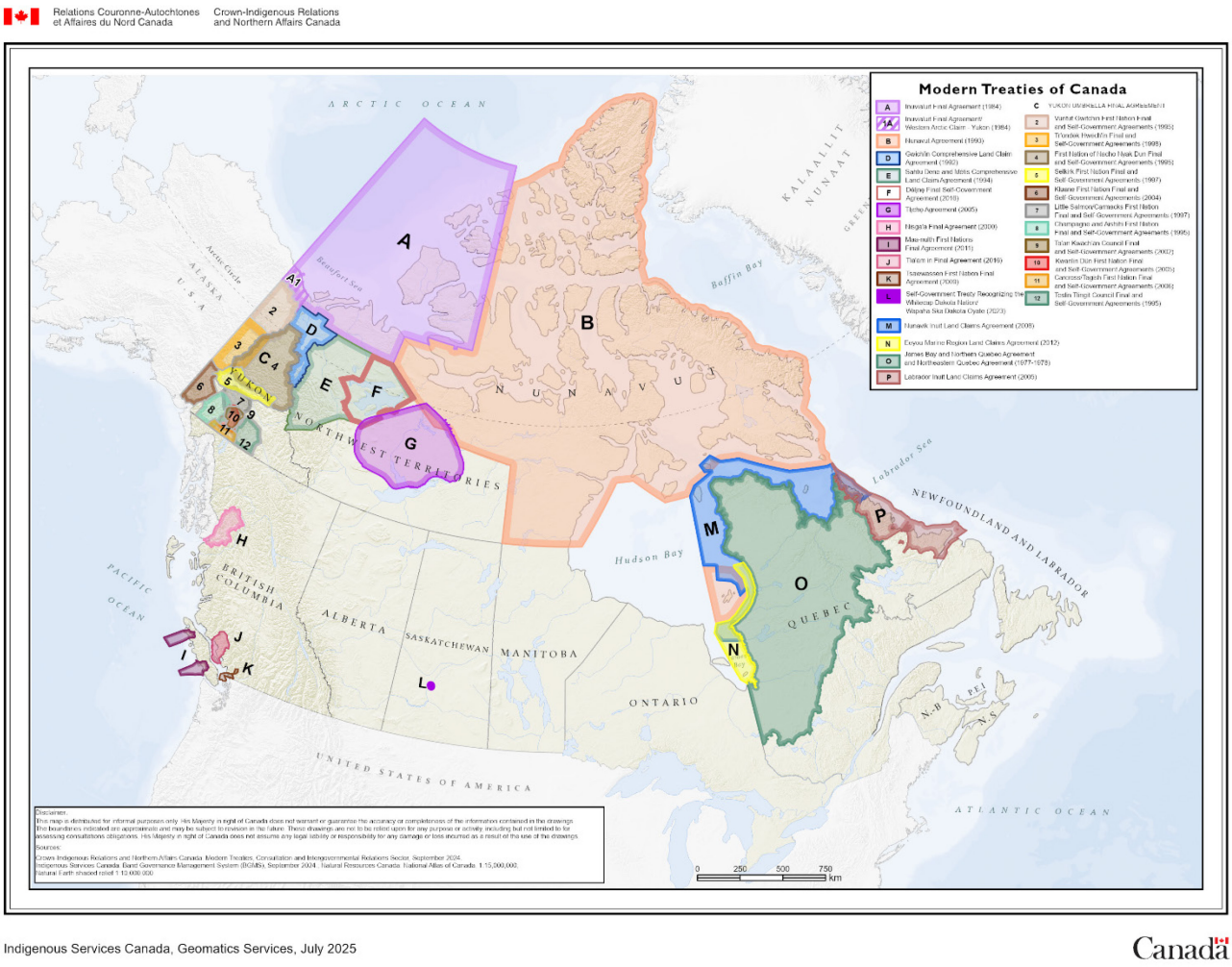

Figure 1
Modern treaties in Canada
Source: CIRNAC (2025).

[31] Comprehensive claims are distinct from "specific" claims, which mainly address issues of implementation regarding historical treaties (White, 2019).

Modern treaties are multifaceted, their processes and outcomes depending on institutional frameworks and the history of relations. As Alcantara (2013) argues, since treaties are negotiated under the terms of the Canadian State, which has significantly greater resources and capacity, Indigenous negotiators must navigate the State's language, culture, and practices to achieve successful treaty outcomes. Furthermore, a completed treaty does not guarantee its implementation, as expressed by Peters: the "negotiation of a claim settlement is only half the battle; implementation is the other half" (1992, p. 142). Pitfalls in implementation and the repeated failures of non-Indigenous governments to meet their treaty obligations have often been underscored by Indigenous leaders (Coon Come, 2004; Saganash, 1995 in Mercier and Ritchot, 1997).

In this respect, it is important to grasp how differently Indigenous Peoples and State authorities view treaties. For governments, treaties are final agreements meant to clarify legal uncertainties regarding land ownership, the outcome being to have the legitimacy to undertake development projects on ceded land. For Indigenous Peoples, treaties are sacred Nation-to-Nation agreements defining the parameters of an evolving relation (Abele and Prince, 2003; Blackburn, 2007; Miller, 2010; Papillon and Lord, 2013).

This tension is best illustrated in land and resources management, where co-management boards have wavered between re-empowering Indigenous Peoples (Spitzer and Selle, 2019; White, 2002, 2019, 2020; Clark and Joe-Strack, 2017) and confining their concerns, knowledge, and practices to an inadequate and foreign, technobureaucratic mold (Nadasdy, 2003; Stevenson, 2006). While other approaches to manage land and resources have been proposed, such as co-jurisdiction (Martin, 2014; Rodon, 2003) or Nation-to-Nation resource governance (Latta, 2018), the issue thus far has been to translate these ideas into practice (White, 2020).

Finally, for some, the shift that occurred in the 1970s with the revival of treaty-making in Canada is just another form of co-optation of the Indigenous power within colonial structures (Alfred and Corntassel, 2005; Alfred, 2009; Coulthard, 2007, 2014). Others, however, suggest that the framework, processes and institutions of modern treaties allowed Indigenous Peoples to gain agency and redefine their position in relation to the Canadian authorities (Martin, 2014; Papillon, 2015; Salée and Lévesque, 2010; White, 2008). Both realities coexist and are reflected in the experience of the Eeyouch that is described in the following sections.

3.3 From the JBNQA to the AGEIJB: the journey to the EIJBRG

This section draws an outline of the region of EIJB and presents a brief sociodemographic and cultural portrait of the Eeyouch. It then traces back the process and outcomes of the JBNQA, focusing on the land tenure and co-management regimes, and describes the Paix des Braves agreement. The section ends on explaining the governance regime in EIJB, the pitfalls to it and the more recent agreements, focusing on the AGEIJB.

3.3.1 The region of Eeyou Istchee James Bay

According to Québecois geographer Louis-Edmond Hamelin, the Canadian North comprises three subzones: the Middle North, the Far North and the Extreme North (Hamelin, 2000). Covering a territory of about 300 000 km^2, EIJB is part of the lower-end of the Nord-du-Québec administrative region, just above Hamelin's southern line of the Middle North between the 49^{th} and the 50^{th} parallel (Figure 2). EIJB falls within Québec's subarctic boreal zone, which is characterized by its extensive hydrographic network comprising many lakes and high flowing rivers (Ministère des ressources naturelles et des forêts, 2003). Such geographical and bioclimatic characteristics shape the Middle North regions which are resource-based, with forestry, mining and hydroelectricity production constituting the backbone of the economy (Hamelin, 2000; Simard, 2017; Rivard et al., 2017). The fact that the northern limit of commercial forestry crosses Eeyou traditional lands introduces important discrepancies within the system of Indoh-hoh Istchee – the Eeyou family hunting grounds (also called traplines). The traplines south of the limit are more affected by forestry while most of the traplines north of the limit remain undisturbed (Awashish, 2018; Bélisle and Asselin, 2021).

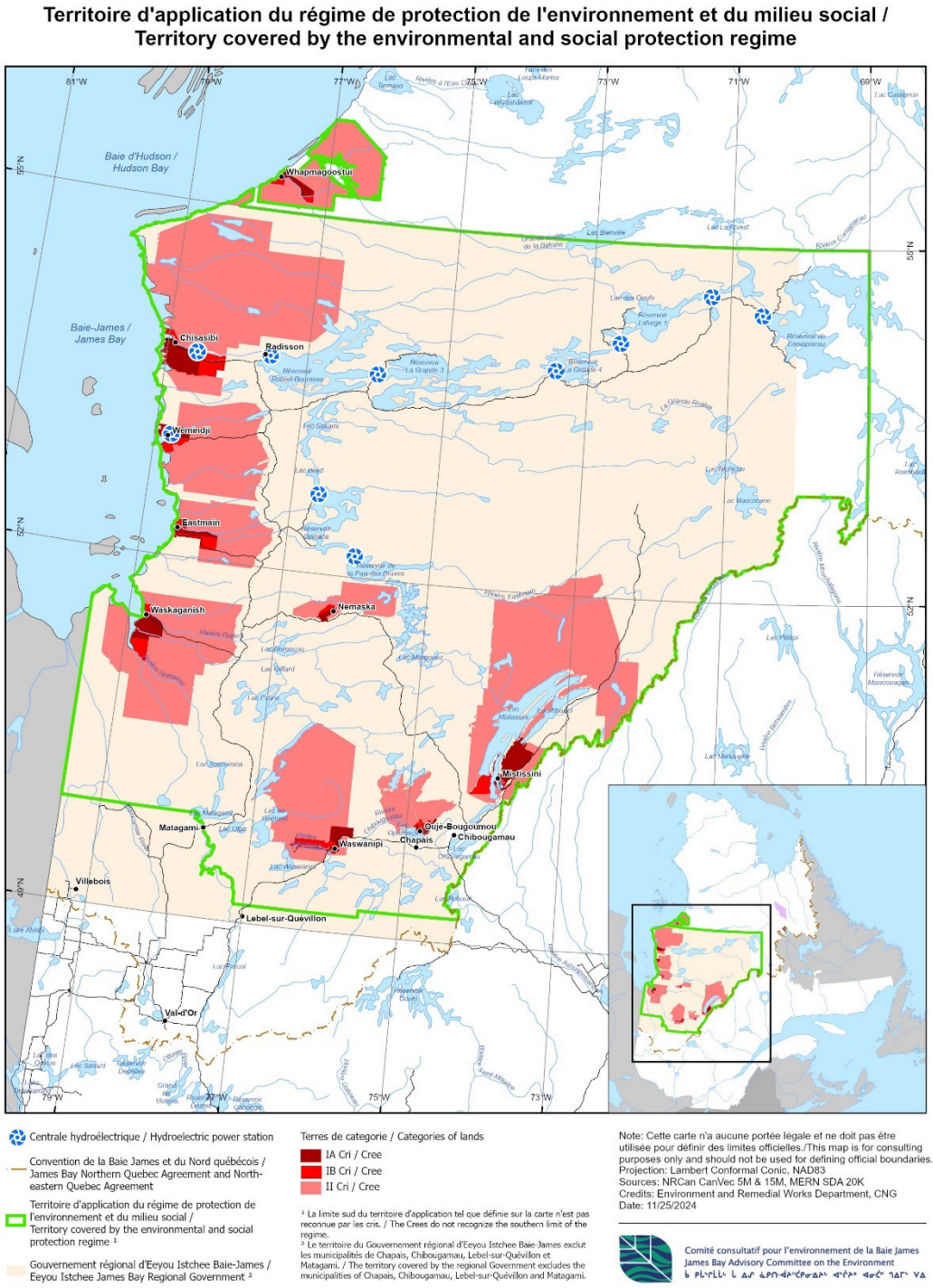

Figure 2
Territorial divisions of Eeyou Istchee James Bay
Source: James Bay Advisory Committee on the Environment (2025).

3.3.2 The Eeyouch of Eeyou Istchee

Eeyouch have been occupying EIJB for at least 5000 years (Feit, 1995 as cited in Whiteman, 2004). Traditionally a nomadic people hunting, trapping and fishing across the land for centuries, Eeyouch are now mostly established in 11 communities, five coastal to James Bay and Hudson Bay and six inland.[32] The Eeyouch share the land with 10 non-Indigenous communities, the administrative center being the city of Chibougamau. Nowadays, there are approximately 19 000 Eeyouch, representing almost 60% of the population of EIJB (Institut de la statistique du Québec, 2024).

The Eeyou Eedouwin (Eeyou way of doing things) and Eeyou pimaat-seewun (Eeyou way of life) draw on a strong connection to the land in the form of relationships and reciprocity with the environment, animals and other land users (Awashish, 2018; Feit, 1989, 2004; Lathoud, 2005a). The Eeyouch relate to the land "in a much more organic and holistic way than does settler society, guided as it is by the western utilitarian notions of individual property, use-value and commodity it attaches to the land" (Salée and Lévesque, 2010, p. 123).

The Eeyouch's inherent right to self-governance finds its sources in the Eeyou collective history, traditions, customs and practices which are all strongly embedded in the land (Awashish, 2018; Desbiens, 2004). Eeyou Istchee is divided into approximately 300 traplines. Each trapline is taken care of by an Indoh-hoh Oujemaao (tallyman), a steward of the land who carries out and monitors harvesting activities and passes down knowledge to future generations. This governance system predates the JBNQA but was formalized by the agreement (Awashish, 2018; Niezen, 2009; Whiteman, 2004).

The first encounters between Eeyouch and Europeans date back from the early 17th century, when Henry Hudson first set foot in James Bay (Whiteman, 2004). With fur trading taking off only in the mid-17th century, the Hudson's Bay Company established its first trading post in Rupert Bay in 1668, bordering today's community of Waskaganish (Rodon, 2011; Whiteman, 2004). In the first half of the 20th century, the influence of the provincial and federal authorities remained limited in the north. In the 1930s, the involvement of Québec in the management of so-called "beaver reserves" hinted at the northern expansion of the province's authority (Feit, 2005; Rynard, 2001;

[32] The two most recent established communities are Washaw Sibi, located in Amos, Québec, and MoCreebec, located in Moose Factory, northern Ontario.

Whiteman, 2004). As Feit (2005) recalled, though, the coexistence of State management and Eeyou stewardship suggested fairly cordial and reciprocal relations. By the time Québec's government had laid claims to resources of Eeyou Istchee in the 1960s, federal authorities, under the 1947 version of the *Indian Act*, had already been forcing Eeyouch into permanent settlements and imposing band councils, gradually subsuming the Eeyou social and political modes of organization (Rynard, 2001; Whiteman, 2004). At the dawn of the 1970s, Eeyou Istchee and the Eeyou pimaat-seewun had already experienced unprecedented disruptions.

3.3.3 The JBNQA: a national precedent building regional relations

In April 1971, the premier of Québec, Robert Bourassa, announced without consulting the Eeyouch the James Bay Project, which planned to build hydroelectric dams on the La Grande River which flows through the community of Chisasibi (Figure 2). Aware of the dramatic environmental and cultural disruptions this project would cause, Eeyouch and Inuit[33] immediately opposed it and sought an injunction from the Superior Court of Québec, in October 1972. In the context of the *Calder* ruling, Justice Albert Malouf acknowledged that the Eeyouch had a credible case and issued, in November 1973, an interim injunction to temporarily halt the James Bay Project. Although the provincial government successfully appealed Malouf's decision a week later, both parties realised that they could lose their case in court. In this context and given that the Malouf judgment had prompted the Eeyouch to organize politically, the Québec government was forced to enter into negotiations. It was under sustained pressures by the government to avoid delays in construction that the JBNQA, covering over 1 000 000 km^2, was signed in November 1975 by the Grand Council of the Crees, the Northern Québec Inuit Association, the Government of Canada, the Government of Québec, the James Bay Development Corporation (JBDC), the Société d'énergie de la Baie James and Hydro-Québec (Feit, 1983; Rodon, 2003; Rynard, 2001; Niezen, 2009).[34]

The James Bay hydroelectric project generated multiple and sometimes irreversible environmental consequences on Eeyou Istchee. The building of the five hydroelectric reservoirs reversed the

[33] The territory of Nouveau-Québec (present-day Nunavik), the homeland of Inuit, was annexed to the territory of the JBNQA during negotiations (Rodon, 2003). This thesis only addresses the political journey of the Eeyouch.

[34] It is also important to mention that under the 1912 *Quebec Boundaries Extension Act* – transferring to the Province of Québec the eastern part of Rupert Land (the Hudson Bay) –, Québec had the legal obligation to enter treaty negotiations to extinguish Eeyou and Inuit Rights on the land (Rodon, 2003; Rynard, 2001).

seasonal flow of the La Grande River, causing impacts such as a loss of wetlands, increased soil erosion and increased mercury levels in fish and humans (Whiteman, 2004). The tallymen reported shifts in ecological patterns such as the collapse of eelgrass – a major source of food for geese (Scott, 2020). The development of the road infrastructure further enabled the development of forestry, mining and sports hunting and fishing (Whiteman, 2004). These cumulative impacts have, over time, altered the access to the land, the abundance and quality of resources and the overall experience of Eeyouch on the land (Bélisle and Asselin, 2021).

The record-time in which the JBNQA was negotiated does not render a truthful portrait of modern treaty-making as most of comprehensive land claims negotiations have been lasting for decades. For instance, the Nisga'a, in British Columbia, signed the Nisga'a treaty in 1998 following some 30 years of negotiations (Papillon and Lord, 2013). Frontline scholars and practitioners have been vehemently criticizing power and capacity asymmetries underlying the negotiations of the JBNQA (Feit, 1983; Coon Come, 2004; Craik, 2004), which generated important conflict among parties (Feit, 1989). As Niezen (2009) explained, the JBNQA represented the clash of two perspectives: that of the Québec leaders, who were driven by the economic development of northern resources in the context of nation-building[35] and that of the Eeyouch, who prioritized the protection of the land over any economic considerations. Embodying the bargaining of a way of life, the JBNQA revealed the gulf separating the spirit and intent of a treaty for the Eeyouch and for the State (Rynard, 2001; Scott, 2020). For Whiteman (2004), the Québec government's rationale, striving for development at all costs, displayed the State's disregard for the pre-existence of a natural world within which Eeyouch were – and still are – embedded.

In return for "ced[ing], releas[ing], surrender[ing] and convey[ing] all their Native claims, rights, titles and interests, whatever they may be, in and to land in the Territory and in Québec" (JBNQA, 1975, sect. 2.1),[36] the Eeyouch and Inuit settled for $150 million dollars (JBNQA, 1975, sect. 25.1.1) and were granted[37] exclusive and specific harvesting Treaty Rights on defined parts of the

[35] Underlying the nation-building narrative of the James Bay Project was the pride associated to the large-scale engineering prowess and the territorial assertion of the provincial authority in the north (Niezen, 2009).
[36] Chapters of the JBNQA are "sections" which are shortened to "sect." when cited throughout the text.
[37] Here, the term "granted" is used for purposes of clarity. In the context of land claims settlements, such a term has been condemned by some who argue that Indigenous Rights are inherent, they cannot be "granted", even if the peoples occupying those lands for time immemorial have surrendered those rights (Coulthard, 2014; Younging, 2018). While Eeyouch and Inuit have theoretically surrendered their inherent rights in exchange of Treaty Rights, such a wording and way to conduct treaty-making is nowadays challenged (see section 5.3).

land (JBNQA, 1975, sect. 5, 24). Marking a precedent from the historical treaties, the JBNQA created administrative structures exercising delegated competencies and managing programs regarding health and social services (JBNQA, 1975, sect. 14), education (JBNQA, 1975, sect. 16), justice administration (JBNQA, 1975, sect. 18) and economic and social development (JBNQA, 1975, sect. 28). The agreement extracted the Eeyouch from the *Indian Act* and special legislation was adopted to establish "local governments" based on Québec's municipal model (Niezen, 2009).[38] Governance structures were also created amid the JBNQA negotiations. In 1974, the Grand Council of the Crees (GCC) was formed to represent Eeyou interests in the negotiation process. The GCC laid down a formal political structure for the Eeyouch, enabling the coordination of a political action among a geographically scattered Eeyou leadership. The GCC has been the main political organ engaging in relations with federal and provincial governments. It also has had an important role in the transnational activism of Eeyouch, notably to the United Nations with UNDRIP and the Permanent Forum on Indigenous Issues, developed in the late 1990s (see Niezen, 2009; Roburn, 2018). The JBNQA also created the Cree Regional Authority (CRA) in 1978, the authority mandated with the administration of programs, the environmental protection, the hunting, fishing and trapping regime and the economic development[39] on category I lands (Feit, 1983; Desbiens, 2004; Niezen, 2009; Rodon, 2011, 2013).[40] Pursuant to the AGEIJB, the CRA was replaced by the CNG (AGEIJB, 2012, art. 12). To date, the GCC and CNG are operated by the same board of elected officials and can be described as one entity, to the slight difference that formally, the former represents the Eeyou members while the latter exercises administrative and governmental functions.

Agreements following the JBNQA modified the Eeyou administrative and governing structures, with gains for Eeyouch in terms of autonomy on their lands. However, the fundamental idea of the

[38] That special law was, since 1984, the *Cree-Naskapi (of Québec) Act*. Since the 2017 *Agreement on Cree Nation Governance Between The Crees of Eeyou Istchee and the Government of Canada* (see subsection 3.3.6), the governance regime on category IA is enforced by the *Cree Nation Eeyou Istchee Governance Agreement Act* (Gauthier and Choquette, 2024).

[39] Pursuant to the JBNQA, such functions were however exercised by the communities which could choose to delegate them to the CRA (JBNQA, 1975, sect. 11A.0.6). Section 11A of the JBNQA was replaced by article 1 of the Complementary Agreement number 24, which aimed to integrate into the JBNQA the relevant provisions of the AGEIJB.

[40] The JBNQA land regime, divided in three categories, is described in subsection 3.3.4.

bargain underlying the JBNQA was absurd for the Eeyouch, as explained by former Grand Chief Matthew Coon Come:

> The Crees negotiated for rights to which we should have been entitled whether the James Bay project was built or not. Why should Indian people have to sign a land claim agreement to gain control over education of our children? (Coon Come, 1992 as cited in Roburn, 2018, p.178)

As explained in more detail in the following sections, the evolution of the JBNQA over the past decades required negotiated amendments to settle legal disputes and enforce provincial and federal treaty obligations. For this reason, the JBNQA was a starting point rather than an end (see Scott, 2020). The agreements that followed established a balance of power reflecting the agency the Eeyouch gained over the last 50 years (Papillon and Lord, 2013; Salée and Lévesque, 2010).

3.3.4 Land regime and co-management institutions of the JBNQA

The JBNQA established a land regime divided into three categories on which applies a corresponding set of rights (see Figure 2 for the geographical distribution; Table 2 for more detail on the uses, ownership and governance).[41] Category I lands, governed by the local governments (communities) are for the "exclusive use and benefit of the James Bay Cree bands" (JBNQA, 1975, sect. 5.1.1). They include the territory of the communities and represent about 1% of EIJB.[42] The Eeyouch have exclusive fish and wildlife harvesting rights on those lands. Category II lands, governed by the CNG, surround category I lands and make up around 18% of EIJB. On those lands, the Eeyouch also have exclusive fishing, hunting and trapping rights (JBNQA, 1975, sect. 5.2.1). Category II lands are Québec public lands which the government can reclaim for resource development, provided those lands are replaced or compensated (JBNQA, 1975, sect. 5.2.3). Category III lands, governed by the EIJBRG, are Québec public lands making up 80% of EIJB (JBNQA, 1975, sect. 5.3.1). On those lands, access to land and resources is unrestricted. However,

[41] As for most modern treaties, the differentiated rights regime that was established by the JBNQA was facilitated by the region's remoteness from densely populated southern Québec, as well as by the limited intermingling between Indigenous and non-Indigenous Peoples prior to the 1960s. Defined resources and parts of the land could thus be reserved to the exclusivity of Eeyouch without stirring up conflicts with non-Indigenous land users.

[42] Category I lands are divided in IA and IB lands. IA lands are to the exclusive use of the Eeyouch and correspond to the community areas (JBNQA, 1975, sect. 5.1.2). IB lands are lands on which the Eeyou communities have jurisdiction as "municipal-type public corporations". The "corporations", which have the status of "Eeyou villages", are managed by the same elected officials as the ones of the Eeyou First Nations on category IA lands, which makes governance on category IA and IB lands somewhat indistinguishable. A particularity of IB lands is that the Eeyou corporations can enact by-laws approved the Government of Québec. Since this thesis focuses on governance on category III lands, it was not deemed necessary to make a distinction between IA and IB lands when references to category I are made, except in relevant circumstances (Gauthier and Choquette, 2024).

in accordance with the principle of conservation and when animal populations permit, the Eeyouch enjoy guaranteed levels of exploitation (JBNQA, 1975, sect. 24.6.2). Under certain conditions, the Eeyouch enjoy an exclusive right to exploitation (JBNQA, 1975, sect. 24.3.3), an exclusive right to trap (JBNQA, 1975, sect. 24.3.19), as well as an exclusive right to harvest certain species (JBNQA, 1975, sect. 24.7.1). Over time, approximately 98% of the Eeyou ancestral territory has been subject to competition over natural resources between the Eeyouch, the Québec government, corporations and non-Indigenous land users (Mulrennan and Scott, 2005; Rodon, 2003; Rynard, 2001).

Table 2
Description of the uses, ownership and governance for each category of land on the JBNQA territory

	Uses	Ownership	Governance
Cat. IA	- For the exclusive use and benefit of **First Nations, Cree (Cree Bands)**	- **Cree First Nations**: usufruct **Provincial government**: bare ownership (ownership of land without usufruct)	- **Federal government**: administration, governance and control (prior to the 2017 agreement) - **Local government**: Cree First Nations - **Regional Government**: Cree Nation Government - Power to adopt Indigenous environmental laws at least as stringent as those of the federal and Québec governments - Priority rules apply according to agreements
Cat. IB	- General **public right of access** to public buildings and land used for public purposes (roads, harbours, etc.)	- **Cree Corporations**: full ownership (usufruct and bare ownership) - **Provincial government**: second owner option (land can only be sold or ceded to the Québec government)	- **Cree villages** (municipal-type public corporations) - Regulatory power in environmental matters - Standards must be more stringent than those otherwise applicable - Québec government approval required
Cat. II	- Exclusive hunting, fishing and trapping rights for the **Crees** - The **general public** can exercise compatible rights, live there or erect buildings there.	- **Provincial government**: full ownership (usufruct and bare ownership) with compensation for the Crees	- **Cree Nation Government** - Possibility of exercising powers usually exercised by a local municipality or regional county municipality
Cat. III	- Access under Québec's **public land** laws	- **Provincial state**: full ownership (usufruct and bare ownership)	- **Eeyou Istchee James Bay Regional Government** - Possibility of exercising powers usually exercised by a local or regional county municipality

Source: Gauthier and Choquette (2024).

Before the AGEIJB, category II and III lands were respectively managed by the James Bay Regional Zone Council (JBRZC), an equally composed Eeyouch-Jamesian management body and the Municipality of James Bay (MJB) (Municipalité de la Baie-James, in French), a government-nominated, non-Indigenous municipal body (Motard, 2015). As argued by Grand Chief Matthew Coon Come in 2008-2009, a core issue has over time been the Eeyou governance outside of

category I lands (Clavreul, 2013). More on issues of governance on category II and III lands is discussed in subsection 3.3.6

To mitigate the loss of land from the James Bay hydroelectric development project, Eeyou negotiators asserted their right to participate in natural resource and wildlife management (Rodon, 2003). The agreement created two regimes that are interrelated. While they protect and delineate the rights of Jamesians as well, they place a strong emphasis on the protection of Eeyou rights and culture, as well as the participation of Eeyouch in processes and decisions. The social and environmental protection regime south of the 55th parallel (section 22) provides a framework for protecting the land and resources, Eeyou communities and economies, and the harvesting rights of Eeyouch with respect to development activities. The regime also enables the participation of Eeyouch in land and environmental decisions, particularly environmental impact assessment. The James Bay Advisory Committee on the Environment (JBACE) is the privileged forum established to monitor section 22. It is a tri-partite board composed of members appointed by the CNG, the federal and provincial governments. The JBACE analyzes the laws, regulations and policies that may affect its territory of application (Figure 2), issues recommendations to the governments and makes sure that the Eeyou rights guaranteed in sections 22 and 24 are respected (JBACE, 2025). The hunting, fishing and trapping regime (section 24), which territory of application covers both EIJB and Nunavik, defines and protects the harvesting rights of the Eeyouch and Inuit. The Hunting, Fishing and Trapping Coordinating Committee (HFTCC), mandated to monitor the regime, includes Inuit and Naskapi members in addition to the provincial, federal and CNG members. A particularity of the HFTCC, compared to other co-management boards, is that it has decision-making powers to establish quotas for moose and caribou hunting, and to regulate black bear populations, for both Eeyou and non-Indigenous hunters (JBNQA, 1975, sect. 24.4.30). For other matters, the HFTCC and the JBACE only exercise advisory functions that are subject to ministerial override. However, in practice, the recommendations are seldom discarded (Rodon, 2003; White, 2020).

The experience of the JBACE and HFTCC over time has been rather negative. The experience of the HFTCC mostly revealed an atmosphere of misunderstanding instead of collaboration (Rodon, 2003). The right to develop of the Québec government often prevailed over the right of Eeyouch to their way of life, as illustrated by Québec's government mismanagement and lack of regulations

of sports hunters, encroaching on Eeyou subsistence harvesting rights (Castro and Nielsen, 2001; Mulrennan and Scott, 2005; Rodon, 2003; Rynard, 2001). As for the JBACE, problems of funding, capacity, and the disengagement of governments, have long hindered the committee's operations (Lathoud, 2005b; Rynard, 2001; Salée and Lévesque, 2010). The JBACE also had limited influence against the Québec's government violations of environmental regulations, particularly in the forestry sector, as large-scale logging in the 1980s and 1990s greatly affected Eeyou traplines (Feit and Beaulieu, 2001; Salée and Lévesque, 2010). Brian Craik, the former Director of Federal Relations for the CNG, captured the state of the committee in a 1997 Senate hearing: "in 23 years, no environmental regulations, laws or policies have ever been implemented by either government pursuant to the work of the Committee" (Papillon, 2008, p. 164). In the past years, the JBACE has been in a better position than it was before, mainly due to strong communication channels with the ministries, a spirit of collaboration between the members and the internal framework of operations it established.[43]

In the late 1980s, the pinnacle of decades of disputes was reached when plans to dam the Great Whale River – bordering Whapmagoostui, the northernmost Eeyou community, and the Inuit village of Kuujjuarapik –, the second phase of the James Bay Project, were announced. In 1990, apprehensive of the looming consequences on their lands and facing a dead end in the negotiations, the Eeyouch and Inuit heavily mobilized against the project and canoed from Ottawa to New York to advertise for their cause and pressurize Americans not to buy the energy produced in Québec. The international attention brought by the campaign was instrumental in the shelving of the project in 1994 (Craik, 2004; Roburn, 2018; Savard, 2009).

An important blindspot of the JBNQA concerned the lack of participation of Eeyouch in the forest management sector which was controlled by the Government of Québec and forest companies (Feit and Beaulieu, 2001; Salée and Lévesque, 2010). In 1998, the Eeyouch filed a lawsuit against the Québec government regarding forestry-related violations of the JBNQA (Salée and Lévesque, 2010). It is against the turmoil of the Great Whale River mobilization and the forestry violations of the late 1990s that the *Agreement Concerning a New Relationship between le Gouvernement du Québec and the Crees of Québec* (known as the Paix des Braves) was signed in 2002.

[43] Before the end of this thesis, the author started working at the JBACE, which gave him an inside perspective.

3.3.5 The Paix des Braves

The context for negotiation had changed from the 1970s, as the possibility for Eeyou [sic] to become "involved in the development of the territory, rather than being compensated to step aside, was on the table for the first time" (Craik, 2004, p. 183). The Paix des Braves aimed for a new Nation-to-Nation relation emphasizing "sustainable development, partnership and respect for the traditional way of life of the Crees, as well as on a long-term economic development strategy" (Paix des Braves, 2002, preamble). The agreement mainly tackled Québec's unfulfilled JBNQA obligations and planned for the greater involvement of the Eeyouch in economic development and in land and resources management (Desbiens, 2004; Scott, 2005). The agreement, among others, promised a provincial financial engagement of $3.5 billion over a 50-year period and increased sharing of resource-generated revenues. In exchange, the Eeyouch had to settle their forestry-related lawsuit and allow for phase three of the James Bay Project to go ahead, which involved the diversion of the Eastmain and Rupert Rivers (Craik, 2004; Niezen, 2009; Rodon, 2011).

In particular, the Paix des Braves created an "adapted forestry regime" (AFR) aimed at accounting for Eeyou forest-based activities within State-led forest management practices (Paix des Braves, 2002, art. 3.1). Notably, the traplines became the territorial reference unit, suggesting a culturally sensitive approach to forestry that considers the concerns and interests of Eeyouch in forestry planning (Lathoud, 2005b; Scott, 2005).[44] The territory of application of the AFR, which northern limit corresponds to the limit of Québec's commercial forest, concerns some of the traplines of Waskaganish, Nemaska and Mistissini, and all the traplines of Ouje-Bougoumou and Waswanipi (Figure 6).

Three mechanisms of implementation were established following the agreement. First, the Cree-Québec Forestry Board (CQFB), was created to implement and monitor the forestry regime (see Cyr et al., 2022; Scott, 2005; Salée and Lévesque, 2010). The board is equally composed of five appointed Eeyou and government members. The CQFB is also involved in the elaboration of the planning tools and has an advisory role to the Ministry regarding forestry-related legislation, regulations, policies and practical guides (CQFB, 2018a). Second, five Joint Working Groups

[44] Among the modalities of the AFR are the sites of interest determined by the tallymen (1% of the trapline), which are protected from any forest development activities (Paix des Braves, 2002, art. 3.9). Areas of wildlife interest are also targeted by the tallymen (25% of the trapline), on which forest development is planned to maintain and improve forest diversity (Paix des Braves, 2002, art. 3.10).

(JWG) were established to monitor the implementation of the AFR at the community level.[45] Besides, the CQFB oversees the processes and consultation mechanism of the JWG (CQFB, 2018b). Third, each party appoints a JWG coordinator for the five JWG. The coordinators support the members of the JWG, act as a drive belt between the CQFB and JWG and are actively involved in the conflict resolution mechanism (CQFB, 2018b).

For anthropologist Colin H. Scott (2005), the forest co-management in the Paix des Braves bolstered the influence of the Eeyouch in that sphere of management, filling an important void of the JBNQA environmental regime. As an amendment to the JBNQA, the co-management regime of the AFR acquired constitutional protection under section 35 of the 1982 *Constitution Act*. More consequently, the participation of the Eeyouch in forest planning and the creation of a regime based on the Eeyou land tenure expanded the scope of the co-management model outlined in the JBNQA. For Scott, this new framework "may render the new Forestry Board and working groups less vulnerable to internal capture by provincial agendas than was the case with the HFTCC" (2005, p. 149). The experience of the AFR has revealed many challenges, however. Despite the crucial steps forward for Eeyou self-determination, the AFR encapsulates enduring power asymmetries. According to Cyr et al. (2022), such asymmetries are found in Québec's unchallenged territorial sovereignty and the dominant technical and bureaucratic State-led forest management. Nonetheless, given the central place of the forest and resources in Eeyou culture, the AFR represents a safeguard for any unilateral State intervention on Eeyou Istchee regarding forest harvesting. One recent and ongoing example is the major discontent amidst treaty less First Nations in the wake of the Bill 97 aimed at modernizing the forest regime in Québec. In EIJB, however, the precedence of the AFR over Québec's forestry legislation provides a measure of legal certainty before negotiations to harmonize both systems are undertaken. In the words of one of their interviewees, Cyr et al. highlight the agency gained by the Eeyouch in negotiating with the non-Indigenous governments: "the only way the Québec government will actually be getting into the territory, [is] by negotiating. And that will never stop with the Crees" (2022, p. 13).

[45] The JWG are each composed of four to six members, equally representing Eeyouch and the Government of Québec. Each of the five communities (Waswanipi, Ouje-Bougoumou, Mistissini, Waskaganish and Nemaska) affected by forestry has a JWG.

3.3.6 The overhaul of the governance regime in Eeyou Istchee James Bay

The institutional developments in EIJB, for the last 50 years, have been incrementally building on past agreements to address implementation issues and enduring litigations. As Scott puts it, "the JBNQA is remarkable, perhaps less as the first comprehensive claims settlement of late twentieth-century Canada than for the many complementary treaties and agreements that the Crees of Eeyou Istchee have secured subsequently" (2020, p. 248).

Following the Paix des Braves, the Eeyou leadership called out the Government of Canada for failing to fulfill its obligations of the JBNQA towards the Eeyouch (Desbiens, 2004). Moreover, long-standing issues of Eeyou representativity and governing capacity on all three land categories remained unaddressed. In this context, agreements were signed with the federal government in the 2000s and 2010s. In 2008, the signing of the *Agreement concerning a new relationship between the government of Canada and the Cree of Eeyou Istchee* aimed to settle long-standing conflicts regarding the implementation of the JBNQA. The agreement also provided for bylaw making powers for the CRA and laid the foundations for the negotiation of a more specific Cree governance agreement (CNG, 2008). Flowing from the 2008 agreement, the 2017 *Agreement on Cree Nation Governance Between the Crees of Eeyou Istchee and the Government of Canada* stipulated that the CNG is the regional authority on category IA lands. The CNG enacted the law-making capacity of the CNG on category IA lands but these laws have to be at least as strict as the federal and provincial applicable laws (Gauthier and Choquette, 2024).[46] The 2017 Agreement also stipulated that the "Cree bands" are now First Nations in their own rights (e.g. the Cree First Nation of Waswanipi), which gives them more administrative authority over certain areas (e.g. natural resources and culture), as well as the right to adopt laws concerning environmental protection, land use planning, wildlife harvesting and public security, among others (Gauthier and Choquette, 2024). The 2017 Agreement also led to the adoption of the Eeyou Constitution, which aims to be an evolving internal document – it is not subject to the approval of Canada or Québec – outlining the values and procedures guiding the self-governing journey of the CNG on category IA lands (CNG, 2017-2018). In brief, the 2017 Agreement was the latest modification to the governance regime on

[46] Remember the change of authority from the CRA to the CNG, pursuant to the AGEIJB (see subsection 3.3.3).

category IA lands. It had the overall effect of bolstering the autonomy of Eeyou to govern and enact laws on category IA lands, both locally for First Nations and regionally for the CNG.

On category II and III lands, changes came earlier with the AGEIJB in 2012. The outdated regional structures, as well as political and economic conjunctures, were important factors in the negotiation of the agreement.[47] Motard (2015) highlighted three main issues posed by the regional structures for the Eeyouch. First was that the JBNQA had the effect of excluding the Eeyouch from the governance of category III lands. Indeed, the lands which were managed by the MJB were under the authority of the JBDC, a regional development body which board members were appointed by governmental decree rather than elected. This created a situation where municipal governance on most of the treaty lands was exercised by non-elected non-Indigenous Peoples, leading to an asymmetrical and non-representative governance regime. Following a reform in 2001, the MJB was administered by the mayors of the non-Indigenous municipalities, once again leaving the Eeyouch aside. With the Eeyou population growing disproportionately over time compared to that of the Jamesians, the underrepresentation of Eeyouch had became an unbearable issue (Motard, 2015).

The second factor was the negative experience of the underfunded and inefficient JBRZC on category II lands. Motard (2015) further notes that in 2001, the *James Bay Region Development and Municipal Organization Act* transferred the appointment power of the JBRZC from the JBDC to the MJB. This had the effect of increasing the management authority of the MJB over category II lands, in addition to the authority it already exercised on category III lands. The stranglehold of the MJB on both category II and III lands, at the expense of the Eeyou political representation, is at the heart of the territorial reorganization of the AGEIJB.

The third issue concerned the Regional Conference of Elected Officers (RCEO) (Conférence régionale des élus, in French) (Motard, 2015; Simard and Brisson, 2020). The RCEO were regional bodies created under the regionalization policy of the Government of Québec in 2003.[48] The RCEO gathered the prefects of the Regional County Municipalities (RCM) (Municipalités régionales de

[47] A word on the administrative structures in Québec: there are 17 administrative regions in Québec (EIJB is part of the Nord-du-Québec administrative region which also comprises Nunavik). Within each administrative region, there are Regional County Municipalities which are regional bodies formed by multiple local municipalities. Finally, a local municipality can be any city, town or village, to the exception of Indian reserves that are under the *Indian Act.*

[48] RCEO were abolished in 2015 (Simard and Brisson, 2020).

comté, in French). They had the mandate to promote and plan regional development, facilitate cooperation between regional actors and allocate the funding for development projects.[49] However, very little room was made for Indigenous Peoples as only one Indigenous representative per Nation could be part of the RCEO (Grammond, 2009). In EIJB, this situation barely left any place for Eeyouch – which population was disproportionately growing[50] – to have a say in both the development and the governance of most of their traditional lands, as category III lands were entirely administered by the Jamesian elected officials. As Motard (2015) remarks, the fact that these political and legal reforms took place without consulting the Eeyouch is in breach of multiple rulings of the Supreme Court of Canada on the Crown's duty to consult Indigenous Peoples (*Delgamuukw v. British Columbia,* 1997; *Haida Nation v. British Columbia,* 2004; *R. v. Sparrow*, 1990).[51]

At the same time, the Government of Québec was announcing the "Plan Nord", a vast structuring project aimed at developing the resources north of the 49th parallel (see Asselin, 2011). As a response, the Eeyouch launched the "Cree Vision of Plan Nord", a document outlining their perspective of northern development and much more. Among others, the document recalls the agreements in force, the occupation of and access to the land by Eeyouch, the long-lasting governance issues, land use and resource planning, the definition of protected areas, funding, and the need for a "real commitment" from the Government of Québec (Cree Vision of Plan Nord, 2011, p. 13).

Furthermore, section 2.3 of the document, titled "Current Governance Structure is not Acceptable", is unequivocal about the Eeyou discontent. It condemns the underfunding and lack of governance powers vested to the JBRZC, as well as the 2001 reform of the MJB which excludes the Eeyouch from the regional governance outside of category I lands. The statement of Eeyouch was not a

[49] The underlying idea for decentralization was that local representatives were better suited to manage regional development (Grammond, 2009; Motard, 2015). Grammond (2009) nuances that the decentralization maintained the province's stranglehold on land and resources management. Having studied decentralization reforms in Senegal, Uganda, Nepal, Indonesia, Bolivia and Nicaragua, Ribot et al. (2006) come to the same conclusion: instead of producing *political decentralization,* the lack of power transfers and of accountability across governmental levels produce *deconcentration*. This occurs when central government actors remain in charge at the local level.

[50] In 2006, Eeyouch and Jamesians represented equal parts of the population. From 2006 to 2019, the Eeyou population grew of 24.3% while the Jamesian population declined of 6.8% (Simard and Brisson, 2020).

[51] Again, the duty to consult had not been extensively defined prior to the *Haida Nation* case in 2004. Following this landmark case, others such as *Taku River Tlingit First Nation v. British Columbia* in 2004 and the *Mikisew Cree First Nation v. Canada* cases, in 2005 and 2018, were instrumental in establishing the legal doctrine of the duty to consult.

passive take on their aspirations and concerns towards development on their lands; it represented a lever asserting their place in the development of EIJB, which enticed the Government of Québec to enter negotiations (Cyr, 2024). The words found in the document best encapsulate how Eeyouch envision the future on their homeland:

> New governance structures must be developed for Eeyou Istchee, in full consultation with the Cree. These structures must reflect the Nation-to-Nation relationship between the Cree and Québec. And they must lay the foundation for a strengthened partnership between the Cree, Québec and the non-Aboriginal population in the development of the Territory.
>
> Any new legislation relating to the Plan Nord must be developed in full consultation with the Cree. It cannot simply incorporate the existing governance regime in Eeyou Istchee. It must also make provision for any new governance regime to be developed by the Cree and Québec. (Cree Vision of Plan Nord, 2011, p. 21)

The factors that led to the signature of the AGEIJB were mainly administrative, political and economic. Simard and Brisson (2020) also suggest that local and regional political actors, notably the mayors of Chibougamau and Chapais, as well as the Chiefs of Ouje-Bougoumou, Mistissini and Waswanipi, played an important role in convincing the Québec government to negotiate.

Against this background, the AGEIJB remodeled the regional governance regime (Craik, 2015; Motard, 2015; Simard and Brisson, 2020). On category II lands, the AGEIJB had the effect of abolishing the JBRZC, which authority was transferred to the CNG (AGEIJB, 2012, art. 23). Under the laws of Québec, the CNG exercises the same jurisdiction, functions and powers of a municipality. The CNG can also declare that it exercises the powers of an RCM (AGEIJB, 2012, art. 13-72). Another important function of the CNG is that of land use planning, which is undertaken by the Eeyou Planning Commission (EPC). The regional land use plan aims to establish orientations for the use of the regional territory. It is elaborated in collaboration with the other entities on the territory in an effort of harmonization (Gauthier and Choquette, 2024).

The outcome of the AGEIJB that is of crucial interest to this research is the change in authority over category III lands, which shifted from the MJB to the EIJBRG. By establishing an unprecedented institutional design for a municipal authority across Québec and Canada, the goal of the EIJBRG was to rebalance power dynamics on category III lands and include Eeyouch in the governance of roughly 80% of the JBNQA lands. Despite the uniqueness of the model, Simard and Brisson's (2020) analysis of the EIJBRG minutes revealed the monotony of day-to-day municipal

administration rather than a revolution in territorial governance. Throughout this thesis, Simard and Brisson's (2020) conclusions will be tested against recent institutional documents in the attempt of providing a more detailed account of the EIJBRG. As was the case for Simard and Brisson (2020), this thesis faces important limitations, which will be important to overcome in future studies (see conclusion). Nevertheless, the in-depth work presented here adds to the body of knowledge on the EIJBRG, especially the way it has been managing the land and resources thus far.

3.4 The AGEIJB: addressing structuring factors

The previous subsection presented the regional factors that led to the signing of the AGEIJB. This section discusses the overarching institutional factors, international and domestic, that have both promoted and hindered the AGEIJB and the formation of the EIJBRG.

3.4.1 The lacking implementation of international law

Canada is not party to the Indigenous and Tribal Peoples Convention 169 of the International Labor Organization (ILO 169), the only legally binding international instrument on the rights of Indigenous Peoples. Contrary to ILO 169, UNDRIP is not legally binding. However, its wide acceptance has made it an international norm. Canada, which initially refused to recognize and ratify UNDRIP, ended up recognizing and signing the declaration in 2010, treating it as an aspirational document. In 2018, Bill C-262 on UNDRIP passed all three readings of the House of Commons before being halted by the Senate in 2019 (Mitchell, 2014, 2019). In 2021, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, formally integrating UNDRIP in the Canadian legal framework, was passed. The act only concerns the federal jurisdiction; provinces and territories must pass legislation to implement UNDRIP at their level, which has only been done by British Columbia and the Northwest Territories thus far.

The recent UNDRIP Action Plan (2023), launched as an "evergreen document that will allow for responsiveness to new priorities that emerge over time" instead of a "comprehensive or restrictive set of actions to be taken by the federal government and Indigenous Peoples to implement the UN Declaration" (Department of Justice of Canada, 2023, p. 20), reveal the piecemeal, lengthy and complex process of incorporating UNDRIP into Canadian law. Indeed, the reluctance of the federal and provincial governments to acknowledge principles such as the right to self-determination and

the FPIC – often misinterpreted as a veto right – are the main obstacles towards implementation and the possibilities for UNDRIP to gain a substantial legal footing for the foreseeable future (Fortin and Bourgeois, 2019; Mitchell, 2014; André, 2025). Gordon Christie, an Inuvialuit/Inupiat jurist, argues that such a "prudent" approach to the UNDRIP hinders the enabling potential of its decolonial spirit and intent, legitimizing the Canadian colonial legal framework and masking the State's "neoliberal-capitalist-extractive" agenda (2018, p. 31). The Canadian political and legal landscape is just getting started with UNDRIP. The future will tell whether domestic laws are consistent with the principles of the declaration and if the Action Plan is the roadmap for Indigenous-State collaborative implementation of UNDRIP it is intended to be.

Another unsettled issue is whether the integration of UNDRIP into the legal framework makes the principles of the declaration legally binding or if they only provide a framework to guide governmental actions. This interpretative dilemma was addressed by the *Kebaowek First Nation v. Canadian Nuclear Laboratories* ruling, delivered by the Federal Court in 2025. In this case, the court ruled that the Canadian Nuclear Safety Commission, which had approved the construction of a nuclear waste disposal facility near the Ottawa River, had failed to apply the principle of FPIC set out in UNDRIP when consulting the Kebaowek First Nation, thereby breaching the Crown's constitutional obligations (Gunn and McKay, 2025). As the ruling obliged the Commission to resume consultations with the Kebaowek in light of FPIC, it further set a legal precedent by clarifying that the integration of UNDRIP in Canadian law reinforces the Crown's obligations when consulting Indigenous Peoples (Gunn and McKay, 2025).[52] Drawing on the *Kebaowek* ruling, even though UNDRIP remains soft law compared to ILO 169, it lays the ground for a more strict consultation process based on UNDRIP's requirements. More on the effects of ILO 169 on the Norwegian domestic law, especially concerning land and resources, is detailed in subsection 3.6.3 of this thesis.

3.4.2 The federal system

In Canada, institutions of Indigenous self-rule resulting from comprehensive land claims agreements have been present in the political landscape for several decades. Such regimes are *nested* in provinces and territories. *Nested federalism*, coined to make sense of this geographical

[52] Nowhere in the ruling is FPIC recognized as a veto right for Indigenous Peoples (Gunn and McKay, 2025).

and political embedding, has been used to illustrate how federalism simultaneously constrains and enables Indigenous self-determination (Wilson, G. N., 2008; Wilson et al., 2020).[53]

Nested federalism, by nature, is an example of the institutional flexibility of federal systems: the divided sovereignties and decentralization of authority allow for the multiplication of spaces of self- and shared rule within existing constituent units (Wilson et al., 2020). Whereas this jurisdictional setting enables the participation of non-constitutional actors in policymaking, it also constrains their authority to the normative political and legal framework of the host units (Papillon, 2012, 2020; Wilson et al., 2020). In the case of Indigenous self-rule, the authority is delegated from the provincial and federal governments, at least for Nations who have not negotiated self-governance agreements (Papillon, 2020). The effect is to circumscribe the Indigenous authority within a framework alien to their knowledge, modes of operations, values and priorities, representing for many a modern extension of colonial power into Indigenous lives (Alfred, 2009; Alfred and Corntassel, 2005; Coulthard, 2014).

Since 1975, the layering of institutions in EIJB has showed the flexibility of the federal framework to respond to the claims of Eeyouch. The CNG is an example of nested self-governance on category I and II lands, capturing the institution building process of the past decades in Eeyou Istchee (Scott, 2020) which occurred without challenging the system,[54] as explained by Wilson et al.:

> Political elites respond to these claims [autonomy or self-rule] by creating new regional governments that fit the logic of the existing system yet do not threaten it nor increase the number of constitutionally recognized political units, such as provinces or states. (2020, p. 10)

However, the progress that we have been witnessing took 50 years and worked against the rigidity of the constitutional framework, considering that the CNG's autonomy remains confined within the constituent units. Further, it is crucial to emphasize that the institutional developments in EIJB

[53] Nested federalism is an analytical concept which recognizes the existence of multiple political units at different scales in a federal system of government. Gary N. Wilson (2008) has notably used the concept to describe the complicated federal structures in Russia and Canada. While the concept is relevant to explain the case of the EIJBRG, it was not included in the conceptual framework of this thesis since it does not apply to Norway, which is a unitary system. Following the definitions provided in the conceptual framework, nested federalism, just like multilevel governance, represents governance arrangements falling under the umbrella of multilevel politics.

[54] This is not to undermine the political clout of the CNG; it became a cornerstone actor in the regional governance of EIJB and is by far the most influential Indigenous authority in Québec (the JBNQA and the Paix des Braves enabled capacity building that other non-treaty Nations in Québec do not enjoy).

would not have been possible without the constant pressure and legal battles of Eeyouch to force the federal and provincial governments to respect their treaty obligations.[55]

If self-rule Indigenous institutions and regions have burgeoned in the past decades,[56] the lack of shared rule arrangements in Canada highlights the limits of the federal framework to expand and include a broader range of actors in the process of public policymaking (Papillon, 2020; Wilson et al., 2020). The EIJBRG displays characteristics of self-rule, as well as shared rule, to a certain extent. It has autonomy over a defined municipal jurisdiction and has relations with other political actors such as the CNG and the Government of Québec.

The EIJBRG exercises both shared rule and self-rule over municipal and regional matters. On questions of land and resources, both the influence and the decision-making capacity of the EIJBRG are, however, negligible. The EIJBRG exercises shared rule, for example, by participating to the Public Land Use Plan (PLUP) (Plan d'affectation des terres publiques, in French) that is elaborated by the Québec government (AGEIJB, 2012, art. 132). The Eeyouch and Jamesians also exercise a joint form of self-rule through the role of a RCEO. This is a particularity of the EIJBRG compared to other self-rule institutions: it exercises self-rule *through* shared authority between the Eeyouch and Jamesians. In comparison, the JBACE, for example, only exercises shared rule through shared authority, while the CNG mainly exercises self-rule through Indigenous authority. By combining the capacity to influence decisions it does not have the final say on (shared rule) and the capacity to take decisions over several matters (self-rule), and that in an Indigenous – non-Indigenous setting, the EIJBRG is a unique model which enhances the possibilities of MLG arrangements and Indigenous political representativity.

As discussed in more details in the discussion chapter, the institutional design of the EIJBRG makes it hard to pinpoint the exact nature of its interactions with other entities. Reflecting such complexity, Wilson et al. consider that "[multilevel governance] and intergovernmental relations [could be employed] as yardsticks to assess whether patterns of State authority have changed"

[55] Beyond institutional factors, the collective and individual preferences, as well as the culture were important determinants. The delegation of Eeyouch and Inuit, which paddled from Eeyou Istchee to New York to draw worldwide awareness on the Great Whale hydroelectric project in 1990, is an example of how they mobilized cultural practices to elaborate their own narrative and alter the course of events (Clerici, 1999; Roburn, 2018).

[56] See Wilson et al. (2020) who analyzed the Inuvialuit settlement region, Nunavik, and Nunatsiavut, three Inuit self-rule cases, respectively nested in the Northwest Territories, Québec and Newfoundland and Labrador.

(2020, p. 13). Understanding nested federalism as a manifestation of various political interactions offers a relevant lens to understand the setting in which the EIJBRG is embedded. It provides guidelines to target, assess and understand the nature of the interactions between the EIJBRG and other levels of governments on the spectrum of MLP (Alcantara et al., 2016).

A priori, the EIJBRG displays MLG dynamics rather than intergovernmental relations. A closer look at the interactions with the provincial government, especially in the discussion chapter, shows the limited input of the EIJBRG in public policymaking and highlights the complexity of power sharing, even in a federal system. Despite the limitations to partake in shared rule, the model of the EIJBRG reveals new avenues for treaty relations and regional governance amidst the Canadian federal system. For instance, the entrenchment of the dispositions of the AGEIJB in the JBNQA (AGEIJB, 2012, art. 210) grants the EIJBRG a quasi-constitutional protection under articles 25 and 35 of the 1982 *Constitution Act*. This unique case of a municipality enjoying constitutional protection questions the balance of power between the EIJBRG and the higher-level governments, should unilateral decisions of the latter impinge upon the responsibilities of the former.

3.4.3 Structuring effect of the JBNQA

In order to understand the structuring effect of the JBNQA on the Eeyou Treaty Rights and subsequent agreements, it is first important to remember the context in which the JBNQA was incorporated and the influence it had on the national stage. Following the 1969 White Paper, the increasing organization and mobilization of Indigenous Peoples influenced developments in EIJB. Just months after the *Calder* case, justice Malouf acknowledged in *Kanatewat et al. v. James Bay Development Corp. et al.* (the James Bay case described in subsection 3.3.3) that the Eeyouch had a credible case and issued, in November 1973, an interim injunction to temporarily halt the James Bay Project. The Malouf judgement spurred the negotiations leading to the JBNQA, which laid the groundwork for the future of treaty making in Canada. In this context, the Eeyouch experienced their newly defined Treaty Rights amidst an unprecedented and moving landscape as landmark

Supreme Court rulings[57] and political events[58] redefined the relations between Indigenous Peoples and the Canadian government and society.

Turning to Scott (2020) helps to understand the overarching regional influence of the agreement. On the one hand, the agency that Eeyouch have gained with the JBNQA helped them establish self-governing institutions, secure economic opportunities and negotiate amendments to the JBNQA. On the other hand, Scott (2020) stresses that such outcomes were fueled by the Eeyou political and legal action in a tense context, rather than by a common desire to develop a living relation. While the agency that the Eeyouch have gained is undisputed, it was continuously framed in and challenged by the dominant liberal and capitalist agenda of the State. This structural violence, Scott argues, "tends to erode and undermine Cree relationality in its full setting of socio-ecological community" (2020, p. 258) and parcels out the Eeyou agency benefiting only the development-oriented interests of Eeyouch.

Over time, the ubiquity of the western neoliberal ontology permeating the treaty relation has drawn the Eeyouch into a system alien to their singular relationships with the living and non-living worlds. At the same time, the JBNQA served as the foundation upon which the Eeyouch asserted their Treaty Rights, demanded greater power, and defended their territory. The AGEIBJ and EIJBRG are at once resulting from the treaty journey and embedded in the regime of the JBNQA.

3.5 Contextualizing Norway's policy towards the Sámi

This section first provides an overview of the political system of Norway to better understand the context in which Sámi-State relations developed over the past 50 years. It then introduces the region of Finnmark, the Sámi in Norway and the history of colonization.

3.5.1 The Norwegian political tradition: a background to Sámi-State relations

Based on the premise that "histories, State systems, and democratic traditions […] are central determinants in the development of political arrangements of Indigenous self-determination"

[57] *Calder* (1973), *Van der Peet* (1996), *Delgamuukw* (1997), *Marshall* (1999) and *Tsilhqot'in* (2014) are among the landmark Supreme Court rulings which have set precedents regarding Indigenous Rights and Indigenous Title in Canada.

[58] Among major events were the repatriation of the Canadian Constitution, in 1982, and the failed Kelowna Accord of 2005 which would have had led to sweeping intergovernmental commitments for Indigenous Nations and communities (Poelzer and Coates, 2014).

(Broderstad, 2011, p. 895), this subsection provides an overview of Norway's political history to better understand the domestic setting within which interactions between the Norwegian State and the Sámi have been occurring. More precisely, it examines the Norwegian Indigenous policy from the late 1800s until the end of the 20th century, and the unfolding of the Sámi Rights movement, from the 1970s onwards, which enabled the Sámi to secure greater political and cultural autonomy.

Since the end of the 19th century, grassroots social and labour movements have had a major influence in Norway. Following the Second World War, the Labour and Social Democratic parties and a centre-left ideology dominated the Norwegian political landscape (Bjørnson, 2001; Østerud and Selle, 2006). The layering of social movements produced over time a rooted civil society and the institutionalization of its influence in the State's decision-making process, establishing a strong democratic tradition and building Norway's reputation for keeping close ties with non-governmental organizations and civil society actors (Falch et al., 2016; Østerud and Selle, 2006; Wilson and Selle, 2019). This context reinforced the existing Welfare State system and built a national identity based on universalism and integration (Bjørnson, 2001; Østerud and Selle, 2006; Wilson and Selle, 2019).

Civil society has provided checks and balances against the power centralization that underlies Norway's unitary political system. In such a system, the central State is the only constitutionally recognized level of government (Broderstad, 2015). It holds the law-making authority, carries out social and economic reforms, and devolves responsibilities and the administration of State-defined programs in spheres such as education, health and regional development to the lower county and municipal levels of government (Everett, 2020; Østerud and Selle, 2006).[59] Everett suggests that such a configuration has limited their spending autonomy and entailed a "strongly sectoral approach [to program delivery], led by the State who sets priorities to ensure that the same services are delivered for citizens regardless of location" (2020, p. 20). These constraints on local democracy, capacity and decision-making have caused resentment, especially in peripheral regions such as Finnmark, which have long called for better coordination and communication between

[59] Norway is divided into 15 counties. Counties are subdivided into municipalities. Within the County of Finnmark, for example, there are 19 municipalities. Unlike provinces and territories in Canada, counties in Norway are not constituent units and thus have less self-determining power.

levels of government, as well as reforms to enhance their control over matters affecting their communities (Angell et al., 2016; Everett, 2020).

Political distance between the center and peripheries, however, has not always characterized the Norwegian political landscape. Dating back to the 18th and 19th century, counties – the oldest level of government – were granted local autonomy (Angell et al., 2016; Everett, 2020). The core idea of this local autonomy remains, although it changed from "primarily being concerned with the freedom to achieve local political goals to being mostly about the ability to adapt national policies to local conditions" (Angell et al., 2016, p. 11). Indeed, in the wake of the economic and post-war challenges of the mid-20th century up until the mid-1980s, municipalities were the main deliverers of Welfare State policies.[60] With the rise of neoliberalism in the 1980s and the retrenchment of the State, the role of local governments as implementers of welfare changed and was reduced to that of "rational economic actors pursuing their own self-interest" (Østerud and Selle, 2006, p. 32).

From an international perspective, the neoliberal context of the 1980s, which promoted a market-driven social organization, led to a shift in the economic and political spheres of liberal democracies. In Norway, these changes opened up possibilities for new spaces of governance and loci of decision-making, moving away from the traditional State-centered governing model (Østerud and Selle, 2006; Wilson and Selle, 2019). One such space was Indigenous governance involving the Sámi. The following subsection addresses the development of the Sámi identity, Sámi – non-Indigenous relations, and regional dynamics in Finnmark, influenced by the domestic and international forces at play.

3.5.2 Historical background of Finnmark and the Sámi

Sápmi, the ancestral land of the Sámi people, crosses the whole of northern Fennoscandia (Norway, Sweden and Finland) and the Kola peninsula in Russia (Figure 3). It is complicated to quantify the exact Sámi population since the last census of Sámi affiliation dates to the 1960s and early 1970s (Falch et al., 2016). It is estimated that the current Sámi population is between 65 000 and 100 000, with approximately 50 000 living in Norway (Selle and Wilson, 2022). The Sámi population in

[60] It is important to note that this is an oversimplified portrait of Norway, highlighting its most salient attributes (strong welfare system; unitary State; corporatist system; strong civil society). The country's social, economic, and political landscapes have not been immune to external influences over time. Some even suggest the erosion of such attributes in the last few decades (Østerud and Selle, 2006).

Norway is concentrated in Finnmark, Norway's northernmost county. Finnmark has been populated for more than 10 000 years; the Sámi are the oldest known ethnic group in the area, having inhabited Finnmark for at least 2 000 to 3 000 years (Pedersen, 2012). Overall, they are a minority in Finnmark but form a majority in the municipalities of Guovdageaidnu (Kautokeino) and Kárášjohka (Karasjok). They also form a large minority in Deatnu (Tana), Unjárgga (Nesseby) and Porsáŋgu (Porsanger).[61] Together, these areas are regarded as the core of Sámi traditional lands in Norway (Falch et al., 2016). The Sámi share the land with Norwegians and other ethnic minorities, notably the Kven (migrants of Finnish descent). In recent decades, a rural exodus of the Sámi population has been observed (Falch et al., 2016).

[61] In a spirit of decolonization, the names are written in Northern Sámi, the Sámi language that is the most prominent across Sápmi and in Finnmark. The Norwegian names are in parenthesis for the first mention.

On the map, the darker shading south of Sápmi is based on the borders of the reindeer herding districts on both sides of the national borders of Norway and Sweden. The slanted and unshaded lines to the south and west represent the current scholarly re-negotiation and investigation of archaeological and historical sources.

Figure 3
Sápmi, the Sámi traditional territory
Source: Hermanstrand et al. (2019).

Northern Norway, administratively considered as the counties of Nordland, Troms and Finnmark, has historically coped with many challenges, such as distance from economic markets, low population density complicating service provision, high unemployment rate (Angell et al., 2016; Everett, 2020), and distinct Sámi and north Norwegian identities that distinguish the inhabitants from southern Norwegians (Saugestad, 2012). Bordered in the north by the Barents Sea, coastal Finnmark is characterized by fjords, mountains and barren plateaus, and has been attractive to

migrating populations in search of maritime resources. Inland Finnmark is characterized by rivers and barren lands with low-lying vegetation and lichens, which make up the grazing lands of reindeers (Ween and Lien, 2012).

The Sámi identity is intrinsically linked to the land and resources (see Falch et al., 2016; Ravna, 2017; Ween and Lien, 2012). The Sámi have been engaged in traditional activities such as hunting, gathering and fishing, which are essential to their livelihood as well as their economic and cultural vitality. Fishing has historically been central for coastal Sámi (see Johnsen and Søreng, 2018; Pedersen, 2012); reindeer husbandry is a core component of inland Sámi livelihood and the only economic activity specific to the Sámi (Falch et al., 2016; Wilson and Selle, 2019). Finnmark is home to most of the reindeer husbandry in Norway with "roughly 70% of the approximately 210,000 semi-domesticated reindeer and approximately 76% of the reindeer owners" (Johnsen et al., 2017, p. 2).[62] Approximately 10% of the Sámi still practice reindeer husbandry (Oksanen, 2020).

The Sámi identities, which are multiple and overlapping – coastal/inland Sámi; modernist/traditionalist Sámi; Sámi living in rural/urban settings – have been activated through different markers, and shaped and influenced through continued interactions with the Norwegian State and society. Roughly, traditionalist Sámi claim their distinct identity and rights, which often involves the protection of the land; modernist Sámi are rather integrated into the Norwegian mainstream economy and society (Spitzer and Selle, 2019).[63]

The intermingling between the Sámi and other non-Indigenous ethnic minorities prior to the establishment of the Norwegian State is an essential premise to understanding the ethnopolitical reality of Finnmark.[64] Wilson and Selle explain that the Sámi have been subject to "degrees of territorial interaction between different ethnocultural groups in northern Fennoscandia over several hundred years" (2019, p. 22). Co-existence has thus always been a reality for the Sámi as testified by the conception that Sápmi is not delineated by borders. As a result, and because Norway

[62] Reindeer husbandry is further concentrated in West Finnmark, where the inland south is used as winter grazing lands and the coastal areas are used for spring, summer, and fall pastures (Johnsen et al., 2017).
[63] This Sámi categorization oversimplifies the "many ways of being Sámi". For a particularly enlightening take on colonization, being/not being Sámi, and land sharing in Finnmark, see Ween and Lien (2012).
[64] From the 17th century onwards, coastal Sámi were gradually exposed to non-Indigenous migration (Ween and Lien, 2012).

unilaterally asserted its sovereignty over Sápmi, no treaties were historically signed between Norway and the Sámi (Falch et al., 2016; Josefsen et al., 2016; Ravna, 2016a; Selle and Wilson, 2022; Ween and Lien, 2012).[65]

3.5.3 Norwegian Sámi policy: colonization and integration

The ethnopolitical structure of Norway stems from the Norwegian colonization policies through which the Sámi were integrated into the Norwegian society and institutions. This policy of "norwegianization" was in force from around 1850 until roughly 1980. As Falch et al. suggest, "a unitary state such as Norway implies not only a centralised power structure, but also historically rests on an ideological understanding that the state and the people are one" (2016, p. 127). Attempts to erase the Sámi identity, culture and language were mainly channeled into the school system by applying strict measures to ensure that the children did not speak Sámi (Minde, 2005).[66] During what Minde (2005) refers to the "consolidation" phase of assimilation (1870-1905), boarding schools around Finnmark were established to separate children from their Sámi environment. The socio-psychological, physical and material consequences of this period in time translated, among others, into a shame to identify as Sámi, leading to a decline in ethnic identification and partial loss of traditional practices such as reindeer herding and fishing (Minde, 2005). Following the Second World War, the development of the Welfare State further fueled the assimilation scheme by drawing the Sámi in the Norwegian society (Spitzer and Selle, 2020).

The gradual softening of the Norwegian Sámi policy, in the early 1980s, was part of a global movement in support of minority and Indigenous Rights that participated to the creation of the United Nations Permanent Forum on Indigenous Issues in 2000 and the adoption of UNDRIP in 2007 (Oksanen, 2020). This shift, from a dominant narrative based on the sovereignty of States to an awareness regarding the rights of ethnic minorities, provided the Sámi with the right conditions to claim their distinctive status as a people (Broderstad, 2014; Oksanen, 2020; Selle and Wilson, 2022). Laframboise (2023) remarks that in the wake of the Alta conflict (see section 3.6), the Sámi

[65] In 1751, when the borders between Denmark and Norway, and Sweden and Finland, were settled by treaty, settler authorities enacted the Lapp codicil, a document recognizing the right of the Sámi to exist as a people and allowing the Sámi to cross boundaries for reindeer herding. Even though it remains the oldest known document on Sámi Rights, the Lapp codicil is not legitimate and does not embody a Nation-to-Nation treaty because it was unilaterally created by the settler authorities (see Broderstad, 2011; Henriksen, 2008).

[66] The Wexelsen decree, issued in 1898, institutionalized the prohibition to speak Sámi and Kven languages in the school system (Minde, 2005).

movement resonated with and contributed to the global Indigenous Rights movement. Especially amidst Finnmark's ethnopolitics and Norway's integrative State policies, the international context was conducive in raising awareness in favour of the Sámi as a "separate ethnic group with its own deep historical roots" (Falch et al., 2016, p. 128).

The combination of positive conjunctures – the softening of the assimilation policy, increased public awareness, the thriving of the Welfare State and the emergence of an international narrative on self-determination – fueled the Sámi mobilization, led by the Norwegian Sámi Association (NSR), which has been active since the 1960s. The NSR is concerned with securing the Sámi collective political and land-related rights, as well as defending the distinct Sámi identity.[67] The organization occupied a central role at the height of the Atla conflict, being at the forefront of the demands for a distinct Sámi political representative body (Falch et al., 2016).

3.6 Understanding the background of the Finnmark Act: an overview from the 1970s to present day

For the past 50 years, Sámi-State relations evolved at an unprecedented pace. The Alta-Guovdageaidnu hydroelectric powerplant project, in the 1970s, is highly regarded as the critical juncture underlying the Sámi Rights movement of the following decades (Broderstad, 2014; Josefsen et al., 2015; Laframboise, 2023; Oksanen, 2020; Selle and Wilson, 2022; Spitzer and Selle, 2019). In 1968, the Norwegian government announced its intention to undertake the hydroelectric development of the Alta-Guovdageaidnu watercourse which runs through core Sámi areas, hence threatening to flood the Sámi community of Máze and reindeer grazing pastures (Oksanen, 2020; Selle and Wilson, 2022) (Figure 4). The mobilization and protests of the Sámi and environmental groups following the authorization of the project, in 1978, were among the most important civil disobedience events in postwar Norway, culminating with road blockades and a hunger strike in front of the Norwegian parliament (Andersen et al., 1985; Oksanen, 2020; Selle and Wilson, 2022).

[67] The Sámi National Organization, a parallel organization born out of internal dissensions, rather promoted Sámi individual rights and the influence of the Sámi as an interest group within the framework of the Norwegian State (Falch et al., 2016).

Figure 4
The Alta-Guovdageaidnu watercourse (Finnmark, Norway)
Source: author (June 2024).

The situation in Alta, just like in EIJB at the same time, revealed a growing dilemma: the opposition of resource development to the conservation of the environment and Indigenous lifeways (see Blaser et al., 2004). The power plant was eventually authorized but the domestic crisis and pressures from the NSR for launching an investigation into Sámi Rights drew global awareness towards the Sámi and Finnmark. It is important to note that this awareness was fueled not only by the conflict in Alta, but also by the Sámi involvement in global Indigenous movements such as the International Working Group for Indigenous Affairs and the American Indian Movement in the

United States (Ravna, 2016a). This complex and unprecedented chain of events compelled the Norwegian government to enter negotiations, thus opening the door to institutional changes which redefined the ethnopolitical landscape of Norway (Broderstad, 2011, 2014, 2015; Falch et al., 2016; Josefsen et al., 2015; Oksanen, 2020; Spitzer and Selle, 2019).

3.6.1 Outcomes of the Alta conflict and burgeoning of a Sámi public space

The Alta conflict revealed the legal blur on questions of land ownership and Sámi Rights to land and water use in Finnmark. Historically, the Norwegian State asserted its ownership of Finnmark arguing that lands used by nomadic peoples were "ownerless" and could be taken into possession by the State despite being claimed, inhabited and used by Indigenous Peoples since time immemorial (Ravna, 2011; Ween and Lien, 2012).[68] As Ravna (2011) explains, the Sámi immemorial occupation and use of the land, highly regarded as a "harmless beneficial usage", was considered an illegitimate legal basis for acquiring rights.[69] Historically, therefore, the State's prevailing legal interpretation, the lack of space for legal pluralism and the lack of legal precedents, prevented the Sámi from testing their land claims before the courts (Ravna, 2011, 2016).[70]

To settle the legal uncertainties, the Sámi Rights Committee (SRC) was created in 1980 to investigate the question of Sámi Rights to land and water. In 1984, the first report of the SRC recommended the creation of a Sámi representative assembly which was later implemented in 1987 through the *Act concerning the Sameting [the Sámi Parliament] and other Sámi legal matters* (the *Sámi Act*) (Broderstad, 2011; Falch et al., 2016; Oksanen, 2020; Ravna, 2011). In 1988, the Norwegian constitution was amended so that the "authorities of the State shall create conditions enabling the Sami people, as an indigenous people, to preserve and develop its language, culture and way of life" (Constitution of Norway, 2024, art. 108).[71] In a subsequent report, in 1997, the SRC recognized that the Sámi had rights on the land based on a prior and protracted use, recommending that the title to the land be transferred from the State Forest Company to an

[68] As explained by Ravna (2011), acquiring rights on the basis of immemorial use is a difficult task to undertake. Immemorial usage here is equivalent to the Aboriginal Title in common law in Canada.
[69] For extensive legal analyses of land rights in Finnmark, see the work of Ravna (2011; 2013; 2014; 2016; 2017).
[70] Contrary to Indigenous Peoples in Canada who were able to enter land claims negotiations following the *Calder* decision, such a framework was lacking in Norway.
[71] The SRC also issued the recommendation to create a governance system in which "local people would be assured influence over resource management through locally appointed 'outfields boards'" (Ravna, 2011, p. 434) which mirror co-management claims boards in Canada. The proposition, however, was overlooked by the Norwegian government.

independent ownership body (Ravna, 2011).[72] As noted by Ravna, "the investigatory work that took place under the umbrellas of the Sámi Rights Committee, was the first formal step in forming the *Finnmark Act*" (2016a, p. 194). Svensson summarizes the crucial role of the SRC on shaping the political future of Norway in relation to the Sámi:

> The legal aspect of change constitutes the most important part of the work of the Sámi Rights Commission. All ethnopolitical articulation and actions in modern time point to the question of rights. The strategy is legal as to form and content, but its goal is primarily political. (2002, p. 9)

The work of the SRC captures the complexity of Norwegian ethnopolitics vis-à-vis the Sámi: the institutional reforms concerning the Sámi are entrenched within a unitary political framework and ideology that is alien to a differentiated rights regime. Indeed, in channeling the uprising of the Alta conflict into a public investigation body, the SRC hierarchized the "right to the land" and fueled the debate around ethnicity and territoriality in Finnmark, a region which history had been characterized by coexistence and land sharing (see Holden, 2014).[73] Thus, the SRC concurrently paved the way for renewed Sámi-State relations while revealing the unease surrounding the ethnic-based nature of the investigation.

It is important to note that even though the SRC represented a stepping stone to the recognition and institutionalization of Sámi Rights, the committee never properly worked on identifying and clarifying Sámi Rights. Thus, despite the recognition of Sámi land rights, the nature and scope of those rights remained unaddressed (Ravna, 2011, 2016a; Svensson, 2002).

3.6.2 The Sámi Parliament (Sámediggi)

The creation of the Sámediggi of Norway (Sámi Parliament, in Northern Sámi), in 1989, marks an important milestone following the Alta conflict and a first institutional outcome of the investigations of the SRC. More broadly, the creation of the Sámediggi represented a major shift in the Norwegian policy towards the Sámi. First, it recognized the historical presence and the ethnic and cultural distinctiveness of the Sámi. Second, it symbolized a shift away from some 150 years

[72] It is important to note that the years preceding the *Finnmark Act* were marked by an increasing pressure on the Norwegian government to abide by the principles of the ILO 169 Convention, which it had signed in 1990 (Ravna, 2016a).

[73] The issue here is not so much about the divisions among the peoples of Finnmark but rather about the State making decisions about the management of land and resources in Finnmark (Holden, 2014).

of Norwegian colonialism. Third, it provided the Sámi with a channel of influence within the State institutions and structures (Falch et al., 2016; Josefsen and Saglie, 2024; Wilson and Selle, 2019).

The Sámediggi is located in the town of Kárášjohka, a core Sámi area in inner Finnmark. The plenary assembly is composed of 39 seats from seven electoral districts and is elected every four years, at the same time as the elections of the Norwegian parliament. The council is the executive branch of the Sámediggi, consisting of the president and four appointed members of the plenary assembly. The Sámi have to register in the electoral roll to vote, based on self-identification and community affiliation criteria. Either they, or a parent or grandparent, must have Sámi as a home language, or they must have a parent or grandparent that is a registered voter (Falch et al., 2016; Josefsen and Saglie, 2024).

The legitimacy of the Sámi Parliament is multifaceted, deriving from the national law (the *Constitution Act*, the *Sámi Act*), international law (ILO 169) and the Sámi people through the elections. Its political success and longevity also depend on the credibility it receives from the Norwegian society (Falch et al., 2016; Josefsen et al., 2015). This creates a complex legal basis which highlights the conflictual role of the institution, as explained by Falch et al.: "its role has been evolving against the background of two tensions: between being a public authority and a democratically elected policymaker, and between representing the Sámi people and being respected by Norwegians" (2016, p. 131). The exact scope of the authority of the Sámediggi, beyond that of a representative body, is ambiguous. Falch et al. see it as both a government agency and an independent political body, having the role of a "policymaker and prime mover vis-à-vis the state" (2016, p. 130). The Sámediggi is indeed an administrative body which powers and tasks are delegated by the Norwegian government. It also entirely depends on financial transfers from the Norwegian government to operate (Josefsen and Saglie, 2024). At the same time, the Sámediggi is an autonomous body; it determines its operating rules and procedures, has the power to refuse the tasks it is being delegated and operates independently from the hierarchical State system (Johansson, 2016; Josefsen et al., 2015; Josefsen and Saglie, 2024; Henriksen, 2008). There is therefore a tension between, on the one hand, the autonomy of the Sámediggi and the fact that it operates on the margins of Norwegian politics and, on the other hand, the fact that it remains dependent on the State in several respects.

The scope of the mandate of the Sámediggi is non-territorial,[74] meaning it is tasked with representing the Sámi all over Norway, despite the strong concentration of the population in the County of Finnmark (Falch et al., 2016). The possibility of an institution representing the interests of the Sámi on a defined territory (the core Sámi areas presented earlier in this chapter) is at odds with the fact that they do not form a clear majority of the population in the region. Such an institutional design would also leave out a significant part of the Sámi population living elsewhere and further impinge on the rights of the non-Sámi population (Josefsen and Saglie, 2024). On the other hand, the legitimacy of the Sámediggi, relying on the Sámi people itself, is inextricably linked to the land which is at the core of the Sámi identity (Josefsen and Saglie, 2024). While Spitzer and Selle analyze the Sámediggi as a non-territorial authority, they also argue that Sámi self-governance has taken a "territorial turn" over the years through a "patchwork of Sámi Rights, powers and authorities over land and natural resources" (2020, p. 3). Indeed, there is no consolidation of a Sámi authority but rather multiple entities – Sámi-majority municipalities, the Reindeer Herders Association, the FeFo – which sometimes have competing interests. It is important to note that the Sámediggi has also been involved in territorial areas of operation either through the consultation procedures, as the manager of the Sámi cultural heritage which heavily involves reindeer husbandry areas,[75] or in the wake of the 2009 *Planning and Building Act* (*PBA*), as explained below (Falch et al., 2016; Josefsen and Saglie, 2024; Spitzer and Selle, 2020).

The Sámediggi deals mainly with the development and protection of the Sámi culture, language and education (Falch et al., 2016; Wilson and Selle, 2019). The *Sámi Act* defines the authority of the Sámediggi as "any matter that in the view of the parliament particularly affects the Sámi people" (*Sámi Act*, 1987, art. 2-1). Such a broad mandate allowed for the expansion of the responsibilities delegated over time, mainly in the form of transfers of responsibility of funding programs in the fields of Sámi language, culture and youth education (Broderstad, 2011; Falch et al., 2016). However, since the authority of the Sámediggi is limited to the administration and management of programs and funds, the possibility to further expand its role as a policymaker is

[74] In an Indigenous context, the distinction between territorial and non-territorial hinges on the scope of the autonomy arrangement. If an arrangement deals only with cultural rights, then its application does not have to be circumscribed within boundaries.

[75] Josefsen et al. (2015) remark that the fact that the Sámediggi does not deal with reindeer husbandry (which falls under the *Reindeer Husbandry Act*, amended in 2007) may have enabled it to represent a wider array of Sámi interests, including those of coastal Sámi, rather than a narrow mandate oriented toward the reindeer industry.

limited (Falch et al., 2016; Josefsen et al., 2015). As Josefsen and Saglie (2024) explain, instead of claiming and taking on more powers and responsibilities, the Sámediggi has been exerting influence from within, by managing the inclusion of Sámi Rights in crucial legislation (e.g. the *PBA;* the *Mineral Act;* the *Education Act*). In 2009, the *PBA* was revised and a new paragraph was added stating that 'the Act shall protect the natural basis for Sami culture, economic activity and social life" (*PBA,* 2009, sect. 3-1). The *PBA* entitles the Sámediggi to oppose all land use and regional plans and refer to the Ministry if it thinks the impact on the Sámi culture are not adequately considered (*PBA,* 2009, sect 5-4). If projected plans are met with opposition, either an agreement must be reached or the Ministry has the prerogative to make a decision (Falch et al., 2016; Spitzer and Selle, 2020; Wilson and Selle, 2019). Despite the fact that it has been increasingly consulted and involved in lawmaking projects over the years, the questions it deals with remain for the most part under the decision-making authority of the State (Falch et al., 2016).

The *Sámi Act* establishes that "other public bodies should give the Sameting [Sámediggi] an opportunity to express an opinion before they make decisions on matters coming within the scope of the business of the Sameting" (*Sámi Act*, 1987, art. 2-2). Consultation, implicit in the *Sámi Act*, was given more heft through an agreement on procedures for consultation between the State and the Sámediggi that was signed in 2005 and made legally binding in 2021 (Josefsen and Saglie, 2024). The goal of this agreement was to lay the groundwork for how to conduct consultations on matters affecting the Sámi. The issues falling under the consultation procedures are defined by the Sámediggi; they cover a wide range of material and immaterial areas touching on culture, health, education, land and resources (Broderstad, 2014; Falch et al., 2016; Ravna, 2020). Generally understood as a mechanism of shared rule, the duty to be consulted marks a shift in the agency of the Sámediggi from an advisory body to an informed participant in the decision-making process (Broderstad, 2014; Falch et al., 2016 Josefsen and Saglie, 2024; Wilson and Selle, 2019).

The consultations have drawn consensus on most of the affairs related exclusively to the Sámi while it has been harder to reach an agreement for issues of shared concerns such as resource development (Broderstad, 2014; Josefsen and Saglie, 2024). For issues concerning land and resources, the State's duty to consult is limited to the reindeer herding territories, which cover 40% of Norway's land mass (Spitzer and Selle, 2020). However, according to Josefsen and Saglie, the lack of checks and balances impedes the conduct of consultation:

> this is a basic limitation of the Norwegian model – consultations are required, but there are no sanctions when these are not honoured; therefore, they rest on the condition that the State respects Indigenous human rights, Supreme Court rulings and its own consultation rules. (2024, p. 18)

Given that the influence of the Sámediggi over issues regarding the land and resources mainly takes form through its right to be consulted, the obstacles to consultation highlight the importance of other spaces of Sámi territorial authority, particularly the institutions of the *Finnmark Act*. The issue concerning consultation not only questions the respect of Norway towards its domestic political and legal engagements, but it further questions Norway's respect of its own international obligations.

The focus on the Sámediggi shows how instrumental the institution has been in the greater scheme of Sámi self-determination in Norway, being the result of decades of Sámi mobilization. Of particular interest for this research, the Sámediggi is the stepping stone to the territorial dimension of Sámi self-determination given the role it played in the negotiation process leading to the *Finnmark Act* and in the role it plays in nominating Sámi members on the board of FeFo. The importance of the Sámediggi further lies in the idea that the coexistence of strong shared rule and self-rule institutions enables Sámi self-determination (Wilson and Selle, 2019). In being a vehicle allowing the concerns and interests of the Sámi to influence the decisions of the Norwegian government, the Sámediggi established the foundations for the FeFo, which is complementary to the Sámi self-determination project by exercising a regional and territorial-based type of self-rule.

3.6.3 International law as a bulwark for Sámi Rights

The ethnopolitical, historical and geographic setting that was outlined previously is important to understand the legal sources of Sámi Rights in Norway. First, due to the history of land sharing with Kven and Norwegians, the Sámi in Norway never sought exclusive control on their land, which in turn never led to land claims being challenged before the courts (Akhtar, 2022). Second, and for similar reasons, no treaties – understood as multipartite agreements over large swaths of land defining shared rights and responsibilities – were ever negotiated between the Sámi and the State (Boirin-Fargues and Thériault, 2024). Third, prior to the *Sámi Act*, the Norwegian State did not recognize the distinctive status of the Sámi. Rather, the Sámi were considered as Sámi-speaking Norwegians and drawn into the mainstream society under the auspices of universal citizenship, the Welfare State and the unitary, integrative State system (Broderstad, 2015; Falch et al., 2016). Thus,

in the wake of the major disruptions of the 1970s and 1980s in Finnmark, there was neither a clear and defined legal framework for the relations between the Sámi and the State, nor a defined space for Sámi territorial autonomy (Spitzer and Selle, 2020).

Without a strong legal basis, the Sámi channeled their mobilization into the political and public spheres with the consequences that were described in previous subsections.[76] Following the creation of the SRC, the process of rights recognition first emphasized cultural rights with the *Sámi Act* and the enshrinement of article 108 in the Norwegian constitution.[77] However, even though the SRC had the mandate to address questions of land ownership and Sámi land rights, such issues remained largely unaddressed until the end of the 1990s (Ravna, 2011, 2014, 2016). In the moving context following the Alta conflict, the ratification by Norway of ILO 169, in 1990, marked an important development for State-Sámi relations, particularly regarding the recognition and protection of the land rights of the Sámi (Drange, 2021; Ravna, 2014). Norway also ratified the International Covenant on Civil and Political Rights (ICCPR) in 1972. It became legally binding in 1976 and was incorporated to Norwegian law in 1999. Although it does not tackle Indigenous Rights *per se*, Ravna (2014, 2017) notes that the ICCPR, particularly article 27 which deals with minority rights, understands a vision of Sámi culture which is based on their relationship to the land. Given this interpretation and in relation to national law, the link between article 27 of the ICCPR and article 108 of the constitution has strengthened the protection of Sámi lands rights (Ravna, 2017). The ICCPR also formed an important legal basis to the crafting of the SRC and *Finnmark Act* (Oksanen, 2020; Ravna, 2022).

[76] As a counterexample, the Sámi in Sweden chose a different path at the time: in 1966, Sámi villages and individuals in Jämtland County sued the State claiming the ownership of the reindeer herding areas. Despite the courts ruling in favour of the State, the *Taxed Mountain* case set a precedent and led to the launching of the Sámi Rights Committee in Sweden in 1982 (Josefsen et al., 2015).

[77] As a reminder, article 108 states that "authorities of the State shall create conditions enabling the Sami people, as an indigenous people, to preserve and develop its language, culture and way of life".

The focus here will mainly be on ILO 169 as it is the only legally binding international convention related to the rights of Indigenous Peoples.[78] The convention lays out a comprehensive framework compelling the signatory States to protect and promote the equality of chances (ILO 169, 1989, art. 2), human rights (ILO 169, 1988, art. 3) and the social, cultural, religious and spiritual rights, values and practices of Indigenous Peoples (ILO 169, 1989, art. 5). Other elements that the convention safeguards are the duty to consult the peoples concerned (ILO 169, 1989, art. 6), the right to determine their priorities and participate in regional and national development (ILO 169, 1989, art. 7) and the protection of the customary law (ILO 169, 1989, art. 8). Notably, ILO 169 lays out a framework for the Indigenous Rights to land and resources. Article 14 is important in terms of protecting[79] and identifying[80] land rights as well as "establish[ing] [adequate procedures] within the national legal system to resolve land claims by the peoples concerned" (ILO 169, 1989, art. 14.3). Article 15.2 is also important as it narrows the duty to consult to mining, a prevalent industry in Finnmark which has recently drawn much conflict between the different institutional actors, stakeholders and the Sámi (see Angell et al., 2020; Nygaard, 2016).

The recent history of the Sámi Rights movement is interwoven with that of ILO 169 in Norway. Through ILO 169, the Sámi could henceforth rely on a legally binding instrument to enforce the protection of Sápmi and secure their rights. The ratification of ILO 169 by the signatory States entails that its principles must be implemented into national law (Drange, 2021). Practically, the incorporation of the convention in national law entails four obligations for Norway: enable Sámi

[78] Norway is a party to UNDRIP. A recurrent critique of UNDRIP is that it is not legally binding, undermining its propension to be enforced domestically. In considering these instruments, Åhrén (2023) notes that it overlooks the fact that some of the provisions are customary international law by their recurrence in other landmark conventions such as the Universal Declaration on Human Rights and by the general acceptance of their principles by the international community. In the realm of Indigenous Rights, UNDRIP, which is ratified by most of the States and was jointly negotiated between States and Indigenous representatives, enjoys such a consensus giving force to its principles. It is also important to recall that UNDRIP is the result of decades of Indigenous activism which was crucial in building the global Indigenous Peoples movement (Oksanen, 2020; Ravna, 2014). However, from a legal standpoint, Åhrén's (2023) argument is less relevant since ILO 169 was ratified by Norway. Åhrén's (2023) argument would better apply to Canada which only ratified UNDRIP. In such a case, many of the principles of UNDRIP could be read in relation to other international instruments such as ILO 169 and be interpreted as international customary law.

[79] The convention states that "measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities" (ILO 169, 1989, art. 14.1).

[80] The convention states that States shall "take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession" (ILO 169, 1989, art. 14.2).

participation,[81] consultation, benefit-sharing and compensation (Ravna, 2014, 2017). The Sámediggi represents a first step to the integration of ILO 169 in the national law by allowing the Sámi to participate in the decision-making processes which concern them (ILO 169, 1989, art. 6.1b) and by participating to "the full development of these peoples' own institutions and initiatives" (ILO 169, 1989, art. 6.1c) (Drange, 2021). However, like Canada with UNDRIP, for the ILO 169 principles to be fully legally binding on Norway, the State must enact legislation to this effect. As Norway has not enacted a general implementing law, ILO 169 is incorporated to Norwegian law only on a sector-by-sector basis, in that case through section 3 of the *Finnmark Act.*[82] On another note, it was not before 2016, with the *Stjernøy* ruling, that the relation between the *Finnmark Act* and ILO 169 was discussed (more on this at page 75) (Ravna, 2016b).

The influence of ILO 169 on the national law and politics grew significantly at the end of the 1990s, being instrumental in both the 2005 agreement on consultation and the negotiations leading to the *Finnmark Act* (Ravna, 2020). The first draft of the *Finnmark Act* was heavily criticized by the Sámediggi, which accused Norway of breaching its international obligations by failing to consult it in the law-making process (Ravna, 2020). What ensued is regarded as an unprecedented set of interactions amidst Norway's unitary system between the Norwegian government, the Sámediggi and the Parliamentary Standing Committee of Justice, which negotiated the *Finnmark Act* (Spitzer and Selle, 2019, 2023).

Meeting the obligations of ILO 169 was an important factor leading to the creation of the institutions of the *Finnmark Act* (Ravna, 2016b). The Finnmark Commission and the Uncultivated Land Tribunal for Finnmark (the Land Tribunal) are the main vehicles implementing articles 14.2 and 14.3 of ILO 169 (Ravna, 2014, 2016b). The creation of FeFo was aimed at meeting and incorporating ILO 169 in the national law by redefining the property and management on most of the Finnmark's County lands. In providing a space for the Sámi to participate in matters that concern them, the FeFo is a response to articles 6.1b and 6.1c, and specifically article 15.1, which compels the State to create the conditions for the Sámi to participate to the "use, management and

[81] This obligation entails that Sámi must be represented in the decision-making bodies; it is a right to participate in the process, not to have influence over decision-making (Ravna, 2017).
[82] Section three states: "The *Act* shall apply with the limitations that follow from ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The *Act* shall be applied in compliance with the provisions of international law concerning Indigenous Peoples and minorities and with the provisions of agreements with foreign states concerning fishing in transboundary watercourses."

conservation" of the land and resources (ILO 169, 1989). Whether the decisions and operations of FeFo meet the criteria set by ILO 169 will be determined and analyzed in the discussion chapter of this thesis.

Both the domestic Sámi Rights movement of the past 50 years and international factors enabled a shift in the legal interpretation and practical redefinition of land ownership and use in Finnmark. The role of international law is important to protect Indigenous Rights in domestic settings which fail to provide a coherent legal framework (Åhrén, 2023). In Norway, where the situation of Sámi Rights is ongoing and evolving, international law acts as both a safety net and a driver for domestic changes. Despite the clear influence of ILO 169 on shaping Sámi-State relations and leading to a new land regime in Finnmark, the limitations to incorporation in national law are manifest. Most notably are the Finnmark Commission investigations which, until recently,[83] came short of identifying Sámi lands on the basis of immemorial use, questioning the compliance of the *Finnmark Act* with article 14.2 of ILO 169 (Ravna, 2013, 2014, 2017).[84] Notably, Ravna explains how the discretionary interpretation of ILO 169 – instead of treating it as a legally binding document – by the Finnmark Commission undermined the recognition of rights to local users:

> The first report of the Finnmark Commission does not point out that the discretionary freedom will go in favour of the local right holders, Sámi or non-Sámi, but rather towards the State's successor, the Finnmark Estate, where the Commission is more careful to recognise rights due to immemorial usage than the Supreme Court was in the Svartskog case. (2013, p. 456)

Another issue is that since Norway has not incorporated the convention beyond Finnmark,[85] the scope of ILO 169 regarding the rights of the Sámi in other regions of Norway is called into question (Akhtar, 2022; Boirin-Fargues and Thériault, 2024; Ravna, 2016b). Even in Finnmark, Ravna (2014) recalls the pitfalls to meet the obligations of ILO 169 in failing to recognize the historical fishing rights of coastal Finnmark Sámi communities (see also Johnsen and Søreng, 2018). The Norwegian *Mineral Act* also falls short of complying with ILO 169, especially concerning benefit

[83] The groundbreaking land investigation of the Kárášjohka region is further addressed in subsection 3.6.4.
[84] The interpretation of the Finnmark Commission in its reports challenges the aim of the *Finnmark Act* itself: proving immemorial use was not hindered by the lack of evidence of the continuity of the Sámi use. Rather, the failure to recognize and secure the land title in various parts of Finnmark so far has been justified by the fact that the local peoples have never exercised comprehensive authority, one that was held by the State before the transfer to FeFo. The legal force granted to the historic authority of the Norwegian State over Finnmark overrode the recognition of Sámi collective rights (Ravna, 2013, 2014, 2017).
[85] Unlike other human rights conventions ratified by Norway, ILO 169 was not incorporated through the Norwegian Human Rights Act in 1999 (Ravna, 2016b).

sharing with the Sámi (Ravna, 2014). Indeed, the fact that benefits from mining activities only rest with FeFo, which does not represent Sámi interests *per se*, overlooks the other Sámi actors that are affected by mining activities. This highlights the complex interwoven landscape of Sámi influence in Finnmark, which is characterized by multiple actors – the Sámediggi, FeFo, Finnmark County, reindeer herders and Sámi-dominated municipalities – which have different and sometimes competing interests in land development (Ravna, 2014; Spitzer and Selle, 2019).

The landmark court rulings of *Selbu* and *Svartskog,* and the more recent *Stjernøy* ruling, have established precedents regarding land use for reindeer pastures, confirming and giving force to the principles of ILO 169 in national law (Ravna, 2014, 2016b; Ravna and Bankes, 2017). However, courts of law have provided mixed results in their interpretation of ILO 169 and its effect on national law. In the *Stjernøy* ruling, the Supreme Court limited the scope of ILO 169, particularly that of article 14 which is not given "independent significance as a rule of law in the legal identification process framed in the *Finnmark Act*" (Ravna, 2016b). Other recent legal cases inside (the copper mine in Fálesnuorri (Northern Sámi) (Kvalsund), coastal Finnmark) (see Drange, 2021; Nygaard, 2016; Spitzer and Selle, 2019) and outside of Finnmark (the Fosen case[86]) illustrate the difficulty of forcing the State and industries to consult Sámi actors that are affected by development projects, let alone the consequences these projects have on the land (Ravna, 2022). In Fosen, the fact that the court ruled in favour of the Sámi, invoking article 27 of the ICCPR, somehow shows how international law can serve as a tool for protecting Sámi Rights (see Åhrén, 2023; Laframboise, 2023; Oksanen, 2020; Ravna, 2022). Overall, there seems to be a contradiction in how ILO 169 is considered and interpreted domestically. Despite the consensus among political and legal actors recognizing Sámi Rights and customary law, the process of identifying those rights and the piecemeal implementation of ILO 169 questions the quality of the *Finnmark Act* to implement ILO 169, protect and promote the rights and cultural heritage of the Sámi (Ravna, 2017).

[86] In 2010, wind turbines were built in the Fosen peninsula, in the Trøndelag County, at the southern border of Sápmi. The project happened without consulting the Sámi reindeer herders and the Sámediggi and was ruled in breach of Norway's international obligations by the Norwegian Supreme Court in 2021. However, following the State inaction to implement the court's ruling, a massive mobilization unfolded before the conflict was settled in early 2024 (see Josefsen and Saglie, 2024; Laframboise, 2023; Ravna, 2022).

3.6.4 The *Finnmark Act*: redefining land rights and management in Finnmark

The *Finnmark Act* is the result of over 20 years of public investigation on Sámi land rights undertaken by the Sámi Rights Committee. As much as the complete reworking of the land regime and governance system is groundbreaking, the legal process leading to the adoption of the *Finnmark Act* was itself an unprecedented case of coordination and collaboration between the Sámi and non-Sámi authorities (Broderstad, 2011; Josefsen et al., 2016; Spitzer and Selle, 2023). Although it set a precedent, the factors underlying this collaboration demonstrated that the hierarchical nature of decision-making in Norway can paradoxically hinder the State's compliance with its international obligations to the Sámi.

The proposition of the SRC in 1997 to create a land management body in Finnmark was met by a draft bill of the Bondevik government in 2003. The draft bill, however, was in breach of Norway's international obligations under ILO 169 by failing to consult the Sámediggi in the elaboration process (Broderstad, 2015). It also failed to comply with section 14 of ILO 169 and establish measures to proceed with an investigation aimed at identifying the rights to the land in Finnmark. Following heavy criticism, the Sámediggi and the Finnmark County Council were included in the law-making process and consulted four times by the Parliamentary Standing Committee of Justice (Josefsen et al., 2016; Ravna, 2016a). These consultations were the first time that the Norwegian government allowed the interference of "outsider" bodies at the final stage of a legislative process (Josefsen et al., 2016). The inclusion of the Sámediggi in the process led to considerable changes realigning the bill with Norway's international obligations, notably with the inclusion of section 5 acknowledging the rights of the Sámi to the land and water in Finnmark and the establishment of the Finnmark Commission (Broderstad, 2015; Josefsen et al., 2016; Ravna, 2016a).

The purpose of the *Finnmark Act* is to:

> facilitate the management of land and natural resources in Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Sámi culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. (*Finnmark Act,* 2005, sect. 1)

Inherent to the *Finnmark Act* is a tension between the public scope of the regime and the fact that its enactment is the result of decades of Sámi mobilization and that a significant part of its mandate is oriented towards identifying Sámi Rights under Norway's international obligations (Angell et

al., 2020; Broderstad, 2015). Ween and Lien capture the rationale behind the ethnic/public balance found in the *Finnmark Act*:

> Although the Act was adopted in acknowledgement of continued Sami settlement and use, and in recognition of Norwegian obligations according to international law, the architects behind the Act took care to recognize that the county of Finnmark today, due to migrations and a number of colonization processes, is more ethnically mixed than other parts of Norway. (2012, p. 102)

The *Finnmark Act* grants specific rights to residents of the municipalities of Finnmark such as the right to gather eggs and down, fish with nets and collect timber for domestic purposes (*Finnmark Act,* 2005, sect. 22). The *Act* allows big game hunting, fishing and berry picking rights to all Finnmarkers (*Finnmark Act*, 2005, sect. 23). It extends the right to hunt and trap small game and fish with a rod to outside visitors (*Finnmark Act*, 2005, sect. 25). The Sámi Rights recognized in section 5 are not specified in scope and content, which is the task of the Finnmark Commission. The *Act* recognizes "special rights to local utilization" which are granted to peoples whose livelihood is based on the land (*Finnmark Act*, 2005, sect. 24). Overall, the rights regime of the *Finnmark Act* remains largely undefined in scope and content, particularly the specific Sámi Rights of section 5 and the "special rights" of section 24.

The institutions of the Finnmark Act. The *Finnmark Act* led to the transfer of 95% of the county's land from the State Forest Company (Statskog) to the FeFo, the new landowner and land manager (Broderstad, 2014). The *Act* establishes three new institutions: the land managing body (the FeFo), the Finnmark Commission and the Land Tribunal. The Finnmark Commission, as introduced in the previous subsection, is tasked with investigating the rights of use and ownership of the land and water in Finnmark (*Finnmark Act,* 2005, sect. 29). This includes determining the Sámi Title to the land, but also special user rights defined on the basis of immemorial use (Falch et al., 2016; Ravna, 2016a; Spitzer and Selle, 2023).[87] The Land Tribunal has the mandate to settle disputes that could arise from the findings of the Commission (*Finmmark Act*, 2005, sect. 5). The Commission was established by royal decree in 2008. It is composed of five members and determines itself the fields it investigates.

[87] Some exclusions apply, notably salmon fishing in Finnmark's large rivers (the Tana and Neiden rivers in eastern Finnmark). Given that investigations must be based on current national law, investigations regarding reindeer herding rights are performed only upon request by a person with legal interest (Ravna, 2016a).

The work of the Commission spans all Finnmark; the FeFo is tasked with assessing the findings of the Commission given it concerns the land it owns (*Finnmark Act*, 2005, sect. 34). Each report of the Commission must contain the following: 1) who, in the view of the Commission, are owners of the land; 2) what rights of use exist; and 3) the circumstances on which the Commission bases its conclusions (*Finnmark Act*, 2005, sect. 33). If the FeFo accepts the conclusions of the Commission, the new rights-holders secure the title; if it refuses the findings, a mediation process overseen by the Finnmark Commission can be engaged to resolve the dispute (*Finnmark Act*, 2005, sect. 35). Otherwise, the matter can directly be brought before the Land Tribunal, which has exclusive jurisdiction to address such matters (*Finnmark Act*, 2005, sect. 36).

So far, the Commission has produced six reports, four of which have not led to identifying and recognizing lands that were collectively owned by the local population (indirectly by the Sámi in inner Finnmark municipalities).[88] The reports only recognized the usage rights of the local population (Ravna, 2025). In one report, that of the Unjárgga municipality, the Finnmark Commission recognized management rights to the local population on the basis of immemorial use. Ownership rights were not addressed in the case (Unknown, 2017). The findings in the report were contested by the FeFo, which feared that recognizing the rights of certain groups would affect the unasserted rights of others in the same area and impinge on the management capacity of the FeFo (Unknown, 2017). The case went all the way up to the Supreme Court, which ruled in favour of the FeFo retaining the management rights (Spitzer and Selle, 2019). More recently, the conclusions of another investigation showed how findings recognizing ownership rights to the local population have the potential to affect the foundations of the *Act*, the authority of FeFo and ethnopolitics in Finnmark and Sápmi more broadly.

The case of Kárášjohka: challenges to the Finnmark Act regime and future perspectives. In 2019, the Finnmark Commission released its report on the Kárášjohka Municipality, a core Sámi area and the seat of the Sámi Parliament, located in inner Finnmark (Figure 3) (Ravna, 2023b, 2025; Spitzer and Selle, 2023). The Commission concluded that the people of Kárášjohka collectively owned the land, which could entail the transfer of 5% or 20,000 km^2 of Norway to the Sámi majority of Kárášjohka (Spitzer and Selle, 2023). Parting ways with the previous reports, the

[88] This can be partly explained by the fact that the Commission started its investigations in outer Finnmark, where there is a majority of non-Sámi Finnmarkers.

findings of the Commission drew strong reactions from supporters and opponents fearing that the authority in Finnmark would be parcelled out. Initially, the FeFo affirmed the findings on the tie-break by the Sámi-appointed chair. Following the rotation of the chairmanship a few weeks later, FeFo's decision was overturned, invoking that the Sámi neither had continuously occupied the land, nor had they had exclusive rights to the land (Spitzer and Selle, 2023). In reaction, groups of Sámi filed lawsuits claiming their ownership of the region, opening up a legal process before the Land Tribunal against the FeFo (Ravna, 2023b, 2025; Spitzer and Selle, 2023). The decision of the Land Tribunal, which reaffirmed the Commission's findings, was appealed by FeFo to the Supreme Court of Norway. In May 2024, the Supreme Court ruled that the population of Kárášjohka did not own the land and overturned the initial decision of the Finnmark Commission, thus ending a high-stake political and legal episode (Ravna, 2025).

The case of Kárášjohka is an example of the contradictions and competition that were built into the *Finnmark Act* which mainly arise from the contrary mandates of the FeFo and Finnmark Commission. First is the ethnic nature of the *Act*: even though the Commission investigates the rights of all Finnmarkers, it is in fact mostly responsible for determining whether the Sámi hold rights. Also, the FeFo, which theoretically must champion the public interest, operates along ethnic lines, as was seen in the change of position by the FeFo's board (Spitzer and Selle, 2023).[89] Second, the power the FeFo has to either affirm or discard the findings of the Commission necessarily creates a delicate situation: in the event it refuses the findings of the Commission, the judicialization of the issue could cast a shadow on the relations and political process of the *Finnmark Act* and draw tensions with the pro-Sámi actors; in the event it affirms the findings, there likely is a great number of non-Sámi that would raise their voice against exclusive Sámi ownership.

The Kárášjohka case revealed the latent reality of Finnmark being divided and becoming a patchwork of rights. While such a reality would reinforce Sámi Rights in defined parts of Finnmark

[89] More examples in this respect are provided in the results chapter.

and comply with international obligations,[90] it also would dislocate FeFo's authority, upset the coexistence between peoples that has long been characterizing Finnmark and exacerbate the tensions underlying the *Act*. The case highlighted the consequences that could be experienced by the Sámi and non-Sámi populations inside and outside of Finnmark, but also elsewhere in Sápmi where the Norwegian ruling could be used as a legal precedent (Ravna, 2016a; Spitzer and Selle, 2023). It is important to note, however, that the storm caused by the investigation of Kárášjohka provided an equal measure of certainty for the following investigations. Indeed, experts suggested that if the Supreme Court did not confirm that the Sámi hold the title to a core Sámi area such as Kárášjohka, it is hard to foresee how future investigations elsewhere in the county could allow for the recognition of another landowner other than FeFo (Ravna, 2023b; Spitzer and Selle, 2023).

Here lies the seemingly irreconcilable mandate of the Finnmark Commission and FeFo: FeFo's landowner role is theoretically threatened by the findings of the Commission. However, the fact that the findings of the Commission are subject to FeFo's approval depends on whether the board of FeFo has a Sámi or non-Sámi president, which proved decisive in the Kárášjohka case. In practice, then, the findings of the Commission are not really a threat for FeFo's territorial integrity and authority. Furthermore, the fact that the Finnmark Commission's findings in favour of Sámi ownership rights have not yet been confirmed calls into question Norway's compliance with its international obligations (Spitzer and Selle, 2023).

While the rejection of the Kárášjohka findings by Norway's Supreme Court was perceived as an assault on Sámi Rights and Norway's international obligations (Spitzer and Selle, 2023), the influence of the minority judges (5 out of the 11), who assumed that the population of Kárášjohka had acquired collective ownership, shows that the case might not be the endpoint but rather a stepping stone to other claims. Ravna recently remarked that the Supreme Court only considered in its judgement whether the ownership concerned the Kárášjohka residents, without regard to

[90] James Anaya, then United Nations' Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, praised the *Finnmark Act* as an example for the other States sitting on Sápmi. However, he also expressed reservations on the process of land identification given it was underway – and before the findings of Kárášjohka (Anaya, 2011). As noted by Ravna (2016), Anaya's reservations were legitimate given that the first reports of the Commission did not identify collectively Sámi owned lands and/or Sámi Rights based on immemorial use. Thus, what seems to be the consensus in the literature is that the investigations are not enough to comply with ILO 169; the process must "guarantee effective protection of their rights", that is the identification of Sámi lands (Ravna, 2016b; Spitzer and Selle, 2023).

whether "individuals, rural societies, siidas,[91] or others in Karasjok [may] have acquired ownership to 'their' areas through immemorial use" (2025, p. 3). This could open the door to individual claims, notably by Sámi actors, on targeted parts of the municipality of Kárášjohka.

Such openings draw further questions about the relation between ownership and user rights. Other scenarios could see local claimants being granted ownership rights over land and resources to targeted parts of Kárášjohka, undermining the authority of FeFo at the municipal scale. Or else, claimants could choose not to challenge FeFo's ownership and instead claim governance rights over specific resources or areas within Kárášjohka, in addition to the rights granted in the *Act* at the scale of Finnmark (Ravna, 2025). Such a piecemeal regime would mirror the land claims model in Canada where the State retains the ownership of the land, but targeted parts of the land are reserved for exclusive Indigenous use (Spitzer and Selle, 2023). There is therefore a lingering uncertainty about the future of the Finnmark Commission in terms of identifying and establishing a Sámi Title (Spitzer and Selle, 2023). Nevertheless, the Commission remains central to identifying the rights and clarifying the regime, even though it does not involve the transfer of land from the FeFo to another owner. It is likely that the FeFo will continue as both a landowner and manager.

The Kárášjohka case encapsulates the history of Sámi Rights: despite a strong and sustained Sámi movement leading to the institutionalization and recognition of these rights in the *Finnmark Act* (*Finnmark Act*, 2005, sect. 5, 24), identifying the Sámi Rights and Sámi ownership remains a challenge in Finnmark, where people have long shared the land (Ween and Lien, 2012). The central critiques highlighted by the narrow majority of the Supreme Court such as the doctrine of *terra nullius*, as well as the ill-interpretation of ILO 169 according to Norwegian property law instead of making international law prevail, show the structural and institutional hurdles facing Sámi Rights and Title. On the other hand, the influence of the dissenting opinion holds promise for Sámi groups and individuals in future claims that may be addressed before the courts (Ravna, 2025).

Despite the contradictions of the *Finnmark Act*, it is unique for the way it structures the relations between the Sámi and Norway and marks the outcome of decades of mobilization and piecemeal progress. First and foremost, it represents the only legal recognition of Sámi land and water rights through prolonged use (*Finnmark Act*, 2005, sect. 5). Even though those rights have yet to be

[91] A siida is a Sámi community and territorial unit related to reindeer herding (Ravna, 2025).

defined in scope and content, it sets a precedent. Second is the importance of ILO 169 as a compelling factor underlying the *Finnmark Act* and less about the *Act* representing the implementation of ILO 169. Indeed, passing laws and incorporating international obligations in the constitution is meaningless if Indigenous Rights are continually violated by the State and private interests (Drange, 2021). Thus, even though the *Act* is a partial answer to the implementation of ILO 169, the structural issues it faces, notably the incapacity to identify Sámi Rights and the limited leeway of FeFo to protect those rights, show the significant gap between the principles of the *Act* and their application into practice.

This chapter has set the historical backdrop to the EIJBRG and the FeFo. In describing the series of events leading to the establishment of both institutions, one can notice the similarities and differences that will be at the centre of the discussion. Prior to this comparison, which notably draws on the institutional pathways in EIJB and Finnmark addressed here, the next chapter presents an individual assessment of both cases to enhance the understanding of their functions and operations and further underline the relevance for their comparison.

4. RESULTS

Chapter three provided background information about the EIJBRG and FeFo. This chapter presents the features of the EIJBRG and FeFo[92] in light of the two main research questions of this thesis: 1) what can be said about the nature of Indigenous – non-Indigenous relations within the EIJBRG and FeFo based on their respective functions and the issues they face with regards to land management?; 2) to what extent are the EIJBRG and FeFo vehicles for Indigenous self-determination? The presentation of the two cases will provide a basis for considering the third and fourth research questions: 3) what can both institutions learn from each other's experience?; and 4) could these models be applied to other Indigenous – non-Indigenous settings? These two questions will be examined in the discussion chapter.

4.1 The Eeyou Istchee James Bay Regional Government: dissecting a new institution

The EIJBRG is a unique governance model in Canada as it is the only municipality governed equally by Indigenous and non-Indigenous members. In the words of the CNG, the EIJBRG marks an historic turning point as for the first time, "the elected leaders of the Cree Nation and of the Jamésien [Jamesian] municipalities met as equal partners in a governance council. The Regional Government gives life to the original vision in the James Bay and Northern Québec Agreement of a partnership in governance of the Territory" (CNG, 2013-2014, p. 29).

While the configuration of the EIJBRG is similar to other Indigenous – non-Indigenous arrangements in Canada, notably co-management boards, four distinctive features set apart the EIJBRG: 1) the municipal and regional decision-making power capacity; 2) the capacity to generate revenues from taxes; 3) the legitimacy deriving from board members being elected representatives instead of government appointees; and 4) the quasi-absence of provincial government officials – only one provincial member without a voting right. Such an institutional design theoretically holds potential for reshaping the nature of the relations between Eeyouch and Jamesians, providing Eeyouch with enhanced influence on category III lands and making the EIJBRG relatively independent from the State authorities. This chapter explores these assumptions to determine whether they match the reality of governance in the region. Building on the relevant

[92] Both cases are compared along the same features yet the order in which they are presented might differ for purposes of clarity. Also, sometimes, some of the elements (e.g. functions and voting procedure in the case of FeFo) better fit in the same subsection for explanatory purposes.

literature and institutional documents, the features of the EIJBRG – legal basis, scope, board composition, voting and decision-making process, independence, Indigenous influence and functions – will be described, followed by those of the FeFo in sections 4.2 and 4.3. Both cases will later be compared in the discussion against the main concepts presented in chapter two.

4.1.1 Mandate and legal basis

The EIJBRG is a municipality pursuant to the *Cities and Towns Act* (AGEIJB, 2012, art. 90), the *Municipal Powers Act*, and the *James Bay Region Development and Municipal Organization Act* (AGEIJB, 2012, art. 124, 125). It inherited the powers and functions of the former MJB, dissolved in the wake of the agreement. The EIJBRG exercises authority on category III lands, which cover roughly 80% of the JBNQA territory (Figure 2). As public lands, category III lands are subject to the sections 5 and 24 of the JBNQA and the Québec laws such as the *Act respecting the Land Regime in the James Bay and New Québec Territories* and *the Act respecting hunting and fishing rights in the James Bay and New Québec territories,* in compliance with the provisions of the AGEIJB (AGEIJB, 2012, art. 75).

The EIJBRG has the unique feature of being a constitutionally protected municipal body. Indeed, article 210 of the AGEIBJ states that "the provisions of this Agreement that will be incorporated into the JBNQA shall have constitutional protection under sections 25 and 35 of the *Constitution Act*, 1982". This means that if the provincial or federal government were to unilaterally disband the EIJBRG, they would have a constitutional, treaty-based obligation to replace it with another competent institution. Similar to claims boards, this ensures the longevity of the institution – or at least of its spirit and intent – regardless of what institutional form it takes (White, 2020).

It is important to note that articles 103 and 104 of the AGEIJB state that if the EIJBRG is inactive for 30 days due to a deadlock in operations (a tie vote, for example), it can go under the tutelage of the Commission municipale du Québec.[93] According to Motard (2015), such a measure lessens the scope of the EIJBRG and the inherent right to self-determination of the Eeyouch; it legitimizes the cooptation of the authority of the EIJBRG by the State, which is contrary to the spirit and intent of

[93] The Commission municipale du Québec is "an (independent) administrative tribunal, an arbitrator, an investigator, an auditor, an administrator, an advisor and a mediator" which mission is "to improve the governance and management of municipal organizations in addition to promoting integrity, thus strengthening the population's confidence in its institutions" (Commission municipale du Québec, 2025).

the AGEIJB. It also sends mixed signals regarding the government's support for the new governance model of the EIJBRG.

4.1.2 Scope of operation and composition of the board

The EIJBRG is a territorial and public institution. This means that it is accountable to the whole population regardless of ethnicity, within territorially defined boundaries (Figure 2). The board is equally represented by 11 Eeyou leaders appointed by the Eeyou authority (arguably the CNG, but it is not specified in the AGEIJB) and 11 non-Indigenous James Bay elected officials appointed by the Ministry of Municipal Affairs and Housing (MMAH) (free translation of Ministère des Affaires municipales et de l'Habitation, in French), the ministry overseeing municipal affairs and housing in Québec (AGEIJB, 2012, art. 84).[94] One non-voting representative of the Government of Québec is appointed by the MMAH. While this involvement was set to be reassessed following the five years anniversary of the EIJBRG, the representative of Québec is still sitting on the board (AGEIJB, 2012, art. 81). The chairperson alternates every two years between Eeyouch and Jamesians (AGEIJB, 2012, art. 101).

The agreement stipulates that ten years after the implementation of the EIJBRG, the distribution of seats is to be reassessed following a "formula to be agreed by the Crees and Québec based on democratic principles and demographic realities" (AGEIJB, 2012, art. 85). Currently, there are already more Eeyouch than Jamesians in the region (58.5% vs 41.5% in 2024; Institut de la statistique du Québec, 2025), so technically the Eeyouch are underrepresented around the table. However, per the regional newspaper La Sentinelle, Eeyouch have not voiced any desire to change the composition of the board (Lord, 2021). Such an ethnic turn would be hard, even impossible, to achieve given the municipal powers and responsibilities vested to the EIJBRG and given the fact that the Eeyou communities and the CNG already exercise self-rule on category I and II lands. Nonetheless, the creation of the EIJBRG revealed the intercultural complexity of shared governance and the fears of the Jamesians, who were concerned by a foreseeable reshuffling of the

[94] The members, as designated by the Government of Québec and the CNG, are the elected officials of James Bay municipalities and localities, as well as the Grand Chief of the Eeyou Nation, the Deputy Grand Chief and the chiefs of each community.

EIJBRG.[95] The elected officials of Chapais, one of the non-Indigenous municipalities, made sure to notify the Québec government of their desire to have their concerns heard before any further changes were made to the EIJBRG (Lord, 2021).[96] While discussions have been held, no reassessment of the EIJBRG has been conducted yet (CNG, 2020-2021). Since 2021, there has not been any more news on that topic.

4.1.3 Voting and decision-making process

The main difference between the EIJBRG and other shared governance arrangements in Canada (e.g. co-management boards) is that beyond its advisory role to governments, it exercises municipal and regional decision-making powers (Craik, 2015; Motard, 2015; Simard and Brisson, 2020). The EIJBRG is therefore a unique example of Indigenous and non-Indigenous shared governance that evolves within the boundaries of municipal and Québec law. On questions of land and natural resources management, the Québec's Ministry of Natural Resources and Forests (MNRF) retains the final say for most of the planning operations (Cyr et al., 2022; Fortier and Wyatt, 2014; Tardif et al., 2017). Despite this lack of decision-making authority, the provisions of the AGEIJB are constitutionally protected, which reinforces the duty of the State to consult and include the EIJBRG when it establishes priorities regarding questions of land and resources (AGEIJB, 2012, art. 210). As discussed in more nuanced detail in subsections 4.1.5 and 4.1.6, the lack of authority of the EIJBRG on questions of land and resources is not only a question of State prerogative but also one of implementation.

The issues discussed by the board members of the EIJBRG are either voted on by simple majority (AGEIJB, 2012, art. 106) or by an absolute majority of the 2/3 of the votes from the members of each group and from at least three Jamesian and Eeyou communities (AGEIJB, 2012, art. 107). Most of the responsibilities of the EIJBRG regarding land use and forestry planning require an

[95] Informal conversations with Jamesians living in Chibougamau highlighted their resentment – partly fueled by misunderstanding – regarding the differentiated rights regime. Also expressed was the fear that the EIJBRG would be a stepping stone to increased autonomy for the Eeyouch, at the expense of the non-Indigenous inhabitants of the region. One man from the Eeyou community of Ouje-Bougoumou shared that some non-Indigenous people are critical of how "their taxes" finance Eeyou social and political choices. Here, "taxes" are to be understood as the public funds used in negotiating deals with the Eeyouch. While such limited, informal and anecdotal information must be taken with caution, it shows that misunderstandings exist concerning the regime in place and how it concretely affects the region's inhabitants.

[96] The Jamesians are not a signatory party of the AGEIJB, but it is hard to imagine the Québec government accepting a revamped EIJBRG with a diminished Jamesian participation.

absolute majority. These include matters of interest in this thesis, particularly the adoption of the Regional Plan for Integrated Land and Resource Development (RPILRD) (free translation of Plan régional de développement intégré des ressources et du territoire, in French). On another note, article 102 of the AGEIJB stipulates that in the event of a tied vote, a decision cannot be taken, and the vote is deemed negative. This mechanism provides a measure of "veto" power for the minority or the vulnerable group engaged in the collaborative system of governance (Motard, 2015).[97] For Motard (2015), however, this mechanism has not been tested against the decision-making process of the EIJBRG, at least not for decisions related to land and resources.

In their review of the minutes of the EIJBRG from 2014 to 2019, Simard and Brisson (2020) highlighted that 812 out of 818 decisions, mostly administrative, have been adopted unanimously and the other 6 obtained a majority. The authors further revealed that 46.6% of the decisions were either proposed and/or supported by both Jamesian and Eeyou members. Based on these findings, the authors concluded to a strong cohesion between the members of both groups, acknowledging that the little information available calls for a nuanced interpretation. As Simard and Brisson (2020) argue, most of the work of the EIJBRG concerns technical questions and the provision of municipal services, topics which do not lead to conflictual situations. The meetings of the EIJBRG are also preceded by an informal meeting the day before, which suggests that potential conflictual questions are addressed by the members in advance (EIJBRG, 01/2019; Simard and Brisson, 2020). Motard (2015) further argues that the history of collaboration can explain that both parties are familiar with working together.[98]

The minutes of the EIJBRG and Local Integrated Land and Resources Management Panels (LILRMPs), from 2020 to 2024, confirm that the issues that are discussed are mainly technical and administrative.[99] When issues with a higher potential of tensions arise (e.g., increasing forest logging disrupting the caribou habitat), the divergent views of the delegates are not mirrored in the

[97] To analyze the EIJBRG, Motard draws on the concept of consociational democracy (see Lijphart, 1969), which she describes as a "form of governance based on consensus among all segments of a multi-ethnic or multinational society to ensure peaceful coexistence, democratic stability and, ultimately, good governance" (2015, p. 154).
[98] Even though the EIJBRG can build on and learn from past experiences, notably in the realm of intercultural relations, the context chapter of this thesis showed that those experiences – say the HFTCC, the JBRZC and the JBACE – had been mainly ineffective due to external factors such as the lack of funding or the asymmetrical power relations against industrial actors (e.g. forestry companies).
[99] The COVID-19 pandemic, peaking in 2020 and 2021, as well as the forest fires during the summer of 2023, are two crucial conjunctures which considerably altered the governance of the EIJBRG.

decisions, which are all adopted unanimously. While this suggests that delegates always manage to reach a consensus, just knowing the outcome fails to capture most of the factors involved in the process such as trust and interpersonal/intercultural relations, power relations, voting distribution and interdependence, which help shape and determine the nature of the collaboration (Ansell and Gash, 2007). It is also unclear if consensus is always reached, or if some contentious issues are set aside and risk escalating into conflict.

4.1.4 Independence

The independence of the EIJBRG is assessed along two lines following the work of Spitzer and Selle (2019): independence vis-à-vis other governments (legal standing and funding) and independence of the members from their respective appointing organization. The EIJBRG is not granted direct constitutional status and the powers it exercises are delegated through the laws and regulations enacted by the Province of Québec (AGEIJB, 2012, sect. D). The functions of land use and forestry planning that are delegated to the EIJBRG, pursuant to the *Municipality Powers Act* and the *Sustainable Forest Development Act* (*SFDA*) – discussed in detail in subsection 4.1.6 –, nevertheless confer a form of delegated municipal autonomy to the EIJBRG. Compared to the co-management boards of the JBNQA, the level of independence of the EIJBRG is different. While the latter has more delegated powers and responsibilities, it remains a provincial creature. On the other hand, while most co-management boards do not enjoy such powers and responsibilities, they are operating outside of the governmental structure, at the interstice of federal, provincial and Indigenous governments (Spitzer and Selle, 2019).

The fact that the representative of the Government of Québec sitting on the board of the EIJBRG does not have a voting right prevents the government's direct intervention in the affairs discussed and decided by the council (AGEIJB, 2012, art. 83). While this involvement was set to be reassessed following the five years anniversary of the EIJBRG (AGEIJB, 2012, art. 81), the representative of Québec is still sitting on the board, at least according to the most recent minutes of the board's meetings (EIJBRG, 04/2025). The exact role of the Québec representative is not mentioned in the AGEIJB. However, one can assume that the person reports to the Government of Québec, ensuring a certain level of oversight of the activities of the EIJBRG.

The EIJBRG generates revenues from municipal and property taxes. This element is instrumental as the institution, unlike co-management boards, does not draw only on financial transfers from the governments of Québec and Canada to fund its operations. Recently adopted budgets show that revenues from taxes are significantly higher than governmental funding. For the 2025 financial year, the adopted budget forecasts $7.6 million of revenues from taxes and $2.3 million from funding (EIJBRG, 12/2024). Despite the diversity of revenue sources, the funding structure provided in the AGEIJB has proved a major impediment for the EIJBRG in the fulfillment of its functions of land use planning, as explained in subsection 4.1.6.

Regarding the independence of the delegates from the organizations they represent, both the Eeyou and Jamesian delegates are *de jure* appointed respectively by the competent Eeyou authority and the MMAH. *De facto*, however, the delegates are the chiefs, Grand Chief and Deputy Chief for the Eeyouch and the mayors and counsellors of the cities and towns for the Jamesians. Thus, in practice, the members of the EIJBRG are elected officials and changes in the composition of the board depend on local elections. The fact that the delegates are elected representatives enhances the legitimacy (members are democratically elected local politicians rooted in the region and aware of the challenges on the ground) and independence of the institution (there are no appointments, which could otherwise be made on a preferential or partisan basis to forward specific positions from the inside of the EIJBRG).[100] Given the scope of the mandate of the EIJBRG, the delegates are theoretically not mandated to follow an agenda established by the MMAH and/or the CNG. Even though the minutes of the EIJBRG do not hint on patterns of members siding with their appointing body, further investigations beyond the scope of this thesis will be necessary to assess the independence of members. Indeed, similar to co-management boards, although the EIJBRG ought to act in the public interest, it cannot avoid hidden agendas and members' biases (Spitzer and Selle, 2019).

4.1.5 Indigenous influence and power

The mission of the EIJBRG is complex and delicate as it must answer to the whole of the population, regardless of identity, while making sure its operations are in tune with the rights, concerns and interests of Eeyouch. Assessing both Indigenous influence and power is relevant to

[100] However, given the involvement of the Grand Chief and Deputy Chief in the EIJBRG, there could be direct interference from the CNG.

determining whether the EIJBRG is an appropriate vehicle for meeting the needs, interests and concerns of Eeyouch.

As argued by Motard (2015), the EIJBRG and the functions it exercises are embedded or nested within the governance institutions of the Province of Québec. The influence and power of Eeyouch, therefore, are exercised within structures and institutions that are traditionally alien to Eeyou law, rights and aspirations (Awashish, 2005). This framework has forced the EIJBRG to work within the existing limits of regional governance, thus preventing it from co-producing land management planning tools and forums that build on a common vision, one that is, among other things, culturally informed by the knowledge, concerns and preferences of the Eeyouch. In this context, the degree of influence of Eeyouch depends on two factors: 1) whether the structures are implemented and operating any mandate at all, and 2) whether the issues that are discussed within these structures are informed by the concerns, values and knowledge of the Eeyouch.

First, the Regional Land and Natural Resources Committee (RLNRC) (Commission régionale des ressources naturelles et du territoire, in French) has had limited output since 2014, and has declined even more since 2018 (CNG, 2017-2018). The weakened role of the RLNRC means that the Eeyouch do not have a privileged bilateral forum with the Jamesian authorities on questions of land and resources on category III lands. Further, the absence of an RPILRD deprives the Eeyouch of decision-making powers over how their traditional territory is managed and used. The case of the RLNRC, its role and the issues it has been facing, are addressed in detail in subsection 4.1.6.

With regards to the "collaborative forestry regime" on category III lands, there is an important gap between the LILRMPs and the bilateral management promised in the agreement (AGEIJB, 2012, art. 182; see Teitelbaum et al., 2026). The issue here is not the concept of a LILRMP on category III lands but rather the inconsistency between what was outlined in the agreement and what happened in practice.[101] Further, what is important to remember is that the LILRMPs are spaces where land users and stakeholders collaborate on forestry planning – they are neither a privileged

[101] There is one LILRMP for category II lands. The CNG and the MNRF are represented by five members each (Cyr, 2024). For category III lands, discussions with François-Xavier Cyr, PhD, who wrote a thesis on the AFR at Laval University (Québec), enlightened my understanding of the complex institutional overlaying following the AGEIBJ: the forestry collaborative regime between the MNRF and the EIJBRG, intended to harmonize the AFR with the *SFDA* pursuant to article 182 of the AGEIJB, is in reality operationalized by the LILRMPs. Such an outcome is misleading for the LILRMPs, gathering many different stakeholders, undermine the bilateral collaboration guaranteed by article 182 and may be seen as diluting the Eeyou influence amidst the concerns of other land users.

forum between Indigenous Peoples and the State, nor a space where Indigenous Peoples can exercise their land rights (see Fortier and Wyatt, 2014). Approaching the LILRMPs this way downplays the expectation that they operate as channels of Indigenous agency, especially considering that the Eeyouch have many other self-rule and shared rule mechanisms to exercise authority and voice their perspectives, concerns and interests.

Second, the minutes of the LILRMPs reveal how the Eeyouch are involved in decision-making. To highlight is the consistent presence of tallymen and trappers on the panels, especially on the Waswanipi, Nemaska (LILRMP-EIJB Nemaska, 11/2016) and Mistissini (LILRMP-EIJB Mistissini, 01/2019) LILRMPs. Noteworthy were their critiques concerning the lack of inclusion of Eeyou knowledge in the development of the Guidelines on Wildlife Habitats (LILRMP-EIJB Nemaska, 12/2021) and their lack of participation in the consultations and committees overseeing access to the land (LILRMP-EIJB Mistissini, 01/2019; 09/2019). Generally, however, the question of Eeyou traditional knowledge was neither addressed very often in the minutes of the LILRMPs, nor in those of the EIJBRG. More on Waswanipi and the history of the community with forestry is discussed in the subsection 4.1.6.

An important factor also determining both Indigenous influence and power is article 85 of the AGEIJB, which outlines changes in the composition of the board. Concrete measures to implement article 85 are not addressed in the minutes but the larger and ever-growing population of Eeyouch suggests the balance of power within the institution could be revised. A change in the board's composition would raise many questions beyond the scope of this thesis, but which are nonetheless relevant to the research: Were Eeyouch to have a majority of seats on the EIJBRG board, would the harmonization process of land use plans on category II and III lands be increasingly informed by an Eeyou perspective? Would the resulting land use plans better reflect the priorities of the Eeyouch? Could an Indigenous-led municipality alter the power relations with provincial actors such as the MNRF?

These questions highlight the importance of article 85 in the future. However, it is hard to picture a consensus for an Eeyou majority on the board of the EIJBRG, and that for three reasons. First, as mentioned earlier, the goal of the EIJBRG is not to be a stepping stone toward Eeyou self-governance; the Eeyouch have their own self-governance institutions. Second, article 85 specifies a reassessment of the seats based on democratic principles, which necessarily excludes the

possibility of an Eeyou majority that would be imposed on the Jamesians against their will. Third, assuming that Eeyouch aim for a majority on the board of the EIJBRG does not necessarily reflect their vision of sovereignty.[102] As noted by Niezen, "the principal goal of Cree sovereignty is a fair, equitable, carefully negotiated and honored inclusion in an already existing State – Canada – rather than an independent nation" (2009 in Cyr et al., 2022, p. 10). This integration, as well as the structures established by the JBNQA, does not mean that Eeyou governance is not imbued with Eeyou tradition, as explained by Awashish:

> aside from the regime of local governing authority conferred under the terms of the Cree-Naskapi Act and related provision of the JBNQA, the powers and authority of Eeyou governance arise from long-standing practices based on Eeyou law, traditions, and customs. Moreover, Eeyouch continue to incorporate Eeyou law, traditions, and customs in the exercise and practice of local government and Eeyou Nation governance. In other words, the JBNQA, the Cree-Naskapi Act, and other enabling legislation of Quebec and Canada are not exhaustive of the inherent right of Eeyou governance. Therefore, whereas the Grand Council of the Crees exercises a form of governance as an incorporated board under Canadian and Quebec law, it exercises a form of national governance under Eeyou law. (2005, p. 172, 173)

4.1.6 The functions of the EIJBRG: a deep dive into land and resources management

Besides exercising the jurisdiction of a municipality, the EIJBRG exercises the functions of a Regional Conference of Elected Officers (RCEO) (AGEIJB, 2012, art. 128) and that of a RLNRC (AGEIJB, 2012, art. 130).[103] The EIJBRG is also entitled to collaborate with the Québec government on the elaboration of the Public Land Use Plan (PLUP) (Plan d'affectation des terres publiques, in French) (AGEIJB, 2012, art. 132), which defines the policy directions of the government regarding the uses and protection of the public land and resources (L.R.Q., c. T-8.1, art. 21). The EIJBRG also has the power to adopt by-laws (AGEIJB, 2012, art. 133) and impose taxes at different rates on parts of the land it determines (AGEIJB, 2012, art. 135).

The EIJBRG can, by resolution, declare that it exercises the jurisdiction, functions and powers of an RCM. Among those are regional economic development, the management of watercourses and lakes, the establishment and management of regional parks, the establishment of a fund to provide financial support for operations to develop land or forest resources, the planning of waste disposal

[102] Here, the conception of sovereignty (Nadasdy, 2017 in Cyr et al., 2022) is interchangeable with the definition of self-determination that is part of the conceptual framework of this thesis.

[103] Before they were abolished, the RCEO were responsible for the RLNRC. By taking responsibility for an RLNRC, the EIJBRG is effectively maintaining the RCEO's operations. Otherwise, however, the RCEO no longer exercises authority over the Eeyou Istchee James Bay territory, as is the case elsewhere in Québec.

and the planning of land use and development, pursuant to Québec's *Land Use Act* (AGEIJB, 2012, art. 126). It is unclear whether the EIJBRG has declared its authority over some or all of these powers. Neither the minutes of the EIJBRG, nor the "legal notice" section of the *Gazette officielle du Québec* (AGEIJB, 2012, art. 126) provide any information to this extent. By not declaring its authority over the elaboration of a land management and development plan (schéma d'aménagement et de développement, in French; AGEIJB, 2012, art. 126a), the EIJBRG overlooks an important binding tool that would enhance its capacity on this latest matter. An RCM's land management and development plan is a binding document that is elaborated in compliance with the orientations in terms of land management elaborated by the Government of Québec (orientations gouvernementales en aménagement du territoire, in French). Should such a plan be developed, the orientations will have to "take account of the specific character of these lands, the participation of the Crees and Jamésiens in their management as well as the particular issues related to the development of the resources in a perspective of sustainable development, the whole in concurrence with the Regional Government" (AGEIJB, 2012, art. 126a).

The management of land and resources on category III lands involves many structures resulting from the JBNQA, the Paix des Braves and Québec laws (the *SFDA*, for example). These structures, institutions and mechanisms are all interacting with each other to a certain extent (Figure 5). The RLNRC and LILRMPs are the main structures under the authority of the EIJBRG that articulate a regional vision for the use and development of the land and resources (Figure 5, in green).[104] The RLNRC has the mandate to establish a regional framework regarding the planning, management, development and conservation of land and resources (Commission régionale sur les ressources naturelles et le territoire de la Baie-James, 2008). The RPILRD, prepared by the RLNRC, is the main tool that articulates the integrated regional development planning that considers all the uses and values associated with natural resources. The LILRMPs are local forums gathering stakeholders and land users who share their concerns and interests regarding forest management planning (Gérard and St-Hilaire, 2013).

[104] Even though the RLNRC and LILRMP are the only bodies mandated with land and resources management under the EIJBRG, other advisory boards answer to specific issues. In the wake of the increasing concerns about the population of woodland caribou, successive working groups were created: the Cree-Québec Woodland Caribou Taskforce (2014), the Cree-Québec subcommittee on Woodland Caribou (2018) and the Cree-Québec Technical Committee/Regional Operational Group (Groupe opérationnel régional, in French) (2019).

It is relevant to mention that the Cree Vision of Plan Nord was clear on the illegitimate character of the land and resources planning tools and structures which, prior to the AGEIJB, did not include the perspectives of the Eeyouch:

> The Cree do not recognize the legal validity of the CRRNT-BJ [RLNRC] or PRDIRT-BJ [RPILRD] for reasons communicated to Québec since at least 2005. Further, the PRDIRT-BJ contravenes the JBNQA, the Paix des Braves and Québec's constitutional duty to consult the Crees. Neither the PRDIRT-BJ nor the PATP-BJ [PLUP] reflects the Cree perspective on land and resource use planning in Eeyou Istchee. These plans preempt the Plan Nord process by deciding land and resource use in Eeyou Istchee, key objects of the Plan Nord process in our region. The PRDIRT-BJ and PATP-BJ processes must be suspended immediately. (Cree Vision of Plan Nord, 2011, p. 21)

While the creation of the EIJBRG tampered the main critiques of the Eeyou leadership, the results of this regional collaboration were not what might have been expected. But before delving into the RLNRC and the LILRMPs on category III lands, the following briefly discusses the state of land and resources management under the EIJBRG.

Land and resources management under the EIJBRG: an overview. Questions concerning land and resources only made up 11.6% of all decisions of the EIJBRG according to the analysis of Simard and Brisson (2020). This can be mainly explained by the fact that the EIJBRG is not a co-management board dealing only with questions of land and resources. Indeed, the municipal functions and the responsibilities it deals with make a great share of the discussion points in the minutes.[105] Another reason would be that since 2018, discussion points on natural resources and technical services have been merged, which probably diluted the former into a larger body of technical issues. Finally, another reason could be that the RLNRC and LILRMPs are – were, in the case of the RLNRC – provincial creatures and thus not under the final authority of the EIJBRG. Since these structures were already established under the terms of the Québec law, it left little room to imagine new institutions and thus less discussions were held during the board meetings.

The particularity of the LILRMPs in EIJB, compared to the LILRMPs elsewhere in Québec, is that they operate in a unique context where different land rights regimes are layered (Figure 5). The harmonization of the land regime of the JBNQA and the AFR of the Paix des Braves with the *SFDA* shows the complex legal and operational interactions between the Québec government, the Eeyou actors and the shared governance institutions. Untangling the place and role of the RLNRC and

[105] For example, decisions related to treasury correspond to 26% of all the decisions (Simard and Brisson, 2020).

LILRMPs amidst this system is necessary for a proper understanding of the underpinnings and challenges faced by these institutions.

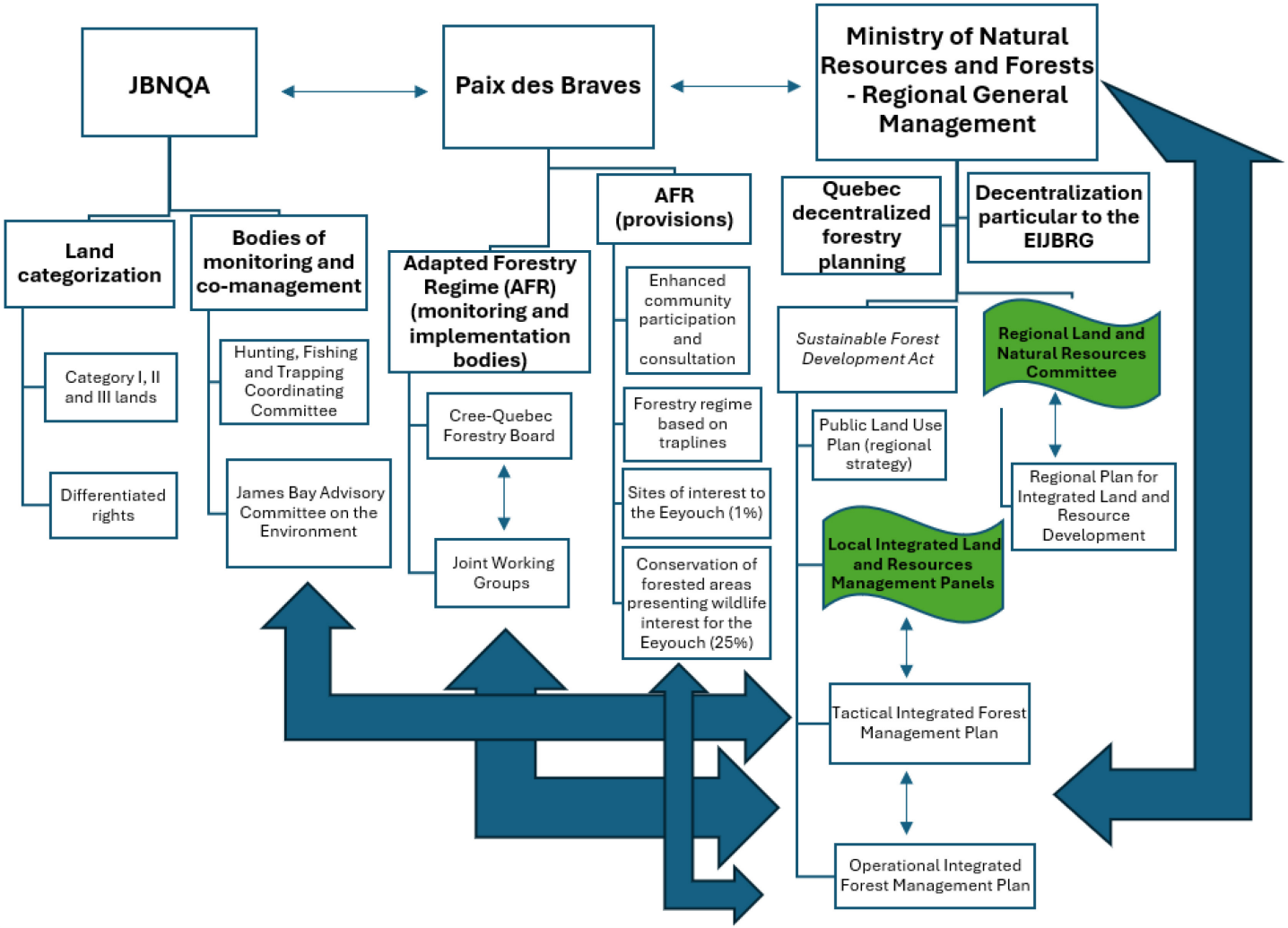

Figure 5
The interlocking of regimes affecting forestry and land use planning on category III lands in Eeyou Istchee James Bay
Source: author (2025).

Legally and politically, governance on category III lands is at the crossroads of public and ethnic governance: the lands are public and the EIJBRG answers to all the population. Yet, the specific land use and wildlife harvesting rights guaranteed to the Eeyouch pursuant to the JBNQA also apply to the territory of application of the EIJBRG (JBNQA, 1975, sect. 5, 24). Despite the clarity of the mandate, scope and jurisdiction of the EIJBRG, its unprecedented character entails apprehensions and challenges. Notably, fears were spelled out that the newly established EIJBRG would be used as a vehicle by the Government of Québec to bypass the CNG concerning matters of interest to the Eeyouch (CNG, 2015-2020). The annual reports of the CNG, from 2015 to 2020, clarify that the AGEIJB, instead, reinforces Eeyou Rights that are enshrined in the JBNQA and Paix des Braves.

Land and resources governance on category III lands is also at the intersection of treaty and provincial legislation. The Paix des Braves came up with a pioneering adaptation of the forestry regime alien to the existing organization and modes of operation (Scott, 2005; Cyr et al., 2022).[106] The AFR overlays to the social and environmental regime of the JBNQA; it does not replace any of the provisions of the JBNQA. The case of forestry on category III lands shows the systemic interconnections and the multiple actors involved, notably the integration of the legal mechanisms and planning tools of the *SFDA* with the AFR. A first example of the harmonization between the AFR and the *SFDA* is the creation of the LILRMPs on category III lands, which are mandated with forestry co-management between the EIJBRG and MNRF (AGEIJB, 2012, art. 182). Another example illustrating this harmonization is the process of forestry planning through the elaboration of the Tactical Integrated Forest Management Plan (TIFMP) (Plan d'aménagement forestier intégré

[106] A brief overview of the recent history of forest management in Québec is necessary: private companies long had the upper hand in forest management until the mid-1980s. In 1986, the *Forest Act* reimagined forest management. The bill introduced State-led management of public forests and greater possibilities for public participation in the decision-making process (Gérard and St-Hilaire, 2013). In 2001, amendments to the *Forest Act* established the first mechanisms of public participation at the origin of the LILRMPs (Leclerc and Andrew, 2013). In 2010, the *Sustainable Forest Development Act* centralized forest management in the hands of the State, drawing on an "ecosystemic" approach aimed at reducing the differences between managed forests and natural forests. The act also created new structures and reorganized public participation in forest management. From top to bottom, the Regional General Management (free translation of Direction générale régionale, in French) is the regional arm of the MNRF. The RCEO is responsible for the implementation of the RLNRC and LILRMP, which are the main regional and local spaces of public participation in forest management (Gérard and St-Hilaire, 2013). In 2015, the abolition of the RCEO and RLNRC entailed the reorganization of the regional structures and of the forest management regime (Fortier and Wyatt, 2014; Gérard and St-Hilaire, 2013; Tardif et al., 2017). While the LILRMPs remained in place with their scope and organization reassessed, the abolition of the RLNRC – regarded as a relevant forum for dialogue and knowledge sharing – represented an important setback for regional collaboration (Tardif et al., 2017).

tactique, in French). The TIFMP is a five-year plan established by the MNRF in collaboration with numerous actors. It targets the annual allowable cuts, the sustainable forest development objectives and the location of the main infrastructures and areas of increased timber production, among others. The Operational Integrated Forest Management Plan (OIFMP) (Plan d'aménagement forestier intégré opérationnel, in French), which operationalizes the TIFMP, targets the forest operations zones designated for timber harvesting and keeps track of the harmonization measures for land use adopted by the Minister and which concern the Eeyouch (CQFB, 2018c).

The TIFMP is an important space of public participation for local actors. It allows the actors of the JBNQA (CNG, JBACE), the AFR (the MNRF, JWG, CQFB, tallymen), the LILRMPs and Eeyou communities to be involved in forestry planning (CQFB, 2018c) (see APPENDIX B – Elaboration process of a TIFMP).[107] There, the role of the EIJBRG is to consult Eeyou and Jamesian land users. The EIJBRG is also involved in the TIFMP by overseeing the LILRMPs. Even though the MNRF has the decision-making authority to issue the final TIFMP, the "treaty trumps policy" logic legally bounds the planning of the Québec government to comply with the regimes of the JBNQA and Paix des Braves (CNG, 2022-2023). The role of the treaty actors such as the JBACE, the CQFB and the JWG is to oversee the procedure and make sure that the planning realized by the Ministry is consistent with the agreements in place (e.g. that the provisions of the AFR are accounted for in the TIFMP).

The process of forestry planning on category III lands encapsulates the complexity of land and resources planning in EIJB, where many actors must collaborate and several regimes must be harmonized. Against this background, the following suggests a deep dive into the RLNRC and LILRMPs to understand how they have fared so far and whether they are vehicles for the perspectives and concerns of the Eeyouch.

The Regional Land and Natural Resources Committee. In 2015, the passing of the *Act mainly to implement certain provisions of the Budget Speech of 4 June 2014 and return to a balanced*

[107] The public consultations are carried out locally by the Regional General Management while the MNRF directly consults the concerned Indigenous Nations and communities. The TIFMP and the OIFMP undergo the same consultation process (Fortier and Wyatt, 2014). The minutes from the EIJBRG meetings touch at various points on the problem of consultation delays that are caused by the inappropriate funding received from the provincial government (EIJBRG, 09/2016; 03/2017). Such issues are also plaguing the RLNRC and LILRMPs and are further discussed below.

budget in 2015-2016 led to the amendment of multiple pieces of legislation in Québec, including changes to the organization of local and regional governance. Notably, the abolition of the RCEO, the overarching regional body operating the function of a RLNRC and interlocutor of the MNRF regarding regional development, forced a restructuring of public participation in forest management (Tardif et al., 2017; Fortier and Wyatt, 2014). The EIJBRG undertook the mandate and responsibilities of the RLNRC, once exercised by the James Bay RCEO on category III lands (AGEIJB, 2012, art. 128, 129).[108] Whereas the RLNRC remained active in EIJB, regional actors elsewhere in Québec feared that the issues would be politicized by the elected officials or that the RCM would not be fit to take up the responsibility of the RCEO and deal with land use and forestry planning (see Tardif et al., 2017).

The RLNRC has the mandate to "provide multi-disciplinary advice on natural resources issues that are submitted by the EIJBRG, [notably on] tactical Forest Management Plans, surplus timber allocations, and proposed forestry regulations" (CNG, 2014-2015, p. 41). The 2014 and 2015 minutes of the EIJBRG detailed the process leading to the creation of the RLNRC. The committee was composed of six members appointed by the CNG and six members appointed by the James Bay Regional Administration (EIJBRG, 11/2014). Among other issues, the RLNRC advised on bylaws of the *SFDA*, commented on regulations related to private recreational leases, provided a plan for establishing the LILRMPs (EIJBRG, 03/2015) and was involved in the creation of the Lac-Evans-et-de-la-Rivière-Broadback et Assinica and Waswanipi Lake protected areas (EIJBRG, 11/2016).

Simard and Brisson (2020) recommended the elaboration of a land use and development plan for EIJB. This recommendation implied that the EIJBRG had neither produced a land use and development plan (role of an RCM), nor a RPILRD (role of a RLNRC). Furthermore, a PLUP was finally presented in 2023 to the members of the EIJBRG, but the final plan, including recent comments of the EIJBRG (EIJBRG, 01/2024), has yet to be unveiled. In fact, the preparation of the PLUP had been delayed due to the lack of coordination between the Ministry of Energy, Mines

[108] In 2014, the James Bay Regional Administration replaced the James Bay RCEO and became the regional development authority for the Jamesians on category III lands (AGEIJB, 2012, art. 129). On category II lands, the CNG is the equivalent authority for the Eeyou communities (AGEIJB, 2012, art. 17).

and Natural Resources (MERN)[109] and the EIJBRG to define the terms of collaboration as stipulated in the AGEIJB (AGEIJB, 2012, art. 132). Due to these issues, the RLNRC postponed its participation in the PLUP until the issue was resolved, at which point the EIJBRG asked the JBACE for advice on the appropriate parameters for collaboration that were compatible with the JBNQA regime (CNG, 2016-2017; EIJBRG, 03/2017). The delays associated with the PLUP also slowed down the process of the RPILRD, given that the former is an overarching part of the planning process on category III lands.

Some of the issues faced by the RLNRC in carrying out its responsibilities, notably that of producing a RPILRD, appear upon reviewing the EIJBRG minutes from 2014 to 2024. First, the little information provided on the functioning and operations of the RLNRC suggests that more transparency on the activities of the committee is needed.[110] For instance, the meeting minutes refer at some point to nine mandates assigned to the RLNRC without ever detailing those mandates and how they would be operationalized (EIJBRG, 11/2014).

Second, a lack of consultation by the MNRF and of overall collaboration between both entities was apparent from the outset. In one case where the MNRF failed to include the EIJBRG in the consultation and allocation process of unharvested wood volumes, the EIJBRG called out the Government of Québec to acknowledge and respect its authority and engage with the EIJBRG for matters taking place on category III lands (EIJBRG, 03/2015). Another example is the lack of involvement of the Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs (MELCCFP)[111] in the elaboration of the tripartite working plan on water management (AGEIJB, 2012, art. 180), for which the EIJBRG notified the Ministry to respect its engagement (EIJBRG, 05/2015). These examples do not provide sufficient evidence to conclude that relations between the Government of Québec and the EIJBRG are strained. However, they do indicate that the overlapping of regimes complicates relations between actors and that long-

[109] In 2022, the Ministry of Forests, Fauna and Parks (MFFP) was dissolved. Forests were assigned to the MNRF, which replaced the MERN, and fauna and parks were transferred to the MELCCFP.
[110] In a recent informal discussion with Johanne Morasse, director of the land and resources department of the EIJBRG, I was informed that the minutes of the RLNRC were to be available to the EIJBRG and the public following its 12th meeting. However, there was never a 12th meeting and now the committee apparently operates only when it is asked to provide a notice.
[111] There is no official translation for the name of this Ministry. A free translation would be Ministry of Environment, Fight against Climate Change, Fauna and Parks.

standing treaty relations between Eeyouch and non-Indigenous authorities do not guarantee a spirit of collaboration.

Third, the most recurrent and pressing issue addressed in the minutes of the CNG and the EIJBRG, since 2015, is the issue of funding involving the MNRF (CNG, 2015-2020; EIJBRG, 03/2015; 03/2016; 05/2016). This issue prevents the RLNRC from fully realizing its mandate, including the elaboration of a working plan for the RPILRD, which seemed well underway in 2015 (EIJBRG, 07/2015). However, the minutes do not provide any follow-up and instead show the administrative and bureaucratic hurdles regarding the retroactive use of funds. The issue peaked in 2016 as the MNRF argued that it duly transferred the annual amount of $500 000 pursuant to article 169 of the AGEIJB,[112] as a part of a $1 913 440 transfer for the operationalization of the Forest Regional Development Program (FRDP). These funds were not initially used by the EIJBRG since it was busy establishing the regime in the first years. As the FRDP became the Delegation Agreement for Management of the Sustainable Forest Development Program (Programme d'aménagement durable des forêts, in French), the MNRF argued that the new working framework did not allow the backdated use of the funds to support the functions of the RLNRC (EIJBRG, 05/2016). Both sides of the EIJBRG spoke out about the situation, resulting in a united voice (EIJBRG, 09/2016). Funding has also been lacking for the EIJBRG to consult the Eeyouch and Jamesians on the Plan for Integrated Forest Management (Plan d'aménagement forestier intégré, in French) (EIJBRG, 09/2016; 03/2017).[113] Such an impediment has affected Indigenous influence (delays to gather the input of the Eeyouch) and the independence of the EIJBRG (lack of financial means to conduct its operations).

To date, category III lands lack a regional co-produced vision for how land and resources should be developed. In the absence of a RPILRD, the Québec government tried to impose its Regional Plan for Public Land Development (Plan régional de développement du territoire public, in French), impinging on the responsibilities of the EIJBRG (CNG, 2015-2016). From 2018 onward, the meeting points regarding technical municipal services were merged with those addressing land

[112] This transfer is for the function of a RLNRC.
[113] The Plan for Integrated Forest Management is the umbrella planning tool under which fall the TIFMP and the OIFMP.

and natural resources, suggesting a decrease in the role of the RLNRC over time. The CNG explains the limited input the RLNRC has had:

> In the past year this committee has been largely dormant due to the fact that the MERN has temporarily suspended its efforts on the development of the Public Land Use Plan (PLUP). Moreover, the EIJBRG has not requested the committee's services. (CNG, 2017-2018, p. 53)

In 2019-2020, Michael Petawabano, Deputy Executive Director at the CNG, reiterated the enduring issue of funding: "MERN argued that funds for RPILRD are no longer available since orientation on the planning tool and process to be used has been changed and differs from that of the agreement" (CNG, 2019-2020, p. 29). Petawabano argued that such delays in implementation may in turn negatively affect the harmonization of category II and III land use plans pursuant to the AGEIJB (2012, art. 31, 130b) and, more broadly, the overall power delegation pursuant to the agreement (CNG, 2019-2020). In contrast, the Regional Land and Resource Use Plan (RLRUP), produced by the Eeyou Panning Commission (EPC) on category II lands, is underway according to the CNG (CNG, 2021-2022). The most recent mentions of the RPILRD do not reveal whether the appropriate means have been provided to the RLNRC (EIJBRG, 01/2023). In both cases, processes are long overdue, but it is unclear why there has been more developments in the case of the RLRUP since both the EPC and the RLNRC (respectively on category II and III lands) receive an equivalent funding to carry their planning duties (AGEIJB, 2012, art. 159bii, 169b). Delays in the elaboration and harmonization of land use plans have had concrete consequences, particularly on finding solutions to the moratorium on non-Indigenous cabin leases. Effective since 2012, and despite vain efforts to mandate the RLNRC to make recommendations to the EIJBRG since 2015 (EIJBRG, 03/2015), the moratorium has lingered and has been a source of tensions between both groups (CNG, 2019-2020; EIJBRG, 01/2016).

The LILRMPs. Pursuant to the *SFDA*, the LILRMPs are mandated to gather the concerns and interests of the land users on a given territorial unit and elaborate local management objectives

(*SFDA*, 2013, art. 55).[114] The EIJBRG (through the RLNRC) is mandated to establish and coordinate the LILRMPs on category III lands. In EIJB, a territorial unit represents a community or conurbation of neighbouring communities. Whilst there were originally nine LILRMPs, a recent reorganization has reduced the number to five (EIJB-LILRMP, annual report, 2024-2025) (see Figure 6 below for the most recent territorial delineation of the five LILRMPs). On the panels, the concerns and interests of stakeholders are framed into a system called issues and solutions (free translation from enjeux-solutions, in French),[115] which informs the MNRF during the elaboration of the TIFMP and OIFMP (Fortier and Wyatt, 2014). The elaboration of a plan to establish the LILRMPs started in 2015 with talks on the composition of panels and the division of management units (EIJBRG, 05/2015), with the first meetings being held in early 2016 (EIJBRG, 03/2016). As mentioned before, the MNRF is not bound to include the recommendations of the LILRMPs in the plans. Cyr et al. (2022) and Tardif et al. (2017), respectively in EIJB and elsewhere in Québec, remark that some delegates were confused that their recommendations were not included in the final plans, which raises concerns on misconceptions regarding the decision-making capacity of the LILRMPs.

Figure 6 below shows the divisions of the LILRMPs, based on the territory of application of the AFR. The southernmost communities of Waswanipi (yellow), Ouje-Bougoumou (green) and Mistissini (green) are the most affected by forestry. Some of Mistissini's traplines and most of the traplines of Waskaganish and Nemaska are located north of the upper limit of Québec's commercial forest, which means that those traplines are not affected by forestry. The Valcanton-Villebois (brown) and Matagami – Lebel-sur-Quévillon (purple) LILRMPs are located outside the territory of application of the AFR. Thus, given the different forestry planning regime and consultation

[114] The EIJBRG is required to include to the panels the following groups: Indigenous Peoples, RCM, beneficiaries of supply guarantees (BSG), managers and operators authorized to offer activities or services in a wildlife reserve, outfitting permit holders, agricultural lease holders, trapping permit holders holding a lease of exclusive rights for this purpose (SFDA, 2013, art. 55; EIJBRG, 07/2015). Observer members – experts, representative of the MNRF, representative of the EIJBRG, among others – can attend the meetings but do not participate in the elaboration of recommendations (Fortier and Wyatt, 2014). Their presence can nevertheless establish and reinforce power dynamics with socio-forestry stakeholders which do not have equivalent expertise and knowledge in forest management (Leclerc and Andrew, 2013). Most of the delegates of the LILRMPs are from local authorities, industrial BSG (mainly forestry companies), economic and land and natural resources departments of band councils, local development agencies and trappers' associations. Vacationers/owners associations, snowmobile/off-road vehicle groups and women's/youth associations are also strongly represented in all of the LILRMPs. The participation rate on the LILRMPs varies depending on the period and the panel, without there being a clear pattern.

[115] The issues and solutions were formerly called Values, Objectives, Indicators and Targets (free translation from Valeurs, Objectifs, Indicateurs et Cibles, in French).

mechanisms, the issues are different compared to those raised on the three other LILRMPs (LILRMP-EIJB annual report, 2024-2025).

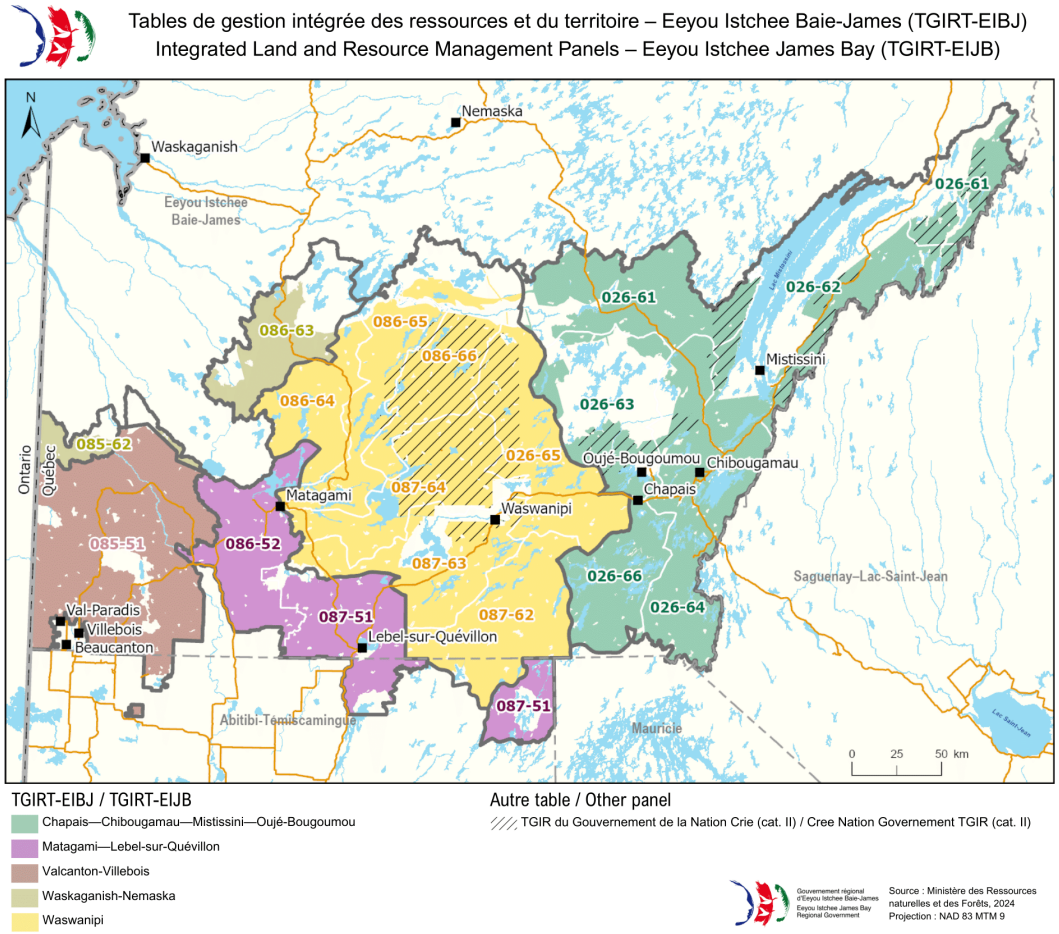

Figure 6
Territorial division of the LILRMPs
Source: EIJBRG (2025).

The issues mentioned in the TIFMPs for the period 2023-2028 reveal that the LILRMPs on category III lands have similar concerns. Among those, four values stand out: 1) wildlife habitats (especially moose, woodland caribou and fish); 2) water quality and integrity of aquatic habitats; 3) access to the land/management of the road network; and 4) competitiveness of the forestry industry in the region. One issue that was frequently observed in the minutes of the LILRMPs, which has also been highlighted in other regions, is the number of LILRMPs (see Tardif et al., 2017). To avoid the overlapping of issues and attendance and the demobilisation/demotivation of delegates, there were calls for merging the panels and/or some meetings (LILRMP-EIJB Chapais-

Chibougamau, 06/2018; LILRMP-EIJB Lebel-sur-Quévillon and Waswanipi, 03/2017). Yet, this strategy created another problem: the lack of translation in iyniw-ayamiwin (inland East Cree language) proved culturally sensitive in some cases and was ultimately dealt with by keeping the meetings separate (LILRMP-EIJB Lebel-sur-Quévillon and Waswanipi, 12/2016; 03/2017). In some other cases where meetings sporadically involved many communities (LILRMP-EIJB Matagami, Nemaska, Waskaganish, 06/2019), or when non-French speakers were sitting at a panel operated in French, both French and English were used, which worsened the linguistic tension (LILRMP-EIJB Matagami, 05/2018). Nevertheless, the most recent reorganization produced beneficial results. For example, the new Chapais – Chibougamau – Mistissini – Oujé-Bougoumou LILRMP reunites all the trapping areas of Mistissini and Oujé-Bougoumou affected by forest management, thereby maximizing the value of these panels for Eeyou representatives. The LILRMP also better reflects the diversity of the south-eastern part of the region, where Eeyouch and Jamesians coexist. The fusion of the Waskaganish and Nemaska LILRMPs further allowed to bring together all the Waskaganish traplines within a single panel, which was necessary given the very low level of forestry activity in management unit 085-62 due to interim measures for the protection of caribou (LILRMP-EIJB annual report, 2024-2025).

The inconsistent/lack of participation in the meetings also revealed the challenges of mobilizing the delegates over time and bringing to completion the issues they discussed (LILRMP-EIJB Matagami, 11/2018, 11/2019).[116] The group most consistently represented throughout the meetings, the BSG, gave more weight to issues concerning forest operations (e.g. the annual allowable cut) and development-oriented interests (LILRMP-EIJB Matagami, 11/2018, 11/2019). The tallymen and the trappers' associations – either the community- or Nation-based associations – were also quite involved in the panels, especially in Nemaska, Waswanipi and Mistissini. Particularly on the issue of access to the land and management of the road network, tallymen were involved in the consultation processes and the technical committee (LILRMP-EIJB Mistissini, 09/2019). Furthermore, given that the traplines are the unit of reference for the planning modalities of the AFR, strategies such as the Management Strategy for Mixedwood Stands (2020) (free translation from Stratégie d'aménagement des peuplements mixtes, in French) – first included in the 2023-2028 TIFMPs – involved close collaboration with the tallymen. Tallymen are also the

[116] The issue was also highlighted during the consultations regarding the elaboration of the planning tools (LILRMP-EIJB Chapais-Chibougamau, 01/2019; LILRMP-EIJB Matagami, Nemaska, Waskaganish, 06/2019).

first consulted by the JWG in the elaboration of the TIFMP and then once again as delegates of the LILRMPs (CQFB, 2018c; LILRMP-EIJB Nemaska, 06/2021). The Eeyou land users are therefore consulted in several areas, often on a priority basis. It should be noted that following the reorganization of the number of LILRMPs, in 2024-2025, greater dynamism and increased participation were observed, particularly for the Chapais–Chibougamau–Mistissini–Oujé-Bougoumou, Waskaganish-Nemaska and Waswanipi LILRMPs (LILRMP-EIJB annual report, 2024-2025).

The delegates of the LILRMPs are constantly informed by the consultations and presentations undertaken by the MNRF, MELCCFP, forestry companies and the other relevant public or private actors of land development. Smaller technical committees formed to address particular issues (e.g. forestry roads, caribou) gravitate around and inform the LILRMPs. Among others, the minutes highlighted the lack of communication and consultation from the MNRF with the LILRMPs. On the issue of the management of forestry roads, delegates complained that the MFFP had not consulted them properly (LILRMP-EIJB Chapais-Chibougamau, 06/2018) and that coordination was lacking between the work undertaken by the MFFP and the LILRMPs' technical committees (LILRMP-EIJB Lebel-sur-Quévillon, 02/2019). The joint elaboration of the Management Strategy for Mixedwood Stands and the Guidelines on Wildlife Habitats (free translation from Directives sur les habitats fauniques, in French), between the CNG and MFFP, was also criticized for its lack of transparency and communication with the LILRMPs and was perceived to be driven by economic interests (LILRMP-EIJB Lebel-sur-Quévillon Waswanipi, 06/2019). Other examples of issues, such as the lack of communication between tallymen and the MFFP in the management of fish spawning areas, or the MFFP's unilateral decision to maintain a 30 metre buffer strip alongside the Route du Nord[117] without waiting for the conclusions of the works of the LILRMP (LILRMP-EIJB Chapais-Chibougamau, 02/2018, 11/2018), show the challenges and tensions inherent in the consultation and decision-making processes in a multistakeholder setting.

The case of Waswanipi is worth particular attention as it encompasses many of the issues discussed here. A brief contextual reminder is required: the decades following the JBNQA were characterized by intensive forestry operations on Eeyou Istchee. In response to encroachments on the JBNQA and Québec laws, the Grand Council of the Crees (GCC) filed a lawsuit in 1998, which laid grounds

[117] The road linking the town of Chibougamau to the Eeyou community of Nemaska.

for the Paix des Braves and the AFR (Salée and Lévesque, 2010). Waswanipi and Ouje-Bougoumou are the only Eeyou communities where traplines are all below the northern limit of Québec's commercial forest, a profitable area for forest companies. This vulnerable position led Waswanipi to develop its own forest company (Mishtuk Corporation) and the Waswanipi Cree Model Forest (WCMF), a non-binding initiative established in 1997 aimed at reflecting the Eeyou socio-cultural paradigm of the forest. The WCMF promoted sustainable forest management practices, building on the Canadian Model Forest framework (see Jacqmain et al., 2012; Lathoud, 2005a, 2005b; Salée and Lévesque, 2010; Teitelbaum et al., 2026).

The history of Waswanipi with forest management is reflected in the minutes of the LILRMPs. The delegates were particularly vocal on the impacts of forestry on the land, the Eeyou pimaat-seewun (Eeyou way of life) and the Eeyou Eedouwin (Eeyou way of doing things). Many criticized the impacts of forestry and mining operations, particularly the growing number of roads that improve access to the land and alter wildlife habitats. Tensions arose between trappers and off-road vehicle users, revealing disagreements about an expanded access versus a more limited, rights-based access to the traplines. On another occasion, a delegate from the trappers' association challenged the BSG, saying that if they were to harvest in a planned protected area, community members would block the roads and establish camps to hinder the operations (LILRMP-EIJB Waswanipi, 11/2017, 07/2018, 02/2019). What stands out in the case of Waswanipi are the emphatic comments revealing anger in response to the short-term vision and economic interests, as well as the overall lack of balance between the different uses of the forest. This kind of comment was absent from the other LILRMPs.

While the minutes of the LILRMPs allow a better understanding of the management issues related to land use and forestry, relying solely on the minutes fails to fully capture the state of the relations between Jamesians and Eeyouch, their influence on the joint management of category III lands, and whether this new political configuration empowers the Eeyouch. Indeed, the wording of the minutes, referring to "delegates", does not reveal whether the preferences and concerns that are voiced are from Eeyouch or Jamesian delegates, except for the case of Waswanipi or other obvious cases. The minutes also do not provide details on the decision-making process and the voting patterns, which does not allow to detect nuances in the positions taken by the delegates. Despite all the above, Dion Michel, delegate of the Mistissini Cree Forestry Department, argued that the Eeyou

participation in the LILRMPs is relevant since the panels, in addition of the consultation process happening at the community level, are a meeting place for local stakeholders where interests converge (LILRMP-EIJB Mistissini, 12/2016). During the recent consultations for Bill 97 on the modernization of the forestry regime, former Chibougamau Mayor, Manon Cyr, also remarked that the LILRMPs in EIJB had been rather successful and relevant spaces of collaboration compared to the LILRMPs in other regions.

4.1.7 Land and resources management under the EIJBRG: concluding remarks

In conclusion, the governance of the land and resources on category III has so far produced limited results. With no timeline for a RPILRD, a PLUP lingering to be effective and the LILRMPs being the only collaborative forum for the EIJBRG on category III lands, the current regime needs some fine-tuning to meet the promising collaborative model it initially suggested. On the one hand, the RLNRC struggles to get a clear mandate and has seen its role diminish throughout the years. The main problem, however, remains the funding arrangement with the MNRF, which impedes the elaboration of a RPILRD. The LILRMPs, on the other hand, seem to have an added value as spaces for local actors to build relations, foster mutual understanding and convey Indigenous concerns. While occasional issues of communication and consultation with the MNRF had been highlighted, the revision of the number of LILRMPs shows adaptation to the realities, needs and resources of the local actors and communities.

4.2 The FeFo: a new institution in the Norwegian political landscape

Until the enactment of the *Finnmark Act*, in 2005, the Sámediggi was the only institution representing the Sámi concerns and interests to the Norwegian Parliament. It provides the Sámi with a distinct political space, yet one that remains entrenched in the structures and institutions of the Norwegian State (Falch et al., 2016). The FeFo challenged the *status quo* by "breaking out" of the Norwegian political system, as opposed to the Sámediggi which "broke in" the system (Josefsen and Saglie, 2024). In that sense, both institutions are complementary as they respectively strengthen self-rule and shared rule. Despite the FeFo being an institutional innovation, the perceived "ethnicization" of the management of the commons of Finnmark revealed the multiple and complex challenges it would face, beginning with the public opinion of Finnmarkers.

4.2.1 Public opinion on FeFo

From its inception, the FeFo has never been popular among both the Sámi (33% positive) and non-Sámi (10% positive) (Broderstad et al., 2020). "Precautionary supporters", as categorized by Broderstad et al. (2020, p. 7), timidly support the new institution, somewhat agreeing that the FeFo is relevant and that the *Finnmark Act* improves environmental management. While fear and apprehension were shared among the different ethnic groups, the motives were different. The Sámi were generally satisfied with the existing State management system and did not see the necessity of replacing it with FeFo, whereas non-Sámi feared that the new system would disproportionately advantage the Sámediggi which would be granted increased influence in land and resources management (Broderstad et al., 2020; Josefsen et al., 2016; Ween and Lien, 2012). Non-Sámi Finnmarkers also felt that the institution was imposed on them and that the input of the population was not considered throughout negotiations (Josefsen et al., 2016).

Considering the complex demography and ethnic background of Finnmark, the *Finnmark Act* disrupted centuries of intertwined communities sharing the same land and resources.[118] The new regime created uncertainty and confusion among Finnmarkers since activities such as berry picking, hunting and fishing had thus far been practiced by both the Sámi and non-Sámi.[119] A coastal Finnmarker of Sámi descent, who does not identify as Sámi, captures the concerns about a differentiated rights regime: "I don't think the right to land should be defined by descent. Why should I have any greater access to berries, fish, or moose hunting than my husband, whose ancestors are from this area as well?" (Ween and Lien, 2012, p. 97). Despite the confusion and overall low support for Sámi Rights and FeFo's principles, Broderstad et al. (2020) remark that the

[118] For Ween and Lien (2012), the case of the FeFo stands out from the land claims regimes in northern Canada, as coexistence and relations between the Sámi and non-Sámi shaped a common understanding, whereas Indigenous Peoples in treaty regions of Canada had been living in relative isolation from the mainstream society.

[119] Ninety-five percent of Finnmark is commons. However, and most importantly, the notion of "commons" draws from different ontologies between the Norwegians (at least Norwegians in the south without any link to Finnmark) and Sámi. For Norwegians, the notion that the land is "owned" commonly parts ways with that of a Sámi conception characterized by movement on the land, place-based stewardship and the entanglement of human and natural worlds (Ween and Lien, 2012).

population, especially resource users, has been generally supportive of FeFo's specific decisions, especially concerning wildlife management.[120]

The negative opinion of the majority of Finnmarkers towards FeFo adds to the uncertainty plaguing the *Finnmark Act.*[121] Underlying this consensus are concerns about the advancement of Sámi Rights and the perception that the *Finnmark Act* and FeFo pursue an ethnic agenda.[122] Such opposition puts FeFo in a delicate position: if it makes decisions aligned with Sámi Rights, it reinforces the negative opinion of the non-Sámi population.[123] Conversely, decisions against Sámi Rights jeopardize FeFo's legitimacy in the eyes of the Sámi, as the spirit and intent of the *Act* is to manage the land as "a basis for Sami culture" so that Norway complies with its international obligations as a signatory of ILO 169 (Broderstad et al., 2020). Without a change in how Sámi Rights are perceived among the non-Sámi, the general perception of FeFo is less likely to evolve positively over time in comparison to the support for specific management actions, which are not ethnically based. FeFo is thus confronted with balancing its actions to reconcile both the interests and land rights of the Sámi and non-Sámi – and the myriad in-group interests and rights –, a reality reflected in many of its decisions that are explored below.

4.3 Characteristics of the FeFo

In the Norwegian context, the shared authority that is FeFo represents an institutional innovation given the centralized, unitary political system in which it is embedded. Regionally, it represents a crucial step towards the recognition of Sámi self-determination by providing them with ownership and management rights over a critical part of Sápmi in Norway (Josefsen et al., 2016; Spitzer and Selle, 2019; Wilson and Selle, 2019). Despite the public's mistrust over FeFo, its strength lies in its attempt to recognize the Sámi cultural territorial dimension without discriminating against the other populations of the region (Broderstad, 2015; Josefsen et al., 2016). The present section

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[120] However, it is important to consider that Broderstad et al. (2020) mainly interviewed Finnmarkers from coastal communities of eastern Finnmark. This choice, based on "governance criteria seeking to maximise contrasts" (Broderstad et al., 2020, p. 4) necessarily excludes a large proportion of the Sámi living in the core Sámi areas of inner Finnmark and thus does not consider opinions and perceptions that may reflect the realities of the peoples inhabiting this area.

[121] In 2012, 47% of the population was for the dissolution of FeFo (30% for Sámi) (Broderstad et al., 2020).

[122] This was the case even though the Sámi Rights movement of the past decades is foundational to the *Finnmark Act* and the establishment of FeFo.

[123] Much of the opposition supports management practices which positively affect Sámi Rights, highlighting inconsistencies and a lack of understanding of Sámi Rights.

emphasizes the attributes of FeFo and some recent cases of development projects it had to deal with. It shows how the complex political, administrative and ethnic setting steers the relations between the Sámi and Norwegians, the decision-making process and the influence that the Sámi have.

4.3.1 Scope of operation and composition of the board

The scope of operations of the FeFo is public and territorial. The new regime defined in the *Finnmark Act* stipulates that land and resources are managed on behalf of all the residents, the aim being to create a shared political space between the Sámi and non-Sámi (Wilson and Selle, 2019). Reflecting this balance, the board of FeFo is equally composed of three members appointed by the Sámediggi and three by the Finnmark Council. There is no State representative sitting on the board. One of the nominees of the Sámediggi must represent the interests of reindeer herders. The terms can run up to 10 years and the members can be removed at any time by their appointing body. The chair of the board alternates annually between a Sámi and a Finnmark County appointee. This equal composition has drawn criticism since it overrepresents the Sámi given that the Sámediggi represents far less voters than the Finnmark County Council (Broderstad, 2015; Josefsen et al., 2016; Wilson and Selle, 2019; Spitzer and Selle, 2019, 2023).

4.3.2 Mandate, legal basis and decision-making powers

The institutions of the *Finnmark Act* enjoy constitutional-like permanence since the *Act* has the effect of implementing ILO 169 principles in Norwegian law, particularly the State obligations towards Sámi (Nygaard, 2016).[124] Since the FeFo is one of the guarantors of Norway's international obligations, the State would need to find an alternative way to fulfill its obligations if it were to dissolve the FeFo (Spitzer and Selle, 2019). Indeed, as provided for by ILO 169, the Norwegian government must create the conditions so that the Sámi can participate in the use, management and conservation of their land and resources (ILO 169, 1989, art. 15.1).

[124] This constitutional-like permanence is strictly tributary to the *Finnmark Act* as it is the sole vehicle implementing ILO 169 in Norwegian law thus far. As discussed earlier, ILO 169 only applies on a sector-by-sector basis since no general implementing law has been passed, hence possibly explaining the interpretative use of ILO 169 by the courts. Moreover, as Spitzer and Selle (2019) have noted, if FeFo's permanence is guaranteed, its constitutional status is less clear. So far, FeFo's cautious approach has not resulted in its constitutional status being challenged politically or legally.

Section 6 of the *Finnmark Act* defines the mandate of the FeFo: "Finnmarkseiendommen is an independent legal entity with its seat in Finnmark which shall administer the land and natural resources, etc. that it owns in compliance with the purpose and other provisions of this Act". The FeFo thus plays the dual role of a landowner and land manager, a conflicting role which concurrently enables the institution to develop the land and generate revenues, while acting as a land keeper (Broderstad, 2015; Spitzer and Selle, 2023).

The FeFo is constrained from above by the central government as it must comply with Norwegian laws and regulations relating to nature, wildlife and land use (Broderstad, 2015; Broderstad et al., 2020; Spitzer and Selle, 2019).[125] Regarding environmental management, the County Governor is the regional authority pursuant to the *Nature Diversity Act* and ensures that governmental regulations are implemented by FeFo (Broderstad et al., 2020). The FeFo also operates "within the frameworks provided by the *Wildlife Act*, the *Act relating to salmonids and fresh-water fish and other legislation*" (*Finnmark Act*, 2005, sect. 21). Section 21 further reads that "the provisions of this chapter [on renewable resources management] shall not apply in so far as otherwise established by special legal relations" (*Finnmark Act,* 2005). This suggests that the provisions of the *Finnmark Act* are subordinate to existing equivalent laws. Illustrating how the FeFo's powers are constrained, Broderstad (2015) gives the example of a local hunting and fishing organization which argued for defining "time" as a scarce resource to establish exclusive fishing slots for local users. Even if the FeFo has specific authority on controlling the access to resources in case of a shortage, the claim was refused by the Ministry. Thus, the authority of the FeFo remains confined within the limits of Norwegian law and the final decision by the Ministry cannot be appealed (*Finnmark Act*, 2005, sect. 27).

At the local level, FeFo's overlapping jurisdiction with municipalities limits its authority over specific areas under municipal jurisdiction.[126] Concerning renewable resources management, which is the most codified area in the *Finnmark Act*, FeFo can "issue general rules concerning the procedures and assessment of matters pursuant to section 24 [on special rights to local utilization]"

[125] Among other laws are the *Act on Water Systems*, the *Act on Cultural Heritage*, the *Concession Act*, the *Act on Motorized Traffic*, the *Sámi Act*, the *Act on Game* and the *Forest Act*. The Department for Nature Management establishes quotas and monitors land use (Broderstad, 2015; Ween and Lien, 2012).

[126] Motorized use, for example. Arguably, in municipalities where the Sámi do not form a majority and where specific questions of land and resources are not under FeFo's authority, the edge of the non-Sámi authority mitigates the critiques related to the overrepresentation of the Sámi on the board of FeFo.

and "shall be the appeal body for decisions made by the municipality" (*Finnmark Act*, 2005, sect. 24). Further, its authority largely rests on assigning special rights to local users whose livelihood is based on the land[127] (*Finnmark Act,* 2005, sect. 24) and extending access to the renewable resources of sections 22 and 23 to residents outside of Finnmark (*Finnmark Act*, 2005, sect. 25).[128] It also has the authority to devolve management responsibilities to other organizations or associations in Finnmark (*Finnmark Act*, 2005, sect. 26). On the other hand, the *Finnmark Act* provides little guidance on the land development that the FeFo can exercise as a landowner (Angell et al., 2020). For example, if FeFo was inclined to pursue development projects, it could run into opposition from municipalities which, under the *PBA*, must approve a project before it receives a permit (Spitzer and Selle, 2019; Nygaard, 2016). The case of the Arctic Gold mine, in the municipality of Guovdageaidnu, showed the municipality's ability to oppose mining projects based on the protection of Sámi culture (see Nygaard, 2016).

The establishment of FeFo complicates the administration of Finnmark by creating administrative overlap and competition, even between actors sharing the goal and mandate of protecting and promoting Sámi Rights. The legal framework with which FeFo must comply and the public/ethnic balance it must manage condition the role it chooses to exercise and the response of the other actors. Notably, the position of FeFo in favour of mining projects has been a source of conflicts with other actors, emphasizing the challenges of concertation among the Finnmark County Council, the Sámediggi, the Norwegian authorities, land users and even Sámi communities (Josefsen et al., 2016).

4.3.3 Independence

The FeFo enjoys a relative independence that Spitzer and Selle (2019) assess against legal standing, funding and board members. Despite having its authority constrained from above and below, the FeFo is a legal independent entity that is neither an arm of the Finnmark County, nor of the Sámediggi. The State is not represented on the board and does not interfere in the affairs of the FeFo. Indeed, the sole role of both parent institutions is to appoint and remove board members. In

[127] While this can be interpreted as referring to the Sámi, the *Finnmark Act* does not guarantee them territorially based rights.

[128] As a reminder, the *Finnmark Act* grants specific rights to residents of the municipalities of Finnmark such as the right to gather eggs and down, fish with nets and collect timber for domestic purposes (*Finnmark Act,* 2005, sect. 22). The *Act* allows big game hunting, fishing and berry picking rights to all Finnmarkers (*Finnmark Act*, 2005, sect. 23).

turn, the board members must exercise their mandate independently. However, as shown in the case of the Nussir mine, discussed later in subsection 4.3.5, the fact that the FeFo voted along ethnic lines indicates that the independence of members from their appointee institution might be harder to guarantee when a high stakes matter such as mining arises.

As a landowner, the FeFo is self-funded. It has the authority to collect taxes and revenues from cabin leases, hunting and fishing licences and to rightfully engage in resource exploitation as a land developer. The royalties FeFo has amassed from these activities, however, are negligible, averaging only US$1 million annually (Spitzer and Selle, 2023).

4.3.4 Functions and voting procedure

The FeFo can exercise some form of authority over three main areas: 1) resource property, rights, and the management of non-renewable resources; 2) industry and development; and 3) the management of uncultivated land and renewable resources.[129] The first area entitles FeFo to deal with leasing contracts and applications and the development of property. The second area allows FeFo to engage in windmill and hydroelectric power, forestry and mining activities. The third area is the management of *meahcit* (Sámi term describing the human-land relationship; see definition in footnote 129 below), which involves small and big game and the lease of hunting and fishing permits (*Finnmark Act*, 2005, sect. 27). The FeFo does not have management rights and duties over reindeer herding, which are defined by the *Reindeer Husbandry Act* (*Finnmark Act*, 2005, sect. 5). Specifically, FeFo has implemented the first claim to Finnmarkers in case of resource scarcity. It has also established measures to regulate hunting pressure, notably by requiring hunters to register their time and location in zones for small game hunting. These measures have received strong support from land and resource users (Broderstad et al., 2020).

[129] Uncultivated lands refer to grazing lands and wilderness, which are basically lands that are untouched by agriculture and development (Spitzer and Selle, 2019). However, Ravna (2011) remarks that such a term does not reflect the reality of the Sámi, which never relied on cultivation but conducted several cultural practices on the land. Ween and Lien (2012) point to the term *meahcci*, which refers to a holistic and intertwined place-based conception of the relationship between human and nature (akin to the "cultural landscape" concept; Davidson-Hunt and Berkes, 2003). The use of the term "wilderness", as argued by the authors, also seems out of place in the context of Finnmark. Indeed, it implies that the land is unused whereas for both the Sámi and non-Sámi Finnmarkers, it consists of a cultural and livelihood basis. Meahcci (plural meahcit) will be used throughout to refer to those uncultivated lands to reflect a decolonial approach to the land (see also Joks et al., 2020).

Most of the matters decided by FeFo's board are voted by simple majority. In case of a tie, the vote of the chair determines the decision (*Finnmark Act*, 2005, sect. 9). The *Finnmark Act* prescribes a special procedure for changes in the use of meahcit, which aims to privilege Sámi interests in inner Finnmark, non-Sámi interests in coastal Finnmark, and reindeer herders' interests throughout the county (*Finnmark Act*, 2005, sect. 10).

The FeFo must follow the guidelines of the Sámediggi and assess how the changes on the land might affect the Sámi culture, reindeer husbandry, the use of non-cultivated areas, commercial activity and social life (*Finnmark Act*, 2005, sect. 4). Planned changes on meahcit must have the support of at least four members of the board who base their assessment on the Sámediggi guidelines. If four or less members support the matter or if there is a tie, the minority can require that the matter go before the Sámediggi. If planned changes concern inner Finnmark or only the remainder of Finnmark and are supported by three members, the board can ask to reconsider the matter. In such a case, if the matter is in inner Finnmark, the last appointee of the county council must abstain from voting in the second round. Conversely, if planned changes are on an area outside of the five core Sámi municipalities of inner Finnmark, the last appointee of the Sámediggi must abstain from voting. In all cases, the appointee representing the interests of the reindeer herders never withdraws from the voting procedure (*Finnmark Act*, 2005, sect. 10).

4.3.5 Indigenous influence and power

The territorial jurisdiction of the FeFo represents a step forward for Sámi self-determination for two main reasons: first, it enables the Sámi to be decision-makers in a core region of their homeland; second, it enables Sámi to determine, in collaboration with non-Sámi Finnmarkers, how land and resources should be used. This subsection aims to determine the extent to which the FeFo is a vehicle for Sámi influence and power.

Even if FeFo manages the land and resources on behalf of all Finnmarkers, it bears a significant Sámi "imprimatur". It is located in the inner Finnmark community of Lakselv and its working language is Sámi (Spitzer and Selle, 2019). In its operations, however, evidence of Sámi influence is limited. The *Nature Diversity Act* (2009) stipulates that "the authorities shall attach importance to knowledge that is based on many generations of experience acquired through the use of and interaction with the natural environment, including traditional Sami use" (*Finnmark Act*, 2005,

sect. 8). Yet, the processes and decisions of FeFo are not informed by Sámi traditional knowledge (Spitzer and Selle, 2019). In fact, neither the *Finnmark Act*, nor the governance patterns of the FeFo observed in the literature stipulate and suggest the inclusion of Sámi values, knowledge, practices and modes of governance.

The question of Sámi influence must be assessed against the public mandate of the FeFo. Although the institution faces a negative public opinion and a general perception that it represents an arm of the Indigenous government, the decisions it has supported over time do not reflect ethnic preferences, at least not in favour of "traditional" Sámi interests (Broderstad, 2015; Spitzer and Selle, 2019, 2023). For this reason, FeFo has mainly carried out its role of land manager and landowner on behalf of all Finnmarkers. By answering the pressing needs for revenues and employment in the region, FeFo has supported large-scale industrial projects such as mining, a position at odds with the mandate it has to manage Finnmark with awareness of Sámi culture and livelihood. Angell et al. (2020) argue that a "traditional" view on Sámi culture and economy, which rests on reindeer herding, is not necessarily incompatible with a "modernist" approach (to which some Sámi adhere) aimed at diversifying the regional economy. Rather, the issue lies in large-scale development such as mining, which puts too much pressure on traditional Sámi livelihoods and small-scale economy. For all that, "traditional" interests have had little influence in shaping the agenda of the FeFo.

In terms of the decision-making power of the Sámi on the board of FeFo, the voting procedure described in subsection 4.3.4 shows an awareness of the occupation and use of the land by the Sámi. However, even if the reindeer herders always have a vote, the procedure neither considers the migration routes of reindeers and the spring and summer pastures in coastal areas, nor the coastal Sámi small-scale fishing industry (Jan Olli, former Director of the FeFo).[130]

Spitzer and Selle (2019) note that despite the decision-making power that the FeFo is granted as a landowner, it has not wielded this power thus far. The bigger picture of Sámi influence and decision-making power shows that Sámi actors have been at loggerheads concerning land development. Contrary to the FeFo, the Sámediggi and inner Finnmark Sámi municipalities have

[130] Based on a discussion at the FeFo's headquarters, in Lakselv, Norway, on June 19, 2024. A verbal approval for using the information was given by Jan Olli.

historically been against large-scale development projects on the land. The Nussir mine project, which is discussed next, illustrates the conflicting concerns and interests and the subordinate role of FeFo in resource development in relation to the State authorities.

Changes to meahcit, competing interests and structural constraints to Sámi influence: the case of the Nussir mine. The legal framework in Norway has evolved to consider the consequences of development on the Sámi and Sápmi.[131] For example, FeFo's procedure on changes to meahcit considers the Sámi culture, livelihood and economy while accommodating other non-Sámi land users. However, in contrast to the Sámediggi and the municipalities which enjoy considerable leverage to oppose development projects pursuant to the *PBA*, the FeFo does not have such leverage.[132] To put it simply, the Sámediggi generally defends the "traditional" aspect of Sámi culture; it is the main Sámi actor responsible for monitoring and implementing changes to meahcit. As observed previously, the municipalities also have a central role in including Sámi concerns in their decisions. Depending on whether they are in inner or coastal Finnmark, their initial take on a given project can be decisive for the rest of the decision-making process.

Finnmark is a fertile ground for the mining industry, with massive investments made recently to develop resources (Johnsen, 2016; Kuokkanen, 2019; Nygaard, 2016). In 2009, the Norwegian government amended the *Mineral Act* without the approval of the Sámediggi. The law was criticized by the Sámediggi for failing to meet Norway's obligations to protect the resources used by the Sámi and prevent the Sámi from outside Finnmark from participating in the decision-making process (Broderstad, 2014; Kuokkanen, 2019). For these reasons, the Sámediggi has largely opposed large-scale development over the years (Nygaard, 2016).

The case of the Nussir mine in the coastal community of Fálesnuorri captures the complexities of ethnopolitics and resource development in Finnmark. The project, presented in 2010, aimed to exploit a copper deposit in parts of the county where reindeer herding is practiced. The municipality

[131] A reminder on important legal leverages is important here: in 2021, the agreement on consultation of 2005 was passed into law, making all levels of government legally bound to consult the Sámediggi and relevant Sámi actors on matters affecting the Sámi culture and identity. Another law, the revised *PBA*, stipulates that "the Act shall protect the natural basis for Sami culture, economic activity and social life" (2009, sect. 3-1); it also allows the Sámediggi to make objections to a planning proposal and to appeal decisions that might impact the Sámi lands and culture. The *Mineral Act* also affirms the right for the Sámi to be consulted and gives to the Sámediggi the responsibility to conduct the consultations on behalf of the Sámi.

[132] The *PBA* does not stipulate that the FeFo, as a legal independent entity, has the rights to object to planning proposals (section 5–4) and to appeal decisions (section 1–9), as is the case for the municipal authorities and the Sámediggi.

and FeFo sided in favour of the project, whereas the Sámediggi and Reindeer Herders Association opposed the project on the basis that mining operations and the Sámi livelihood cannot coexist. The project was finally approved by the Ministry on the condition that before any mining activities can take place, the Sámi reindeer herders shall be consulted on mitigation measures to ensure the continuation of reindeer herding in the region (Angell et al., 2020; Johnsen, 2016; Nygaard, 2016).

The Nussir case is a telling example of the structural issues built into the *Finnmark Act*. The FeFo voted along ethnic lines with the tie being broken by the county council chair. The Sámi members were aligned with the Sámediggi but the voting procedure ended up undermining the Sámi position, creating tensions between both entities (Angell et al., 2020). The fact that the FeFo Director at the time, a Sámi, championed the mine added to the controversy (Spitzer and Selle, 2019). Further, the dual role of FeFo is particularly problematic in relation to the Sámediggi, as both pursue different interests. As a landowner, FeFo receives royalties from mining activities and has the incentive to create jobs and revenues for all Finnmarkers (Angell et al., 2020). On the other hand, the Sámediggi's commitment to defending Sámi Rights remains uncompromised. Since it has no revenue-generating capacity, it has little incentive to support development projects that would adversely affect the land of the people it represents.[133]

The Nussir case also shows the uneven consideration of the "traditional" Sámi concerns in comparison to those of the State and industry. Johnsen attributes the failure to reach a common vision for land use to the "procedural rationality of the politicians [which] simplified reality by ignoring the contested rationalities and power relations" (2016, p. 76). For Nygaard (2016), the biased environmental impact assessment mandated by the company and the municipality's overvaluation of new employment and revenues show how the concerns of the reindeer herders were incidental in the evaluation of the project.

Finally, the case of the Nussir mine illustrates the power of municipal and State actors in the decision-making process. Indeed, if a municipality is pro-development and the Sámediggi appeals the decision, the case showed that the State is likely to side with the municipality and approve the project, especially when it meets the national interest. In contrast, the Arctic gold mine, near

[133] This is not to imply that the Sámediggi would pursue resource development if it could. However, its authority places it in a less conflictual position than the FeFo.

Guovdageaidnu, was met with instant opposition from the municipality and rejected in 2013. The difference in both cases shows the agency of municipal authorities against projects they either do or do not support pursuant to the veto right they have under the *PBA* (Johnsen, 2016; Kuokkanen, 2019; Nygaard, 2016). In this context, the role and influence of FeFo remains unclear and is not extensively addressed in the literature. What is highlighted is the fact that it stood for a "modernist" perspective of land use against the Sámediggi's defense of the "traditional" interests (Angell et al., 2020). This situation questions the capacity of the FeFo to be a vehicle for Sámi influence given that the Sámediggi-appointed members are drawn into the development-oriented path the FeFo has taken (Spitzer and Selle, 2019).

4.3.6 Land and resources management under FeFo: concluding remarks

It is possible that the FeFo embraced the role of public defender to balance the increased agency of the Sámediggi over questions of land use and planning and its tendency to defend Sámi Rights and traditional activities (see Falch et al., 2016; Wilson and Selle, 2019). On the other hand, given FeFo's alien status amidst Norway's political system and the negative public opinion, it is possible that a period of adaptation and trust building with the public is necessary before it decides to pursue an agenda that is friendly to the concerns of the "traditional" Sámi minority. Spitzer and Selle (2019) remarked that the FeFo has never challenged the authorities by taking positions favorable to the protection of Sámi Rights. For example, in the case of the Arctic gold mine, FeFo was shielded from taking a stand because the pro-Sámi municipality vetoed the project. In the case of the Nussir mine, the FeFo decided to side with the majority, at odds with its duty to manage the land with respect to Sámi Rights. The fact that the FeFo has not tested its authority against the other actors has prevented the institution from exercising the decision-making authority it is entitled to and undermined the protection of Sámi Rights.

One other explanatory factor reflects the view of FeFo's outgoing Director, Jan Olli. Olli simultaneously supports large-scale development and recognizes the Sámi ownership of Finnmark. He claims that the FeFo, as a compromise, must answer to the whole of Finnmark. He emphasizes the diverging Sámi interests and concerns, and the need to not consider reindeer herding as the unique Sámi cultural marker. In this respect, Olli points out that the main challenge for the future of the FeFo will be to assess the changes in land use and what it means to be Sámi. He is aware that "urban" Sámi and Sámi living on the land (reindeer herders and fishers) all have different

needs, concerns and interests and that FeFo must account for all of these and avoid framing the Sámi identity only through defined markers. While Olli's vision cannot be generalized to the other members appointed by the Sámediggi, it suggests a more comprehensive take on Sámi culture, identity and livelihood than what is suggested by the "traditional" and "modernist" dichotomy.

The fifth chapter of this thesis will compare the EIJBRG and FeFo against the concepts laid out in chapter two to answer the third and fourth research questions: 3) what can both institutions learn from each other's experience?; and 4) could these models be applied to other Indigenous – non-Indigenous settings?

5. DISCUSSION

The previous chapter answered the first two research questions based on an analysis of the information available about the EIJBRG and the FeFo. The minutes of the EIJBRG and LILRMPs revealed some misunderstandings and tensions, particularly in the case of the Waswanipi LILRMP. The funding issues for the RLNRC and the failure to develop a RPILRD are also important limitations to the land and resources management mandate of the EIJBRG. For the FeFo, the results also revealed tense relations with other Sámi institutions defending Sámi Rights and the "traditional" Sámi identity and economy. The results further showed that the limited Sámi influence on the operations of the FeFo is compensated by the fact that pro-Sámi municipalities and the Sámediggi have some decision-making authority on land use issues.

The following section draws on the concepts that were presented in chapter two to evaluate how the EIJBRG and FeFo fare in terms of relational self-determination, multilevel governance and co-management. The main insights from this comparison will help answer research questions three and four, which will be addressed in sections 5.2 and 5.3 of this chapter.

5.1 The EIJBRG and FeFo: similarities and differences

The comparison of the two study cases is divided into three subsections. First, a brief comparison of the settings of EIJB and Finnmark is provided. Second, drawing on the concepts of path-dependency and critical junctures, the institutional pathways of the Eeyouch and the Sámi are compared to develop a better understanding of the choices and constraints that influenced the establishment of the EIJBRG and FeFo. Third, the main differences between the EIJBRG and FeFo are addressed through the lenses of relational self-determination, intercultural relations, co-management and multilevel governance. In particular, the concept of relational self-determination, which considers both self-rule and shared rule, is used throughout to explain the uniqueness of both cases in relation to their respective systems.

5.1.1 The Eeyouch, the Sámi and the settler States

Colonization, State policies and ethnopolitics: setting the course of Indigenous claims. In Norway and Canada, the Sámi and Eeyouch have experienced assimilation by the State and are still affected by colonial systems. Moreover, they deal with the ever-growing presence of industrial

development on their traditional lands, which threaten their culture and livelihood (Angell et al., 2020; Blaser et al., 2004). The main difference is the nature of State policies and how they have been affecting the Sámi and Eeyouch. In Norway, the Sámi assimilated in boarding schools and were progressively integrated into the State's structures and institutions in the post-war period (Minde, 2005). This strategy of integration into the mainstream Norwegian society differs from the situation in Canada, where colonial policies were based on a system of differential treatment (Spitzer and Selle, 2020). Given this context, the Sámi in Finnmark, rather than being physically isolated form the rest of the population, have been cohabiting with Norwegians and other minorities for centuries, notably in coastal areas (Ween and Lien, 2012.) In EIJB, the *Indian Act* articulated the State's colonial policy before the signature of the JBNQA, establishing boarding schools and reserves in which the Eeyouch were forced to settle. Although the residential schools in Québec remained open until the 1990s, the growing role of provincial social services facilitated the "Sixties Scoop", which perpetuated the cultural genocide by separating Indigenous children from their families and placing them in an alien child-welfare system (Truth and Reconciliation Commission, 2015). Due to their remoteness from the more densely populated southern Québec, contact with the non-Indigenous society and authorities remained limited prior to growing State interest in natural resource extraction in the second half of the 20th century (Feit, 2005).

In Finnmark, the integration of the Sámi and the reality of interethnic coexistence suggested a context that was less responsive to the territorial rights claimed by the Sámi following the Alta conflict. Despite the long way the peoples of Finnmark have come since the 1970s, the compromise represented by the FeFo was instead perceived as an ethnic turn led by the Sámediggi, threatening the long-standing sharing of the land between peoples (Ween and Lien, 2012; Broderstad et al., 2020). In EIJB, the differentiated rights regime of the reserve system was somehow maintained with the JBNQA and land tenure regime.[134] Concurrently, the treaty relations created spaces for interaction and collaboration, setting a precedent for the negotiation of the AGEIJB (Motard, 2015). Despite the fears expressed by the stakeholders and elected officials regarding land use, the new

[134] Legally, the JBNQA extracts the Eeyouch from the *Indian Act*. The idea here is to illustrate that the reserves became category I lands, perpetuating a logic of territorial segregation. This is not to equate the regime of the *Indian Act* with that of the JBNQA although some would suggest that the politics of recognition, notably realized through modern treaties, carry on the colonial power under new terms (Coulthard, 2007, 2014). Despite the urge in which the JBNQA was negotiated, the agency of the Eeyouch in determining the type of rights regime and governance they wanted should not be undermined.

regime of the AGEIBJ does not appear to have increased tensions between Eeyouch and Jamesians. In fact, the creation of the EIJBRG received little media attention and occurred without controversy.[135] The geographical and economic proximity of Indigenous and non-Indigenous Peoples in EIJB and Finnmark produced different outcomes, prompting the search for alternative explanations. These answers can be found in the institutions. In EIJB, existing Eeyou self-rule and shared rule institutions paved the way for a seemingly smooth public acceptance of the EIJBRG. Unlike in Finnmark, the perception of the EIJBRG as an extension of Eeyou authority was not the dominant narrative. In Finnmark, the lack of Sámi self-rule and of prior co-management experience provided a weaker institutional basis for welcoming FeFo and fostering a positive public opinion (Wilson and Selle, 2019).

The place of the EIJBRG and FeFo in their domestic political and legal systems. While the results have shown that both institutions have faced the challenge of integrating existing State and legal structures, the reasons were different in each case. The EIJBRG and the FeFo have integrated systems that are strikingly different. In Canada, the institutional flexibility of the federal system enabled the creation of territorially based solutions such as the EIJBRG (Papillon, 2012; Wilson et al., 2020). In exercising municipal and regional powers and responsibilities – MJB, RCM, RLNRC and RCEO –, the EIJBRG shows the capacity of the federal system to adapt to local and regional claims, and that without threatening the very foundations of that system and the authority of the recognized constituent units (Papillon, 2012).[136]

In Norway, the centralized political system and integrative welfare-based Norwegian model is less flexible to territorial institutional changes that bear an ethnic dimension. That is why the Sámediggi, as a shared rule non-territorial institution, seemed fit as a Sámi channel into Norway's unitary and centralized system (Wilson and Selle, 2019). The *Finnmark Act* and the landowner FeFo created a precedent by establishing a legal regime based on the recognition of the Sámi ownership of Finnmark. As observed in the results, the FeFo is not a State actor and it has not exercised its authority to challenge development-oriented decisions. It nonetheless disrupted

[135] Apart from a few articles to highlight the signature of the AGEIJB (2012) and the creation of the EIJBRG (2014), the three main national newspapers in Québec (Le Journal de Montréal, La Presse, Le Devoir) have not since mentioned the EIJBRG. The local newspaper La Sentinelle has referred to the EIJBRG a few times, and so did The Nation, a magazine focusing on Eeyou affairs.

[136] The "breaking in" of the EIJBRG (see Josefsen and Saglie, 2024) does not undermine the major step for Eeyou self-determination it represents, as discussed later in the chapter.

Norway's political landscape as a bicultural co-management institution balancing the complex task of answering a public and ethnic mandate.

In short, the different colonial experiences and political systems they fit in influenced the institution building courses of the Sámi and Eeyouch. The integration of the Sámi into mainstream society and the centralized State system explain the non-territorial basis of the Sámediggi; the particular ethnopolitical context of Finnmark and yet the strong concentration of the Sámi in the region provided for the territorial and public design of the FeFo. On the opposite, the segregationist Canadian policy and the JBNQA paved the way for an ethnic and territorial regime in EIJB. The self-rule foundations of the JBNQA and the institutional flexibility of the federal system are important factors that allowed the negotiation of further agreements and the creation of the EIJBRG to meet the claims of Eeyouch for representativity in the governing structures.

5.1.2 Similar starting point, different pathways and different outcomes

In both study regions, critical junctures set the Sámi and Eeyouch on path-dependent processes. The conflictual political events (the construction of the La Grande and Alta dams) that gave rise to the EIJBRG and FeFo decades later produced foundational institutions (the JBNQA; the SRC and *Sámi Act*) that would shape the future of these regions. However, the major differences in the legal force and exhaustiveness of the JBNQA and Sámi institutions produced different trajectories which are crucial to consider in the assessment of the EIJBRG and FeFo.

In EIJB, the institutions of the JBNQA have constrained the path forward. However, the urge to mobilize for the protection of their land spurred the Eeyouch to organize as a nation and gain experience in how to negotiate under the terms of the colonial governments. The agency gained by the Eeyouch enabled the negotiation of agreements modernizing the JBNQA and creating new, complementary institutions (Cyr et al., 2022; Salée and Lévesque, 2010; Scott, 2020). The Paix des Braves can be considered a critical juncture as it led to the creation of the AFR, a unique and distinct regime in Québec, constraining in turn the path of forestry collaborative management. The AGEIJB can also be regarded as a critical juncture since it established new institutions on category II and III lands, constraining, yet again, the future decisions of the actors.

In Norway, the Alta conflict spurred a new institutional path leading to a national awakening on the question of Sámi Rights (Josefsen and Saglie, 2024; Laframboise, 2023). The critical juncture

of the *Finnmark Act*, which addressed the long-standing identification of Sámi Rights, set Finnmark on the conflicting path that is discussed below.

Looking at both cases, the similar patterns of path-dependency interspersed with critical junctures, however, did not develop in the same way. In EIJB, institutional change occurred but remained bounded to the institutions of the JBNQA, displaying a self-reinforcing process (see Pierson, 2000 in Peters et al., 2005). In Norway, the *Finnmark Act* created a totally new branch of institutions (territorial), different from those that had followed the Alta conflict (non-territorial). More importantly, the *Act* enshrined competition between its two main institutions, the FeFo and the Finnmark Commission (Spitzer and Selle, 2023). Therefore, the mechanisms of path-dependency have been less clear over time in Finnmark than in EIJB, mostly because of the legal uncertainty and undefined nature of Sámi Rights at the very beginning.

Land-tenure sequencing: different approaches affecting Indigenous Rights and governance. Important to the assessment of the EIJBRG and FeFo is understanding how differently Indigenous Rights were dealt with in Canada and Norway. In Canada, Indigenous Rights have either been defined by the courts, through comprehensive land claims agreements or by the recognition of the Indigenous Title (see Alcantara, 2013; Weir, 2013). The JBNQA had the effect of ruling out any uncertainties regarding ownership rights to the land by defining a set of Treaty Rights. Thus, there has been a clear sequencing with first the land-tenure clarification, followed by the claims settlement. This ensured a clear division between the rights regime in EIJB and the governance institutions in charge of applying and protecting those rights.

In Norway, Sámi land rights remained largely unaddressed prior to the *Finnmark Act*, hence the mandate of the Finnmark Commission to identify ownership rights. Contrary to Canada, the land-tenure clarification is ongoing and overlaps with the governance of the FeFo. This sequencing creates tensions by inducing an interval between the FeFo governance and the ongoing work of the Commission. For instance, the FeFo has been undertaking development projects on unsurveyed land, thwarting the authority of the Commission before it could proceed to investigations (Spitzer and Selle, 2023).

One could argue that the ongoing process of land rights investigations in Norway embodies a living approach to Indigenous Rights as opposed to that of modern treaties in Canada which are aimed at

extinguishing Indigenous Rights and Title to the land. The EIJBRG, however, did not have to bother with the question of land tenure and rights since the matter had been dealt with long before. On the other hand, the ongoing investigations of the Finnmark Commission allow for a lingering uncertainty on the rights regime and territorial divisions of Finnmark. Further, as illustrated by the Kárášjohka case, the fact that the FeFo must take decisions based on the findings of the Finnmark Commission exacerbates the ethnic tensions between the Sámi actors which side with the Commission and non-Sámi actors which support the FeFo (Spitzer and Selle, 2023). Overall, the sequencing and competition enshrined in the *Finnmark Act* are obstacles to both the FeFo governance, which faces uncertainty, and to Sámi land rights, which have not been protected by the FeFo thus far.

5.1.3 At the crossroads of ethnic/public and self-rule/shared rule governance: the unique propositions of the EIJBRG and FeFo

The EIJBRG and FeFo share the similarity of suggesting new models of governance that capture many institutional attributes that often are in opposition. Both cases are public institutions that build on the Indigenous movements that preceded them and have the duty to allow for greater Indigenous participation. The FeFo also has the duty to manage the land in accordance with Indigenous culture, commercial activity and social life (*Finnmark Act*, 2005, sect. 1.1). While the AGEIJB does not explicitly state that the EIJBRG must co-manage the region in accordance with the cultural principles of the Eeyouch, the agreement "shall promote the emergence of Cree expertise in the fields of local and regional governance, land and resource planning and use" (AGEIJB, 2012, preamble). Although the EIJBRG has arguably less to balance a public and ethnic mandate, the bicultural encounter it represents implies the mutual recognition of each other's experience, values and practices. Although the development and influence of this intersubjectivity remains unassessed, it certainly underlies the governance of the EIJBRG and deserves further attention (Simard and Brisson, 2020).

One difference between the EIJBRG and FeFo is how the ethnic/public balance is reflected in governance practices. In the case of the FeFo, due to how the *Act* was crafted and given FeFo's propension to side with non-traditional Sámi interests, an unambiguous public mandate has been exercised. Since it is the only territorially based institution tasked with protecting and promoting Sámi land rights, the lack of FeFo's efforts in that respect and the support of mining project (e.g.

the Nussir mine) has drawn critics from the Sámi municipalities and the Sámediggi (see Angell et al., 2020). In EIJB, the fact that the territorial authority is clearly divided between the ethnic self-rule of the CNG on category I and II lands and the public self-rule of the EIJBRG on category III lands could explain why the latter has not faced the same challenges as the FeFo.

Looking solely at their institutional design, the EIJBRG and FeFo do not differ drastically from other collaborative governance institutions such as Canadian co-management boards which, in the words of White, are at the "intersection of three orders of government: Indigenous, territorial and federal" (2008, p. 72). Only, the EIJBRG and FeFo are rather at the intersection of Indigenous and regional authority, a feature with significant implications described below.

What draws the EIJBRG and the FeFo apart from co-management institutions and from the classic characterization of shared rule, is the fact that they both exercise self-rule and shared rule at a local level. Instead of being institutions created at the level of constituent units, they suggest a new locus of authority taking place at the municipal and county level. As mentioned in subsection 4.1.6, the EIJBRG exercises self-rule in the realm of land and resources as a RLNRC (AGEIJB, 2012, art. 128-130).[137] The EIJBRG exercises shared rule in many ways, notably through participation in the PLUP elaborated by the Government of Québec, by being consulted at the end of the TIFMP process and through the LILRMPs it oversees. It also exercises shared rule with other local entities. For example, the EIJBRG and CNG must harmonize their land use plans on category II and III lands (AGEIBJ, 2012, art. 130b). Finally, from within, the EIJBRG represents a form of shared rule as a channel of influence for Eeyouch in municipal and regional politics, for which they had been excluded historically. The FeFo, as a private landowner, land developer and co-manager of Finnmark, mainly exercises self-rule at a regional level. Similarly to the EIJBRG, the FeFo also exercises shared rule as a vehicle for Sámi influence regarding issues of land and resources (Wilson and Selle, 2019), although it has not adamantly defended the Sámi "traditional" interests thus far. The local shared rule of the EIJBRG and FeFo, which concerns policymaking between traditionally non-State actors at a local level, suggests new political relations that would deserve more attention from the scholars of federalism and MLG.

[137] Affirming that the RLNRC exercises self-rule can be farfetched to the extent that the RCEO, on which it depended, was only advisory to the government. Nonetheless, the fact that the RCEO was composed of local elected officials, thus free from the direct intervention of the government, provided relative independence to the RLNRC.

Finally, it is worth reiterating one other shared attribute of the EIJBRG and FeFo that sets them apart from other forms of self-rule/shared rule arrangements: they exercise self-rule and shared rule *through* shared authority. Indeed, the Sámi/Eeyouch and the non-Indigenous authorities share decision-making and responsibilities over a defined territory (Spitzer and Selle, 2019; Wilson and Selle, 2019). This joint capacity to make local decisions and influence those made by the governments empowers the local peoples who are the first concerned. This configuration reflects a more integrative approach to self-rule and shared rule than what is often depicted in the literature, which generally considers self-rule as autonomy and shared rule as integration (see Murphy, 2005; Broderstad, 2014; Wilson and Selle, 2019). Here, shared rule and self-rule coexist and are operated by a shared authority between two different ethnic and cultural groups. Thus, these models of governance enable the integration of Indigenous concerns within jurisdictions where Indigenous Peoples have traditionally not been involved (e.g. municipal and regional levels) (Heritz, 2018). Further, they broaden the conceptual boundaries of self-rule and shared rule to imagine spaces where Indigenous and non-Indigenous policymaking at a local level can occur. While the EIJBRG and FeFo need some fine tunning to meet their mandate and responsibilities, as mentioned many times throughout this thesis, they nevertheless represent a type of governance which has the potential to empower local communities and inform local decisions with Indigenous knowledge and practices.

5.1.4 Are the EIJBRG and FeFo cases of multilevel governance? And why does it matter?

As the results have shown, the EIJBRG and the FeFo are embedded in systems that both constrain and enable their decision-making authority. Yet, a traditional center-periphery or federalism lens such as intergovernmental relations (IGR) does not capture the migration and dispersion of authority (Alcantara et al., 2016) that have characterized both the internal and external dynamics of the EIJBRG and FeFo. This is where MLG fills in the gap left by IGR, making sense of dynamics between governmental and non-governmental actors from different political scales that engage in the co-production of policy and public goods (Alcantara and Nelles, 2014; Alcantara et al., 2016).

Nowhere has this authority migration from the State to non-State actors been displayed more clearly than in the case of FeFo. Even more than the EIJBRG, the FeFo marks a drastic departure from Norwegian centralization, shifting land ownership from a State-owned company to an Indigenous – non-Indigenous organization. To a different yet similar extent, the EIJBRG also

represents a migration of authority, from the total absence of Indigenous representation on category III lands to the creation of a bicultural municipal authority.

The assessment of the EIJBRG and FeFo reveals a unique display of MLG. In most cases, Indigenous MLG has been used to capture the dynamics between an Indigenous actor (a Nation, government) and either a government or a private corporation (see Alcantara and Nelles, 2014; Alcantara and Morden, 2019; Latta, 2018). No cases of shared governance between Indigenous and non-Indigenous members have been assessed against MLG. Reasonably, this is because co-management boards, even though they are non-governmental entities engaging with governmental actors from other territorial scales (e.g. advising provincial governments), do not participate in the co-production of policy. Indeed, although the recommendations of the boards are rarely disregarded by decision-making authorities in practice, they are not legally binding on governments. This shows a limit of the concept of co-management to capture arrangements that are "at the intersection of resource governance and Indigenous self-determination" (Latta, 2018, p. 4). To a certain extent, it reinforces the argument of critics of co-management (Nadasdy, 2003; Stevenson, 2006) and scholars of Indigenous resurgence for whom the institutions of modern treaties co-opt Indigenous agency (Coulthard, 2007, 2014). In light of these considerations, MLG can provide a better suited conceptual framework to describe the power sharing realities of the EIJBRG and FeFo.

Drawing on the approach of Alcantara et al. (2016), MLG and IGR are instances, or political moments falling under the umbrella of multilevel politics (MLP), which are observed in political systems (unitary or federal, for example). While the architecture of FeFo clearly shows dynamics of MLG, the approach of Alcantara et al. (2016) is particularly relevant to capture the internal and external policy interactions of the EIJBRG, which are less self-explanatory. The following paragraph explores the internal dynamics of the EIJBRG and FeFo to determine where they fit in the greater MLP framework. Doing so acknowledges the possibility that power dispersion occurs in settings of local collaborative governance, spaces which, both in Norway and Canada, have not traditionally been the loci of decision-making. What is more, it resonates with the idea, central to co-management, that local land users (Eeyouch/Sámi; Jamesian/non-Sámi Finnmarkers) instead of State authorities (State forestry company/MJB) should manage the land and resources or at least have increasing influence in management (Berkes, 2009, 2010; Lockwood et al., 2010).

The FeFo is governed by Sámi members (appointed by the Sámediggi, a non-governmental actor) and non-Sámi members (appointed by the Finnmark County Council, a governmental actor). There, MLG is undisputed: members from a governmental (county) and non-governmental actor (Sámediggi), operating at different scales (non-territorial/county-level), engage in a collaborative decision-making process. Within the EIJBRG, the Eeyouch elected officials (formally appointed by the CNG) co-govern EIJB with municipal elected officials (formally appointed by the MMAH). Many aspects are to unpack in the case of the EIJBRG. The first step is determining who should be considered an "actor". For comparative purposes with the FeFo, the appointing bodies should be targeted. In the case of the EIJBRG, even though the appointing body for the Jamesians is the MMAH, the latter exercises no influence on the EIJBRG and the appointed members represent local interests, not those of the Ministry. Thus, for representativity purposes, the targeted actors for analyzing the EIJBRG should be the Indigenous authorities (CNG and local governments) and the municipal authority (mayors and councillors). Second, it must be determined whether those actors are considered government actors. Drawing on a classical definition of IGR in Canada – policymaking between constitutionally recognized governments –, the EIJBRG is a case of MLG since it involves two non-constitutionally recognized entities. However, Alcantara et al. (2016) include in their definition a broader range of constitutional and non-constitutional actors, notably Indigenous governments and municipal authorities.[138] In this case, dynamics within the EIJBRG would be considered instances of IGR – two government actors, at different scales (Indigenous government/municipal authority), co-producing policies. Pinpointing the exact type of interactions within the EIJBRG is complex and Alcantara et al. (2016) recognize that distinguishing IGR and MLG is easier conceptually than in practice. Importantly for the case of the EIJBRG is the notion that IGR and MLG can coexist within a same system (Alcantara et al., 2016). Seeing only IGR in the EIJBRG would fail to capture the dispersion of authority and the fact that it represents a groundbreaking municipal decision-making space involving two non-traditional government actors. This would further downplay the evolution of the political representation on category III lands and the re-empowerment of the Eeyouch on most of their traditional territory. On the other

[138] The research on Indigenous MLG has used examples involving Indigenous and non-Indigenous governments, which question the consistency of Alcantara's et al. (2016) definition. Alcantara and Morden (2019) use MLG to describe the negotiation of Impact and Benefit Agreements (IBA) between Indigenous governments and private actors. They also acknowledge that IBAs negotiated between Indigenous governments and non-Indigenous governments are instances of MLG.

hand, acknowledging IGR within the EIJBRG elevates the CNG and municipal authorities to the status of government actors, reinforcing the very idea of the dispersion of authority central to MLG.

The narrower definition of Alcantara et al. (2016) is useful for distinguishing MLG from IGR, providing a more reliable conceptual lens for future analyses. Doing so addresses two criticisms of MLG. One that its wide application risks turning it into a "catch-all concept" (Alcantara et al., 2016) and the other, which questions the value of MLG beyond that of a descriptive tool given the lack of conceptual robustness (Alcantara and Nelles, 2014). However, the case of the EIJBRG emphasizes a paradox found in the conceptualization of Alcantara et al. (2016). A more inclusive conception of the actor parameter can blur the lines between what is IGR and MLG in situations where all the non-traditional government actors involved in the arrangement under study are henceforth considered government actors. Looking at the parameters of the study cases (actors/scale/decision-making) but also considering the institutional context in which they happen, could provide a more comprehensive understanding. As with the EIJBRG, the model's innovative nature and value extend beyond the institution as it is analyzed in its current terms. To make sense of the groundbreaking dispersion of authority, one must also look at the evolution from the MJB to the EIJBRG.

Detecting either MLG or IGR in the relations of the EIJBRG and FeFo with other local, governmental and non-governmental actors, is not self-explanatory. The FeFo, as a non-governmental actor, presumably engages in MLG with the County Governor, which is the regional authority for environmental management under the *Nature Diversity Act*. However, it is unclear, based on the available information, whether policymaking happens at this level or if the county authority is only proceeding to monitor the measures carried by the FeFo. Drawing on the conceptualization of Alcantara et al. (2016), the EIJBRG is rather involved in IGR as a regional and municipal actor engaged in policymaking with the CNG (harmonization of land use plans) and the MNRF (participation to the elaboration of the PLUP; overseeing of the LILRMPS; consultation on the TIFMP). In the context of this research, the potential spaces of MLG are more limited for the EIJBRG because only land and resources-related functions, powers, and responsibilities were examined. Further research should assess whether instances of MLG are found in other areas of operations of the EIJBRG.

Power sharing and the shadow of hierarchy. The notion of power is a blind spot of the application of MLG in Indigenous contexts. The fact that the concept originally was used to capture the dispersion of authority from the State to non-State actors amidst the European Union could explain why it was not conceptualized to capture the re-empowerment of a marginalized group and more specifically Indigenous Peoples. While the shadow of hierarchy has been used to capture the unequal power relations of MLG in Indigenous contexts (Alcantara and Nelles, 2014; Alcantara and Morden, 2019; Latta, 2018) and non-Indigenous contexts (Bakvis, 2013; Héritier and Lehmkuhl, 2008), the lack of a parameter assessing precisely power dynamics leaves a conceptual void.

The addition of a *power distribution* parameter, under the decision-making criterion, could refine the application of MLG in an Indigenous context. Such an addition would allow us to assess the capacity of an instance to re-empower the Indigenous People involved and provide a definition of MLG that is more sensitive to the reallocation of power in colonial settings. Doing so is a direct answer to Alcantara et al. (2016), who called for the refinement of the concept and "theoretically and/or empirically construct a MLG typology based on variations within our three criteria of actors, scale and decision-making" (2016, p. 47). It also echoes Ladner (2010), who, while exploring MLG in Canada and how it affects Indigenous women, remarked that many instances of MLG have not succeeded in transcending the colonial structures of the *Indian Act*. Creating a typology that reflects the ongoing power asymmetries between Indigenous Peoples and the State would be useful empirically. It could draw on qualitative and quantitative indicators from which conclusions could be drawn and solutions devised. For example, one indicator of power distribution could be the degree of inclusion of Indigenous knowledge in the MLG arrangements. Targeting the factors replicating or mitigating power asymmetries could be beneficial for the EIJBRG and FeFo, but also for other cases of Indigenous MLG. Indeed, it would serve the purpose of Indigenous MLG – that is to provide Indigenous Peoples with more agency – by providing a truthful and measurable assessment of the studied instances. One example to determine whether an instance is MLG or not could be to look into the legitimacy of the Indigenous entity involved. As Alcantara and Morden (2019) point out, an instance of MLG can hardly empower a community or Nation if the entity, say a band council or other colonial legacy institution, is illegitimate in the eyes of its members.

Overall, the refinement of the conceptualization of Indigenous MLG must be accompanied by on-the-ground efforts to uncover asymmetries and propose solutions. Decision-makers, authorities and industrial actors must take action from the theoretical and empirical evidence as research alone cannot solve the systemic problems faced by Indigenous MLG arrangements.

Looking at the FeFo, the shadow of hierarchy is obvious and has been highlighted in subsection 5.1.2. To avoid repetition, suffice to say that the competition embedded in the *Finnmark Act* has so far hindered the protection of Sámi land rights. The fact that the FeFo has sided with the non-Indigenous majority and supported the extractive industries further highlights that the dominant interest for resource development has been prevailing over the duty of FeFo to manage the land as a basis for Sámi culture. Driving forces supporting the shadow of hierarchy seem to be at play here, but the limited information prevents us from drawing conclusions. Regarding relations with State actors, the limited information about the FeFo makes it difficult to draw a more extensive picture of policymaking dynamics.

With regards to the EIJBRG, the proposition of reshuffling the board compensates for the underrepresentation of the past. An Eeyou-led EIJBRG would make sense based on considerations of demographic representativity. However, given the development of Eeyou self-rule over time and the struggle of Jamesian municipalities and localities with devitalization, neither would the expansion of Eeyou authority be approved by Jamesians, nor would it be consistent with the spirit and intent of the AGEIJB to "provide for greater participation by the Crees in the governance of the Category III Lands in the Territory *in partnership with the Jamésiens* [emphasis mine]" (AGEIJB, 2012, preamble). Regarding resources and capacity, the funding issues and the lack of collaboration/consultation are important factors that have hindered the EIJBRG's capacity to exercise the role of a RLNRC. This has so far prevented the Jamesians and Eeyouch from articulating a regional land use strategy. Since the RPILRD would be the only planning tool for which the Eeyouch have decision-making authority on category III lands, its absence undermines Eeyou Treaty Rights pursuant to the AGEIJB. Circling back to the criticisms found in the Cree Vision of Plan Nord (see subsection 3.3.6), suffice it to say the current situation in terms of land use planning has not improved since.

Both the FeFo and the EIJBRG incur the shadow of hierarchy as regional institutions constrained by the structures and institutions of the political systems in which they are embedded.[139] Although the changes represented by the FeFo and EIJBRG should not be met with excessive skepticism, the fact remains that most decisions related to land and resources are made by those in the highest spheres of power. The transformative potential of MLG, understood as the capacity to alter State structures and institutions, is hardly displayed in the FeFo and EIJBRG. Rather, their establishment in the regional landscapes of Finnmark and EIJB exemplifies the value of MLG to instill incremental changes to State systems, which in turn enhance the capacity of the Sámi and Eeyouch to influence policymaking (see Papillon, 2012, 2015, 2020). This shows the potential for power sharing arrangements between Indigenous and non-Indigenous Peoples at a regional level and the value of MLG to explain the underpinnings of those arrangements. It further lays the groundwork for the idea of exerting influence from within, which is explored in the next subsection on co-management.

5.1.5 The EIJBRG and FeFo: managing land, resources and relations

Initially, the goal of mobilizing the concept of co-management was to capture trust and relationship building in a context of shared land and resources between Indigenous and non-Indigenous Peoples. Throughout the research process, this objective persisted, but lost importance due to the inability of the researcher to conduct interviews. Coming back to White's (2020) idea of co-management as integrating and exerting influence within the State structures, the EIJBRG is here assessed against co-management to capture the influence the Eeyouch exercise on decisions made by the State. This subsection draws mainly on the intercultural relations and the place of Eeyouch on the board of the EIJBRG and within the LILRMPs. Regarding the FeFo, much has been said about the competition between its role of landowner and co-manager. However, there is no comprehensive portrait of its

[139] Alcantara and Morden (2019) explain that the shadow of hierarchy is present "between" and "within" governments. The lack of capacity of the EIJBRG to carry the role of a RLNRC is an example of shadow of hierarchy "between" the EIJBRG and the MNRF. The latter, which holds the funding capacity, does not provide the EIJBRG with adequate resources. The shadow of hierarchy "within" the EIJBRG, that is between the Jamesian and Eeyou members, is not noticeable at first glance. This could be explained by the fact that power asymmetries are less pronounced among regional actors than between regional actors and provincial authorities. In the case of the FeFo, the shadow of hierarchy is rather displayed in the architecture of the *Finnmark Act.* An analysis based on a larger and more diverse set of sources may reveal the influence of underlying driving forces, both within the FeFo and between the FeFo and other actors.

role of co-manager, at least in the English-language literature. Due to the lack of available information on the functions of the FeFo, there are imbalances in the following analysis.

Co-management not only entails managing the land, but also relations and cultural differences (Natcher et al., 2005; Zurba et al., 2012). While the minutes of the EIJBRG and LILRMPs have not revealed major divisions between members of the board of the EIJBRG and members of the LILRMPs, one issue deserves attention: the gaps in understanding Eeyou Treaty Rights on the part of the Jamesian population and Jamesians sitting on decision-making boards.

First, the cabin lease moratorium highlighted the interwoven issues of access to the land and the misunderstanding regarding the application of the JBNQA regime. One delegate's question about whether the cabins of Eeyouch are regulated by municipal regulation showed that there still might be a lack of knowledge relative to the precedence of the JBNQA (EIJBRG, 09/2015).[140] On the other hand, Eeyouch and Jamesians seemed to agree on keeping the moratorium active until an RPILRD was developed (EIJBRG, 01/2016).

Second, tensions between Indigenous and non-Indigenous hunters arose regarding caribou (EIJBRG, 01/2016) and moose (EIJBRG, 11/2022) hunting, notably concerning the unethical practices of sport hunters which were criticized by the Eeyouch and the moratorium that unfolded in certain areas (Martel, 2022). Non-Indigenous hunters had to be reminded of the hunting rights of the Eeyouch pursuant to the JBNQA, indicating, once again, a lack of knowledge about the legal regime in the region. Somehow, what stood out was the willingness to collaborate and find compromises, especially on the part of the Eeyouch who invited non-Indigenous hunters to Eeyou traplines and expressed an understanding of the value of sport hunting for the Jamesians (EIJBRG, 01/2016, 11/2022). The Regional Operational Group on the woodland caribou and the consensus on taking steps to maintain and increase the woodland caribou population (LILRMP-EIJB Lebel-sur-Quévillon, 03/2017; LILRMP-EIJB Matagami, 12/2020) is another example of collaboration.

As the examples above show, the fact that the EIJBRG is the first space of joint decision-making between Eeyouch and Jamesians and that it includes such an important number of members entails

[140] The minutes of the March 2017 meeting of the EIJBRG report the presentation by an analyst of the JBACE aimed at informing the delegates on the compliance of territorial planning on category III with the existing regime and institutions of the JBNQA (EIJBRG, 03/2017). The delegates are therefore aware of the particularly complex setting for governance they deal with.

challenges. Amidst the work on the reassessment of the EIJBRG, concerns of governance (board composition, tasks of the board and executive committee) and land use planning were raised. Former Grand Chief Mandy Gull-Masty highlighted another issue, that is the need to reach better mutual understanding of the different legal frameworks under which Eeyouch and Jamesians operate. Increased understanding of the JBNQA regime is indeed necessary to foster more harmonious relations and smoother operations (Lord, 2023).

These examples further show the cultural encounter the EIJBRG represents. The institution is an opportunity to overcome the cultural barriers and develop as a sociocultural space of shared values and practices (Hinkson and Smith, 2005; Moran, 2010). The Eeyouch have long bridged tradition and bureaucracy, a central argument put forward by Niezen who suggests that the resistance, negotiation and adaptation of the Eeyouch to foreign political rules "provide examples of indigenous activism changing the rules of political engagement with non-native society" (2009, p. 8). For Niezen, the coexistence of Euro-Canadian institutions and Eeyou forest life without leading to assimilation is therefore possible: "the development of Cree administrations based on southern models does not in itself mean that their values, goals, and strategies will be the same as those of parent organizations in non-native societies" (2009, p. 4). The AFR of the Paix des Braves is an example of the agency gained by the Eeyouch, who negotiated the inclusion of their governance principles (e.g. the trapline as the territorial reference unit for forestry) and their participation (e.g. the role of the tallymen, CQFB, JWG) within the Québec forestry framework of operation (see Awashish, 2018; Cyr et al., 2022; Salée and Lévesque, 2010). While the AFR provides the Eeyouch with a measure of agency, this agency is gained within the State's structures and does not challenge the State's structural power (Cyr et al., 2022; Takeda and Røpke, 2010).

Applied to the EIJBRG, the idea of a sociocultural space of shared values and practices would mean the creation of more room for the Eeyou cultural meanings to permeate the administrative and bureaucratic structures of the EIJBRG (RCM, RCEO, RLNRC). For example, facilitating the inclusion of Eeyou knowledge in the work of the EIJBRG could raise cultural awareness among the Jamesian delegates about the Eeyouch's special connection to the land and the value and implications of the related Treaty Rights. Engaging in cultural differences and understanding how the other group perceives itself in the environment (Indigenous holistic view vs. western compartmentalized, functional view) is key to produce an intercultural dialogue which directly

influences land management practices. As Natcher et al. put it: “culture forms perceptions, guides group behavior, and ultimately implements management decisions.” (2005, p. 248).

Concerning the LILRMPs, the panels in EIJB reflect a different reality than in southern Québec where Indigenous participation is generally weak (Andrew, 2013; Fortier and Wyatt, 2014). Most choose not to participate in LILRMPs because they consider themselves as Nations, not as “just another stakeholder” (Stevenson and Webb, 2003). The lack of participation can also be explained by the fact that Nations which have pending land claims do not want any interference in the process (Tardif et al., 2017). On category III lands, despite the inconsistent participation, tallymen and trappers’ associations ensure a constant presence on the LILRMPs, notably those of Nemaska, Waswanipi and Mistissini. Particularly in Waswanipi, the LILRMP turned out to be an important forum on which tallymen and trappers have been vocal on the impact of forestry and mining activities on their land (LILRMP-EIJBRG Waswanipi, 11/2017, 07/2018).

In light of the limited mobilization of Indigenous knowledge on the LILRMPs, the examples of Waswanipi and the CGFA co-management experience (see section 2.4) show the possibilities of drawing on Indigenous participation to include Indigenous forest knowledge in planning and management. In the face of the cumulative effects of climate change and resource exploitation, the values, practices, and knowledge of Indigenous Peoples – grounded in empirical, holistic, and lived experiences – are more important than ever to inform forest management and biodiversity conservation goals (Artelle et al., 2019; Asselin, 2024; Bélisle and Asselin, 2021).

The cases of the Waswanipi LILRMP and of the CGFA further show that the collaborative spaces can be reclaimed by Indigenous Peoples to voice their concerns and raise awareness among the other non-Indigenous land users and developers. LILRMPs, for example, not only establish a dialogue and promote knowledge sharing (Tardif et al., 2017) but also create a space to overcome the “cultural deafness” (Lathoud, 2005a). Whereas recognizing the embeddedness of each other in a different cultural setting is a challenging endeavour, it holds potential for enlarging horizons, enabling mutual respect and shaping favorable intercultural relations (Oman, 2004). A shared understanding can support future collaborative efforts, particularly by facilitating the inclusion of Indigenous knowledge and perspectives in decision-making processes (White, 2020).

5.2 Mutual lessons: what the EIJBRG and FeFo can learn from each other

Both the EIJBRG and FeFo are unique institutions that have restructured the relation of the Eeyouch and the Sámi with the State authorities. The recent experience of the EIJBRG has yet to be tested against empirical research that could uncover whether it matches the promising bicultural model it suggests. The FeFo, so far, has mainly had to cope with the contradictions of the *Finnmark Act* leading to tensions with the Sámediggi and Sámi municipalities. The following highlights the main takeaways the cases could draw from each other.

5.2.1 Building on existing grounds: agency and past history of collaboration

On the experience of shared governance, the FeFo, to some extent, could draw insight from the EIJBRG. The EIJBRG represents the outcome of decades of continued relationship building institutionalized in collaborative bodies such as the HFTCC, JBACE, CQFB and, at a higher level, the Standing Liaison Committee.[141] Without dwelling on whether these bodies have been efficient at fostering mutual understanding and power sharing, it can nonetheless be argued that they normalized the collaborative governance on which the EIJBRG builds (Motard, 2015). The process of institution building in EIJB draws on many factors: a history of collaboration and antagonism (Ansell and Gash, 2007; Chuenpagdee and Jentoft, 2007; Scott, 2020; von der Porten and de Löe, 2013), which enabled the continued renewal and renegotiation of the relations between the Eeyouch and Jamesians; the evolving landscape of Indigenous Rights in Canada and the institutional adaptability of the federal system (Alcantara and Nelles, 2014; Papillon, 2012); and the growing agency of the Eeyouch, coexisting alongside the power struggle with the Québec government for access to and use of the land and resources (Cyr et al., 2022; Salée and Lévesque, 2010; Scott, 2005, 2020; Teitelbaum et al., 2026). In addition to these factors, the regionalization policy of the early 2000s exacerbated and highlighted asymmetries in land governance between the Jamesians and the Eeyouch (see subsection 3.3.6) (Grammond, 2009; Motard, 2015).

[141] The Cree-Québec Standing Liaison Committee was created following the signature of the Paix des Braves. It is a coordinating body composed of an equal number of Eeyou and Québec representatives which mandates is to reinforce the relation between the parties, implement the Paix des Braves and act as a mechanism for conflict resolution that may arise concerning the JBNQA (Paix des Braves, 2002, art. 11.6). Although it does not touch on land and resources management particularly, it does oversee related issues of strategic importance such as the development of road infrastructure, the creation of protected areas and the coordination between the ministries of Québec and the departments of the CNG (Cyr, 2024). As a "watchdog" to the Paix des Braves, it is the most important relational and strategic space between the Eeyouch and Québec.

These factors have arguably helped the EIJBRG integrate the municipal and regional political structure without making waves, despite being an important overhaul of the governance regime. Another factor could be the functional nature of political relations revealing mutual indifference to engaging in a deeper intercultural understanding (Guimond and Desmeules, 2017). It is also possible that the EIJBRG is gatekeeping information on internal processes to avoid revealing disagreements and maintain internal cohesion.[142] In their study of the meeting minutes of the EIJBRG, Simard and Brisson (2020) noted that no particular tensions are revealed and that the vast majority of decisions are taken unanimously. According to the authors, a possible explanation could be that the disagreements are leveled by discussions taking place prior to the meetings, reinforcing the consensual decision-making approach. This assumption, which could not be tested in this thesis, will need further investigation, as it suggests that informal mechanisms might have a significant weight in the shared governance of EIJB.

The FeFo, on the other hand, does not draw on decades of Sámi-State institutionalized collaboration or on a political framework and tradition that accommodates sub-State entities, let alone non-State actors, to be actively engaged in policymaking (Spitzer and Selle, 2020). In that respect, public discontent towards the FeFo has been proportional to its disruptive novelty in the Norwegian context (Josefsen et al., 2016). While positive attitudes towards the FeFo have developed over time, especially concerning specific management actions (Broderstad et al., 2020), FeFo's legitimacy does not only hinge on the population and land users but also on the other institutions. To this extent, the FeFo has often been at loggerheads with the other Sámi actors, mainly because of the structural issues framed in the *Finnmark Act* and described in subsection 5.1.2 (see also Spitzer and Selle, 2019, 2023).

Initially negotiated as a one-off, fixed contract, the JBNQA developed into a living agreement (Scott, 2020). The evolution of the JBNQA, however, is not only tributary to the agency gained by the Eeyouch and the external factors stated above. Due to repeated violations of the JBNQA, the Eeyou leadership was forced to take legal action against the government to enforce its treaty obligations. Indeed, the Paix des Braves was negotiated to settle forestry-related violations of the JBNQA. A decade later, the AGEIJB was also negotiated to settle a dispute between the

[142] It was confirmed that some members were less inclined than others to share information, thus explaining the fact that the EIJBRG refused to participate in this research project.

Government of Québec and the Eeyouch (AGEIJB, 2012, art. 205, 206). Thus, central to the treaty experience, as Scott puts it, is "relationship building through successive episodes of litigation, negotiation and agreement [which] has drawn Cree society into profound interdependencies with an extractive capitalist economy, consumer goods and state-upheld visions of neoliberal development" (Scott, 2020, p. 258).

The actors of the *Finnmark Act* could draw lessons from the contentious history of the JBNQA and address the structural issues that plagues it. In this way, the Sámediggi and Norwegian State would avoid reproducing the long and strained path of the JBNQA towards the respect of Sámi Rights. Approaching the *Finnmark Act* as a living agreement instead of a piece of legislation only could be a promising path to reimagining the FeFo and mitigating the contradictions it faces. First, the negotiations around the *Finnmark Act*, which gathered the Sámediggi, the Finnmark County and the government, represented a precedent on which to build to amend the *Finnmark Act*. This pre-implementation phase has been important in building the collaboration that unfolded later with the FeFo (Josefsen et al., 2016). Second, the fact that the question of the Sámi Title and Rights is pending arguably allows more institutional and legal flexibility to negotiate the scope and nature of the rights in comparison to the JBNQA, which established in record-time a definite set of Treaty Rights. On the other hand, the ongoing rights investigation creates uncertainty and conflicts between the Finnmark Commission and the FeFo (see subsection 3.6.4). Further, the Sámi also face uncertainty given the identification of their land rights – besides those enshrined in the *Reindeer Husbandry Act* – which exclusively depend on findings of the Commission. Contrary to the Eeyouch, the Sámi do not enjoy specific and exclusive rights on defined parts of the land. Third, an evolutive approach to the *Finnmark Act* and the FeFo could be facilitated by the particular setting of Finnmark and the fact that the Sámi are the only Indigenous People on the land.[143] Indeed, the exclusive relation with the State and the absence of overlapping Indigenous territorial claims present a context that is less complex than that of EIJB.[144]

[143] However, many non-Sámi Finnmarkers claim similar rights to land and resources as Sámi, based on the past use by their ancestors (Ween and Lien, 2012).

[144] EIJB is bordered by the Atikamekw Nitaskinan (south), the Innu Nitassinan (east) and the Anishnabe Nitakinan (southwest). Parts of the traditional territories of the Innu, Atikamekw and Anishnabek overlap with the land ceded by the Eeyouch under the JBNQA. This had the effect of extinguishing potential competing claims of the three latter Indigenous Peoples on the JBNQA territory without them being included in the treaty. The creation of the Innu Anishnabek Atikamekw Political Coalition in 2014 aimed to defend the Indigenous Rights and Title of the three groups that were unjustly diluted in the JBNQA (Quirk, 2015).

Potential avenues to correct the issues and contradictions faced by the FeFo can find answers in the experience of the Eeyouch and in the path that led to the *Finnmark Act*, which was unique in Norway's political history. How this journey unfolds is uncertain and would depend on 1) future findings of the Finnmark Commission and whether ownership rights are finally recognized and identified on Sámi-owned pockets of land, and 2) the role exercised by the FeFo: does it support land development encroaching on Sámi land rights? Does it pursue a management role that reconciles non-Sámi interests and Sámi Rights? These possibilities draw further questions on the path taken and the outcome: could amendments to the *Act* fix the competition between the Finnmark Commission and the FeFo? Could amendments clarify FeFo's mandate and mitigate the tensions between its role of landowner and land manager? Should the State, as Spitzer and Selle (2023) suggest, seek more involvement in the regime of the *Act* to fulfill its international obligations and monitor the actions of the FeFo to assess whether they are aligned with ILO 169? In this respect, the FeFo could seek insights from the experience of the board of the EIJBRG on which a representative of the Québec government sits as a non-voting observer. Could a treaty-like agreement be negotiated to replace the *Act* to provide more legal certainty? Does the Sámediggi have the institutional capacity to embody such a role? All these questions, which are beyond the scope of this thesis, reflect the complex future awaiting the regime of the *Finnmark Act* and the governance of the FeFo. They further emphasize that although the EIJB experience can provide guidance, the solutions lie in Finnmark.

5.2.2 Similarities and differences in the institutional design, limited mutual lessons

The previous subsections of the discussion showed that if the EIJBRG and the FeFo share the similarity of being Indigenous – non-Indigenous shared governance arrangements, they share little other significant attributes. Most of the differences stem from structural constraints which affect the institutional design of both cases. However, those differences can yield interesting insights that are discussed below.

First, the fact that the EIJBRG is a municipal and regional actor, whereas the FeFo is both a landowner and land manager, draws important implications. In the case of the EIJBRG, the regime is clear, demarcated by both the JBNQA and provincial legislation. The FeFo, on the other hand, exercises an inherently conflicting mandate. Spitzer and Selle (2023) suggest that the FeFo could keep its managerial role but relinquish its ownership to Sámi municipalities such as Kárášjohka.

While this would strengthen the position of the Sámi and mitigate the conflicting role of the FeFo, Spitzer and Selle (2023) argue that it is hard to see how the FeFo, given the prominent landowner role it was given and the institutional building process that has cemented over the past 20 years, would cede ground to other authorities. Structural changes such as the division of ownership and management in Finnmark are unlikely but they could build on the land categorization in EIJB. The FeFo could exercise management responsibilities to the extent of the EIJBRG (equivalent to category III lands) while the municipalities in core Sámi areas could be granted local ownership (equivalent to category I and II lands). In this situation, the mandate of the Finnmark Commission would have to be reviewed to make sense of the new legal configuration.

Second, as detailed previously, the EIJBRG has struggled with the implementation of its land and resources management functions. The main regional plan for land use, the RPILRD, has not been elaborated and the RLNRC plays a negligible role, mainly because of the funding issues that have plagued the EIJBRG (see subsection 4.1.6). The FeFo has more revenue-making capacity due to its landowner role. Annually, it reaps estimated revenues of just under $1 million (Spitzer and Selle, 2019). The EIJBRG often forecasts gains in its annual budgetary previsions but has, since its inception, chosen to balance revenues and expenditures, notably by investing the remaining funds (EIJBRG, 12/2020, 12/2024). Practically, then, the EIJBRG does not provide for a buffer sum which it could use to mitigate funding issues as experienced with the RLNRC. However, the EIJBRG's financial statements are not publicly available, which makes it difficult to assess its financial condition. With access to the financial statements of the FeFo in English and a fuller picture of both financial statements, the EIJBRG could potentially gain insights from the positive finances of the FeFo. On the other hand, it is important to remember that the issues of the EIJBRG are first and foremost about the management, not the lack of funds. To assess whether the FeFo could really provide some answers, it would be necessary to carry out a comparative analysis of the financial statements of the two cases, which is beyond the scope of this thesis.

Third, at the moment, the functions of land and resources management of the EIJBRG are exercised only by the LILRMPs. The EIJBRG has to consult the relevant Eeyou actors during the elaboration of the TIFMP, but it is not clear whether this is a responsibility of a RLNRC. Despite the issues they face – uneven participation from meeting to meeting and lack of communication and consultation from the MNRF, for example –, the LILRMPs represent “a frontline forum for

discussing planning processes" (Cyr et al., 2022, p. 7). Pursuant to the *Finnmark Act*, the board of the FeFo is the only managing entity (2005, sect. 9, 10). To inform its decisions, the FeFo gathers information from public authorities and civil-society organizations, with little first-hand input from local stakeholders (Spitzer and Selle, 2019). Arguably, the FeFo could draw on the LILRMP model and establish similar forums that would enable a dialogue and shared understanding of the concerns and priorities of the actors on the land (LILRMP-EIJB Mistissini, 12/2016). For instance, each municipality of Finnmark could have a LILRMP-like forum supervised by the FeFo. For each forum, actors such as reindeer herders, non-Indigenous land users, land developers and representatives of ministries would sit alongside representatives of the Sámediggi and Finnmark County Council, producing locally based, rooted recommendations to the board of the FeFo. This arrangement, although adding bureaucratic, political and cultural complexity, could, on the long run, give to the board of the FeFo the local insights necessary to make decisions informed by the municipal context and tailored to local-level concerns. Depending on whether the decisions it makes apply locally or county-wide, this could enhance the legitimacy of FeFo to either pursue resource development projects or protect the land "as a basis for Sámi culture" (*Finnmark Act*, 2005, sect. 1.1), without being in a state of conflict.

The English-language literature on the FeFo emphasizes the innovation it represents within the Norwegian system, the complex interplay between its role as landowner and co-manager and the issue of public opinion (see Broderstad, 2015; Broderstad et al., 2020; Josefsen et al., 2016; Spitzer and Selle, 2023). However, beyond mentioning that FeFo "plays a key role in wildlife management, land-use planning, and licensing, permitting and environmental-impact assessment" (Spitzer and Selle, 2019, p. 731), the research falls short of providing a comprehensive overview of the procedures and relations of FeFo. This draws multiple questions: are there committees tasked with defined areas of activity? Is the FeFo elaborating a land use strategy for Finnmark or is that a State prerogative? Is there collaboration between the FeFo and the State in the elaboration of specific plans/strategies and between FeFo and the municipalities? Related to the research questions of this thesis, how do FeFo's board members get along? Closing on almost 20 years of collaboration, what conclusions can be drawn from this shared governance experience? A lot has been said about the relations of FeFo with other actors, seemingly coming short of understanding the institution from within through empirical work. How do the Sámediggi appointees feel about the position of FeFo regarding land development? Do the Sámediggi appointees think the FeFo is successful in

balancing its public and ethnic mandates? What do the county council appointees think of the new governance arrangement? Do appointees feel constrained by the framework of operation of FeFo?

Answering these questions would provide a better understanding of the functions, processes and relations of FeFo. In turn, it would arguably provide interesting insights for the experience of the EIJBRG. In the context of this research, however, the lessons of the FeFo for the EIJBRG are limited. Beyond the lack of data, this conclusion can be first explained by the different legal grounds on which both study cases draw. Indeed, the main issue faced by the FeFo is the competition with the Finnmark Commission embedded in the *Finnmark Act.* Other cases could learn from this by better sequencing the process of rights investigation and the establishment of the governance body. Given the EIJBRG manages a settled territory, it does not face such issues. The next section draws on the sequencing of the *Finnmark Act* to inform an ongoing case of treaty-making in Québec. The other main shortcoming of FeFo is its capacity to forward traditional Sámi interests, which rest on a territorial basis. Again, the EIJBRG does not have to deal with such issues since the land categorization ensures the exercise of the land rights of Eeyouch on all three categories of land, with exclusive use on category I and II lands.

This subsection revealed three things: 1) the FeFo deals with important structural issues that are embedded in the *Finnmark Act*; 2) the experience in EIJB, rather than the EIJBRG itself, could provide insights for the future of the FeFo; and 3) some issues faced by the EIJBRG and FeFo, specific to their respective setting, remain unanswered and neither case can provide insights to this end. In the case of the EIJBRG, the 10-year review of the agreement has not yet been made public. This assessment will arguably provide important information on the governance of the EIJBRG, which could inform more precisely the FeFo. In Finnmark, the areas of Guovdageaidnu, Deatnu and Porsáŋgu are currently under investigation by the Finnmark Commission.[145] Monitoring these investigations will be important to assess the consequences of the landmark case of Kárášjohka, see how the FeFo reacts to the findings and whether its authority is undermined or strengthened.

5.3 The EIJBRG and FeFo: models for other settings?

This section aims to determine whether the models of the EIJBRG and FeFo could be applied to other settings where Indigenous and non-Indigenous groups share the land and resources. Although

[145] The area of Guovdageaidnu will be of particular interest since it is the neighboring municipality of Kárášjohka.

some features of each case can be applied to other situations, the extent to which they can be replicated entirely remains limited. The following explains this observation and evaluates the generalizability of both cases against their proximal geographical, political and cultural environment.

The EIJBRG builds on a complex 50-year old history of turmoil, collaboration and institution building with the governments and the Jamesian communities. The governmental structure and capacity of the Eeyouch traces back to and legally hinges on the JBNQA. Bearing in mind the steering and constraining effect of a modern treaty, the question is to determine whether the municipal and regional structure of the EIJBRG could fit in other settings or if the signature of a modern treaty is a contingency for achieving the type of multilevel governance and land co-management the EIJBRG suggests.

A particular case to observe is that of the Innu Nation, whose traditional territory borders (and overlaps) EIJB. Looking at this case is relevant for the geographical proximity and the similar industrial pressures faced by both First Nations. The Innu Nation, whose traditional territory mostly spans the Québec administrative regions of Saguenay–Lac-Saint-Jean (SLSJ) and Côte-Nord (Figure 7), has been negotiating a modern treaty for almost 50 years. Since the 2004 Agreement-in-Principle signed between the federal and provincial governments and the Mamuitun mak Nutashkuan Tribal Council (CTMN) (the communities of Mashteuiatsh (Pekuakamiulnuatsh First Nation), Essipit and Nutashkuan) (Figure 7), currently known as the Petapan group, negotiations have met a dead-end (Papillon and Lord, 2013; Rodon, 2013). While negotiations have been progressing slowly for the past 20 years, the Petapan group announced in 2022 that an agreement was imminent (Dufour et al., 2022). Since then, despite signing a joint declaration with the federal government, the Québec government has yet to endorse the draft treaty, first arguing it wanted to wait for the outcome of the federal 2025 election (Drouin, 2025), and now in the process of replacing prime minister François Legault, who resigned from his seat under public pressure. As there will be provincial elections in October 2026, negotiations with the Innu will likely remain stalled for some time.

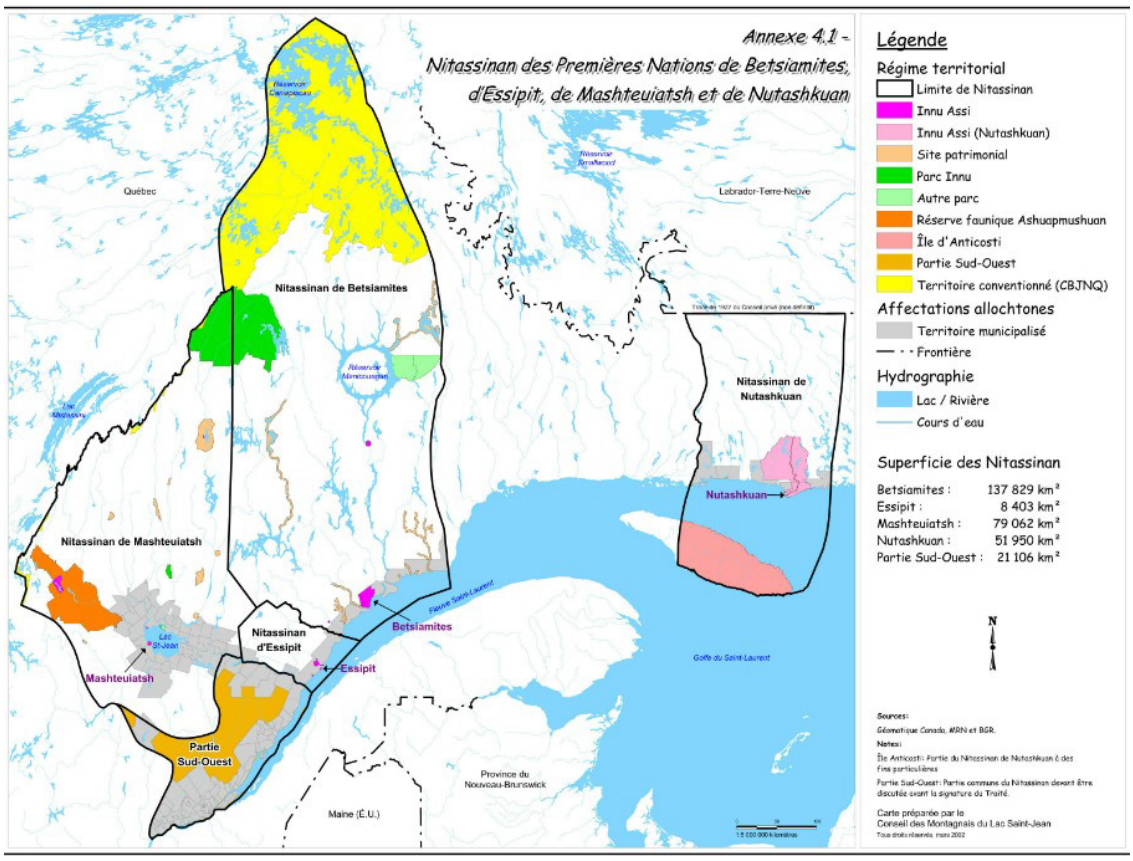

Figure 7
The Nitassinan of Mashteuiatsh, Essipit and Nutashkuan defined in the Agreement-in-Principle (also shown is the Nitassinan of Pessamit (Betsiamites), not part of the Petapan treaty negotiations)
Source: Regroupement Petapan (https://petapan.ca/page/nitassinan) (2025).

The Petapan treaty promises a different approach compared to the JBNQA, that would include an evolutionary section which would imply a continued reinterpretation of the treaty provisions according to the evolution of society. This would eliminate the burden of going before the courts to amend the treaty.[146] It also adopts a spirit and intent that aims to shift away from the "cede, release and surrender" vernacular of past treaties and acknowledges the continuity of the Indigenous Rights of the Innu (Gill-Couture, 2023). Nevertheless, opponents question the colonial scope of the treaty, arguing that the principles of co-management and self-governance are merely

[146] The evolutionary clause enshrined in the draft treaty has not yet been defined so the way it would work out is not known yet.

a facade for the State's ultimate goal of appropriating the Nitassinan (the traditional territory of the Innu) for resource development (Morin-Racine, 2023).

If it were to be signed, the area covered by the Petapan treaty, particularly the Nitassinan of Mashteuiatsh, would overlap with municipalities and urban centers in SLSJ, a region that is vital to Québec's forest industry (Figure 7, bottom left grey areas). The establishment of a differentiated rights regime on such a culturally different, populated land mass would reveal important challenges for land and resources management, especially considering that the Saguenéen-Jeannois[147] were initially strongly opposed to the treaty project (Desbiens and Rivard, 2014; Papillon and Lord, 2013; Rivard et al., 2017).

The treaty signatories could imagine, from the outset, a land and resources shared governance institution equally governed by the Innu and Saguenéen-Jeannois. For the purpose of a comparison with the EIJBRG and FeFo, the case of Mashteuiatsh's Nitassinan is emphasized because cohabitation, urban density, and the importance of the forest industry represent overlapping challenges that, while certainly present, are less acute on the Essipit and Nutashkuan's Nitassinan. Nevertheless, an institution of such scope should also involve the Innu of Essipit and Nutashkuan. These interrelated challenges, while not unique to the Nitassinan and particularly that of Mashteuiatsh, are rare in the context of modern treaties in Canada, which often concern remote areas where the lack of significant urbanized communities presents less of an issue to establish a differentiated land rights regime.[148] In this context, both the settings in which the EIJBRG and FeFo are embedded – pockets of urbanized areas, close coexistence with non-Indigenous communities and the ubiquity of resource development – set precedents on which a future institution resulting from Petapan could draw.

Drawing more particularly on the institutional design of the EIJBRG and FeFo, the institution could be vested with decision-making powers, beyond the advisory role the co-management claims boards usually exercise. Similarly to the EIJBRG, the institution could oversee land use planning,

[147] Demonym of the non-Indigenous inhabitants of the region of Saguenay–Lac-Saint-Jean.
[148] There are obviously exceptions. In British Columbia, the Tla'amin Nation Final Agreement encompasses the City of Powell River. Strong ties characterize the relation between the Tla'amin People and the City of Powell River and mechanisms were established to facilitate the collaboration (BC Treaty Commission, 2011). Further south, the Tsawwassen First Nation Final Agreement is the first urban treaty in British Columbia. It integrates the cities of Richmond and Surrey part of the Greater Vancouver area (Yellowhead Institute, 2025).

allowing the Innu to be involved in questions of land and resources beyond their Indigenous Rights. This would institutionalize the common concerns and interests of Innu and Saguenéen-Jeannois for the forest and strengthen the position of the Innu to influence regional orientations regarding land use and forestry planning. Thus, the institution could exercise some of the powers and responsibilities of municipalities and the RCM – RLNRC, oversee the LILRMPs and participate to the PLUP – but there should be a clear distinction between these powers and the standard municipal ones to prevent interference and conflict with the non-Indigenous authorities. Then again, as with the FeFo, non-interference does not guarantee a favorable public opinion. Efforts to explain the added value of a joint institution managing the land and resources would be needed to address misconceptions and fears, given the importance of the forest industry in the region.

In all, the proposed model would be similar to the current co-management institutions, only it would have more responsibilities and exercise decision-making powers. This proposition answers two core, interrelated principles underlying this research: first that local peoples, Indigenous and non-Indigenous, should have the power to decide how the land and resources they occupy, take care of and use, should be managed (see Berkes, 2009, 2010; Lockwood et al., 2010); second, in line with the idea of power dispersion, that it is important to imagine land and resources governance models beyond the advisory co-management boards. Models that incorporate features of MLG would better fulfill the self-determination aspirations of Indigenous Peoples (see Latta, 2018).

The institution would have to consider the particularities of the region. What would be the territory of application of the institution, especially since the Nitassinan of the three negotiating Nations are not contiguous? Would one institution per Nitassinan, tailored to the concerns, needs and realities of each Nation, be a solution? These are pending questions that, even if they fall short of providing solutions, can be thought-provoking for practitioners. From a demographic perspective, the situation in SLSJ is also quite different than that in EIJB, as the members of the Pekuakamiulnuatsh First Nation represent only 4% of the regional population (Première Nation des Pekuakamiulnuatsh, 2025). In comparison, the Sámi make up 18.8% of the population of Finnmark (Statistics Norway, 2021). Although the Sámi represent a much larger share of Finnmark's population than the Pekuakamiulnuatsh do in the SLSJ, the fact that the basis for FeFo is not demographic parity underscores the importance of envisioning a shared governance arrangement that considers immemorial occupation and collaboration beyond demographic considerations. As

Rivard et al. (2017) point out, the place and importance of the Innu in SLSJ must be assessed not only in terms of their demographic weight, but also by considering the economic interdependencies with non-Indigenous actors in the region.

The institution, which would be constitutionally protected, could expand upon former co-management initiatives in the region. Notably, the small-scale hydroelectric power plant of Val-Jalbert and the Lac-Saint-Jean Model Forest, respectively managed by the "Société de l'énergie communautaire du Lac-Saint-Jean" and the "Agence de développement des communautés forestières ilnu et jeannoise", both involved the Pekuakamiulnuatsh Takuhikan (former Conseil des Montagnais du Lac-Saint-Jean) and the RCMs of Maria-Chapdelaine (north of Lac-Saint-Jean) and Domaine-du-Roy (southwest of Lac-Saint-Jean) (see Desbiens and Rivard, 2014; Rivard et al., 2017). Given the importance of a past history, these experiences could set a precedent for future collaboration (see subsection 5.2.1). While shared governance could first be met with misunderstanding and opposition, discontent could eventually turn into acceptance and specific support for management actions, as observed with the FeFo (see Broderstad et al., 2020). A joint decision-making institution would establish treaty relations on the basis of a shared understanding and trust building, which are critical conditions for problem solving and conflict mitigation in co-management (Chuenpagdee and Jentoft, 2007; Zurba et al., 2012; Hotte et al., 2019).

The question whether the institution could exercise the role of a landowner is complex. First, given the experience of the FeFo, is it even desirable to concurrently perform the roles of a landowner and land manager? Second, the question is whether a landowning body would be compatible with the land tenure established by the Petapan treaty. If Indigenous Right and Title are not extinguished but rather "recognized, confirmed and continued", as provided for in the Agreement-in-Principle (2004, art. 3.3.1), it seems unlikely that the Innu would agree to cede their title to a co-managing body.[149] On the other hand, if the question of the Innu Title turns out to be blurrier and that the State has some ownership rights pursuant to the treaty, it is also unlikely that those rights would be

[149] Papillon and Lord mention the "suspension of its effects and terms, except as provided for in the agreement" (free translation, 2013, p. 184).

transferred to a co-managing body, given the treaty relation's early stage[150] and the State's stranglehold on land and resources.

While the Indigenous Rights and Title of the Innu are not extinguished, the Agreement-in-Principle includes a provision stating that "the effects and terms of exercise, other than those provided for in the Treaty, of the Indigenous Rights of these First Nations, whatever they may be, are suspended (free translation, 2004, art. 3.3.4). Papillon and Lord (2013) explain that suspending the effects and terms of the Innu Rights and Title that are not enshrined in the treaty would leave the door open for future redefinitions of those rights, while providing a measure of legal certainty for the State.

There is uncertainty regarding how this unprecedented way of managing Indigenous Rights and Title would fit in with provincial and municipal authority and with development on the land. Since Indigenous Rights and Title would neither be ceded, nor fully recognized under the "suspension" provision of the Petapan treaty, it would result in a land regime more flexible and perhaps more favorable to joint ownership on parts of the Nitassinan. On the other hand, it would also create a type of uncertainty similar to what is observed in Finnmark. To some extent, the architecture of the *Finnmark Act* could provide lessons on the procedure *not* to adopt if a shared governance institution were to be included in the Petapan treaty. Indeed, like the authority of the FeFo that can be undermined if the Finnmark Commission identifies Sámi ownership rights, the authority of the shared governance institution could also be undermined if the treaty were to redefine the rights of the Innu. Unlike the *Finnmark Act*, however, a procedure should be put in place to protect the institution's assets. This procedure would clearly delineate the institution's functions, rights, and responsibilities in regard to those of the Innu. This would help avoid the competition and contradictions enshrined in the *Finnmark Act* if the treaty were to be modified.

The example of the Petapan treaty could be an interesting opportunity to test the applicability of the EIJBRG model in other regions of Québec. An institution with decision-making powers established under Petapan could learn from the hardships and successes of the EIJBRG and contribute to gathering empirical evidence. One impeding factor to the scenario presented above is

[150] The creation of the FeFo is the product of decades of Sámi activism and relationship building with the Norwegian State. A similar landowning body on the Mashteuiatsh Nitassinan could arguably not be established overnight given the high stakes and novelty of the regime.

the fragmentation of Innu authority (Papillon and Lord, 2013).[151] In the absence of a coordinated political structure and strong self-rule and shared rule institutions, the path to shared governance could take longer. Innu would want to establish both formal political relations with governments and engage in a process of nation-building, two distinct yet interrelated processes of shared rule and self-rule (Wilson and Selle, 2019). Drawing a comparison with the Sámi, it is hard to see how FeFo (self-rule) would have been established without the influence of the Sámediggi (shared rule) vis-à-vis the Norwegian State in the first place.

Once the empirical data on the EIJBRG builds up, it could be relevant to assess the feasibility of conducting comparative research with other treaty cases. Notably, assessing the case of the EIJBRG against modern treaties outside of Québec and looking at their evolution and their structures could provide insights of mutual relevance. Looking at the Confederation Era treaties (the so-called "numbered treaties") in Ontario, the Prairies and current Northwest Territories, Yukon and Nunavut, could also offer interesting insights for the revitalization of numbered treaties which often overlap with densely populated, multiethnic urban areas (e.g. Toronto) and are otherwise considered relics of the past. Jai suggests three "principles from modern treaties [that] can reinvigorate historic treaties: processes for co-management of resources, dispute resolution mechanisms and amendment provisions" (2017, as cited in Bohaker, 2019, p. 200). While assessing the applicability of these principles to numbered treaties is beyond the scope of this thesis, it deserves far more attention in the scholarly literature.

Elsewhere in Québec, the absence of other treaties draws an uncertain picture of the applicability of co-management and regional MLG arrangements such as the EIJBRG. Swerdfager and Armitage (2023) point to institutional and structural factors that have been impeding the expansion of co-management outside of land claims settlements. The authors emphasize the lack of a comprehensive policy for co-management, the absence of knowledge sharing and structural capacity constraints. Therefore, if non-treaty co-management of land and resources exists across

[151] Unlike the Eeyouch and the Inuit, who maintained a degree of unity despite their differences, the Innu communities have found it difficult to establish a common position. They initially negotiated with the Atikamekw under the Conseil Atikamekw-Montagnais before parting ways in 1994. Since then, the Mamuitun mak Nutashkuan Tribal Council (current Petapan group since 2011) and the Mamit Innuat Tribal Council, which represents the communities of Ekuanitshit, Unamen Shipu and Pakua Shipu, are the two organizations (Papillon and Lord, 2013). This means that there currently are two groups (Petapan and Mamit Innuat) and three unaffiliated communities (Matimekosh Lac-John, Uashat mak Mani-utenam and Pessamit).

Canada,[152] there is still an urgent need for the government to increase its commitment to establish a co-management policy, as well as investments in Indigenous resource management and knowledge systems (Swerdfager and Armitage, 2023). Due to the factors impeding initiatives outside the land claims framework, the question of whether modern treaties are a prerequisite for MLG could be answered positively. Indeed, inventorying 490 bilateral and trilateral land and resources agreements involving provinces and Indigenous organizations and governments, Papillon (2015) highlighted that 347 of them are located in British Columbia (31 in Québec; 14 in Newfoundland and Labrador), whereas non-modern treaty provinces have a total of 98. For Papillon "this fact confirms the importance of legal uncertainties created by unsettled land claims in driving provincial policy towards Aboriginal peoples" (2015, p. 16).

Considering these impeding factors, Indigenous Peoples can choose to undertake treaty negotiations with governments. However, treaty-making is a costly and lengthy process, and some Indigenous Nations do not have the capacity to engage on this path. Where Indigenous preferences and incentives are not aligned with treaty-making, they have sought other avenues such as the courts, self-governance agreements or narrower bilateral agreements (Alcantara, 2008, 2013). It is also important to note that even if the practice of modern treaty-making has evolved and uses a different vernacular than the "cede, release and surrender" found in the JBNQA (e.g. the Petapan treaty), a land claims settlement remains a bargain in which the Indigenous Rights and Title are framed in the terms established by the State. This circles back to the criticism of Alfred (2009) and Coulthard (2007, 2014), among others, for whom the practice of comprehensive land claims settlements of "granting" and "recognizing" rights that are inherent to Indigenous Peoples, reinforces colonial domination in contemporary terms by containing Indigenous sovereignty and self-determination.

Imagining other spaces for land and resources co-management outside of the land claims framework is thus critical. In Québec, two examples of Indigenous communities and non-Indigenous municipal authorities sharing geographical and relational proximity could be relevant

[152] The Gwaii Haanas Gina 'Waadluxan KilGuhlGa Land-Sea-People Management Plan, in Haida Gwaii (coastal northwestern British Columbia), is co-managed by the Canada Government (Parks Canada) and the Haida Nation. Although the Haida have recently secured their Indigenous Title through negotiation instead of legal action, a groundbreaking feat in Canada, they have not signed a modern treaty. The Land-Sea-People Management Plan represents the latest effort resulting from conflicts over the exploitation of resources on Haida Gwaii since the 1970s (Council of the Haida Nation and the Government of Canada, 2018).

to assess. In the Innu Nitassinan, albeit not part of the Petapan treaty project, the city of Sept-Îles borders the community of Uashat mak Mani-utenam; in Abitibi-Témiscamingue, the town of Amos is adjacent to the Abitibiwinni First Nation (Anishnabe). The Abitibiwinni First Nation and the Innu of Uashat mak Mani-utenam each have a seat on their region's LILRMP, marking their inclusion in resource and land management structures. A thorough assessment could be conducted to determine what are the relations between the above-mentioned Indigenous and non-Indigenous communities, whether municipal-level agreements exist and if participation in the LILRMPs yields positive outcomes for the relations and the agency of the Abitibiwinni and Innu. Again, the fact that they both form a demographic minority in their respective regions, that they are not unified under a common structure and that they do not share a precedent of co-management leaves many pending questions on the feasibility of implementing structures such as the EIJBRG.

In a nutshell, the Eeyouch have over time secured multiple spaces of autonomy and influence. The EIJBRG is the last and most comprehensive step to an extensive institution building process that has enabled the strengthening of both self-rule (community powers on category I lands; CNG on category II lands) and shared rule (HFTCC, JBACE, the CQFB, the consultation mechanisms, the priority of Eeyouch in environmental impact assessment), sometimes both within the same structure. While the limited success of the land and resources management functions of the EIJBRG – the diminished role of the RLNRC and the lack of a RPILRD to this date – draws questions on the capacity of the EIJBRG to govern beyond the run-off-the-mill municipal issues, time will be necessary to assess the institution's performance. One positive takeaway from those shortcomings relates to the critique of the Cree Vision of Plan Nord towards the land and resource planning tools (see subsection 4.1.6). Indeed, the fact that the RLNRC, RPILRD and PLUP are neither active, nor implemented leaves room for new structures filling the same functions, elaborated collaboratively by and for the Eeyouch and Jamesians.

Assessing the applicability of FeFo to other contexts requires an examination of the situation of the Sámi in Russia, Sweden, and Finland. In Russia, the situation of Indigenous Peoples has differed from time to time. The territorial dispossession under the Stalinist policy of collectivization was followed by assimilationist policies in the after-war (Berg-Nordlie, 2015a). Eventually, the liberalization policies of the mid-1980s promised openings for cultural and ethnic minorities (Fondahl et al., 2001). However, these were not met with consequential law-making in the 1990s

and the promising federal laws of the early 2000s were only partly implemented (Fondahl and Poelzer, 2003; Tomaselli and Koch, 2014; Xanthaki, 2004). The weak institutionalization of Indigenous Rights and policy has been a constant over time (Berg-Nordlie, 2015a; Fondahl and Poelzer, 2003). Since the coming to power of Vladimir Putin, Russian authorities have particularly been hostile to Indigenous Peoples and organizations. One notable example is the suspension of the activities of the Russian Association of the Indigenous Peoples of the North, the only organization promoting Indigenous Rights nationally. While the decision was overturned in 2013, it shows the fragility of Indigenous Rights in Russia (Tomaselli and Koch, 2014).

The Sámi in Russia live in the Kola peninsula in Murmansk Oblast, Russia's north-westernmost region bordering Norway and Finland (see Figure 3). Contrary to the Sámi in Norway, they do not have a Sámi Parliament and they are not protected by ILO 169, which has not been ratified by Russia. Their main political channels are the Association of Kola Sámi and the Non-Governmental Organization of the Murmansk Region Sámi (Berg-Nordlie, 2011, 2015a). Representatives of these organizations sit as observers on the Saami Council, the transborder Sámi non-governmental organization which mandate is to promote Sámi Rights across Norway, Sweden, Finland and Russia (Saami Council, 2025). Despite the project of a Sámi Parliament, the Kola Sámi Assembly (Sobbar), the lack of political recognition prevented the Sobbar from further developing as a structure for Sámi representation vis-à-vis the regional and State authorities (Berg-Nordlie, 2011, 2015b). The possibility that the Russian central State would accommodate the Sámi by transferring the land title to a co-managing body governed by the Sámi and the Murmansk authorities is not conceivable in a near future for four main reasons: 1) the lack of implementation of the federal Indigenous laws and an especially weak Indigenous policy in Murmansk (Berg-Nordlie, 2015a); 2) the absence of self-rule and shared rule institutions in place and more generally of Indigenous territorial governance in Murmansk (Berg-Nordlie, 2015a); 3) a recent wave of oppression against political dissent in the context of the Russian invasion of Ukraine, which has seen many Sámi activists seek asylum in neighbouring Nordic countries (Bryant, 2024); and 4) the State's interest in the resources of northern Russia and the unlikely possibility that the current Russian government would cede land and resources to a non-State actor that borders the West (Berg-Nordlie, 2015a).

The situations in Finland and Sweden are incomparable to that of Russia but nonetheless show impediments to institution building beyond what is already in place. In Finland, Sámi cultural and

linguistic rights have been recognized in the constitution since 1995. In Sweden, it was only in 2010 that the rights of the Sámi to preserve and develop their culture were enshrined in the constitution. The Sámi Parliaments in Sweden and Finland were respectively established in 1993 and 1996. Their mandate mainly involves the promotion and protection of Sámi culture and language (Johansson, 2016; Stepien et al., 2015). In Sweden, the Sámi Parliament's concurrent role as a government agency and Indigenous political body is often highlighted as a major impediment to Sámi self-determination. In comparison to Norway and Finland, the Sámi Parliament in Sweden operates a lot more under the control of the State (Henriksen, 2008; Johansson, 2016; Josefsen et al., 2015; Stepien et al., 2015).

The question of Sámi land rights in Finland and Sweden is a step back from Norway for several reasons. First, neither Finland, nor Sweden has ratified the ILO 169 convention, limiting the recognition and protection of the Sámi land rights. Second, there is neither comprehensive domestic legislation recognizing and circumscribing Sámi land rights, nor a process of Sámi land rights identification that is underway (Boirin-Fargues and Thériault, 2024).[153] For example, the recognition of Sámi land rights in Sweden mainly concerns reindeer husbandry, which is a right exclusive to Sámi.[154] In Finland, however, reindeer husbandry can be practiced by non-Sámi (Boirin-Fargues and Thériault, 2024; Stepien et al., 2015). Third, the Sámediggi in Norway gained capacity to act on decisions affecting land use, notably through consultations (*Mineral Act, Planning and Building Act*). In Finland, the State has the "obligation to negotiate" with the Sámi Parliament on matters such as "community planning; the management use, leasing and assignment

[153] However, initiatives aligned with the protection of Sámi land rights and enabling the participation of Sámi to resource management should not be overlooked. In Sweden, the management of the Laponia World Heritage Site was delegated to Laponiatjuottjudus, a non-profit organization exercising the co-management responsibility. On the board of Laponiatjuottjudus, Sámi representatives are in the majority and efforts were conducted to include Sámi practices and perspectives in the management framework. While this case was groundbreaking in Sweden, the fact that it is a temporary arrangement casts doubts on its longevity. Moreover, outside of Laponia, perspectives of Sámi influence in land governance and management are limited given the lack off mechanisms and the State's stranglehold on land governance (for more details, see Reimerson and Flodén, 2023).

[154] Recognizing this right does not prevent conflicts with the forestry industry. Forest harvesting removes lichen, which is the preferred food of reindeer. However, preserving lichen-rich old forests is not economically viable for the industry. Teitelbaum et al. (2023) argue that joint management between the reindeer herders and the forestry industry could benefit both actors by using selective cuts instead of clear-cuts. However, selective cuts are prohibited by the *Swedish Forestry Act*. Currently, no such joint arrangements exist. Teitelbaum et al. (2023) also explain that Sweden's FSC National Forest Stewardship Standard, the norm for responsible forest management, was revised in 2020 and requires companies to include reindeer herders in the planning process. However, in the event of a dispute, the companies have the final say in the planning process. This leads the authors to conclude that an effective planning process that includes the Sámi in the decision-making process has yet to be developed.

of state lands, conservation areas and wilderness areas; and applications for licences to stake mineral mine claims or file mining patents" (*Act on the Sámi Parliament*, 1995, sect. 9).[155] Legally, this enables the Sámi to exercise shared rule for matters of land use. However, the *Act on the Sámi Parliament* has neither translated into consequential political actions by the government, nor into the creation of political spaces for the Sámi (Johansson, 2016; Stepien et al., 2015). In Sweden, the lack of consultation was addressed in 2022 with the law on consultation on matters concerning the Sámi. As this law is a recent addition to the Swedish legal landscape, its impact and implications will need to be observed and assessed over time (Reimerson and Flodén, 2023). In short, the weaker legal and political position of the Sámi Parliaments in Finland and Sweden, and the lack of a framework recognizing, identifying and protecting Sámi land rights, do not provide adequate foundations for a land-based regime of shared governance such as FeFo.

In conclusion, the EIJBRG and FeFo, or at least some of their features, could translate in other contexts under the right conditions – demographic reality, geographical and ethnopolitical setting, history of institution building and compliance with international laws, among others. So far, however, no other region seems institutionally prepared to welcome the changes brought by the EIJBRG and FeFo. Furthermore, as previously mentioned, it is debatable whether the FeFo's current institutional design is desirable in other contexts. Nordic States should pay attention to developments in Finnmark but refrain from replicating the contradictions found in the *Finnmark Act.*

[155] Article 2 of Section 9 of the *Act on the Sámi Parliament* provides that "in order to fulfil its obligation to negotiate, the relevant authority shall provide the Sámi Parliament with the opportunity to be heard and discuss matters. Failure to use this opportunity in no way prevents the authority from proceeding in the matter."

CONCLUSION

This thesis compared the EIJBRG and the FeFo through four research questions: 1) what can be said about the nature of Indigenous – non-Indigenous relations within the EIJBRG and FeFo based on their respective functions and the issues they face with regards to land management?; 2) to what extent are the EIJBRG and FeFo fitting vehicles for Indigenous self-determination?; 3) what can both institutions learn from each other's experience?; 4) could these models be applied to other Indigenous – non-Indigenous settings?

The first research question looked at the nature of Indigenous – non-Indigenous relations within the EIJBRG and FeFo based on their respective functions and the issues they face with regards to land management. For both cases, assessing trust and relationship building, as was initially intended, turned out to be a hard task. Nonetheless, some takeaways can be drawn.

Almost all decisions taken by the EIJBRG are adopted unanimously. This suggests that relations are generally harmonious between members of the two groups and that consensus is reached, even when the subjects discussed are thornier (e.g. forestry operations; moose and caribou harvesting; and cabin leases, among others). A few hypotheses can explain this. First, it is possible that tensions or disagreements between members are addressed and tempered the day before the meetings since the members meet informally (EIJBRG, 01/2019; Simard and Brisson, 2020). Second, it is also possible that non-partisan issues such as funding issues and poor coordination by the MNRF have brought the Eeyouch and Jamesians closer together and in opposition to the government. Third, the history of antagonism/collaboration, which transitioned to relationship building and shared understanding over time, could have facilitated bicultural collaboration (Ansell and Gash, 2007; Motard, 2015). Regarding the FeFo, no information specific to the relations between the members could be found. However anecdotal, the case of the Nussir mine, where members voted along the position of their appointing institution, suggests divisions mirroring those between the Sámediggi, the FeFo and the Finnmark County.

Indigenous – non-Indigenous relations. The first question of this thesis focused on the relations of the EIJBRG and FeFo with the satellite actors involved in the management of land and resources. In EIJB, issues of funding underlie the diminished role of the RLNRC and the failure to produce a RPILRD (see subsection 4.1.6). The funding issue has drawn frustration from the members vis-à-

vis the MNRF and the Government of Québec and does not seem to be resolved. The lack of funding and inability to produce the regional land use plan had a negative effect on many other issues of importance for the EIJBRG. Among those, the lack of a land use plan prevented the RLNRC from addressing the moratorium on cabin leases, which has been a source of tensions between Eeyouch and Jamesians since 2012 (CNG, 2019-2020; EIJBRG, 01/2016). At a broader scale, the lack of regional planning could impede the efforts of harmonization with planning on category II lands and thus affect the collaboration between the EIJBRG and the CNG prescribed by the AGEIJB (AGEIJB, 2012, art. 31, 130b).

The AGEIJB overlays an already complex regime which is conducive to misunderstandings and tensions relative to Treaty Rights (see subsection 5.1.5). Concerns were raised among Eeyouch that the Québec government would bypass the privileged forum with the CNG to address issues concerning their rights with the EIJBRG directly (see subsection 4.1.6). Amidst the creation of the Assinica National Park, Grand Chief Coon Come also voiced concerns regarding access to the land and the loss of rights, as hunting and trapping are prohibited pursuant to the *Parks Act.* Even though the JBNQA has precedence over the *Parks Act*, the Grand Chief expressed fears that confusion in the application of the law would encroach on Eeyou Treaty Rights and asked for the support of Jamesian elected officials. This fear, and the desire to collaborate, were repeated by the EIJBRG then-president, Manon Cyr (EIJBRG, 07/2015).

The entanglement of institutions in the region and the technical complexity this entails showed the need to clarify the role of the EIJBRG – alleviating perceptions that it replaces existing institutions – and proceed to the harmonization of the different planning tools with the regimes of the JBNQA and Paix des Braves (EIJBRG, 11/2015, 03/2017). Further, the lack of transparency, consultation and overall spirit of collaboration of the Québec government with both the RLNRC and LILRMPs (see subsection 4.1.6) calls for more orchestrated public participation, as well as a better understanding from the government of the complex regional reality of EIJB. Thus, a follow-up on the actors' knowledge and perceptions of the regime would allow to see whether an evolution has occurred over time and if it had any influence on the relations and operations of the EIJBRG.

Regarding the FeFo, this thesis showed that the nature of relations with the other actors are shaped by four interrelated variables: 1) the mandate of the FeFo (public/ethnic); 2) its roles (co-manager/landowner); 3) public opinion; and 4) the contradictions framed in the *Finnmark Act*.

First, the fact that the FeFo must manage Finnmark both as a basis for Sámi culture and on behalf of all Finnmarkers makes the institution walk a fine public/ethnic line. Thus far, the FeFo has not been a proponent of Sámi Rights, generating tense relations with Sámi municipalities and the Sámediggi, which has traditionally defended Sámi Rights (see subsection 4.3.5). Second, the public-oriented mandate that the FeFo chose to exercise, combined with its ability to generate income as a landowner, led the institution to support development projects to which other Sámi actors opposed (e.g. the Nussir mine). Indeed, having chosen to support development on behalf of the greater interest of all Finnmarkers, the FeFo fails to protect the land rights of the Sámi engaged in the traditional culture and economy (e.g. reindeer herders). On the other hand, the FeFo is self-financed, so it has incentives to support land development projects to fund its operations. It must be said as well that over time, the agency of the Sámi municipalities and Sámediggi to influence land use planning and development probably played out in FeFo's decision to defend other interests, namely those of the non-Indigenous majority and of the Sámi supporting development projects. Others, however, would argue that FeFo's protection of Sámi land rights is crucial since it is the only territorial institution having such authority (see Spitzer and Selle, 2019). Third, the FeFo must cope with a generally negative public opinion. This has influenced the choice of the FeFo not to overly support Sámi land rights to avoid reinforcing negative perceptions among non-Sámi (see Broderstad et al., 2020; Josefsen et al., 2016). Finally, the contradictions built in the *Finnmark Act* underly the relations of the FeFo with other actors, condemning the FeFo to exercise incompatible functions. The concurrency of being a land manager and landowner has produced situations such as the conflict around the Nussir mine (see subsection 4.3.5). More broadly, it highlights the delicate, if ever irreconcilable challenge of balancing conservation and development with which the FeFo is tasked.

Whereas the internal and external dynamics of the EIJBRG and FeFo reveal misunderstandings, a lack of implementation and important gaps in how land should be used, it would be wrong to affirm that the institutions are embedded in a state of conflict. Nonetheless, they both face important challenges. While the experience of the EIJBRG appears relatively seamless, the complexity of the overlapping of agreements and structures is an impediment to shared understanding among members. In that respect, education on the JBNQA regime (including subsequent agreements) and on the structures and institutions of land and resources management is necessary. Furthermore,

efforts to provide the right funding to the EIJBRG to undertake its planning duties will be crucial to ensure that the government respects its treaty obligations.

In Finnmark, the situation of the FeFo is more complex since it faces deep-seated issues which are hard to overcome without undertaking a major overhaul of the *Finnmark Act*. Nonetheless, some of the solutions to normalize the relations with the Sámediggi and other Sámi actors could draw on the negotiations that led to the *Finnmark Act*, which were unprecedented in Norway. This MLG space could be reestablished to gather the actors of the *Act* and discuss the main issues the FeFo faces. Notably, reflecting on the roles of landowner and co-manager of the FeFo against the title-securer mandate of the Finnmark Commission would be a crucial step towards making the *Finnmark Act* more consistent and less competitive. The capacity of the FeFo to have a say on the Commission's findings and FeFo's stranglehold as Finnmark's landowner – while ownership rights on those lands is currently being clarified and FeFo's ownership of those lands is not guaranteed over time –, show the incongruity of opposing two institutions working towards the same goal (Spitzer and Selle, 2023). Another related issue would be that of the land developer role of FeFo and especially *when* such a role should be exercised, not to bypass the investigations of the Commission (Spitzer and Selle, 2023). Were the FeFo to support projects affecting Sámi traditional lands, increased efforts of collaboration should be undertaken between the Sámediggi and FeFo to establish common grounds and develop solutions that meet as much as possible the concerns of both "traditionalist" and "modernist" Sámi. In that way, both institutions would favorably work towards Sámi self-determination.

Indigenous power and influence. The second research question aimed to determine whether the EIJBRG and FeFo are vehicles for the self-determination of Eeyouch and Sámi. Drawing more particularly on the notion of relational self-determination, this thesis showed that the EIJBRG and FeFo innovate in exercising a local form of self-rule and shared rule *through* shared authority. In fact, both institutions empower the Eeyouch and the Sámi to partake in joint decision-making while exercising influence on decisions that rest in the authority of the State (e.g. forestry planning, mining development).

Concerning the EIJBRG, the main leverage of Eeyou influence and power is the evolution of the composition of the board (AGEIJB, 2012, art. 85). Even though the possibility of a Eeyou-led board should not be further considered (see subsections 4.1.5, 5.1.4), monitoring how this issue

will be dealt with by the members of the board will provide a good idea of the relations between members and the common vision both sides have managed to develop.

The RLNRC and LILRMPs are the two main spaces of shared rule allowing the Eeyouch to have a say on land use and forestry on category III lands. However, given the lack of activity of the RLNRC, the absence of a RPILRD and the fact that the LILRMPs are multistakeholder forums, not privileged spaces of collaboration between Indigenous and non-Indigenous Peoples, it must be admitted that the EIJBRG, since its inception, has come short of re-empowering the Eeyouch regarding land use planning on category III lands. In the coming years, it will be necessary to monitor the progress of the RLRUP on category II lands to notice if it can positively influence the progress of the RPILRD.

Regarding the LILRMPs, it appears as though the Eeyou trappers and tallymen use the panels to voice their concerns, particularly in Waswanipi (see subsection 4.1.6). This shows that in EIJB, the LILRMPs are not only forums for consensus building and perspective sharing (see Leclerc and Andrew, 2013) but also reclaimed spaces by Eeyouch who speak out the consequences of development on their land. In this context, the LILRMPs are important spaces as they expose the other stakeholders to the perspectives of Eeyou land users. Thus, if forest co-management is crucial to operationalize the Nation-to-Nation relation (e.g. the CQFB), the participation of Eeyouch at the local level (LILRMPs) is also instrumental in raising awareness and shared understanding with non-Indigenous stakeholders (see Natcher et al., 2005; Rivard et al., 2017).

For the FeFo, the first research question provided some answers to the second. Sámi influence in the operations of the FeFo – understood here as the degree to which the "traditional" Sámi culture, economy and land rights are considered in the processes and decisions of the FeFo – has thus far been limited to the equal representation and the voting procedure (see subsection 4.3.5), hardly translating into concrete actions. At the level of Finnmark, the Commission's investigations showed that under the right conditions, the recognition of Sámi ownership rights could be a foothold for the emergence of Sámi-owned parts of Finnmark. However, the case of Kárášjohka showed the complex legal procedures and hurdles to identifying Sámi ownership, let alone the transfer of ownership (see subsection 3.6.4). The endpoint of this case led experts to question whether the limits of Sámi territorial autonomy had been reached (Spitzer and Selle, 2020). Despite the expert's conclusions, ongoing and future investigations by the Finnmark Commission are worth

monitoring. Further, parallel to the question of ownership rights, there will be a need to better define, circumscribe and acknowledge the Sámi land use rights (e.g. the Unjárgga case) that could be brought up in the investigations of the Finnmark Commission. All these considerations circle back to the need to question the capacity of FeFo to rule on the Commission's findings.

Drawing on the actions of the EIJBRG and FeFo, they arguably have both came short of meeting the spirit and intent of their mother agreements in terms of Indigenous influence, albeit to varying degrees. The impediments to the exercise of functions and mechanisms have constrained Eeyou influence in land use and forestry planning. When influence has been exercised, it has been through the LILRMPs, which do not embody a Nation-to-Nation relation. Further, whether the mobilization of the Eeyouch in some LILRMPs strengthened shared understanding and collaboration on category III lands remains hard to assess without directly talking to the actors involved. In the case of the FeFo, limited influence from "traditional" Sámi interests prevented from realizing half of the institution's mandate of managing Finnmark as a basis for "Sámi culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life" (*Finnmark Act,* 2005, sect. 1).

In both cases, the absence of mobilization of traditional ecological knowledge is another important blindspot which meets the critiques that see co-management as the protraction of State power in Indigenous communities and spaces of influence (see Nadasdy, 2003; Stevenson, 2006). While the place of traditional ecological knowledge is arguably less significant in the run-of-the-mill municipal management of the EIJBRG, its absence is more concerning in the case of the FeFo, which was created specifically to manage the land and resources.

Beyond the challenge of including Indigenous knowledge, the fact that most of the EIJBRG's responsibilities and functions were inherited from former structures and institutions (e.g. MJB, RCEO, and RLNRC) embeds the institution within a framework deeply rooted in western-defined municipal bureaucratic and administrative rules and procedures (e.g. regular scheduled meetings, voting procedure based on majority rather than consensus) (see Nadasdy, 2005 in White, 2020). While it is hard to assess whether changes would be desirable, let alone possible, it questions both the very promises of the EIJBRG as a unique institution and whether the re-empowerment of the Eeyouch on category III lands is only cosmetic.

The findings on Indigenous influence should not, however, be reduced to influence within the EIJBRG and FeFo. In EIJB, even if the operations of the EIJBRG have been limited to municipal management thus far, the institution answers to decades of underrepresentation of the Eeyouch in the governance of 80% of their traditional lands. In Finnmark, the FeFo established a territorial authority that complements the non-territorial authority of the Sámediggi, providing the Sámi with an unprecedented type of political influence in Norway. By being innovative spaces of local self-rule and shared rule *through* shared authority, both cases illustrate the possibility of relational self-determination. Although institutional and structural impediments hinder the full realization of relational self-determination, identifying the causes of these impediments in the context and results chapters of this thesis has improved the understanding of the EIJBRG and FeFo, as well as the challenges they face. Hopefully, future research can use this as a starting point to develop solutions that could address the issues that prevent the EIJBRG and FeFo from evolving in accordance with their inceptive spirit and intent.

The EIJBRG and FeFo: mutual lessons. While the EIJBRG and FeFo share the similarity of being shared governance institutions exercising decision-making powers at the regional level, the results of this thesis showed that their foundations and some of their core features produced two very different institutions. These differences are not based on their management actions which share similarities, but rather on their institutional designs, which are based on different legal and political premises (see section 5.2). In fact, the challenges faced by the EIJBRG and FeFo can rarely draw on the other's experience. For example, based on the FeFo's experience with exercising dual roles, the EIJBRG would not gain anything from being a landowner to resolve its funding issues. In turn, the land-tenure sequencing of the *Finnmark Act* is bound to the context of Finnmark and Norway where the lack of treaty-making prevented the clarification of land tenure. The fact that the question of Sámi Rights has been pending for the past 40 plus years led to encroachments with FeFo's governance as both were addressed concurrently in the *Act*. In this respect, drawing on the JBNQA land-tenure negotiations made 50 years ago, which have long cemented the political and social life in EIJB, would provide little if any insights for resolving issues in Finnmark.

Despite the above-mentioned differences, mutual lessons can be drawn, especially for the FeFo. The actors of the *Finnmark Act* could look at the history of the Eeyouch-State treaty relations as an example of constant renegotiation to envision the *Act* as a living agreement. This initiative could

be further supported by the unprecedented experience of negotiations upstream to the *Act.* The recent case of Kárášjohka showed that the regime of the *Finnmark Act* is at the crossroads, as the foundations on which it builds – the Sámi Rights movement – are constrained by the *Act*'s architecture. Indeed, by acting as both judge and party to the findings of the Finnmark Commission, the FeFo reinforces the competition between the protection of the Sámi land rights and FeFo's public mandate.

A reflection on the future of FeFo should consider an overhaul of the *Finnmark Act* to alleviate the competition and the contradictions built into it (see subsection 5.2.1). Practitioners should imagine solutions that would reconcile FeFo's roles as landowner and land manager – if these roles can be reconciled – and protect Sámi land rights and the interests of all Finnmarkers. The English-written literature on the *Finnmark Act* and FeFo does not provide any information on the management structure of the FeFo. Assuming there are no committees under the six-person board, the FeFo could draw on the LILRMPs. While the success of LILRMPs is context-dependent and far from guaranteed (see Andrew, 2013; Fortier and Wyatt, 2014), establishing forums at the municipal level could foster the development of solutions that harmonize different land uses closer to the needs and interests of local populations.

The EIJBRG and FeFo: models for other similar contexts? The generalizability of the EIJBRG and FeFo is limited due to their unique contexts and historical backgrounds. That is particularly true for the FeFo as the situation of Sámi land rights in Sweden and Finland, let alone Russia, does not rest on solid enough foundations to establish a landowning co-management body (see section 5.3). The spirit and intent of the FeFo make it a relevant model, especially in Nordic States where land and resources management has historically been centralized. Somehow, the FeFo should especially serve as a counterexample in terms of land-tenure sequencing and regional governance given its built-in competition and contradictions that are widely discussed in this thesis. That lesson applies to both the Nordic States and the treaty that is currently being negotiated in SLSJ and Côte-Nord in Québec.

Concerning the EIJBRG, parallels were drawn with ongoing treaty negotiations in Québec that could lead to the Petapan treaty, which would be the first modern treaty in the province since the JBNQA in 1975 (see section 5.3). The Petapan treaty provides an opportunity to incorporate provisions for a joint governance arrangement similar to the EIJBRG into the treaty text. Learning

from the governance imbalances that plagued the region of EIJB prior to the AGEIJB, the planning of upstream modalities for shared governance would give the signatory parties a foothold for relationship building early in the treaty implementation journey. In these regions particularly, joint governance would be beneficial to address important shared issues such as forest management. Drawing on the FeFo, a future shared governance body resulting from the Petapan treaty could perform functions beyond the advisory role of treaty co-management, without interfering with the run-of-the-mill powers and responsibilities of the non-Indigenous municipalities. Nonetheless, given the economic importance of the forest industry in SLSJ and Côte-Nord, special attention to the public perception and understanding of the institution would be important to avoid stirring up the negative public opinion, as was the case initially with the FeFo.

Finally, the question of whether models of MLG, such as the EIJBRG, can be applied to non-treaty settings deserves more attention given the importance of treaty-based institutional and relationship building processes in creating the EIJBRG. While the uncertainty of unsettled land claims undermines the development of land and resources MLG arrangements (see Papillon, 2015), there is especially, at the root, a lack of a comprehensive policy on co-management for unsettled lands (see Swerdfager and Armitage, 2023). Determining the conditions on which unsettled MLG could build will be crucial to develop an analytical framework and tools for Indigenous Nations wishing to regain power on their lands without undertaking treaty-making.

Limitations. This research has faced multiple limitations that are important to highlight here. First, the inability to conduct interviews prevented access to first-hand data informing the research questions at a level more truthful to the reality. Conducting interviews with the main actors of the EIJBRG and FeFo would be crucial to have a better understanding of the relations, trust and perceptions of the members, as well as a better sense of the processes and operations of the institutions. For the FeFo, delving into the scholarly literature and documentation in Norwegian and Sámi will be necessary to level up with the information on the EIJBRG and determine whether interviews with the actors of the FeFo and *Finnmark Act* have been conducted.[156] This could help

[156] Josefsen et al. (2016) and Broderstad et al. (2020) interviewed Finnmarkers and land users in the context of their research on the public opinion of the FeFo. Of the literature examined for this thesis, none contained information from interviews with FeFo members.

provide answers – or at least partial answers – on FeFo's procedures and internal relations which are largely unaddressed in the English scholarly literature (see subsection 5.2.2).

Second, discrepancies in the information available is also a notable limitation of this research, which resulted in an uneven analysis of the EIJBRG and FeFo. The analysis of the FeFo only drew on the English literature, limiting the information and perspectives available. This notably reflects in section 5.2, as the larger body of data on the EIJBRG allowed for more detailed takeaways on the functioning of the institution and thus more insights for the FeFo. For the EIJBRG, the lack of important documents such as annual reports and the unavailability of the RLNRC minutes prevented the researcher from developing both a broad picture of the EIJBRG and a more detailed idea of one of the functions assessed in this thesis.

Third, methodological choices made in this research have set aside important considerations. In the case of the EIJBRG, focusing on category III lands only partially answers the question of Indigenous power and influence following the restructuring of the AGEIJB. Further research should adopt a more integrative approach to consider how, for example, the self-rule of the CNG on category II lands has fared thus far, and whether the experience of the CNG could provide takeaways to the EIJBRG in terms of land and resources management. Moreover, the fact that the EIJBRG was assessed only through the spectrum of land and resources management limits the overall conclusions on the experience of the institution.

Lastly, most of the examples provided in the results chapter were anecdotal. For example, issues of communication and consultation between the MNRF and the LILRMPs were highlighted, but these issues were not supported by multiple examples (see subsection 4.1.6). While such examples were relevant to support the descriptions of the phenomena, they, alone, have limited weight. They only represent a sample of the reality of the EIJBRG and cannot be used to convey a generality. This underscores the importance of interviews to confirm or infirm the validity of the claims based on multiple sources.

The state of land and resource collaborative governance under the EIJBRG and FeFo: final remarks. This thesis must be approached like a stepping stone for further research, be it comparative or not. The initial goal was to gain a better understanding of the EIJBRG, for which there is very little research. To do so, the experience of the FeFo, as a similar arrangement on which

little comparative research had been conducted, seemed a relevant case to include. The assessment of the FeFo turned out to reveal the issues it faces instead of providing insightful information for land and resources management in EIJB. The contribution of this thesis has thus been to highlight the main underlying factors facilitating and impeding the governance of the EIJBRG and FeFo in the context of land and resources management.

The findings of this research draw implications for the joint management of land and resources in both regions. First of all, both the EIJBRG and FeFo have established as unique institutions that address long-standing imbalances regarding the representativity of the Eeyouch and the recognition of Sámi land rights. Despite all the issues they face, they represent a foundation on which a more just governance system can be built. Second, they embody the idea inherent to co-management that local land users ought to participate to setting management priorities (Berkes, 2009, 2010; Lockwood et al., 2010). This time, however, both institutions surpass the advisory powers typically exercised in co-management. In this context, MLG was relevant to unpack the power sharing and joint decision-making characteristics of the EIJBRG and FeFo, beyond the notions of collaboration and participation found in co-management (Latta, 2018). Highlighting those distinguishing features can provide a basis for imagining new, decentralized configurations that enhance the agency and decision-making capacity of Indigenous Peoples, both as Nations and in collaboration with local and State actors.

While the groundbreaking characteristics of the EIJBRG and FeFo have not produced significant changes in land management thus far, it is important to bear in mind that they remain relatively new institutions. In the case of FeFo, the lack of precedent and the reluctant public opinion call for relationship building and adaptation to joint governance. The structural issues it faces will require high-level political and legal decisions which are beyond the scope of this thesis. On the contrary, the region of EIJB benefits from a longer history of decentralized regional governance and capacity building which, what is more, fits in a framework that is more responsive to MLG. Hinging on this context, the EIJBRG has arguably more leeway than the FeFo to take charge of the challenges it faces. For the EIJBRG, this could involve, for example, negotiating its own way out of the regional planning framework developed by the provincial government, especially considering that the RLNRC and RPILRD are no longer effective in most regions in Québec. Revitalizing the RLNRC in terms jointly defined by the EIJBRG members or reimagining land and resources management

organizations tailored to regional particularities that do not depend on the goodwill and funding of the Québec government could be solutions to speed up the elaboration of a land use plan and reclaim the innovative institutional space that Eeyouch and Jamesians are building together.

While some of the points made in this thesis are thought-provoking, testing their applicability in real life will require direct interaction with the architects and stakeholders of the EIJBRG and FeFo. Not only would the latter benefit from the insights of this research, but the research would also benefit from their insights to provide a more truthful portrait of the institutions. Indeed, research collaboration between academics and practitioners enables a better, more grounded understanding of Indigenous – non-Indigenous land and resources shared governance. This is a research area that will continue to be of critical importance in the coming years as ever-growing resource development demands and territorial dispossession accentuate pressures on ecosystems and Indigenous lands.

APPENDIX A – Institutional documents used for the EIJBRG

Annual reports of the CNG

Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government. (2014). *40 Years of Modern Cree Nation-Building. Annual Report 2013-2014*. https://www.cngov.ca/wp-content/uploads/2018/03/gcc-cra-annual-report-2013-2014.pdf

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Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government. (2016). *Annual Report 2015-2016*. https://www.cngov.ca/wp-content/uploads/2018/01/gcc-cng-annual-report-2015-2016.pdf

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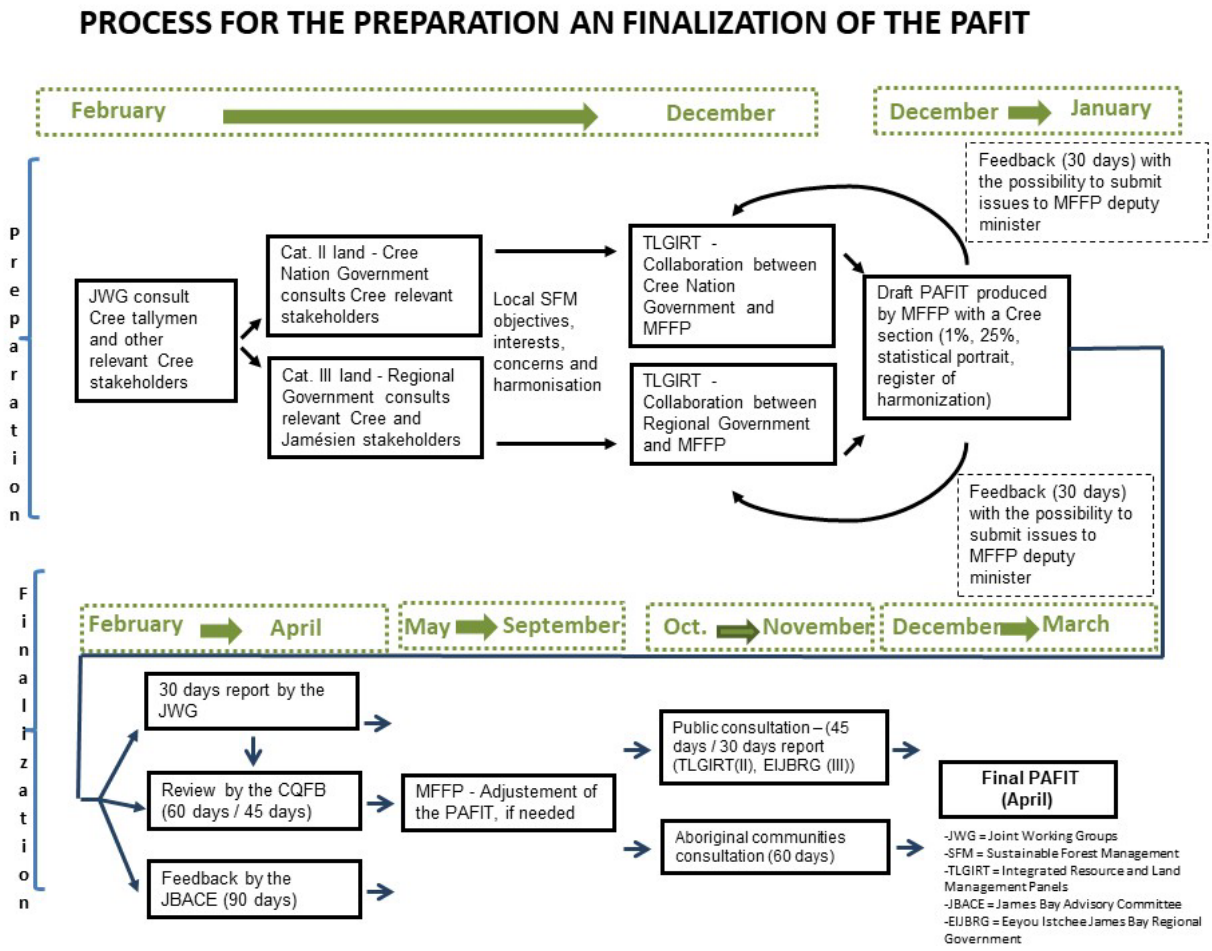
APPENDIX B – Elaboration process of a TIFMP



Source: CQFB (2018c).

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