**Country engagement, agenda item 6 – EMRIP session July 11th**

**Introductory statement from Government of Norway**

By: Bjørn Olav Megard, Director General

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Chairperson,

I will begin by thanking the Expert Mechanism for organising this panel, and to recognise the presence of the President of the Sámediggi – the Sami Parliament of Norway – and of the Vice President of the Saami Council and thank them for their interventions.

We appreciate this opportunity to address some of the topics arising from the Expert Mechanism’s country visit in Norway in March this year.

As has been mentioned by previous speakers, the initiative for this engagement came from the Saami Council, an international Sami civil society organisation.

I would like to reaffirm our satisfaction with the process leading to the terms of reference for the country visit. The Sámediggi – the political institution representing the Sami in Norway – was given its proper role in that process, and in the terms of reference, and we had a constructive dialogue on the topics to be covered during the country visit.

The terms of reference take note of the Norwegian government’s understanding of some key issues, including how the concept of free, prior, and informed consent should be understood.[[1]](#footnote-2)

We were pleased to note that the experts had a good experience during their travel in Norway, and I must emphasise that the honour for this should be given to the hard-working council members, staff, and volunteers of the Saami Council, who made a big effort to make the whole trip possible. A big thank you to them!

During the visit, we had a dialogue with the delegation on several topics, including our consultation mechanisms, the planning legislation, energy law and the ongoing work on a new minerals act.

As we have not yet received the draft report from the visit, we will address some of the topics from the dialogue during the visit, including the issue of how to understand and implement the aim of working towards consent.

Chair,

The Norwegian state was established on the territory of two peoples, Sami and Norwegians. 40% of mainland Norway has some form of traditional Sami presence. In most of the traditional Sami area, Norwegians and Sami have lived and are living mixed and intertwined. There is a long history of shared, competing, and complementary use of land and waters. The Sami have usually been in the minority.

More recently, a key challenge of Norway’s policy on Sami land use, has been one of recognising and protecting traditional land use, and balance that interest against other, legitimate, uses of land. Striking that balance has not always been straightforward, and occasionally quite contentious.

As was mentioned in the previous intervention, in 2023 the Norwegian government approved changes to the LNG plant at Melkøya that are required for the plant to be run on electricity from the grid rather than on natural gas.

The Sami Parliament has given formal notice that it will challenge the validity of this approval in court due to an alleged breach of the duty to consult.

The position of Norwegian government is, however, is that all relevant procedural rules have been followed and adhered to.

Since the case may soon be before the courts, it is not appropriate for me to comment this topic any further.

Chair,

In current legislation and government practice in Norway, the concept of free, prior, and informed consent comes up through two main avenues, the consultation procedures and article 27 of the ICCPR.[[2]](#footnote-3)

The one most used is the procedures for how the ministries and agencies are to consult the Sami regarding proposed legislation or measures, with consent or agreement being the key aim. The procedures were agreed upon in 2005, implementing article 6 of the ILO Convention No 169. In 2021, they were adopted as a new chapter 4 of the Sami Act, where it is clarified that the duty to consult also applies to the regional level and to the municipal governments.

The right to be consulted does not include a right on the indigenous side to block or veto measures or legislation, but there is a duty on the government to try, in good faith, to find a solution, a compromise, and to continue the process when there is a realistic chance to reach agreement.[[3]](#footnote-4) The duty to make a real effort to reach agreement is considered to be increasingly strong when the issues are of great importance for the Sami’s traditional culture and way of life.

There are measures to ensure that efforts to reach agreement are made in good faith, and there is a requirement for written documentation of the process. Written documentation is important when another body takes the final decision, for example the Norwegian Parliament.

Agreement or consent is often reached in the consultation processes, meaning this system works. And, it is anchored in binding law, ensuring legitimacy for the system within the government apparatus.

The procedures leads to the government making better decisions, and to learning and more knowledge, on both sides. Ideas arise that make the final decision better, and different than either of the original positions.

Chair,

The other important way consultations and free, prior, and informed consent is part of our legal system, is through the ICCPR article 27, which is incorporated into Norwegian law and prevails in case of conflict with other legislation.

Opinions from the Human Rights Committee[[4]](#footnote-5) make it clear that when a measure negatively impacts the land use of individuals for an indigenous people, it is important to assess both whether there has been a good faith ***effort to seek*** agreement, and whether free, prior, and informed consent has ***actually been reached***. These are important factors in determining whether the threshold for breaching article 27 has been reached, or not.

In the Fosen case from October 2021 the Supreme Court recognised and clarified that these factors are important considerations also in domestic law in Norway.

In that case, agreement has been reached, after a mediation process. The parties agree that the agreement secures the reindeer herders rights according to ICCPR article 27.

To sum up, the obligation of the state of making a real effort to reach consent or agreement is a key, both in the consultation procedures in the Sami Act and as an obligation under article 27. And these obligations are binding domestic law in Norway.

We look forward receiving the draft report from the country visit to Norway and to our discussion in the panel today. I look forward to any questions you might have.

Thank you for the attention.

Thank you, Chair.

1. We refer to Terms of Reference heading 5 (purpose), subheading iv for references to previous statements from the Government of Norway on these topics, cf. footnote 3. [↑](#footnote-ref-2)
2. A third avenue is through article 16 (2) of ILO Convention No 169, on forced removal. See A\_HRC\_33\_42\_Add.4-EN. It is a little practical relevance in Norway and is not expanded on in this statement. [↑](#footnote-ref-3)
3. See Terms of Reference V) Purpose iv., with reference to Norwegian Government’s comments/Addendum to the Report of the Special Rapporteur on the Rights of Indigenous Peoples on the human rights situation of the Sámi people in the Sápmi region in Norway, Sweden and Finland (A\_HRC\_33\_42\_Add.4-EN.pdf). In addition to the Norwegian Government’s statement in the Human Rights Council in 2016: [https://www.norway.no/en/missions/wtoun/ nig/statements/hr/hrc/hrc-33rd-session-13-sept.---30-sept/item-3/item-3--- statement-on-indigenous-peoples-and-emrip/](https://www.norway.no/en/missions/wtoun/%20nig/statements/hr/hrc/hrc-33rd-session-13-sept.---30-sept/item-3/item-3---%20statement-on-indigenous-peoples-and-emrip/) [↑](#footnote-ref-4)
4. In particular the Poma Poma case. [↑](#footnote-ref-5)