

## TO THE HUMAN RIGHTS COMMITTEE

Submission of the Saami Council for the preparation and adoption of the List of Issues to Reporting (LoIPR) for Finland by the Human Rights Committee in March 2019, during its 125<sup>th</sup> Session.

### A. Briefly about the Sami people and the Saami Council

1. Traditionally, the Sami people enjoyed a nomadic lifestyle, with hunting, fishing, and gathering as main livelihoods. Later, many Sami communities took up semi-nomadic reindeer herding, while other complimented their traditional livelihoods with farming. Yet others maintained and developed fjord and coastal fishing as well as freshwater fishing as their main livelihood or in combination with small farming. A large part of the Sami people lives and exercises their culture in the fjords and coasts of what is today Norway.

2. Reindeer herding is considered the most distinctive and characteristic among the Sami traditional livelihoods, and the most cardinal among the Sami cultural denominators. However, fjord and coastal fishing and salmon fishing in the rivers, often in combination with small farms, are equally important livelihoods for the Sami people in Norway.

3. The Sami people has inhabited its traditional territory, Sápmi – covering what today constitutes the northern areas of Finland, Norway, Sweden, as well as the Kola Peninsula in the Russian Federation – since time immemorial.



4. The Sami have established their society in these areas well before present day nation states drew their borders across the Sami territory. The Sami maintain their own society and culture, including language, traditions and livelihoods, distinct from those of the Fenno-Scandinavian and Russian peoples. The Sami people are hence indigenous to its traditional territory.

5. The Saami Council, established in 1953, is a non-governmental with consultative status with the Economic and Social Council (ECOSOC) and the International Labour Organization (ILO). It is also a Permanent Participant to the Arctic Council (AC). The Saami Council is a voluntary and independent cooperation organization for the main Sami organizations in Finland, Norway, Russia and Sweden.

6. The primary objective of the Saami Council is to safeguard the Sami interests as a people, strengthen the Sami solidarity across national borders as one people and indigenous people, and work to ensure that the Sami also in future are recognized as one people and indigenous people, whose cultural, political, economic, civil, social and spiritual rights shall be ensured through each country's laws, agreements between the States concerned and the Sami representative bodies, and the international law in general.

7. The Saami Council is also working internationally to promote and ensure the rights and interests of the Sami and other indigenous peoples. It has participated proactively in the negotiations on international human rights instruments, such as the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO169) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

8. The resources of the Human Rights Unit of the Saami Council are currently limited to only half a position, as the funding from the Nordic States has constantly been reduced the recent years.



## B. Article 1 and the Sami people's right to self-determination and traditional territories

9. The Saami Council is deeply concerned over the lack of progress regarding the Sami people's right to self-determination in Finland. As pointed out by a recent doctoral dissertation by Mr. Juha Guttorm (2018), the status of Sami people's right to self-determination has remained static since the establishment of the Sami parliament in 1996. The Sami Parliament of Finland holds no actual decision-making power regarding traditional Sami livelihoods and traditional lands and waters, but merely has an advisory role. The proposed renewed Act on the Sami Parliament of 2018 will not give any actual decision-making power to the Sami Parliament. The decision-making power of the Sami Parliament is limited to the distribution of certain funds allocated by the State, though these funds are to be distributed within a frame set by the State. Thus, the Sami are not able to freely pursue their economic, social and cultural development and to fulfil their right to self-determination.

Proposed draft question for the Committee's consideration:

What will the State party do to fulfil the Article 1 of the ICCPR regarding Sami people's right to self-determination and their right to freely determine their political status and freely pursue their economic, social and cultural development?

10. The attempt to amend the Act on the Sami parliament has failed due to the disagreement on who should be able and have the right to define who is eligible to vote in the elections of the Sami parliament. The State demanded that the Supreme Administrative Court of Finland – which is a fully non-Sami body - has the final say on the issue. The Sami parliament rejected the proposal for the renewed act on the Sami parliament, as the position of the Supreme Administrative Court violates the Sami people's right to freely determine their political status, and due to insufficient opportunities for the



Sami parliament to be heard, as well as the transitional provisions that would have continued the current problematic acceptance procedure until after the next elections.

Proposed draft question for the Committee's consideration:

Which measures will the State party take to to secure the Sami people's right to freely determine their political status, as it is currently a non-Sami body that defines who is eligible to vote in the elections of the Sami Parliament?

11. Saami Council expects the State Party to now conclude a plan of process and measures that it will take to revise its legislation to fully guarantee the rights of the Sami people to their traditional lands and territories, and to the right of Sami communities to engage in free, prior and informed participation in policies and development processes that affect them.

Saami Council refers to the Human Rights Committee's concluding observations on the sixth periodic report of Finland from 2013 (CCPR/C/FIN/CO/6), as well as the concluding observations Addendum (CCPR/C/FIN/CO/6/Add.1) from 2014, where the Committee recommends as follows:

*Paragraph 16 — The State party should advance the implementation of the rights of the Sami by strengthening the decision-making powers of Sami representative institutions, such as the Sami parliament. The State party should increase its efforts to revise its legislation to fully guarantee the rights of the Sami people in their traditional land, ensuring respect for the right of Sami communities to engage in free, prior and informed participation in policy and development processes that affect them. The State party should also take appropriate measures to facilitate, to the extent possible, education in their own language for all Sami children in the territory of the State party.*



12. The renewed act on the State parks and forest enterprise (Metsähallitus) in 2016 transferred a lot of areas in the Sami homeland from conservation status, to a status of an area that is under pressure of providing economic income. The decision was done despite strong opposition from the Sami parliament. All the areas that were transferred from the conservation status are areas where Sami people have ancestral claims, and the state ownership to the areas is contested.

Proposed draft question for the Committee's consideration:

What measures will the State party take to secure the right of the Sami to their traditional livelihoods, as there are no safeguards on this regarding the act on State parks and forests Agency (Fin. Metsähallitus), which largely determines the way in which the traditional Sami territories are governed?

13. In 2013, the Committee expressed its concern that the Sami people lack participation and decision-making powers over matters of fundamental importance to their culture and way of life, including rights to land and resources. The Committee also noted that there may be insufficient understanding or accommodation of the Sami lifestyle by public authorities and that there is a lack of legal clarity on the use of land in areas traditionally inhabited by the Sami people (arts. 1, 26 and 27). The Committee noted that the State party has committed to ratifying the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and established a working group in August 2012 to strengthen the rights of the Sami to participate in decisions on the use of land and waters. Saami Council cites the Committee's recommendation made in 2013:

*The State party should advance the implementation of the rights of the Sami by strengthening the decision-making powers of Sami representative institutions, such as the Sami parliament. The State party should increase its efforts to revise its legislation to fully*



*guarantee the rights of the Sami people in their traditional land, ensuring respect for the right of Sami communities to engage in free, prior and informed participation in policy and development processes that affect them. The State party should also take appropriate measures to facilitate, to the extent possible, education in their own language for all Sami children in the territory of the State party.*

Proposed draft questions for the Committee's consideration:

What concrete measures will the State Party take to ensure that the mandate of the Sami's elected body Sami Parliament to exercise the right of the Sami people to self-determination under international law is realized and implemented, including participation and decision-making powers over matters of fundamental importance for their culture and way of life and rights to land and resources?

What will the State Party do to ensure that the Sami Parliament is provided with adequate funding for the implementation and exercise of its functions as the Sami self-determination body in Finland?

### C. Article 27 and the Deatnu/Tana agreement

14. Deatnu (Tana River) today constitutes a state border between Finland and Norway, and the river, along with its many tributaries, has sustained a significant Sami settlement in the Deatnu Valley and has provided livelihood for the local population since time immemorial. The salmon in the Deatnu River is equally important for the Sami river population, their culture and identity as the reindeer are for Sami reindeer herders. Salmon fishing is considered as the lifeblood of Sami culture in the area.

15. The salmon fishing in Deatnu has been regulated through bilateral agreements since 1873. In 2016, the governments of Finland and Norway signed a new bilateral agreement on fishing in the Deatnu (Tana) Watercourse. Sami and other stakeholders have strongly



criticized the dealings for procedural and material deficiencies. However, in 2017 the Finnish Parliament (Eduskunta) and the Norwegian Parliament (Storting) ratified the agreement on fishing in the Deatnu Watercourse and associated regulations. The Deatnu/Tana agreement was passed through against unanimous protests from the Sami Parliaments in both states, the Tana Watercourse Fisheries Administration, all the affected municipalities, and all rights holders. As all the Sami representatives in the negotiations on the Deatnu/Tana agreement opposed the outcome of the negotiations, this is an example of a case where the Sami people's right to self-determination regarding traditional resources and livelihoods in harshly broken.

16. The Fishing agreement for Deatnu of 2017 strongly limits traditional Sami fishing methods, to an extent that the continuation of some of these methods is impossible. These limitations were done in the name of protecting salmon, though at the same time non-local Finnish fishing rights holders were given more rights for fishing, despite the rights of non-local Finnish fishing rights holders have been considered in the case *Taivalaho v. Finland* in the European Court of Human Rights in 2006, and the court concluded that their rights were not broken with the previous fishing agreement.

17. The Deatnu/Tana agreement furthermore denies non-local Sami the right to legally take part in traditional net-fishing methods, thus denying Sami the right to practice their traditional fishing culture.

18. The Saami Council believes that it is vitally important for the survival of the river Sami culture that the Deatnu/Tana agreement is renegotiated. The agreement must safeguard the rights of the local population in the river basin, so that the agreement is perceived as legitimate and fair by the traditional rights holders (ILO Convention no. 169, articles 14 and 15 (1) cf. Articles 6, 23 and 35).



Proposed draft questions for the Committee's consideration:

What measures will the State party take in order to safeguard respect and protection of the river Sami people's rights to traditional salmon fishing in Deatnu/Tana River and to secure that the traditional Sami salmon fishing culture can continue?

Will the State party take swift steps to renegotiate the Deatnu/Tana agreement with Norway with the aim at safeguarding the rights of the local population in the river basin, so that the agreement is perceived as legitimate and fair by the traditional rights holders?

How will the State Party secure the rights of non-local Sami to take part in traditional net-dishing methods?

19. In 2004, the Committee regretted that it had not received a clear answer from the State party concerning the rights of the Sami as an indigenous people (Constitution, sect. 17, subsect. 3), in the light of article 1 of the ICCPR. It reiterated its concern over the failure to settle the question of Sami rights to land ownership and the various public and private uses of land that affect the Sami's traditional means of subsistence - in particular reindeer breeding - thus endangering their traditional culture and way of life, and hence their identity. The Committee made the following recommendation in 2004:

*The State party should, in conjunction with the Sami people, swiftly take decisive action to arrive at an appropriate solution to the land dispute with due regard for the need to preserve the Sami identity in accordance with article 27 of the Covenant. Meanwhile it is requested to refrain from any action that might adversely prejudice settlement of the issue of Sami land rights.*



## D. Article 27 and the Arctic Railway

20. The Ministers of Transport and Communication of Finland and Norway have agreed to proceed with the investigation of the Arctic Railway project in order to produce a basis for decision-making on a railway construction from Rovaniemi in Finland to Kirkenes in Norway. The Saami Council has learned that the authorities of the two states are set to complete the construction of the railway project for the sake of the industry and tourism development, and the transport connectivity to central Europe and Asia.

21. The Saami Council is of the opinion that the authorities of Finland and Norway are in the process of forcing a large-scale industrial development in the Sami people's traditional territory without respecting Sami interests and representative bodies in a proper manner. Preservation of reindeer husbandry, traditional land use and traditional Sami land is the foundation for the survival of Sami language and culture. The Arctic Railway will inflict major encroachments on and fragmentation of large and important Sami reindeer pastures and nature areas. The railway will have major negative consequences for reindeer husbandry, other natural-based industries and the entire Sami culture. A failure to fulfill the rights of the Sami to participate in the decision-making process of an industrial project of such dimensions is, in our view, a clear breach of international law. The process of the Arctic Railway project will deny the Sami people of fundamental rights and encroach both upon land rights as well as culture and language as a whole.

Proposed draft questions for the Committee's consideration:

Will the State party make assessments of cumulative impacts of already existing encroachments that all the affected Sami reindeer herding communities have demanded concerning the regional land use planning process?



If so, will the State party carry out this an assessment in consultation, cooperation and mutual understanding with Sami stakeholders and provide enough financial resources for the task?

Will the State party carry out consultations with relevant Sami rights holders and the Sami Parliament in order to ensure that the rights and needs are protected at an early stage before decisions are made?

How will the State party secure that the consultations are carried out in good faith in order to fulfill the rights of the Sami to free, prior and informed consent?

Yours sincerely,

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President