



## PERMANENT MISSION OF NORWAY

NV. 33/2022

The Permanent Mission of Norway to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the Special Rapporteur on the rights of indigenous peoples, and with reference to the Special Rapporteur's letter dated 30. December 2021 regarding Øyfjellet wind park project, has the honour to transmit the reply from the Norwegian Minister of Petroleum and Energy, Ms Marte Mjøs Persen, dated 1 March 2022. The letter comes in addition to the preliminary answer from Norwegian authorities dated 31. January, forwarded by the Permanent Mission of Norway to the Office of the Special Rapporteur on 3. February 2022.

The Permanent Mission of Norway to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the Special Rapporteur on the rights of indigenous peoples the assurances of its highest consideration.

Geneva, 2 March 2022



The Office of the Special Rapporteur on the rights of indigenous peoples

Geneva



ROYAL NORWEGIAN  
MINISTRY OF PETROLEUM AND ENERGY

*The Minister*

Deres ref

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1. March 2022

Dear Mr. Cali Tzay

The Government of the Kingdom of Norway presents its compliments to the Special Rapporteur on the rights of indigenous peoples. With reference to our preliminary response of 31 January 2022, the Ministry of Petroleum and Energy wishes to alleviate the concerns expressed in the letter from the Special Rapporteur of 30 December 2021.

The Ministry wants to inform the Special Rapporteur that after the Ministry's preliminary response of 31 January 2022, the reindeer district and Øyfjellet Wind have entered an agreement applicable to the remaining duration of the construction period. The agreement extends a similar agreement from December 2020. According to the agreement, Øyfjellet Wind covers the costs related to migration to and from the winter pasture zone 5 during winter and spring 2021-2022.

**1. Additional information and comments regarding the allegations**

Regarding the allegations presented in the letter from the Special Rapporteur, the Ministry of Petroleum and Energy (OED) refers to the statements provided in the preliminary response which should be considered in conjunction with the more detailed statements of this letter. OED is the appellate body related to decisions made by the Norwegian Water Resources and Energy Directorate (NVE). When an administrative decision made by the NVE is contested, it may be appealed according to the Public Administration Act to the OED, which is the immediate parent body of the NVE. This procedure provides security under the law and guarantees a new hearing where the views of the appellant shall be considered. The decision of the appellate body is final and no appeal may be brought against a decision of the appellate body. It is correct that there were no appeal options for OED's decision, but as explained above, this does not mean that Jillen-Njaarke never had the possibility to appeal

the administrative decision of the license. The decision was considered by two administrative bodies before the Sami reindeer herders decided to bring the case before the court.

The Sami reindeer herders assessed a claim for an interim injunction to halt the constructions of the wind power plant in order to later bring the validity of the license before the court. As stated in our preliminary response of 31 January 2022, the administrative decisions were tried before both the Oslo District Court and the Borgarting High Court, which both ruled in favour of the companies. Please find attached the translated court decisions. The High Court decision was not appealed to the Supreme Court, and the Sami reindeer herders have so far not initiated any legal proceedings against the Government, as they indicated in the temporary injunction procedure.

The Government is well aware of research concerning reindeer and the possible avoidance of grazing areas. We wish to underline that the case in matter is not about avoidance of grazing areas, but of securing pathways and migration routes for the reindeer to enter the grazing areas. The impact assessments for the Øyfjellet project have not pointed out the project area as crucial pastures. The Sami reindeer districts have never previously claimed that Øyfjellet is a crucial and important grazing area, neither before the courts and nor before the administrative bodies that have considered the case. The Sami Parliament has not made such claims to the NVE or the OED.

## **2. Documentation on consultation processes undertaken with the Sami indigenous community prior to the approval of the construction of the Øyfjellet Wind Park**

Both the NVE and OED have held consultations in accordance with both national and international law with the Sami community regarding the license of the Øyfjellet wind power plant. The NVE held consultation meetings with the Sami reindeer herders on 6 November 2011 and 24 June 2014. NVE also held consultation meetings with the Sami Parliament the 26 June 2014. The companies were granted the license on 13 November 2014, but was later appealed by the Sami reindeer district.

In conjunction with OED's consideration of the Sami reindeer herders appeal, the OED inspected the site and held an open meeting on 24 May 2016, held consultation meetings with the Sami reindeer herders 25 May 2016 and with the Sami Parliament 25 October 2016.

The NVE held another consultation meeting with the Sami reindeer herders 27 August 2019, before approving the MTA-plan. This decision was also appealed to the OED. OED held consultation meetings with the Sami reindeer herders 8 January 2021 regarding the MTA-plan with subsequent correspondence by e-mail during February-March 2021. OED also held consultation meetings with the Sami Parliament 12 May 2021. OED's political leadership met with the Sami Parliament 8 June 2021.

In addition to the consultation process described above, prior to and during the approval of the construction of the Øyfjellet Wind Park, the OED has corresponded with both the Sami

reindeer herders and Øyfjellet Wind on several occasions from November 2021 to January 2022. On 2 December 2021 OED met with the Sami reindeer herders of Jillen-Njaarke. The State Secretary Amund Vik of OED met with Maja Kristine Jåma, Member of the Governing Council of the Sami Parliament, to discuss the Øyfjellet Wind project, on 18 January 2022.

As stated in our preliminary response of 31 January 2022, the companies have proposed meetings to discuss and possibly reach an agreement concerning different temporary and permanent measures to comply with the terms in the MTA-plan. The Sami reindeer herders have so far rejected every invitation from the companies. OED has encouraged the Sami reindeer herders to accept these invitations in order to reach a solution, but the Sami reindeer herders have not met the encouragement.

**3. Information on remedies and just, fair and equitable compensation available for the Sami indigenous peoples, for the lands, territories and resources which have been used or damaged without their free, prior and informed consent**

If a company is given a license that conflicts with existing rights of other groups, such as the Sami indigenous peoples, the company must first try to make an arrangement with the conflicting party. If an arrangement is not made, the company will need a license for expropriation of the existing rights of the other group/parties. According to Norwegian law, any loss suffered shall be redeemed completely through expropriation compensation.

The Government is competent to grant a private party a license for expropriation. The measure of compensation for the expropriation is settled by the courts if an agreement is not reached. The valuation case for the compensation for the Sami reindeer herders rights in Øyfjellet is set for Helgeland District Court in May 2022. The legal costs are covered by the expropriator, meaning that the Sami reindeer herders legal costs in this case are covered by the companies.

**4. Information as to whether the Government of Norway envisages meeting with the local population of Jillen-Njaarke reindeer herding district**

Please see the above described consultation process which illustrates OEDs willingness to communicate with the Sami reindeer herders. The Ministry of Petroleum and Energy is open to further meetings and discussions with the herders.

**5. Official measures taken to protect against human rights abuses by business enterprises within the Norwegian territory and/or jurisdiction, and ensuring that business enterprises conduct effective human rights due diligence etc.**

Section 108 of the Norwegian Constitution and the Sami Act form the basis for the Government's goal of taking steps to ensure that the Sami people can maintain and develop their language, culture and way of life. As stated in the preliminary response 31 January 2022, Norway is a signatory State to all treaties referred to in the annex to your communication. This includes the obligations pursuant to ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and The International Covenant on Civil and Political Rights Section 27 which states that minorities, such as the Sami

indigenous people, shall not be denied the right to enjoy their culture. By the Human Rights Act section 2, the Covenant shall have the force of Norwegian law.

Every industrial project that includes use of land requires some sort of Governmental approval. In the process leading to such approvals, the relevant authority is committed to consider the international and national legal boundaries safeguarding the rights of indigenous people and other minorities. The procedure according to Norwegian law is that the business enterprise which wishes to execute an industrial project must investigate how the project will influence affected minorities and document this along with the application of the project. The relevant authorities, in first instance the NVE, will then consider the findings of such investigations against the international and legal boundaries safeguarding the rights of affected indigenous people and other minorities. The relevant authorities may, if needed, set terms for the licensee which are meant to secure the interest of affected groups.

The purpose of the procedural acts is to secure compliance of international obligations and prevent violations of given rights. In regard to the case of Øyfjellet Wind Park, the authorities have followed these procedures, terms for the licensee have been set in the MTA-plan, and measures have been made to secure the reindeer herders access to the relevant winter herding area. See the process described above in paragraph 2.

The Transparency Act of 2021 shall promote business enterprises' respect for fundamental human rights. Fundamental human rights means the internationally recognised human rights that are enshrined, among other places, in the International Covenant on Civil and Political Rights of 1966 and ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries. According to Section 4 of the Act, the enterprises shall carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises. The Act will enter into force 1 July 2022.

## **6. Independent monitoring and complaints mechanisms**

The Norwegian authorities are not involved with the business enterprise and companies in the development of the Øyfjellet Wind park. The Norwegian authorities are independent controllers for the project in virtue of being the licence authority. The licence is granted by the NVE whereas the OED is the appellate body of decisions made by the NVE. The Sami reindeer herders may submit a complaint to the administrative authorities if they claim that the companies are violating their rights. Other independent monitoring and complaints mechanisms are the Parliamentary Ombud for Scrutiny of the Public Administration as well as the ordinary courts.

## **7. The affected Sami indigenous communities access to effective, adequate and timely remedies for business related human rights abuses**

As stated under paragraph 6, the Norwegian authorities are independent monitors of industrial projects which may affect indigenous and other minority groups. If such groups claim to be affected by business related human rights abuses, they may file a complaint to

the relevant authority. If the affected party does not accept the final decision of the supreme administrative instance, it may contest the validity of the licence for the courts.

The Sami reindeer herders could have initiated legal proceedings against the Government by filing a lawsuit for the validity of the license, as notified in the claim for an interim injunction, but the Sami reindeer herders have chosen to wait for the expropriation process and after the construction of the wind park.

In matters of expropriation, the Government is not a party of case before the courts. The primary matter in these cases is to determine the valuation for the expropriation compensation. However, the defendant may prove the validity of the licence in court. In valuation cases, the legal costs are covered by the party granted the expropriation licence. This is the case for Helgeland District Court in May, where the Sami reindeer herders of Jillen-Njaarke have claimed that the license of the Øyfjellet Wind Park project is invalid.

**8. Information on the status of the license litigation process before the Court of Appeal and the decision on the environmental, transport and construction plan (MTA plan) before the OED.**

As mentioned above in paragraph 7, the Sami reindeer herders could have initiated legal proceedings against the Government by filing a suit for the validity of the license, as notified in the claim for an interim injunction, but chose to wait for the expropriation process and after the construction on the wind park.

The claim for interim injunction was not found in favour for the Sami reindeer herders and the verdict of the Borgarting Court of Appeal is final and binding. In connection with the claim for interim injunction before the Oslo District Court and the Borgarting Court of Appeal, the Sami reindeer herders stated that they would file a separate lawsuit over the validity of the licencing decision for the development. Such a lawsuit is yet to be filed as of February 2022. The Special Rapporteur can read the translated decisions of the courts, as attached to this letter.

The MTA-plan was confirmed by the Ministry 21 September 2021, see paragraph 6 as regarding the consultation process. The Sami reindeer herders have not taken any legal action against the Ministry's decision to approve the MTA-plan.

**9. Detailed information on any measures adopted by the Government to ensure compliance with international human rights obligations; and with the order of the Norwegian Public Administration Act § 32 (a), as well with the order of Section 22 of the 2007 Reindeer Husbandry Act.**

As stated in our preliminary response, Norway is a signatory State party to all treaties referred to in the annex to your communications, and all Norwegian authorities, including domestic courts, are bound to have regard to the legal obligations flowing from these treaties. All relevant human rights obligations, including those incorporated to Norwegian law

through the Human Rights Act Section 2, are considered in all matters where Sami indigenous rights may be affected.

Section 22 of the 2007 Reindeer Husbandry act prohibits the closure of migration routes. The question whether a migration route is closed or not, is not decided by the licensing process of Øyfjellet Wind Park. Regarding the compliance with the order of Section 22 in the case of Øyfjellet, The Government refers to the verdict of Oslo District Court and the Borgarting High Court's verdict.

Yours sincerely



Marte Mjøs Persen