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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

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REFERENCE: AL Indigenous (2001-5)
NOR 1/2008

18 December 2008

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 6/12.

In this connection, I would like to call the attention of your Excellency's Government to information received in relation to the draft bill currently being considered in Norway to regulate the management and use of mineral resources.

According to the information received:

On 28 November 2008, the Sami Parliament of Norway voted not to give its informed consent to the draft legislation due to concerns regarding certain provisions that affect their rights. One concern that has been raised is that the draft bill fails to provide safeguards for all land that is within the Sami traditional territory. Rather, according to information received, the sections of the draft bill that affect Sami rights and interests limit protections for the Sami to the county of Finnmark only.

Another concern directly relates to Section 15 of the Ministry's draft law on exploration in Finnmark. While the provision allows the Sami Parliament an opportunity to comment on applications for licenses in the county, and some weight is given to Sami culture, reindeer management, and business activities when assessing these applications, it allegedly does not provide an adequate level of consultation with the Sami Parliament. Finally, attention has been drawn to the absence of a section providing for benefit sharing when mines are located in traditional Sami lands and affect the Sami community.

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Her Excellency Mrs Bente Angell-Hansen
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Norway
to the United Nations Office at Geneva

Without yet assessing the validity of these concerns, I would like to draw the attention of your Excellency's Government to the United Nations Declaration on the Rights of Indigenous Peoples, in particular the following provisions:

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Further, International Labour Organisation Convention No. 169 on Indigenous and Tribal Peoples states:

Article 6

1. In applying the provisions of this Convention, Governments shall:
 - (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly . . .
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

The Norwegian Government has proven to be a leader in advocating for and protecting indigenous peoples' rights, from its adoption of International Labour Organisation Convention No. 169, to its support for the United Nations Declaration on

the Rights of Indigenous Peoples, to its cooperation with the Sami Parliament at the national level. If Norway were to adopt a mineral act to which the Sami Parliament could give its informed consent and which is faithful to relevant international standards, the act could prove to be a model for such legislation worldwide, particularly for States that want to implement policies and laws that both support the development of the country and respect the rights of indigenous peoples.

I would appreciate a response with your Government's observations on this matter within sixty days. I undertake to ensure that your Government's response is accurately reflected in the report I submit to the Human Rights Council or in any public statement I may make in this regard. I would appreciate a response within sixty days.

Please accept, Excellency, the assurances of my highest consideration.



James Anaya
Special Rapporteur on the situation of human rights and fundamental
freedoms of indigenous people

Valvatne Lars Sigurd

From: BestPost
Sent: 19. desember 2008 14:15
To: Seksjon for MR og demokrati
Cc: Permanent Mission of Norway in Geneva; Smith Tine Mørch; Ervik Helga Fastrup; Merchant Anne; Valvatne Lars Sigurd; Stirø Beate; Angell-Hansen Bente; Skorpen Hilde Janne; Heines Vebjørn
Subject: VS: MR. Urfolk. FNs spesialrapportør for urfolks rettigheter ber om kommentarer til behandlingen av mineralloven.
Attachments: Urfolk - klage.pdf

GENEVE, NORGES FASTE DELEGASJON

Saksbehandler: Heines Vebjørn

Til:

Prioritet:

Ref. Off.loven:

UD's saksnummer:

Stasjonens saksnummer:

Tilgangsgruppe:

Ansv.enhet:

Vedlagt oversendes brev fra FNs spesialrapportør for urfolks rettigheter hvor han ber om kommentarer fra norske myndigheter vedrørende den pågående behandlingen av utkastet til minerallov i Norge. Bakgrunnen for henvendelsen er det forhold at Sametinget 28.11.08 vedtok å ikke gi sitt samtykke til lovutkastet i sin nåværende form. Spesialrapportøren ber om nærmere informasjon om hvordan denne saken blir håndtert videre, særlig i lys av artiklene 19, 25, 6 og 15 i Urfolkserklæringen. I den forbindelse oppfordrer han til en prosess som leder til at Sametinget vil kunne gi sitt informerte samtykke til lovutkastet.

Spesialrapportøren ber om at henvendelsen blir besvart innen 60 dager.

Vebjørn Heines
FN-delegasjonen i Geneve

Kopi:

Sendt: 2008-12-19 14:11:54

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