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

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# Background – historical development

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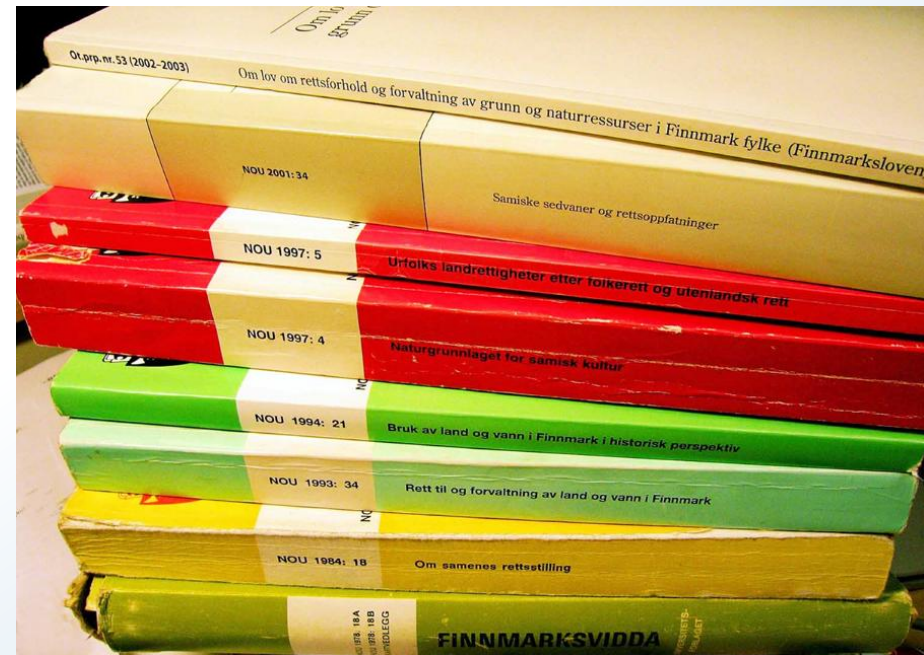
- Sami presence: Times immemorial
  - Mix of peoples
- 1860's: Start of the dark hundred years
- 1960's: Thawing
- Late 1970's/early 1980's: Strong political mobilisation
  - Alta River – damming project
  - Lost the river, «won» the indigenous battle



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- 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

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- 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

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- 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.

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- 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

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- 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

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- 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

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- 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

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- 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

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- “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?

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- 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