|  |  |  |
| --- | --- | --- |
| Office of the High Commissioner for Human RightsCEDAW-committee   |  |  |
|

|  |  |  |
| --- | --- | --- |
| Your refCEDAW/GRIWAG/2021/2 | Our ref22/324-19 | Date15 February 2022 |
|  |

 |

Draft General Recommendation No. 39 on the rights of indigenous women and girls
- comment from Norway

Dear Ms. Gladys Acosta-Vargas,

The Norwegian Government (Norway) presents its compliments to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) and has the honour to refer to the Committee’s invitation of 16th December 2021 concerning Draft General Recommendation no. 39 on the rights of indigenous women and girls. We thank the committee for the extension of the deadline for submission of Norway’s comments. Norway is a longstanding party to the CEDAW convention and its Optional Protocol and is firmly committed to upholding its obligations under these instruments. The CEDAW convention and the Optional Protocol are incorporated into Norwegian law through the Human Rights Act and thus take precedence over conflicting provisions in other national legislation.

We thank the Committee for drafting this General Recommendation and creating attention to the multiple forms of discrimination indigenous women and girls are subjected to. Norway has the following comments:

The introductory sentence of paragraph 7 seems to belittle the role played by successful indigenous women and girls in today's society by indicating that their role as leaders is limited to their own communities. In addition, some indigenous women are recognised as great artists both within and outside of their own communities, thus reaching beyond pure transmission of culture, and there are also great scientists among them. In our view, recognising the achievements of the most successful indigenous women would not take anything away from the main concerns of the proposed recommendation.

As a consequence, we propose that instead of “7. Indigenous women and girls play a key role in their communities as leaders; transmitters of culture; custodians; food producers and guardians of native seeds; …”, the sentence should rather be phrased as follows:

“7. Indigenous women and girls play *key roles as leaders; artists; scientists;* transmitters of culture; custodians; food producers and guardians of native seeds; …” (proposed revision in italics)

Reference is made to paragraph 10 where The Committee calls upon states to undertake efforts to collect data disaggregated by sex and ethnic origin.

We acknowlege the importance of reliable data and statistics. However we keep no registers in Norway on the basis of ethnicity apart from data on country of origin and citizenship. One exception is the Sami Parliament’s electoral roll, where registration is voluntary. Statistics on the Sami population is however produced based on a geographical delimitation.

Statistics Norway has developed informative statistics on the Sami population. Every other year, the agency issues a publication on Sami statistics which contains table data on population, education, language and working life. Furthermore, an Analysis Group for Sami Statistics, which is a central government committee in which Statistics Norway and other agencies are represented, has been established. Every year, this committee issues a publication entitled *Samiske tall forteller* [Sami Figures Relate], which contains articles that offer broad coverage of Sami society.

The Government is in dialogue with Statistics Norway, which states that several ongoing activities may be relevant or contribute to producing some of the data requested by the CEDAW committee, including work on indicators for the United Nations Sustainable Development Goals.

It is otherwise Norway's assessment that the collection of data on groups that has been discriminated against, or have a significant risk of beeing discriminated against as a group, as a general rule must be based on self-reporting or done in close collaboration with the groups' representatives or interest groups. Reference is also made to the Personal Data Act and the European the provisions of the Privacy Regulation on sensitive data.

Reference is made to paragraph 10, 22, 28 (i), 71 (c) and 78 (f) where the Committee refers to the principle of free, prior and informed consent. The Government would like to take the opportunity to underline that the concept of free, prior and informed consent is closely connected to consultations. Consultations are conducted [in good faith] in order to obtain a free, prior and informed consent, however, it can't be regarded as a general "veto power" for indigenous peoples over decisions that may affect them.

The concept of free, prior and informed consent is referred to in several international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples article 19. Consultations serve as an important tool to secure participation from indigenous peoples in decision-making processes and as a tool to increase knowledge of indigenous peoples' issues in Government ministries and agencies. While the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is not a legally binding document, it does provide important guidance. Article 19 declares that states should consult in good faith in order to obtain a free, prior and informed consent. As observed earlier by James Anaya in his capacity as Special Rapporteur on Indigenous Peoples (A/HRC/12/34), this provision of UNDRIP should not be regarded, as according to indigenous peoples, a general “veto power” over decisions that may affect them, but rather as establishing consent as the objective of consultations with indigenous peoples.

The UN Human Rights Committee has also interpreted ICCPR article 27 as to involve a requirement for indigenous peoples’ right to effective participation in decision-making processes. In exceptional and severe circumstances, it is assumed that there is a duty to obtain a free, prior and informed consent from the affected indigenous people. The duty to *consult*, with the aim of obtaining free, prior and informed consent applies in a wider set of cases.

The Norwegian parliament adopted in June 2021 rules on consultations with Sami interests in a new chapter of the Sami act. The new provisions came into force 1 July. The new legislation makes it statutory for the Sami parliament and other representatives of Sami interests to be consulted in cases that may directly affect Sami interests. The duty to consult apply to government bodies at central, county and municipal level. The consultations shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures. Consultations with the Sami parliament and other affected Sami interests imply that it should be made a real effort to reach agreement on the proposed measures. However, the consultation obligation is not a right to veto. If agreement is not reached, the public authorities make the final decision.”

Reference is made to paragraphs 13, 28 (f), 76 L and 77 where the Committee refers to indigenous women’s and girls’ “right to a clean, healthy, and sustainable environment” and that “Under international human rights law, States should take individual and collective actions to address climate change”. The Government agrees that numerous linkages exist between human rights and the environment. All states should step up efforts to protect the environment, to reduce emissions, and to choose sustainable solutions. And in doing so, ensuring that human rights are protected and promoted. However, the political recognition of the right to a clean, healthy, and sustainable environment does not have legal effects and thus cannot be used as a legal argument, [Statement Norway](https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/48session/Pages/Statements.aspx?SessionId=46&MeetingDate=07/10/2021%2000:00:00), Human Rights Council 48th session, resolutions 28 October 2021, HRC/RES/48/13.

Concerning paras. 76-78 more specifically, we fail to see that a right to a clean, healthy, and sustainable environment can be derived from Articles 12 or Article 14. There are also statements in these paragraphs that in our view are  too categorical or far reaching, without sufficient basis in the text of the Convention, for instance when it is stated that «[t]he failure of states to take adequate action to prevent, adapt to, and remediate these serious environmental harms constitutes a form of discrimination and violence against indigenous women and girls that needs to be promptly addressed». We suggest that paras. 76-78 are rephrased in order make clear that these paragraphs concern environmental aspects of existing rights, and not an independent right to a clean, healthy, and sustainable environment, which is not recognized by the States Parties to the Convention.

«The first four sentences of para. 46 of the draft General Recommendation reads as follows:

*«States should have an effective legal framework and adequate support services in place to address gender-based violence against indigenous women and girls. This framework must include measures to prevent, investigate, punish perpetrators, and provide assistance and reparations to indigenous women and girls who are victims, as well as services to address and mitigate the harm, of gender-based violence. This general obligation extends to all areas of State action, including the legislative, executive, and judicial branches, at the national, regional and local levels, as well as privatized services. They require the formulation of legal norms, including at the constitutional level, and the design of public policies, programs, institutional frameworks and monitoring mechanisms, aimed at eliminating all forms of gender-based violence against indigenous women and girls, whether committed by State or non-State actors.»*

We cannot see that there is basis in the Convention for requiring legal norms at the constitutional level aimed at eliminating gender-based violence against indigenous women and girls. Footnote 66 of the draft General Recommendation refers to General Recommendation 35 on gender-based violence against women, para. 24(b). However, para. 24(b) of General Recommendation 35 does not mention legal norms at the constitutional level, but the duty for states «to have laws […] in place to

address such violence». Consequently, we suggest deleting *«at the constitutional level»* from the fourth sentence of para. 46. Alternatively, this sentence could be rephrased in order to make clear that including such legal norms at the constitutional level is a recommendation from the Committee, and not an obligation stemming from the Convention.

With reference to para. 54(c) of the draft General Recommendation, Norway assume that the recommendation is to be understood within the framework of the Refugee Convention.

Yours sincerely

|  |  |
| --- | --- |
| Elisabeth Lier HaugsethDirector General | Georg Hilmar AntonsenSenior Adviser |

This document is signed electronically and has therefore no handwritten signature

Copy: Noregian Ministry of Foreign Affairs and
Norway’s Permanent Mission to the United Nations in Geneva