

Summary of “Consultations as a tool. The Finnmark Act – an example to follow? “ by Else Grete Broderstad.

Else Grete Broderstad, Tromsø Forum Conference, 6th of October 2006

At the Forum conference Else Grete Broderstad presented a work on the consultations concerning the Finnmark Act. This work, which she is doing together with Hans-Kristian Hernes at the Institute of Political Science, University of Tromsø, is not yet completed. She focused on the process from 2003 when the Government had finalized their preparatory work and presented a bill for a new act – the Finnmark Act. The criticism of the bill was both substantial with regard to the content and also covered procedures and the process leading to the proposed Finnmark Act. At this stage in 2003, there were different opinions between the Ministry of Justice and the Sámi Parliament about whether the process had been real consultations. The Sámi Parliament claimed that the proceedings leading to the proposed Finnmark Act were not in compliance with the consultation and participation articles of the ILO Convention no 169.

This was triggering a strong focus on the authorities’ duty to consult Saami interests. And the duty to consult derived from the ILO 169, is a main incentive for the consultations. Several articles in the convention determine the state’s duty to consult indigenous peoples, and the consultation and participation articles are the cornerstone of the convention.

The result of the conflict was that the Norwegian Parliament's Standing Committee on Justice required an independent assessment from the government, which was finalized in November 2003. The main conclusion was that the bill on important points did not fulfil the requirements of international law. The government responded with a new inquiry on international law published in February 2004. Based on this report the Government claimed that the bill was in accordance with international law, but an identification of rights was necessary. The situation became even more tense; the government had a “hot potato” in their hands. Thus; the Standing Committee on Justice invited the Sámi Parliament and the Finnmark County Council to consultations on the law proposal. It must be stressed that this is a unique way of dealing with legislative measures in Norway, meaning preparation of legislation, and the act is a result of a unique political process.

In their further discussion, Broderstad and Hernes link the process on the Finnmark Act to three principal debates on the possibilities arising from consultations: a) What makes consultations different from public inquiries and bargaining? b) Is this a way of implementing self-determination within the framework of the nation state? c) This is an example of deliberative democracy, and it is possible to pay scientific attention on real deliberations processes.

In the presentation Broderstad drew some preliminary conclusions regarding the character of the consultations: a) It must be regarded as a deliberative process; b) the Sámi Parliament took a leading role. The Sámi Parliament was during all the consultations active in defining and adopting the concept of consultation, and prepared and presented several papers among others on the duty of the state to consult; c) the consultations became important for the results. Quite a lot of time was spent on discussions about standpoints and formulations in order to come to an agreement. The final bill was different from the bill of the Government.

In her presentation Broderstad also pointed on some special circumstances of relevance for other indigenous contexts, like the duty to prior consultations. This duty has been commented on by the ILO bodies; the importance of representative indigenous institutions and the subject of the consultation duty that also can include parliamentary bodies, not only governments and public administration.