

United Nations Permanent Forum on Indigenous Issues (UNPFII)

Agenda item 4

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Mr. Tuomas Aslak Juuso

2nd Vice-president

Sámi Parliament of Finland

Statement of the Finnish Sámi Parliament

Mr. / Madam Chairperson

Let me first congratulate you on your election as chairperson for the UNPFII and all other expert members on your work.

I am speaking in my capacity of the Second vice-President on behalf of the Sámi Parliament in Finland. We would like to draw your attention to the situation of the Sámi People in Finland and to point out the matters deeply concerning us.

The status and rights of the Sámi as an indigenous people in Finland have in multiple instances been recognized and protected by national legislation and the international law through the United Nations and regional human rights mechanisms.

Mr. / Madam Chairperson, The Sámi Parliament in Finland would like to express our deepest concern regarding the current situation and development regarding the Sámi people in Finland. In the UNPFII, Finland has traditionally been supportive of indigenous peoples and has traditionally stood shoulder-to-shoulder with other friendly states. Nevertheless, our culture and our survival as a distinct and indigenous people is in danger. We, the Sámi in Finland, are hopeful that Finland is willing to take a step forward and become as one of the pioneers for the human rights, in particular with the rights of the indigenous people.

In addition, Finland is going to be among the first countries under review in the third round of the Universal Periodic Review and it has launched its candidacy for membership of the United Nations

Human Rights Council for the 2022-2024 term. Despite all of the above, the question of the authority of the elected Sámi Parliament in Finland has remained controversial, and hence also the enjoyment of the right of self-determination by the Sámi and rights to their lands. The Sámi Parliament in Finland hopes that this statement will help the government of Finland to have new ideas for further enhancing the realization of the Sámi Peoples' human rights.

The Sámi Parliament in Finland would like to invite everybody interested to explore our full Statement that includes, as an annex, a **Report on the current situation of the Sámi People in Finland**. The report highlights our concerns and can be very helpful with identifying some of the greatest challenges we are currently facing in Finland. We would like to invite especially the UN member states and the UN human right mechanisms and their members to study our report as it gives a clarifying road map with the situation. In addition, this report can be helpful for the UPR process that Finland enters in the near future. In our report, reference is made to the problems faced by the Sámi in Finland and it touches upon the following topics:

1. The bill for the amendment of the Act on the Sámi Parliament
2. The failure to ratify the ILO Convention No. 169
3. The new act on Metsähallitus (the Forest and Park Enterprise).
4. The elections of the Sámi Parliament in Finland in 2015
5. The Nordic Sámi Convention process

Furthermore, we would like to point out one of our major concerns; even though Finland has received several recommendations and instructions from various human right mechanisms and actors on the Sámi issues it seems to face challenges with taking account and in implementing those recommendations. Recently, the United Nations Special Rapporteur on the rights of indigenous peoples and the High Commissioner for Human Rights instructed Finland to consult with the Sámi about the legislation concerning them, and the Committee for the Elimination of Racial Discrimination (CERD) recommended the State party accord due weight to the rights of the Sámi people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation. Nevertheless, the recommendations were not taken into account.

The Sámi Parliament in Finland would like to encourage the government of Finland to start to pay more attention to the recommendations. We further encourage the Government of Finland to start to implement the UNDRIP and the outcome document of the World Conference on Indigenous Peo-

ples. In our view, the declaration standards are not currently met in Finland, even though they are set up as minimum standards in the Declaration itself. The Sámi Parliament in Finland strongly believes in the United Nations human right framework and calls for political willingness from the Government of Finland to start to implement and respect Sámi Peoples rights as Indigenous Peoples as stated in the UNDRIP.

We thank for the opportunity to speak, thank you Mr. / Madam Chairperson

Annex :

Report on the current situation of the Sámi People in Finland

Introduction

The Sámi Parliament in Finland would like to communicate to the national and international community the following:

The Sámi are the only indigenous people in Finland and the European Union. The status of the Sámi was written into the Constitution of Finland¹ in 1995 and the Sámi have constitutional self-government in the Sámi Homeland in the spheres of language and culture since 1996. This self-government is managed by the Sámi Parliament. There are about 10 000 Sámi in Finland, more than 60 per cent of them living today outside the Sámi Homeland. The total Sámi population is estimated to be over 75,000 living across four countries: Norway, Finland, Sweden and Russia, with the majority living in Norway. Traditional Sámi livelihoods are reindeer herding, fishing, handicrafts, hunting and gathering. The Sámis see themselves as a distinct people with its own culture, language and traditions.

The Sámi Parliament² (Sámediggi) is the self-government body of the Sámi and the functions of the Parliament are regulated through *the Act on the Sámi Parliament*. Its main purpose is to plan and implement the cultural self-government guaranteed to the Sámi as an indigenous people by the Constitution. The Sámi Parliament is the supreme political body of the Sámi in Finland. It is an independent legal entity of public law and it is neither a state authority nor part of the public administration due to its self-governmental nature. The Sámi Parliament functions under the administrative sector of the Ministry of Justice. The Sámi Parliament represents the Sámi in national and international connections and deals with the issues concerning Sámi language, culture, and matters relating to their status as an indigenous people. The Sámi Parliament can make initiatives, proposals and statements to the authorities. The 21 members, and 4 deputies, are elected among the Sámi every four years. Due to its representative nature, the Sámi Parliament expresses an official view of the Sámi in Finland on the issues concerning them.

¹ The Constitution of Finland 11 June 1999 (731/1999, amendments up to 1112 / 2011 included)
[http://www.finlex.fi/en/laki/kaannokset/1999/en19990731?search\[type\]=pika&search\[pika\]=constitution](http://www.finlex.fi/en/laki/kaannokset/1999/en19990731?search[type]=pika&search[pika]=constitution)

² See more at www.samediggi.fi

The Sámi Parliament of Finland expresses its deepest concern at the land rights situation of Sámi People in Finland and lack of the right to self-determination. For Sámi People, securing these rights over their land is fundamental to their self-determination and extremely important to them to be able to continue to exist as an indigenous and distinct people. Land rights and collective self-determination are umbrella terms and that covers central concerns of indigenous peoples, from the Indigenous peoples right to determine their own identity or membership to control over natural resources. Even though Finland has received a notable amount of recommendations from the United Nations human rights mechanisms and regional human rights institutions to resolve the land right issues and to strengthen the Sámi People's right to self-determination, these questions remain unresolved. It is also notable that Finland has pledged to ratify the ILO Convention No. 169 several times, but has not yet done so. Furthermore, the current budget of the Parliament is not enough to cover the expenses, thus the Sámi Parliament struggles to find the resources needed to deal with the issues concerning Sámi language, culture, and other matters relating to their status as an indigenous people.

Recent legislation projects concerning the Sámi

The Sámi Parliament in Finland would like to point out that its greatest concern and effort during the recent years have been the following significant legislation projects: the new Act on the Sámi Parliament³, the ratification of the ILO Convention No. 169⁴ and the new act on Metsähallitus⁵ (the Forest and Park Enterprise). These three legislation projects would have advanced the most essential legislation concerning the rights of the Sámi People in Finland if they would have been approved with the free, prior and informed consent of The Sámi Parliament in Finland.

Under section 17(3) of the Finnish Constitution (731/1999), the Sámi, as an indigenous people, have the right to maintain and develop their own language and culture. Under section 121(4) of the Constitution, in their native region, the Sámi have linguistic and cultural self-government, as provided by the Act. The provisions of the Constitution form the basis for the Sámi cultural autonomy. More specifically, the cultural autonomy is regulated through *the Act on the Sámi Parliament* (974/1995)⁶, which came into force in 1996. The Act on the Sámi Parliament contains provisions on the Sámi Parliament elections as well as the Parliament's composition and functions. The Act also contains the obligation of the authorities to negotiate with the Sámi Parliament on the matters concerning them. Although some provisions have been revised after the Act has come into force, it needs to be reformed, for instance the regulations concerning the obligation of negotiation and the elections.

In addition, regardless the traditional livelihoods of the Sámi are considered to constitute an essential part of Sámi culture, which is protected by the Constitution, there is no legislative provision enshrining the rights of the Sámi to land, waters and natural resources; in particular, there is no special provision for exercising these rights. Furthermore, as mentioned before, Finland has received a number of recommendation from international and regional human rights treaties' monitoring bodies and to ratify the ILO Convention No. 169, as well as to solve the Sámi homeland land rights issues. The State manages currently 90 percent of the land in the Sámi homeland and regulates the land use through The Act on Metsähallitus (the Forest and Park Enterprise); therefore, these Acts together form the most fundamental law in relationship to the Sámi culture and livelihoods.

³ [http://www.finlex.fi/fi/esitykset/he/2014/20140167?search\[type\]=pika&search\[pika\]=167%2F2014](http://www.finlex.fi/fi/esitykset/he/2014/20140167?search[type]=pika&search[pika]=167%2F2014) (in Finnish)

⁴ <http://www.finlex.fi/fi/esitykset/he/2014/20140264> (in Finnish)

⁵ [http://www.finlex.fi/fi/esitykset/he/2015/20150132?search\[type\]=pika&search\[pika\]=Mets%C3%A4hallituksesta](http://www.finlex.fi/fi/esitykset/he/2015/20150132?search[type]=pika&search[pika]=Mets%C3%A4hallituksesta) (in Finnish)

⁶ <http://www.finlex.fi/fi/laki/ajantasa/1995/19950974> (in Finnish)

In the fall 2014, the Government of Finland submitted to the Parliament the government bill for the amendment of the Act on the Sámi Parliament (government bill 167/2014) and the government bill for the ratification of the ILO convention no. 169 (government bill 264/2014). The Sámi Parliament had done a lot of work with preparation and negotiations with the state of Finland in order to draft the content for the new Act on the Sámi parliament and with the measures to be taken in national legislation in order to fulfill the requirements of the ILO 169 –Convention. The final draft of the act on the Sámi Parliament also contained some elements which would have brought the national legislation closer to some of the main principles expressed in the international law on recent years concerning the rights of indigenous peoples. For example, the “duty to co-operate” with the indigenous people in matters which may have some affections to indigenous peoples lands and rights was implemented in the draft of the new act on the Sámi Parliament, and it would have brought Finnish legislation closer to commonly acknowledged principle of FPIC (free prior informed consent).

Unfortunately, neither the bill for the amendment of the Act on the Sámi Parliament nor the bill for the ratification of the ILO Convention No. 169 became approved by the Parliament of Finland. The Parliament didn't have the political will and courage to promote the rights of the Sámi. Currently, the ratification process of the ILO 169 is pending and the government has stated that the process is active the year of 2016 and a comparative research to clarify the situation is conducted. Furthermore, the amendment of the Act on the Sámi Parliament will be restarted in 2016.

In addition, the Act on Metsähallitus, at the final stage of the consultation in 2014, included valuable safeguards to the Sámi People, which had been negotiated with the Sámi Parliament respecting the Free, Prior and Informed Consent. These Safeguards included so *called prohibition of cause deterioration and erosion of the Sámi culture*, and would had stood as an important step towards recognizing the Sámi land rights and the rights of Indigenous people as determined by international law. It would had been binding to Finland and honored the requests of the Sámi.

However, when the Act was unveiled in draft form in December 2015, it no longer contained these essential safeguards for the Sámi People. The whole part concerning these safeguards had been omitted. Furthermore, according to this new, proposed Forestry Act and its provisions the management in the Sámi Homeland will change significantly, increasing the pressure of various, harmful industrial land uses in the Sámi homeland. This would happen without the consent of the Sámi people or the Sámi Parliament. The Act was finally approved by the Parliament of Finland in March 2016 and does not include the safeguards.

The Sámi Parliament, the Constitutional Law Committee and many other civil society stakeholders, including all of the Sámi Reindeer Herding cooperatives, had demanded to include these important safeguards for the Sámi People to the draft since it was presented, but their proposals and opinions have not been considered at all and have been dismissed during the drafting of the new bill. This has constituted a breach of the Sámi People's rights of self-determination as guaranteed both in domestic law, including the Constitution of Finland and in the international law. In addition, both The United Nations Special Rapporteur on the rights of indigenous peoples and the High Commissioner for Human Rights instructed Finland to further consult with the Sámi and to include these safeguards to the bill. Nevertheless, their recommendations were not taken into account and the Government introduced the bill without further consultations with the Sámi.

Anyhow, it is worth mentioning that some of these safeguards are in use. The Sámi Parliament has succeeded to find a common solution in negotiations with the state of Finland to include important paragraphs into specific legal acts in order to prevent the area of the Sámi homeland to be used for

purposes that would have crucial negative impacts on the Sámi culture. *The prohibition of cause deterioration and erosion of the Sámi culture* is laid down in three different Acts: The Mining Act (2011), the Water Act (2011) and the Environmental Protection Act (2014). However, it is also notable that up to the present the state of Finland has not created an appropriate mechanism for the impact assessment, thus a system to be able to define the actual situations when the form of land use or use of natural resources in a single case will cause erosion of the Sámi culture and should be prohibited according to the law. Therefore, regardless of the paragraph which prohibits an activity which may have crucial negative impacts to the Sámi culture, there is no appropriate way to implement the provisions thus the state of Finland should create it immediately.

Elections of 2015

In addition, the legislation projects had an important role for the survival of the Sámi people as a distinct people through the right to self-determination and not to be assimilated. The elections of the Sámi Parliament are held every four years, and to be able to vote the person needs to be registered as a Sámi in the Sámi Parliament's list of voters. Recently, a large group of individuals have been trying to be registered as a voter, but in many cases the Electoral Board of the Sámi Parliament, chosen by the Sámi Parliament Plenum among the Sámis themselves, came to the conclusion that they did not meet the criteria and did not consider these individuals eligible. There have been several organized campaigns by non-Sámi inhabitants of the northern parts of Finland to register themselves as voters, with an objective to influence the composition and positions of the Sámi Parliament and for the hypothetical benefits to be recognized as indigenous and Sámi if Finland would ratify the ILO Convention No. 169.

One of the provisions of the Act on the Sámi Parliament includes a so-called definition on who is to be regarded as a Sámi for the purposes of being allowed to vote in the elections of the Sámi Parliament. The provision reads as follows:

Section 3 — Definition of a Sámi

For the purpose of this Act, a Sámi means a person who considers himself a Sámi, provided:

- (1) That he himself or at least one of his parents or grandparents has learnt Sámi as his first language;
- (2) That he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or
- (3) That at least one of his parents has or could have been registered as an elector for an election to the Sámi Delegation or the Sámi Parliament.

This provision has remained a subject of constant controversy between the state of Finland and the indigenous Sámi people, in particular the subsection 2. According to the Sámi Parliament, the current criteria is not adequate and as mentioned before there is an urgent need to revise the Sámi Parliament Act so that the uncertainty created through the judicial interpretation of the so-called Sámi definition could be removed. In 2011, the Supreme Administrative Court decided to grant voting rights to 4 persons not regarded as Sámi by the Sámi themselves. In the elections of 2015, the Court granted voting rights to 93 individuals that had not been considered eligible by the self-governing competent organs of the Sámi Parliament. This had an effect upon the outcome of the elections.

In 2011, the Supreme Administrative Court adopted a number of controversial decisions that gave priority to an individual's wish to be registered as a voter in Sámi Parliament elections, over objective criteria related to actual active membership in the group or the group's recognition of the person as a member of the Sámi people. The Court referred to the 2009 Concluding Observations by the Committee for the Elimination of Racial Discrimination (CERD) to justify taking into its own

hands the “overall consideration” of a person’s membership in the Sámi people, rather than exercising deference by defining the role of a judicial institution as being related merely to affording protection against eventual cases of discrimination or arbitrariness. These rulings were widely criticised, and in 2012 the CERD Committee clarified its own position by siding with that critique. The CERD Committee pronounced in its Concluding Observations (CERD/C/FIN/CO/20-22) as follows:

12. While noting that the Supreme Administrative Court relied on the Committee’s prior concluding observations in its decision of 26 September 2011 defining who is a “Sámi” entitled to vote for Members of the Sámi Parliament, the Committee is concerned that the definition adopted by the Court gives insufficient weight to the Sámi people’s rights, recognized in the United Nations Declaration on the Rights of Indigenous Peoples, to self-determination (art. 3), in particular their right to determine their own identity or membership in accordance with their customs and traditions (art. 33), as well as their right not to be subjected to forced assimilation or destruction of their culture (art. 8) (art. 5 of the Convention).

The Committee recommends that, in defining who is eligible to vote for Members of the Sámi Parliament, the State party accord due weight to the rights of the Sámi people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation.

Anyhow, the Sámi Parliament Act provides for a right of judicial appeal, so that the highest court in administrative matters, the Supreme Administrative Court, becomes the ultimate arbiter. The Supreme Administrative Court is a judicial organ of the Finnish state with no Sámi judge. Therefore, a completely Finnish institution decides in the end the membership of the Sámi people. The rulings in the 2011 and 2015 of the Supreme Administrative Court are in contradiction with the Sámi Parliament Act (974/1995), with the 1999 Constitution of Finland, and with the core human rights treaties Finland has ratified and the United Nations Declaration on the Rights of Indigenous Peoples. In a majority of those decisions the person did not meet any of the objective criteria spelled out in the provision. Resorting to an operation the Court called as “overall consideration” and by stating that a person’s own opinion about considering oneself a Sámi was “strong”, the Court ignored the explicit requirement of meeting at least one of the objective criteria and compelled the Electoral Board to allow 93 individuals to vote, even in the absence of a single objective criterion.

Moreover, the inclusion of 93 persons in the voters’ register has affected the composition of the new Sámi Parliament by moving its political center of gravity away from policies that emphasize the indigenous distinctiveness of the Sámi people and of their culture and a quest for Sámi self-determination in respect of the Finnish state and across national borders. The composition of the new Sámi Parliament is being affected by the votes of the court-approved voters. It is apparent that the Act, the existing regulations in order to register in the electoral roll of the Sámi Parliament and stand as a candidate in the elections and the conduction of the election are not sufficient, and need to be revised.

Even within the Sámi Homeland the Sámi already constitute a minority, despite of being the only recognized indigenous people in Finland. In the next elections in four years’ time, hundreds of the relative of these 93 persons are likely to seek registration as voters, this constituting a new step in the forced assimilation of the Sámi into the mainstream population through the gradual takeover of the Sámi Parliament by members of the dominant (Finnish) population resident in the northernmost municipalities of Finland. According a research⁷ conducted in 2013, if the persons are considered

⁷ Matala-Aho, Tapio, 2013

eligible only by the Section 3 (2) there could be up to 512 000 individuals seeking registration as new voters.

the Nordic Sámi Convention

Finally, the Sámi Parliament in Finland would like to remind that the negotiations in order to finish the preparation of the Nordic Sámi Convention have been continuing but the progress has been extremely slow. The Sámi People are regarded as one people divided between four countries thus the Sámi people regard themselves as Sámi, despite their country of origin. The three Nordic countries, Finland, Norway and Sweden, are currently negotiating to reach an agreement of the content for the Nordic Sámi Convention, and the Sámi Parliaments are a crucial part of the negotiation process. The Sámi Parliament in Finland expresses its willingness to reach a content that satisfy the negotiating parties and hopes that full agreement can be reached, particularly on the right to self-determination and the rights to lands, territories and natural resources, and for identifying harmonized rules in order to register in the electoral roll of the Sámi Parliaments.

Inari, May 11th 2016

Tiina Sanila-Aikio

President

Inka Saara Arttijeff

Adviser to the president

Board of the Sámi Parliament decided upon the report on May 9th 2016.