

SUBMISSION



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Human Rights Committee

Re: Submission to the United Nations Human Rights Committee for consideration of the Seventh Periodic Report of Finland, 131 Session (01 – 26 March 2021)

Introduction

The Sámi are the only Indigenous People in the continental territory of the European Union. Their status as an indigenous people is enshrined in the Constitution of Finland. As an Indigenous People, the Sámi have the right to maintain and develop their own language and culture, as well as their traditional livelihoods as part of their culture. Since 1996, the Sámi living in the Sámi homeland have had autonomy with regard to their language and culture under the Finnish Constitution. The duties falling within the Sámi people's cultural autonomy are discharged by the Sámi Parliament.

The Sámi Parliament is the supreme political body of the Sámi in Finland. It is an independent legal entity of public law which, due to its self-governmental nature, is not a state authority or part of the public administration. 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 it attends to the issues concerning Sámi language, culture, and their position as an indigenous people. The Sámi Parliament can make initiatives, proposals and statements to the authorities. The 21 members, and 4 deputies, are elected from among the Sámi every four years.

The present submission focuses on the situation of the Sámi People in Finland and on the implementation of articles 1 and 27 of the Covenant (paragraph 23 of the list of issues prior to reporting) and is based on the Sámi Parliaments own views, findings and conclusions.

A handwritten signature in blue ink, appearing to read 'Tuomas Aslak Juuso'.

Tuomas Aslak Juuso
President

A handwritten signature in blue ink, appearing to read 'Inka Saara Artijeff'.

Inka Saara Artijeff
Secretary for International Affairs

Specific information on the Rights of Indigenous Peoples (Paragraph 23 of the list of issues prior to reporting)

1. Finland has recognized the right to self-determination of the Sámi people to some extent. However, the implementation of the right to self-determination is challenging and does not fulfill the rights of the Sámi as indigenous people enshrined in the national and international law. Despite the strong provisions in the Constitution and in legislation, the implementation of the right self-determination is not effective. The development of the Sámi cultural self-governance has rather been halted than advanced during recent years. The Sámi Parliament and the government of Finland have attempted to revise the Act on the Sámi Parliament (974/1995) twice, in 2014 and 2018, with no success. In addition to the Act on the Sámi Parliament, other significant legislation regulating land use and traditional livelihoods has been revised, but the outcome for the Sámi has been negative. In the study by J. Guttorm conducted in 2018, it was assessed how the intendedly dynamic cultural and linguistic self-government of the Sámi materializes itself in legislation and how it has developed until today. The research's main result is the observation that the Finnish government treats the Sámi self-government as a static system. The study distinguishes three different development phases of self-government: In the foundation period in 1996 the Sámi Parliament was guaranteed some competence for decision-making and influence. The second phase, which lasted up until 2003, can be regarded as the actual development period of the Sámi self-government with dynamic policies made by the Sámi Parliament without revising the act, thus The Sámi Parliament developed its own interpretations of the self-government. The on-going third phase can be called the period of stagnation, or even decline, during which self-government has been turned into a static arrangement.¹

2. Plenty of developments have taken place in Sámi affairs since the concluding observations on the sixth periodic report of Finland in 2013. The Sámi Parliament has aimed to promote the Sámi people's rights and status as an Indigenous People and strengthen the decision-making power of the Sámi Parliament. Despite some positive central government measures, Finland has failed to sufficiently promote and protect the Sámi people's rights as an indigenous people. To some extent, their rights have even been undermined by some legislative and policy developments, such as the Fishing Act (379/2015), the drafting of the Regional land use plan 2040 for Northern Lapland and the Agreement between Finland and Norway relative to fishing in the Tana river fishing area. At the same time, no significant legislative reform projects – such as the reform of the Act on the Sámi Parliament– have been successfully completed.

3. In December 2020 a new Commission was set up to prepare amendments to the Sámi Parliament Act. It is composed of five representatives of the political parties in Government and five representatives of the Sámi Parliament, as well as the Permanent Secretary (kansliapäällikkö) of the Ministry of Justice as Chair. The mandate of the Commission is clear in that its work should be based on recent developments in international law, including Human Rights Committee's Final Views in respect of Communications 2668/2015 and 2950/2017. It is, however, not clear that the Commission will succeed. Earlier experience shows that compromise solutions reached between the Government and the Sámi may still be subjected to obstructive manoeuvres in the national Parliament. While also

¹ Guttorm, *Saamelaisten itsehallinto Suomessa: Dynaaminen vai staattinen? Tutkimus perustuslaissa turvatussa saamelaisten itsehallinnon kehittämisestä lainsäädännössä vuosina 1996–2015*.

action by the national Parliament will trigger the international responsibility of Finland for continued or new breaches of the Covenant, there is no domestic mechanism to resolve such situations.

4. In respect of the Sámi Parliament elections of September 2019, the Supreme Administrative Court refused to correct its own 2011 and 2015 decisions concerning the construction of the Section 3 of the Sámi Parliament Act. Even if the Committee had on 1 February 2019 released its Final Views in the above-mentioned cases, establishing that the Court had decided in violation of the Covenant, the Supreme Administrative Court decided that the legal prerequisites for the correction of the above mentioned decisions were not fulfilled. Hence, the forced assimilation of the Sámi into the mainstream population continued in the 2019 elections through the inclusion, by the Court, in the electoral roll of the Sámi Parliament, again a significant number of individuals against the will of the Sámi. For instance, the Sámi Parliament was ordered to include dozens of new individuals in its electoral roll on the basis that they were descendants of persons whom the Court had ordered to be included in 2015, even if exactly those orders were found by the Committee to violate the Covenant. This process indicates a great concern in demand of renewing the Section 3 of the Sámi Parliament Act.

5. The Sámi Parliament should exercise the right to self-determination of the Sámi through the section 9 of the Act on the Sámi Parliament that obligates the state authorities to negotiate with the Sámi Parliament in the face of development projects, plans and programs.² However, the actual implementation of the section does not fulfill the standards of the principle of free, prior and informed consent (FPIC) as the negotiations conducted with the state authorities have often turned out as technical hearings with no true possibilities of the Sámi Parliament to influence on the outcome of the decision-making. Albeit during the last year within some sectors improvement has occurred within the actual negotiation process, the Sámi Parliament still can't exercise genuine influence over the material outcome of the decision making process. Consequently, the obligation to negotiate can be seen as an inadequate way to exercise and to develop the right to self-determination. The issue of better inclusion of the principle of free, prior and informed consent (FPIC) in the Sámi Parliament Act, to implement also Articles 1 and 27 of the Covenant, is on the agenda of the Commission that is preparing amendments to the Sámi Parliament Act. It is not clear that any improvements will be accepted by the representatives of political parties or ultimately the national Parliament.

6. Moreover, the so called “prohibition to undermine Sámi culture” is laid down in sectorial legislation with regard to the Sámi. However, the state of Finland hasn't been able to implement the “prohibition to undermine the Sámi culture” in a proper way. The difficulty is the lack of proper

² Section 9: The authorities shall negotiate with the Sámi Parliament in all far reaching and important measures which may directly and in a specific way affect the status of the Sámi as an indigenous people and which concern the following matters in the Sámi homeland: (1) community planning; (2) the management, use, leasing and assignment of state lands, conservation areas and wilderness areas; (3) applications for licenses to stake mineral mine claims or file mining patents; (4) legislative or administrative changes to the occupations belonging to the Sámi form of culture; (5) the development of the teaching of and in the Sámi language in schools, as well as the social and health services; or (6) any other matters affecting the Sámi language and culture or the status of the Sámi as an indigenous people. (2) In order to fulfil its obligation to negotiate, the relevant authority shall provide the Sámi Parliament with the opportunity to be heard and discuss matters. Failure to use this opportunity in no way prevents the authority from proceeding in the matter.

procedures to recognize and define the different types of impacts to the Sámi culture and traditional Sámi livelihoods that could undermine the Sámi culture and thus prohibit the fulfilment of a project. This is possible due the ambiguous concepts of “significant harm” or “significantly hinder” used in the sectorial legislation with respect to impact assessment and their unclear definition and application. As for now, the Sámi and the national and regional authorities continue to disagree about the meaning of “significant harm” and “significantly hinder”.

7. Therefore, albeit there is a provision which prohibits an activity which may have crucial negative impacts to the Sámi culture, these letters of law have not been correctly applied by now. In other words, the state of Finland, in partnership with the Sámi Parliament, should as soon as possible create mechanisms according to which the effects of a planned activity, land use or use of natural resources to the Sámi culture could be defined and a comprehensive assessment of the cumulative effects of all the forms of land use to the Sámi people and Sámi culture could be conducted. As a contribution to the development described shortly above, the Sámi parliament has attempted to find solutions to this problem by negotiations with the authorities but negotiations haven't lead into an acceptable solution so far.

8. There is no progress towards Finland ratifying ILO Convention No. 169. Progress towards the ratification of the Nordic Sámi Convention is slow. The possible ratification of the Convention is included in the current Government Programme of Prime Minister Sanna Marin. The question pertaining the land rights of the Sámi has been examined various times since the Sámi have had their linguistic and cultural self-governance and various committees, working groups and proposal have put forward, but not in the form of a government bill. Thus, the question remain unresolved. There is no legislation enshrining the rights of the Sámi to land, water and natural resources nor special provision for exercising these rights. Instead, the Sámi are considered to have the same rights to land, water and natural resources as any other residents of the Sámi homeland. The resolution of the land and water rights of the Sámi in Finland was called for as far back as 1990 in a Government bill on the ratification of the ILO Convention No 169 (HE 306/1990 vp).³ The Constitution Committee of the Finnish Parliament has called for a similar legislative solutions.

9. In conclusion, the Sámi people's right to self-determination and its resource dimension is not fulfilled and protected. Despite various studies and committee work, the question on the Sámi land rights remains unresolved. This threatens particularly the possibilities to practise traditional livelihoods. Furthermore, the legislation pertaining traditional livelihoods has not followed the developments in international law.

10. Hate speech against the Sámi and the increasing prevalence of deliberate misunderstandings, especially in social media, constitute a broad societal problem. There are particularly discernible spikes in hate speech in connection with the process of drafting an amendment to the Act on the Sámi Parliament and with the Sámi Parliament election.

³ Pursuant to the Government bill, the Government proposed not to ratify the Convention as the land rights of the Sámi were not resolved to fulfill the rights enshrined in the Convention. The Bill suggest that the right of the Sámi to their traditional land and resources should be protected more extensively that the current legislation offers.

11. All the Sámi languages spoken in Finland are extremely endangered, and the work done in reviving the languages in Finland has not progressed effectively. The right of the Sámi to their own language and good administration is guaranteed by the Sámi Language Act (1086/2003). Despite the legislation, the linguistic rights of the Sámi are poorly realized and most public services are not available in the Sámi languages, although the Sámi Language Act has been in force in its current form since 2003. The right of the Sámi to social and health care services in their own language is particularly weak. The rights of Sámi children and young people living outside the Sámi homeland to official services, early childhood education and education in their own language should be more effectively safeguarded through special measures.