

**Research on Best Practices for the Implementation of the Principles of
ILO Convention No. 169**

Case Study: 3

**The Finnmark Act (Norway),
A Case Study**

by

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2008



Programme to Promote ILO Convention No. 169

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Table of Contents

INTRODUCTION	5
1. BACKGROUND	7
2. THE LEGISLATIVE PROCESS.....	9
2.1 Background.....	9
2.2 The Dialogue Process	11
2.3 Negotiations between the national parliament and the Sami Parliament.....	13
2.4 Post-Finnmark Act Agreement concerning Consultations	15
3. THE FINNMARK ACT	19
3.1 The Purpose of the Act	20
3.2 The Scope of the Act.....	23
3.3 Relationship to International Law.....	24
3.4 Guidelines for Management and Use of Uncultivated Lands.....	27
3.5 Relationship to Established Rights	30
3.6 The Finnmark Estate.....	33
3.6.1 The Legal Position of the Finnmark Estate.....	34
3.6.2 The Board of the Finnmark Estate.....	35
3.6.3 Election of Board members	39
3.6.4 The responsibilities of the Board	40
3.6.5 Changes in the Use of Uncultivated lands and transfer of real property	43
3.6.6 Distribution of Surplus assets	47
3.6.7 The Control Committee	48
3.6.8 National Parks on Lands owned by the Finnmark Estate	50
3.6.9 Relationship to Future Legislation.....	51
3.7 Renewable Resources in Finnmark.....	52
3.7.1 Rights of municipality residents	53
3.7.2 Rights of People Resident in Finnmark County	54
3.7.3 Special Rights for Local Utilization	56
3.7.4 Access for Other People.....	58
3.7.5 Local Management of Fishing and Hunting	59
3.7.6 Further Conditions for Utilization of Renewable Resources.....	60
3.8 Fishing Rights in Tana and Neiden Watercourses.....	62
3.9 Survey and recognition of existing land rights	64
3.9.1 The Finnmark Commission.....	64
3.9.2 The Uncultivated Land Tribunal for Finnmark	71
3.9.3 Joint Provisions.....	73
3.9.4 Final Provisions	75
3.10 Analysis.....	80
3.10.1. The Interdependency between Process and Substance	80
3.10.2 Recognition and identification of Sami Rights to Lands and Resources.....	80
3.10.3 Management of Lands and Resources in Finnmark.....	87
3.10.4 Conclusions.....	91
Bibliography	93
Annex	95

Annex 1: The Finnmark Act, as adopted by the national parliament (the Storting), 17 June 2005	95
Annex 2: Draft Finnmark Act, as proposed by the Government in 2003	114
Annex 3: Procedures for Consultations between State Authorities and the Sami Parliament	125
Annex 4: Guidelines for Consultations between State Authorities and the Sami Parliament and other Sami Entities.....	131
Annex 4: Questionnaire: ILO Convention No. 169 – the Finnmark Act (Norway) ...	151

INTRODUCTION

In 1990, Norway became the first State party to ratify the International Labour Organization's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989). As such, the implementation of these standards in Norway was watched with great interest by other States interested in ratifying the Convention, as well as the International Labour Organization (ILO) in monitoring the application of the Convention.

A diverging interpretation and understanding of the core land rights provisions of the Convention soon became apparent: The Government and the indigenous Sami Parliament in Norway differed in their understanding of the substantive content of article 14 of the Convention. The Government interpreted its obligations under article 14 to be limited to ensuring a strongly protected usufruct right to lands and natural resources for the Sami, whereas the Sami Parliament believed the State is obliged to recognize and protect Sami rights of ownership and possession, as well as usufruct rights. The difference between the positions of the Government and the Sami Parliament as far as the land rights provisions were concerned established serious constraints for their cooperation and dialogue within the framework the periodic reporting to the ILO.

In 1993, when Norway had to submit its first periodic report to the ILO on the implementation of Convention, the Sami Parliament also developed its own independent report on how the Convention was being implemented. The Sami Parliament forwarded its report to the Government for submission to the ILO, but the Government did not do so as it viewed the Sami Parliament's report as too critical and radical. It was later agreed that future reports from the Sami Parliament should always be attached to governmental periodic reports. The ILO endorsed this procedure and encouraged the parties to work on this basis in the future.

The provisions of the ILO Convention, in particular its provisions concerning land rights, have been in the center stage of the domestic Sami political debate ever since Norway ratified the Convention. Norway's obligations under the Convention, in particular as far as Sami land rights are concerned, have been the subject for numerous legal studies in

Norway. The studies conducted by the Sami Rights Committee, are of major importance in this regard. The work of the Sami Rights Committee paved the way for the 2005-adoption of the Finnmark Act, through which approximately 95 per cent of the landmass in Finnmark County was transferred from the State to a private entity - called the Finnmark Estate.¹

Case Study²

This case study is an introduction to the Finnmark Act, and an analysis of the Act in relation to the ILO Convention. The study focuses on the process leading to the adoption of the Act and the substantive content of the Act, as well as the interdependency between the process and the substantive legal content of the Act. Besides focusing on State's obligation to consult the indigenous peoples concerned through appropriate procedures whenever consideration is being given to legislative or other measures which may affect them directly, the case study also demonstrates that consultations can have enormous substantive influence.

The case study aims at giving an overall introduction and analysis of the process and the substantive content of the Act, rather than a detailed legal analysis of the individual provisions of the Finnmark Act.

Methodology

The case study is based on the author's personal knowledge about Sami political issues, Sami land rights, and the process leading to the adoption of the Finnmark Act. Various relevant reports, decisions and studies have been taken into account when preparing the case study. The author also conducted interviews with civil servants who all held key positions in the central Government and the Sami Parliament during the process. These interviews were conducted on the basis of a questionnaire which is attached to this report (please see annex 4 for details).

¹ About 46,000 sq. km – an area approximately the size of Denmark

² The case study has been funded by the International Labour Office. However, the views expressed in this paper do not necessarily reflect the position of the International Labour Office. The author takes sole responsibility for the substantive content of the paper, including any shortcomings or inaccuracies.

1. BACKGROUND

The Sami are the indigenous people of Finland, Norway, Sweden and the Kola Peninsula in the north-western part of Russia. The Sami is one people residing across the national borders of four countries, with their own distinct identity, language, culture and cultural expressions, social structures, traditions, livelihoods, history, and aspirations. The term Sami stems from 'Sápmi' which is the name for both the Sami Homeland (*Sápmi*) as well as the people itself; *sámit* or *sápmelaččat* (Solbakk, 2006).

The present Sami settlement area is much smaller than the Sami traditional homeland. In Norway, it stretches from Finnmark County in the north to Hedmark County in the south. The total Sami population is estimated to be somewhere between 80,000 - 95,000 individuals. In Norway, the Sami population is around 50 - 65,000 (Nordisk ekspertgruppe, 2005). These figures are estimates only as the national censuses do not include a specific component on ethnic identity thereby making it difficult to give accurate estimates. The Sami in Norway are spread over wide parts of the country so that many of the traditional Sami areas appear today as Sami enclaves. However, in the county of Finnmark the Sami constitute a significant part of the total population; in particular in municipalities in Inner-Finnmark where they are in majority.

Historically, the aim of Norway's discriminatory policies towards the indigenous Sami people was to annihilate the Sami culture and language, and assimilate the Sami people into Norwegian society. This policy was practiced since the second half of the 19th century and is often referred to as the 'Norwegianisation' policy.

This also resulted in a discriminatory application of legal standards and principles. Sami traditional ownership of lands and resources was regarded as irrelevant in legal terms, as their immemorial occupation and use of land and resources did not establish any right under the Norwegian system. The State held title to 96 per cent of the land in Finnmark County - covering an area the size of Denmark.

The Norwegianisation policy came to a head in connection with the Alta-Kautokeino conflict around 1980. This arose from the construction of a dam that had adverse impact on traditional Sami reindeer herding. The conflict culminated with six hundred police officers clearing a Sami encampment and forcibly removing hundreds of demonstrators on 15 January 1981 (Falch, 2005). The dispute about the hydroelectric development of

the Alta-Kautokeino watercourse highlighted the need to clarify the State's relationship to Sami culture and the legal position of the Sami people.

For the Norwegian authorities, this conflict demonstrated that there was a need to accommodate Sami rights and to engage in dialogue with the Sami people. State authorities also became aware that their capability and ability to govern the Sami people was being challenged, and that Norway's treatment of its own indigenous people had an increasingly damaging impact on Norway's image internationally. In 1981, an agreement was reached between the Government and the Sami organizations to establish the Sami Rights Committee. After many years of deliberations it submitted its conclusions and recommendations concerning Sami land rights; this forms an important part of the foundation for the Finnmark Act.³ The Act regulates rights to lands and natural resources in Finnmark County, and it recognizes that the indigenous Sami people have rights to land and natural resources in the county of Finnmark.

In 1988, a specific section on Sami rights was included in the Constitution of Norway, establishing constitutional guarantees for Sami language, culture and society. Section 110a states that it is the obligation of the State to create the conditions necessary for the Sami to protect and develop their language, their culture and their society.

The establishment of the *Sami Parliament* in 1989 is regarded as an important part of the implementation of section 110a of the Constitution. Section 2-1 of the Sami Act provides that the Sami Parliament's mandate includes all questions that the Parliament considers to relate to the Sami. The Parliament can on its own initiative raise and issue statements on all questions within its mandate, and raise questions before public authorities and private institutions. Moreover, it has the authority to make decisions when this follows from legislative or administrative provisions.

³ The Finnmark Act was adopted on 8 June 2005, and entered into force in July 2006.

2. THE LEGISLATIVE PROCESS⁴

2.1 Background

The Sami Rights Commission submitted its second report to the Ministry of Justice in January 1997. This report (NOU 1997:4) addresses issues such as the protection of the natural resource foundation for the Sami culture, use and management of lands and resources in Finnmark County, and protection against encroachments onto Sami areas. The Government then started to work on its proposal for an Act relating to legal relations and management of land and natural resources in the county of Finnmark. In April 2003, the Government submitted a proposal for a Finnmark Act to the Norwegian National Parliament (the Storting). The proposal was strongly criticised by Sami institutions, legal experts and international entities for not meeting the international legal requirements for recognition and protection of Sami rights. This forced the National Parliament to enter into a direct dialogue with the Sami Parliament regarding the contents of the Act. This dialogue process concluded with the adoption of a radically revised and amended Finnmark Act by the National Parliament in June 2005. The Finnmark Act entered into force in July 2006. This process demonstrates the importance for State authorities to establish an appropriate and genuine dialogue with indigenous peoples about planned measures that may affect them.

Chronological overview of key events contributing towards the adoption of the Finnmark Act:

1980: Appointment of the Sami Rights Commission.

1984: The Sami Rights Commission submits its first report.

1987: The National Parliament (the Storting) adopts the Sami Act.

⁴ This section is largely based on the author's interviews with civil servants in the Government and Sami Parliament respectively, who were actively engaged in the process leading to the adoption of the Finnmark Act. The following four were interviewed: (1) Petter Wille, Deputy Director General, Human Rights Department, Ministry of Foreign Affairs; (2) Arne G. Arnesen, Legal Adviser, Ministry of Justice; (3) Carl Erik Moksness, Adviser, Sami Parliament; (4) Laila Susanne Vars, Legal Adviser, Sami Parliament. See attached questionnaire.

1988: The National Parliament (the Storting) adopts an amendment to the Norwegian Constitution; a specific provision on the rights of the Sami is included in the Constitution (Section 110 a).

1989: The Sami Parliament is established.

1990: Norway ratifies ILO Convention No. 169.

1991: ILO Convention No. 169 comes into force.

1997: The Sami Rights Commission submits its second report (focus on land rights in Finnmark County).

1999: The Government starts to draft the Finnmark Act.

2003: a) The Government submits the proposed Finnmark Act to the National Parliament.

b) The ILO Committee of Experts adopts critical observations related to the proposed Finnmark Act.

c) Two independent legal experts (professor Ulfstein and professor Graver), appointed by the Government to review the proposed Act, concludes that the proposed Act is incompatible with Norway's international obligations.

d) The Sami Parliament rejects the proposed Finnmark Act.

2004: The National Parliament (the Storting) establishes direct consultations / negotiations with the Sami Parliament concerning the Finnmark Act.

2005: a) The National Parliament's Judiciary Committee finalizes its proposal concerning the Finnmark Act, based on its consultations / negotiations with the Sami Parliament and the Finnmark County Council.

b) The Sami Parliament adopts a resolution through which it approves the proposal from the National Parliament's Judiciary Committee.

c) The National Parliament adopts the Finnmark Act (Act of 17 June 2005 No. 85

relating to legal relations and management of land and natural resources in the county of Finnmark).

2006: The Finnmark Act comes into force on 1 July 2006.

2.2 The Dialogue Process

In 1999, the Government started up with a process which was meant to become a formal process of consultations with the Sami Parliament; however, it never materialized into a formal process of consultations. The Ministry of Foreign Affairs representative who was interviewed by the author is, however, of the view that there was a formal oral consultation process in place with the then President of the Sami Parliament. He referred to 1-2 “oral consultations” between the President of the Sami Parliament and political representatives of the Government. The principal drafter of the Act, at the time employed as legal adviser in the Ministry of Justice, however, expressed the opinion that there was no formal consultation procedure in place between the Government and the Sami Parliament. He said that a small number of meetings/contacts took place between political representatives of the Government and the President of the Sami Parliament. Moreover, he said that there was some contact between civil servants in the Government and the Sami Parliament. Information was mainly given in oral form to the Sami Parliament representatives and there were no official records of the meetings/contacts which took place between the Government and the Sami Parliament. The Sami Parliament received extremely limited written information on the Governments views, intentions and the substance of the draft Act. The Sami Parliament did not receive a copy of the draft Act as prepared by the Government at any stage, nor was the Sami Parliament given an opportunity to give its view on the final proposal before its submission to the National Parliament for adoption. The Government was of the view that sporadic oral contacts with the President of the Sami Parliament fulfilled its international legal obligations to consult the Sami Parliament, and there was no need for further consultations and exchange of written material. The author of this paper has the impression that the reluctance to undertake any proper consultations with the Sami Parliament was determined at the political level in the Government.

The key informants who worked at the Sami Parliament during that time were of the view that the Government violated its international legal obligations to undertake consultations with the Sami Parliament. They pointed out that the Finnmark Act was about Sami rights to lands and resources in Finnmark County; thus, the content of the Act has a direct effect on the Sami in Finnmark, and their rights. They stressed that the Sami Parliament did not receive any written information of any substantive importance from the Government, and above all the Sami Parliament was not given an opportunity to review the governmental proposal before it was submitted to the National Parliament. It was also said the Government did not reply to letters from the Sami Parliament concerning the Finnmark Act, and that this made it impossible to have a dialogue with the Government on this matter.

In the view of the informants from the Sami Parliament, the failure to consult the Sami Parliament was a violation of the Government's obligations under the International Covenant on Civil and Political Rights, and the ILO Convention No. 169. With reference to article 6 of the ILO Convention, it was pointed out that the Government is obliged to consult the Sami people, through the Sami Parliament, whenever consideration is being given to legislative measures which may affect the Sami people directly. Moreover, that the consultations must be undertaken in good faith, and in an appropriate form, with the objective of achieving agreement or consent to the proposed measure. Contrary to the views expressed by the governmental informants, one of the Sami Parliament informants said that in reality the Government paid limited attention to the requirements of the ILO Convention with Government representatives informally stating that it is up to the National Legislative Assembly to decide upon the preferred solution, as the country's policy on Sami issues cannot be dictated by international instruments.

Both the Government and the Sami Parliament agreed on the facts concerning the extent and the nature of the contact which took place between them prior to the government's submission of the draft Act to the National Parliament in 2003. Based on the facts, it is hard to judge the process as anything else but non-compliance with the government's obligations under international law, including articles 6 and 7 of the ILO Convention.

According to the practice developed by the ILO Committee of Experts concerning the concept of governmental consultations with indigenous peoples, there must be a genuine dialogue between the parties, involving the indigenous peoples, based on mutual understanding, respect and good faith, and a sincere desire to reach consensus. A meeting conducted merely for information purposes cannot be considered as being consistent with the terms of the Convention. It is the view of the ILO Committee that, “although article 6 does not require that consensus be reached in the consultation process, it does envisage that the peoples concerned should have an opportunity to participate freely at all levels in the formulation, application and evaluation of measures and programmes that directly affect them.”⁵

2.3 Negotiations between the national parliament and the Sami Parliament

The Sami Parliament’s rejection of the legislative proposal from the Government, and the fact that there had not been a process of consultations prior to the submission of the proposal to the National Parliament, created a very difficult political situation for the national parliament. Under the Norwegian Constitutional system, the Legislative Assembly normally does not undertake major revisions of governmental proposals. However, in the case of the Finnmark Act, from the outset of the parliamentary process there were serious concerns about whether the proposed legislation met requirements established by international law for the identification and protection of Sami land rights, as well as whether the absence of consultations at the governmental level was compatible with Norway’s international obligations. The legislative process and substance of the proposed Act was also criticized by independent legal experts as well as international bodies, in particular the ILO Committee of Experts.⁶ In this situation, the National Parliament had two options: either to send the proposal back to the Government, or to start a process at the parliamentary level. The National Parliament followed the latter alternative and decided to amend the draft legislation, in cooperation with the Sami Parliament. This was very significant indeed, as the Parliament normally does not undertake major amendments to legislative proposals from the government,

⁵ For further information, see representation alleging non-observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Central Unitary Workers Union (CUT), paragraphs 78 and 90.

⁶ Concluding observations and recommendations from the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) of 2003, responding to the periodic report from the Government of Norway, concerning the implementation of Convention No. 169

and due to the fact that this was first time that the National Parliament established direct contact with the Sami Parliament on legislative matters.

A governmental informant expressed the view that the National Parliament established this direct cooperation with the Sami Parliament, and to a certain degree also with the Finnmark County Council, because of the need to reach an agreement – in particular with the Sami Parliament. In his view, it would not have been possible to implement the Act without the involvement of the Sami Parliament. Moreover, he said that there was also a strong desire from the National Parliament to ensure that the process and substance were compatible with Norway's international obligations, in particular the International Covenant on Civil and Political Rights (ICCPR) and ILO Convention No. 169.

The two parties, the National Parliament and the Sami Parliament, described this process as a dialogue on the substance of the Act. They were careful not to identify the process as negotiations, presumably because some national political camps did not appreciate such direct contact on a matter which they regarded as being the prerogative of the legislative assembly. Interviewees described the process in various ways - as dialogue, effective consultations and even as negotiations. One of the interviewees from the Sami Parliament believed that the process at the parliamentary level could be divided into three phases: It started as a political dialogue between the National Parliament and the Sami Parliament, successively becoming a process of consultations, and then transformed into negotiations towards the final stages.

The Sami parliament was given the opportunity to debate the final legislative text prior to the final debate and adoption in the National Parliament. The Sami Parliament gave its unanimous endorsement to the Act. This was a significant part of the process. The author's research has not been able to identify any other legislative process in which an entity publicly considered and debated a legislative text prior to the final debate in the national legislative assembly. The Sami Parliament's free, prior and informed consent to the final Act was indeed an important element of this process.

The National Parliament's intervention in the Finnmark Act process, by establishing direct negotiations with the Sami Parliament, mitigated the government's violation of its

international legal obligation to consult the Sami Parliament. Moreover, the National Parliament's intervention also made the final Act more compatible with Norway's international obligations.

2.4 Post-Finnmark Act Agreement concerning Consultations

The government's failure to consult the Sami Parliament in the process of drafting the Finnmark Act, and the fact that this was widely regarded as non-compliance with its international obligations to consult the Sami whenever considering to propose legislative measures affecting the Sami directly, forced the Government to consider ways of avoiding a similar situation in the future. The Government and the Sami Parliament established a joint working group to formulate possible solutions. This resulted in an agreement between the Government and the Sami Parliament to establish procedures for consultations between State authorities and the Sami Parliament. The agreement was signed by the Minister of Local Government and Regional Development and the President of the Sami Parliament in May 2005. The full text of the agreement is annexed to this paper (see annex 3). Additional guidelines for consultations between State authorities and the Sami Parliament and other Sami entities have been issued by the Government, aimed at clarifying the scope of State authorities' consultation obligation (see annex 4).

The stated objective of the procedures for consultations is to contribute to the implementation in practise of the State's obligations to consult indigenous peoples under international law. Moreover, seek to achieve agreement between State authorities and the Sami Parliament whenever consideration is being given to legislative or administrative measures that may directly affect Sami interests, and to facilitate the development of a partnership perspective between State authorities and the Sami Parliament that contributes to the strengthening of Sami culture and society. It is also stated that the agreement aims at facilitating the development of a common understanding of the situation and developmental needs of the Sami society.

The consultation procedures apply to the Government and its ministries, directorates and other subordinate State agencies or activities. The procedures apply in matters that may affect Sami interests directly. Key elements of the procedures are:

- The obligation to consult the Sami Parliament may include all material and immaterial forms of Sami culture, including music, theatre, literature, art, media, language, religion, cultural heritage, immaterial property rights and traditional knowledge, place names, health and social welfare, day care facilities for children, education, research, land ownership rights and rights to use lands, matters concerning land administration and competing land utilization, business development, reindeer husbandry, fisheries, agriculture, mineral exploration and extraction activities, wind power, hydroelectric power, sustainable development, preservation of cultural heritage, biodiversity and nature conservation.

- In matters concerning the material basis for the Sami culture, including land administration, competing land utilization, and land rights, the obligation to consult the Sami Parliament is applicable to traditional Sami areas. This includes the counties of Finnmark, Troms, Nordland and Nord-Trøndelag, and the municipalities of Osen, Roan, Åfjord, Bjugn, Rissa, Selbu, Meldal, Rennebu, Oppdal, Midtre Gauldal, Tydal, Holtålen and Røros in the county of Sør-Trøndelag, and Engerdal and Rendalen, Os, Tolga, Tynset and Folldal municipalities in Hedmark county, and Surnadal and Rindal municipalities in the county of Møre- og Romsdal.

- Matters which are of a general nature, and are assumed to affect the general Norwegian society, shall in principle not be subject to consultations.

- The agreement states that State authorities shall fully inform the Sami Parliament about all matters that may directly affect the Sami, as well as about all relevant concerns and queries at all stages of the process.

- In order to ensure regular contact between the Government and the Sami Parliament, it is stated in the agreement that regular half-yearly meetings shall be held between the Minister responsible for Sami affairs and the President of the Sami Parliament. Other governmental ministers may attend these meetings when required. At these meetings, the situation and developmental needs of the Sami society, issues of fundamental and principle importance, and ongoing processes, shall be discussed. Such regular half-yearly meetings shall also be held between

the Sami Parliament and the Inter-ministerial Coordination Committee for Sami affairs. Among other things, information about relevant current Sami policy matters shall be provided at these meetings.

- It is stated in the agreement that the consultations carried out with the Sami Parliament, in application of the agreement on consultation procedures, shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures. State authorities shall as early as possible inform the Sami Parliament about the commencement of relevant matters that may directly affect the Sami, and identify those Sami interests and conditions that may be affected. After the Sami Parliament has been informed on relevant matters, it shall inform the relevant State authority as soon as possible whether further consultations are required. Moreover, the Sami Parliament can also independently identify matters which in its view should be subject to consultations.
- The agreement dictates that in cases where State authorities and the Sami Parliament agree that further consultations shall be held on a specific matter, they shall then seek to agree on a plan for such consultations, including the dates and venues for further contact (e.g. meetings, video-conferences, telephone contact, exchange of written material), deadlines for responses, whether consultations at the political level are required and the type of political proceedings. Sufficient time shall be allocated to enable the parties to carry out genuine and effective consultations and political consideration of all relevant proposals. In case it is necessary for the Sami Parliament to consider and debate the matter concerned in a plenary session, such debate and consideration must be conducted as early as possible in the process. Furthermore, when necessary, provisions shall be made for further consultations. Consultations shall not be discontinued as long as the Sami Parliament and State authorities consider that it is possible to achieve an agreement.
- The agreed procedures state that whenever a matter is submitted for consideration to the Cabinet, the ministerial submission document shall clearly inform other governmental ministries about the concluded agreement with the

Sami Parliament and, if necessary, also to include information about matters where agreement has not been reached.

- The agreement also dictates that in governmental propositions and reports to the national parliament (the Storting), on matters where the governmental position differs from that of the Sami Parliament, the views and positions of the Sami Parliament shall be reflected in the documents submitted.
- The procedures also state that minutes shall be kept of all consultation meetings between State authorities and the Sami Parliament. The minutes shall include a brief account of the subject matter, the views and positions of the parties, and the conclusions made at the meeting.
- According to the agreement, the Ministry responsible for Sami affairs and the Sami Parliament shall jointly appoint a specialized analysis group which, among other things shall submit an annual report concerning the situation and developmental trends of the Sami society on the basis of Sami statistics. The report shall be used as the basis for consultations on specific matters and for consultations concerning the developmental needs of the Sami society at one of the half-yearly meetings between the Minister responsible for Sami affairs and the President of the Sami Parliament. Moreover, whenever State authorities, or the Sami Parliament, consider there to be a need for background studies to strengthen the factual or formal basis for assessments and decisions, this shall be raised as early as possible, and both parties shall include questions concerning the terms of reference for such studies into the consultation process.
- The agreement also stipulates that the Government and the Sami Parliament shall seek to reach an agreement on the terms of reference for such a study, and who shall carry out the study. The Central Government and the Sami Parliament are obliged to assist in providing information and materials necessary for carrying out the study.
- In matters where State authorities plan to consult local Sami communities and/or specific Sami entities or interests that may be directly affected by legislation or

administrative measures, State authorities shall as early as possible notify which Sami entities or organizations it regards as affected by the matter, and discuss the coordination of such consultation processes with the Sami Parliament.

The conclusion of the agreement on consultation procedures is a positive development, in particular in light of the experience in the Finnmark Act process at the governmental level. The agreement establishes an agreed framework for consultations between State authorities and the Sami Parliament. However, the agreement is only a political agreement with the Government at the time and the Sami Parliament, and thus it not automatically politically binding for successive governments. In 2007, the Sami Parliament has already on a couple of occasions accused the new Government of breaching the agreement on consultation procedures. In order to ensure proper implementation of the consultation procedures, it might prove to be necessary to consider the possibility of formalizing this through legislation. In the absence of such formalization, there is a danger that the frequency and degree of consultations will depend on the discretion of the Government and individual ministers.

3. THE FINNMARK ACT

This chapter introduces the key provisions of the Finnmark Act,⁷ and the main substantive differences between the governmental proposed text and the final Act - as adopted by the National Parliament. The changes to the text were made are mainly as a result of negotiations between the National Parliament and the Sami Parliament.

This chapter demonstrates the importance of having a proper process between State authorities and indigenous peoples whenever legislative or other measures that may affect indigenous peoples are considered introduced. In the case of the Finnmark Act, the negotiation process between National Parliament and the Sami Parliament resulted in a text which is significantly closer to fulfilling the requirements of the ILO Convention No. 169 than the original proposal from the Government - which was developed without any consultations with the Sami Parliament.

⁷ Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act)

[This chapter to a certain degree validates the 2003-observation of the ILO Committee of Experts on the Application of Conventions and Recommendations concerning the situation in Norway. The Committee stated that “the process and the substance are inextricably intertwined in the requirements of the Convention and in the present conflict [the conflict concerning the governmental proposal]” (ILO CEACR, 2003).]

3.1 The Purpose of the Act

Section 1 The Purpose of the Act	
As proposed by the Government in 2003:	<i>“The purpose of the Act is to facilitate the management of land and natural resources in the County of Finnmark in a balanced and ecologically sustainable manner for the benefit of Sami culture, reindeer husbandry, commercial activity and social life, the inhabitants of the county and the public at large.”</i>
As amended and adopted by the National Parliament (the Storting) in 2005:	<i>“The purpose of the Act is to facilitate the management of land and natural resources in the County of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for the Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life.”</i>
Main differences between the governmental proposal and the final Act:	The final text emphasizes that the purpose of the Act is to facilitate ecologically sustainable management of lands and resources for the benefit of all residents of the County of Finnmark, and in particular for the Sami culture, social life, their land use and livelihoods. The final text places greater emphasis on the recognition of land and natural resources in being the basis for Sami culture. Moreover, the wording “public at large” (people who are not residents of the county) was deleted from the text. Thus, the final text highlights that the management of lands and resources should be done for the benefit of

	the interests of the people living in the county, particularly the Sami.
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Government position: An important objective of the Act should be to establish protection for Sami culture, reindeer husbandry, commercial activities and social life in relation to the management of lands and resources. However, this should not be the sole purpose of the Act, and it should also facilitate resource management that benefits all inhabitants of Finnmark County. Furthermore, the Government proposed that the rest of the national population should also, to a reasonable extent, have the right to utilize the natural resources of Finnmark, as has been the practices under the state ownership regime, including for fishing and hunting. It argued that it is necessary to take into account the interests of the general public in Norway, in order to enable the proposed joint land and resource management system to be put in practice. The Government proposed that the aim of the Act should give equal importance to the interests of the indigenous Sami people, the other inhabitants in Finnmark County, and the nationwide public. In the view of the Government, the interests of the Sami culture and other interests in the county as well as in the entire country, should be balanced and weighed against each other in the management of lands and resources in Finnmark (Proposition No. 53, 2002-2003).

Sami Parliament Position: The Sami Parliament strongly opposed the Governments proposal. According to the Sami Parliament, the proposed purpose provision did not sufficiently stress the recognition of Sami interests and culture, including their dependency on lands and natural resources. It was argued that the purpose of the Act must be grounded on the fundamental philosophy that it's main aim is to safeguard Sami culture with land and natural resources as the basis for the Sami culture, economy and social life (Sami Parliament, 2003).

The statement of the President of the Sami Parliament captures the essence of the Sami Parliament's opposition to the proposed Act. He stated that the Sami Parliament was concerned that the proposed Act, if adopted by the national parliament, would facilitate increased industrial development and militarization in Finnmark County. He said that the proposed Act was contrary to the interests of the Sami and did not recognize any traditional Sami land rights; and that it was an attempt to expand the land rights of non-Sami living in Finnmark County to the remaining Norwegian population as well as to all European Union citizens (Nunatsiaq News, 2003).

The Saami Council: The Saami Council, the pan-Sami non-governmental organization, also expressed strong opposition against the proposed Act. The Saami Council was of the view that the Finnmark Act, which was supposed to address the Sami people's right to land and resources, would instead facilitate and secure the non-Saami population's access to land and resources in Finnmark County. The Saami Council advocated that it is a firmly established principle under international law that indigenous peoples, due to their special attachment and priority in time to their ancestral land, have particular rights to their traditional, land, waters and natural resources. This was substantiated by Articles 14 and 15 of ILO Convention No. 169, and Article 27 of the International Covenant on Civil and Political Rights. Moreover, it was argued that Articles 1 (4) and 5 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), read in conjunction, provide that special measures must be taken in order to protect indigenous ownership and control of historically occupied lands and resources, and require that indigenous consent be obtained with regard to matters that affects such land (Saami Council, 2003).

The Saami Council stated that "the Finnmark Act claims to build on the principle of non-discrimination, alleging that the right not to be subject to discrimination requires that individuals of Saami and non-Saami origin be treated equally. However, the Finnmark Act's failure to recognize that the Saami, as an indigenous people, has distinct rights to its traditional land and resources results in the Act being outright discriminatory. As outlined above, the right not to be subject to discrimination implies not only that equal cases be treated equally, but also that different cases be treated differently. Even though the Finnmark Act's alleged motive is to address the Saami people's right to land and resources, the main aim is to confirm non-Saami control over traditional Saami land, water and natural resources - land and resources that was taken away from the Saami people during the Norwegification process" (Saami Council, 2003).

End result: The proposed purpose provision of the Act was amended as a result of the negotiation process between the National Parliament and the Sami Parliament. The previous formulation that the management of lands and resources should also benefit the entire Norwegian population was deleted, and stronger emphasis placed on Sami interests in formulating the aim of the Act. These amendments, in combination with

some other key substantive revisions, were of pivotal importance to the Sami Parliament's consent to the Act which was eventually adopted by the national parliament.

3.2 The Scope of the Act

Section 2 The Scope of the Act	
As proposed by the Government in 2003:	<i>“The Act shall apply to real property and watercourses with natural resources in the County of Finnmark. On the shoreline, the Act shall apply as far out to sea as private right of ownership extends.”</i>
	The National Parliament adopted the provision as proposed by the Government.

According to section 2 of the Act, it applies to real property, watercourses and natural resources in Finnmark County. On the shoreline, the Act applies as far out to sea as private right of ownership normally extends under Norwegian legislation; private ownership to land extends into the sea to the point where the sea suddenly becomes very deep.⁸ In other words, the right to coastal waters and resources are not covered by the Act.

The Sami Parliament Position: The Sami Parliament expressed opposition against making the ordinary principle for the extension of private ownership rights to land into the sea applicable under the Finnmark Act, particularly because it excludes Sami rights to the resources in coastal waters. The Sami Parliament held the view that the Act must also provide special protection for Sami rights to marine resources. It was argued that this is a requirement under the ILO Convention. References were made to Articles 13 (2) and 15 (1) of the ILO Convention. It was argued that Article 13 (2) of the ILO Convention states that the use of the term “lands” in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use. Moreover, it was said that Article 15 (1) obliges

⁸ The point to which private ownership to land extends to under Norwegian law is called “marbakken”.

State parties to specially safeguard indigenous peoples' rights to the natural resources pertaining to their lands, including their right to participate in the use, management and conservation of such resources. Hence, the exclusion of coastal resources would be incompatible with Norway's obligations under the ILO Convention.

End result: The scope of the Act was not changed in the parliamentary process. In its decision to endorse the version of the Finnmark Act which was adopted by the national parliament, the Sami Parliament emphasized the importance of establishing the necessary protection for Sami rights to coastal waters and resources. The Sami Parliament stated that the Sami, and other local people in Finnmark, have rights to renewable marine resources in coastal waters, including fisheries. Moreover, it stated that the identification and protection of Sami coastal rights need to be given high priority in the future (Sami Parliament, 2005).

As a result of the process between the national parliament and the Sami Parliament, it was decided that a committee on coastal fisheries in Finnmark should be established mandated to review the rights of the Sami and others to coastal resources.⁹

3.3 Relationship to International Law

Section 3 Relationship to International Law	
As proposed by the Government in 2003:	<i>“The Act shall be applied in compliance with the provisions of international law concerning indigenous peoples and minorities and with the provisions of agreements with foreign states concerning fishing in border zones.”</i>
As amended and adopted	<i>“The Act shall apply with the limitations that follow from ILO Convention No. 169 concerning Indigenous and Tribal peoples in</i>

⁹ The Committee is chaired by Dr. Carsten Smith, the former Chief Justice of the Norwegian Supreme Court.

by the National Parliament (the Storting) in 2005:	<i>Independent Countries. The Act shall be applied in compliance with the provisions of international law concerning indigenous peoples and minorities and with the provisions of agreements with foreign states concerning fishing in border zones.”</i>
Main differences between the governmental proposal and the final Act:	Partial incorporation of the ILO Convention No. 169 through the amendment made by the national parliament. In the case of conflict between the provisions of the Act and Norway’s obligations under ILO Convention No. 169, the provisions of the Convention shall prevail.

Government position: According to the proposition from the Government, section 3 stipulated that the Act should be applied in compliance with the provisions of international law concerning indigenous peoples and minorities. The Government justified the inclusion of this provision, and its content, with a reference to the central role of international law in the area to be regulated by the Act (Proposition No. 53, 2002-2003).

Sami Parliament Position: As the ILO Convention is not incorporated into Norwegian law, the Sami Parliament believed that the proposed provision in the Finnmark Act concerning the relationship to international law was an insufficient guarantee for the implementation of the Act to be in compliance with the requirements of the ILO Convention. This is due to the fact that Norwegian courts, due to the ascertainment of normative harmony between international conventions and domestic law, give domestic law precedence over non-incorporated international conventions. Thus, the partial incorporation of the ILO Convention No. 169 through the amendment made by the national parliament was welcomed by the Sami Parliament. This amendment was also an important element of the compromise package which enabled the Sami Parliament to endorse the Act.

Analysis: The ILO Convention, and the International Covenant on Civil and Political Rights (Articles 1 and 27), are the most important international legal instruments in the

context of Sami rights to lands and resources. The International Covenant on Civil and Political Rights is among the international human rights conventions which are given status as domestic law through the Norwegian Human Rights Act of 1999. Pursuant to section 3 of the Human Rights Act, the Covenant takes precedence over other legislation in the event of conflict.

The Norwegian legal system is a dualist system. This means that the terms of an international convention do not become part of domestic law unless expressly incorporated by an Act. The ascertainment of normative harmony, or passive transformation, is the principle which guides the relationship between Norwegian law and international conventions which are not incorporated into domestic law.

Due to the nature of the Act, including its geographical scope, the ILO Convention is only incorporated as far as Finnmark County and the application of the Finnmark Act is concerned. The incorporation does not apply to other laws affecting Sami land rights and interests, including the Building and Planning Act. However, it is to be assumed that the incorporation of the ILO Convention will also be included in future legislation concerning Sami land rights in other counties.

End result: Questions related to Norway's international obligations concerning Sami rights proved to be a sensitive issue also in the parliamentary debate concerning the Act. Some political parties and individual members of parliament expressed opposition against giving international human rights law such a prominent status in the context of Sami rights. This was the case for some members of parliament from Finnmark County, and in particular the right-wing nationalist political party - Fremskrittspartiet (FRP). During the parliamentary debate, FRP strongly opposed the adoption of the Finnmark Act. FRP also proposed that the Act should not enter into force before a referendum was held in Finnmark County, in which the residents in Finnmark should be asked to give their view on whether the Act should take effect. FRP also advocated a regular review of various international conventions, including whether any of them should be denounced by Norway (Innst.O.nr.80, 2004-2005). However, these concerns about Norway's extensive international obligations, including as far as Sami rights are concerned, only represented a minority of the members of parliament.

3.4 Guidelines for Management and Use of Uncultivated Lands

Section 4 The guidelines of the Sami Parliament regarding changes in the use of uncultivated land	
As proposed by the Government in 2003:	<p><i>“Guidelines for management of uncultivated land</i></p> <p><i>“The Sami Parliament may issue guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, commercial activity and social life. The guidelines and amendments to the guidelines shall be approved by the Ministry.</i></p> <p><i>In matters concerning changes in the use of uncultivated land, state, county and municipal authorities shall on the basis of the guidelines issued by the Sami Parliament assess the significance such changes will have for Sami culture, reindeer husbandry, commercial activity and social life.”</i></p>
As amended and adopted by the National Parliament (the Storting) in 2005:	<p><i>“The guidelines of the Sami Parliament regarding changes in the use of uncultivated land</i></p> <p><i>The Sami Parliament may issue guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, commercial activity and social life. The guidelines shall be approved by the Ministry. The Ministry shall examine whether the guidelines lie within the framework laid down in the first sentence and whether they have been drawn up in an appropriate manner.</i></p> <p><i>In matters concerning changes in the use of uncultivated land, state, county and municipal authorities shall assess the significance such changes will have for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines of the Sami Parliament shall be followed in the assessment of Sami</i></p>

	<i>interests pursuant to the first sentence.”</i>
Main differences between the governmental proposal and the final Act:	<p>Compared to the governmental proposal, the text adopted by the National Parliament provides more real authority to the Sami Parliament in the development of guidelines to assess the impact of any changes in the use of uncultivated land on Sami culture, reindeer husbandry, commercial activity and social life. This is due to the fact that the adopted provision limits the ministry’s possibility to challenge the substantive content of the provision; its review of the guidelines of the Sami Parliament shall be limited to an examination of whether the guidelines are drawn up in line with the provision contained in the first sentence of the provision.</p> <p>The guidelines issued by the Sami Parliament are also made more binding. The final text states that the guidelines of the Sami Parliament shall be followed in the assessment of Sami interests pursuant to the first sentence.</p>

Analysis: Section 4 of the Act contains a provision concerning the authority to issue guidelines regarding changes in the use of uncultivated land. The provision was amended as a result of the dialogue between the national parliament and the Sami Parliament. The language proposed by the Government was not accepted by the Sami Parliament. It was argued that the Sami Parliament’s authority to issue guidelines would have limited practical influence on land management given the fact that the proposed provision did not establish any limitations to the ministry’s authority to approve or disapprove guidelines issued by the Sami Parliament.

This provision in Section 4 of the Act is regarded as being fundamentally important, as it assigns the Sami Parliament the authority to issue guidelines concerning assessment of the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, commercial activity and social life. These guidelines are applicable in the context of development projects, or other projects or activities leading to a change in the

usage of uncultivated lands, e.g. building of recreational facilities, building of energy plants, mining, infrastructure projects etc.

The authority to issue such guidelines is an important element for ensuring the Sami Parliament's influence on land and resource management. The ministry's approval of the guidelines is mainly a formal act, as it shall not make any review of the Sami Parliament's assessment of what might be detrimental to Sami culture, livelihoods etc. This assessment is to be at the sole discretion of the Sami Parliament. The main task of the ministry is to consider whether the guidelines adhere to the objective restrictions laid down in Section 4 of the Act.

These guidelines apply to state, county and municipal authorities. Public authorities are obliged to pay due respect to the guidelines when dealing with matters concerning changes in the use of uncultivated land, regardless of the ownership to the area concerned. The guidelines will also apply to the procedures followed by the Finnmark Estate – which is an independent legal entity which shall administer the land and natural resources in Finnmark County in compliance with the purpose and provisions of the Finnmark Act.

The guidelines of the Sami Parliament will have an influence on decisions made by public authorities in matters related to the use of land and resources in Finnmark. However, they are not legally binding for the relevant public authorities. Thus, even if the authority concerned concludes that a development project will adversely impact traditional Sami livelihoods and the Sami culture, the guidelines do not prevent or prohibit the authority from implementing the project. This is due to the fact that the provision only obliges public authorities to take these guidelines into account when Sami interests are assessed, without establishing compliance as a prerequisite for the implementation of the project. However, the guidelines shall be taken into consideration and if public decision-making authorities fail to consider the significance of a decision for Sami culture, on the basis of the guidelines this will constitute a procedural error that may have significance for the validity of the decision.

The authority to issue such guidelines strengthens the Sami Parliament's potential to influence future land usage and development in Finnmark County. Through these

guidelines, the Sami Parliament is given the authority to specify major Sami interests and considerations that public authorities and the Finnmark Estate, must take into account in their dealings with matters concerning land and resource usage. The guidelines will not have any direct significance for the rights or duties of private individuals. However, they will take effect by their inclusion in the procedures followed by the public authorities when assessing changes in the use of uncultivated land, for example, following applications from private landowners.

3.5 Relationship to Established Rights

Section 5 Relationship to established rights	
As proposed by the Government in 2003:	<p><i>“This Act does not interfere with private or collective rights based on prescription or immemorial usage.</i></p> <p><i>The rights held by Sami reindeer herders on the basis mentioned in the first paragraph or pursuant to the Reindeer Herding Act are not reduced by this Act.”</i></p>
As amended and adopted by the National Parliament (the Storting) in 2005:	<p><i>“Through prolonged use of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark.</i></p> <p><i>This Act does not interfere with collective and individual rights acquired by the Sami and other people through prescription or immemorial usage. This also applies to the rights held by reindeer herders on such a basis or pursuant to the Reindeer Herding Act.</i></p> <p><i>In order to establish the scope and content of the rights held by Sami and other people on the basis of prescription or immemorial usage or on some other basis, a commission shall be established to investigate rights to land and water in Finnmark and a special court to settle</i></p>

	<i>disputes concerning such rights, cf. chapter 5.”</i>
Main differences between the governmental proposal and the final Act:	The two main differences between the text proposed by the Government, and the text adopted by the national parliament are: (1) The final text acknowledges that the Sami have acquired rights to land in Finnmark through their historical use of land and water areas; (2) that the Act shall not interfere with collective and individual Sami rights, including rights acquired through nomadic and semi-nomadic reindeer herding activities; (3) the final text also contains a provision for the identification of traditional Sami rights, and the establishment of a mechanism for such identification.

Government position: According to the proposal from the Government, the proposed provisions in section 5 are aimed at providing general indications regarding the Act's relations to established rights acquired on the basis of law of property and rights held by reindeer herders on this basis or pursuant to the Reindeer Herding Act. The Government recognized that the proposed provision would have limited independent legal significance. However, the Government argued that in view of the confusion and disagreement that has existed in Finnmark, the Government has found it correct to express this principle explicitly in the Act. State ownership in the county has entailed that many people have perceived the land use that has been exercised as merely tolerated by the State and thus not an expression of independent rights. By means of this provision, the Government wished to make it clear that such an interpretation may not be adopted, and that it is the aim of the Act to provide that established personal and collective rights of use and ownership shall be respected and recognized in Finnmark as elsewhere in Norway (Proposition No. 53, 2002-2003).

Analysis: The governmental proposition recognized that Sami reindeer husbandry has, in addition to the Reindeer Herding Act, an independent statutory basis in the use that has been exercised where reindeer husbandry has traditionally been carried out. The proposed provision entails a legal recognition that it is not reindeer herding legislation that constitutes the reindeer herding right, but that the reindeer herding right is an independently acquired right. Rights established by law may in principle also be reduced

or revoked by law. However, rights founded on other legal bases will in principle not be revocable without payment of compensation pursuant to article 105 of the Norwegian Constitution. Recognition of the independent statutory basis for reindeer husbandry regardless of the Reindeer Herding Act is thus of major legal significance for the reindeer herders. However, the provision did not address the question of in what areas such use has taken place that the herders have acquired an independent statutory basis for the use.

Sami Parliament Position: The Sami parliament voiced strong opposition to the proposed provision, as it held the view that this did not give any special protection for Sami rights to lands and resources, and that it was incompatible with Norway's obligations under ILO Convention No. 169. It was argued that the State is obliged, under Article 14 (1) of the ILO Convention, to recognize and protect the rights of ownership and possession of the Sami over the lands which they have traditionally occupied. Moreover, it was argued that the State is obliged to take measures to identify such lands.

Negotiation process: The process between the national parliament and the Sami Parliament resulted in substantive changes in the provision concerning established rights to lands and resources. From the Sami viewpoint, the most important amendment was the explicit recognition that the Sami have collective and individual rights to land in Finnmark through their prolonged use of lands and waters, and that this does not interfere with the rights acquired by the Sami through immemorial usage. It was also viewed as important that the amended provision establishes a mechanism for the identification of the scope and content of the rights held by the Sami. The provision adopted by the National Parliament states that a commission and a special tribunal shall be established for this purpose.

International dimension: In 2003, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) reviewed Norway's periodic report concerning the implementation of the ILO Convention. As concerns the substance of the Finnmark Act, the CEACR stated that "it appears to go beyond what is permitted under Article 14 of the Convention [No. 169], though under the proper circumstances it could be in conformity with Article 15." Moreover, the CEACR stated that: "The proposal would transfer state ownership of 95 per cent of the land in the county to the [Finnmark] Estate.

It appears that this would include areas that Sami claim as their land by right of long occupation, and to which the Government acknowledges in principle that the Sami do have rights, though the extent of these lands and the content of the rights have yet not been identified as required in Article 14 of the Convention. It would give the Sami a significant role in the management and use of a larger area than that to which they now have rights, and the Government indicates that they would have more benefits from the management of the larger area than under the present situation. However, the proposal would replace the rights of ownership and possession recognized by the Convention with a right to a larger share in administration of the region.” The CEACR concluded that it appears “that if the Sami parliament, as the acknowledged representative of the Sami people of Norway, were to agree to the proposal, they could accept this solution as a resolution of negotiation between the Sami and the Government. The adoption of the Finnmark estate without such agreement amounts, however, to an expropriation of rights recognized in judicial decisions in Norway and under the Convention” (ILO CEACR, 2003).

The observations of the CEACR are believed to have influenced the outcome of the negotiations between the National Parliament and the Sami Parliament, including as far as Section 5 of the Act is concerned. The CEACR clearly indicated that the proposed Act did not meet the requirements in Article 14 of the ILO Convention, and that the proposal would replace the rights of ownership and possession recognized in Article 14 with a right to a share in administration. The amendments which the national parliament made to section 5 are in line with the observations made by CEACR. Moreover, the Sami Parliament was given the opportunity to discuss the final draft Act in its plenary meeting prior to the national parliament’s final consideration and adoption of the Act. As mentioned earlier, the Sami Parliament endorsed the final version of the Act.

3.6 The Finnmark Estate

Chapter 2 of the Act forms the legal basis for a new management arrangement for land and resources in Finnmark County through the establishment of the Finnmark Estate (Finnmarkseiendommen).

3.6.1 The Legal Position of the Finnmark Estate

Section 6 The legal position of the Finnmark Estate	
As proposed by the Government in 2003:	<i>“Finnmarkseiendommen (“the Finnmark Estate”) is an independent legal entity with its seat in Finnmark which shall administer the land and natural resources, etc. that it owns in compliance with the purpose and other provisions of this Act.”</i>
	This provision was not amended by the national parliament.

Government position: The Government recognized that Articles 14 (1) and 5 of the ILO Convention call for a solution whereby the new body is assigned independent right of ownership in relation to the State (Proposition No. 53, 2002-2003). On the Act’s entry into force, the Finnmark Estate was assigned the title to the land in Finnmark that was previously held by the State owned entity Statskog SF, making it the owner of the real property that was transferred.

Analysis: From a legal point of view, this gave rights to the Finnmark Estate that are very similar to those of private landowners. If the state needs land owned by the Estate for a specific purpose, it must purchase the land or expropriate it and pay compensation to the Estate pursuant to the general provisions. However, unlike other private landowners, the Estate will have no protection against change, reduction or revocation of its legal position or rights by statute - see Section 20 of the Act. This provision entitles the National Parliament to make amendments to the Finnmark Act if the new management arrangement does not function according to the provisions of the Act.

Sami Parliament position: The Sami Parliament initially opposed this common land management arrangement for (1) lands to which Sami ownership and possession should be recognized, and (2) lands which the Sami have right to use. The Sami parliament argued that the legal status of the Estate and the management system do not reflect that the Sami have different categories of rights, as described in Article 14 of the ILO

Convention (rights of ownership and possession over the lands which they traditionally occupy, and right to use lands to which they have traditionally had access for their subsistence and traditional activities).

The Sami Parliament stated that the proposed management arrangement cannot be established without its consent. It was stated that such an arrangement cannot be accepted unless there is an equal representation in the Finnmark Estate between the Sami Parliament and the Finnmark County Council (Sami Parliament, 2003). The proposed provision was eventually accepted by the Sami Parliament as part of a holistic package solution.

End result: This provision was adopted by the National Parliament as proposed by the Government. The Sami Parliament as well as the Finnmark County Council had expressed strong desire to see the land in Finnmark being transferred from state to local ownership.

3.6.2 The Board of the Finnmark Estate

Section 7 The Board of the Finnmark Estate	
As proposed by the Government in 2003:	<p><i>“The Finnmark Estate shall be governed by a board consisting of seven persons.</i></p> <p><i>Finnmark County Council and the Sami Parliament shall each elect three members, each with a personal deputy. The members and deputies shall be resident in Finnmark. Among the members elected by the Sami Parliament at least one board member and that person’s deputy shall be representatives for reindeer husbandry. Both as members and as deputies, both bodies shall elect both women and men. The body shall elect members and deputies collectively. Employees of the Finnmark Estate. The Finnmark Estate’s auditor and members and deputies of the Control Committee may not be elected as board members or deputies.</i></p>

	<p><i>The King shall appoint one board member with a personal deputy. The board member concerned shall not be entitled to vote at board meetings.</i></p> <p><i>The board members and deputies are elected for a term of up to four years at a time. No-one may be a board member for longer than ten years consecutively.</i></p> <p><i>Board members and deputies may be removed by the body that elected them. The body shall in such a case elect new members and deputies collectively.</i></p> <p><i>Board members and deputies have a right to withdraw before their period of service expires if there are special reasons for so doing. The board and the body that has elected the member concerned shall be given reasonable notice. The fifth paragraph, second sentence, shall apply accordingly.</i></p> <p><i>The board shall itself elect a chairman and vice-chairman from among its members. If no-one achieves a majority, the board member appointed by the state shall be the chairman.”</i></p>
<p>As amended and adopted by the National Parliament (the Storting) in 2005:</p>	<p><i>“The Finnmark Estate shall be governed by a board consisting of six persons.</i></p> <p><i>Finnmark County Council and the Sami Parliament shall each elect three members, each with a personal deputy. The members and deputies shall be resident in Finnmark. Among the members elected by the Sami Parliament at least one board member and that person’s deputy shall be representatives for reindeer husbandry. Both as members and as deputies, both bodies shall elect both women and</i></p>

	<p><i>men. The body shall elect members and deputies collectively. Employees of the Finnmark Estate. The Finnmark Estate’s auditor and members and deputies of the Control Committee may not be elected as board members or deputies.</i></p> <p><i>The board members and deputies are elected for a term of up to four years at a time. No-one may be a board member for longer than ten years consecutively.</i></p> <p><i>Board members and deputies may be removed by the body that elected them. The body shall in such a case elect new members and deputies collectively.</i></p> <p><i>Board members and deputies have a right to withdraw before their period of service expires if there are special reasons for so doing. The board and the body that has elected the member concerned shall be given reasonable notice. The fourth paragraph, second sentence, shall apply accordingly.</i></p> <p><i>The board shall itself elect a chairman and vice-chairman from among its members. If no-one achieves a majority of votes, which of the six members shall be chairman and vice-chairman shall be decided by Finnmark County Council in years ending on an odd number and by the Sami Parliament in years ending on an even number.”</i></p>
<p>Main differences between the governmental proposal and the final Act:</p>	<p>The number of board members was reduced from seven to six members as a consequence of the deletion of the provision providing that the King (Government) shall also appoint one non-voting board member, and the position of a personal deputy in the negotiation process between the National Parliament and the Sami Parliament. Thus, the board is now only composed by members appointed by the Finnmark County Council and the Sami Parliament respectively. In the original proposal from the Government, it was proposed that the</p>

	<p>State-appointed board member should be the chairman of the board in the event the Finnmark County Council and the Sami Parliament are not able to agree on the selection of chairman and vice-chairman of the board. This proposed provision was replaced with a provision giving the Finnmark County Council and the Sami Parliament the right to appoint the chair and vice-chair on a rotational basis.</p>
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The board of the Finnmark Estate is responsible for the management of the Estate and to develop a policy for land and resource utilization in Finnmark County, as well as a policy on commercial and industrial development in Finnmark, within the framework of the Act.

Government position: The management arrangement which was proposed by the Government was based on the principle that the Finnmark Estate should be governed by a board consisting of seven members: three members elected by Finnmark County Council, three members elected by the Sami Parliament and one member without the right to vote appointed by the State. The Government was of the view that the Sami Parliament and Finnmark County Council should be equally represented on the board. Since the body shall be a landowner body mandated to manage land and resources in Finnmark, the Government proposed that all board members should be resident in Finnmark. The Government also found it appropriate to ensure representation on the board for reindeer husbandry. It was therefore proposed that at least one of the representatives elected by the Sami Parliament shall be a representative for the Sami reindeer husbandry. In the Government's view, the reason for ensuring representation for reindeer husbandry on the board is that it constitutes an important element of Sami culture. Reindeer husbandry is dependent on large land areas, and this entails that representatives of the industry must be allowed to participate actively in land management. For the proposed State representative on the board, the Government held the view that State representation would ensure the necessary two-way communication between the board and the central government authorities, and to facilitate compromises between the Finnmark County Council and the Sami Parliament (Proposition No. 53, 2002-2003).

During the negotiation process between the National Parliament and the Sami Parliament, it was agreed that the State should not have any representatives on the board of the Finnmark Estate. This was as demanded by the Sami Parliament. Both the Finnmark County Council and the Sami Parliament argued for greater local control over land and resource utilization in Finnmark County.

The final Act states that the board shall have six members with the Finnmark County Council and the Sami Parliament each electing three members each. The members, and their deputies, must be residents of Finnmark County. The Act also ensures a gender balance among the members of the board by stipulating that both the County Council and the Sami Parliament must elect women to serve on the board.

3.6.3 Election of Board members

Section 8 Proportionally representative elections	
As proposed by the Government in 2003:	<p><i>“Elections of board members and deputies shall be held as proportionally representative elections as mentioned in section 37 of the Local Government Act if so required by at least one member of the body.</i></p> <p><i>If in connection with proportionally representative elections it is necessary in order to fulfil the requirement that among the members and deputies there shall be both women and men, candidates of the under-represented sex shall move up on the list with fewest votes of the lists that shall be represented. In the event of tied votes, the list on which candidates of the under-represented sex are to move up shall be decided by drawing lots.</i></p> <p><i>If in connection with proportionally representative elections in the Sami Parliament it is necessary in order to fulfil the requirement that one of the board members and that member’s deputy shall be representatives for reindeer husbandry, representatives for reindeer husbandry shall</i></p>

	<i>move up on the list that has received fewest votes of the lists that shall be represented and that have such candidates. If there is no such list, the last place on the board shall be given to the representatives for reindeer husbandry on the list that has received most votes of the lists that have such candidates. In the event of tied votes, the list that shall be regarded as having received most or fewest votes shall be decided by drawing lots.”</i>
	No changes were made in the parliamentary process, and the provision was adopted as proposed by the Government.

This provision is based on the principles concerning elections to public committees established by the Local Government Act. It is aimed at ensuring a gender balance among the members of the board by stipulating that among the members and deputies there shall be both women and men, and that candidates of the under-represented sex shall move up on the list with fewest votes of the lists that shall be represented. In the event of tied votes, the list on which candidates of the under-represented sex are to move up shall be decided by drawing lots. Moreover, the provision also secures a place for reindeer Sami husbandry representation on the board; the Sami Parliament must ensure that one of its board members and that member’s deputy are representatives for the reindeer husbandry. This requirement is justified by the reindeer husbandry’s dependency on lands and resources, and further endorsed through the requirement under Article 14 (1) of ILO Convention No. 169 that “particular attention shall be paid to the situation of nomadic peoples and shifting cultivators” in relation to the implementation of indigenous peoples land rights.

3.6.4 The responsibilities of the Board

Section 9 The duties and procedures of the board	
As proposed	<i>“The board is responsible for management of the Finnmark Estate.</i>

<p>by the Government in 2003:</p>	<p><i>The board shall ensure that the body is satisfactorily organized. The board shall to the extent necessary provide plans, budget, guidelines and instructions for the body. The board shall implement the investigations it finds necessary for performance of its duties. The board shall implement such investigations if so required by a board member.</i></p> <p><i>The chairman of the board shall ensure that appropriate matters are dealt with by the board and that board meetings are convened in an appropriate manner and with reasonable notice. A board member may require that specific matters be dealt with by the board.</i></p> <p><i>The board shall deal with matters in meetings unless the chairman finds that a matter may be submitted in writing or be dealt with in another satisfactory manner. A board member may require that a matter be dealt with at a meeting of the board.</i></p> <p><i>The board may make decisions when at least five voting members are present. Such decisions are made by simple majority unless otherwise provided by section 10.</i></p> <p><i>In the event of tied votes, a decision is deemed not to have been made. If the board member appointed by the state regards it as necessary for the operation of the Finnmark Estate that a decision be made, that member may request that the matter be decided by the Ministry. A decision by the Ministry has the same effect as such a decision by the board. It may not be appealed to the King.</i></p> <p><i>The board shall submit an annual report to the Control Committee concerning the Finnmark Estate's activities. This annual report shall include a particular account of changes in the use of uncultivated land and an assessment of the significance of these changes for the natural resource base for Sami culture, reindeer husbandry, commercial activity and social life.</i></p>
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	<i>The board shall fix its own fees. Such fees are to be covered by Finnmark Estate.”</i>
As amended and adopted by the National Parliament (the Storting) in 2005:	<p>In the parliamentary process, the following sentence was added to the fourth paragraph: <i>“In the event of tied votes, the chairman shall have the casting vote.”</i></p> <p>Moreover, the entire fifth paragraph in the governmental proposal was deleted: <i>“In the event of tied votes, a decision is deemed not to have been made. If the board member appointed by the state regards it as necessary for the operation of the Finnmark Estate that a decision be made, that member may request that the matter be decided by the Ministry. A decision by the Ministry has the same effect as such a decision by the board. It may not be appealed to the King.”</i></p>
Main differences between the governmental proposal and the final Act:	As a consequence of the changes, the State is not involved in the activities of the board – composed by representatives elected by the Sami Parliament and the Finnmark County Council.

The chairman’s casting vote in the event of tied votes means that the “majority” of the board will rotate between the Sami Parliament and the Finnmark County Council. Section 7 specifies that the Finnmark County shall appoint the chairman of the board in years ending on an odd number, whereas the Sami Parliament appoints the chair in years ending on an even number. This rotational system applies if none of the board members get the support of the majority of the board.

Furthermore, the board is required to submit an annual report to the Control Committee concerning the Finnmark Estate’s activities, including an account of changes in the use

of uncultivated land, and an assessment of the significance of these changes for the natural resource base for Sami culture, reindeer husbandry, commercial activity and social life.

3.6.5 Changes in the Use of Uncultivated lands and transfer of real property

Section 10 Matters concerning changes in the use of uncultivated land	
As proposed by the Government in 2003:	<p><i>“In matters concerning changes in the use of uncultivated land, the Finnmark Estate shall assess the significance a change will have for Sami culture, reindeer husbandry, commercial activity and social life. In making this assessment, the guidelines of the Sami Parliament pursuant to section 4 shall be followed.</i></p> <p><i>Decisions concerning changes in the use of uncultivated land always require the support of at least four board members who are entitled to vote if the whole minority bases its opinion on due consideration for Sami culture, reindeer husbandry, commercial activity and social life assessed on the basis of the guidelines of the Sami Parliament. If the majority consists of four or less, a collective minority may during the board meeting demand that the matter be placed before the Sami Parliament. If the Sami Parliament does not ratify the decision of the majority or does not consider the matter within a reasonable time, a collective majority of the board may demand that the Finnmark Estate place the matter before the King [Government], who shall then decide whether the decision shall be approved. Such approval of the decision has the same effect as such a decision by the board.</i></p> <p><i>The board may only authorize employees and other persons to make decisions concerning changes in the use of uncultivated land when at least four board members vote in favour of so doing. The second paragraph, second to fourth sentence, applies correspondingly. The provisions of this section apply correspondingly in respect of</i></p>

	<p><i>matters concerning sale and leasing of uncultivated land or rights to uncultivated land, concerning assignment of special rights for local utilization of renewable resources and concerning local management of hunting and fishing. The provisions of this section shall not apply to other matters pursuant to chapter 3.”</i></p>
<p>As amended and adopted by the National Parliament (the Storting) in 2005:</p>	<p><i>“In matters concerning changes in the use of uncultivated land, the Finnmark Estate shall assess the significance a change will have for Sami culture, reindeer husbandry, commercial activity and social life. In making this assessment, the guidelines of the Sami Parliament pursuant to section 4 shall be followed.</i></p> <p><i>Decisions concerning changes in the use of uncultivated land always require the support of at least four board members who are entitled to vote if the whole minority bases its opinion on due consideration for Sami culture, reindeer husbandry, commercial activity and social life assessed on the basis of the guidelines of the Sami Parliament. If the majority consists of four or less, a collective minority may during the board meeting demand that the matter be placed before the Sami Parliament. If the Sami Parliament does not ratify the decision of the majority or does not consider the matter within a reasonable time, a collective majority of the board may demand that the Finnmark Estate place the matter before the King [Government], who shall then decide whether the decision shall be approved. Such approval of the decision has the same effect as such a decision by the board.</i></p> <p><i>If a proposal concerning changes in the use of uncultivated land that either applies only to Karasjok, Kautokeino, Nesseby, Porsanger and Tana municipalities, or only to the remainder of Finnmark, is supported by three and only three members of the board, three members of the board may collectively demand that the matter be reconsidered by the board. The last member elected by the Finnmark County Council shall not take part in the reconsideration in matters concerning the use of</i></p>

	<p><i>uncultivated land in Karasjok, Kautokeino, Nesseby, Porsanger and Tana municipalities. If the matter concerns changes in the use of uncultivated land in the remainder of Finnmark the last board member elected by the Sami Parliament who does not represent reindeer husbandry shall not take part. The matter shall be decided by a simple majority. If changes in the use of uncultivated land are decided with the support of three and only three members of the board and the whole majority bases its opinion on consideration for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life assessed on the basis of the guidelines of the Sami Parliament, a collective minority may during the board meeting demand that the matter be placed before the Sami Parliament. The second paragraph, third and fourth sentence, shall apply correspondingly.</i></p> <p><i>The second and third paragraphs shall apply correspondingly for authorization of employees and other persons to make decisions concerning changes in the issue of uncultivated land.</i></p> <p><i>The first to fourth paragraphs shall apply correspondingly in respect of matters concerning transfer and leasing of uncultivated land or rights to uncultivated land. The provisions of this section shall not apply to matters pursuant to chapter 3.</i></p> <p><i>Decisions concerning transfer of real property adopted with support of less than four members of the board are subject to the approval of the Sami Parliament and the Finnmark County Council. The first sentence shall not apply to transfer of properties that have been partitioned by public division proceedings and that have been designated for development in plans pursuant to the Planning and Building Act or sites that have been parcelled out and developed.”</i></p>
<p>Main differences</p>	<p>The adopted provision establishes procedures for the board for the two main categories of lands in Finnmark County; (1) lands in five</p>

between the governmental proposal and the final Act:	municipalities which are largely considered as falling under the “ownership and possession” category of Article 14 of the ILO Convention, and (2) lands which the Sami have used/use but which are not “exclusively occupied” by them. The Sami Parliament is granted more control over the management of lands which fall under the “ownership and possession” category. Moreover, controversial decisions of the board concerning transfer of property are made subject to the approval of the Sami Parliament and the Finnmark County Council.
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Analysis: The process between the National Parliament and the Sami Parliament resulted in the inclusion of a new paragraph three. This paragraph is an important part of the package solution which was reached in the negotiation process. It describes the procedural rules for the board’s reconsideration of matters concerning changes in the use of uncultivated lands.

It stipulates that when the board considers such an issue applicable to Kautokeino, Karasjok, Nesseby, Porsanger and Tana municipalities, one of the Finnmark County Council representatives will not be allowed to deal with this issue, thereby the Sami Parliament appointed representatives will be in the majority. These five municipalities are widely considered as areas where the Sami are entitled to “ownership and possession” rights under Article 14 of the ILO Convention.

To counterbalance this, when the remaining parts of Finnmark County are under consideration, the Finnmark County representatives are in majority with one of the Sami Parliament appointed members not being entitled to vote. The representative of reindeer herding interests, are to be always included in this group, as they normally use such lands during the summer for reindeer grazing. This latter category of lands is widely considered as lands which the Sami have right to use for their traditional activities (ILO Convention, Article 14 (1), 2nd sentence).

Furthermore, it is stated in the fifth paragraph that decisions concerning transfer of property adopted with the support of less than four members of the board are subject to the approval of the Sami Parliament and the Finnmark County Council. This ensures that

any controversial transfer of property is not undertaken without the involvement of these two political institutions.

3.6.6 Distribution of Surplus assets

Section 15 Distribution of surplus assets	
As proposed by the Government in 2003:	<i>“If the Finnmark Estate in bank deposits, cash and the like holds assets which, less any liabilities, exceed reserves necessary for ensuring continued operations, the board may decide that such a surplus shall wholly or partly be paid to the County of Finnmark or the Sami Parliament or used for non-profit purposes of benefit to the inhabitants of the county. Such a surplus may nevertheless only be paid out to the extent that the sum of bank deposits, cash and the like exceeds the Finnmark Estate’s total proceeds from the sale of real property during the period since its establishment less investments in real property.”</i>
As amended and adopted by the National Parliament (the Storting) in 2005:	<i>“If the Finnmark Estate in bank deposits, cash and the like holds assets which, less any liabilities, exceed reserves necessary for ensuring continued operations, the board may decide that such a surplus shall wholly or partly be paid to the County of Finnmark or the Sami Parliament or used for non-profit purposes of benefit to the inhabitants of the county.”</i>
Main differences:	The final provision provides greater freedom to the board to decide about use and distribution of surplus funds, including whether it should be paid to the County of Finnmark or the Sami Parliament.

The provision in section 15 regulates the Finnmark Estate’s authority to distribute surplus funds. The Estate shall be managed in compliance with the purpose of the Act, which is to facilitate the management of land and natural resources in the county in a balanced and ecologically sustainable manner for the benefit of the residents of Finnmark County, and particularly as a basis for Sami culture, reindeer husbandry, commercial activity and social life. It is not the purpose of the Act to establish the basis for financial profit for the benefit of the actors involved in the new management arrangement. To this end, it was decided that the Finnmark estate shall only be able to distribute surplus funds if, bank deposits, cash and the like, less any liabilities, exceed what is needed to ensure the operation of activities. It was clarified that surplus funds shall be paid to the County of Finnmark or the Sami Parliament, or used for non-profit purposes that benefit the inhabitants of the county.

3.6.7 The Control Committee

Section 16 The Control Committee	
As proposed by the Government in 2003:	<p><i>“Supervision of the board’s activities is conducted by a Control Committee consisting of three members. Finnmark County Council, the Sami Parliament and the King shall each appoint a member and a personal deputy. As member and deputy, each body shall appoint a man and a woman. The member and deputy appointed by the state shall fulfil the requirements of the Courts of Justice Act regarding Supreme Court judges. The members and deputies shall be appointed for a period of four years at a time. No-one may be a member for longer than ten years consecutively. The member appointed by the state shall chair the Committee.</i></p> <p><i>The Control Committee shall:</i></p> <p><i>a) control that the activities of the Finnmark Estate are carried out in compliance with the Finnmark Act and other legislation,</i></p>

	<p><i>b) select one or more state authorized public accountants to audit the Finnmark Estate's accounts,</i></p> <p><i>c) approve the Finnmark Estate's annual accounts, annual report and auditor's report,</i></p> <p><i>d) approve the fees payable to the board,</i></p> <p><i>e) approve loans and guarantees, and</i></p> <p><i>f) approve distribution of surplus assets.</i></p> <p><i>In the event of disagreement, decisions shall be made by the majority. Decisions concerning (e) and (f) in the second paragraph require unanimity.</i></p> <p><i>The Control Committee shall have access to all available information held by the Finnmark Estate that it needs in order to perform its duties pursuant to this section.</i></p> <p><i>The Control Committee shall submit an annual report to Finnmark County Council, the Sami Parliament and the Ministry. In the report, the Control Committee shall provide an account of its control activities, an assessment of the board's annual report and the matters dealt with there and an assessment of how the present Act functions and whether any amendments to the Act are desired.</i></p> <p><i>The expenses of the Control Committee are to be covered by the Finnmark Estate. The fees of members and deputies are to be covered by the body that appointed them."</i></p>
	<p>The national parliament did not amend the proposed provision.</p>

The provision provides that a Control Committee shall be appointed to supervise that activities comply with the Finnmark Act and other legislation. The Control Committee

shall also approve the board's annual accounts and annual report, as well as its decisions on loans, distribution of surplus funds and fees to board members.

The provision also requires that the Control Committee's report shall be submitted to the central government thereby establishing a link between the Finnmark Estate and the central government authorities. Moreover, the State member shall always serve as the chair of the Control Committee. The main purpose of this control mechanism is to review whether the decisions and activities of the board have been carried out in compliance with the provisions of the Act. Hence, it is only in cases of non-compliance that the Control Committee can intervene in relation to decisions made by the board.

3.6.8 National Parks on Lands owned by the Finnmark Estate

Section 19 National Parks on the Finnmark Estate's land	
As proposed by the Government in 2003:	<p><i>“Land owned by the Finnmark Estate may be designated as national parks pursuant to the provisions of the Nature Conservation Act without the Finnmark Estate being entitled to compensation. When drafting rules of use, emphasis shall be placed on the possibility of continuing traditional use.</i></p> <p><i>The Finnmark Estate may not claim compensation in connection with expropriation for public purposes for the benefit of the county of Finnmark or municipalities in Finnmark. Nor may the Finnmark Estate claim compensation in connection with expropriation for the benefit of the state or wholly owned state enterprises, for hospitals or other medical or psychiatric institutions or the like, churches, graveyards, educational purposes, museums or cultural heritage projects.”</i></p>
As amended and adopted	<p><i>“Land owned by the Finnmark Estate may be designated as national parks pursuant to the provisions of the Nature Conservation Act. When</i></p>

<p>by the National Parliament (the Storting) in 2005:</p>	<p><i>drafting rules of use, emphasis shall be placed on the possibility of continuing traditional use. The Finnmark Estate and holders of rights of use may demand compensation for financial loss pursuant to the provisions of section 20b of the Nature Conservation Act.”</i></p>
<p>Main differences between the governmental proposal and the final Act:</p>	<p>The final provision states that the Finnmark Estate and holders of rights of use may demand compensation for financial loss caused by the establishment of a natural park.</p>

Government position: The Government proposed that natural parks should be allowed to be established on lands owned by the Finnmark Estate without the State being obliged to pay any compensation to the estate or to any other holders of rights.

Sami Parliament position: The Sami Parliament opposed this proposal, including that no compensation should be paid for expropriations. It stated that it is reasonable that the population in Finnmark enjoy the protection given to other citizens by the ordinary legal provisions concerning expropriation and compensation. The Sami parliament also argued that local people must profit from, and receive compensation for, encroachments on local resources that the State makes based on other domestic legislation (Sami Parliament, 2003).

End result: As a result of the negotiation process between the national parliament and the Sami Parliament, the proposed rules concerning compensation was deleted from the text of the provision, and replaced with a recognition of the right to compensation in cases of expropriation of land.

3.6.9 Relationship to Future Legislation

Section 20 Relationship to future legislation

As proposed by the Government in 2003:	<i>“The Finnmark estate has no protection against change, reduction or revocation of its legal position or rights by statute.”</i>
	The national parliament did not amend the proposed provision.

The Government proposal caused frustrations in many Sami communities, as it was regarded as somewhat provocative. It was argued that under the Norwegian legal system, similar to most jurisdictions, laws can always be amended, revised or revoked by new legislation, thus many regarded this provision as unnecessary and redundant. The Sami Parliament, however, accepted the provision as proposed by the Government, based on the understanding that this is merely a reflection of an already existing general legal principle and does not give the State an extended authority to extinguish or dilute any Sami rights acquired through immemorial usage of lands and resources.

3.7 Renewable Resources in Finnmark

Section 21 Main principles for management	
As proposed by the Government in 2003:	<i>“The Finnmark Estate shall manage the renewable resources on its land in compliance with the purpose of this Act and within the frameworks provided by the Wildlife Act, the Act relating to salmonids and fresh-water fish and other legislation. The diversity and productivity of nature shall be preserved.”</i>
As amended and adopted by the National Parliament	<i>“The Finnmark Estate shall manage the renewable resources on its land in compliance with the purpose of this Act and within the frameworks provided by the Wildlife Act, the Act relating to salmonids and fresh-water fish and other legislation. The diversity and productivity of nature shall be preserved.”</i>

<p>(the Starting) in 2005:</p>	<p><i>The provisions of this chapter shall not apply in so far as otherwise established by special legal circumstances.”</i></p>
<p>Main differences between the governmental proposal and the final Act:</p>	<p>This is a new provision. It states that the provisions of Chapter 3 of the Act shall not apply unless through special legal circumstances.</p>

Harvesting of the resources of uncultivated land has traditionally been important for people living in Finnmark County, and continues to be so, particularly for the Sami. Chapter 3 of the Act regulates management of renewable resources on land owned by the Finnmark estate. Management of renewable resources is assigned to the Finnmark Estate which will have the overall responsibility for ensuring that management is conducted in an ecologically sustainable manner within the framework of the Finnmark Act and other legislation.

However, municipalities have the authority to grant special rights to local users of uncultivated land to exploit certain renewable resources for limited periods; its purpose is to strengthen the rights of local users, which in many parts of the County will be Sami, to the resources of uncultivated land.

3.7.1 Rights of municipality residents

<p>Section 22 Rights of the persons resident in municipalities</p>	
<p>As proposed by the Government in 2003:</p>	<p><i>“Pursuant to the provisions of this chapter and within the frameworks provided by other legislation, residents of a municipality in the county of Finnmark have the right on the Finnmark Estate’s land in the municipality to:</i></p>

	<p>a) fish for freshwater fish with nets, b) fish for anadromous salmonids with fixed gear in the sea, c) gather eggs and down, d) fell deciduous trees for domestic fuel, e) cut peat for fuel and other domestic purposes and f) remove deciduous trees for use as fence posts and poles for hay-drying racks in the reindeer husbandry and agriculture industries.</p> <p><i>Reindeer herders have the same right as the inhabitants in the municipality for the period during which reindeer husbandry takes place there.”</i></p>
	<p>The national parliament adopted the proposed provision.</p>

Through this provision certain resources are reserved for local users. The detailed list includes the right to fish for freshwater fish with nets, fish for salmon in the sea with fixed gear, gather eggs and down, fell deciduous trees for fuel for domestic purposes, cut peat for fuel and other domestic purposes and fell deciduous trees for fence posts and poles for hay-drying racks in reindeer husbandry and agriculture industry. These rights are held by all inhabitants of a municipality throughout the entire land area of the municipality.

3.7.2 Rights of People Resident in Finnmark County

Section 23 Rights of person resident in Finnmark	
<p>As proposed by the Government in 2003:</p>	<p><i>“In compliance with the provisions of this chapter and within the framework provided by other legislation, persons residing in the county of Finnmark have on the Finnmark Estate’s land the right to hunt big game, pick cloudberries and remove timber for home crafts.</i></p> <p><i>Agricultural holdings shall have grazing rights for as large a herd as can be winter-fed on the holding.</i></p>

	<p><i>Finnmarkseiendommen may permit the inhabitants of Finnmark to utilize renewable resources as mentioned in section 23 to the extent the resources permit.”</i></p> <p>(In the governmental proposal, this text was included in draft Section 23.)</p>
<p>As amended and adopted by the National Parliament (the Storting) in 2005:</p>	<p><i>“In compliance with the provisions of this chapter and within the framework provided by other legislation, persons residing in the county of Finnmark have on the Finnmark Estate’s land the right to:</i></p> <ul style="list-style-type: none"> <i>a) hunt big game,</i> <i>b) hunt and trap small game,</i> <i>c) fish in watercourses with a rod and line,</i> <i>d) pick cloudberries, and</i> <i>e) remove timber for home crafts.</i> <p><i>Agricultural holdings shall have grazing rights for as large a herd as can be winter-fed on the holding.</i></p>
<p>Main differences between the governmental proposal and the final Act:</p>	<p>In the parliamentary process the provisions allowing the Finnmark Estate to permit the inhabitants of the entire county to utilize renewable resources, generally, reserved for municipal residents, was deleted from the text.</p>

The Act provides for a distribution of the right to use of uncultivated lands to the inhabitants of the individual municipalities, the inhabitants of the county, and to a certain degree also the national public at large. A number of rights are reserved for the municipality’s inhabitants, while the inhabitants of the county shall continue to have

access to the resources of uncultivated land that they have been entitled to utilize during the period of state ownership.

3.7.3 Special Rights for Local Utilization

Section 24 Special rights to local utilization	
As proposed by the Government in 2003:	<p><i>“Individuals or groups of persons a considerable part of whose livelihood is associated with the utilization of renewable resources may for up to ten years at a time be assigned special rights by the municipality to utilize renewable resources as mentioned in sections 21 to 23 in specified areas of the municipality. The first sentence does not apply to hunting of large and small game, fishing in watercourses with a rod and line and fishing with fixed gear in the sea for anadromous salmonids.</i></p> <p><i>The Finnmark estate may issue general rules concerning the procedures and assessment of matters pursuant to this section. The Finnmark Estate shall be the appeal body for decisions made by the municipality. The procedures followed by the municipalities and Finnmarkseiendommen are subject to the Public Administration Act.”</i></p>
As amended and adopted by the National Parliament (the Storting) in 2005:	<p><i>“Individuals or groups of persons who are associated with a rural district and whose livelihood is wholly or partly associated with the utilization of renewable resources in the vicinity of the rural district may for up to ten years at a time be assigned special rights by the municipality to utilize renewable resources as mentioned in sections 22 and 23 in specified areas of the municipality. When establishing the area and the specific conditions, the use traditionally made of the area by people associated with the rural district shall be taken into consideration. The areas shall preferably constitute an uninterrupted area in the vicinity of the rural district.</i></p>

	<p><i>The Finnmark estate may issue general rules concerning the procedures and assessment of matters pursuant to this section. The Finnmark Estate shall be the appeal body for decisions made by the municipality. The procedures followed by the municipalities and the Finnmark Estate are subject to the Public Administration Act.</i></p> <p><i>This section does not apply to hunting of large and small game, fishing in watercourses with a rod and line and fishing with fixed gear in the sea for anadromous salmonids.”</i></p>
<p>Main differences between the governmental proposal and the final Act:</p>	<p>The main substantive change resulting from the process between the National Parliament and the Sami Parliament is that the final text states that in order to grant special rights to utilize local resources, the livelihood must partly be associated with the utilization of the renewable local resources concerned. This is particularly important for many Sami communities, as the utilization of natural resources often only constitutes part of their total livelihood activities.</p>

The Government proposed that the Act should contain a provision concerning local preferential rights to the harvesting of renewable resources for two reasons; (1) to draw attention to the significance of the use of uncultivated land resources that has and still takes place in local communities, and (2) to pay due consideration to actual needs in local communities (Proposition No. 53, 2002-2003).

Municipalities may assign special rights to utilization for periods of up to ten years at a time. The Finnmark Estate will be the superior body in relation to the municipality. This entails, *inter alia*, that parties and other persons with legal interest in appealing will be able to appeal decisions concerning assignment of special rights. The Finnmark Estate is granted the authority to reverse municipalities’ decisions on its own motion.

The scheme for local preferential rights is to be administered by the municipalities, and they may assign such rights within the boundaries of the municipality. Special utilization

rights are reserved for individuals or groups a considerable part of whose livelihood is wholly or partly associated with the utilization of renewable resources. Fulfilment of this condition will have to be considered in terms of concrete factors such as other sources of income for the person concerned, the need to utilize resources of uncultivated land, and the extent of utilization of uncultivated land.

3.7.4 Access for Other People

Section 25 Access for other persons	
As proposed by the Government in 2003:	<p><i>“In compliance with the provisions of this chapter and within the frameworks provided by other legislation, all persons who throughout the previous year have resided in Norway and who still reside in Norway have the right to hunt and trap small game and to fish with a rod and line in watercourses on the Finnmark Estate’ land. The Finnmark Estate may allow other people to utilize renewable resources as referred to in the first sentence.</i></p> <p><i>To persons who throughout the previous year have resided in Norway and who still reside in Norway and others, Finnmarkseiendommen may grant the right to utilize renewable resources as mentioned in sections 22 and 23 to the extent allowed by such resources. Persons referred to in the first sentence shall on application normally be given permission to pick cloudberries for their own domestic use.”</i></p> <p>(In the governmental proposal, this text was included in draft Section 21 – the rights of the general public.)</p>
As amended and adopted by the National	<p><i>“In compliance with the provisions of this chapter and within the frameworks provided by other legislation, all persons have the access to hunt and trap small game and to fish with a rod and line in watercourses on the Finnmark Estate’s land and to pick cloudberries</i></p>

<p>Parliament (the Storting) in 2005:</p>	<p><i>for their own domestic use.</i></p> <p><i>The Finnmark Estate may grant other persons than those resident in the municipality or county further access to renewable resources as referred to in sections 22 and 23.”</i></p> <p>(In the final Act, this text is included in Section 25 – Access for other persons)</p>
<p>Main differences between the governmental proposal and the final Act:</p>	<p>The governmental proposal aimed at giving all persons who reside in Norway the right to hunt and trap small game and to fish in Finnmark. It also provided the Finnmark Estate with the authority to allow other people to utilize renewable resources in Finnmark; in other words people who do not reside in Norway. The final provision is more restrictive in this regard.</p>

The provision adopted by the National Parliament is more restrictive than the original governmental proposal, as it limits the rights of people who are not residing in the county to use natural resources. For instance, their right to fish and pick berries is limited to “their own domestic use” – hence not commercial purposes.

3.7.5 Local Management of Fishing and Hunting

<p>Section 26 Local management of hunting and fishing</p>	
<p>As proposed by the Government in 2003:</p>	<p><i>For up to ten years at a time, the Finnmark Estate may grant special rights to administer hunting, trapping and fishing in specific areas of the Finnmark Estate’s land to local organizations whose purpose lies in the general promotion of hunting, trapping and fishing.</i></p>
	<p>The national parliament adopted the proposed provision.</p>

Similar to Section 24, this provision provides with special rights for local utilization of renewable resources. The rationale is that the use of uncultivated land resources is of significant importance to local communities; the provision seeks to respond to actual needs in local communities.

3.7.6 Further Conditions for Utilization of Renewable Resources

Section 3 Relationship to International Law	
As proposed by the Government in 2003:	<p><i>“The Finnmark Estate may issue further rules for utilization of renewable resources as mentioned in sections 21 to 23. The Finnmark Estate may stipulate that utilization is subject to issue of a permit. Conditions may be provided in the permits.</i></p> <p><i>For hunting, trapping and fishing, permission is always required. Persons who are granted permission shall be issued cards or the like indicating that they have permission. With the consent of the Ministry, The Finnmark Estate may make exceptions to the provisions of this paragraph.</i></p> <p><i>For permission to hunt, trap and fish, the Finnmark Estate may claim a fee. The fee for inhabitants of Finnmark shall not exceed double the fee charged to the inhabitants of a municipality. Fees may not be charged in connection with assignment of special rights pursuant to section 24.</i></p> <p><i>Fishing for anadromous salmonids in the sea with fixed gear may only be carried out at places indicated by the Finnmark Estate.”</i></p>
As amended and adopted	<p><i>“The Finnmark Estate may issue further rules for utilization of renewable resources as mentioned in sections 22 (a) to (f) and section</i></p>

<p>by the National Parliament (the Storting) in 2005:</p>	<p>23 (a) to (e). <i>The Finnmark Estate may stipulate that utilization is subject to issue of a permit. Conditions may be provided in the permits.</i></p> <p><i>For hunting, trapping and fishing, permission is always required. Persons who are granted permission shall be issued cards or the like indicating that they have permission. With the consent of the Ministry, The Finnmark Estate may make exceptions to the provisions of this paragraph.</i></p> <p><i>For permission to hunt, trap and fish, the Finnmark Estate may claim a fee. The fee for inhabitants of Finnmark shall not exceed double the fee charged to the inhabitants of a municipality. Fees may not be charged in connection with assignment of special rights pursuant to section 24.</i></p> <p><i>Fishing for anadromous salmonids in the sea with fixed gear may only be carried out at places indicated by the Finnmark Estate.</i></p> <p><i>For specified areas, the Finnmark Estate may lay down restrictions on access to exploitation of renewable resources as referred to in the first paragraph if due consideration for any such resource so indicates. Municipalities, authorities with responsibility for wildlife, fisheries, etc. and organizations for the affected users shall be consulted in advance.</i></p> <p><i>In connection with restriction on the exploitation of renewable resources as referred to in the first paragraph, due consideration shall be taken as regards the use of the resource by the various user groups.</i></p> <p><i>The Finnmark Estate's decisions concerning restrictions as referred to in the fifth and sixth paragraphs may be appealed to the Ministry pursuant to the provisions of the Public Administration Act chapter VI. The decisions of the Ministry may not be appealed."</i></p>
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<p>Main differences between the governmental proposal and the final Act:</p>	<p>The national parliament added three news paragraphs (paragraphs 5-7). The Finnmark Estate is mandated to establish restriction on access to certain renewable resources if so required. This addition provides the Finnmark Estate with a possibility to limit the utilization of certain resources, if the resource situation so requires. However, the decision of the Finnmark Estate to establish such restrictions may be appealed to the Government for final consideration.</p>
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The purpose of the Act is to facilitate the management of land and natural resources in Finnmark County in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for the Sami culture, reindeer husbandry, use of non-cultivated land areas, commercial activity and social life. The responsibility for ensuring such management of lands and resources is with the Finnmark Estate. This provision provides the Estate to establish restrictions on access to resources if required in order to meet the overall objective of the Act.

3.8 Fishing Rights in Tana and Neiden Watercourses

<p>Section 28 Fishing in the Tana and Neiden watercourses</p>	
<p>As proposed by the Government in 2003:</p>	<p><i>“The special situation as regards rights and the special regulation of fishing in the Alta, Tana and Neiden watercourses is not affected by the provisions laid down in this chapter.”</i></p>
<p>As amended and adopted by the National Parliament (the Storting) in 2005:</p>	<p><i>“In the Tana and Neiden watercourses, the local population holds special rights to fishing on the basis of statutes, immemorial usage and local customs.</i></p> <p><i>The King may issue regulations prescribing further rules concerning administration and exercise of the fishing. Such regulations shall make provisions for local, rights-based administration of fishing resources</i></p>

	<p><i>consistent with agreements with Finland concerning fishing in the Tana and Neiden watercourses.</i></p> <p><i>The preparation of regulations and negotiations with Finland concerning fishing in the Tana and Neiden watercourses shall be conducted in consultation with the Sami Parliament, affected municipalities and holders of special rights to fishing in these watercourses.”</i></p>
<p>Main differences between the governmental proposal and the final Act:</p>	<p>The final provision recognizes that the local population holds special rights to fishing in Tana and Neiden watercourses on the basis of statutes, immemorial usage and local customs. This of vital importance for Sami communities along these two watercourses. The Alta watercourse is not mentioned in the final provision, which means that the Sami will have no special fishing rights in this river as the old administrative and legal regime will continue to apply for this river.</p> <p>The final provision also provides that the Government may issue regulations prescribing further rules concerning administration and exercise of the fishing in these two watercourses, and that any such regulations shall make provisions for local, rights-based administration of fishing resources consistent with bilateral agreements with Finland concerning fishing in the Tana and Neiden watercourses. Moreover, the provision ensures that the Sami Parliament, affected municipalities and holders of special rights to fishing in these watercourses are included in negotiations with Finland about future administration of these two national boundary watercourses.</p>

The governmental proposal was aimed at keeping the issue of fishing rights in the three largest watercourses in Finnmark County beyond the scope of the Finnmark Act. The Sami Parliament strongly opposed this proposal, as salmon fishing is an important occupation and livelihood for many Sami communities along these watercourses, in

particular Tana and Neiden watercourses. In response to the governmental proposal, the Sami Parliament demanded that the rights to fisheries in the Alta, Neiden and Tana watercourses be clarified. It emphasized the need for providing the East Sami special protection for their cultural and social life; their traditional salmon fishing in the Neiden watercourse is an important part of the East Sami culture and way of life (Sami Parliament, 2003).

The negotiations between the national parliament and the Sami Parliament resulted in an explicit recognition of the special rights of the local population to fishing in Tana and Neiden watercourses on the basis of statutes, immemorial usage and local customs. The “local population” in question is largely composed by Sami communities.

3.9 Survey and recognition of existing land rights

3.9.1 The Finnmark Commission

Section 29 The Finnmark Commission	
	The governmental proposal did not contain any provision concerning survey and recognition of existing rights.
As proposed and adopted by the National Parliament (the Storting) in 2005:	<p><i>“A commission (the Finnmark Commission) shall be established, which, on the basis of current national law, shall investigate rights of use and ownership to the land to be taken over by the Finnmark Estate pursuant to section 49.</i></p> <p><i>The King shall appoint the members of the Finnmark Commission. The Finnmark Commission shall consist of a chairman and four other members. The chairman shall fulfil the requirements of the Courts of Justice Act regarding Supreme Court Judges. Two of the other members shall fulfil the requirements regarding district judges. At least two members shall be resident in or otherwise have a strong affiliation to the county of Finnmark.”</i></p>

The entire chapter 5 of the final Act concerning the survey and recognition of existing rights was added in the parliamentary level following the process between the national parliament and the Sami Parliament.

Sami Parliament position: The Sami Parliament demanded that a suitable system for investigation, evaluation and conclusion of Sami land claims should be established. It argued that such an arrangement is of fundamental importance since ordinary Norwegian courts do not undertake any investigations in relation to historic facts, Sami customs and legal traditions. Moreover, it stated that it would be unreasonably burdensome for private individuals themselves to have to undertake such investigations, particularly since the source material is largely based on oral traditions or other traditional sources. There are few written sources which can provide insight into historical facts. The Sami Parliament also made the point that it would be neither ethically nor morally defensible for the ordinary court system to have to deal with legal disputes in the wake of the Finnmark Act, due to the legal history in Finnmark as far as land rights are concerned.

Section 29 concerning the establishment of the Finnmark Commission is an important element in the compromise which was reached between the national parliament and the Sami Parliament. Section 29 is closely linked to section 5 concerning established rights, which recognizes that the Sami have acquired individual and collective rights to land in Finnmark through prolonged and immemorial usage. Section 29 provides an important element of the mechanisms through which such existing rights will be identified. The Commission shall consist of five members. The Chair of the Commission, and a minimum of two other members, shall be lawyers fulfilling the requirements regarding supreme court and district court judges respectively.

Section 29 states that the Commission's investigations concerning rights of use and ownership to the land to be taken over by the Finnmark Estate shall be undertaken on the basis of "*current national law*". The concept of "*current national law*" includes the principle that protracted traditional use of land or water areas constitutes the basis for individual or collective ownership right to these areas for the Saami, in accordance with national norms concerning protracted usage.

Section 30 Delimitation of fields of investigation	
	The governmental proposal did not contain any provision concerning survey and recognition of existing rights.
As proposed and adopted by the National Parliament (the Storting) in 2005:	<p><i>“The Finnmark Commission shall establish the field for investigation and decide the order of investigation. When so deciding, emphasis shall, inter alia, be placed on due regard for a natural and appropriate delimitation of the field as regards extent and legal and historical contexts and the need to clarify the legal relations.</i></p> <p><i>The Finnmark Commission may restrict or extend a field after initiating the investigation if this is necessary for the creation of a natural and appropriate delimitation.</i></p> <p><i>The Finnmark Commission may omit to investigate rights that are clearly inappropriate for investigation by the Commission. When so deciding, emphasis shall, inter alia, be placed on the nature of the right and the basis on which it is founded.”</i></p>

The Commission has the mandate to decide which land rights claims, and in which order, it will investigate. However, the Commission can decide not to investigate land rights claims that are clearly inappropriate for it to address.

Section 31 Notification of potential right holders	
	The governmental proposal did not contain any provision concerning survey and recognition of existing rights.

<p>As proposed and adopted by the National Parliament (the Storting) in 2005:</p>	<p><i>“Investigation in respect of a field shall be announced with a request to potential right holders to make themselves known. Such announcement shall be made in the Norwegian Gazette, in a newspaper that is generally read at the place concerned and locally in any other appropriate manner.</i></p> <p><i>Reindeer husbandry organizations and other representatives of user interests in the field concerned as well as the Sami Parliament, Finnmark County Council, the Finnmark Estate and affected municipalities shall be notified separately.”</i></p>
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Section 31 establishes the rules for the manner in which the Commission shall notify the public and potential right holders about its decision to undertake investigations concerning rights of use and ownership for a particular area. The Commission shall request all potential right holders to inform the Commission about their claims.

<p align="center">Section 32 Responsibility for obtaining all necessary information concerning the relevant case</p>	
	<p>The governmental proposal did not contain any provision concerning survey and recognition of existing rights.</p>
<p>As proposed and adopted by the National Parliament (the Storting) in 2005:</p>	<p><i>“The Finnmark Commission is itself responsible for obtaining sufficient information concerning a matter. The Commission may in the manner it finds appropriate obtain statements, documents and other material and conduct surveys and investigations, etc. concerning actual and legal circumstances that may be significant for the Commissions’ conclusions.</i></p> <p><i>The parties have the right to give an account of the actual circumstances and provide evidence significant for the Commissions’ conclusions. The parties may request the implementation of measures</i></p>

	<p><i>pursuant to the first paragraph. The Finnmark Commission may refuse such a request if it finds it to be unfounded or that it would involve excessive delays or costs to comply with it.</i></p> <p><i>In order to safeguard the interest of the parties, the Finnmark Commission may appoint representatives from various interest groups to monitor the work of the Commission. The costs shall be covered by the State.”</i></p>
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The obligation to obtain the necessary legal and factual information relevant to the case concerned rests with the Commission. However, the parties – those with a potential legal interest in the case – may also request the Commission to obtain specific information that is relevant for the case. In the ordinary court system, the parties are themselves responsible for providing the court with the necessary factual information and legal arguments in favour of their respective positions. Thus, the Act gives the Commission responsibilities which go beyond that of ordinary courts.

When the Commission is considering cases involving potential Sami rights to use and ownership, it has to take into account the fact that Saami land and water usage often does not leave permanent traces in the environment. Moreover, it will also have to take into account that the rights of the Sami have historically not been recognized, and thus it may be difficult to find any legal documents proving the existence of specific Sami rights. Therefore, the assessment of whether traditional Sami use exists must be made on the basis of what constitutes traditional Saami use of land and water, bearing in mind that such usage normally does not leave any permanent physical traces. This is particularly true for traditional nomadic and semi-nomadic reindeer-herding usage of lands and resources.

The Act provides that the costs for the work of the Commission, including the costs for the parties' representation in the proceedings of the Commission, shall be covered by the State.

Section 33 The Finnmark Commission's report	
	The governmental proposal did not contain any provision concerning survey and recognition of existing rights.
As proposed and adopted by the National Parliament (the Storting) in 2005:	<p><i>“After investigating a field, the Commission shall issue a report containing information concerning:</i></p> <ul style="list-style-type: none"> <i>a) who, in the view of the Commission, are owner of the land</i> <i>b) what rights of use exist in the Commission's view</i> <i>c) the circumstances on which the Commission bases its conclusions</i> <p><i>The report shall state whether the conclusions are unanimous. If this is not the case, it shall be stated who disagrees and which points the disagreement concerns. Grounds shall be given for the conclusions of both the majority and the minority.</i></p> <p><i>Following submission of the report, it shall be announced in the manner described in section 31. It is sufficient that an announcement pursuant to section 31, first paragraph contains a brief summary of the conclusions and information concerning where interest persons can obtain the report in its entirety. In such an announcement notification shall be given of the final date for bringing disputes before the Uncultivated land Tribunal.”</i></p>

In each case, the Commission shall give its opinion on (1) who is the owner of the relevant land area; (2) who has the right to use the area; and (3) the nature and scope of the usufruct right. The Commission is also required to inform on the facts and legal considerations on which its conclusions are based.

Section 34 Consideration by the Finnmark Estate	
	The governmental proposal did not contain any provision concerning survey and recognition of existing rights.
As proposed and adopted by the National Parliament (the Storting) in 2005:	<p><i>“The Finnmark Estate shall without undue delay assess the Commission’s conclusions. In the case of decisions to accept the conclusions of the Commission that other parties hold rights, section 10, sixth paragraph shall apply correspondingly.</i></p> <p><i>To the extent that the Finnmark Estate agrees with the Commission that other parties hold rights, the Finnmark Estate is obliged to state this in writing, and without undue delay ensure that the right is officially registered or, if appropriate, bring the matter before the Land Consolidation Court pursuant to section 45.”</i></p>

Under the Finnmark Act, lands earlier held in State ownership is transferred to the Finnmark Estate. In order to establish whether there might be other private owners to land areas now owned by the Estate, the Finnmark Commission is mandated to review private land claims related to land areas now owned by the Estate. If the Commission concludes that there is another rightful owner than the Finnmark Estate, the Estate will decide on whether it accepts the conclusions of the Commission. If it accepts the conclusions, it shall ensure that such rights are registered. The Estate is also mandated to bring the case before the Land Consolidation Court, in the event disputes concerning demarcation of boundaries between properties.

Section 35 Negotiations	
	The governmental proposal did not contain any provision concerning survey and recognition of existing rights.

<p>As proposed and adopted by the National Parliament (the Storting) in 2005:</p>	<p><i>“Parties that are not in agreement with the Commission’s conclusions, or that need assistance in ensuring that the conclusions are laid down in a binding agreement may request the Finnmark Commission to mediate. The Commission’s obligation to mediate ceases to apply when the time limit for bringing the dispute before the Uncultivated Land Tribunal has expired.”</i></p>
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According to section 35 of the Act, parties that are not satisfied with the conclusions of the Commission, have the right to request the Commission for mediation. This is also applicable if any of the parties requires assistance from the Commission to reach a binding agreement between the various parties. The Commission's obligation to mediate ceases to apply 18 months following the submission of the Commission's report pursuant to section 33.

3.9.2 The Uncultivated Land Tribunal for Finnmark

<p>Section 36 The Uncultivated Land Tribunal for Finnmark</p>	
	<p>The governmental proposal did not contain any provision concerning a special tribunal for uncultivated land.</p>
<p>As proposed and adopted by the National Parliament (the Storting) in 2005:</p>	<p><i>“A special court (the Uncultivated Land Tribunal for Finnmark) shall be established, which shall consider disputes concerning rights that arise after the Finnmark Commission has investigated a field.</i></p> <p><i>The members of the Uncultivated Land Tribunal shall be appointed by the King. The Uncultivated Land Tribunal shall consist of a chairman, a vice-chairman, three permanent members and two deputy members. The chairman, the vice-chairman, and one of the other members shall</i></p>

	<p><i>fulfil the requirements of the Courts of Justice Act regarding Supreme Court judges. The same applies to one of the deputy members, who shall function as a deputy for these three members.</i></p> <p><i>Matters pertaining to the jurisdiction of the Uncultivated Land Tribunal, may not be brought before ordinary courts or the Land Consolidation Court unless the Uncultivated Land Tribunal has rejected a case pursuant to section 40 or the limit for instituting legal proceedings pursuant to section 39, first paragraph, has expired and the Uncultivated Land Tribunal shall not consider the case pursuant to section 38, second paragraph.”</i></p>
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The Uncultivated Land Tribunal for Finnmark is a special land rights court mandated to consider disputes about land rights related to the conclusions of the Finnmark Commission. In cases where parties are dissatisfied with the conclusions of the Commission, and if the Commission fails to facilitate an agreement between parties through its mediation process, the dispute can be filed with the Uncultivated Land Tribunal. As a general rule, matters pertaining to the jurisdiction of the Uncultivated Land Tribunal may not be brought before ordinary courts or the Land Consolidation Court. However, pursuant to section 42, decisions of the tribunal may be appealed to the Supreme Court (see annex 1).

<p align="center">Section 41 Responsibility for obtaining information concerning a case</p>	
	<p>The governmental proposal did not contain any provision concerning a special tribunal for uncultivated land.</p>
<p>As proposed and adopted by the National Parliament</p>	<p><i>“The parties are responsible for giving an account of the actual circumstances and evidence significant for deciding the case. The Uncultivated Land Tribunal shall of its own motion obtain the report of the Finnmark Commission and use this as a basis for its consideration of the case. The parties may in addition produce as evidence</i></p>

<p>(the Storting) in 2005:</p>	<p><i>documents received by, submitted to or issued by the Finnmark Commission.</i></p> <p><i>The Uncultivated Land Tribunal may not receive testimony from members of the Finnmark Commission or from persons who have carried out work for the Commission in connection with the case.</i></p> <p><i>Court sittings for examination of parties and witnesses outside the main hearing may be held by two members of the Uncultivated Land Tribunal, of which at least one must hold the qualifications required of Supreme Court judges. The Uncultivated land Tribunal may request that the examination be made by the appropriate district court.”</i></p>
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The parties are themselves responsible for giving an account of the actual circumstances and evidence – similarly as in ordinary courts. However, the Uncultivated Land Tribunal shall use the report of the Finnmark Commission as a basis for its consideration of the case. In other words, the investigations of the Commission about factual and legal circumstances relevant to the case serve as the basis for the tribunal’s considerations.

Pursuant to section 43, the State shall cover the costs of the tribunal’s activities, and all necessary costs of parties in cases concerning claims for rights. If special grounds so indicate, the tribunal may order a party wholly or partly to carry its own costs. (See annex 1 for further details).

3.9.3 Joint Provisions

<p>Section 44 Sami language</p>	
	<p>The governmental proposal did not contain any provision concerning use of the Sami language.</p>

As proposed and adopted by the National Parliament (the Storting) in 2005:	<i>“Chapter 3 of the Sami Act shall apply to the use of the sami language. Section 3-4, first paragraph, of the Sami Act shall also apply to the Finnmark Commission.”</i>
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The practical implication of this provision is that the Sami language shall have equal status to the Norwegian language in the proceedings of the Finnmark Commission and the Uncultivated Land Tribunal. Section 3-4 of the Sami Act provides that the Sami language (oral and written) shall have equal status to Norwegian language in courts with a jurisdiction wholly or partly covering the administrative area for the Sami language, which includes five municipalities in Finnmark County. As the Uncultivated Land Tribunal has the status equal to a court, the provision in Sami Act automatically applies to the tribunal. Thus, it is only the Finnmark Commission which is mentioned in section 44 of the Finnmark Act, stating that the relevant provision in the Sami Act shall equally apply to the Commission.

Section 45 Delineation of boundaries and official registration	
	<p>The governmental proposal did not contain any provision concerning delineation of property boundaries an official registration of property rights.</p>
As proposed and adopted by the National Parliament (the Storting)	<i>“Legally enforceable judgements by the Uncultivated Land Tribunal and declarations and agreements issued or entered into accordance with the conclusions of the Finnmark Commission may be brought before the Land Consolidation Court pursuant to section 88 of the Land Consolidation Act. The Land Consolidation Court carries out boundary marking on the ground, fixing of coordinates and survey of</i>

<p>in 2005:</p>	<p><i>the boundaries in accordance with the judgement, declaration and agreement.</i></p> <p><i>In respect of right established by a legally enforceable judgement of the Uncultivated Land Tribunal or by a declaration or agreement in accordance with the conclusions of the Finnmark Commission, the limitations of public legal provisions as regard the right to establish or transfer such rights shall not preclude their being officially registered. No fee or document duty shall be paid in connection with the official registration.”</i></p>
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Judgements by the land tribunal, and declarations or agreements from the proceedings of the Commission, may be brought before the Land Consolidation Court pursuant to the ordinary provisions concerning land consolidation for boundary demarcation etc. Rights that are established through such judgements, declarations or agreements shall be officially registered.

3.9.4 Final Provisions

<p align="center">Section 49 Transitional provisions</p>	
<p>As proposed by the Government in 2003:</p>	<p>There were no substantive differences between the governmental proposal concerning transitional provisions and the provision as adopted by the national parliament.</p>
<p>As adopted by the National Parliament (the Storting)</p>	<p><i>The real property in the county of Finnmark to which Statskog SF holds the registered title or which it owns without holding the registered title shall be transferred to the Finnmark Estate as soon as chapter 2 of the Act comes into force. This applies correspondingly to restricted rights to real property. Re-registration in the real property register shall</i></p>

in 2005:	<p><i>be effectuated by means of a change of name. Fiscal continuity shall be maintained in connection with the transfer and the transfer shall entail no tax liability for Statskog SF pursuant to section 5-2 of the Taxation Act.</i></p> <p><i>The Finnmark Estate shall take over the personal responsibility from Statskog SF for mortgages and other encumbrances for monetary claims on the properties or rights taken over by the Finnmark Estate. The Finnmark Estate shall also take over the responsibility for agreements concerning rights of use, leases and the like in respect of the transferred properties and rights. The Finnmark Estate will take over concessions and licences etc. held by Statskog SF in connection with the properties and rights taken over.</i></p> <p><i>By agreement with Statskog SF, the Finnmark Estate has the right to take over agreements entered into by Statskog SF concerning activities in Finnmark.</i></p> <p><i>Persons who, on the entry into force of chapter 2, are employees of Statskog SF with their place of work in the county of Finnmark, with the exception of employees attached to Statskog SF's Mountain Service, will be regarded as employees of the Finnmark Estate from the date of entry into force with the same pay and working conditions as they had in Statskog SF unless the employee concerned has notified that he or she does not so wish. From the date of entry into force, employees of Statskog SF with their place of work in Finnmark are no longer employees of Statskog SF unless by special agreement.</i></p> <p><i>The Ministry shall convene the first board meeting of the Finnmark Estate. The board shall ensure that Finnmarkseiendommen is registered in the Register of Business Enterprises not later than six months after the entry into force.”</i></p>
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Pursuant to this provision the State transferred its ownership rights to the Finnmark Estate. Potential individual and collective right holders are, as mentioned earlier, entitled to have their land claims on the land area which is now owned by the Estate considered by the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark. This terminates the century long period of State ownership in Finnmark County.

Section 50 Amendments to other legislation	
As proposed by the Government in 2003:	<p><i>From the date decided by the King, the following amendments shall be made to other legislation:</i></p> <ol style="list-style-type: none"> <i>1. The Act of 12 March 1965 relating to the state's unregistered land in the county of Finnmark is repealed.</i> <i>2. In the Act of 30 June 1972 No. 70 relating to mining, the following amendments shall be made:</i> <p><i>In chapter 2, a new section 7a shall read as follows:</i></p> <p><i>Special provisions concerning preliminary examination of minerals in Finnmark</i></p> <p><i>In connection with preliminary examination of minerals in the county of Finnmark, a person wishing to conduct such preliminary examination of minerals shall not later than one week prior to the commencement of such preliminary examination provide written notification to the Sami Parliament, the landowner and the appropriate area and district boards for reindeer husbandry. If the person wishing to conduct such preliminary examination intends to make an impact on the land, the location of such impact shall be indicated.</i></p> <p><i>In chapter 3, a new section 22a shall read as follows:</i></p> <p><i>Special provisions concerning licensed prospecting in Finnmark</i></p> <p><i>Applications for licensed prospecting in the county of Finnmark may be rejected if general considerations contraindicate granting of the application. When considering such applications, significant emphasis</i></p>

shall be placed on due consideration of Sami culture, reindeer husbandry, commercial activity and social life. If the application is granted, conditions may be stipulated in order to safeguard such considerations.

When considering the application the Commissioner of Mines shall give the landowner, the Sami Parliament, the County Governor, the county authority, the municipality and the appropriate area and district boards for reindeer husbandry an opportunity to comment.

If the Sami Parliament or the Finnmark Estate as landowner opposes granting of the application, the application shall be decided by the Ministry.

If the Ministry grants the application in cases mentioned in the third paragraph, an appeal to the King from the Sami Parliament or from the Finnmark Estate as landowner will have suspensive effect.

In chapter 4, a new section 39b shall read as follows:

Special provisions concerning patenting of claims in Finnmark

In connection with applications for patenting of claims in the county of Finnmark, the provisions of section 22a shall apply correspondingly. In cases mentioned in section 22a, third paragraph, the Ministry shall decide whether patenting of claim proceedings shall be held before or after the Ministry considers the application.

Section 42, first paragraph, new second sentence shall read as follows:

In the case of mines on the Finnmark Estate's land, the King may by regulations stipulate a larger fee.

3. In the Act of 9 June 1978 No. 49 relating to reindeer husbandry, the following amendments shall be made:

Section 13, third paragraph, new fourth sentence shall read as follows:

The Finnmark Estate may not claim payment pursuant to the

	<p><i>provisions of this paragraph.</i></p> <p><i>Section 14, first paragraph, first sentence shall read as follows:</i></p> <p><i>In connection with the lawful practice of reindeer husbandry in reindeer herding areas, the right to hunt, trap and fish covers hunting, trapping and fishing on state-owned common land, on state-owned land that is not specifically registered and on the Finnmark Estate's land in the reindeer herding district where reindeer husbandry is practised on the same conditions as apply for persons who are permanent residents of the municipality, rural district or neighbourhood where the common land, state-owned land or relevant part of the Finnmark Estate's land is situated.</i></p> <p><i>4. In the Act of 29 May 1981 No. 38 relating to wildlife and wildlife habitats, section 44, second paragraph, is repealed.</i></p> <p><i>5. In the Act of 15 May 1992 No. 47 relating to salmonids and freshwater fish, etc. the following amendments shall be made:</i></p> <p><i>Section 19, third paragraph, shall read as follows:</i></p> <p><i>When real property in the county of Finnmark is sold by the state or by the Finnmark Estate, the fishing rights may be withheld for the benefit of the general public.</i></p> <p><i>Section 22, fourth and fifth paragraph are repealed.</i></p> <p><i>6. In the Act of 21 June 1996 No. 38 relating to a government nature inspectorate, section 2, new fourth paragraph, shall read as follows:</i></p> <p><i>On the Finnmark Estate's land, the Inspectorate shall conduct further control as agreed between the Ministry and the Finnmark Estate."</i></p> <p><i>(In the governmental proposal, these provisions are in section 31).</i></p>

	The national parliament adopted these provisions without any substantive changes.
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The Finnmark Act does not change the legal situation concerning ownership of mineral and sub-surface resources; the State retains the ownership of such resources. However, the adoption of the Finnmark Act leads to some changes in the Mining Act: (1) The Finnmark Estate, the Sami Parliament, and the reindeer herding community concerned, shall always be notified prior to any preliminary examination of minerals in the county of Finnmark. (2) Application for licensed prospecting in the county can be rejected if general considerations contraindicate granting of the application, including the interests of Sami culture, reindeer husbandry, commercial activity and social life.

3.10 Analysis

3.10.1. The Interdependency between Process and Substance

This chapter demonstrates that the process between the Norwegian National Parliament (the Storting) and the Sami Parliament, and the final substantive content of the Finnmark Act are inextricably intertwined. The major substantive changes which the National Parliament made to the text are direct results of the process which was established between the National Parliament and the Sami Parliament. The final Act is much closer to meeting the requirements of ILO Convention No. 169 compared to the 2003-proposal from the Government. It is also more in line with the Sami Parliament's view on the scope of Sami rights to land and resources in Finnmark County. This experience demonstrates that State consultations with indigenous peoples are fundamental in matters which may affect them, in order to prevent conflicts and to ensure that indigenous peoples' rights and interests are properly taken into account. Moreover, it suggests that it is extremely difficult, if not impossible, to reach a satisfactory substantive outcome in the absence of a due process that fully involves the indigenous peoples.

3.10.2 Recognition and identification of Sami Rights to Lands and Resources

The governmental proposal of 2003 did not explicitly recognize any particular Sami rights to land and resources in Finnmark County, beyond restating an already accepted

legal principle that the rights of Sami reindeer herders are acquired through immemorial usage. Although, it was stated in section 5 of the proposed legislation that the Act does not intend to “interfere with private or collective rights based on prescription or immemorial usage”, no explicit recognition of Sami rights was given beyond reiterating the already accepted legal principle concerning reindeer herding rights.

The proposed Act introduced a concept of joint administrative arrangement for all land areas in the county of Finnmark, through the proposed establishment of the Finnmark Estate with equal representation between the Finnmark County Council and the Sami Parliament. However, the proposed Act did not distinguish between land areas falling under ILO Convention No. 169, Article 14 (1), first and second sentence. In other words there was no distinction between (i) lands to which Sami “ownership and possession shall be recognized” under Article 14 (1) first sentence – lands which the Sami “traditionally occupy”, and (ii) lands where the Government is obliged to take necessary measures to safeguard the Sami “right to use” under Article 14 (1) second sentence – lands which the Sami traditionally have had access to for their subsistence and traditional activities.

As the proposed Act did not make a distinction between the two categories of rights – rights of ownership and possession and the right to use certain lands – one of the key questions in the legal debate was whether the joint administrative management arrangement would somehow offer a redress.

The Government argued that the crucial point to be taken into account in this regard is the totality of the proposed arrangement and whether it effectively promotes the underlying principles of the ILO Convention. Furthermore, the Government stated that the overall solution is in compliance with Norway’s international legal obligations as the Sami people would be secured sufficient influence over land management to ensure a stable basis for the protection, preservation and development of the Sami culture (Proposition No. 53, 2002-2003).

The Government also argued that Article 34 of the ILO Convention provides a flexible interpretation and implementation of substantive provisions of the Convention, as it states that the nature and scope of the measures to be taken to give effect to the

Convention “shall be determined in a flexible manner, having regard to the conditions characteristic of each country.” In other words, in the view of the Government, the proposed Act’s lack of explicit recognition of Sami rights to ownership and possession would not be incompatible with the Convention. This should be regarded as a flexible implementation of the Convention, in compliance with its overall spirit and underlying principles (Proposition No. 53, 2002-2003).

Sami political institutions, in particular the Sami Parliament and the Saami Council, rejected the proposal from the Government because they regarded the proposal as being incompatible with international law, including the ILO Convention. The Saami Council argued that Norway, through the proposed Act, was failing to “address its colonial past, and retains control over Sami land, waters and natural resources, even though the land and resources were taken away under an era marked by racist theories. The Saami Council also argued that the proposed Act constitutes discrimination based on race, as it awards the non-Sami population control over the Sami people’s traditional land, waters and natural resources, at the expense of the Sami population, and in violation of international law” (Saami Council, 2003).

The Saami Parliament expressed the view that the proposed Act does not give the Sami people any special legal protection for their culture and their economic activities in competition with other interests, and that this is in conformity with neither internal nor international law. The Sami Parliament referred to Article 14 (1) of the ILO Convention, and strongly argued that this provision demands that the “right of ownership and possession” as well as the “right to use” is recognized. The Sami Parliament believed that the proposed Act was incompatible with Article 14 (1), both first and second sentence. The Sami Parliament pointed out that there was a contradiction between the Government’s recognition of Inner-Finmark as a Sami “ownership and possession” area due to the history of exclusive Sami use of these areas, and the proposed Act’s failure to recognize this in legal terms (Sami Parliament, 2003).

Several independent Nordic legal experts also concluded that the proposed Act did not meet international legal requirements, in particular Article 1 and 27 of the International Covenant on Civil and Political Rights (ICCPR) and the specific land rights provisions in the ILO Convention No. 169.

Professor Martin Scheinin, a member of the UN Human Rights Committee at that time, expressed the view that the proposed Finnmark Act was not in accordance with articles 1 and 27 of the ICCPR, the two provisions taken together. Scheinin based its conclusions upon existing practice of the Human Rights Committee. He stated that if the proposed Act were to result in the establishment of a new decision-making structure (the Finnmark Estate) designed by the State through legislation despite the opposition of the Sami, it would be a violation of ICCPR article 1 and 27; in particular it is aiming at co-opt the Sami in a mixed decision-making structure where they would not have a decisive role, and leaving it largely to that decision-making structure to protect and promote the Sami culture and economy. Scheinin clarified that the role of the elected Sami Parliament in controlling the use of lands and resources as the material basis for Sami culture and means of livelihood is crucial for securing compliance with the Sami people's right of self-determination under ICCPR article 1. Furthermore, he argued that the same goes for compliance with ICCPR article 27 where effective participation by the indigenous group and the sustainability of the indigenous economy are the decisive criteria, instead of how the issue of ownership of lands is settled (Scheinin, 2003).

Professor Geir Ulfstein, one of the two independent experts appointed by the Ministry of Justice to undertake a study on the proposed Finnmark Act, concluded that if the proposed Act were "to meet the ILO Convention's requirements as regards land rights, the Sami representation and rules on decisions making in the Finnmark Estate must be changed so as to ensure the Sami people the control that is inherent to an ownership position" Ulfstein argued that indigenous peoples, under Article 14 (1), first sentence of the ILO Convention, are entitled to all rights usually held by an owner in the national legal system in question, insofar as this does not result in significantly poorer protection than that which follows from the dominant legal cultures of continental legal systems and common law. Furthermore, he argued that Article 34 of the ILO Convention does not provide a basis for undermining the rights flowing from Article 14. In his view, Article 34 make allowance for rights whose content differs somewhat from those customarily held by an owner, but not for rights that are poorer or significantly different from those flowing from Article 14 (Ulfstein, 2004).

In 2003, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), *inter alia*, made the following observation concerning the

proposed Finnmark Act: “The proposal would transfer state ownership of 95 per cent of the land in the county to the [Finnmark] Estate. It appears that this would include areas that sami claim as their land by right of long occupation, and to which the Government acknowledges in principle that the Sami do have rights, though the extent of these lands and the content of the rights have not yet been identified as required in Article 14 of the Convention. It would give the Sami a significant role in the management and use of a larger area than that to which they now have rights, and the Government indicates that they would have more benefits from the management of the larger area than under the present situation. However, the proposal would replace the rights of ownership and possession recognized by the Convention with a right to a larger share in administration of the region” (ILO CEACR, 2003).¹⁰

CEACR concluded that the proposed Act “would appear to be closer to compliance with Article 15, which recognizes that the right to natural resources on indigenous lands is often retained by the State, and that if this is so indigenous and tribal peoples on whose lands these resources lie must be able to participate in the use, management and conservation of these resources (Article 15 (1) of the Convention).”¹¹

Most legal experts in Norway who engaged themselves in the public and academic debate about the proposed Finnmark Act, as well as the ILO Committee of Experts, concluded that the proposed Act was not in compliance with Norway’s international legal obligations concerning the protection and promotion of Sami rights. This made it extremely difficult for the National Parliament to proceed with an adoption of the proposed Act in such circumstances. Governmental civil servants who were interviewed as part of this case study expressed the view that the concluding observations and recommendations of the ILO Committee of Experts on Norway’s report on the application of the ILO Convention No. 169 had a significant impact on the Finnmark Act, both on process and substance. The uncertainty about whether the proposed Act met international legal requirements in relation to process as well as substance were said to be the main reason for the national parliament’s decision to directly engage itself in a process with the Sami Parliament.

¹⁰ CEACR (Norway), 2003/74th session, paragraph 17

¹¹ Ibid, paragraph 18

The final Act, as amended and adopted by the National Parliament, recognizes that the Sami, through prolonged and continued use of land and water areas, have collectively and individually acquired rights to land in Finnmark. This is fundamentally different from the proposal which was made by the Government.

This codification of the principle that protracted traditional Sami use of land or water areas constitutes the basis for individual or collective ownership right to these areas for the Sami is a milestone achievement for the Sami struggle for strengthened protection for their rights to lands and resources. The Act recognizes that if the Sami are not deemed to be the owners of certain land and water areas, which they have traditionally used for reindeer husbandry, hunting, fishing or in other ways, they shall have the right to continue to use these areas to the same extent as before. Particular regard in this connection shall be paid to the interests of reindeer-herding Sami. See section 5 of the Act.

Assessment of whether prolonged use exists pursuant to the Act must be made on the basis of what constitutes prolonged or immemorial use of land and water. In this regard it is necessary to bear in mind that traditional Saami use of land and water usage often does not leave permanent traces in the environment, and that such usage is normally not reflected in any formal legal documents, are important parts of the justification for the establishment of the Finnmark Commission and the Uncultivated Land tribunal for Finnmark (See Chapter 5 of the Act). The evidence for traditional Sami usage is due to historical circumstances of such a nature that the ordinary court system would have difficulties to deal with these cases.

Article 14 (2) of the ILO Convention No. 160 requires that national authorities adopt necessary measures to identify the lands which indigenous peoples “traditionally occupy”, and to guarantee effective protection of their rights of ownership and possession. The Finnmark Act does not identify the lands which the Sami have the rights of ownership and possession to, nor does it explicitly recognize any Sami ownership rights. The Act recognizes that the Sami through prolonged use of land and water areas have acquired “rights” to lands, including ownership.

According to Article 14 (3) of the ILO Convention, authorities shall establish adequate procedures within the national legal system to resolve land claims by indigenous peoples. The Finnmark Act seeks to resolve such land claims through the established Finnmark Commission, and the Uncultivated Land Tribunal for Finnmark. The Finnmark Commission is mandated to investigate rights of “use and ownership” to the land which has been transferred to the Finnmark Estate, i.e. to seek to identify any other possible owners or rights holders, including individual or collective Sami rights acquired through immemorial usage. The Uncultivated land Tribunal shall consider disputes concerning rights that arise after the Commission has investigated a certain area. This mechanism to resolve land claims in Finnmark County is not a system limited to Sami land claims, as it is mandated to deal with all possible land claims in Finnmark. However, the establishment of this specific land claims mechanism is a direct result of the fact that the Act recognizes that the Sami through prolonged use of land and water areas have acquired land rights, but without identifying the rights and the relevant land areas.

The Act draws no distinction between land areas along the line of Article 14 (1) of the ILO Convention; ownership and possession land areas and areas which the Sami have right to use. However, the Act does not preclude Sami ownership rights, as the land claims mechanism shall deal with all land claims, including possible Sami land ownership claims. Moreover, the voting procedures for the board of the Finnmark Estate to a certain degree seek to reflect the existence of two categories of Sami rights, and the fact that the ILO Convention requires that indigenous peoples in certain areas shall have the right of “possession”. According to section 10 (3) of the Act, the board’s majority will be held by the members appointed by the Sami Parliament when the board is considering proposals concerning changes in the use of lands in Inner-Finnmark where the Sami use historically has been relatively exclusive.

The established land claims mechanism will be crucial for the implementation of the Finnmark Act. The Finnmark Act’s level of compliance with Norway’s international legal obligations in relation to Sami land rights, including under the ILO Convention, depends largely on how successful the Finnmark Commission and the Land Tribunal are in identifying and securing Sami ownership and usufruct rights.

3.10.3 Management of Lands and Resources in Finnmark

In compliance with section 49 of the Finnmark Act, the registered title to the lands in Finnmark, previously held by the State, has been transferred to the Finnmark Estate – which according to section 6 is an independent legal entity. In this regard there is no difference between the original proposal from the Government and the Act as adopted by the national parliament.

Although, the governmental proposal provided for the transfer of the registered title from the State to the Finnmark Estate, it aimed at retaining a significant role for the State in the management of lands and resources in Finnmark through the proposed representation on the board of the Estate. In the final Act, the role of the State has been significantly reduced, although the State is no longer represented on the board, it still plays a certain role in the management of lands and resources. See chapters three and four of the Act. Moreover, the State retains rights to non-renewable resources in Finnmark.

The criticism with reference to the proposed management arrangement from Sami institutions, legal scholars in Norway and other legal experts with knowledge of international law, was largely focused on three elements: (1) lack of legal distinction between Sami “ownership and possession” land areas and “usufruct” areas; (2) lack of identification of “ownership and possession” areas; and (3) lack of effective Sami control over lands and resources in “ownership and possession” possession areas.

The pan-Sami non-governmental organization, the Saami Council, stated that the proposed Act's failure to recognize that the Sami, as an indigenous people, have distinct rights to its traditional land and resources results in the Act being an expression of racial discrimination. It also argued that the proposed Act violated the Sami people's right to self-determination under international law. The Saami Council urged the Government to withdraw the proposed Act and elaborate a new land management act in full cooperation with the Sami Parliament (Saami Council, 2003).

The Sami Parliament stated that Norway is established on the territory of two peoples, Sami and Norwegians, and that the Sami are thereby one of the two peoples who constitutes the Norwegian State. The Sami Parliament stated that the Sami people had

never handed over their inherited rights to others in negotiations, sale or other kinds of alienation, including as far as the rights to lands, water and natural resources are concerned. It expressed the view that the proposed Act was not in conformity with the International Covenant on Civil and Political Rights, and the ILO Convention No. 169. The Sami Parliament placed emphasis on the fact that the proposed Act did not recognize Sami rights in accordance with Article 14 (1) of the ILO Convention, in particular the fact that no “ownership and possession” rights nor any measures for identification of such rights were included in the proposed Act. The Sami Parliament also stated that the proposed joint management system [the Finnmark Estate] cannot be established without an unambiguous agreement between the State and the Sami Parliament. The Sami Parliament established equal representation of the Sami Parliament and the Finnmark County Council as a fundamental condition for its approval of any joint management mechanism (Sami Parliament, 2003).

Professor Martin Scheinin expressed the view that in the light of existing practice by the UN Human Rights Committee, the management provisions of the proposed Act were not in accordance with articles 1 and 27 of the International Covenant on Civil and Political Rights. He said that the proposed Act aimed at co-opting the Sami in a mixed decision-making structure where they would not have a decisive role. Scheinin emphasized that the right of an indigenous group that qualifies as a people under article 1 of ICCPR to control their traditional lands and the natural resources on those lands is an important dimension of self-determination, and that self-determination also entails a people's right to design its own decision-making structures. He pointed out that under both article 1 and 27 of ICCPR, the Human Rights Committee has expressed its support to regimes where certain rights related to a traditional indigenous territory are reserved to the members of the indigenous group concerned (Scheinin, 2003).

In its General Comment No. 23 on article 27 of ICCPR, the Human Rights Committee states that in the case of indigenous peoples, the right of the members of the group, to enjoy their culture may entail reserving lands to them exclusively (UN Human Rights Committee, 1994). The reservation of such exclusive land rights are regarded as positive measures permissible under ICCPR article 27, if they are based on reasonable and objective criteria and are aimed at correcting conditions which prevent or impair the group's enjoyment of rights contained in article 27.

Professor Geir Ulfstein concluded that the proposed Finnmark Act represents an innovative approach to ownership rights and management of land by proposing to establish the Finnmark Estate and transfer ownership rights to this body. He stated that article 14 of the ILO Convention requires, however, that the Sami people be given ownership or possession rights to those parts of the county where the Sami population traditionally reigns supreme. In the view of Ulfstein, the proposed administrative arrangements, in the form of representation of Sami interest on the board and the procedures for decisions-making, fail to meet these requirements. He was also of the view that article 34 of the ILO Convention cannot remedy this deficiency. He argued that while the Sami Parliament can endorse an administrative arrangement for the Finnmark Estate that falls short of the requirements of the ILO Convention, such endorsement cannot be given with effect for rights enjoyed by individuals or groups of individuals with a basis in prescription and immemorial usage or in article 27 of the ICCPR (Ulfstein, 2004).

The ILO Committee of Experts on the Application of Conventions and Recommendations also expressed clear reservations concerning the proposal. The Committee said that although the proposal would give the Sami a significant role in the management of a larger area than to which they now have rights, the proposal would nevertheless replace the rights of ownership and possession with a large share in administration of the region. The Committee concluded that the proposal appears to be closer to compliance with article 15 of the ILO Convention than with article 14 (1) (ILO CEACR, 2003).

There are some important substantive differences between the original governmental proposal and the final Act as far provisions concerning management of lands and resources are concerned. First of all, the State has now a reduced role in the management of lands and resources. Thus, the Sami Parliament and the Finnmark County Council execute greater control over lands and resources than what was originally intended by the Government. The voting procedures of the board of the Finnmark Estate to a greater extent accommodate the legal reality in the way that the Sami Parliament appointed board members hold the majority vote when matters concerning specific geographical areas are dealt with by the board. See section 10 of the Act.

When elaborating on the management system which is established by the Act, it is important to bear in mind that the Sami Parliament has given its consent to the present administrative arrangement. The process between the national parliament and the Sami Parliament and the internal Sami process together, must be regarded as constituting a form of acceptance of the administrative system in compliance with internal legal provisions, including the ILO Convention and ICCPR articles 1 and 27. However, the condition for such compliance is that the implementation of the Act does not encroach upon existing Sami rights based on prescription and immemorial usage. In other words, the Sami Parliament's consent to the administrative arrangement cannot be given any effect for rights enjoyed by Sami individuals or groups with basis in prescription or immemorial usage, or internal legal provisions.

Article 14 (1) requires that indigenous rights to use lands which are not exclusively occupied by them are safeguarded, and article 14 (2) requires that necessary steps are taken to identify the lands which indigenous peoples traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. The Finnmark Act does not make any distinction between these two categories of Sami rights, as this is left to the Finnmark Commission and the Uncultivated Land Tribunal to decide upon. These two institutions represent the mechanism through which the identification and securing of Sami rights in Finnmark County shall take place.

More than two years after the adoption of the Act neither of these institutions has been established due to a slow political process, which could be an indication of a somewhat lacking political will to follow-up the decision of National Parliament. The status of Sami land rights in Finnmark remains uncertain and there has not been any move towards identification and registration of such rights. The Government is currently pursuing a 25-year old plan to give large areas in Finnmark County national park status, which will establish serious restrictions on the local Sami usage of those areas. This process continues despite the fact that the Finnmark Act is in force, and the Finnmark Commission has not been established yet and thus has not embarked on its mandate to investigate rights to use and ownership in Finnmark. In the spirit of the Act, and Norway's international obligations toward the Sami, the State should refrain from taking

legislative or administrative measures affecting Sami rights, before the legal situation is clarified through the land claim mechanism established by the Finnmark Act.

3.10.4 Conclusions

The concluding observations of the ILO Committee of Experts on the Application of Conventions and Recommendations stated that the Finnmark Act – as proposed by the Government in 2003 – was incompatible with Norway's obligations under ILO Convention No. 169. The observations of the Committee of Experts directly influenced the outcome of the legislative process in two ways: (i) convinced the Norwegian National Parliament (the Storting) that an adoption of legislation with direct impact on Sami land rights, without conducting appropriate consultations with the Sami Parliament, would be a violation of Norway's international obligations; (ii) influenced the substantive negotiations between the National Parliament and the Sami Parliament. This demonstrates that it is crucial that the ILO continues to closely monitor national implementation of ILO Convention No. 169.

The case study highlights the interdependency between the legislative process and the substantive legal content of the Finnmark Act. The process between the National Parliament and the Sami Parliament resulted in substantive changes in the provisions of the Act, including as far as the recognition of established Sami rights are concerned. In other words, the case study demonstrates the importance of ensuring that State parties consult indigenous peoples through appropriate procedures whenever consideration is being given to legislative or other measures which may affect them directly, and that such consultations can have enormous substantive influence.

The Finnmark Act provides a foundation and mechanism for the identification and effective protection of Sami land and resource rights in Finnmark County. Under the present circumstances, the realization of Sami land rights in Finnmark is inextricably linked to the future work of the Finnmark Commission, and the Uncultivated Land Tribunal for Finnmark. The Commission is mandated to investigate rights of use and ownership to the land which is taken over by the Finnmark Estate, including collective and individual Sami rights which are based on prescription or immemorial usage. The special land rights tribunal for uncultivated lands in Finnmark is mandated to consider

disputes about rights that arise after the Commission has submitted its findings and conclusions concerning rights to ownership and use in the relevant areas.

The land claims procedure under the Act provides a mechanism through which Sami rights of ownership and use can be identified and guaranteed. It is to be expected that the process of settling land claims in Finnmark, including Sami land claims, will be a lengthy and resource demanding process. A more comprehensive evaluation of Norway's compliance with its international legal obligation to recognize and protect Sami land and resource rights will have to await the completion of the land claim process. Moreover, the rights of the coastal Sami to marine resources constitutes a crucial element of the overall status of Sami rights in Finnmark, and as such rights are not covered by the Finnmark Act, a complete evaluation of the status of Sami rights cannot be given before also these matters are settled.

As the process of settling Sami land claims might take a number of years, there is the possibility that further encroachment on Sami land rights may take place through various forms of legislative and administrative measures. This could for instance be the case if national authorities declare vast uncultivated areas in Inner-Finnmark as national parks, with the effect that local usage of these areas will be restricted. State authorities have acknowledged that parts of Inner-Finnmark consist of land which the Sami people "traditionally occupy" in the meaning of article 14 (1) of the ILO Convention. It should also be expected that the future land claims process will conclude that the Sami are entitled to rights of ownership and possession to vast areas of the uncultivated land which currently in the process of becoming declared as national parks.

Thus, the successful conclusion of this historical process of identifying and protecting Sami land rights in Finnmark is not limited to the performance of the Commission and the Uncultivated land Tribunal, as it is also dependent on whether State policies related to lands and resources in Finnmark are developed and implemented in good faith and taking into account the ongoing process related to Sami land rights. If State authorities show signs of wanting to by-pass the land claims process, including by adopting measures ahead of its successful conclusion, the fragile Sami political endorsement of the arrangement established by the Finnmark Act may prove to be threatened.

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Annex

Annex 1: The Finnmark Act, as adopted by the national parliament (the Storting), 17 June 2005

Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act)

Chapter 1 General provisions

Section 1 The purpose of the Act

The purpose of the Act is to facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life.

Section 2 Scope

The Act shall apply to real property and watercourses with natural resources in the county of Finnmark. On the shoreline, the Act shall apply as far out to sea as private right of ownership extends.

Section 3 Relationship to international law

The Act shall apply with the limitations that follow from ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Act shall be applied in compliance with the provisions of international law concerning indigenous peoples and minorities and with the provisions of agreements with foreign states concerning fishing in trans-boundary watercourses.

Section 4 The guidelines of the Sami Parliament regarding changes in the use of uncultivated land

The Sami Parliament may issue guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines shall be approved by the Ministry. The Ministry shall examine whether the guidelines lie within the framework laid down in the first sentence and whether they have been drawn up in an appropriate manner.

In matters concerning changes in the use of uncultivated land, state, county and municipal authorities shall assess the significance such changes will have for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines of the Sami Parliament shall be followed in the assessment of Sami interests pursuant to the first sentence.

Section 5 Relationship to established rights

Through prolonged use of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark.

This Act does not interfere with collective and individual rights acquired by Sami and other people through prescription or immemorial usage. This also applies to the rights held by reindeer herders on such a basis or pursuant to the Reindeer Herding Act. In order to establish the scope and content of the rights held by Sami and other people on the basis of prescription or immemorial usage or on some other basis, a commission shall be established to investigate rights to land and water in Finnmark and a special court to settle disputes concerning such rights, cf. chapter 5.

Chapter 2 Finnmarkseiendommen (“the Finnmark Estate”)

Section 6 The legal position of Finnmarkseiendommen

Finnmarkseiendommen (Finnmárkkuopmodat) (“the Finnmark Estate”) is an independent legal entity with its seat in Finnmark which shall administer the land and natural resources, etc. that it owns in compliance with the purpose and other provisions of this Act.

Section 7 The board of Finnmarkseiendommen

Finnmarkseiendommen shall be governed by a board consisting of six persons. Finnmark County Council and the Sami Parliament shall each elect three members, each with a personal deputy. The members and deputies shall be resident in Finnmark. Among the members elected by the Sami Parliament at least one board member and that person’s deputy shall be representatives for reindeer husbandry. Both as members and as deputies, both bodies shall elect both women and men. The body shall elect members and deputies collectively. Employees of Finnmarkseiendommen, Finnmarkseiendommen’s auditor and members and deputies of the Control Committee may not be elected as board members or deputies.

The board members and deputies are elected for a term of up to four years at a time. No-one may be a board member for longer than ten years consecutively.

Board members and deputies may be removed by the body that elected them. The body shall in such a case elect new members and deputies collectively.

Board members and deputies have a right to withdraw before their period of service expires if there are special reasons for so doing. The board and the body that has elected the member concerned shall be given reasonable notice. The fourth paragraph, second sentence, shall apply accordingly.

The board shall itself elect a chairman and vice-chairman from among its members. If no-one obtains a majority of votes, which of the six members shall be chairman and vice-

chairman shall be decided by Finnmark County Council in years ending on an odd number and by the Sami Parliament in years ending on an even number.

Section 8 Proportionally representative elections

Elections of board members and deputies shall be held as proportionally representative elections as mentioned in section 37 of the Local Government Act if so required by at least one member of the body.

If in connection with proportionally representative elections it is necessary in order to fulfill the requirement that among the members and deputies there shall be both women and men, candidates of the under-represented sex shall move up on the list with fewest votes of the lists that shall be represented. In the event of tied votes, the list on which candidates of the under-represented sex are to move up shall be decided by drawing lots. If in connection with proportionally representative elections in the Sami Parliament it is necessary in order to fulfill the requirement that one of the board members and that member's deputy shall be representatives for reindeer husbandry, representatives for reindeer husbandry shall move up on the list that has received fewest votes of the lists that shall be represented and that have such candidates. If there is no such list, the last place on the board shall be given to the representatives for reindeer husbandry on the list that has received most votes of the lists that have such candidates. In the event of tied votes, the list that shall be regarded as having received most or fewest votes shall be decided by drawing lots.

Section 9 The duties and procedures of the board

The board is responsible for management of Finnmarkseiendommen. The board shall ensure that the body is satisfactorily organized. The board shall to the extent necessary provide plans, budget, guidelines and instructions for the body. The board shall implement the investigations it finds necessary for performance of its duties. The board shall implement such investigations if so required by a board member.

The chairman of the board shall ensure that appropriate matters are dealt with by the board and that board meetings are convened in an appropriate manner and with reasonable notice. A board member may require that specific matters be dealt with by the board.

The board shall deal with matters in meetings unless the chairman finds that a matter may be submitted to the board in writing or be dealt with in another satisfactory manner. A board member may require that a matter be dealt with at a meeting of the board.

The board may make decisions when at least five members are present. Such decisions are made by simple majority unless otherwise provided by section 10. In the event of tied votes, the chairman shall have the casting vote.

The board shall submit an annual report to the Control Committee concerning Finnmarkseiendommen's activities. This annual report shall include a particular account of changes in the use of uncultivated land and an assessment of the significance of these changes for the natural resource base for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life.

The board shall fix its own fees. Such fees are to be covered by Finnmarkseiendommen.

Section 10 Matters concerning changes in the use of uncultivated land and transfer of real property, etc.

In matters concerning changes in the use of uncultivated land, Finnmarkseiendommen shall assess the significance a change will have for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines of the Sami Parliament pursuant to section 4 shall be followed in the assessment of Sami interests pursuant to the first sentence.

Decisions concerning changes in the use of uncultivated land require the support of at least four board members if the whole minority bases its opinion on consideration for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life assessed on the basis of the guidelines of the Sami Parliament. If the majority consists of four or less, a collective minority may during the board meeting demand that the matter be placed before the Sami Parliament. If the Sami Parliament does not ratify the decision of the majority or does not consider the matter within a reasonable time, a collective majority of the board may demand that Finnmarkseiendommen place the matter before the King, who shall then decide whether the decision shall be approved. Such approval of the decision has the same effect as such a decision by the board.

If a proposal concerning changes in the use of uncultivated land that either applies only to Karasjok, Kautokeino, Nesseby, Porsanger and Tana municipalities or only to the remainder of Finnmark is supported by three and only three members of the board, three members of the board may collectively demand that the matter be reconsidered by the board. The last member elected by Finnmark County Council shall not take part in this reconsideration if the matter concerns changes in the use of uncultivated land in Karasjok, Kautokeino, Nesseby, Porsanger or Tana municipalities. If the matter concerns changes in the use of uncultivated land in the remainder of Finnmark, the last board member elected by the Sami Parliament who does not represent reindeer husbandry shall not take part. The matter shall be decided by a simple majority. If changes in the use of uncultivated land are decided with the support of three and only three members of the board and the whole minority bases its opinion on consideration for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life assessed on the basis of the guidelines of the Sami Parliament, a collective minority may during the board meeting demand that the matter be placed before the Sami Parliament. The second paragraph, third and fourth sentence, shall apply correspondingly. The second and third paragraphs shall apply correspondingly for authorization of employees and other persons to make decisions concerning changes in the use of uncultivated land.

The first to fourth paragraphs shall apply correspondingly in respect of matters concerning transfer and leasing of uncultivated land or rights to uncultivated land. The provisions of this section shall not apply to matters pursuant to chapter 3.

Decisions concerning transfer of real property adopted with the support of less than four members of the board are subject to the approval of the Sami Parliament and Finnmark County Council. The first sentence shall not apply to transfer of properties that have been partitioned by public division proceedings and that have been designated for development in plans pursuant to the Planning and Building Act or sites that have been parcelled out and developed.

Section 11 Matters concerning the employees' working conditions and legal position

A representative shall be elected by and from the employees of Finnmarkseiendommen, who shall attend meetings of Finnmarkseiendommen's board when considering matters concerning the employees' working conditions or legal position. The employees' representative shall be entitled to speak and to submit proposals, but not to vote.

The employees' representative shall not be entitled to take part in the consideration of matters concerning the employer's preparations for negotiations with employees, labour disputes, legal disputes with employee organizations or termination of collective pay agreements.

Section 12 Representation

The board represents Finnmarkseiendommen externally and signs on its behalf. The board may assign to one or more board members or other named persons the right to sign on behalf of Finnmarkseiendommen. The right to sign on behalf of Finnmarkseiendommen may be withdrawn at any time.

If any person who represents Finnmarkseiendommen externally pursuant to this provision has exceeded his or her authority, the transaction shall not be binding for Finnmarkseiendommen when Finnmarkseiendommen establishes that the contracting party understood or should have understood that the authority was exceeded and that it would be contrary to fair practice to uphold the transaction.

Section 13 Accounts, audit and registration

Finnmarkseiendommen shall keep accounts in compliance with the provisions of the Accounting Act.

The accounts shall be audited by a state authorized public accountant. The auditor shall for each accounting year submit an auditor's report to the board of Finnmarkseiendommen.

Finnmarkseiendommen shall be registered in the Register of Business Enterprises.

Section 14 Mortgage and debt proceedings

Real property owned by Finnmarkseiendommen and limited rights held by Finnmarkseiendommen in real property owned by others may not be offered as security for debt or other commitments and may not be subject to attachment by creditors. This shall not however apply to properties and limited rights to properties that have been partitioned by public division proceedings and that have been designated for development in plans pursuant to the Planning and Building Act or sites that have been parcelled out and developed.

Bankruptcy or debt settlement proceedings may not be instituted regarding Finnmarkseiendommen.

Section 15 Distribution of surplus assets

If Finnmarkseiendommen in bank deposits, cash and the like holds assets which, less any liabilities, exceed reserves necessary for ensuring continued operations, the board may decide that such a surplus shall wholly or partly be paid to the county of Finnmark or the Sami Parliament or used for the common good of the county's inhabitants.

Section 16 The Control Committee

Supervision of the board's activities is conducted by a Control Committee consisting of three members. Finnmark County Council, the Sami Parliament and the King shall each appoint a member and a personal deputy. As member and deputy, each body shall appoint a man and a woman. The member and deputy appointed by the state shall fulfil the requirements of the Courts of Justice Act regarding Supreme Court judges. The members and deputies shall be appointed for a period of four years at a time. No-one may be a member for longer than ten years consecutively. The member appointed by the state shall chair the Committee.

The Control Committee shall:

- a) control that the activities of Finnmarkseiendommen are carried out in compliance with the Finnmark Act and other legislation,
- b) select one or more state authorized public accountants to audit Finnmarkseiendommen's accounts,
- c) approve Finnmarkseiendommen's annual accounts, annual report and auditor's report,
- d) approve the fees payable to the board,
- e) approve loans and guarantees and
- f) approve distribution of surplus assets.

In the event of disagreement, decisions shall be made by the majority. Decisions concerning (e) and (f) in the second paragraph require unanimity.

The Control Committee shall have access to all available information held by Finnmarkseiendommen that it needs in order to perform its duties pursuant to this section.

The Control Committee shall submit an annual report to Finnmark County Council, the Sami Parliament and the Ministry. In the report, the Control Committee shall provide an account of its control activities, an assessment of the board's annual report and the matters dealt with there and an assessment of how the present Act functions and whether any amendments to the Act are desired.

The expenses of the Control Committee are to be covered by Finnmarkseiendommen. The fees of members and deputies are to be covered by the body that appointed them.

Section 17 Criminal liability and liability for compensation of board members and others

Members of the board, persons authorized to sign on behalf of Finnmarkseiendommen, auditors, senior employees authorized to make decisions on behalf of Finnmarkseiendommen within restricted areas of responsibility or members of the Control Committee who show gross lack of judgment in the execution of their responsibilities in respect of Finnmarkseiendommen shall be liable to fines or under aggravating circumstances to imprisonment for a term not exceeding one year. Members of the board who willfully or negligently have inflicted a loss on Finnmarkseiendommen during the performance of their duties are obliged to compensate the loss. The Control Committee shall decide whether a claim for compensation shall be made.

Section 18 Relationship to the Freedom of Information Act and the Public Administration Act

To Finnmarkseiendommen, chapter II of the Public Administration Act concerning disqualification, section 11 concerning duty to provide guidance, section 11a concerning time spent on dealing with a case and provisional replies and sections 13 to 13f concerning duty of secrecy shall apply correspondingly. Finnmarkseiendommen shall give the right holders in an area prior notification and the opportunity to express their opinions pursuant to the provisions of section 16 of the Public Administration Act before Finnmarkseiendommen makes a decision that may have legal or actual consequences for them.

Finnmarkseiendommen's case documents are public pursuant to the provisions of the Freedom of Information Act. In the event of a rejection of a request for access to a document, an appeal on the question of the power to exempt the document from public disclosure lies to the County Governor of Finnmark.

Section 19 National parks on Finnmarkseiendommen's land

Land owned by Finnmarkseiendommen may be designated as national parks pursuant to the provisions of the Nature Conservation Act. When drafting rules of use, emphasis shall

be placed on the possibility of continuing traditional use. Finnmarkseiendommen and affected holders of rights of use may demand compensation for financial loss pursuant to the provisions of section 20b of the Nature Conservation Act.

Section 20 Relationship to future legislation

Finnmarkseiendommen has no protection against change, reduction or revocation of its legal position or rights by statute.

Chapter 3 Renewable resources on Finnmarkseiendommen's land

Section 21 Main principles for management

Finnmarkseiendommen shall manage the renewable resources on its land in compliance with the purpose of this Act and within the frameworks provided by the Wildlife Act, the Act relating to salmonids and fresh-water fish and other legislation. The diversity and productivity of nature shall be preserved.

The provisions of this chapter shall not apply in so far as otherwise established by special legal relations.

Section 22 Rights of the persons resident in municipalities

Pursuant to the provisions of this chapter and within the frameworks provided by other legislation, residents of a municipality in the county of Finnmark have on Finnmarkseiendommen's land in the municipality the right to:

- a) fish for freshwater fish with nets,
- b) fish for anadromous salmonids with fixed gear in the sea,
- c) gather eggs and down,
- d) fell deciduous trees for domestic fuel,
- e) cut peat for fuel and other domestic purposes and
- f) remove deciduous trees for use as fence posts and poles for hay-drying racks in the reindeer husbandry and agriculture industries.

Reindeer herders have the same right as the persons resident in the municipality for the period during which reindeer husbandry takes place there.

Section 23 Rights of persons resident in Finnmark

In compliance with the provisions of this chapter and within the framework provided by other legislation, persons residing in the county of Finnmark have on Finnmarkseiendommen's land the right to:

- a) hunt big game,
- b) hunt and trap small game,
- c) fish in watercourses with a rod and line,

- d) pick cloudberries and
- e) remove timber for home crafts.

Agricultural holdings shall have grazing rights for as large a herd as can be winter-fed on the holding.

Section 24 Special rights to local utilization

Individuals or groups of persons who are associated with a rural district and whose livelihood is wholly or partly associated with the utilization of renewable resources in the vicinity of the rural district may for up to ten years at a time be assigned special rights by the municipality to utilize renewable resources as mentioned in sections 22 and 23 in specified areas of the municipality. When establishing the area and the specific conditions, the use traditionally made of the area by people associated with the rural district shall be taken into consideration. The area shall preferably constitute a uninterrupted area in the vicinity of the rural district.

Finnmarkseiendommen may issue general rules concerning the procedures and assessment of matters pursuant to this section. Finnmarkseiendommen shall be the appeal body for decisions made by the municipality. The procedures followed by the municipalities and Finnmarkseiendommen are subject to the Public Administration Act.

This section does not apply to hunting of large and small game, fishing in watercourses with a rod and line and fishing with fixed gear in the sea for anadromous salmonids.

Section 25 Access for other persons

In compliance with the provisions of this chapter and within the frameworks provided by other legislation, all persons have the access to hunt and trap small game and to fish with a rod and line in watercourses on Finnmarkseiendommen's land and to pick cloudberries for their own domestic use.

Finnmarkseiendommen may grant other persons than those resident in the municipality or county further access to renewable resources as referred to in sections 22 and 23.

Section 26 Local management of hunting and fishing

For up to ten years at a time, Finnmarkseiendommen may grant special rights to administer hunting, trapping and fishing in specific areas of Finnmarkseiendommen's land to local organizations and associations whose purpose lies in the general promotion of hunting, trapping and fishing.

Section 27 Further conditions for utilization of renewable resources and restrictions on such utilization

Finnmarkseiendommen may issue further rules for utilization of renewable resources as mentioned in section 22 (a) to (f) and section 23 (a) to (e). Finnmarkseiendommen may stipulate that utilization is subject to issue of a permit. Conditions may be provided in the permits.

For hunting, trapping and fishing, permission is always required. Persons who are granted permission shall be issued cards or the like indicating that they have permission. With the consent of the Ministry, Finnmarkseiendommen may make exceptions to the provisions of this paragraph.

For permission to hunt, trap and fish, Finnmarkseiendommen may claim a fee. The fee for persons resident in Finnmark shall not exceed double the fee charged to the persons resident in a municipality. Fees may not be charged in connection with assignment of special rights pursuant to section 24.

Fishing for anadromous salmonids in the sea with fixed gear may only be carried out at places indicated by Finnmarkseiendommen.

For specified areas, Finnmarkseiendommen may lay down restrictions on access to exploitation of renewable resources as referred to in the first paragraph if due consideration for any such resource so indicates. Municipalities, authorities with responsibility for wildlife, fisheries, etc. and organizations for the affected users shall be consulted in advance.

In connection with restrictions on the exploitation of renewable resources as referred to in the first paragraph, due consideration shall be taken as regards the use of the resource by the various user groups.

Finnmarkseiendommen's decisions concerning restrictions as referred to in the fifth and sixth paragraphs may be appealed to the Ministry pursuant to the provisions of the Public Administration Act chapter VI. The decision of the Ministry may not be appealed.

Chapter 4 Tana and Neiden

Section 28 Fishing in the Tana and Neiden watercourses

In the Tana and Neiden watercourses, the local population holds special rights to fishing on the basis of statutes, immemorial usage and local customs.

The King may issue regulations prescribing further rules concerning administration and exercise of the fishing. Such regulations shall make provision for a local, rights-based administration of fishing resources consistent with agreements with Finland concerning fishing in the Tana and Neiden watercourses.

The preparation of regulations and negotiations with Finland concerning fishing in the Tana and Neiden watercourses shall be conducted in consultation with the Sami

Parliament, affected municipalities and holders of special rights to fishing in these watercourses.

Chapter 5 Survey and recognition of existing rights

I The Finnmark Commission

Section 29 The Finnmark Commission

A commission (the Finnmark Commission) shall be established, which, on the basis of current national law, shall investigate rights of use and ownership to the land to be taken over by Finnmarkseiendommen pursuant to section 49.

The King shall appoint the members of the Finnmark Commission. The Finnmark Commission shall consist of a chairman and four other members. The chairman shall fulfill the requirements of the Courts of Justice Act regarding Supreme Court judges. Two of the other members shall fulfill the requirements regarding district court judges. At least two members shall be resident in or otherwise have a strong affiliation to the county of Finnmark.

Section 30 Delimitation of fields of investigation, etc.

The Finnmark Commission shall establish the fields for investigation and decide the order of investigation. When so deciding, emphasis shall, inter alia, be placed on due regard for a natural and appropriate delimitation of the field as regards extent and legal and historical contexts and the need to clarify the legal relations.

The Finnmark Commission may restrict or extend a field after initiating the investigation if this is necessary for the creation of a natural and appropriate delimitation.

The Finnmark Commission may omit to investigate rights that are clearly inappropriate for investigation by the Commission. When so deciding, emphasis shall, inter alia, be placed on the nature of the right and the basis on which it is founded.

Section 31 Notification of potential right holders

Investigation in respect of a field shall be announced with a request to potential right holders to make themselves known. Such announcement shall be made in the Norwegian Gazette, in a newspaper that is generally read at the place concerned and locally in any other appropriate manner.

Reindeer husbandry organizations and other representatives for user interests in the field concerned as well as the Sami Parliament, Finnmark County Council, Finnmarkseiendommen and affected municipalities shall be notified separately.

Section 32 Responsibility for obtaining information concerning a matter

The Finnmark Commission is itself responsible for obtaining sufficient information concerning a matter. The Commission may in the manner it finds appropriate obtain statements, documents and other material and conduct surveys and investigations, etc. concerning actual and legal circumstances that may be significant for the Commission's conclusions.

The parties have the right to give an account of the actual circumstances and provide evidence significant for the Commission's conclusions. The parties may request the implementation of measures pursuant to the first paragraph. The Finnmark Commission may refuse such a request if it finds it to be unfounded or that it would involve excessive delays or costs to comply with it.

In order to safeguard the interests of the parties, the Finnmark Commission may appoint representatives from various interest groups to monitor the work of the Commission. The costs shall be covered by the state.

Section 33 The Finnmark Commission's report

After investigating a field, the Commission shall issue a report containing information concerning:

- a) who, in the view of the Commission, are owners of the land
- b) what rights of use exist in the Commission's view
- c) the circumstances on which the Commission bases its conclusions

The report shall state whether the conclusions are unanimous. If this is not the case, it shall be stated who disagrees and which points the disagreement concerns. Grounds shall be given for the conclusions of both the majority and the minority.

Following submission of the report, it shall be announced in the manner described in section 31. It is sufficient that an announcement pursuant to section 31, first paragraph contains a brief summary of the conclusions and information concerning where interested persons can obtain the report in its entirety. In such an announcement notification shall be given of the final date for bringing disputes before the Uncultivated Land Tribunal.

Section 34 Consideration by Finnmarkseiendommen

Finnmarkseiendommen shall without undue delay assess the Commission's conclusions. In the case of decisions to accept the conclusions of the Commission that other parties hold rights, section 10, sixth paragraph shall apply correspondingly.

To the extent that Finnmarkseiendommen agrees with the Commission that other parties hold rights, Finnmarkseiendommen is obliged to state this in writing, and without undue delay ensure that the right is officially registered or, if appropriate, bring the matter before the Land Consolidation Court pursuant to section 45.

Section 35 Negotiations

Parties that are not in agreement with the Commission's conclusions, or that need assistance in ensuring that the conclusions are laid down in a binding agreement may request the Finnmark Commission to mediate. The Commission's obligation to mediate ceases to apply when the time limit for bringing the dispute before the Uncultivated Land Tribunal has expired.

II The Uncultivated Land Tribunal for Finnmark

Section 36 The Uncultivated Land Tribunal for Finnmark

A special court (the Uncultivated Land Tribunal for Finnmark) shall be established, which shall consider disputes concerning rights that arise after the Finnmark Commission has investigated a field.

The members of the Uncultivated Land Tribunals shall be appointed by the King. The Uncultivated Land Tribunal shall consist of a chairman, a vice-chairman, three permanent members and two deputy members. The chairman, the vice-chairman and one of the other members shall fulfil the requirements of the Courts of Justice Act regarding Supreme Court judges. The same applies to one of the deputy members, who shall function as a deputy for these three members.

Matters pertaining to the jurisdiction of the Uncultivated Land Tribunal, may not be brought before the ordinary courts or the Land Consolidation Court unless the Uncultivated Land Tribunal has rejected a case pursuant to section 40 or the limit for instituting legal proceedings pursuant to section 38, first paragraph, has expired and the Uncultivated Land Tribunal shall not consider the case pursuant to section 38, second paragraph.

Section 37 Absence

If any of the permanent members is absent, one of the deputy members is summoned to serve instead of the permanent member who is absent. If the chairman is absent, the vice-chairman shall serve as chairman.

If any of the members of the Uncultivated Land Tribunal is absent after consideration of a case has commenced, proceedings may continue without summoning a deputy member provided that four members are present during the proceedings. In the event of a tied vote, the chairman shall have the casting vote.

Section 38 Summonses

Disputes may be brought before the Uncultivated Land Tribunal by means of written summonses at the latest one year and six months following submission of the report of the Finnmark Commission. The summons shall be signed and shall contain:

the full name and address of the party a) a list of the claims made by the party and the circumstances on which they are based, b) the claim for judgment submitted by the party, and c) the opposite party against whom the claim is made.

Even if the time limit pursuant to the first paragraph has expired, the Uncultivated Land Tribunal shall nevertheless deal with cases brought before it before all cases from the same field have been brought to conclusion if it finds such cases appropriate for such consideration and that they can be considered without considerable delay to the court's proceedings. Decisions made pursuant to this paragraph may not be challenged by way of an interlocutory appeal or an appeal proper.

Section 39 Dismissal of cases

Cases found inappropriate for consideration by the Uncultivated Land Tribunal may be wholly or partly dismissed by the court. When so deciding, consideration shall be paid, inter alia, to the nature of the claim and to the basis on which it is made.

Before dismissing a case, the plaintiff shall be given the opportunity to make a statement. The case may be dismissed without summoning the parties to a sitting of the Tribunal. Dismissal pursuant to this section may not be challenged by way of an interlocutory appeal or an appeal proper.

Section 40 Consolidation of cases, separation, etc.

The Uncultivated Land Tribunal may:

- a) consolidate two or more cases for joint consideration and, in such case, joint decision
- b) separate the proceedings and judgment of one or more claims that are consolidated in a single case or individual issues in dispute concerning the same claim
- c) decide the order in which cases brought will be heard.

When making decisions pursuant to the first paragraph, emphasis shall be placed, inter alia, on paying due consideration to a natural and appropriate delimitation of the areas of dispute as regards extent, legal and historical context and the need to clarify the legal relations.

Before making decisions pursuant to the first paragraph, the parties shall be given the opportunity to express their views unless this is found to be unnecessary or would result in disproportionate delay or expense.

Decisions pursuant to this section may not be challenged by way of an interlocutory appeal or an appeal proper.

Section 41 Responsibility for obtaining information concerning a case, etc.

The parties are responsible for giving an account of the actual circumstances and evidence significant for deciding the case. The Uncultivated Land Tribunal shall of its own motion obtain the report of the Finnmark Commission and use this as a basis for its

consideration of the case. The parties may in addition produce as evidence documents received by, submitted to or issued by the Finnmark Commission.

The Uncultivated Land Tribunal may not receive testimony from the members of the Finnmark Commission or from persons who have carried out work for the Commission in connection with the case.

Court sittings for examination of parties and witnesses outside the main hearing may be held by two members of the Uncultivated Land Tribunal, of which at least one must hold the qualifications required of Supreme Court judges. The Uncultivated Land Tribunal may request that the examination be made by the appropriate district court.

Section 42 Appeals and interlocutory appeals

Decisions of the Uncultivated Land Tribunal may be appealed to the Supreme Court. Section 357 of the Civil Procedure Act shall not apply.

Decisions that, pursuant to the provisions of the Civil Procedure Act, are subject to interlocutory appeal may in a corresponding manner be lodged with the Appeals Committee of the Supreme Court except in cases where an appeal is excluded pursuant to the present Act.

Section 43 Costs of the case

The state shall cover the costs of the Uncultivated Land Tribunal's own activities. The state shall also cover the necessary costs of the parties in cases concerning claims for rights opposed by Finnmarkseiendommen.

When deciding the question of whether the costs were necessary, the Uncultivated Land Tribunal shall, inter alia, bear in mind that parties with similar interests that are not in conflict with each other should use the same legal and technical assistance. The court shall as early as possible, of its own motion, raise the question where appropriate.

When special grounds so indicate, the Uncultivated Land Tribunal may order a party wholly or partly to carry his costs in conjunction with the case himself. Section 177 of the Civil Procedure Act shall otherwise apply correspondingly.

No fee shall be paid for consideration of cases by the Uncultivated Land Tribunal. Section 8 of Act of 17 December 1982 No. 86 concerning court fees shall apply to appeals and interlocutory appeals against decisions of the Uncultivated Land Tribunal.

III Joint provisions

Section 44 Sami language

Chapter 3 of the Sami Act shall apply to use of the Sami language. Section 3-4, first paragraph, of the Sami Act shall also apply to the Finnmark Commission.

Section 45 Delineation of boundaries and official registration

Legally enforceable judgments by the Uncultivated Land Tribunal and declarations and agreements issued or entered into in accordance with the conclusions of the Finnmark Commission may be brought before the Land Consolidation Court pursuant to section 88 of the Land Consolidation Act. The Land Consolidation Court carries out boundary marking on the ground, fixing of coordinates and survey of the boundaries in accordance with the judgment, declaration or agreement. The provisions concerning land consolidation shall apply correspondingly in so far as they are applicable. The Land Consolidation Court shall sit without lay land consolidation judges. Section 88, fifth paragraph, and section 89, second paragraph, of the Land Consolidation Act shall not apply. In the event of appeal, section 72 shall apply. The court fee pursuant to section 74, first paragraph, shall not be paid. Nor shall the parties pay for the costs of boundary marking, fixing of coordinates and survey of the boundaries. Section 24 of the Land Consolidation Act shall apply to official registration as far as it is applicable. In respect of rights established by a legally enforceable judgment of the Uncultivated Land Tribunal or by a declaration or agreement in accordance with the conclusions of the Finnmark Commission, the limitations of public law as regards the right to establish or transfer such rights shall not preclude their being officially registered. No fee or document duty shall be paid in connection with the official registration.

Section 46 Relation to other legislation

Chapter 6 of the Courts of Justice Act concerning disqualification and the Freedom of Information Act shall apply to the activities of the Finnmark Commission in so far as they are applicable. In the event of a rejection of a request for access to a document, an appeal on the question of the power to exempt the document from public disclosure lies to the County Governor of Finnmark. The Public Administration Act does not apply to the activities of the Finnmark Commission.

Unless otherwise provided by the present Act, the Courts of Justice Act and the Civil Procedure Act shall apply in so far as they are applicable to the activities of the Uncultivated Land Tribunals.

Section 47 Authority to issue further provisions

The King may issue further provisions concerning the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark, including provisions concerning organization and financial matters, etc.

Chapter 6 Final provisions

Section 48 Entry into force

The Act shall enter into force on the date decided by the King. The King may bring into force the various provisions on different dates.

Section 49 Transitional provisions

The real property in the county of Finnmark to which Statskog SF holds the registered title or which it owns without holding the registered title shall be transferred to Finnmarkseiendommen as soon as chapter 2 of the Act comes into force. This applies correspondingly to restricted rights to real property. Re-registration in the real property register shall be effectuated by means of a change of name. Fiscal continuity shall be maintained in connection with the transfer and the transfer shall entail no tax liability for Statskog SF pursuant to section 5-2 of the Taxation Act.

Finnmarkseiendommen shall take over the personal responsibility from Statskog SF for mortgages and other encumbrances for monetary claims on the properties or rights taken over by Finnmarkseiendommen. Finnmarkseiendommen shall also take over the responsibility for agreements concerning rights of use, leases and the like in respect of the transferred properties and rights. Finnmarkseiendommen will take over concessions and licenses etc. held by Statskog SF in connection with the properties and rights taken over.

By agreement with Statskog SF, Finnmarkseiendommen has the right to take over agreements entered into by Statskog SF concerning activities in Finnmark.

Persons who, on the entry into force of chapter 2, are employees of Statskog SF with their place of work in the county of Finnmark, with the exception of employees attached to Statskog SF's Mountain Service, will be regarded as employees of Finnmarkseiendommen from the date of entry into force with the same pay and working conditions as they had in Statskog SF unless the employee concerned has notified that he or she does not so wish. From the date of entry into force, employees of Statskog SF with their place of work in Finnmark are no longer employees of Statskog SF unless by special agreement.

The Ministry shall convene the first board meeting of Finnmarkseiendommen. The board shall ensure that Finnmarkseiendommen is registered in the Register of Business Enterprises not later than six months after the entry into force.

Persons who, on the entry into force of chapter 2, are employees of Statskog SF with their place of work in the county of Finnmark and are attached to Statskog SF's Mountain Service will be regarded as employees of the Norwegian Nature Inspectorate from the date of entry into force. The fourth paragraph shall otherwise apply correspondingly.

The King may provide that property other than real property associated with activities in Finnmark shall be transferred from Statskog SF to Finnmarkseiendommen and the Norwegian Nature Inspectorate. The King may also provide that agreements as referred to in the third paragraph may be taken over by the Norwegian Nature Inspectorate.

The King may issue further transitional provisions.

Section 50 Amendments to other legislation

From the date decided by the King, the following amendments shall be made to other legislation:

1. The Act of 12 March 1965 relating to the state's unregistered land in the county of Finnmark is repealed.
2. In the Act of 30 June 1972 No. 70 relating to mining, the following amendments shall be made: In chapter 2, a new section 7a shall read as follows:

Special provisions concerning preliminary examination of minerals in Finnmark

In connection with preliminary examination of minerals in the county of Finnmark, a person wishing to conduct such preliminary examination of minerals shall not later than one week prior to the commencement of such preliminary examination provide written notification to the Sami Parliament, the landowner and the appropriate area and district boards for reindeer husbandry. If the person wishing to conduct such preliminary examination intends to make an impact on the land, the location of such impact shall be indicated.

In chapter 3, a new section 22a shall read as follows:

Special provisions concerning licensed prospecting in Finnmark

Applications for licensed prospecting in the county of Finnmark may be rejected if general considerations contraindicate granting of the application. When considering such applications, significant emphasis shall be placed on due consideration of Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. If the application is granted, conditions may be stipulated in order to safeguard such considerations.

When considering the application the Commissioner of Mines shall give the landowner, the Sami Parliament, the County Governor, the county authority, the municipality and the appropriate area and district boards for reindeer husbandry an opportunity to comment.

If the Sami Parliament or Finnmarkseiendommen as landowner oppose granting of the application, the application shall be decided by the Ministry.

If the Ministry grants the application in cases mentioned in the third paragraph, an appeal to the King from the Sami Parliament or from Finnmarkseiendommen as landowner will have suspensive effect.

In chapter 4, a new section 39b shall read as follows:

Special provisions concerning patenting of claims in Finnmark

In connection with applications for patenting of claims in the county of Finnmark, the provisions of section 22a shall apply correspondingly. In cases mentioned in section 22a, third paragraph, the Ministry shall decide whether patenting of claim proceedings shall be held before or after the Ministry considers the application.

Section 42, first paragraph, new second sentence shall read as follows:

In the case of mines on Finnmarkseiendommen's land, the King may by regulations stipulate a larger fee.

3. In the Act of 9 June 1978 No. 49 relating to reindeer husbandry, the following amendments shall be made:

Section 13, third paragraph, new fourth sentence shall read as follows:

Finnmarkseiendommen may not claim payment pursuant to the provisions of this paragraph.

Section 14, first paragraph, first sentence shall read as follows:

In connection with the lawful practice of reindeer husbandry in reindeer herding areas, the right to hunt, trap and fish covers hunting, trapping and fishing on state-owned common land, on state-owned land that is not specifically registered *and on Finnmarkseiendommen's land* in the reindeer herding district where reindeer husbandry is practised on the same conditions as apply for persons who are permanent residents of the municipality, rural district or neighbourhood where the common land, state-owned land or *relevant part of Finnmarkseiendommen's land* is situated.

4. In the Act of 29 May 1981 No. 38 relating to wildlife and wildlife habitats, section 44, second paragraph, is repealed.

5. In the Act of 15 May 1992 No. 47 relating to salmonids and freshwater fish, etc. the following amendments shall be made:

Section 19, third paragraph, shall read as follows:

When *real property in the county of Finnmark* is sold by the state or by *Finnmarkseiendommen*, the fishing rights may be withheld for the benefit of the general public.

Section 22, fourth and fifth paragraph, are repealed.

6. In the Act of 21 June 1996 No. 38 relating to a government nature inspectorate, section 2, new fourth paragraph, shall read as follows:

On Finnmarkseiendommen's land, the Inspectorate shall conduct further control as agreed between the Ministry and Finnmarkseiendommen.

Annex 2: Draft Finnmark Act, as proposed by the Government in 2003

Act relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act)

Chapter 1 General provisions

Section 1 The purpose of the Act

The purpose of the Act is to facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner for the benefit of Sami culture, reindeer husbandry, commercial activity and social life, the inhabitants of the county and the public at large.

Section 2 Scope

The Act shall apply to real property and watercourses with natural resources in the county of Finnmark. On the shoreline, the Act shall apply as far out to sea as private right of ownership extends.

Section 3 Relationship to international law

The Act shall be applied in compliance with the provisions of international law concerning indigenous peoples and minorities and with the provisions of agreements with foreign states concerning fishing in border zones.

Section 4 Guidelines for management of uncultivated land

The Sami Parliament may issue guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, commercial activity and social life. The guidelines and amendments to the guidelines shall be approved by the Ministry.

In matters concerning changes in the use of uncultivated land, state, county and municipal authorities shall on the basis of the guidelines issued by the Sami Parliament assess the significance such changes will have for Sami culture, reindeer husbandry, commercial activity and social life.

Section 5 Relationship to established rights

This Act does not interfere with private or collective rights based on prescription or immemorial usage.

The rights held by Sami reindeer herders on the basis mentioned in the first paragraph or pursuant to the Reindeer Herding Act are not reduced by this Act.

Chapter 2 Finnmarkseiendommen (“the Finnmark Estate”)

Section 6 The legal position of Finnmarkseiendommen

Finnmarkseiendommen (Finnmárkkkuopmodat) (“the Finnmark Estate”) is an independent legal entity with its seat in Finnmark which shall administer the land and natural resources, etc. that it owns in compliance with the purpose and other provisions of this Act.

Section 7 *The board of Finnmarkseiendommen*

Finnmarkseiendommen shall be governed by a board consisting of seven persons.

Finnmark County Council and the Sami Parliament shall each elect three members, each with a personal deputy. The members and deputies shall be resident in Finnmark. Among the members elected by the Sami Parliament at least one board member and that person's deputy shall be representatives for reindeer husbandry. Both as members and as deputies, both bodies shall elect both women and men. The body shall elect members and deputies collectively. Employees of *Finnmarkseiendommen*, *Finnmarkseiendommen's* auditor and members and deputies of the Control Committee may not be elected as board members or deputies.

The King shall appoint one board member with a personal deputy. The board member concerned shall not be entitled to vote at board meetings.

The board members and deputies are elected for a term of up to four years at a time. No-one may be a board member for longer than ten years consecutively.

Board members and deputies may be removed by the body that elected them. The body shall in such a case elect new members and deputies collectively.

Board members and deputies have a right to withdraw before their period of service expires if there are special reasons for so doing. The board and the body that has elected the member concerned shall be given reasonable notice. The fifth paragraph, second sentence, shall apply accordingly.

The board shall itself elect a chairman and vice-chairman from among its members. If no-one achieves a majority, the board member appointed by the state shall be the chairman.

Section 8 *Proportionally representative elections*

Elections of board members and deputies shall be held as proportionally representative elections as mentioned in section 37 of the Local Government Act if so required by at least one member of the body.

If in connection with proportionally representative elections it is necessary in order to fulfil the requirement that among the members and deputies there shall be both women and men, candidates of the under-represented sex shall move up on the list with fewest votes of the lists that shall be represented. In the event of tied votes, the list on which candidates of the under-represented sex are to move up shall be decided by drawing lots.

If in connection with proportionally representative elections in the Sami Parliament it is necessary in order to fulfil the requirement that one of the board members and that member's deputy shall be representatives for reindeer husbandry, representatives for reindeer husbandry shall move up on the list that has received fewest votes of the lists that shall be represented and that have such candidates. If there is no such list, the last place on the board shall be given to the representatives for reindeer husbandry on the list that has received most votes of the lists that have such candidates. In the event of

tied votes, the list that shall be regarded as having received most or fewest votes shall be decided by drawing lots.

Section 9 *The duties and procedures of the board*

The board is responsible for management of *Finnmarkseiendommen*. The board shall ensure that the body is satisfactorily organized. The board shall to the extent necessary provide plans, budget, guidelines and instructions for the body. The board shall implement the investigations it finds necessary for performance of its duties. The board shall implement such investigations if so required by a board member.

The chairman of the board shall ensure that appropriate matters are dealt with by the board and that board meetings are convened in an appropriate manner and with reasonable notice. A board member may require that specific matters be dealt with by the board.

The board shall deal with matters in meetings unless the chairman finds that a matter may be submitted in writing or be dealt with in another satisfactory manner. A board member may require that a matter be dealt with at a meeting of the board.

The board may make decisions when at least five voting members are present. Such decisions are made by simple majority unless otherwise provided by section 10.

In the event of tied votes, a decision is deemed not to have been made. If the board member appointed by the state regards it as necessary for the operation of *Finnmarkseiendommen* that a decision be made, that member may request that the matter be decided by the Ministry. A decision by the Ministry has the same effect as such a decision by the board. It may not be appealed to the King.

The board shall submit an annual report to the Control Committee concerning *Finnmarkseiendommen's* activities. This annual report shall include a particular account of changes in the use of uncultivated land and an assessment of the significance of these changes for the natural resource base for Sami culture, reindeer husbandry, commercial activity and social life.

The board shall fix its own fees. Such fees are to be covered by *Finnmarkseiendommen*.

Section 10 *Matters concerning changes in the use of uncultivated land, etc.*

In matters concerning changes in the use of uncultivated land, *Finnmarkseiendommen* shall assess the significance a change will have for Sami culture, reindeer husbandry, commercial activity and social life. In making this assessment, the guidelines of the Sami Parliament pursuant to section 4 shall be followed.

Decisions concerning changes in the use of uncultivated land always require the support of at least four board members who are entitled to vote if the whole minority bases its opinion on due consideration for Sami culture, reindeer husbandry, commercial activity and social life assessed on the basis of the guidelines of the Sami Parliament. If the majority consists of four or less, a collective minority may during the board meeting demand that the matter be placed before the Sami Parliament. If the

Sami Parliament does not ratify the decision of the majority or does not consider the matter within a reasonable time, a collective majority of the board may demand that *Finnmarkseiendommen* place the matter before the King, who shall then decide whether the decision shall be approved. Such approval of the decision has the same effect as such a decision by the board.

The board may only authorize employees and other persons to make decisions concerning changes in the use of uncultivated land when at least four board members vote in favour of so doing. The second paragraph, second to fourth sentence, applies correspondingly.

The provisions of this section apply correspondingly in respect of matters concerning sale and leasing of uncultivated land or rights to uncultivated land, concerning assignment of special rights for local utilization of renewable resources and concerning local management of hunting and fishing. The provisions of this section shall not apply to other matters pursuant to chapter 3.

Section 11 *Representation*

The board represents *Finnmarkseiendommen* externally and signs on its behalf.

The board may assign to one or more board members or other named persons the right to sign on behalf of *Finnmarkseiendommen*. The right to sign on behalf of *Finnmarkseiendommen* may be withdrawn at any time.

If any person who represents *Finnmarkseiendommen* externally pursuant to this provision has exceeded his or her authority, the transaction shall not be binding for *Finnmarkseiendommen* when *Finnmarkseiendommen* establishes that the contracting party understood or should have understood that the authority was exceeded and that it would be contrary to fair practice to uphold the transaction.

Section 12 *Accounts, audit and registration*

Finnmarkseiendommen shall keep accounts in compliance with the provisions of the Accounting Act.

The accounts shall be audited by a state authorized public accountant. The auditor shall for each accounting year submit an auditor's report to the board of *Finnmarkseiendommen*.

Finnmarkseiendommen shall be registered in the Register of Business Enterprises.

Section 13 *Mortgage and debt proceedings*

Real property owned by *Finnmarkseiendommen* and limited rights held by *Finnmarkseiendommen* in real property owned by others may not be offered as security for debt or other commitments and may not be subject to attachment by creditors. This shall not however apply to properties and limited rights to properties that have been partitioned by public division proceedings and that have been designated for development in plans pursuant to the Planning and Building Act or sites that have been parcelled out and developed.

Bankruptcy or debt settlement proceedings may not be instituted regarding *Finnmarkseiendommen*.

Section 14 *Distribution of surplus assets*

If *Finnmarkseiendommen* in bank deposits, cash and the like holds assets which, less any liabilities, exceed reserves necessary for ensuring continued operations, the board may decide that such a surplus shall wholly or partly be paid to the county of Finnmark or the Sami Parliament or used for non-profit purposes of benefit to the inhabitants of the county. Such a surplus may nevertheless only be paid out to the extent that the sum of bank deposits, cash and the like exceeds *Finnmarkseiendommen's* total proceeds from the sale of real property during the period since its establishment less investments in real property.

Section 15 *The Control Committee*

Supervision of the board's activities is conducted by a Control Committee consisting of three members. Finnmark County Council, the Sami Parliament and the King shall each appoint a member and a personal deputy. As member and deputy, each body shall appoint a man and a woman. The member and deputy appointed by the state shall fulfil the requirements of the Courts of Justice Act regarding Supreme Court judges. The members and deputies shall be appointed for a period of four years at a time. No-one may be a member for longer than ten years consecutively. The member appointed by the state shall chair the Committee.

The Control Committee shall:

- a) control that the activities of *Finnmarkseiendommen* are carried out in compliance with the Finnmark Act and other legislation,
- b) select one or more state authorized public accountants to audit *Finnmarkseiendommen's* accounts,
- c) approve *Finnmarkseiendommen's* annual accounts, annual report and auditor's report,
- d) approve the fees payable to the board,
- e) approve loans and guarantees and
- f) approve distribution of surplus assets.

In the event of disagreement, decisions shall be made by the majority. Decisions concerning (e) and (f) in the second paragraph require unanimity.

The Control Committee shall have access to all available information held by *Finnmarkseiendommen* that it needs in order to perform its duties pursuant to this section.

The Control Committee shall submit an annual report to Finnmark County Council, the Sami Parliament and the Ministry. In the report, the Control Committee shall provide an account of its control activities, an assessment of the board's annual report and the matters dealt with there and an assessment of how the present Act functions and whether any amendments to the Act are desired.

The expenses of the Control Committee are to be covered by *Finnmarkseiendommen*. The fees of members and deputies are to be covered by the body that appointed them.

Section 16 *Criminal liability and liability for compensation of board members and others*

Members of the board, persons authorized to sign on behalf of *Finnmarkseiendommen*, auditors, senior employees authorized to make decisions on behalf of *Finnmarkseiendommen* within restricted areas of responsibility or members of the Control Committee who show gross lack of judgment in the execution of their responsibilities in respect of *Finnmarkseiendommen* shall be liable to fines or under aggravating circumstances to imprisonment for a term not exceeding one year.

Members of the board who wilfully or negligently have inflicted a loss on *Finnmarkseiendommen* during the performance of their duties are obliged to compensate the loss. The Control Committee shall decide whether a claim for compensation shall be made.

Section 17 *Relationship to the Freedom of Information Act and the Public Administration Act*

Finnmarkseiendommen's case documents are public pursuant to the provisions of the Freedom of Information Act. In the event of rejection of requests to examine documents, an appeal on the question of the power to exempt the document from public disclosure lies to the County Governor of Finnmark.

Chapters II and III of the Public Administration Act shall apply to *Finnmarkseiendommen*.

Section 18 *National parks, expropriation*

Land owned by *Finnmarkseiendommen* may be designated as national parks pursuant to the provisions of the Nature Conservation Act without *Finnmarkseiendommen* being entitled to compensation. When drafting rules of use, emphasis shall be placed on the possibility of continuing traditional use.

Finnmarkseiendommen may not claim compensation in connection with expropriation for public purposes for the benefit of the county of Finnmark or municipalities in Finnmark. Nor may *Finnmarkseiendommen* claim compensation in connection with expropriation for the benefit of the state or wholly owned state enterprises, for hospitals or other medical or psychiatric institutions or the like, churches, graveyards, educational purposes, museums or cultural heritage projects.

Section 19 *Relationship to future legislation*

Finnmarkseiendommen has no protection against change, reduction or revocation of its legal position or rights by statute.

Chapter 3 Renewable resources on *Finnmarkseiendommen's* land

Section 20 *Main principles for management*

Finnmarkseiendommen shall manage the renewable resources on its land in compliance with the purpose of this Act and within the frameworks provided by the Wildlife Act, the Act relating to salmonids and fresh-water fish and other legislation. The diversity and productivity of nature shall be preserved.

Section 21 *The rights of the general public*

In compliance with the provisions of this chapter and within the frameworks provided by other legislation, all persons who throughout the previous year have resided in Norway and who still reside in Norway have the right to hunt and trap small game and to fish with a rod and line in watercourses on *Finnmarkseiendommen's* land. *Finnmarkseiendommen* may allow other people to utilize renewable resources as referred to in the first sentence.

To persons who throughout the previous year have resided in Norway and who still reside in Norway and others, *Finnmarkseiendommen* may grant the right to utilize renewable resources as mentioned in sections 22 and 23 to the extent allowed by such resources. Persons referred to in the first sentence shall on application normally be given permission to pick cloudberries for their own domestic use.

Section 22 *Rights of the inhabitants of Finnmark*

In compliance with the provisions of this chapter and within the framework provided by other legislation, persons residing in the county of Finnmark have on *Finnmarkseiendommen's* land the right to hunt big game, pick cloudberries and remove timber for home crafts.

Agricultural holdings shall have grazing rights for as large a herd as can be winter-fed on the holding.

Finnmarkseiendommen may permit the inhabitants of Finnmark to utilize renewable resources as mentioned in section 23 to the extent the resources permit.

Section 23 *Rights of the inhabitants of municipalities*

In compliance with the provisions of this chapter and within the frameworks provided by other legislation, residents of a municipality in the county of Finnmark have the right on *Finnmarkseiendommen's* land in the municipality to:

- g) fish for freshwater fish with nets,
- h) fish for anadromous salmonids with fixed gear in the sea,
- i) gather eggs and down,
- j) fell deciduous trees for domestic fuel,
- k) cut peat for fuel and other domestic purposes and
- l) remove deciduous trees for use as fence posts and poles for hay-drying racks in the reindeer husbandry and agriculture industries.

Reindeer herders have the same right as the inhabitants in the municipality for the period during which reindeer husbandry takes place there.

Section 24 *Special rights to local utilization*

Individuals or groups of persons a considerable part of whose livelihood is associated with the utilization of renewable resources may for up to ten years at a time be assigned special rights by the municipality to utilize renewable resources as mentioned in sections 21 to 23 in specified areas of the municipality. The first sentence does not apply to hunting of large and small game, fishing in watercourses with a rod and line and fishing with fixed gear in the sea for anadromous salmonids.

Finnmarkseiendommen may issue general rules concerning the procedures and assessment of matters pursuant to this section. *Finnmarkseiendommen* shall be the appeal body for decisions made by the municipality. The procedures followed by the municipalities and *Finnmarkseiendommen* are subject to the Public Administration Act.

Section 25 *Further conditions for utilization of renewable resources*

Finnmarkseiendommen may issue further rules for utilization of renewable resources as mentioned in sections 21 to 23. *Finnmarkseiendommen* may stipulate that utilization is subject to issue of a permit. Conditions may be provided in the permits.

For hunting, trapping and fishing, permission is always required. Persons who are granted permission shall be issued cards or the like indicating that they have permission. With the consent of the Ministry, *Finnmarkseiendommen* may make exceptions to the provisions of this paragraph.

For permission to hunt, trap and fish, *Finnmarkseiendommen* may claim a fee. The fee for inhabitants of Finnmark shall not exceed double the fee charged to the inhabitants of a municipality. Fees may not be charged in connection with assignment of special rights pursuant to section 24.

Fishing for anadromous salmonids in the sea with fixed gear may only be carried out at places indicated by *Finnmarkseiendommen*.

Section 26 *Local management of hunting and fishing*

For up to ten years at a time, *Finnmarkseiendommen* may grant special rights to administer hunting, trapping and fishing in specific areas of *Finnmarkseiendommen's* land to local organizations whose purpose lies in the general promotion of hunting, trapping and fishing.

Section 27 *Restrictions on utilization*

For specific areas, *Finnmarkseiendommen* may restrict access to utilization of renewable resources as mentioned in sections 21 to 23 if due consideration for any such resource so indicates. Municipalities, authorities with responsibility for wildlife, fisheries, etc. and organizations for the affected users shall be consulted in advance.

Restrictions on the right to hunting of big game, hunting and trapping of small game and fishing in watercourses with a rod and line shall be distributed proportionally between users mentioned in sections 21 to 24.

Section 28 *Fishing in the Alta, Tana and Neiden watercourses*

The special situation as regards rights and the special regulation of fishing in the Alta, Tana and Neiden watercourses is not affected by the provisions laid down in this chapter.

Chapter 4 Final provisions

Section 29 Entry into force

The Act shall enter into force on the date decided by the King. The King may bring into force the various provisions on different dates.

Section 30 Transitional provisions

The real property in the county of Finnmark currently owned by Statskog SF is transferred to *Finnmarkseiendommen* as soon as chapter 2 of the Act comes into force. This applies correspondingly to restricted rights to real property. Re-registration in the real property register shall be effectuated by means of a change of name. Fiscal continuity shall be maintained in connection with the transfer and the transfer shall entail no tax liability for Statskog SF pursuant to section 5-2 of the Taxation Act.

Finnmarkseiendommen shall take over the personal responsibility from Statskog SF for mortgages and other encumbrances for monetary claims on the properties or rights taken over by *Finnmarkseiendommen*. *Finnmarkseiendommen* shall also take over the responsibility for agreements concerning rights of use, leases and the like in respect of the transferred properties and rights. *Finnmarkseiendommen* will take over concessions and licences etc. held by Statskog SF in connection with the properties and rights taken over.

By agreement with Statskog SF, *Finnmarkseiendommen* has the right to take over agreements entered into by Statskog SF concerning activities in Finnmark.

Persons who, on the entry into force of chapter 2, are employees of Statskog SF with their place of work in the county of Finnmark will be regarded as employees of *Finnmarkseiendommen* from the date of entry into force with the same pay and working conditions as they had in Statskog SF unless the employee concerned has notified that he or she does not so wish. From the date of entry into force, employees of Statskog SF with their place of work in Finnmark are no longer employees of Statskog SF unless by special agreement.

The board member appointed by the state shall convene the first board meeting of *Finnmarkseiendommen*. The board shall ensure that *Finnmarkseiendommen* is registered in the Register of Business Enterprises not later than six months after the entry into force.

The King may issue further transitional provisions.

Section 31 Amendments to other legislation

From the date decided by the King, the following amendments shall be made to other legislation:

1. The Act of 12 March 1965 relating to the state's unregistered land in the county of Finnmark is repealed.

2. In the Act of 30 June 1972 No. 70 relating to mining, the following amendments shall be made:

In chapter 2, a new section 7a shall read as follows:

Special provisions concerning preliminary examination of minerals in Finnmark

In connection with preliminary examination of minerals in the county of Finnmark, a person wishing to conduct such preliminary examination of minerals shall not later than one week prior to the commencement of such preliminary examination provide written notification to the Sami Parliament, the landowner and the appropriate area and district boards for reindeer husbandry. If the person wishing to conduct such preliminary examination intends to make an impact on the land, the location of such impact shall be indicated.

In chapter 3, a new section 22a shall read as follows:

Special provisions concerning licensed prospecting in Finnmark

Applications for licensed prospecting in the county of Finnmark may be rejected if general considerations contraindicate granting of the application. When considering such applications, significant emphasis shall be placed on due consideration of Sami culture, reindeer husbandry, commercial activity and social life. If the application is granted, conditions may be stipulated in order to safeguard such considerations.

When considering the application the Commissioner of Mines shall give the landowner, the Sami Parliament, the County Governor, the county authority, the municipality and the appropriate area and district boards for reindeer husbandry an opportunity to comment.

If the Sami Parliament or *Finnmarkseiendommen* as landowner oppose granting of the application, the application shall be decided by the Ministry.

If the Ministry grants the application in cases mentioned in the third paragraph, an appeal to the King from the Sami Parliament or from *Finnmarkseiendommen* as landowner will have suspensive effect.

In chapter 4, a new section 39b shall read as follows:

Special provisions concerning patenting of claims in Finnmark

In connection with applications for patenting of claims in the county of Finnmark, the provisions of section 22a shall apply correspondingly. In cases mentioned in section 22a, third paragraph, the Ministry shall decide whether patenting of claim proceedings shall be held before or after the Ministry considers the application.

Section 42, first paragraph, new second sentence shall read as follows:

In the case of mines on *Finnmarkseiendommen's* land, the King may by regulations stipulate a larger fee.

3. In the Act of 9 June 1978 No. 49 relating to reindeer husbandry, the following amendments shall be made:

Section 13, third paragraph, new fourth sentence shall read as follows:

Finnmarkseiendommen may not claim payment pursuant to the provisions of this paragraph.

Section 14, first paragraph, first sentence shall read as follows:

In connection with the lawful practice of reindeer husbandry in reindeer herding areas, the right to hunt, trap and fish covers hunting, trapping and fishing on state-owned common land, on state-owned land that is not specifically registered *and on Finnmarkseiendommen's land* in the reindeer herding district where reindeer husbandry is practised on the same conditions as apply for persons who are permanent residents of the municipality, rural district or neighbourhood where the common land, state-owned land or *relevant part of Finnmarkseiendommen's land* is situated.

4. In the Act of 29 May 1981 No. 38 relating to wildlife and wildlife habitats, section 44, second paragraph, is repealed.

5. In the Act of 15 May 1992 No. 47 relating to salmonids and freshwater fish, etc. the following amendments shall be made:

Section 19, third paragraph, shall read as follows:

When *real property in the county of Finnmark* is sold by the state or by *Finnmarkseiendommen*, the fishing rights may be withheld for the benefit of the general public.

Section 22, fourth and fifth paragraph, are repealed.

6. In the Act of 21 June 1996 No. 38 relating to a government nature inspectorate, section 2, new fourth paragraph, shall read as follows:

On *Finnmarkseiendommen's land*, the Inspectorate shall conduct further control as agreed between the Ministry and *Finnmarkseiendommen*.

PROSEDYRER FOR KONSULTASJONER MELLOM STATLIGE MYNDIGHETER OG SAMETINGET

Som urfolk har samene rett til å bli konsultert i saker som kan få direkte betydning for dem. For å sikre at arbeidet med saker som kan påvirke samene direkte gjennomføres på en tilfredsstillende måte, er regjeringen og Sametinget enige om å legge vedlagte retningsgivende prosedyrer til grunn ved konsultasjoner mellom statlige myndigheter og Sametinget.

Oslo, 11. mai 2005

**Erna Solberg
kommunal- og regionalminister**

**Sven-Roald Nystø
sametingspresident**

1. Formål

Formålet med prosedyrene er å:

- bidra til en praktisk gjennomføring av statens

PROCEDURES FOR CONSULTATIONS BETWEEN STATE AUTHORITIES AND THE SAMI PARLIAMENT [Norway]

As an indigenous people, the Sami have the right to be consulted in matters that may affect them directly. In order to ensure that work on matters that may directly affect the Sami is carried out in a satisfactory manner, the Government and the Sami Parliament agree that consultations between State authorities and the Sami Parliament shall be conducted in accordance to the annexed procedural guidelines.

Oslo, 11 May 2005

**Erna Solberg
Minister of Local Government
and Regional Development**

**Sven-Roald Nystø
President of the Sami Parliament**

1. The Objective

The objective of the procedures for consultations is to:

- contribute to the implementation in practise of

folkerettslige forpliktelse til å konsultere med urfolk.

- søke å oppnå enighet mellom statlige myndigheter og Sametinget når det overveies å innføre lover eller tiltak som kan påvirke samiske interesser direkte.
- legge til rette for utviklingen av et partnerskapsperspektiv mellom statlige myndigheter og Sametinget som virker til styrking av samisk kultur og samfunn.
- utvikle felles forståelse for situasjonen og utviklingsbehovet i samiske samfunn.

2. Virkeområde

- Konsultasjonsprosedyrene gjelder for regjeringen, departementer, direktorater og andre underliggende virksomheter.
- Konsultasjonsprosedyrene gjelder i saker som vil kunne påvirke samiske interesser direkte. Det saklige virkeområdet for konsultasjoner vil kunne omfatte ulike sakstyper, slik som lover, forskrifter, enkeltvedtak, retningslinjer, tiltak og beslutninger (f.eks. i stortingsmeldinger).
- Konsultasjonsplikten kan omfatte alle ideelle og materielle former for samisk kultur. Aktuelle sakstemaer kan f.eks. være musikk, teater, litteratur, kunst, media, språk, religion, kulturarv, immaterielle rettigheter og tradisjonell kunnskap, stedsnavn, helse- og sosial, barnehager, utdanning, forskning, eiendoms- og bruksrettigheter, arealinngrep- og arealdisponeringssaker, næringsutvikling, reindrift, fiske, landbruk, mineralvirksomhet, vindkraft, vannkraft, bærekraftig utvikling, kulturminnevern, biomangfold og naturvern.

the State's obligations to consult indigenous peoples under international law.

- seek to achieve agreement between State authorities and the Sami Parliament whenever consideration is being given to legislative or administrative measures that may directly affect Sami interests.
- facilitate the development of a partnership perspective between State authorities and the Sami Parliament that contributes to the strengthening of Sami culture and society.
- develop a common understanding of the situation and developmental needs of the Sami society.

2. The Scope

- The consultation procedures apply to the Government and its ministries, directorates and other subordinate State agencies or activities.
- The consultation procedures apply in matters that may affect Sami interests directly. The substantive scope of consultations may include various issues, such as legislation, regulations, specific or individual administrative decisions, guidelines, measures and decisions (e.g. in governmental reports to the Norwegian Parliament, the Storting).
- The obligation to consult the Sami Parliament may include all material and immaterial forms of Sami culture, including music, theatre, literature, art, media, language, religion, cultural heritage, immaterial property rights and traditional knowledge, place names, health and social welfare, day care facilities for children, education, research, land ownership rights and rights to use lands, matters concerning land administration and competing land utilization, business development, reindeer husbandry, fisheries, agriculture, mineral exploration and extraction activities, wind power, hydroelectric power, sustainable development, preservation of cultural heritage, biodiversity and nature conservation.

- I saker som er knyttet til det materielle kulturgrunnlaget, slik som arealdisponeringer, arealinngrep og landrettigheter er det geografiske virkeområde for konsultasjoner (tradisjonelle samiske områder) Finnmark, Troms, Nordland og Nord-Trøndelag fylke, samt kommunene Osen, Roan, Åfjord, Bjugn, Rissa, Selbu, Meldal, Rennebu, Oppdal, Midtre Gauldal, Tydal, Holtålen og Røros i Sør-Trøndelag fylke, Engerdal og Rendalen, Os, Tolga, Tynset og Folldal kommuner i Hedmark fylke, og Surnadal og Rindal kommuner i Møre og Romsdal.
- Saker av generell karakter som må antas å ville påvirke hele samfunnet vil i utgangspunktet ikke omfattes av konsultasjonsplikten.
- In matters concerning the material basis for the Sami culture, including land administration, competing land utilization, and land rights, the obligation to consult the Sami Parliament is applicable to traditional Sami areas; this includes the counties of Finnmark, Troms, Nordland and Nord-Trøndelag, and the municipalities of Osen, Roan, Åfjord, Bjugn, Rissa, Selbu, Meldal, Rennebu, Oppdal, Midtre Gauldal, Tydal, Holtålen and Røros in the county of Sør-Trøndelag, and Engerdal and Rendalen, Os, Tolga, Tynset and Folldal municipalities in Hedmark county, and Surnadal and Rindal municipalities in the county of Møre- og Romsdal.
- Matters which are of a general nature, and are assumed to affect the society as a whole shall in principle not be subject to consultations.

3. Informasjon

- Statlige myndigheter skal gi full informasjon om aktuelle saker som kan påvirke samene direkte, og om relevante forhold på alle stadier i behandlingen av saken.

4. Offentlighet

- Informasjon som utveksles mellom statlige myndigheter og Sametinget i forbindelse med konsultasjoner skal kunne unntas offentlighet, forutsatt at det foreligger hjemmel for dette. Meroffentlighet skal praktiseres. Partenes endelige standpunkter i de enkelte saker skal være offentlige.

5. Faste møter

- Det skal avholdes faste halvårlige politiske møter mellom statsråden for samiske saker og

3. Information

- State authorities shall fully inform the Sami Parliament about all matters that may directly affect the Sami, as well as about all relevant concerns and queries at all stages of the process.

4. Public disclosure

- Information exchanged between State authorities and the Sami Parliament in connection with consultations may be exempted from public disclosure provided it is authorised by law. The principle of expanded public disclosure shall be practised. The final positions of the parties in individual matters shall be made public.

5. Regular meetings

- Regular half-yearly meetings shall be held between the Minister responsible for Sami

Sametingspresidenten. Fagstatsråder deltar på disse møtene etter behov. I de faste halvårlige politiske møtene skal en ta opp situasjon og utviklingsbehov for samiske samfunn, saker av grunnleggende prinsipiell karakter og pågående prosesser.

- Det skal avholdes faste halvårlige møter mellom Sametinget og det interdepartementale samordningsutvalget for samiske saker. I møtene skal det blant annet redegjøres for aktuelle samepolitiske saker i kommende måneder.

6. Generelle bestemmelser om konsultasjonsprosedyrene

- Konsultasjonene med Sametinget skal foregå i god tro og med målsetting om å oppnå enighet om foreslåtte tiltak.
- Statlige myndigheter skal så tidlig som mulig informere Sametinget om oppstart av aktuelle saker som kan påvirke samene direkte, og om hvilke samiske interesser og forhold som kan bli berørt
- Etter at Sametinget er blitt informert om aktuelle saker, skal Sametinget gi tilbakemelding så snart som mulig om det er ønskelig at det gjennomføres videre konsultasjoner.
- Sametinget skal også kunne ta opp saker hvor Sametinget ønsker å gjennomføre konsultasjoner.
- Dersom statlige myndigheter og Sametinget blir enige om å avholde videre konsultasjoner i en bestemt sak, skal en i fellesskap søke å bli enig om opplegget for disse konsultasjonene, herunder tid og sted for videre kontakt (f.eks. møter, videokonferanser, telefonkontakt, utveksling av skriftlig materiale), tidsfrister for tilbakemeldinger, evt. behov for konsultasjoner

affairs and the President of the Sami Parliament. Other governmental ministers may attend these meetings when required. At these meetings, the situation and developmental needs of the Sami society, issues of fundamental and principle importance, and ongoing processes, shall be discussed.

- Regular half-yearly meetings shall also be held between the Sami Parliament and the Inter-ministerial Coordination Committee for Sami affairs. Among other things, information about relevant current Sami policy matters shall be provided at these meetings.

6. General provisions concerning the consultation procedures

- The consultations carried out with the Sami Parliament, in application of the agreement on consultation procedures, shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures.
- State authorities shall as early as possible inform the Sami Parliament about the commencement of relevant matters that may directly affect the Sami, and identify those Sami interests and conditions that may be affected.
- After the Sami Parliament has been informed on relevant matters, it shall inform the relevant State authority as soon as possible whether further consultations are required.
- The Sami Parliament can also independently identify matters which in its view should be subject to consultations.
- If State authorities and the Sami Parliament agree that further consultations shall be held on a specific matter, they shall then seek to agree on a plan for such consultations, including the dates and venues for further contact (e.g. meetings, video-conferences, telephone contact, exchange of written material), deadlines for responses, whether consultations

på politisk nivå, og politisk behandlingsform. Det skal gis tilstrekkelig tid til gjennomføring av reelle konsultasjoner og politisk behandling av forslag. En evt. plenumsbehandling i Sametinget av den aktuelle saken må skje så tidlig som mulig.

- Der sakene krever det skal det legges til rette for at det skal kunne avholdes flere konsultasjonsmøter og at saker ikke avsluttes så lenge Sametinget og staten antar at det er mulig å oppnå enighet.
- I saker som behandles i regjeringen skal det i foreleggelsen for øvrige berørte departementer fremgå tydelig hvilke forhold det er oppnådd enighet med Sametinget om, og eventuelt hva det ikke er oppnådd enighet om. I proposisjoner og meldinger som fremmes for Stortinget, og der regjeringen har et annet standpunkt enn Sametinget, skal Sametingets vurderinger og standpunkter fremgå.

7. Protokoll

- Det skal føres protokoll fra alle konsultasjonsmøter mellom statlige myndigheter og Sametinget. I protokollen skal det gis en kort redegjørelse for hva saken gjelder, partenes vurderinger og standpunkter, og konklusjonen i saken.

8. Behov for utredninger/kunnskapsgrunnlag

- Kommunal- og regionaldepartementet og Sametinget nedsetter i fellesskap en faglig analysegruppe som blant annet på bakgrunn av

at the political level are required and the type of political proceedings. Sufficient time shall be allocated to enable the parties to carry out genuine and effective consultations and political consideration of all relevant proposals. In case it is necessary for the Sami Parliament to consider and debate the matter concerned in a plenary session, such debate and consideration must be conducted as early as possible in the process.

- When necessary, provisions shall be made for further consultations. Consultations shall not be discontinued as long as the Sami Parliament and State authorities consider that it is possible to achieve an agreement.
- When a matter is submitted for consideration to the Government (Cabinet), the ministerial submission document shall clearly inform other governmental ministries about the concluded agreement with the Sami Parliament and, if necessary, also to include information about matters where agreement has not been reached. In governmental propositions and reports to the national parliament, the Storting, on matters where the governmental position differs from that of the Sami Parliament, the views and positions of the Sami Parliament shall be reflected in the documents submitted.

7. Minutes

- Minutes shall be kept of all consultation meetings between State authorities and the Sami Parliament. The minutes shall include a brief account of the subject matter, the views and positions of the parties, and the conclusions made at the meeting.

8. The need for studies/knowledge base

- The Royal Ministry of Local Government and Regional Development and the Sami Parliament shall jointly appoint a specialized

samisk statistikk årlig avlegger en rapport om situasjon og utviklingstrekk i samiske samfunn. Rapporten legges til grunn for konsultasjoner i konkrete saker og for konsultasjoner om utviklingsbehov for samiske samfunn i ett av de halvårlige møtene mellom statsråden for samiske saker og Sametingspresidenten.

- Når statlige myndigheter eller Sametinget mener det er behov for utredninger for å styrke faktagrunnlaget eller det formelle grunnlaget for vurderinger og beslutninger skal dette tilkjennegis så tidlig som mulig og partene skal bringe spørsmål knyttet til mandat for eventuelle utredninger inn i konsultasjonsprosessen. Staten og Sametinget skal søke å oppnå enighet om både mandat, og hvem som skal stå for et eventuelt utredningsarbeid. Staten og Sametinget har plikt til å bistå med nødvendige opplysninger og materiale som det er behov for ved gjennomføringen av utredningsarbeidet.

9. Konsultasjoner med øvrige berørte samiske interesser

- I saker der staten planlegger å konsultere med samiske lokalsamfunn og/eller særskilte samiske interesser som kan bli direkte påvirket av lovgivning eller tiltak, skal staten så tidlig som mulig informere om hvilke interesser /organisasjoner staten mener saken berører, og drøfte samordningen av konsultasjonsprosessene med Sametinget.

analysis group which, inter alia, shall submit an annual report concerning the situation and developmental trends of the Sami society on the basis of Sami statistics. The report shall be used as the basis for consultations on specific matters and for consultations concerning the developmental needs of the Sami society at one of the half-yearly meetings between the Minister responsible for Sami affairs and the President of the Sami Parliament.

- When State authorities or the Sami Parliament consider there to be a need for background studies to strengthen the factual or formal basis for assessments and decisions, this shall be raised as early as possible, and both parties shall include questions concerning the terms of reference for such studies into the consultation process. The Central Government and the Sami Parliament shall seek to reach an agreement on the terms of reference for such a study, and who shall carry out the study. The Central Government and the Sami Parliament are obliged to assist in providing information and materials necessary for carrying out the study.

9. Consultations with other affected Sami entities

- In matters where State authorities plan to consult local Sami communities and/or specific Sami entities or interests that may be directly affected by legislation or administrative measures, State authorities shall as early as possible notify which Sami entities or organizations it regards as affected by the matter, and discuss the coordination of such consultation processes with the Sami Parliament.

Annex 4: Guidelines for Consultations between State Authorities and the Sami Parliament and other Sami Entities

GUIDELINES FOR CONSULTATIONS BETWEEN STATE AUTHORITIES AND THE SAMI PARLIAMENT AND OTHER SAMI ENTITIES [NORWAY]

The Royal Ministry of Labour and Social Inclusion, 23 June 2006

CHAPTER 1 – INTRODUCTION

An agreement on procedures for consultations between State authorities and the Sami Parliament was signed by the Minister of Local Government and Regional Development and the President of the Sami Parliament [Norway] on 11 May 2005. The Sami Parliament Plenary endorsed these consultation procedures on 1 June 2005. In accordance with the relevant Royal Degree of 1 July 2005, the consultation procedures apply to the entire State government administration.

The rationale for the consultation procedures is grounded on the right of indigenous peoples to be consulted on matters that may directly affect them. This right is proclaimed in the ILO Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries. Article 6 of the ILO Convention states that:

“1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

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

The ILO Convention was ratified by Norway in 1990.

To whom ILO Convention No. 169 applies, is established in Article 1 of the Convention.. In the Norwegian context, the relevant provision is Article 1, paragraph 1, sub-paragraph b, which defines indigenous peoples as follows:

“b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

Indigenous peoples are generally not the dominating people in the larger society they are a part of, and they have a distinct culture with a close attachment to their traditional lands and natural resources. Indigenous peoples often constitute a numerical minority in the country, but this is not always the case. In some countries in Latin America, indigenous peoples comprise a majority of the country’s population.

In Norway the Sami people clearly meet the requirements to be described as an ‘indigenous people’. In the Selbu case of 21st June 2001, the Supreme Court decided it is stated that ILO Convention No. 169, Article 1 (1) (b) unquestionably gives the Sami status as an indigenous people in Norway, including in the South Sami area.

Meetings and other forms of contact on political as well as administrative levels have previously been established between the Central Government and the Sami Parliament, concerning matters that affect the Sami. Throughout the past years however, several governmental proposals and other matters of concern to the Sami have been submitted to the national parliament, the Storting, where questions have arisen whether the consultation obligations as required under the ILO Convention No. 169 have been satisfactorily fulfilled. The issue of the substance of the consultation obligation was rekindled particularly in relation to the drafting of the Finnmark Act. The Ministry of Local Government and Regional Development, and the Sami Parliament agreed that recurring debates concerning the interpretation of the international legal provisions concerning consultations and indigenous peoples’ participation in processes affecting them served little purpose. In March 2004, it was therefore decided that a working group with members drawn from the Sami Parliament and the Ministry of Local Government and Regional Development was to look more closely at the judicial basis of the Sami’s right to be consulted in cases of direct impact, and to make suggestions for procedures. The working group presented its report on 20 April 2005.

Simultaneously to the Government’s initiative, the Standing Committee on Justice of the national parliament, the Storting agreed to undertake consultations with the Sami Parliament and the County Council of Finnmark on the Finnmark Act.

Consultations between the Sami Parliament and State authorities will in some cases lead to decision-making processes and administrative procedures that are more time-consuming than normal. Satisfactory consultations will, however, in the last instance secure a more flexible and prompt implementation of the measures in question. Decisions

with a disputable basis of legitimacy may, whether in the local community or the international community, be difficult to implement. A lack of legitimacy may also result in “extra rounds” that prolong and increase the cost of the processes.

The consultation procedures are also binding for the Sami Parliament. Among other things, it is implied that the Sami Parliament must give clear feedback to the authorities’ proposals within agreed deadlines.

The consultation procedures may also contribute to strengthening the Sami Parliament’s legitimacy, and lead to a better understanding of the situation and needs of the Sami society. The agreed consultation procedures will also lay the ground for a partnership perspective between State authorities and the Sami Parliament, which will enable a strengthening of Sami culture.

The consultation procedures are to be regarded as normative guidelines. This entails that State authorities and the Sami Parliament can jointly choose to disregard the procedures in matters where other rules and procedures have been established, which both the Ministry and the Sami Parliament believes establishes a level of protection for indigenous peoples interests to the same extent as the agreed consultation procedures. Such a case may be the Mining Act (Bergverksloven), wherein specific provisions provided concerning mineral exploration and exploitation in the county of Finnmark are given. However, State authorities cannot unilaterally decide not to apply the agreed consultation procedures.

The present guidelines contain detailed guidelines and practical examples of when an obligation to consult occurs, and the contents thereof. Uncertainties about the scope of the consultation obligation may still arise, in which case the authorities must use their own discretion, or alternatively, contact the Sami Parliament in order to clarify the scope of the consultation obligation.

The Consultation Agreement of 11 May 2005 was entered into between the Central Government and the Sami Parliament, and thus only regulates the relationship between the State and the Sami Parliament. The consultation obligation under Article 6 of the ILO Convention No. 169, however, applies to “the peoples concerned”, and particularly through their representative institutions. The State may therefore, in some cases, also have the obligation to consult with other Sami interest holders in addition to the Sami Parliament. This is with specific reference to matters which directly affect particular Sami livelihoods, such as Sami reindeer husbandry. The State’s obligation to consult Sami entities other than the Sami Parliament is further elaborated in chapter 3 of this document.

The overall responsibility for developing and coordinating the Central Government’s policy on Sami affairs was, transferred from the Ministry of Local Government and

Regional Development to the Ministry of Labour and Social Inclusion as of 1 January 2006.

CHAPTER 2 – COMMENTARY ON INDIVIDUAL PROVISIONS CONTAINED IN THE AGREEMENT ON PROCEDURES FOR CONSULTATIONS OF 11 MAY 2005

The Objective

The objective of the procedures for consultations is to:

- contribute to the implementation in practise of the State's obligations to consult indigenous peoples under international law.
- seek to achieve agreement between State authorities and the Sami Parliament whenever consideration is being given to legislative or administrative measures that may directly affect Sami interests.
- facilitate the development of a partnership perspective between State authorities and the Sami Parliament that contributes to the strengthening of Sami culture and society.
- develop a common understanding of the situation and developmental needs of the Sami society.

Commentary

In accordance to Article 6 of ILO Convention No. 169, the Government is under an obligation to seek agreement or consent to proposed measures which may directly affect the Sami. By establishing specific and detailed provisions for consultations, the agreed procedures will contribute to the implementation in practise of State authorities' obligation to consult indigenous peoples. Through dialogue and consultations with the Sami Parliament, the knowledge and understanding of the needs of the Sami society and the processes within the State administration, respectively, will increase.

The consultation procedures will, to a greater degree, prepare the ground for a partnership between State authorities and the Sami Parliament. However, the State authorities still retain the legal authority and responsibility to make the final decisions in such matters.

2. The Scope

The consultation procedures apply to the Government, ministries, directorates and other subordinate agencies or activities.

- The consultation procedures apply in matters that may affect Sami interests directly. The substantive scope of consultations may include various issues, such as legislation, regulations, individual decisions, guidelines, measures and decisions (e.g. in governmental reports to the Norwegian Parliament, the Storting).
- The obligation to consult the Sami Parliament may include all material and immaterial forms of Sami culture, including music, theatre, literature, art, media, language, religion, cultural heritage, immaterial property rights and traditional knowledge, place names, health and social welfare, day care facilities for children, education, research, land ownership rights and rights to use lands, matters concerning

land administration and competing land utilization, business development, reindeer husbandry, fisheries, agriculture, mineral exploration and extraction activities, wind power, hydroelectric power, sustainable development, preservation of cultural heritage, biodiversity and nature conservation.

- In matters concerning the material basis for the Sami culture, including land administration, competing land utilization, and land rights, the obligation to consult the Sami Parliament is applicable to traditional Sami areas; this includes the counties of Finnmark, Troms, Nordland and Nord-Trøndelag, and the municipalities of Osen, Roan, Åfjord, Bjugn, Rissa, Selbu, Meldal, Rennebu, Oppdal, Midtre Gauldal, Tydal, Holtålen and Røros in the county of Sør-Trøndelag, and Engerdal and Rendalen, Os, Tolga, Tynset and Follidal municipalities in Hedmark county, and Surnadal and Rindal municipalities in the county of Møre- og Romsdal.
- Matters which are of a general nature, and are assumed to affect the society as a whole shall in principle not be subject to consultations.

Commentary

To whom does the consultation obligation apply?

The consultation obligation applies to the Government and its ministries, directorates and other subordinate agencies and their activities (e.g. chief administrative officer of a country).

The procedures for consultations also apply to state-owned enterprises, such as Statskog, and to state enterprises, whenever such enterprises exercise public administrative authority by delegation from a superior State authority. The agreed procedures for consultations do not apply to the municipalities. The Ministry of Labour and Social Inclusion will examine how Sami interests can be taken into account in municipal administrative procedures.

However, in matters where municipalities have been granted some form of delegated governmental authority, e.g. from the chief administrative officer of a county or the Directorate for Nature Management, the consultation procedures may be applicable to municipalities, provided the conditions set out in the agreed procedures for consultations are otherwise present.

Which matters may directly affect the Sami?

The consultation procedures apply in matters that “may directly affect Sami interests.” This does not mean that the relevant matters must be exclusively about the Sami, but the matter concerned must be of special interest for the Sami. There may, for instance, be a consultative obligation in some cases concerning fisheries, since fishing traditionally has been and still is an important livelihood for the Sami. This applies even though fisheries are an important trade and business for Norwegians as well. In matters of general character that will presumably affect society as a whole, however, such as matters concerning taxation, pensions, etc., there will on a general basis not be a consultative obligation.

The condition that a matter must affect Sami interests directly also entails that the matter must have a certain general interest for Sami culture and society, in order for the procedures to come into force. There will thus not be an obligation to consult in every matter that has direct effect specifically on one or several individuals of the Sami people, if the effect cannot be related to Sami culture and society in general.

The allocation of financial subsidies or grants to Sami individuals and organisations is largely delegated to the Sami Parliament. Other public authorities also have governmental subsidies at their disposal that can be used for Sami purposes; in this category this it is not required to consult with the Sami Parliament.

The consultation obligation may come into force in the event that, although it may not be obvious that a legislative or administrative measure will affect Sami interests directly, it seems reasonably probable that such a matter may have direct impact on the Sami.

In many cases that may have direct impact on the Sami and their interests there may be strongly conflicting interests, e.g. in matters concerning exploitation of natural resources where large economic interests may be involved. Nevertheless, State authorities have an obligation under ILO Convention No. 169 to undertake consultations with the Sami.

In matters where it is unclear whether the Sami are affected directly, it is relevant to take into account the Sami Parliament's own assessment of what constitutes direct impact, and its view on whether it is necessary to have consultations on the matter concerned.

Which types of matters shall be subject to consultations?

The obligation to the Sami Parliament does not depend upon the manner in which decisions are made. It is the possible consequences of the relevant measure which is the determining factor as to whether consultations shall take place. The obligation to consult the Sami Parliament is applicable to different types of matters that may affect the Sami directly, such as preparation of legislation, regulations, guidelines and decisions (e.g. in governmental reports to the national parliament, the Storting). There may also be an obligation to consult the Sami Parliament when consideration is being given to whether the State shall become party to international treaties, and when endorsing international declarations that may affect Sami interests directly.

Consultation shall concern the contents of the matter at hand. Normally, it will thus not be practical that documents, where proposals and decisions are reflected, are prepared jointly.

It is the State authority which is mandated to make a decision in the matter concerned that is obliged to undertake consultations with the Sami Parliament. Moreover, State entities undertaking background studies and submitting recommendations to a superior State authority have an obligation to consult the Sami Parliament if the matter may affect Sami interest. This is the case for instance when the chief administrative officer of a county is submitting recommendations on matters concerning environmental protection and

conservation. However, in situations where a State authority only gives its opinion in response to a consultative document, it is not expected to undertake consultations with the Sami parliament.

In principle, the offices of the chief administrative officers of counties may in some cases also be obliged to consult the Sami Parliament in individual cases where and when it is considering an individual complaint. This will normally be limited to large cases concerning land administration and utilization. For further information about such cases, see below. Nevertheless, in the instance of arbitration in formal objection proceedings, the ordinary rules of procedures as contained in the Planning and Building Act and the principles of arbitration will apply. However, in cases where the conditions for consultations with the Sami Parliament are fulfilled, the relevant ministry may have an obligation to also undertake consultations where objections are raised and the relevant ministry must make a decision.

The obligation to consult may also exist for administration plans for protected areas if these plans establish rules that may affect Sami interests directly.

When the Sami Parliament is the decision-making authority, as is the case in some matters according to the Cultural Heritage Act, the consultation obligation with the Sami Parliament will naturally be fulfilled due to the fact that it is the Sami Parliament which holds the decision-making authority. In matters that according to the Cultural Heritage Act are decided upon by the Directorate for Cultural Heritage (Riksantikvaren) or the Ministry of the Environment, there may be an obligation to consult the Sami Parliament. Section 3 of the “Regulation Concerning Apportionment of Responsibility According to Subject” concerning the Obligation to Cooperate etc also applies in such cases. . This regulation is established in accordance with the Cultural Heritage Act.

When decisions are made by an authority where the Sami Parliament is represented, and the requirements for consultations are otherwise present, the treatment of the matters within this authority must take place in accordance with the procedures for consultations. When the Sami Parliament is represented in committees or working groups that give advice or recommendations to State authorities, the concerned authority may have an obligation to consult with the Sami Parliament.

There is a clear understanding between the Sami Parliament and the Ministry of Local Government and Regional Development that the agreed procedures for consultations do not apply to matters related to the national budget.

Specific administrative decisions

The agreed procedures for consultations establish that specific administrative decisions and resolutions are covered by the consultation obligation. In practice, it will only rarely be relevant to consult with the Sami Parliament regarding such matters. However, there may be an obligation to consult the Sami Parliament in cases of specific administrative decisions concerning competing land utilization, including development of wind power and hydroelectric power, construction of roads and building of holiday homes. On the

other hand, it will not be necessary to consult concerning specific administrative decisions for example about hunting licences etc which are decided by the Predatory Wildlife Boards.

As regards specific administrative decisions in other cases than matters than land utilization, it may, as a general rule, be assumed that no consultation obligation applies.

The threshold for consultation on specific administrative decisions may be lower in relation to Sami reindeer husbandry, see chapter 3.

The substantive and geographical scope for the obligation to consult
In matters concerning land management, competing land utilization and land rights, the consultation obligation may apply within traditional Sami areas. In other kinds of matters, such as for example, language and culture, the consultation obligation will not be a matter of geography to the same degree. It is difficult to clearly demarcate traditional Sami areas. The Sami area of land utilisation and habitation is large, and stretches from the county of Hedmark in the south to the northernmost county of Finnmark. Consideration must be given to Sami interests in areas with historic Sami habitation, even if the Sami culture today is weak and of little visibility in these areas, due to past Norwegian assimilation policies..
The geographical areas that are identified by name and listed under section 2 of the agreed procedures for consultations are Sami reindeer grazing areas, and municipalities that are of Sami cultural heritage interest.

3. Information

State authorities shall fully inform the Sami Parliament about all matters that may directly affect the Sami, as well as about all relevant concerns and queries at all stages of the process.

Commentary

State authorities that are preparing legislative or administrative measures shall inform and facilitate dialogue with the Sami Parliament as early as possible in the process. Information at an early stage in the process is a prerequisite for the Sami Parliament's potential ability to influence the process and the final result. The responsible State authority shall, based on its substantive knowledge, give an orientation regarding which Sami interests may be affected in the relevant case. The Sami Parliament is responsible for giving feedback on this as swiftly as possible, and for informing the authority concerned whether the matter raises other issues in relation to Sami interests.

Transparency about all aspects of the matter concerned is a prerequisite for good and effective consultations. Relevant and complete information must therefore be given. The authorities are responsible for presenting the information in such a way that the contents of the matter are understood. This might in some cases mean that the information must be given in the Sami language.

The obligation to inform the Sami Parliament about all relevant aspects of the matter concerned implies that the information must be sufficient enough to enable the Sami Parliament to assess all aspects of the matter, and thereby make an opinion on the matter on the basis of sound analysis. In cases of draft legislation of great impact on Sami culture, it is required that the Sami Parliament considers the draft legislation in its entirety before it can take a position in the matter. However, certain parts of the draft legislation may be exempted if it is obvious that it has no effect on Sami interests.

No confidential information regarding the national budget shall be given to the Sami Parliament as part of State authorities' consultations with the Sami Parliament. It may nevertheless be necessary to consult the Sami Parliament concerning possible changes in the responsibilities of a ministry and the Sami Parliament. Such consultations may entail giving information to the Sami Parliament concerning financial transactions and reallocation between different budget lines within the ministry's budget.

It can be expected that there may be some situations where State authorities are uncertain whether a consultative obligation exists. Initially, it will be natural for the State authority concerned to contact the Sami Parliament or the Ministry of Labour and Social Inclusion in cases of doubt. After a while, as experience with the consultation procedures develops, it is expected a practice concerning which cases require consultation will emerge.

The Sami Parliament can be contacted via its switchboard (telephone number 78 47 40 00) or via e-mail (samediggi@samediggi.no). It is also possible to contact individual staff members in the Secretariat of the Sami Parliament who are knowledgeable about the issue at hand.

4. Public disclosure

Information exchanged between State authorities and the Sami Parliament in connection with consultations may be exempted from public disclosure provided it is authorised by law. The principle of expanded public disclosure shall be practised. The final positions of the parties in individual matters shall be made public.

Commentary

The provisions of the Freedom of Information Act apply to documents that are exchanged between governmental authorities and the Sami Parliament. The Government's decision of 19 May 2006 relating to public access to documents in the public administration, under the Freedom of Information Act, is to exempt from public access information exchanged between State authorities and the Sami Parliament in connection with consultations. The legislative amendment has not yet come into force.

The background for this provision is that the possibility to exempt documents from public access will probably be a prerequisite for sharing of information with the Sami Parliament about ideas and points of view at an early stage in the policy process. It is,

however, a prerequisite that the principle of expanded public disclosure is practised, and that the final positions of the parties in individual matters are made public.

5. Regular meetings

- Regular half-yearly meetings shall be held between the Minister responsible for Sami affairs and the President of the Sami Parliament. Other governmental ministers may attend these meetings when required. At these meetings, the situation and developmental needs of the Sami society, issues of fundamental and principle importance, and ongoing processes, shall be discussed.
- Regular half-yearly meetings shall also be held between the Sami Parliament and the Inter-ministerial Coordination Committee for Sami affairs. Among other things, information about relevant current Sami policy matters shall be provided at these meetings.

Commentary

The Ministry of Labour and Social Inclusion should, well in advance of the half-yearly meetings, send out written materials to other ministries concerned. In case the other ministries have matters they wish to address in the meeting they should inform the Ministry of Labour and Social Inclusion about these matters prior to the meeting.

It may also be appropriate to have regular meetings between the Sami Parliament and regional State entities. Further agreements can be made about such meetings at the regional level.

6. General provisions concerning the consultation procedures

- The consultations carried out with the Sami Parliament, in application of the agreement on consultation procedures, shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures.
- State authorities shall as early as possible inform the Sami Parliament about the commencement of relevant matters that may directly affect the Sami, and identify those Sami interests and conditions that may be affected.
- After the Sami Parliament has been informed on relevant matters, it shall inform the relevant State authority as soon as possible whether further consultations are required.
- The Sami Parliament can also independently identify matters which in its view should be subject to consultations.
- If State authorities and the Sami Parliament agree that further consultations shall be held on a specific matter, they shall then seek to agree on a plan for such consultations, including the dates and venues for further contact (e.g. meetings, video-conferences, telephone contact, exchange of written material), deadlines for responses, whether consultations at the political level are required and the type of political proceedings. Sufficient time shall be allocated to enable the parties to carry out genuine and effective consultations and political consideration of all relevant proposals. In case it

is necessary for the Sami Parliament to consider and debate the matter concerned in a plenary session, such debate and consideration must be conducted as early as possible in the process.

- When necessary, provisions shall be made for further consultations.

Consultations shall not be discontinued as long as the Sami Parliament and State authorities consider that it is possible to achieve an agreement.

- When a matter is submitted for consideration to the Government (Cabinet), the ministerial submission document shall clearly inform other governmental ministries about the concluded agreement with the Sami Parliament and, if necessary, also to include information about matters where agreement has not been reached. In governmental propositions and reports to the national parliament, the Storting, on matters where the governmental position differs from that of the Sami Parliament, the views and positions of the Sami Parliament shall be reflected in the documents submitted.

Commentary

The point of departure for the consultations: Good faith, and with the objective of achieving agreement. The consultations shall take place in good faith, with the objective of achieving agreement to the proposed measures. This means the process of consultations with the Sami parliament is something more than an ordinary public process through which appropriate bodies are invited to consider various proposals (process of hearing), as the parties must sincerely and genuinely seek to reach an agreement to the proposed measures. This also means that State authorities are under an obligation to initiate consultations with Sami Parliament and make all necessary efforts to achieve an agreement even though the State authority concerned may believe that the likelihood of achieving an agreement is limited. However, the agreed procedures for consultations do not dictate that an agreement or consent to the proposed measures must always be reached.

The required extent of the consultations may vary in specific situations. The most important requirement is that necessary consultation processes and procedures are established in order to enable the Sami Parliament to exert real influence on the process and the final result. A simple information meeting will thus normally not fulfill State authorities obligation to consult indigenous peoples under ILO Convention No. 169.

Information and response

The relevant and responsible State authority shall inform the Sami Parliament about which Sami interests and conditions may be affected by the matter at hand. The Sami Parliament is responsible for responding to this information as soon as possible, including whether the matter is of such a nature that further consultations are desired, and whether the matter raises other questions of importance to Sami interests. Response on whether further consultations should be conducted should normally be given within one week. It is important that the Sami Parliament receives information and thus get involved as early as possible in the process, as the opportunity to exert influence is greater during the early stages of a process.

When the Sami Parliament and the State authority concerned agree to establish a process of consultations, they must also seek to agree on a plan for such consultations. Due to the need for progress in the consultation process, it is deemed important that dates for further contact are established as early as possible in the process.

Further about the contents of the consultation obligation

Fulfillment of the consultation obligation requires that both parties are informed about the counterpart's position and assessments. The State party shall ensure that its interests and views are communicated to and understood by the Sami Parliament, and that the State party has understood the position of the Sami Parliament. The Sami Parliament has a corresponding responsibility to communicate its points of view on the matter concerned. If the parties do not reach an agreement, they are expected consider compromises and possible changes in the original proposal with the aim to narrow the gap between their positions. When necessary, provisions shall be made for further consultations.

Consultations shall not be discontinued as long as the Sami Parliament and the State authority concerned believe it is possible to reach an agreement. If an agreement is not achieved, a clear account of the parties' assessments and positions must be given. It is important that State authorities and the Sami Parliament can exchange views on their preliminary positions. In other words, the State authority concerned must be able to undertake consultations with the Sami Parliament before it presents the matter to other relevant State authorities for final consideration. However, confidential information about the national budget should not be given to the Sami Parliament in connection with the consultations (See point 3 above). Because of the State authorities need to find a common State position, preliminary discussions between the various ministries should take place before the Sami Parliament is involved in the process. It is appropriate to have representatives of other State authorities attending these consultations.

It is of great importance that the established procedures are set up in such a manner that it is practically possible to undertake consultations, for both State authorities and the Sami Parliament. Matters that may be handled easily should be easily handled. One should, for example, always consider whether it is possible to solve a matter by telephone contact rather than through meetings. According to the regulations in force as regards matters in subject areas where State authorities are in contact with Sami interests, the consultation procedures should also be incorporated into such procedures. It is vital that both parties agree on further arrangements and process in the matter concerned.

The individual ministry or agency involved is responsible for the consultations in their areas of responsibility. It is the individual agency that has the best knowledge about subject matters falling within its mandate; it also has the responsibility for matters falling within its mandate in relation to all sectors of the population. The independent responsibility of individual ministries and agencies to undertake consultations with the Sami Parliament is in line with the Government's general principle of sector responsibility. The Ministry of Labour and Social Inclusion can advise the other ministries on how consultations should be conducted, and shall, if so desired, be able to

participate in consultation meetings. As coordinating ministry for Sami affairs, the Ministry of Labour and Social Inclusion shall in all cases be informed of consultations that are initiated.

Matters submitted for consideration to the Government (Cabinet)

When a matter is due to be submitted for consideration to the Government (Cabinet), the ministerial submission document shall clearly state that and inform about the assessment and position of the Sami Parliament, as well as about the results of the consultations which have been undertaken. The relevant ministries are responsible for clarifying all outstanding matters with other ministries in accordance with normal procedures, while at the same time consulting with the Sami Parliament.

The procedures for consultations do not establish a general instruction that the ministries shall consult the Sami Parliament after the matter has been submitted to the Government (Cabinet). However, consultations with the Sami Parliament should not be discontinued as long as there is a possibility to achieve an agreement.

The agreed procedures for consultations entail that the Sami Parliament shall be allowed to consider and debate draft legislation in its plenary. This may be the case when the draft legislation is of great importance to Sami interests, such as the Reindeer Herding Act, the Planning and Building Act, the Nature Diversity Act, and the Mineral Act. It is also clear under the agreed procedures for consultations that the Sami Parliament is entitled to full information about all relevant aspects of the matter concerned, and that also the Sami Parliament Plenary shall have the opportunity to influence the process.

The Sami Parliament's views and position shall be stated in the Government's proposition to the Odelsting [the larger division or chamber in the national parliament, the Storting. Under the Norwegian constitutional system, draft legislation and proposed legal amendments shall always be submitted to and considered by the Odelsting before it is considered by the other division or chamber, the Lagting]. In other words, the views and position of the Sami Parliament plenary shall in such cases be communicated to the national parliament, whenever the plenary has expressed its view and position. Consequently, the Plenary of the Sami Parliament must receive preliminary draft legislation prior to its consideration and debate. Such submission of draft legislation for consideration to the Sami Parliament plenary must nevertheless be authorized by the Government (Cabinet), as the plenary debates in the Sami Parliament are public meetings. In cases where the Sami Parliament has any objections or comments to the draft legislation, it will be natural for the Government to revisit the matter before the governmental legislative proposition is submitted to the Odelsting. It is clearly stated in the agreed procedures for consultations that in governmental propositions and reports to the national parliament, on matters where the governmental position differs from that of the Sami Parliament, the views and positions of the Sami Parliament shall be reflected in the documents submitted to the national parliament. It is, however, important that the same procedure is applied in relation to submissions concerning matters where an agreement has been reached with the Sami Parliament.

It is furthermore important to facilitate Sami participation in governmental appointed committees which are mandated to consider and propose legislation in matters of great importance for the Sami. Sami participation in such committees will not be regarded as consultations with the Sami. However, such participation will ensure that Sami interests are communicated and considered at an early stage in the legislative process, and thus make future consultations easier.

The consultation obligations are nevertheless not a hindrance to entitling the Sami Parliament to express its views and comments in public hearing processes related to significant matters, such as in the NOU procedures (Norwegian Public Report). In smaller or less significant matters it may be natural to merge the hearing process and the consultations. In matters where the Sami Parliament submits a response to documents as part of a regular hearing process, it should inform its counterpart whether specific consultations on the matter are desired.

Particulars concerning the Sami Parliament's consultations with subordinate State agencies

In matters that are prepared by subordinate State agencies, and where decisions are made by a superior agency, in assessing of whether State authorities have fulfilled the consultation obligation, the entire consultation process must be taken into account. This means that where a subordinate State agency and the Sami Parliament have agreed on a matter, and this has not been changed by the superior agency, the latter agency does not need to conduct further consultations with the Sami Parliament. It is vital that information concerning the Sami Parliament's views and position and the results of the consultations always accompany the matter on its way in the process.

In cases where a subordinate State agency has knowledge about the fact that its superior agency has views that differ from those of those of the Sami Parliament, the case should either be checked beforehand with the superior agency or consultations take place directly with the superior agency. The question about which of these agencies will be the one undertaking consultations with the Sami Parliament must be settled between the superior and the subordinate agencies and with the Sami Parliament.. At times it may be appropriate that the ministries concerned consult with the Sami Parliament on priority policy areas before the responsibility for the matter is delegated to a subordinate State agency, such as the office of the Chief administrative officer of a county. It is also a prerequisite that superior State agencies facilitate the subordinate agencies' consultations by allowing them to use the necessary time for such consultations.

In matters that are prepared by subordinate State agencies, a prerequisite for good consultations with the Sami Parliament will often be that the Sami Parliament is allowed to become informed about the views of the Sami society and organizations. It is in such cases vital that the Sami Parliament is informed about the matter as early as possible, but often it will be inappropriate to initiate consultations until it has been established how the

matter is regarded by various Sami interests. Further arrangements must be made with the Sami Parliament on how the consultations should be set up in such cases.

In subject areas where implementation of consultations are frequent (e.g. environmental protection plans, energy development projects) it may be appropriate that the State authority concerned and the Sami Parliament jointly develop standard procedures for consultations. The Ministry of Labour and Social Inclusion may in such offer its services in the development of such procedures.

7. Minutes

- Minutes shall be kept of all consultation meetings between State authorities and the Sami Parliament. The minutes shall include a brief account of the subject matter, the views and positions of the parties, and the conclusions made at the meeting.

Commentary

Minutes shall be kept of all consultation meetings, unless both parties agree otherwise. The records of the meeting should inform that there is consensus between the parties on how the meeting is reflected in the minutes. However, the parties are not required to sign the minutes. It is natural that the State party offers to draft the minutes.

The proceedings should also identify matters where an agreement has been achieved through the State party's telephone conversations with the Sami Parliament. In matters where it is considered particularly important to be able to document agreement, minutes should be kept of relevant telephone conversations etc.

8. The need for studies/knowledge base

- The Royal Ministry of Local Government and Regional Development and the Sami Parliament shall jointly appoint a specialized analysis group which, inter alia, shall submit an annual report concerning the situation and developmental trends of the Sami society on the basis of Sami statistics. The report shall be used as the basis for consultations on specific matters and for consultations concerning the developmental needs of the Sami society at one of the half-yearly meetings between the Minister responsible for Sami affairs and the President of the Sami Parliament.
- When State authorities or the Sami Parliament consider there to be a need for background studies to strengthen the factual or formal basis for assessments and decisions, this shall be raised as early as possible, and both parties shall include questions concerning the terms of reference for such studies into the consultation process. The Central Government and the Sami Parliament shall seek to reach an agreement on the terms of reference for such a study, and who shall carry out the study. The Central

Government and the Sami Parliament are obliged to assist in providing information and materials necessary for carrying out the study.

Commentary

Statistics provide an important basis for analysis of the situation and the developmental needs of any society. In order to establish effective consultations between the Government and the Sami Parliament, a great deal will depend on the parties having as much knowledge as possible about the situation and the developmental trends of Sami society. This will enable the parties to establish the highest possible degree of common understanding about the situation and challenges. The knowledge base concerning the Sami society is in many issues both weak and inaccessible.

The Ministry of Local Government and Regional Development (at present the Ministry of Labour and Social Inclusion), the Sami Parliament, the Nordic Sami Institute, and Statistics Norway have initiated a project with the goal of compiling an annual Sami statistic yearbook. The first Sami statistic yearbook was published in February 2006.

As regards matters in which the Sami Parliament believes there is a need for further studies, this shall be assessed by the State authority. In such cases, it should be taken into consideration whether a study will be of such importance to the matter that it should be postponed pending the result of the study. Wherever possible, studies on Sami conditions should be integrated into other studies that are to be conducted.

In addition, it should here also be referred to the fact that in some cases there exists an obligation to undertake an impact assessment of plans and measures that may have significant impact on the environment, natural resources, or society. This is established by the regulations on environmental impact assessment, section (e) concerning the criteria for assessing significant effects on the environment, natural resources and society. It is here stated that:

“Plans and measures pursuant to section 3 shall be dealt with in accordance with the Regulations if they

e) may conflict with the pursuit of Sami commercial activities in uncultivated areas, or are located in areas of special value for Sami reindeer husbandry or limited seasonal reindeer pasture and may conflict with Sami reindeer husbandry interests, or may in other ways conflict with the land-use needs of Sami reindeer husbandry”

9. Consultations with other affected Sami entities and interests

- In matters where State authorities plan to consult local Sami communities and/or specific Sami interests that may be directly affected by legislation or administrative measures, State authorities shall as early as possible notify which Sami interests or organizations it regards as affected by the matter, and discuss the coordination of such consultation processes with the Sami Parliament.

Commentary

Section 9 of the agreed procedures for consultations concerns the authorities' coordination of the consultation procedures when the State authorities are also planning to consult other Sami interests in addition to the Sami Parliament. The obligation per se to consult with other Sami interests derives from an interpretation of the ILO Convention No. 169 and not from the Consultation Agreement as such. See more about this in Chapter 3 below.

The most important questions to be discussed with the Sami Parliament in cases where other Sami interests will be consulted are agreed times for consultation meetings with the Sami Parliament and other Sami interests, hereunder the possibility for arranging simultaneous consultations. From the State authority's point of view, concurrent consultation meetings will normally be the most desirable and efficient.

CHAPTER 3 – GUIDELINES FOR STATE AUTHORITIES' CONSULTATIONS WITH OTHER SAMI ENTITIES AND INTERESTS THAN THE SAMI PARLIAMENT

As a point of departure, the Sami Parliament is the representative body that speaks on behalf of all the various Sami interests. The Ministry of Labour and Social Inclusion therefore takes as its point of departure that the Sami Parliament shall always be consulted. As mentioned above, the State authorities may, however, have an obligation to consult with other Sami interests in addition to the Sami Parliament. This is particularly the case in matters which directly affect Sami livelihoods, such as reindeer husbandry. People involved with reindeer husbandry have important rights to use lands and natural resources, and have their own representative bodies and a tradition for representing themselves. Through direct consultations with representative entities for reindeer husbandry, surveys can be made regarding how measures and activities can be developed in order to avoid conflicts Sami reindeer husbandry.

Cases in which Sami reindeer husbandry interests should normally be consulted are land utilization matters, where planned measures may come into conflict with the land area needs of the reindeer husbandry. In some individual cases of encroachment, in which the Sami Parliament does not wish to participate in consultations, the State authorities should nevertheless assess whether Sami reindeer herding interests should be consulted, since measures that on a national scale may be considered small will often be of great consequences to the individual reindeer grazing area.

When Sami reindeer husbandry interests are consulted, the same principles should apply as for consultations with the Sami Parliament.

As concerns the question regarding who should be consulted within the reindeer husbandry industry, a distinction must be made between regulations which generally apply to large areas, and individual legislative encroachment cases. In legislative and

regulatory matters it will be natural to consult the industry's organization, which is the Sami Reindeer Herders' Association of Norway (NRL). In specific encroachment cases it will, on the other hand, be natural to consult the individual holder of rights, normally represented by appointed representatives of owners of reindeer in the reindeer grazing area concerned. As a first step for State authorities in such cases, it would be appropriate to contact the State entity for Reindeer Husbandry and Resource Management to obtain information concerning the reindeer grazing areas which may be affected by planned measures, along with other relevant information.

In individual matters which are settled by the ministries, an obligation to consult with the reindeer grazing area representatives may apply to the ministries, if the subordinate State authority has not achieved an agreement with the representatives of the reindeer grazing area. This also applies in cases where the ministry holds a position which differs from that of the subordinate agency. It may be appropriate that the Sami Reindeer Herders' Association of Norway (NRL) assists the reindeer grazing area in the consultations if the representatives of the reindeer grazing area concerned so desire. The ministry and the representatives of the reindeer grazing area must make a concrete assessment of the necessity of having meetings between the ministries and the representatives of the reindeer grazing area, or whether their views already are sufficiently clearly stated and reflected in proceedings.

In some cases, it will be natural to consult affected Sami reindeer herding communities in Sweden whenever such communities have reindeer grazing rights in Norway. However, State authorities in Norway are under no obligation to consult with the Sami Parliament in Sweden, which only has authority in Sweden.

With regards to other Sami interests, the point of departure must be that the Sami Parliament represents these interests. Particular situations may however arise where it may be natural to consult with others Sami interest, such as local Sami communities or organizations. This must be assessed specifically in each individual case. Possible such cases may be where there are Sami villages or a Sami minority group with representative spokespersons for the village/group. It may be of particular interest to consult with these in cases when there is reason to believe that there are different points of view in the Sami Parliament and in the affected Sami interests. The Ministry of Labour and Social Inclusion will be able to assist other State entities in assessing when Sami bodies or entities other than the Sami Parliament and the Sami reindeer husbandry industry should be consulted. The individual State authority does not, on its own initiative, need to conduct investigations concerning the existence of particular Sami interests that should be consulted directly.

In some cases, the Sami Parliament and the Sami reindeer husbandry industry may have different approaches or opinions on how matters should be solved. Nothing concrete may be said regarding a greater obligation to reach agreement with the Sami Parliament than the Sami reindeer husbandry industry in such cases. This will have to depend on an overall assessment. Moreover, State authorities should always look for the possibility of finding compromise solutions. It must in each case be emphasized that State authorities

cannot choose to consult only with the group that holds the views which concur the most with those of State authorities.

CHAPTER 4 – THE EFFECT OF THE PROCEDURES FOR CONSULTATIONS

The agreed procedures for consultations represent a political agreement between the Government of Norway and the Sami Parliament. The agreement has been verified by a Royal Decree. If situations should arise in which State authorities and the Sami Parliament/Sami interests disagree on the issue of implementation of the consultation obligation, it will be natural to submit this question to a superior State body, and/or to the Ministry of Labour and Social Inclusion, as this ministry is responsible for the consultation procedures.

If the Sami Parliament/Sami interests are of the view that the consultation obligation under ILO Convention No.169 is violated by the State party, this may be brought to the attention of the International Labour Organization (ILO) in accordance with the applicable ILO rules and procedures concerning reporting and submission of complaints.

CHAPTER 5 – THE RELATIONSHIP TO OTHER REGULATIONS

ILO Convention No. 169 and the Consultation Agreement between the Central Government and the Sami Parliament will not override other national rules, regulations and guidelines. Thus, the Public Administration Act's procedural rules, as well as the authorities' obligation to send out invitations to submit comments (hearing) and establish contact with other private and public participants are still applicable.

Statutory provisions that establish short deadlines may still be of hindrance to appropriate and meaningful consultations. It is therefore vital that the ministries, in the development of new legislation and procedural regulations, take into account that sufficient time for consultations with the Sami Parliament are provided.

As regards the relationship to the Finnmark Act, State authorities must, in cases of land utilization and administration within areas falling under the "Finnmark Estate", interact with the governing board of the Finnmark Estate, in addition to consulting the Sami Parliament and other possible Sami interests. The Finnmark Estate, on the other hand, is not a State body, and is thus not obliged to consult with the Sami Parliament under the agreed procedures for consultations.

As mandated under section 4 of the Finnmark Act, , the Sami Parliament has issued preliminary guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, use of non-cultivated areas (utmark), commercial activity, and social life. In matters concerning changes in the use of uncultivated land, State authorities shall assess the significance of such changes for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. These rules

apply in addition to State authorities' obligation to consult the Sami Parliament under the agreed procedures for consultations.

The Finnmark Estate is an independent legal entity which shall administer the land and natural resources that it owns in compliance with the purpose and other provisions of the Finnmark Act. Thus, the Finnmark Estate is not obliged to consult the Sami Parliament under the agreed procedures for consultations. The Finnmark Estate will safeguard Sami interests in accordance with, among other provisions, the special voting procedures established through section 10 of the Finnmark Act.

Annex 4: Questionnaire: ILO Convention No. 169 – the Finnmark Act (Norway)

- 1) What was your position in the Government/Sami Parliament at the time when the Finnmark Act was prepared by the Government?
- 2) Were you involved in this legislative process?
- 3) If so, how and to what extent were you involved?

The Process (prior to the submission of the proposal to the national parliament)

- 4) What is your view in general about the extent of involvement of the Sami Parliament in the legislative process prior to the government's submission of the proposal to the national parliament, the Storting?
- 5) Did the Government have a formal consultation procedure with the Sami Parliament in this process?
- 6) How were consultations with the Sami Parliament undertaken?
 - a) Mechanisms for consultations?
 - b) Number of consultations?
 - c) With whom?
 - d) Were these consultations recorded?
 - e) Did the Sami Parliament receive any documents which informed it about the content of the proposed Act, as a whole or partially?
 - f) Was the Sami Parliament consulted on the final proposal, before the proposed Finnmark Act was submitted to the national parliament?
- 7) Did the Government consult any other Sami entities or organizations during its preparation of the Finnmark Act?
- 8) What is your view about the government's consultations with the Sami Parliament during its preparation of the Finnmark Act, in particular in light of the provisions in the ILO Convention No. 169 and the International Covenant on Civil and Political Rights (ICCPR)?
- 9) Do you think ILO Convention No. 169, or any other international human rights instrument, had any influence on the process and/ the substantive work?
- 10) Can you recall whether the various relevant recommendations, conclusions and/or observations from the ILO Committee of Experts or the UN Human Rights Committee were the subject for discussions between the Government/ and/or the Sami Parliament in relation to the process, as far as the consultations are concerned?

- 11) Do you know what was the view of the Government/Sami Parliament, concerning the Government's obligations under the ILO Convention No. 169 and ICCPR, to consult the Sami Parliament – with reference to the Finnmark Act?
- 12) What is your overall view about the Finnmark Act process - from the point in time when the government commenced on the substantive drafting to its submission of the proposed Act to the national parliament?
- 13) From the perspective/position of the Government/Sami Parliament, what were the most challenging and difficult issues and questions, with respect to the process?

The Process (at the level of the national parliament, the Storting)

- 14) What is your view in general, about the process and the involvement of the Sami Parliament at the national level, e.g. with the national parliament?
- 15) How would you describe the national parliament's process on consultations?
 - a) Would you describe the process as a dialogue?
 - b) Would you describe the process as effective consultations?
 - c) Would you describe the process as negotiations?
 - d) Any other way describing this process?

Please give reasons to explain your response.

- 16) In your view, was the process at the level of the national parliament of significant importance to the final result?
- 17) What was achieved through the process established by the national parliament?
- 18) What do you believe to be the main reasons for the national parliament to establish a separate process with the Sami Parliament?
- 19) In your view, were there any major differences between how the national parliament consulted the Sami Parliament and what the Government did in this regard?
- 20) The Sami Parliament was given the opportunity to discuss the final proposal prior to the final debate in the national parliament. What is your viewpoint on this?
 - a) As far as you know, has this ever happened before in a legislative process in Norway?
- 21) In your view, does the process at the level of the national parliament carry any constitutional significance?

- 22) In your view, do you believe that this process at the level of the national parliament established any kind of precedence for how, in the future, the national parliament might deal with other matters which are regarded as being of great importance to the Saami/Saami society?
- 23) In your view, did the debate concerning the Finnmark Act have major consequences, positive as well as negative, on national politics at large, and Sami affairs in general?

Procedures for Consultations (between State authorities and the Sami Parliament)

- 24) In 2005, the Central Government and the Sami Parliament agreed on procedures for consultations between state authorities and the Sami Parliament on matters which may affect Saami interests, rights and society as such. Are you aware of this agreement? If so, in your view, is this in any way a result of the debate concerning consultations in the Finnmark Act process?
- 25) What is your view on the agreed procedures for consultations. Are they in accordance to ILO Convention No. 169? Do you have any opinion on this?

The Content of the Finnmark Act (as proposed by the Government compared with the final Act as adopted by the national parliament)

- 26) In your view, does the content of the Finnmark Act, as proposed by the Government, meet all the relevant standards in the ILO Convention No. 169?
- a) If no, please explain why and which standards were not met by the Act.
- 27) In your view, what are the main legal differences between the proposal made by the Government, and the final Act as revised and adopted by the Government?
- 28) In your view, what are the most important differences between the proposal made by the Government and the final Act as adopted by the national parliament, in particular with relation to the ILO Convention No. 169?
- 29) In your view, is the Finnmark Act as adopted by the national parliament in compliance with the ILO Convention No. 169?
- 30) In your view, did the concluding observations and recommendations on Norway's report on the application of Convention No. 169 to the ILO, as made by the ILO Committee of Experts in the spring of 2004, have any impact on the Finnmark Act - both on process and substance?
- 31) Do you have any opinion as to why the national parliament decided to amend the text of the Finnmark Act to better accommodate the position of the Sami Parliament?

- a) In your view, did potential doubts about compliance with the standards of the ILO Convention No. 169 influence the course of this process and the content of the Act?
 - b) Were there any national political issues/concerns that influenced the process and the content of the Act?
 - c) Did the academic debate concerning the Finnmark Act influence the course of the process and the content of the Act?
- 32) In section 3 of the Finnmark Act, it is stated that the Act shall apply with the limitations that follow from ILO Convention No. 169. Do you view this as an incorporation of the ILO Convention into domestic law?
- a) If so, in your view, what is the significance of this?