

Saami Parliament in Norway

Conference with the UN Special Rapporteur Professor James Anaya in Rovaniemi
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The Saami people's right to self - determination

The Covenant on Civil and Political Rights has been implemented in Norwegian law by giving it priority over other laws in the event of a conflict between the Covenant provisions and other Norwegian legislation; see section 3 of the Human Rights Act.

As regards article 1 of the Covenant, developments have shown that the term “self-determination” is dynamic and evolving over time. The term has become increasingly relevant in the Norwegian Sami-political debate in recent years (among other things in the debate concerning the Finnmark Act, the proposed Nordic Sami Convention and the UN Declaration on the Rights of Indigenous Peoples), as efforts have been made to fulfil Norway's obligations to the Sami as an indigenous people pursuant to international law.

The Norwegian authorities have recognized that the Saami have the right to self-determination. The interpretations of the scope and material content of article 1 are, however different.

While the Norwegian authorities recognise in principle that the Sami have a right of self-determination, the Norwegian authorities nevertheless find it difficult to accept that the Sami as a people have a right of self-determination pursuant to Article 1 of the CCPR. There are currently no examples of measures or processes that have been put into effect in Norway for the purpose of incorporating into Norwegian law the Sami's right of self-determination pursuant to Article 1 of the CCPR. Instead, Norway has chosen not to clarify its position on Article 1 of the CCPR, and has thus explicitly made delimitation against it in processes linked to the fulfilment of its international-law obligations to the Sami as an indigenous people. After the completion of these processes, the Norwegian authorities have nevertheless chosen to cite them in international reporting as examples of the fulfilment of Article 1 of the CCPR. This applies, for example, to the agreement between the Saami Parliament and the Norwegian authorities relating to consultation procedures, which the Norwegian authorities have emphasised was exclusively an implementation of the obligations in Article 6 of ILO Convention No. 169.

The Saami Parliament believes that the draft Article 3 of the Sami Convention concerning self-determination expresses the same right of self-determination as Article 1 of the CCPR/ICESCR. The preparation of a Nordic Sami convention may therefore be regarded as a step in the process of securing explicit confirmation by all Nordic states that the Sami are a people with a right of self-determination as defined in Article 1 of the CCPR/ ICESCR. Sweden gave such confirmation in its 2006 report to the UN.

Furthermore the UN Declaration on the Rights of Indigenous Peoples Article 3 expresses the same right of self-determination as Article 1 of the CCPR/ICESCR and the draft Article 3 of the Nordic Saami Convention. In connection with the work done on the UN Declaration on the Rights of Indigenous Peoples, the Norwegian authorities supported recognition of the principle that indigenous peoples have a right of self-determination. When adopting the declaration, Norway nevertheless chose, contrary to the express will of the Saami Parliament, to make a vote explanation whereby the right of self-determination was interpreted subject to the modifications set out in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. Norway emphasised in this connection that the right of self-determination is not to be interpreted as authorising or encouraging actions that will lead to the

division or weakening of the territorial integrity or political unity of sovereign, independent and democratic states.

There is agreement in Norway that this problem is theoretical and most unlikely to arise, and Norway's vote interpretation is therefore immaterial to the situation in Norway. The Saami Parliament would still emphasise that the Sami have never asserted any right of severance. Given that the Norwegian authorities nevertheless constantly emphasise this problem, the Saami Parliament wishes to point out that the only effect of this focus is to marginalise the Sami as a people, and thus also to reduce the Sami's opportunity to exercise control over their own economic, cultural and social development.

The need for a national body to monitor breaches of the human rights of the Sami

The Saami Parliament is advocating the establishment of an independent monitoring mechanism that is mandated to monitor breaches of the human rights of the Sami. Any body of this kind must have solid knowledge of Sami culture and society, as well as a complete overview of Norway's international-law obligations to the Sami as an indigenous people. The Centre for Human Rights currently conducts general monitoring of the human rights situation in Norway, but lacks culture-specific expertise as regards the circumstances of the Sami. The Saami Parliament will enter into dialogue with the Norwegian authorities with the aim of granting the Resource Centre for the Rights of Indigenous Peoples (GALDU) the necessary resources, and making the centre a national institution for the human rights of the Sami.

The unresolved issues in Norway pertaining to the Saami right to self-determination are good examples of the need for the establishment of such an independent monitoring mechanism. As mentioned the Saami Parliament and Norwegian authorities have different interpretations of the scope and the material content of the Saami right to self-determination in and Norway has chosen not to clarify its position on Article 1 of the CCPR, and has thus explicitly made a delimitation against it in processes linked to the fulfilment of its international-law obligations to the Sami as an indigenous people.

The consultation agreement

During the process leading up to the adaptation of the Finnmark Act, the Saami Parliament and the Norwegian authorities agreed that constant debate about the content of the duty to consult was unfortunate, and a joint project was therefore initiated that led to the adoption of the "Agreement between the Saami Parliament and state authorities relating to consultation procedures" [*Avtale mellom Sametinget og statlige myndigheter om konsultasjonsprosedyrer*]. In this connection, the Saami Parliament also wanted the right of self-determination pursuant to Article 1 of the CCPR to be included as one of the agreement's fundamental legal principles. However, the state authorities proceeded on the basis that the agreement was purely a concretisation of the obligation to consult contained in Article 6 of ILO Convention No. 169.

The duty to consult highlights that state authorities are in fact required to seek agreement with the Saami Parliament in good faith. The procedures are an important tool that helps to ensure that the decisions that are made have legitimacy among the Sami population, through their democratically elected body. Accordingly, the Saami Parliament must have the opportunity to exert real influence on the process and the result. For this reason, provisions have been put in place that require the Saami Parliament to be given full information at all stages of the process,

and account to be taken of the Saami Parliament's view during the further processing of the matter.

Since the confirmation of the consultation agreement by Royal Decree in July 2005, the Saami Parliament has consulted with the state authorities on many matters.

The Saami Parliament's position has been strengthened on a general basis by the fact that various ministries have become more aware of the need to include the Saami Parliament in important processes. The Saami Parliament has been involved in several good consultation processes, and several ministries have acknowledged that, pursuant to the consultation agreement, the Saami Parliament has to be consulted with the aim of achieving agreement. The consultation processes with the Ministry of the Environment regarding the new Planning and Building Act and new Nature Diversity Act, as well as several other processes, are good examples of consultation with full information at all stages and a willingness on both sides to achieve agreement.

Unfortunately, the consultations regarding the new Planning and Building Act and Nature Diversity Act do not consistently represent the general experience. There have been several cases in which the state authorities have not respected the consultation agreement and the underlying international-law obligations. For example, the government chose to end consultation about structural measures for the fishing fleet without a mutual understanding between the parties that there was no need for further consultation, without the ministry having provided full information about all relevant circumstances at all stages of the processing of the matter, and without an assessment being made of the effects of the measures in question on Sami fisheries by reference to international-law obligations. This was done even though the minister had promised to "... prepare a memorandum setting out how the proposals in question may affect Sami interests, by reference to international-law obligations" (see minutes of the consultation meeting on 26 February 2007). The government also chose to publish a draft revised Reindeer husbandry Act before consultations with the Saami Parliament had been concluded and without the Saami Parliament having been given full information about the government's assessments and interpretations of the proposed statutory amendments.

The Saami Parliament has also noted that no consultation took place about, among other things, the national health plan and the management plan for the Barents Sea.

The Saami Parliament has faced challenges connected to the fact that, in a number of situations, there has been very little or no scope for real consultation with the state, as the government has in reality already made the decisions. The Saami Parliament understands that it can be difficult to reach agreement within government on large and complex matters, but nevertheless takes the view that this cannot justify a failure to conduct real consultation.

A general problem in various major resource-legislation cases has been that the state authorities have actively sought to delimit indigenous-people rights by referring them to parallel or subsequent special processes. In reality, this constitutes a disclaimer of responsibility by individual ministries and a disclaimer of the state's obligations to the Sami as an indigenous people pursuant to international law. Moreover, the result in these cases has often been that while extensive new legislation has been adopted, the consideration of questions related to Sami rights and Sami participation has been postponed until the next revision of the entire body of laws, which often lays a long way in the future.

The agreement on consultation procedures does not cover budget-setting. The government and the Saami Parliament agree that a duty to consult also applies in relation to budget-setting, and that procedures for the setting of Saami Parliament budgets must be clarified through a separate process. An inter-ministerial working group was established in 2006. Its members were drawn from the ministries and the Saami Parliament, and it was to consider the formal position of the

Saami Parliament and prepare a proposal regarding budget procedures. The working group submitted its unanimous proposal in March 2007, after evaluating various models.

In 2008, the government put forward a proposal that was not based on the working group's unanimous proposal. Instead, the government chose to base its proposal on the current situation, in which an input meeting is held with state secretaries from various ministries. The Saami Parliament has rejected this solution.

Even though the process has stopped for a period, the Saami Parliament believes that further consultation on the matter will enable a solution to be found that satisfies indisputable international-law provisions.

The 2006 working group also made a joint proposal regarding revision of the Sami Act in order to clarify that the Saami Parliament is a self-contained body that is independent of the Norwegian authorities, on the basis that this is already the factual and legal position of the Saami Parliament. The Norwegian authorities have signalled that they wish to consult further with the Saami Parliament on this matter.