



**ROYAL NORWEGIAN
MINISTRY OF PETROLEUM AND ENERGY**

The Minister

Special Rapporteur on the rights of indigenous peoples
PALAIS DES NATIONS
1211 GENEVA 10

SWITZERLAND

Your ref

Our ref

Date

20/165-

31. January 2022

Øyfjellet Wind park project

Dear Mr. Cali Tzay,

The Government of the Kingdom of Norway presents its compliments to the Special Rapporteur on the rights of indigenous peoples. The Ministry of Foreign Affairs has asked the Ministry of Petroleum and Energy to respond to your letter of 30 December 2021.

Your letter concerns information you have received concerning alleged human rights violations and abuses purportedly committed in the implementation of the Øyfjellet Wind Park project in the Jillen-Njaarke district in the County of Nordland, Norway. The Norwegian Government understands your letter to the effect that a detailed account of the matters itemised at pp. 4 and 5 should reach your office within 60 days, i.e. by 28 February 2022. Please be assured that your office will receive a detailed reply in due course that is intended to alleviate your initial concerns.

As an urgent motion, the Norwegian Government nonetheless deems it crucial to submit a preliminary response. The Government notes that the Special Rapporteur intends to publicly express his concerns in this case prior to receiving any response to the questions posed in the letter of 30 December 2021. This builds on the premise that you have already found the information in your possession "sufficiently reliable" to warrant a public statement at this time. The Government further notes that the Special Rapporteur's communication (and possible public statement) intervenes in pending legal proceedings before Norwegian courts.

The Norwegian Government is not in a position to know the sources upon which the Special Rapporteur has based his restatement of the case and prima facie assumptions. However, the Government has objections to the statement of facts as presented in your communication

and wishes to preliminarily point out some of the Government's concerns, which will be expanded upon within the time limit indicated in your letter.

The Government respectfully points out the following:

- Norway is a signatory State party to all treaties referred to in the annex to your communication, and all Norwegian authorities, including domestic courts, are bound to have regard to the legal obligations flowing from these treaties.

- The Norwegian Water Resources and Energy Directorate (NVE) held consultations in good faith with the reindeer herder district and the Sámediggi (the Sami Parliament) before both the license to build the Øyfjellet wind power plant and the environmental, transport and construction plan (MTA plan) were granted Øyfjellet Wind AS. The Ministry also held consultations with both the district and the Sámediggi during the appeal on the license in 2016 and the MTA-plan in 2021. The Sámediggi had no objections to the concession to Øyfjellet wind power plant, but it emphasised the importance of measures to secure access to the affected winter pasture areas. The Ministry will provide documentation of such good faith consultations in the Government's full reply.

- The complaints from the Sami reindeer herders were thoroughly treated in both the Oslo District Court and the Borgarting High Court in their assessment of their claim for a temporary injunction. In both instances the court ruled against the Sami reindeer herders and did not find any basis in facts or law to temporarily halt the construction of the wind power plant. The High Court decision was not appealed to the Norwegian Supreme Court. In this regard, it is worth noting that the Sami reindeer herders did not bring their case before the court until several years after the licenses were granted, after the construction of the wind power plant had started.

- The claim of the Sami reindeer herders in the temporary injunction procedure from July 2020 was that the construction of the wind power plant had to be halted until the courts had finalised the consideration of a claim that the concession be held invalid. However, the Sami reindeer herders have as of yet not initiated any legal proceedings against the Government, as indicated. They have instead challenged the validity of the concession in the expropriation process between the reindeer herders and the licensee, and this set of proceedings is presently underway and far from completed. In the view of the Norwegian Government, it would be unfortunate if the Special Rapporteur were to publicly state his concern in an ongoing legal process before domestic courts.

- The approved MTA plan states that if the Sami reindeer herders desire it, measures can be made to secure a traditional migration of the reindeer herd through the wind power plant. The companies have proposed meetings to discuss different measures to comply with the

terms in the MTA plan. The Sami reindeer herders have so far rejected every invitation from the companies to discuss such permanent mitigation measures.

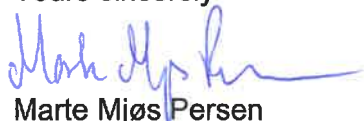
- Sami reindeer husbandry takes place in approximately 40 percent of the Norwegian land area. Section 22 of The Reindeer Husbandry Act does require that reindeer should be able to migrate freely and unhindered and that migration routes must not be closed. This does not mean that migration routes may not be subject to reorganisation, which is stated in Section 22.

- The Ministry has been informed that the reindeer herders and the licensee have made an agreement which states that the reindeer herders shall not use the area where the wind power plant is located this year. In addition to this agreement, the licensee has also offered the reindeer herders a significant compensation to support the reindeer herders in the near future.

As stated above, the Norwegian Government will furnish the Special Rapporteur with detailed replies to the requests itemised in his communication of 30 December 2021, and the Government's response will be accompanied by translations, where appropriate.

In order for the Government to discern what information and documentation would be needed to alleviate the Special Rapporteur's concerns about this case, it would be helpful to know which material the Special Rapporteur has based his preliminary assessment on. We would be grateful for a fast response in this regard.

Yours sincerely



Marte Mjøs Persen