ROYAL NORWEGIAN MINISTRY
OF LOCAL GOVERNMENT AND REGIONAL DEVELOPMENT

United Nations Expert Mechanism on the Rights
of Indigenous Peoples

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Concerning the Expert Mechanism on the Rights of Indigenous Peoples country engagement with Norway – Additional comment to the advisory note of 18 March 2025

The Royal Norwegian Ministry of Local Government and Regional Development presents its compliments to The Office of the United Nations High Commissioner for Human Rights (OHCHR). We refer to the advisory note dated 18 March 2025, following the country engagement with Norway in 2024, by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).

We are looking forward to participating in the panel on the country engagement during the 18th session of the Expert Mechanism on the rights of Indigenous Peoples (EMRIP) 14-18 July 2025 and would like to draw your attention to one important issue in this regard.

While we acknowledge that the advisory note has been finalised and made public, we would like to highlight to EMRIP some information on current procedures in Norway for granting licenses, permits, or concessions for land use interventions, such as wind power production, mineral extraction, or road construction.

Paragraph 66 (and 67) of the advisory note implies that agencies or ministries give licenses, permits, or concessions – or decisions on advance possession – “before full consultations are conducted” or “before a full assessment of cultural, environmental, and socio-economic impacts is made”. If that had been the case, it would indeed have been problematic. However, we would like to underscore that this is factually not correct and not how the system (of granting licenses, permits, or concessions) in Norway works.

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As we attempted to inform in our comments to the draft advisory note, the procedures for granting licenses, permits, or concessions for land use interventions, as obliged by law in the Planning and Building Act, the Energy Act, and the Mineral Act, are as follows:

- The ***first*** phase is a process and a decision at the agency level, for example the Norwegian Water Resources and Energy Directorate or the Directorate of Mining.

- The ***second*** phase is the option of filing a complaint, which is decided by the relevant ministry[1]. This decision can be challenged in court, right away, by anyone who is substantially impacted by the decision.

Consultation and cooperation, in addition to assessments of all relevant human rights implications, are to be carried out in these two phases, initially *before* the decision at the agency level is taken, and then, to the extent there is a need, *before* the complaint is decided in the ministry.

In paragraph 76 in the advisory note, EMRIP points out that, quote: "Consultation processes must be initiated long before any permits are granted". This is already the rule, codified in the Sami Act Article 4-6, which states that consultations shall begin early enough to give the parties a genuine opportunity to reach an agreement.

Once a license, permit, or concession is final, that is after consultations, impact assessments, hearings and the two procedural phases referenced above, a licensee has the right to presume the license, permit, or concession is legally valid and binding. The license, permit, or concession can only be revoked if it is found to be legally invalid.

- The ***third*** phase is that a business enterprise with the license, permit, or concession can either buy the relevant private rights, or the enterprise can ask the authorities for a "permission for expropriation", that is a mandatory sale. Expropriation entitles the right holders to full economic compensation, according to section 105 of Norway's Constitution. For critical infrastructure projects, such permissions for expropriation are typically granted, once the license, permit, or concession is final. A permission for expropriation can also be challenged in court, right away.

- The ***fourth*** phase is; while awaiting the outcome of the economic compensation assessment process, the enterprise with the license, permit, or concession can ask the authorities for a ***decision on advance possession*** ("forhåndstiltredelse" in Norwegian). That is a permission to start building the project while the process for assessing what is the correct level of economic compensation is still ongoing. The relevant authority can only grant such a decision when there is a clear presumption

[1] Some complaints, in major cases, are formally decided by the King in Council, that is, as practical matter, by the Government as a collective, and then effectuated by the responsible ministry. The sequencing of the phases described here, remains the same.

that the underlying license, permit, or concession, and the resulting, underlying permission for expropriation, are both legally valid, and in accordance with human rights law. A decision on advance possession can also be challenged in court, right away.

As mentioned above, in paragraph 66 in EMRIP's advisory note, the reasoning appears to rest on an assumption that decisions on advance possession may happen before the license, permit, or concession itself is granted, or before the government is obliged to have made a full impact assessment. We would like to clarify that this is not the case. A decision on advance possession always happens ***after*** the license, permit, or concession is final, and after a full impact assessment, and only before the mandatory sale.

- The ***fifth*** and final phase is proceedings in the compensation court ("skjønnsretten"), that is determining the price for the mandatory sale. Even at this late stage, the right holders can make a claim that the underlying the license, permit, or concession is legally invalid, even if they did not make that claim earlier. While there is a presumption in the compensation court proceedings that the underlying license, permit, or concession is valid, the compensation court may hold that it is not, for example because the license, permit, or concession is found to violate the human rights of the right holders. That is an unusual outcome, but it notably did happen in the Supreme Court's decision regarding the wind power plant at Fosen.

To summarise what this sequence of decisions means: It is already firmly the rule, that the agencies and ministries have the duty to make all impact assessments, and all human rights assessments, before they grant any license, permit, or concession, and that consultation processes must be initiated early in the planning phase, long before any licenses, permits, or concessions are granted. EMRIP's advice and recommendations regarding this issue, are already standard procedural requirements in Norway.

With this background, we believe that the phrasing of paragraphs 66, 67, parts of paragraph 77, and indirectly paragraphs 75 and 76 in the advisory note may be a result of a misunderstanding.

We are sending this letter now to inform EMRIP in advance that we intend to present the clarifications above during the agenda item on country engagement in the 18th session of the EMRIP 14-18 July 2025, in order to clarify the factual and current legal procedures and practice in Norway. We kindly ask EMRIP that these clarifications also be reflected in EMRIP's introduction of the advisory note under that agenda item.

The Sami Parliament in Norway and the Saami Council are notified by receiving copies of this letter. The letter is public under Norway's the Freedom of Information Act.

The Royal Norwegian Ministry of Local Government and Regional Development avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Yours sincerely,

Bjørn Olav Megard
Director General

Anne Noddeland
Higher Executive Officer

This document is signed electronically and has therefore no handwritten signature.

Copy:

- The Sami Parliament in Norway
- Saami Council
- The Royal Norwegian Ministry of Foreign Affairs
- The Permanent Mission of Norway to the UN in Geneva