
18 March 2025

English Only

Expert Mechanism on the Rights of Indigenous Peoples

Country engagement mission to Norway

Technical Advisory Note of the Expert Mechanism on the Rights of Indigenous Peoples

I. Context and purpose of the mission

1. Under its mandate, the Expert Mechanism on the Rights of Indigenous Peoples (Expert Mechanism) assists Member States and Indigenous Peoples in achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration). It provides for technical assistance upon the request of States and/or Indigenous Peoples and facilitation of dialogue between Indigenous Peoples, States and/or the private sector, pursuant to paragraph 2 of Human Rights Council resolution 33/25. The Expert Mechanism delivers this technical advisory note as a result of the country engagement mission conducted in response to a request from the Saami Council¹ supported by the Sámi Parliament in Norway.

2. The terms of reference (see in Annex 1) for this country engagement were prepared by the Expert Mechanism in consultation with the requesters, the Saami Council with the support of the Sámi Parliament in Norway, and the State of Norway. The mission took place 6 – 15 March 2024 and included the following designated members of the Expert Mechanism: Ms. Antonina Gorbunova, Head of Mission, Ms. Sheryl Lightfoot and Mr. Binota Moy Dhamai, as well as staff of the United Nations Office of the High Commissioner for Human Rights Secretariat, which provides substantive and administrative support to the work of the EMRIP.

3. During its mission, the Expert Mechanism delegation travelled to Karasjok and Tana in the Northern Sámi area and Oslo where it met with the requesters, government officials, representatives from Sámi communities, reindeer herders, Sea Sámi organizations, private companies, the Norwegian Human Rights Institution, NGOs, and others. The delegation also visited Fosen wind industrial area in the Southern Sámi area, as well as a planned mining site at Repparfjord in the Sea Sámi area.

4. The purpose of the Expert Mechanism's country engagement with Norway was to provide technical advice and guidance regarding the interrelated rights of the Sámi People, with specific focus on their rights to land, territories and resources and culture. This engagement was aimed to assist the Sámi People, their organisations, and representative institutions, as well as the State of Norway, in implementing domestic legislation, administrative measures and policies, and enforcing judicial decisions, and to ensure consistency with international human rights standards, including those affirmed in the Declaration. Furthermore, the advice is intended to encompass guidance on the impacts on the Sámi People's rights to lands and livelihoods, culture, and the environment, as well as measures for implementing court decisions and ensuring implementation of the Sámi People's right to free, prior and informed consent in domestic legislation and policies.

5. The technical advisory note will build upon and provide assistance and advice on implementing recommendations made previously to Norway by the various United Nations human rights mechanisms.

II. Legal framework

6. The Expert Mechanism provides this advice based on information received orally and in writing from the parties with whom the Expert Mechanism engaged during the mission as well as background information on the specific context of Norway's legal system, and recommendations of the United Nations human rights treaty bodies and other human rights mechanisms.

7. This advice is grounded in the rights affirmed by the Declaration, and other international standards pertaining to Indigenous Peoples, including provisions of the international human rights treaties. In this regard, the Expert Mechanism considers relevant recommendations of the United Nations human rights treaty bodies and the Special

¹ The Saami Council is a voluntary Sámi organization (a non-governmental organization), with Sámi member organizations in Finland, Russia, Norway, and Sweden. Since its founding in 1956, the Saami Council has actively dealt with Sámi policy tasks.

Rapporteur on the Rights of Indigenous Peoples, among others and its own relevant studies, reports and recommendations.

8. The Expert Mechanism underscores Norway's obligations under several international human rights instruments, particularly, the International Covenant on Civil and Political Rights (ICCPR), International Labour Organisation (ILO) Indigenous Peoples and Tribal Peoples Convention, 1989 (No. 169), the United Nations Declaration on the Rights of Indigenous Peoples, and the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Norway in 1970 and taking into account General Recommendation No. 23 of the CERD Committee (1997). Significantly, article 27 of the International Covenant on Civil and Political Rights has been invoked by the Human Rights Committee and Norwegian courts in relation to the individual and collective human rights of the Sámi People. Furthermore, Norway endorsed the Outcome Document of the High-Level Plenary Meeting of the United Nations General Assembly known as the World Conference on Indigenous Peoples. Such actions reflect Norway's commitment to recognizing, respecting, and upholding the rights of the Sámi People at the national and international level.

9. The Expert Mechanism notes several recommendations in the outcome of the third cycle review of Norway at the Universal Periodic Review (2019) concerning the rights of the Sámi People and their traditional homelands and territory. These recommendations, which were supported and/or noted by Norway, include among others: to ensure adequate and meaningful consultations with the Sámi People, with a view to obtaining their free, prior, and informed consent, on extractive activities and other related projects in Indigenous lands and territories (para. 140.207); review mechanisms for extractive activities on Sámi lands in order to guarantee adequate consultation with the affected Sámi communities, mitigation measures, compensation and benefit sharing (para. 140.211); adoption of "legislation that increases the protection of traditional Sami livelihoods, including coastal Sami fisheries and traditional Sami reindeer herding, and further reinforces the principle of free, prior, and informed consent" (140.202).²

10. The Expert Mechanism shares the concern of the United Nations Human Rights Committee that the right to effective participation through consultations to obtain free, prior, and informed consent, has not been granted in law or effectively ensured in practice. The Expert Mechanism aligns itself with the recommendations from the United Nations Human Rights Committee issued to Norway in 2018 specific to the need for enhancing the legal framework on Sámi land, fishing and reindeer rights, ensuring in particular that fishing rights are recognised by law.³ While the 2021 Sámi Act contained updated rules for consultation, the Expert Mechanism holds the view that further enhancements of the legal framework are still required to meet the recommendations of the Human Rights Committee's 2018 recommendations.

11. The Expert Mechanism agrees with the 2015 recommendations from the Committee on the Elimination of Racial Discrimination to Norway, including to review all administrative and legislative mechanisms under the Finnmark Act, the Mineral Act and the Reindeer Husbandry Act, among others, that allow for extractive activities in Sámi lands in order to guarantee consultation with the affected Sámi communities, in particular with respect to the right to free, prior, and informed consent, mitigation measures, compensation and benefit sharing.⁴ The Committee reiterated its 2015 recommendations to "take measures to implement its previous recommendations to address the legal recognition of land and resource rights of the Sámi people; take measures to improve the legal framework on Sámi land, fishing and reindeer rights, ensuring that fishing are recognised by law; take measures to re-establish the ability of the Eastern Sámi to conduct their traditional reindeer husbandry and address outstanding concerns raised by the Sámi Parliament and facilitate the speedy adoption of the Nordic Sámi Convention".⁵ The Expert Mechanism has learned that the Mineral Act and the Reindeer Husbandry Act are being reviewed by government. The Expert Mechanism trusts that Norway intends to accommodate the rights of Sámi People, including

² A/HRC/42/3

³ CCPR/C/NOR/CO/7, para 37

⁴ CERD/C/NOR/21-22, para 30

⁵ CERD/C/NOR/23-24, para 22

free, prior and informed consent, and looks forward to gaining the analysis of the Saami Council and Sámi Parliament on these matters.

12. The Expert Mechanism notes the 2011 report from the Special Rapporteur on the rights of Indigenous Peoples concerning the need to ensure that decisions directly affecting the Sámi People are not taken without their free, prior and informed consent as well as his recommendation concerning “delimiting certain areas within which the Sámi parliaments can act as primary or sole decision-makers”.⁶

13. The Expert Mechanism also recalls the 2020 recommendations of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment concerning Norway’s obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment calling upon Norway to “redouble its efforts to secure free, prior, and informed consent of the Sámi People before making any decisions that affect their rights in accordance with the Declaration; to amend the Reindeer Husbandry Act to establish a Sámi co-management regime; to complete the consultation agreement related to county and municipal governments, and to expedite completion and ratification of the Nordic Sámi Convention.”⁷

14. The Expert Mechanism acknowledges Norway’s constitutional provisions for the security and protection of Sámi rights guaranteed under article 108 of the Norwegian Constitution. Additionally, the Expert Mechanism acknowledges Norway’s Human Rights Act (No. 30 of 1999) and the significance of the central role of five distinct regional and international human rights treaties recognized and integrated in national law, explicitly ensuring that international human rights law will prevail in the event of a conflict with national or domestic law or actions. As the Norwegian Human Rights Institution has acknowledged, the progressive development of international law on the matter of individual and collective rights of Indigenous Peoples is significant in the context of jurisprudence of the Supreme Court of Norway, the country’s highest court. Specifically, the human rights actions brought by Sámi through invocation of article 27 of the International Covenant on Civil and Political Rights, and those of other Indigenous Peoples, positively compounded by the finalization of international human rights instruments specifically concerning Indigenous Peoples, namely the Declaration, have led to an increased understanding of the interrelated nature of human rights in the distinct cultural context of the Sámi People. A recent notable example is the Fosen judgment, where the Supreme Court of Norway acknowledged a violation of the provisions of international treaties within the Human Rights Act.⁸

15. The Expert Mechanism acknowledges Norway’s laws and provisions that aim to recognise and protect the rights of the Sámi People. This includes the Sámi Act with a chapter establishing the Sámi Parliament, a chapter with provisions protecting the Sámi languages, and a chapter with provisions regarding the consultation procedures, the Reindeer Husbandry Act recognising the traditional rights of Sámi reindeer herders; the Finnmark Act (2005) addressing ownership and management of lands and natural resources in Finnmark County. The 2021 amendments to the Sámi Act established procedures for consultations between the State, including regional and local governments, the Sámi Parliament, and other Sámi interests.

III. Scope of dialogue conducted during the country engagement mission

16. Regarding the legal status of the Declaration, the former United Nations Special Rapporteur on the rights of Indigenous Peoples James Anaya expressed his view, in his annual report in 2011 as follows: “though the Declaration itself is not legally binding in the same way that a treaty is, the Declaration reflects legal obligations that are related to the

⁶ A/HRC/18/35/Add.2, para 76.

⁷ A/HRC/43/53/Add.2, para 94

⁸ Judgment given 11 October 2021, HR-2021-1975-S, (case no. 20-143891SIV-HRET), (case no. 20-143892SIV-HRET) and (case no. 20-143893SIV-HRET)

human rights provisions of the Charter of the United Nations, various multilateral human rights treaties and customary international law. The Declaration builds upon the general human rights obligations of the State and is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity, which are incorporated into widely ratified human rights treaties, as evident in the work of United Nations treaty bodies. In addition, core principles of the Declaration can be seen to connect to a consistent pattern of international and State practice, and hence, to that extent, they reflect customary international law.”⁹ The Expert Mechanism shares this view, as does the International Law Association¹⁰ and several legal scholars.¹¹

17. The Expert Mechanism notices that various domestic laws provide for consultation, most importantly, chapter 4 on consultation in the Sámi Act. However, the Expert Mechanism, from its interaction with the members of the Saami Council, Sámi Parliament and government agencies (including the Ministry of Local Government and Regional Development) and referring to its own subject matter study¹² also notes that there appear to be inconsistencies with accepted and affirmed international human rights standards, thereby undermining the objectives and effectiveness of timely, full, and meaningful consultation. The Expert Mechanism underscores that there is a general understanding on the substantive and procedural elements of both collaboration and cooperation with Indigenous Peoples and the comprehensive dimensions of their right to free, prior and informed consent. Free, prior and informed consent is sourced in the right to self-determination of Indigenous Peoples.

18. According to the information received in the multiple dialogues between the Expert Mechanism and the Sámi People, adverse impacts of development projects on the Sámi People were consistently highlighted, including lack of comprehensive implementation of the right to self-determination; and free, prior and informed consent; the inherent rights of the Sámi People to lands, territories, and resources; and the collective right of the Sámi People to the productive capacity of their environment. Such approaches have reportedly led

⁹ A/66/288, Report of the Special Rapporteur on the rights of indigenous peoples, para 68. See also A/HRC/9/9, paras. 85 and 88. See also A/HRC/EMRIP/2024/1 and A/HRC/57/62.

¹⁰ International Law Association, Committee on Rights of Indigenous Peoples, Sofia Report (2012).

¹¹ Siegfried Wiessner, “Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Perspective”, 12 *Harvard Human Rights Journal* 57-128 (1999), https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2020/06/12_Wiessner_Rights-and-Status-of-Indigenous-Peoples.pdf; Siegfried Wiessner, “The Rights and Status of Indigenous Peoples”, United Nations Audiovisual Library of International Law, Lecture Series, at https://legal.un.org/avl/lis/Wiessner_HR.html; S. James Anaya & Siegfried Wiessner, “The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment”, *Jurist Forum*, Oct. 3, 2007, at <https://www.jurist.org/commentary/2007/10/un-declaration-on-rights-of-indigenous-2/>; Dalee Sambo Dorrough & Siegfried Wiessner, “Indigenous Peoples and Cultural Heritage”, in *The Oxford Handbook on International Cultural Heritage Law* 407-430 (Francesco Francioni & Ana Filipa Vrdoljak eds., Oxford University Press, 2020); Federico Lenzerini, “ILA Resolution No. 5/2012 and the Rights of Indigenous Peoples, in Human Flourishing: The End of Law.” *Essays in Honor of Siegfried Wiessner*, 708-733 (W. Michael Reisman & Roza Pati eds., Brill Nijhoff, 2023); Siegfried Wiessner, “The State and Indigenous Peoples: The Historic Significance of ILA Resolution No. 5/2012”, in *Der Staat im Recht. Festschrift für Eckart Klein zum 70. Geburtstag 1357-1368* (M. Breuer et al. eds, Duncker & Humblot, Berlin, 2013); Timo Koivurova, Federico Lenzerini & Siegfried Wiessner, “The Role of the ILA in the Restatement and Evolution of International and National Law Relating to Indigenous Peoples”, in *International Actors and the Formation of Laws* 89-112 (Katja Karjalainen, Iina Tornberg & Aleksu Pursiainen eds., Springer 2022) <https://library.oapen.org/viewer/web/viewer.html?file=/bitstream/handle/20.500.12657/57316/978-3-030-98351-2.pdf?sequence=1&isAllowed=y>; Siegfried Wiessner, “Re-Enchanting the World: Indigenous Peoples’ Rights as Essential Parts of a Holistic Human Rights Regime”, 15 *UCLA Journal of International Law and Foreign Affairs* 239-288 (2010 [2012]), [http://heinonline.org/HOL/LandingPage?handle=hein.journals/jilfa15&div=10&id=&page=](http://heinonline.org/HOL/LandingPage?handle=hein.journals/jilfa15&div=10&id=&page=;); Siegfried Wiessner, “The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges”, 22 *European Journal of International Law* 121-140 (2011), <http://ejil.org/pdfs/22/1/2128.pdf>; Federico Lenzerini, “Sovereignty Revisited: International Law and Parallel Sovereignty of Indigenous Peoples”, *Texas International Law Journal*, 42:155 (2006); Federico Lenzerini, “Declaration on the Rights of Indigenous Peoples (UNDRIP)”, *Elgar Encyclopedia of Human Rights*, 2021.

¹² A/HRC/39/62

to adverse economic, social, cultural, and spiritual impacts from development, “green economy”, and extractive industries on both the Sámi People and Sápmi (the Sámi land), and other challenges. This is particularly acute in the case of the mining and wind industry, power lines, tourism, and road communications, among others.¹³

19. In light of the information made available to the Expert Mechanism, one of the main challenges to the physical and cultural survival of the Sámi People arises from the imposition of development projects on their ancestral lands and territories without their consent. These concerns are caused not only by extractive industries like mines, but also from renewable energy such as wind farms.

20. Although national legislation may stipulate provisions for consultation, to date, there appears to be a lack of mutually agreed upon substantive and procedural provisions to comprehensively implement free, prior and informed consent consistent with international human rights standards, including article 27 of the International Covenant on Civil and Political Rights. Additional legislative work, in collaboration and cooperation with the Sámi People, appears necessary in order to accommodate their rights and ultimately avoid time consuming and costly litigious results. The Expert Mechanism is increasingly concerned about licensing procedures and phases given the lack of thorough recognition and treatment of the Sámi People’s right to free, prior and informed consent. Furthermore, a mechanism or additional measures are needed to ensure that the Sámi People’s interrelated rights and perspectives are taken into account prior to progressing with development.

21. Firstly, the Expert Mechanism affirms that the State of Norway is responsible for upholding and safeguarding the rights of the Sámi People. The Expert Mechanism encourages developers to educate themselves on the developments in the field of business and human rights. The Expert Mechanism has taken note of a significant lack of trust expressed by the Sámi People concerning impact assessments conducted by the private sector. Sámi representatives are of the opinion that accountability mechanisms as well as participation of the Sámi People are lacking in every phase, including in the selection of contractors, typically solely hired by developers to conduct impact assessments. According to the information received, the Sámi People concerned are not invited to select contractors, and they do not have the right to suggest alternate contractors or to gain a second opinion. Sámi representatives informed the Expert Mechanism that companies are inclined to take a purely scientific approach without due consideration of the economic, social, cultural, and spiritual impacts upon Sámi People or consideration of Sami traditional knowledge. Each of these interrelated provisions are affirmed in the Declaration along with corresponding State obligations.

22. The Expert Mechanism was informed that impacted Sámi communities, including reindeer herders and Sea Sámi, are unaccustomed to drafting “development plans” and conforming to the imposed mechanisms of appeal to avoid, minimize, mitigate and compensate adverse or negative impacts by industrial or development projects. Jointly developed substantive and procedural measures should be instituted to address this dimension of development.

23. The Expert Mechanism considers that both Sámi institutions and Norway have a shared understanding regarding the crucial role of reindeer husbandry for the Sámi culture, identity and food security. However, in practice, the number of industrial projects on lands traditionally used for Sámi reindeer husbandry is significant. The low number of revoked licenses compared to the high number of complaints by the Sámi People raises potential evidential issues of how, or lack of, knowledge concerning Sámi rights have been considered; whether good-faith negotiations have taken place, and the effect of resulting long litigation processes.

¹³ Amnesty International and the Saami Council, *Just Transition or Green Colonialism? How mineral extraction and new energy projects without free, prior and informed consent are threatening Sámi livelihoods and culture and Sweden, Norway and Finland* (Index: EUR 20/8913/2025), January 2025. Available at: <https://amnesty.no/rappor-just-transition>. The EMRIP received this report directly from its authors in January 2025.

24. The Expert Mechanism learned about the impact of development activities on fishing and reindeer herding in Tana and Hammerfest municipalities. Extension of development activities such as the wind industry, mining, power line and road infrastructures, and tourism has caused severe impacts for Sámi cultural integrity, livelihood, and traditional economies. Loss of livelihood practices such as salmon fishing and reindeer herding has resulted in out-migration that leads to loss of language and other cultural dimensions. Information received includes concerns about schools being closed or removed, thereby depriving Sámi youth from learning the Sámi languages, which is pivotal to their identity and ability to thrive either within or outside of their communities.

25. The Expert Mechanism notes that the Sámi Parliament, established under the Sámi Act, serves as a representative and decision-making institution for the Sámi People in Norway, advancing constitutional rights related to social, political, linguistic and cultural autonomy based upon their distinct identity as Indigenous Peoples. However, the Expert Mechanism observed that the Sámi Parliament has limited political influence in exercising their right to self-determined development as major policy decisions including those affecting Sámi rights and interests are often made exclusively by the national government.

26. According to the sources, due to recent legislative changes, municipalities currently have a commanding role in decision-making over the establishment of onshore wind power projects than do Sámi rights holders. There seems to be ambiguity regarding who, in the Sámi context, holds the right to approve projects, deny them, or approve them with conditions. This could raise questions about when and how the Sámi People are accommodated in relation to the exercise of their right to self-determination, self-government, and free, prior and informed consent on matters that affect them. In 2020, the Sámi Parliament passed a resolution that it “does not agree to the provision of more wind power development in reindeer grazing areas.”¹⁴ However, this resolution has been largely ignored by the State and the third-party developers. The Expert Mechanism was made aware of the existence of a guide but is uncertain as to direct involvement of Sámi People in its development or effectiveness.

27. Affected Sámi communities reported process issues as well as capacity constraints and a serious imbalance of power between them and development companies. They reported feeling overwhelmed by consultation processes, not well informed, and lacking in a comprehensive view of all projects. They reported receiving some limited funding support from the Sámi Parliament for legal services, but it was insufficient given the challenges they face in multiple consultations occurring simultaneously, and sometimes, with very little notice.

IV. Advice

28. The Declaration affirms fundamental human rights already enshrined in various treaties and international jurisprudence in the specific context of Indigenous Peoples, according to the Expert Mechanism’s 2024 study. The United Nations treaty bodies have interpreted and applied the Declaration and other international human rights instruments in matters involving Indigenous Peoples in an effort to assist States in understanding their solemn obligations as a matter of international and domestic law.¹⁵ As the minimum global standard on Indigenous Peoples’ rights, the Declaration can and should serve as an interpretive tool in the State’s compliance with article 27 of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and ILO Convention No. 169.

29. The Expert Mechanism sets out its advice below under five main themes: self-determination; lands, territories and resources; domestic legislation, administrative measures and policies pertaining to the rights of the Sámi People; implementation of court decisions

¹⁴ Samediggi Case 022/20, plenary proceedings, 1 September 2020, “Onshore wind power – The Sámi Parliament’s View”, Archive no. 20/1632.

¹⁵ A/HRC/57/62 Advice, No 17 at para. 2.

and Treaty Bodies jurisprudence; and ensuring respect for free, prior and informed consent in domestic legislation, policies and practices.

1. Self-determination

30. The United Nations Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, as well as the Declaration affirm the collective right to self-determination. The right to self-determination is recognized as a pre-requisite to the exercise and enjoyment of all other human rights. As the Expert Mechanism has underscored in its 2021 report, without article 3, none of the other rights can be wholly fulfilled.¹⁶ The right to self-determination is a foundational right, without which indigenous peoples' other human rights, both collective and individual, cannot be fully enjoyed.¹⁷ In regard to autonomy and self-government "relating to their internal and local affairs," article 4 is also recognized and affirmed.

31. For the Sámi People of Norway, self-determination is an overarching concept and an ongoing political process that can only be fully realised through the implementation of an extensive, interrelated, and indivisible range of rights, notably, the rights to lands, territories and resources; political participation; consultation; free, prior, and informed consent; and cultural rights. The exercise of self-determination is therefore indispensable for the Sámi People's enjoyment of all their other rights, including, importantly, land rights (arts. 25-28, 30 and 32); political participation (arts. 18-20 and 34) and cultural self-determination (arts. 11- 16, 31 and 34).¹⁸

32. The Expert Mechanism advises that Norway demonstrate continued commitment to upholding the Sámi People's rights by urgently and comprehensively implementing the provisions of the Declaration and corresponding national legislation, policies, and measures, in collaboration with the Sámi People, to give full legal and political effect to their right to self-determination, self-government, and free, prior, and informed consent. Incorporation of the provisions of the Declaration should be represented in regulations and decision-making processes at local, regional, and national levels. This translates into an obligation for the State to consult with the Sámi People "as to any decision affecting them" and is consistent with international human rights law, including the Declaration.

33. The Expert Mechanism notes that it is important that Norway provides the necessary resources to support the Sámi People in the exercise of their rights, including the right to determine their own priorities. Funding should be allocated for Sámi decision-making institutions, capacity building initiatives, social services, environmental initiatives, sustainable and equitable economic development projects, and social and cultural initiatives led by the Sámi People and inclusive of all of their diverse communities, e.g. Sea Sámi communities.

34. The Human Rights Committee, in interpreting article 27 of the International Covenant on Civil and Political Rights, established the connection between culture and the right to self-determination of Indigenous Peoples. Similarly, the Committee on Economic, Social and Cultural Rights emphasizes the link between the right to participate in cultural life and the right to self-determination. Moreover, both the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination have made the connection between land rights and self-determination. In this context, the Expert Mechanism acknowledges the positive decision of the Supreme Court of Norway that recognises the Sámi People's right to reindeer husbandry, which is a step forward in compliance with international human rights standards. However, more practical efforts need to be taken to protect the Sámi People's lands and culture, including traditional occupations, from the adverse impact of economic projects, including those being advanced to meet "green economy" objectives. The Expert

¹⁶ A/HRC/48/75, para 8.

¹⁷ Human Rights Council, Report of the Special Rapporteur on indigenous people, James Anaya, Addendum: Report on the Situation of Human Rights of Indigenous Peoples in Brazil, UN Doc A/HRC/12/34/Add.2 (26 August 2009), para. 22.

¹⁸ A/HRC/48/75: EMRIP Report on Right to Self-determination, para. 14.

Mechanism recommends that laws, regulations and policies include references to interconnectivity between the rights of self-determination, lands, territories and resources, and culture.

35. The Expert Mechanism recommends that Norway, when making decisions for the common benefit of the entire society, also respects and ensures the ability of the Sámi People to make decisions for the benefit of the Sámi society. The Expert Mechanism recommends Norway to take into account that such decisions that are not endorsed by the Sámi society might eventually lead to the disappearance of the Sámi culture. State authorities shall acknowledge and be mindful of past harms and injustices including, but not exclusively, those investigated by the Truth and Reconciliation Commission that continue to affect the Sámi People.

36. While acknowledging the significance of the landmark judgment by the Supreme Court on Fosen, which is a step forward in recognising the collective rights of the Sámi People to self-determine their political, social, cultural, and economic priorities, the Expert Mechanism recommends enacting legislation that eradicates root causes for the court decision and to avoid repetition of Sámi rights violations in the future.

37. Like the Special Rapporteur on the rights of Indigenous Peoples, the Expert Mechanism advises Norway to make efforts to implement the right of the Sámi People to self-determination in order for them to genuinely influence decision-making in areas of concern to them. This may be achieved through comprehensive, effective consultation mechanisms, at the highest level, that seek to ensure that decisions directly affecting the Sámi People are not taken without good-faith negotiations and without their free, prior, and informed consent. The Sámi People must have the latitude to engage as primary or sole decision-makers, particularly in relation to local, regional, national, and international concerns that affect the Sámi People in Norway, including issues related to lands, territories, and resources; languages; traditional livelihoods; and cultures.

2. Lands, territories and resources

38. The Declaration affirms the right of Indigenous Peoples “to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired” (art. 26.1) This right implies free, prior, and informed consent, in cases of significant impact on lands or relocation from lands. The right to “own, use, develop and control” the lands, territories, and resources (article 26) activates the right to free, prior, and informed consent for safeguarding of Indigenous Peoples’ cultural identity which is inextricably linked to their lands, territories, and resources.

39. The Expert Mechanism agrees with the Special Rapporteur on the Rights of Indigenous Peoples that securing rights over lands and natural resources is fundamental to the self-determination of the Sámi People and is a prerequisite for the Sámi People to be able to exist as a distinct People. Land not only provides the physical space for cultural practices such as reindeer herding, fishing, hunting, harvesting, and farming but also serves as the foundation for social cohesion, traditional governance structure and spiritual connection to the environment. Hence, the State must ensure full protection of the rights of the Sámi People, to their land, territories, and resources through legislative safeguards and administrative measures.

40. The Expert Mechanism recommends Norway develop measures to secure and entrench the rights of the Sámi People to their lands, territories, and resources consistent with the Declaration. Such action is imperative and should be accomplished consistent with all relevant articles of the Declaration, especially in light of the subject matter revealed throughout the country engagement. Furthermore, given the statements by Sámi, such effect should be guaranteed prior to any development or license issuance for development by external parties or developers, including the State.

41. Consistent with the Declaration and in collaboration with the Sámi People, the Expert Mechanism recommends development of legislative measures to ensure direct, early, timely, full, effective and meaningful participation of the Sámi People in good-faith negotiations

concerning development or projects that may directly or indirectly impact Sámi and their communities, including issuance of development approvals, licence issuance regulations, and related laws and/or policies. Such measures should include explicit recognition of free, prior and informed consent in decision-making processes as well as mechanisms for resource management, land use planning, and the resolution of land-related disputes.

42. Norway should also ensure that, through consultation with the Sámi People, the type of land tenure (ownership, usufruct or variations of both) granted to them conforms with the needs, way of life, customs, traditions and land tenure systems of the Sámi People and is respected and ensured. Consistent with the Declaration, in particular with article 27, a key measure is the State establishing, in collaboration and cooperation with the Sámi People, the legislative and administrative measures, and appropriate and effective mechanisms necessary to facilitate the ownership, use and titling of Indigenous lands, territories and resources, including lands that Indigenous Peoples have come to occupy because of past relocations. This should be done with respect for the Sámi People's customs, traditions and land systems, including recognition of their own land tenure system as a source of property and land rights. This may require measures for inter-State dialogues in instances where the Sámi People reside across borders.

43. Norway should ensure that Indigenous Peoples who have unwillingly lost possession of their lands, or whose lands have been confiscated, taken, occupied or damaged without their free, prior and informed consent, are entitled to restitution and, if restitution is not possible, other appropriate redress, bearing in mind that compensation should not be limited to financial awards but should also take the form of alternative similar lands, in accordance with article 28 of the Declaration.

44. Norway should ensure that companies assume responsibility for effectively and immediately cleaning up lands, territories and resources polluted by their development activities, in collaboration and cooperation with the Sámi People concerned.

45. Norway should ensure that all those working on Sámi issues in the State, including legislators, and State officials, including regional or local enforcement officials and members of the judiciary, receive training on the rights of Indigenous Peoples.

46. Norway and the Sámi People should consider and implement innovative agreements for co-management of lands in cases where transfer of title is not desirable or possible.

3. Domestic legislation, administrative measures and policies pertaining to the rights of the Sámi People

47. In 2021, a national Act was formally adopted requiring consultation with Sámi by the government, including regional and local governments. Norway expressed that the right to self-determination is exercised through the right to participate in the public administration affecting both Sámi and the community at large. Their understanding is that the obligation to consult is in accordance with the ILO Convention No. 169. The Expert Mechanism notes the insufficient nature of the present consultation procedures in Norway, especially in light of the wider progressive developments on consultation and free, prior, and informed consent in the distinct cultural context of Indigenous Peoples. Consistent with concerns of the Sámi People and international law, the Expert Mechanism stresses the urgent need for improvement and amendment of the national law regarding both substance and procedures for consultation and free, prior and informed consent before adopting measures and initiatives that may affect Sámi People.

48. The Constitution of Norway article 108, recognises the status of the Sámi People. It states, "The authorities of the state shall create conditions enabling the Sámi People, as an Indigenous People, to preserve and develop its language, culture and way of life". The provision establishes the State's legal obligations to the Sámi People and has independent

significance in the interpretation of laws and in the applications of customary laws.¹⁹ Because the Sámi People are an Indigenous People, the State has an obligation, under international law instruments and international conventions, to create conditions for the Sámi People themselves to safeguard and develop the Sámi culture, including the right to determine their political status and to freely determine their economic, social, cultural, and spiritual development.

49. Legislation and procedures in Norway including the Sámi Act (as amended in 2021) and the Finnmark Act (2005) provide mechanisms for consultation. In its 2024 study, the Expert Mechanism recommended that, to recognise and operationalize the rights of Indigenous Peoples, the legislative process should apply a comprehensive approach to synchronize different elements and levels of legislation and regulations in order to make them consistent.²⁰

50. The Sámi Act provides for establishment of the Sámi Parliament and provisions related to Sámi languages in the context of municipalities in Norway, and the right to be consulted on matters relating to Sámi rights and interests. In light of persistent challenges, it is advisable that the Act be urgently amended by other relevant legislative acts or procedures. There is an exigent, overdue need to provide protection of the interrelated rights of the Sámi People as affirmed in the Declaration. In the context of the present subject matter of the adverse impacts of wind farms, mining, and other developments upon the Sámi People, there is a serious need to recognize and respect their right to free, prior and informed consent.

51. Given the interrelated nature of human rights and the subject matter of this Country Engagement, the Expert Mechanism takes the view that recognition of land rights is directly related to the impacts and actions of government in large-scale development projects. The Expert Mechanism has concerns that the Finnmark Act may or may not sufficiently recognize or secure Sámi property rights consistent with articles 25 through 31 of the Declaration. The articles are interrelated, and they affirm that Indigenous Peoples, as distinct rights holders, have a profound relationship with their traditionally owned, occupied or otherwise used lands, territories and resources. Without such recognition of and respect for the distinct rights of the Sámi People, the result will put the Sámi People and their lands and communities at risk of losing the central dimensions of their cultural identity. Deeper analysis on the recognition of land rights in Finnmark could take place as a follow up to this Country Engagement.

52. The 2009 Minerals Act, which regulates commercial exploration and extraction of minerals, is currently under review. The Expert Mechanism advises Norway to use this as a good platform for a dialogue and good-faith negotiations. The Expert Mechanism also supports the practice of creation of an independent committee in collaboration and cooperation with Sámi People and organizing public hearings to review the Committee's proposals on the Act's reform. The Expert Mechanism recommends negotiating a mutually agreeable solution to the key proposed changes to the Act, including mechanisms for benefit sharing from minerals owned by the State, free, prior and informed consent-based consultation consistent with guidelines or protocols developed by the Sámi People. Therefore, the Expert Mechanism advises, in line with the recommendation of the Special Rapporteur on the rights of Indigenous Peoples, that in the renewed Mineral Act, Norway ensures the requirements for good-faith negotiations and consultations with the affected Indigenous communities, application of free, prior, and informed consent, mitigation and compensation measures, grievance redress mechanism, and fair and equitable benefit-sharing. In addition, applications for exploration and exploitation permits should be evaluated against already existing projects and the cumulative impact that they have on the affected Sámi communities as well as capacity for the Sámi People to review the projects and their impacts for purposes of adjustment and or recommendations for the future of such enterprises.²¹

¹⁹ See NIM's report "Human Rights Protection Against Interference in Traditional Sámi Areas" 2022, available at <https://www.nhri.no/en/report/human-rights-protection-against-interference-in-traditional-sami-areas/>, page 12.

²⁰ See A/HRC/57/62, para 6, page 18.

²¹ A/HRC/33/42/Add.3 para 79

53. The 1990 Energy Act established the legal framework for the regulation of the energy sector in Norway. The Norwegian Water Resources and Energy Directorate (NVE) is responsible for the licencing procedure, which involves evaluating project proposals, making sure environmental impact assessments are conducted, and ensuring compliance with relevant laws, regulations, and standards. The Expert Mechanism advises that agencies of the State, as the responsible entity, implement their obligations in a manner that guarantees the rights and interests of the Sámi People in energy-related matters.

54. As referred to elsewhere in this technical advisory note, substantial progress has been made to more accurately elucidate the objectives of consultation in the context of the Sámi People as distinct collective rights holders. The Expert Mechanism encourages Norway, in collaboration with the Sámi People, to update the procedures for consultations with both the substantive and procedural elements elaborated and inspired by the Declaration and other international standards and protocols. For example, the law reform could address the need and obligations to uphold free, prior, and informed consent of the Sámi People. The Expert Mechanism emphasises that the right to consultation must incorporate the rights and interests of the Sámi People into the relevant processes from the outset, providing them the opportunity to influence the outcomes. Both Sámi and other guidelines and protocols have emerged in relation to consultation and free, prior and informed consent, and they should be employed to inform a refreshed and robust set of protocols or guidelines.

55. In accordance with international standards on Indigenous Peoples' rights, the Expert Mechanism advises Norway to prioritise dialogue and consultation with the Sámi People at all levels of governance, ensuring their meaningful participation in policy development, legislative processes, and project planning and licensure. This requires creating mechanisms for regular and transparent communication to address concerns, seeking input, and building consensus on issues related to the Sámi People's rights and interests.

56. The Expert Mechanism underscores the need for policy and legislative reforms to strengthen the protection of Sámi rights and ensure transparency, accountability and participation in decision-making processes related to land use and development. Follow-up actions should involve existing laws and regulations, as well as proposing amendments or new measures to address identified gaps and challenges. As recommended in its 2024 study, the Expert Mechanism suggests Norway, in implementing article 38 of the Declaration, establish monitoring bodies that can build political momentum towards the advancement of the rights of the Sámi People across society.²² The Expert Mechanism recommends that Norway, in cooperation and collaboration with the Sámi People, should carry out strategic planning and develop monitoring mechanisms and indicators to identify steps for the practical application of the human rights standards set out in the Declaration and for its effective implementation.

4. Implementation of court decisions and Treaty Body jurisprudence pertaining to cultural rights

57. Norway's Supreme Court, in its interpretation of the rights of the Sámi People in the Fosen case, unanimously found a violation of article 27 of the International Covenant on Civil and Political Rights and stated that the licence and expropriation decisions were invalid. As in previous Supreme Court judgments where article 27 of the International Covenant on Civil and Political Rights has been invoked, the judgment in the Fosen case largely follows the practice of the United Nations Human Rights Committee. As a point of departure, the Supreme Court, in accordance with statements from the Human Rights Committee, ruled that the Sámi People are protected under article 27 and that the concept of culture in article 27 of the International Covenant on Civil and Political Rights may include lifestyles and traditional activities such as reindeer husbandry, trapping and fishing. In the judgment, paragraph 101 provides, "It is clear that the Sámi People are a minority within the meaning of article 27, and that reindeer husbandry is a form of protected cultural practice." Given both the national and international force of such a jurisprudential decision and breakthrough, the government of Norway must be compelled to right the wrongs intentionally or unintentionally perpetrated

²² See A/HRC/57/62, Expert Mechanism Advice No. 17 (2024), para 9, page 18

by approval of and subsequent third-party actions that threaten the Sámi People's livelihoods, cultural practices, and all other interrelated rights in jeopardy.

58. While acknowledging the significance of the landmark judgment of the Supreme Court in the Fosen case, which is an advance in recognising the collective rights of the Sámi People to self-determine their political, social, cultural, and economic priorities, the Expert Mechanism received reports about conflicts following the court's verdict and the questions about the actual consequences of the verdict. These conflicts might have arisen due to differing interpretations of the court's decision and unresolved issues regarding the implementation of Sámi rights in practice. Additionally, there are concerns about the potential impacts of the verdict on existing agreements and practices related to land use, resource management, and community development in the affected areas. As such, the Expert Mechanism advises that Norway engage in meaningful collaboration and cooperation, in good faith, with the affected Sámi communities. This should aim to resolve conflicts and uncertainties through a process rooted in free, prior, and informed consent, ensuring that the rights and interests of the Sámi People are fully respected and upheld in accordance with international human rights standards, including the provisions of the Declaration.

59. Acknowledging the Supreme Court judgment in the Fosen case as a reaffirmation of the Sámi People's right to reindeer husbandry as a core aspect of their culture and traditional livelihoods, the Expert Mechanism advises that Norway engage in meaningful consultation and cooperation, in good faith, with the Sámi People. This process should be based on free, prior, and informed consent to address their concerns, perspectives, and grievances regarding the implementation of court decisions. Such an approach will ensure the Sámi People have the opportunity to fully exercise their rights through participation in decision-making processes, express their views, and seek redress for any injustices or violations of their rights.

60. The Expert Mechanism observes that, in compliance with the treaty obligations, Norway fulfils its reporting obligations to the relevant international human rights treaty bodies. This diligent reporting process helps ensure the accountability and effectiveness of Norway's human rights commitment on both domestic and international levels.

5. Ensuring respect for free, prior and informed consent in domestic legislation, policies and practices

61. Free, prior and informed consent is not achieved in a single moment or action but rather, it is a process of dialogue and negotiation over the course of a project, from planning to implementation and follow-up. As the Expert Mechanism has previously articulated, the use in the Declaration of the combined terms "consult and cooperate" denotes a right of Indigenous Peoples to influence the outcome of decision-making processes affecting them, not a mere right to be involved in such processes or merely to have their views heard.²³ Consistent with the right of self-determination, Indigenous Peoples must also have the ability to make an alternative proposal or suggest different models. The Human Rights Committee has further elaborated that Indigenous Peoples' participation in decision-making processes must be "effective".²⁴

62. The Declaration and the ILO Convention No.169 are complementary and mutually supportive, and both are cited by judicial and quasi-judicial bodies. The provisions of the Declaration, including those referring to free, prior, and informed consent, do not create new rights for Indigenous Peoples, but rather provide a contextualised elaboration of general human rights principles and rights as they relate to the specific historical, cultural, and social circumstances of Indigenous Peoples.²⁵ Because it is the duty of States to consult and ensure that Indigenous Peoples are able to fully exercise free, prior and informed consent, Norway must ensure respect for and recognition of the right of the Sámi People to free, prior and informed consent in their interactions with the private sector.

²³ A/HRC/18/42.

²⁴ See Poma Poma case.

²⁵ A/HRC/9/9, para. 86

63. The 2018 study of the Expert Mechanism on free, prior and informed consent elaborates how States can work in collaboration and cooperation with Indigenous Peoples to improve the incorporation of free, prior and informed consent into legislation and policy.²⁶ This study includes the following advice:

a) Private and state-owned companies must exercise human rights due diligence to ensure the adequacy of consultation procedures. States remain responsible for any inadequacy and should ensure measures are in place to oversee and evaluate procedures undertaken by enterprises, which could include legislation or guidelines requiring the operationalization of free, prior and informed consent and penalizing corporations for failing to comply with such norm.

b) States should establish preconditions for achieving effective free, prior and informed consent, including building trust, good faith, culturally appropriate methods of negotiation and recognition and respect for Indigenous Peoples' inherent rights. The process should be formal and carried out with mutual respect.

c) States should ensure that Indigenous Peoples have the opportunity to participate in impact assessment processes (human rights, environmental, cultural and social), which should be undertaken prior to the proposal and licencing. Such impact assessments should be objective and impartial.

d) States should prevent measures or projects that may cause significant harm to Indigenous Peoples, including cumulative harm from competing land-use forms.

e) States should ensure that treaties and other constructive agreements and arrangements recognizing the jurisdiction or decision-making authority of Indigenous Peoples are upheld and enforced.

f) States should ensure that, when relevant, Indigenous Peoples are provided with redress, which may include restitution, and that Indigenous Peoples are able to make their own decision about the form of redress best able to restore and protect their rights. This could be provided through culturally appropriate redress mechanisms, taking into account customary laws. States should not limit redress to cash compensation or arbitrarily exclude the potential for return or restoration of lands. Compensation should, as far as possible, take the form of lands and territories.

g) States should ensure that Indigenous Peoples who have unwillingly lost possession of their lands, or whose lands have been confiscated, taken, occupied or damaged without their free, prior and informed consent, are entitled to restitution or other appropriate redress (Declaration, art. 28). If direct financial benefits in the form of compensation are agreed upon for any adverse effects caused by the project, they should accrue to Indigenous Peoples irrespective of whether or not they own the land or resources. This may require amendments to legislation.

64. Relevant specific technical advice from the Expert Mechanism's 2018 study on free, prior and informed consent includes:

a) establishing a regulatory mechanism or mechanisms at the national level, preferably at the constitutional or legislative level, to regulate consultations.

b) engaging in early and continuous consultations with Indigenous Peoples.

c) providing full information, including about the potential impact of the project or measure, to Indigenous Peoples, presented in a manner and form that is understandable to them, culturally appropriate, in accordance with their inherent traditions and independent, including translations.

d) ensuring Indigenous Peoples have the resources and capacity to effectively engage in consultation processes.

²⁶ A/HRC/39/62 "Free, prior and informed consent: a human rights-based approach" (2018), advice no 11 on indigenous peoples and free, prior and informed consent

e) addressing and mitigating imbalances of power between the State and Indigenous Peoples, for example employing independent facilitators for consultations and establishing funding mechanisms that allow Indigenous Peoples to have access to independent technical assistance and advice.

f) supporting consensus building within Indigenous Peoples' communities and avoiding divisive practices.

g) supporting Indigenous Peoples' participation in objective and impartial impact assessment processes.

h) attending to cumulative impacts.

i) drawing up long-term development plans in collaboration and cooperation with Indigenous Peoples.

65. The Expert Mechanism urges Norway to align its national law, policy, and implementation measures as well as enforcement with articles 19, 28, 31, and 32 of the Declaration. This alignment should prioritize effective, good-faith consultation, cooperation, and negotiation with the Sámi People, through their representative institutions, aiming to reach consensus. The Expert Mechanism also emphasizes respect for and recognition of the Sámi People's right to influence decision-making processes and outcomes that affect them. To avoid adverse impacts, Norway should ensure free, prior and informed consent-based agreements and benefit-sharing, with compensation for damages and losses being considered only as a last resort in exceptional circumstances.

66. Decisions on advance possession²⁷, the practice of issuing construction licenses prior to addressing interrelated rights, pose the greatest risk of infringing upon the Sámi People's rights under international law, specifically article 27 of the International Covenant on Civil and Political Rights, as it allows development projects to move forward without free, prior, and informed consent, potentially leading to irreversible damage to Sámi culture, economy, and the environment. The Expert Mechanism has deep concern that by granting approvals or making decisions before full consultations are conducted, decisions on advance possession effectively bypasses the requirement for free, prior, and informed consent, leading to potential violations of Sámi rights and international legal obligations. This process often undermines trust and creates a power imbalance, leaving Sámi communities with little recourse to influence projects that affect their lands and culture. When decisions on advance possession are allowed, development activities may commence that cause irreversible harm to traditional Sámi lands, reindeer herding territories, and fishing areas, before a full assessment of cultural, environmental, and socio-economic impacts is made. Such harm not only threatens the sustainability of Sámi livelihoods but also erodes their cultural heritage. Decisions on advance possession often allow companies and municipalities to gain a foothold in a development project, while Sámi communities are left in a reactive position, trying to halt or reverse decisions that have already been made.

67. Decisions on advance possession in areas that affect the Sámi People's rights must only be granted when there is compliance by Norway and other parties with United Nations Member States' obligations under international human rights law, particularly under article 27 of International Covenant on Civil and Political Rights and the Declaration. To comply with these legal frameworks, any project that may encroach on Sámi lands or impact their traditional livelihoods, such as reindeer herding, fishing, hunting, harvesting, and other

²⁷ In the 2021 Fosen decision in the Supreme Court of Norway (fn 8), the Court referred to the practice of "forhåndstillatelse" in the Norwegian language (Bokmål). Google translates this term as "prior permission". In an English version of the Supreme Court decision, the term is translated as "decisions on advance possession" (<https://www.domstol.no/globalassets/upload/hret/translated-rulings/hr-2021-1975-s.pdf>). EMRIP notes that the Norwegian Human Rights Institution, NIM, in its 2022 report (fn 19) refers to this practice as "expropriation and granting a license." EMRIP also notes that the 2025 Amnesty International and Saami Council report on Just Transition (fn 13) uses the following terms interchangeably to refer to the practice of expropriation and issuing of licenses to begin construction even if court proceedings continue and compensation is not yet agreed: "pre-permitting/early access to construction", "pre-permission", "advance compulsory possession", "preliminary approval for compulsory expropriation".

livelihood activities, should require full consultation with the objective of obtaining free, prior, and informed consent of the Sámi rights holders before any approvals are granted.

68. The foundational basis for the human rights principles of due diligence, including impact assessments and free, prior and informed consent, are outlined in the Declaration which is based on the human rights conventions such as the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination and ILO Convention No. 169 and provides an international legal basis for the protection of Indigenous Peoples against interferences in their traditional occupational activities.

69. The Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, endorsed by the Human Rights Council in 2011, outlines state obligations and corporate responsibilities and can provide key guidance on enhancing standards and practices, including effective remedies.²⁸

70. The Expert Mechanism recommends the elaboration of a guideline on human rights due diligence and consultations that stipulates concrete steps in concrete circumstances, including consultation procedures, impact assessments, grievance redress, benefit sharing mechanisms, evaluation and monitoring processes. The Expert Mechanism further advises that a national due diligence standard be drafted in collaboration with the Sámi People and be established and enforced. This standard shall incorporate the highest international standards and national specificities. Such standard shall work along with the procedure of voluntary non-financial reporting by the companies based on environmental, social and governance principles. The Expert Mechanism suggests that Norway encourages private and state-owned companies to adopt corporate policies on Indigenous Peoples’ rights. An annual public ranking mechanism, inclusive of Sámi experts, would evaluate companies on the basis of their compliance with human rights and encourage them to improve their practices.

71. The Expert Mechanism recommends good faith negotiations, conducted through culturally appropriate procedures with the objective of reaching agreement on just terms. Such negotiations involve, on the part of all parties: (a) willingness to engage in a process and be available to meet at reasonable times and with reasonable frequency; (b) provision of information necessary for informed negotiation; (c) exploration of key issues of importance; (d) use of mutually acceptable procedures for negotiation; (e) willingness to change an initial position and modify offers, where possible; and (f) provision of sufficient time for decision-making.

72. In the view of the Expert Mechanism, significant improvements are required in the practice of impact assessments in Norway. In particular, such assessments shall include environmental and human rights impact assessments as well as assessments of the factual and potential impacts on culture, way of living, economies and livelihoods of the Sámi People and must ensure a decisive role for the Sámi People. Sámi institutions should be involved in impact assessments pertaining to Sámi economies, livelihoods, culture and way of life.

73. As noted above in relation to the legal status of the Declaration, *opinio juris* and the crystallization of sufficient practice, the two constitutive elements of customary international law, have emerged concerning the right of self-determination; the right to autonomy or self-government; the rights of Indigenous Peoples to their traditional lands, territories, and resources; and the right to reparations and redress.²⁹ To be clear, *opinio juris* necessitates maximum compliance. Additionally, across the globe, sufficient practice has emerged concerning the direct participation of Indigenous Peoples in domestic decision-making in matters that may affect them, and to be consulted, especially in relation to actions taken without their free, prior, and informed consent. Norway’s obligations under the international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the ILO Convention No. 169, and the Declaration, calls for a comprehensive approach to ensuring the Sámi People’s Indigenous rights, including free, prior, and informed consent. These instruments

²⁸ https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

²⁹ International Law Association, Committee on Rights of Indigenous Peoples Report (2012)

establish a framework for protecting the rights of the Sámi People, based on the right of self-determination and principle of non-discrimination. In implementing these international obligations, the Expert Mechanism recommends that Norway prioritise the recognition and implementation of free, prior and informed consent as a fundamental aspect of protection of the Sámi Indigenous People's rights, acknowledging its grounding in established human rights norms and treaties.

V. Recommendations

74. Improve domestic implementation of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples by:

a. Recognizing and integrating the content of the Declaration into Norwegian legislation, ensuring that all development projects and state actions fully respect the rights of the Sámi People, as Indigenous Peoples.

b. Developing a comprehensive national action plan to implement the Declaration and ensure that Sámi rights are safeguarded in line with international obligations.

c. Providing civil servants with comprehensive training on the provisions of the Declaration and its implementation.³⁰

75. Norway should ensure that decisions on advance possession in all cases involving or impacting traditional Sámi lands and livelihoods is prohibited by incorporating clear guidelines into the relevant expropriation act (Energy Acts, the Mineral Act, the Planning and Building Act, and other relevant legislation), which would eliminate the possibility of approving projects that have the potential to harm Sámi communities, and ensuring that all development decisions are made transparently and in accordance with free, prior and informed consent. Alignment of national law and policy in order to respect and recognize the distinct cultural context of the Sámi People is the aim of such efforts and should not be taken as a threat to others in society or the healthy national economic agenda of Norway.

76. Consultation processes must be initiated long before any permits are granted. This includes not only environmental and technical assessments but also thorough socio-cultural and cumulative impact assessments that prioritize the Sámi perspective and their knowledge.

77. Sámi institutions should consider developing their own protocols for engaging in discussions on decisions on advance possession if such processes are to be allowed in exceptional cases. These protocols should set strict criteria under which Sámi organizations are willing to participate in preliminary consultations and provide guidelines for how companies and the government must engage with Sámi communities from the outset. Decisions on advance possession should not proceed without clear and demonstrable consent from the rights holders, and Sámi representatives should be involved from the earliest stages of project planning, not just after decisions on advance possession have been issued. If a decision on advance possession is granted without free, prior and informed consent, Sámi communities do have the legal right to challenge these decisions immediately. This could involve bringing claims to the national courts or international human rights bodies, particularly when a decision on advance possession violates article 27 of the International Covenant on Civil and Political Rights or other international standards protecting the Sámi People's rights.

78. Improve the incorporation of free, prior, and informed consent into legislation, policy and practice by:

a. Implementing stronger provisions for free, prior and informed consent into key legislation such as the Energy Act, The Mineral Act, the Planning and Building Act, and the Consultation Act (chapter 4 of the Sámi Act). This will ensure that the

³⁰ A/HRC/57/62, Advice, No 17 at para. 12.

Sámi People have a stronger decision-making role in development projects that impact their lands, resources, culture, and livelihoods, and their overall interrelated rights. The notion that “consultations” satisfy the substantive and procedural aspects of free, prior and informed consent must be effectively dispelled, moving beyond a mere right to be consulted.

b. Working collaboratively with all relevant Sámi institutions, such as the Norwegian Association of Reindeer Herders and others, to create clear guidelines that align with this advice, the Declaration, and existing and emerging protocols that elaborate upon when and how free, prior and informed consent should be sought, ensuring mutual agreement between Sámi entities, e.g., the Parliament and the State, and municipalities.

c. Adopting regulations that provide equitable decision-making power between municipalities and Sámi rights holders. The government has implemented changes to the Energy Act and the Planning and Building Act to strengthen municipal authority over the establishment of onshore wind power. A requirement has been introduced for land use clarification under the Planning and Building Act, in the form of area regulation, before a concession can be granted. These changes involve modifications to the decision-making processes that significantly strengthened the decision-making authority of municipalities in concessions for wind power. Similar regulations should be adopted for Sámi rights holders.

d. Ensuring that no development project or business activity proceeds without the express consent of Sámi rights holders. Clear guidelines concerning due diligence should be established for how businesses must engage with Sámi rights holders at every stage of development projects.

e. Consider establishing an independent body, in collaboration and cooperation with the Sámi People, to oversee free, prior and informed consent processes and resolve disputes over consent and decision-making.

79. Improve impact assessment processes to enhance their independence and cultural competence, incorporating Sámi traditional knowledge and addressing social, economic and cultural impacts of development, through the following measures:

a. No impact assessment study should be approved, and no assessors should be selected, without the explicit free, prior and informed consent from Sámi rights holders. Businesses and the State must involve Sámi organizations in the selection process of independent, culturally competent assessors.

b. Impact assessments must account for the cumulative effects of multiple projects over time on Sámi lands, livelihoods, and culture. Cumulative environmental and social impacts are essential to consider, particularly in light of the ongoing climate shifts affecting reindeer herding, fishing, hunting, farming, harvesting and other livelihood activities.

c. Impact assessments must integrate and prioritize Sámi traditional knowledge, particularly regarding reindeer herding and fishing practices, to ensure culturally relevant considerations are made.

d. Provide Sámi rights holders with the right to call for a second opinion or reassessment of impact studies at any point during or after the project if they feel their concerns are not adequately addressed.

e. Engage in continuous consultation and cooperation, in good faith, with Sámi rights holders, institutions, and organizations. This process should prioritize trust-building, transparency, respect for and recognition of the Sámi People’s right to free, prior, and informed consent throughout the consultation and permitting process.

f. Recognising the need for unbiased and autonomous review by any structure engaged in evaluation, review, and/or impact assessment, the Expert Mechanism recommends establishment and implementation of a comprehensive evaluation mechanism, that includes a contracted scientific group to conduct research, and an expert committee to evaluate the research, with capacity to provide feedback

and comments to independently determine whether a project will have a significant impact on the rights and interests of the Sámi People. Such a review and evaluation entity must include individuals that possess expertise in Sámi livelihoods and rights, and Sámi representatives should be able to access both the substance and procedures of the evaluation structure at all levels and phases of review, feedback, and comment.

g. Establish an appropriate regulatory mechanism or mechanisms at the national level, preferably at the constitutional or legislative level, to regulate consultations in situations where free, prior and informed consent is required or is sought as the objective of the consultation. The establishment of such a mechanism itself necessitates a process of consultation with the Sámi People in a context of trust and good faith and should be accompanied by the development of adequate implementing institutions, employing well-trained officials and ensuring adequate funding. Such a mechanism could also act as an oversight mechanism.

80. Invest in capacity building for Sámi rights holders to ensure they have the tools they need to advocate for their rights effectively, to make informed decisions about development projects and ensure that they fully understand the potential environmental, cultural, and socio-economic impacts on their lands and livelihoods. This will empower the Sámi People to participate proactively in negotiations and consultations, rather than reactively responding to decisions made by external actors.

81. Capacity building will also allow Sámi communities to assert their right to participate in the selection of impacts assessment consultants, challenge impacts assessment findings if necessary, and ensure that Sámi knowledge is integrated into the assessments. Capacity building is not just about addressing immediate challenges but about fostering long-term sustainability for the Sámi People. By developing strong internal governance structures, technical expertise, and negotiation skills, Sámi organizations and institutions can better protect their rights and ensure the sustainability of their traditional lands, livelihoods, and cultural heritage in the face of future development pressures.

82. Norway should provide comprehensive legal and technical support to Sámi rights holders, including Sea Sámi. This includes funding for legal representation, technical experts, and independent consultants who can assist Sámi rights holders in understanding the full scope of proposed development projects and their potential impacts. This support should be made available to all Sámi groups, including Sea Sámi, to ensure they have equal capacity to engage in consultations and defend their rights.

83. Norway should consider a dedicated national fund to finance capacity-building initiatives for Sámi institutions and organizations. This fund could cover costs related to training, legal aid, negotiation support, and participation in impact assessments, consultations, and other decision-making processes. Such a fund could help Sámi rights holders develop the resources and expertise needed to assert their rights in negotiations with the government and businesses.

84. Norway should also invest in long-term training programs that focus on enhancing the legal, technical, and environmental knowledge of Sámi rights holders. These programs should cover topics such as international human rights law, environmental impact assessments, negotiation techniques, and project management. Providing such training would empower Sámi groups to meaningfully engage in consultations, challenge decisions when necessary, and fully participate in all stages of development planning.

85. Norway should also ensure that local and national public officials as well as business representatives receive education and training on Indigenous Peoples' rights, free, prior and informed consent, and the legal obligations under the Declaration and other international frameworks. This will help ensure that decision-makers have the necessary cultural competence and understanding to work effectively with Sámi communities and uphold their rights in development projects.

86. Sámi organizations and institutions should communicate and collaborate with other Indigenous Peoples, internationally, to share best practices and lessons learned in

areas like free, prior and informed consent, sustainable development, and rights-based governance. Engaging with Indigenous networks can provide valuable insights into how other Indigenous Peoples have successfully navigated similar challenges, particularly in the context of development projects and land rights disputes.

87. Sámi organizations and institutions may consider establishing protocols for free, prior and informed consent, including developing and conducting their own impact assessments based on their own knowledge and governance structures. Such protocols are important tools in preparing Indigenous Peoples, States and other parties to engage in a consultation or free, prior and informed consent process, setting out how, when, why and whom to consult.³¹

88. Deeper co-governance models might be considered for achieving free, prior and informed consent. Suggested models include 1) the lead jurisdiction model, where one jurisdiction makes the decision (this is currently in place in Norway); 2) a jointly authorized decision-making body, where Indigenous and State governments establish a joint body for decision making; or 3) a decision alignment model where both Indigenous and State governments each make their own independent decision and then work together on implementation.³²

89. Increase transparency and accountability for human rights breaches through the following measures:

a. strengthen accountability measures through the Transparency Act, clearly defining the roles and responsibilities of the government and companies regarding breaches of Sámi rights.

b. initiating an independent investigation into the Fosen case to examine the failures in upholding Sámi rights, particularly concerning free, prior and informed consent. The investigation should focus on learning lessons from the case to prevent future breaches of Sámi rights in similar contexts.

90. Develop, in collaboration and cooperation with the Sámi People, a comprehensive national plan for renewable energy projects that ensures Sámi rights are fully protected under the free, prior and informed consent framework and ensures the protection of reindeer herding and fishing. This plan should include assessments of cumulative environmental and social impacts on reindeer herding and fishing and ensure meaningful Sámi involvement in all stages of project development. It should ensure that all new energy projects, particularly wind power, undergo thorough impact assessments that consider the rights of the Sámi People as outlined in national and international frameworks.

91. Similar to the recognition of land rights, concerns regarding deficiencies in fishing rights for the Sea Sámi were brought to the attention of the Expert Mechanism during this Country Engagement. The Expert Mechanism considers that recognition of rights to land and other resources constitutes a crucial component in ensuring the alignment of national legislation and policy with the Declaration and other international human rights law, especially in the context of planning large-scale development projects. However, comprehensive inputs on land, fishing, and other resource rights were not specifically solicited during this Country Engagement. Consequently, a more thorough analysis addressing the recognition of fishing rights for the Sea Sámi could be pursued as a follow-up activity.

92. Consider creation of an oversight body composed of representatives of the State and the Sámi People to monitor how court decisions are interpreted and applied in subsequent legal proceedings to ensure consistency with international human rights standards and the protection of Sámi rights.

³¹ See A/HRC/EMRIP/2010/2

³² See https://fnemc.ca/wp-content/uploads/2022/01/FNEMC_mining_consent_FinalReport.pdf

VI. Follow up

93. As provided in the terms of reference, the parties agreed that this advisory note should be made public. Both parties also expressed an interest in sharing their experiences at dialogue and or best practices during the agenda item on country engagement at the Expert Mechanism`s annual sessions.

Annex 1: Terms of Reference

Country Engagement - Norway³³ Terms of Reference³⁴

03 March 2023

I. Mandate

A. Country engagement mandate:

Pursuant to paragraph 2 of Human Rights Council resolution 33/25, the EMRIP should:

(a) Upon request, assist Member States and/or Indigenous Peoples in identifying the need for and providing technical advice regarding the development of domestic legislation and policies relating to the rights of Indigenous Peoples, as relevant, which may include establishing contacts with other United Nations agencies, funds, and programmes.

(b) Provide Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures, or other relevant mechanisms.

(c) Upon the request of Member States, Indigenous Peoples and/or the private sector, engage and assist them by facilitating dialogue, when agreeable to all parties, in order to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

(d) Provide Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures, or other relevant mechanisms.

(e) Upon the request of Member States, indigenous peoples and/or the private sector, engage and assist them by facilitating dialogue, when agreeable to all parties, in order to achieve the ends of the Declaration.

B. Terms of reference under resolution 33/25:

In accordance with the EMRIP's methods of work (A/HRC/36/57, Annex 1), terms of reference should be agreed for every country engagement activity in the light of the mandate of the Expert Mechanism. Modalities of engagement, timelines and the types of activity envisioned, as well as the expected final product, should be prepared by the Expert Mechanism in consultation with the requester(s) and other relevant stakeholders. The terms of reference should also include modalities for the disclosure of information, in agreement with the requester and other stakeholders.

II. Requester

The Saami Council (22 July 2021)³⁵ made the request, with the support of the Sámi Parliament. The Member State accepted the request for a country engagement mission in a letter to the EMRIP on 18 May 2022 and agreed in receiving the Terms of Reference.

³³ This is the eighth country engagement request to the EMRIP under its amended mandate (33/25). See OHCHR | Requests for country engagement

³⁴ These terms of reference were developed in cooperation between the EMRIP, the requester, the Sámi Parliament in Norway, and the Member State.

³⁵ The Saami Council is a voluntary Sámi organization (a non-governmental organization), with Sámi member organizations in Finland, Russia, Norway, and Sweden. Since it was founded in 1956 the Saami Council has actively dealt with Sámi policy tasks.

III. EMRIP Delegation

Members: Antonina Gorbunova, Head of mission, Dalee Sambo Dorough, Sherly Lightfoot and Binota Dhamai.

IV). Dates of country engagement mission

The EMRIP will undertake a country engagement mission to Norway, to take place from 7-15 March 2024, visiting Trøndelag County of Central Norway, where Fosen Vind is located, Nordland County where Oyfjellet wind power plant is located, Nasafjell, the proposed area for quartz mining, Finnmark County where Nussir copper mine is located and numerous planned wind power plants, and Oslo.

V. Purpose

Consistent with the EMRIP's mandate and directive to contribute to, and promote respect for and full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and to follow up on its effectiveness as expressed in articles 41 and 42, the EMRIP intends to focus its country engagement mission on:

i. Increasing awareness on the rights of the Indigenous Sámi People in Norway, particularly in regard to their lands, territories and resources and the requirement for private sectors to ensure the recognition of the fundamental rights and respect for the principle of free, prior, and informed consent (FPIC) as recognised under international human rights law, including the United Nations Declaration on the Rights of Indigenous Peoples.

ii. Providing advice and guidance to the Sámi People, their organizations, and representative institutions, as well as to the Member State with a focus on the enforcement of the domestic legislation, administrative measures, policies, and judicial functions as well as implementing court decisions pertaining to the cultural rights of the Sámi People in Norway,³⁶ while recognising the relevance of the subject matter throughout Sápmi.

iii. Ensuring effective implementation of Indigenous Peoples' rights in alignment with international standards, including integrating them, if necessary, into the national legislation. This entails upholding the principles of consultation, and free, prior and informed consent provided under international standards including the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169. The advice may include guidance on the restitution of land after dispossession; consequences of the lack of Indigenous Peoples' consent to development projects, including green energy projects, particularly with regard to impacts on the right to culture and livelihoods and the environment;³⁷ implementing Norwegian Supreme Court decisions³⁸; advice on how to ensure respect for free, prior and informed consent in domestic legislation and policies.

iv. The EMRIP intends for this advice to build upon the guidance in its studies and reports particularly its 2018 study on "Free, prior and informed consent: a human rights-based approach" (A/HRC/39/62); its 2020 study on the "Right to land under the United Nations Declaration on the Rights of Indigenous Peoples: a human rights focus" (A/HRC/45/38); its 2022 study on "Treaties, agreements and other constructive arrangements, including peace accords and reconciliation initiatives, and

³⁶ See request at 12.

³⁷ See request at 4-5, 7 ("The wind power plant, road network and power lines would have a large negative impact on the Rastigaisa area in terms of nature, culture and Saami traditional livelihoods. Rastigaisa is a sacred Sámi mountain and there are old Saami places of sacrifice and cultural relics in the area.").

³⁸ The Fosen case (HR-2021-1975-S) on the 11th of October 2021.

their constitutional recognition” (A/HRC/51/50); and its 2021 report on “Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: [I]ndigenous [P]eoples and the right to self-determination” (A/HRC/48/75). Simultaneously the EMRIP acknowledges the Norwegian Government has expressed a somewhat different view regarding these matters, and has taken note of the Norwegian Government’s comments/Addendum to the Report of the Special Rapporteur on the Rights of Indigenous Peoples on the human rights situation of the Sámi people in the Sápmi region in Norway, Sweden and Finland (A_HRC_33_42_Add.4-EN.pdf). Another occasion where the Norwegian Government has expressed its view regarding these issues is in the Human Rights Council in 2016: <https://www.norway.no/en/missions/wto-un/nig/statements/hr/hrc/hrc-33rd-session-13-sept.-30-sept/item-3/item-3---statement-on-indigenous-peoples-and-emrip/>

v. The technical advisory note will build upon, and provide assistance and advice on implementing, recommendations made previously to Norway by UN Human Rights Council’s special procedures and periodic reviews as well as treaty bodies, including the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment ([A/HRC/43/53/Add.2](#)), in 2020; the Human Rights Council’s UPR procedure ([A/HRC/42/3](#)) ([A/HRC/27/3](#)), in 2014 and 2019; the Human Rights Committee ([CCPR/C/NOR/CO/7](#)), in 2018; the Committee on the Elimination of Racial Discrimination ([CERD/C/NOR/CO/21-22](#)) ([CERD/C/NOR/CO/19-20](#)), in 2011 and 2015; and the Special Rapporteur on the rights of Indigenous Peoples ([A/HRC/18/35/Add.2](#)) ([A/HRC/33/42/Add.3](#)), in 2011 and 2016, and recent ILO documents on government of Norway’s implementation of ILO C169.

vi. The EMRIP will facilitate dialogue regarding its proposed advice between the Saami People in Norway through the Sámi Parliament, the Saami Council, the Member State and the private sectors in order to establish and maintain good faith and transparent communications among all parties concerned.

vii. Raising awareness about EMRIP’s mandate and relevant Studies, Reports and Advice among stakeholders in Norway.

viii. The EMRIP acknowledges that some of the projects referenced are under judicial and/or administrative review, and as such, EMRIP will not intentionally influence such independent review.

VI. Activities

The country engagement will consist of the following activities:

- Information gathering to identify existing national and local laws, policies, and frameworks already in place or being established to consult with Indigenous Peoples and to gain their free, prior, and informed consent as well as identifying the gaps in the existing processes that mitigate against full implementation of the applicable rights.
- Bilateral and multilateral meetings with rightsholders and stakeholders including: the Saami Council, the Sámi Parliament in Norway; knowledge holders including youth from impacted areas and communities, reindeer herders; landowners, companies, and NGOs.
- Visiting the Saami Council and Sámi Parliament in Norway.
- Visiting the relevant Government Ministries including Local Government and Regional Government, Ministry of Energy, Ministry of Trade, Industry and Fisheries the Norwegian National Human Rights Institution, and Ministry of Foreign Affairs.
- Facilitating and promoting dialogue among the Saami Council, the Sámi Parliament in Norway, the government of Norway, and the private sector on the effective

implementation of the human rights norm of free, prior, and informed consent (FPIC); and facilitating dialogue between the government and the Sámi on this matter, including assessing how FPIC is safeguarded in the domestic legislation.

- Organise public event in university to raise awareness about EMRIP's mandate.
- Provide technical advice to both Indigenous Peoples and the Member State on the development of domestic legislation, administrative measures, judicial treatment, and policies of the rights of the Sámi in Norway, to ensure implementation of the rights associated with the human rights norm of free, prior and informed consent, under international human rights law and international standards, in particular the United Nations Declaration on the Rights of Indigenous Peoples.
- At the end of the mission, a multilateral meeting with all stakeholders together to discuss the way forward, including preliminary advice from the EMRIP to be elaborated in a Technical Advisory Note after the mission.
- Undertake follow-up activities as agreed by both parties.

VII. Outputs

Following the mission and within a timeframe agreed upon by both parties, the EMRIP will submit to the Saami Council, the Sámi Parliament in Norway, and the government of the Member State, an independent Technical Advisory Note consisting of an analytical synopsis of issues raised and explored; any agreements that may have been achieved during or after the mission; and recommendations on how to take the situation forward.

This Note will be shared with the requester, the Saami Council and the Sámi Parliament in Norway, and the government of Norway, all of whom may submit comments.

VIII. Follow-up and disclosure:

The EMRIP will indicate on its website that it intends to carry out this mission and include general information on the mission.

The EMRIP will issue a press statement at the end of its country engagement; this statement should neither reveal the substantive issues or the conclusions of the country engagement.

The Technical Advisory Note will be made public on the EMRIP's webpage, following comments from the Requester, the Saami Council as well as the Sámi Parliament in Norway, and the Member State.

The EMRIP's annual session in July 2024 will include an Agenda Item on country engagement with a view to offering both parties an opportunity to share their dialogue efforts and/or best practices. All parties to the country engagement should agree to participate in such debates.

The EMRIP could also, upon request, offer an opportunity for bilateral closed meetings between the parties during its annual session.

Upon request and depending on the EMRIP's assessment of future developments and the availability of resources, the EMRIP may undertake a follow-up mission to the Member State.
