

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)

Indigenous and Tribal Peoples Convention, 1989 (No. 169) - Norway (Ratification: 1990)

The Committee notes the Government's report received in September 2013 and the communication by the Norwegian Sami Parliament received in January 2014. The Committee recalls that the Sami Parliament, according to the wishes expressed by the Government upon ratification, plays a direct role in the dialogue associated with the supervision of the application of the Convention.

Articles 6 and 7 of the Convention. Consultation and participation.

The Government recalls that the right of indigenous peoples to participate in decision-making processes was formalized in May 2005 with the establishment of the Procedures for consultations between the state authorities and the Sami Parliament (PCSSP). As a result of this agreement, approximately 30–40 formalized consultations take place every year. The Government indicates that consultations must be conducted in good faith on the part of both parties, and with the objective of achieving an agreement. In its communication, the Sami Parliament indicates that the PCSSP has strengthened interaction and cooperation on items that may have a direct impact on the Sami. Amendments to some legislative texts or regulations have been introduced following agreement or partial agreement between the parties. The Sami Parliament further indicates that in cases in which agreement is not achieved, the consultative procedure has been characterized by a lack of disclosure and late involvement of the Sami Parliament. In these cases, the authorities have adopted a decision or taken a position publicly before the consultations began or while they were in progress. The Sami Parliament adds that there are sometimes major differences in the manner in which *Article 6* of the Convention is interpreted and complied with in practice by the various government ministries. The Sami Parliament calls for clearer internal routines on the part of the Government in this area. The Sami Parliament indicates that there is no mechanism that helps clarify whether the consultation obligations have been satisfied by the Norwegian Parliament (*Storting*) in specific cases. Moreover, it adds that the PCSSP does not cover financial incentives or budgetary measures. It is of the Sami Parliament's opinion that financial parameters and initiatives are of crucial importance and have a direct impact on the Sami community. The Sami Parliament does not consider meetings to be consultations in compliance with *Articles 6* and *7* of the Convention where the Sami are only given an opportunity to make verbal interventions to the Minister of Finance about the budgetary needs of Sami society, but where no insight is gained into the Norwegian Government's assessments, ranking of priorities and decisions. The Committee previously noted that under the PCSSP, the state authorities are to inform the Sami Parliament "as early as possible" about the "commencement of relevant matters which directly affect the Sami", and emphasized that consultations should be initiated as early as possible to ensure that indigenous peoples get a real opportunity to exert influence on the process and the final outcome. In its reply to the communication of the Sami Parliament, the Government indicates that the consultation mechanism ensures that decision-makers are well acquainted with the views of the Sami Parliament and, in accordance with *Article 6*, seek to achieve agreement to the proposed measures. It adds that some challenges remain regarding the practical implementation of the consultation procedures. The Government will consider, in dialogue with the Sami Parliament, how these can be resolved. ***The Committee requests the Government to continue to pursue its efforts to address the challenges identified and to provide information enabling it to examine the manner in which the procedures established ensure the effective***

consultation and participation of the indigenous peoples concerned in decisions which may affect them directly, giving full effect to the requirements of the Convention.

Follow-up to the Committee's previous comments.

Amendments to the Finnmark Act. In reply to the 2009 observation, the Government indicates that section 29 of the Finnmark Act of 2005 was amended in 2012. The amendment came into force on 1 January 2013 and led to the expansion of the mandate of the Finnmark Commission to include the investigation of individual or collective rights to fishing spots upon request from a person with a legal interest in clarification of such rights. The expansion of the Commission's mandate led to a parallel expansion of the mandate of the Uncultivated Land Tribunal for Finnmark. The Finnmark Commission issued its first report in March 2012 (the Stjernøya and Seiland field) and its second report in February 2013 (the Nesseby field). The Committee notes that a common feature of the rights recognized by the Commission for the local population and reindeer herders in the two fields is that they are based on long-term utilization. Thus, the rights are protected against expropriation and similar procedures, and also involve certain restrictions on the Finnmark Estate's landowner rights. In March 2013, the Administrative Regulations regarding the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark were amended by Royal Decree to align the procedures for appointment of members of the Tribunal with those applying to appointment of judges to the ordinary national courts. The Sami Parliament was consulted before the new procedures for appointment of members of the Tribunal were finally decided upon and the consultations led to an agreement. The Sami Parliament indicates that the Finnmark Estate Board has not adopted any decisions regarding changes in the use of uncultivated land, although the authorities have already given permission to several major land encroachment cases in Finnmark County. *The Committee trusts that the necessary steps will be taken to ensure that the process of identifying and recognizing rights of use and ownership under the Finnmark Act will be consistent with Article 14(1) and also Article 8 of the Convention which requires due regard to customs and customary law of the indigenous peoples concerned in applying national laws and regulations. The Committee therefore requests the Government to provide information on progress made regarding the survey and recognition of existing rights of indigenous peoples in Finnmark County, including information on the work of the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark. Please also include information on the implementation of the Finnmark Act as regards the management of the use of uncultivated land in Finnmark County and on how the rights and interests of the Sami have been taken into account in this process.*

The Committee is raising other matters in a request addressed directly to the Government.