Building on ILO 169 – do consultations contribute to indigenous self-determination in Norway?

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Background – historical development

• Sami presence: Times immemorial
  – Mix of peoples

• 1860’s: Start of the dark hundred years

• 1960’s: Thawing

• Late 1970’s/early 1980’s: Strong political mobilisation
  – Alta River – damming project
  – Lost the river, «won» the indigenous battle
• 1980’s: Setting the institutional structure
  – Sami Rights Commission
    • Sami Law
    • Constitutional amendment
    • Sami Parliament
  – ILO 169
• 1990’s: The issue of land and water
  – Sami Rights Commission
    • Two main reports
• 2000’s: Integration and participation in Norwegian politics
• Some Norwegian particularities
  – Political processes
    • Minor role for courts
  – The importance of international law
    • UN Convention on Civil and Political Rights
    • ILO 169
    • UNDRIP
  – Strong institutional structure (politically)
    • Different from neighbor countries – Sweden and Finland
Development of consultations

• 2003/2005 Parliament (The Storting)
  – Consultations on the Finnmark Act
• 2005 Consultation agreement
  – Based on ILO 169, article 6
  – Includes all state agencies (not municipalities and counties)
• 2007 Sami Rights Commission
  – Proposed Consultation Law in Norway
• 2015-2018 Process on Consultation Law (or amendment to the Sami Law)
  – Ministry of Regional Affairs
  – Consultations with Sami Parliament
    • Including municipalities and counties
    • Improve guidelines
    • Relationship to existing laws and international law
The importance of ILO 169

– Norway was the first country to ratify the convention.
– Important for the Finnmark Act and consultation agreement
  • The consultation “copies” expressions from ILO 169

– ILO 169 is most specific on how to organize the role of indigenous peoples in decision making.
  • Demand for participation when it comes to management of resources and use of land and water.
  • Define guidelines for decision-making.
Guidelines for consultations - Article 6

1. In applying the provisions of this Convention, Governments shall:
   - (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
   - (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
   - (c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Able to participate and to affect decisions
The consultation process in Norway

- State: Mandatory to inform the Sami Parliament
  - Issues of particular relevance for the Sami people
  - Present relevant and accessible information
  - Decisions should still be open

- Sami Parliament: Can demand consultations to be carried out

- Consultation process
  - Agreement of timeline, relevant material and process “appropriate to the circumstances”
  - Discussions – “good faith”, “objective of achieving agreement or consent”
Extensive agenda

• High-level talks
  – Minister of Regional Development and President of Sami Parliament
    • Two permanent meetings
  – Discussions with Ministers (policy issues)

• Administrative contact
  – Policy areas
  – Single issues

Photo: NRK
- Land and natural resources
  - The main issue of ILO 169
  - Energy development
  - Mining
  - Fisheries

- Maintenance and development of Sami culture
  - Language, education, health
  - Welfare state services

- Consultations on
  - Laws and single issues
  - Resources, land and water
  - Welfare state services

- Decision making processes
  - Law proposals
  - Administrative and political organization
  - Single issues
  - General political issues
Challenging issues

- Reindeer husbandry
  - Administrative organization
  - Management

- Energy
  - Wind power plants
  - Small water falls

- Fisheries
  - Protection of small scale fisheries

- Conflict over use of land
  - Multiple new actors
    - Wind mills
    - Mining
    - Tourism
    - Protection of nature
Challenging arrangement

• “Weak” invitations
  – The state has already made a decision

• The state – a powerful actor
  – Do not always inform – or listen
    • The Sami Parliament can leave
    • A danger for co-potation?

• Not a single state
  – Different traditions in ministries (and policy areas)

• Solutions for balance
  – Veto
  – External review
  – Third party (mediator)
Sailing the same boat?

• Important
  – Arena for information and involvement
  – Regularly contact

• Challenges
  – “Core” Sami issues – use of land

• Balancing self-determination of two peoples

  • Photo: Framtid i Nord