

Special Rapporteur on the Rights of Indigenous Peoples - Written input for the situation of Mobile Indigenous Peoples

March 2024

The Sámi Parliament of Norway wishes to thank the Special Rapporteur on the Rights of Indigenous Peoples for this opportunity of providing information and descriptions of the situation of Mobile Indigenous Peoples.

In the following, we will only be describing the situation of the Nomadic reindeer herding part of the Sámi people, as your request specifically concerns Mobile Indigenous Peoples. The descriptions are brief and based on existing reports and legislation. The Sámi Parliament of Norway will be happy to provide further information if necessary.

Land and resource rights

1. Please provide examples of law, policy or other safeguards developed, in compliance with international human rights standards, to protect against the eviction and forced or induced sedentarisation of mobile Indigenous Peoples from their traditional territories, including access to effective remedies such as judicial recourse, restitution and fair compensation.

There are a set of laws, policies and regulations developed to protect against eviction and forced or induced sedentarisation from traditional territories. A relevant selection is provided here.

- The Norwegian Constitution § 108, where “The authorities of the state shall create conditions enabling the Sámi people to preserve and develop its language, culture and way of life.” This was inspired by the International Covenant on Civil and Political Rights (ICCPR) art. 27.
- ICCPR has been incorporated to national law by the Human Rights Act (1999), along with Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, and Convention on the Rights of the Child.
- Convention on Biological Diversity
- United Nations Declaration on the Rights of Indigenous Peoples
- Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- The Sámi Act
- Finnmark Act
- Reindeer Husbandry act
- Trollheimen Act
- In addition, some of the national sectoral legislation has elements designed to safeguard access to traditional territories, for example; The Planning and Building Act, Nature Diversity Act

2. Please describe the impacts of extractive industries, tourism projects, conservation initiatives and climate change mitigation and adaptation measures on mobile Indigenous Peoples' rights and indicate whether they are consulted on projects that impact their lands, territories and resources. Please identify any other existing threats to mobile Indigenous Peoples' land rights.

The impacts have been described in different reports. A few reports in English concerning this issue is provided here:

- Norwegian Human Rights Institution, "Canary in the Coal Mine" (February 2024) <https://www.nhri.no/en/2024/canary-in-the-coal-mine/>
- Norwegian Human Rights Institution, "Human Rights Protection against Interference in Traditional Sámi Areas", (April 2022) <https://www.nhri.no/en/report/human-rights-protection-against-interference-in-traditional-Sámi-areas/>

The report "Reindriftras hverdag – interne og eksterne forhold som påvirker reineiere"¹ (translates to: «Everyday life in nomadic reindeer herding – internal and external factors affecting reindeer herders»), describes how the overall effects of protected predators, cabins and cottages, tourism and modern ways of using mountains and tundras (snowmobiles, ATVs, paragliders, bikes etc.), roads, traffic and power development, sums up affecting their daily lives, economy, physical and mental health, and limits access to traditional territories.

Statistics on whether or not mobile Indigenous Peoples are consulted on projects that impact their lands, does not exist in Norway. Neither does statistics or qualitative research on how consultations are practiced and how effective they are in matters of safeguarding traditional territories.

The Sámi Parliament irregularly receives informal feedback about consultations Sámi nomadic reindeer herding communities engage in. The information given in the feedback show inconsistency in the practice of consultations. It varies when they happen, what cases, how thorough they are, and how the Sámi nomadic communities perceive that their information and opinions are received or acted upon.

Political, economic, and social rights

3. Please indicate whether mobile Indigenous Peoples are guaranteed political representation and explain their level of participation in decision-making at the national, regional, and local level. Please indicate if their rights are recognized in Constitutions or other relevant laws.

Nomadic Sámi reindeer herders can vote in national elections, and local elections in the municipality where they live. The Sámi Parliament is democratically elected by and among the Sámi. It is an indigenous parliament and deals with all matters concerning the Sámi people.

Concerning decisions made in local municipalities however, Nomadic Sámi reindeer herders move through many municipalities. Voting in local elections, is limited to the inhabitants of each municipality. Which municipality you shall vote in, is decided by which municipality you pay your taxes too. Nomadic Sámi reindeer herders, as others, are limited to voting in only one municipality. Because of this, they often don't have the legal possibility to participate in

¹ Møllersen, Snefrid, Stordahl, Vigdis, Eira-Åhren, Inger Marit og Tørres, Grete (2016). Reindriftras hverdag interne og eksterne forhold som påvirker reineiere. (Delrapport 1)

local democracy in both/all the municipalities where they have their traditional territories. Moving to another municipality for the right to vote, may affect their childrens legal rights and practical possibilities to education in Sámi language, as this vary between municipalities. In addition to this, nomadic reindeer herders are a minority, with limited possibilities of influencing through democratic elections. National legislation on consultation for municipalities has been adopted in The Sámi Act, chapter 4 in June 2021.

4. Please identify the main barriers to mobile Indigenous Peoples' participation in political, economic or social projects that impact their rights.

Enforcement and implementation is mentioned as an area to focus on by EMRIP, and The Sámi Parliament agrees to this. As we have explained, it is an issue that legislative safeguarding is not as effective as it should be, because of how it is practiced by both state authorities and municipalities.

July 1st, 2023, national legislation regarding establishment of wind power changed. From then, it is necessary that the local municipality where the wind power plant is planned to be located, must process the case in the municipal council. This process shall be done in accordance with The Planning and Building Act, by adopting an area regulation. This change in legislation was done to make sure municipalities, through local democracy, shall be able to decide regulating areas to wind power plants, instead of State authorities.

Nomadic Sámi reindeer herders, however, move through many municipalities. Voting in local elections, is limited to the inhabitants of each municipality. Which municipality you shall vote in, is decided by which municipality you pay your taxes too. Nomadic Sámi reindeer herders, as others, are limited to voting in only one municipality. Because of this, they often don't have the legal possibility to participate in local democracy in both/all the municipalities where they have their traditional territories. Moving to another municipality for the right to vote, may affect their children's legal rights and practical possibilities to education in Sámi language, as this vary between municipalities. In addition to this, nomadic reindeer herders are a minority, with limited possibilities of influencing through democratic elections. National legislation on consultation for municipalities has been adopted in The Sámi Act, chapter 4 in June 2021. However, The Sámi Parliament notices that municipalities practice their obligation to consult very differently. Clarifications on best practices in specific similar cases are needed, for instance in cases of municipal councils processing area regulations for wind power plants.

5. Please provide information on whether the Indigenous knowledge of mobile Indigenous Peoples, including their governance institutions, legal systems, land administration, food systems, and livestock herding is being incorporated into the decision-making of the State and relevant laws and policies.

Convention on Biological Diversity and the national Nature Diversity Act an Sámi Act, among others, shall safeguard the incorporation on practices and knowledge as mentioned above in decision making processes. Unfortunately, implementation processes have not yet been able to fulfill these intentions. For example, to be used as intended in impact assessments and research.

6. Please indicate the challenges mobile Indigenous Peoples face to fully enjoy their economic, cultural, and social rights, including access to health services, education, employment opportunities, housing, and the justice system.

- Impact assessments for industrial interventions in traditional territories: The developer chooses which company shall do the investigation, and also finances it. This creates an

- unfortunate (financial) bond between the developer, and the companies doing independent assessments, also regarding the prospects of future assessments.
- Permission to pre-accession in cases of industrial development: Permission to start building/developing, can be granted in Norway through the Expropriation Act before legal clarification of the territorial rights of Nomadic Sámi reindeer herding communities in the area. This was the case in Fosen, where a windmill plant was built on grazing lands, to later be found to interfere with their right to enjoy their own culture according to IICCPR Article 27.²
 - The Sámi Parliament is experiencing that State authorities, local authorities like municipalities, and Nomadic Sámi reindeer herders, appear to not have the same understanding on how to practice effective consultations in compliance with international human rights standards and the Sámi Act chapter 4.
 - The Plan and Building Act commits municipalities to know the quantitative state of agricultural land within the municipality. While the Plan and Building Act also commits municipalities to include nomadic reindeer herding areas in their spatial planning, it contains no obligation to keep an overview of quantitative or qualitative state of areas for Nomadic Sámi reindeer herding.

7. Please describe the impact that national borders have on the full enjoyment of the human rights of transboundary mobile Indigenous Peoples, whose ancestral territories span national borders.

Throughout history, Nomadic Sámi reindeer herders have lost the ability to follow traditional seasonal paths for the reindeer, crossing borders. It is no longer possible to move between Finland and Norway, or Russia and Norway. This has been described in *The Truth and Reconciliation Commission in Norway's* report.³

Norway and Sweden have for a further amount of time been trying to agree on a new bi-lateral convention on reindeer herding across national borders. The last convention expired in 2005. The issue remains unsolved today and has even resulted in a Supreme Court case.⁴ Complicating this case further, the same areas are used by Nomadic Sámi reindeer herding communities administratively belonging to Norway, after decisions made by the Norwegian State. Their private law rights were not part of the Supreme Court case. The case also involved the Lapp Codicil of 1751, an addendum to the Stromstad Treaty of 1751 that defined the Norwegian-Swedish border. The codicil has been considered to guarantee Sámi rights in traditional Sámi areas and is still considered of importance in the debate about these rights.

8. Please describe the impact of internal or international conflicts on mobile Indigenous Peoples and indicate whether the specific needs of mobile Indigenous Peoples are included in transitional justice and post-conflict policies and programmes.

The Sámi Parliament has noticed local conflicts regarding political processes for establishments of, for instance, new wind power projects or new mining projects as part of the green transition, following political decisions on a national level. This is enforced in some cases, by a national decision stating additional economic benefits for municipalities that allow wind-power plants within the administrative borders of their municipalities. Some

² <https://www.nhri.no/en/2023/about-the-wind-farms-on-fosen-and-the-supreme-court-judgment/>

³ <https://www.stortinget.no/globalassets/pdf/sannhets--og-forsoningskommisjonen/rapport-til-stortinget-fra-sannhets--og-forsoningskommisjonen.pdf>

⁴ <https://www.domstol.no/en/supremecourt/rulings/2021/supreme-court-civil-cases/hr-2021-1429-a/>

municipalities, however, have larger areas than others where Nomadic Sámi Reindeer herders have private law rights to their traditional territories. The Sámi Parliament is worried about how these conflicts affect the nomadic reindeer herding Sámis daily participation in the communities they live in.

Identity, recognition and culture

10. Please indicate whether the identity of mobile Indigenous Peoples is legally recognized by the State and if not, describe the implications that non-recognition has on the realization of their rights.

The identity of mobile Indigenous Peoples is legally recognized by the State.

11. Mobile Indigenous Peoples are at greater risk of human rights violations due to intersecting forms of discrimination including, but not limited to, women and girls, persons with disabilities, LGBTI and gender diverse persons, older persons and children. Please explain the specific situations and views of these groups and the requirements needed to ensure that their rights are recognized and protected.

The Truth and Reconciliation Commission in Norway delivered its report June 2023. An external investigation attached to the report as an appendix describes how gender roles and family structures changed because of State interference in Nomadic Sámi reindeer herding.⁵ Adding business policy moves and “concessions” to be able to be a reindeer herder, this led to a situation with skewed distribution of the economic structures in reindeer herding. Most concessions are in the hands of men, and most of the reindeer are owned by men.

Good practices

12. Please provide examples of resilience, good practices and strategies led by Indigenous Peoples and their organisations to improve the lives of mobile Indigenous Peoples.

The United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has concluded its country engagement mission to Norway (6-15 March 2024). The mission was aimed at providing advice and guidance with a focus on enforcement of the domestic legislation, administrative measures, policies, and judicial functions as well as implementing domestic court and Treaty Bodies’ decisions pertaining to the cultural rights of the Sámi People in Norway. The Expert Mechanism will provide a technical advisory note in coming months that will be published on its website.

The mission was undertaken in response to a request from the Saami Council, supported by the Sámi Parliament, concerning the rights of Sámi people in Norway particularly focusing on their right to land, territories and resources and to ensure free, prior and informed consent as recognised under international human rights law, including the United Nations Declaration on the Rights of Indigenous Peoples. The government of Norway welcomed and participated in the country engagement visit.⁶

14. Please, provide information on mobile Indigenous People’s access to technical and financial support, global markets and direct financing of conservation

⁵ <https://www.stortinget.no/globalassets/pdf/sannhets--og-forsoningskommisjonen/endringer-i-kjonnsroller-og-familiestrukturer.pdf>

⁶ <https://www.ohchr.org/en/press-releases/2024/03/united-nations-experts-rights-indigenous-peoples-conclude-visit-norway>

practices or any other initiatives.

The Nomadic Sámi Reindeer Herders have access to the same markets and similar systems as Norwegian agriculture, organized and financed by the Ministry of Agriculture and Food, for financial support. These are also aimed at conservation practices. However, this is not adequate to cover all their needs. The Sámi Parliament has seen situations where the Nomadic Sámi Reindeer herding communities or individuals have experienced the need to pursue legal processes for conservation. The Fosen case⁷ is a well-known case, but there are others as well. No direct financing exists for cases like this. Legal processes could be avoided if the legal framework was properly implemented in decision making processes.

⁷ <https://www.nhri.no/en/2023/about-the-wind-farms-on-fosen-and-the-supreme-court-judgment/>