

January 13, 2019

**Subject: List of Issues Prior to Reporting (LOIPR) for the periodic report regarding Finland**

Distinguished members of UN Human Rights Committee,

Concerning the periodic report regarding Finland we respectfully wish to present to you a proposal for a topic to be included in the List of Issues Prior to Reporting (LOIPR). It concerns article 27 of ICCPR, more specifically the right of the Sami people to their culture, including traditional livelihoods, as well as article 1 on peoples' right to self-determination, particularly in relation to natural resources and means of subsistence.

Reindeer herding and other traditional Sami uses of land and water are heavily affected by the cumulative effects that competing land uses (forestry, infrastructure development, gold panning and planned mining, mass tourism, hydro energy projects, etc.) have on the quality of pastures and the grazing peace of the reindeer. For the State party to effectively secure the right of the Sami to culture it is paramount that land use decisions – and the consultations with the Sami in connection to them – be based on robust assessment of cumulative effects (CEA) of the past, present and planned activities on traditional livelihoods and culture. We therefore propose the following issue to be included in the LOIPR:

*Quality of the regulations and actual procedures in place to assess the cumulative effects of past, present and planned land uses on Sami traditional livelihoods and culture, and the role of such assessments in land use decisions and related consultations with the Sami.*

This proposal is based on following observations:

1. Several Sami reindeer herding co-operatives (*paliskunta*, in Finnish) in Aanaar/Inari have drawn attention to the fact that the cumulative effects of competing land uses are becoming a serious threat to their possibilities to practice reindeer herding. They have on several occasions urged Finnish Forest and Park Service (*Metsähallitus*) as the manager of the so-called state-owned lands to carry out cumulative impact

assessments of past and present land uses on each co-operative's land area in order to ensure meaningful consultations and enable the reindeer herding communities to present an informed view on the planned land use activities<sup>1</sup>. In its written response, Metsähallitus has declined from carrying out such assessments, arguing that there are no regulations in place that would require such an assessment.<sup>2</sup> This response stands in contrast to the fact that § 6 of the Act on Metsähallitus (234/2016) stipulates that the management, use and protection of natural resources in the Sami homeland “*shall be adjusted to ensuring the conditions of the Sami people to practice their culture*”. In the Government Bill regarding the said Act (HE 132/2015), the State of Finland notes that article 27 of ICCPR, when protecting the culture of the Sami people, requires cumulative impact assessment to be carried out by the authorities when new land use plans that could substantially impact the traditional livelihoods of the Sami are made in the Sami homeland. The consequence of the decision by Metsähallitus to decline such an assessment is that land use decision under its mandate are being made – and reindeer herding communities asked to provide their comments – without adequate information in place.

2. State party, through the Ministry of Transport and Communication, has since 2017 declared plans to build an Arctic railway corridor across the Sami homeland for the transport of mineral and forest products via Norwegian ports to Asian markets. This project would present the largest infrastructure development in the Sami homeland in Finland to date. Sami Parliament of Finland and the affected reindeer herding co-operatives have expressed their strong opposition to the plans<sup>3</sup>. They have requested that a proper procedure for how to carry out a CEA be negotiated with them and a full CEA be carried out before any further steps in the planning are taken. They have regretted that the State party has not, as to date, taken any action in this regard<sup>4</sup>. It has become evident that Finland so far lacks any systematic protocol or guidelines for how the national EIA and CEA regulations should be read and implemented in the light of Sami indigenous rights as safeguarded in article 27 of the ICCPR and in several pieces of national legislation. The State party is proceeding with regional land use planning (Pohjois-Lapin maakuntakaava 2040)<sup>5</sup> and with a joint Finnish-Norwegian working group on the Arctic railway<sup>6</sup> despite the fact that there is no agreement with Sami parliament or the affected reindeer herding co-operatives in place as to the proper procedure for CEA.
3. Simultaneously with these shortcomings in procedures to assess and regulate the impact of competing land uses on Sami traditional livelihoods and culture, the State party has initiated a process to assess and eventually adjust the highest allowed

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<sup>1</sup> Email correspondence from Hammastunturi reindeer herding community (dated September 25, 2017) and Paatsjoki reindeer herding community (dated October 18, 2017) to Metsähallitus.

<sup>2</sup> Metsähallitus response to the email correspondence from Paatsjoki reindeer herding community and to Hammastunturi reindeer herding community (dated October 31, 2017)

<sup>3</sup> <https://www.samediggi.fi/2018/10/18/jaameren-radan-merkitsemiselle-maakuntakaavaan-ei-oikeudellisia-edellytyksia/?fbclid=IwAR2KuXSixBeOHpL1egbeUj3JPJ5DNHIpuk0E5tvRwk-bWM-6lwGat8UQreI;https://yle.fi/uutiset/3-10554107>

<sup>4</sup> Sami Parliament letter to the Ministry of Communication regarding the Finnish-Norwegian Working group dated May 28, 2017 (Dnro 251/D.a.2./2018); Joint statement by the Sami Parliament, Skolt Village Council and the Sami reindeer herding communities' association/Sámi Bálgosat October 9, 2018 (Dnro: 390/D.a.2/2018).

<sup>5</sup> [http://www.lappi.fi/lapinliitto/maakuntakaavoitus/pohjoislapin\\_mmaakuntakaava](http://www.lappi.fi/lapinliitto/maakuntakaavoitus/pohjoislapin_mmaakuntakaava)

<sup>6</sup> [https://valtioneuvosto.fi/en/article/-/asset\\_publisher/jaameren-ratalinjausta-selvittanyt-tyoryhma-julkaisee-raporttinsa-tammikuussa](https://valtioneuvosto.fi/en/article/-/asset_publisher/jaameren-ratalinjausta-selvittanyt-tyoryhma-julkaisee-raporttinsa-tammikuussa)

number of reindeer in each reindeer-herding co-operative in Finland in order to ensure that the number of reindeer does not exceed the carrying capacity of the winter pastures<sup>7</sup>. Previously, similar assessments have led to the reduction of the amount of reindeer without having considered the impact of other land uses on the quality of the pastures, or without prescribing equivalent restrictions on these land uses. To our knowledge, the current process (started in Autumn 2018) has so far not included any articulated procedure for CEA, which is alarming for the reindeer herding communities in the light of the outcomes of the earlier processes.

In sum, the situation with inadequate procedures for CEA risks having the following negative impacts on Sami right to culture, which to an extent have already materialized:

- Sami Parliament and reindeer herding co-operatives are constantly asked, in violation of their right to effective consultations and free, prior and informed consent<sup>8</sup>, to comment and consent to land use decisions without adequate information provided by the State party on the impacts these decisions would have on reindeer pastures.
- State party allows competing land use projects to go ahead without presenting robust evidence that they do not impose negative impact on Sami right to traditional livelihood and culture, and despite the repeated statements by the Sami parliament and the affected reindeer herding co-operatives that this is the case.
- State party may take measures – through decision on highest allowed number of reindeer – that would directly restrict the ability of Sami to practice their traditional livelihood, without considering or adequately regulating the other land uses that significantly affect the quality of the pastures. This would lead to double impact on Sami reindeer herding through the reduction of their own livelihood, and through the continued deterioration of the pastures by competing land uses.

Based on the above, we hope that Committee agrees that the proposed issue is well justified to be part of the periodic report of Finland. Our main justification for the proposal is that the State party is unable to assess whether substantial harm has been inflicted upon the Sami culture in violation of article 27 of ICCPR unless adequate regulations and procedures are in place to carry out robust cumulative effects assessment of past, present and planned land uses on Sami livelihoods and culture at large. We also respectfully draw your attention to the report of the Expert Mechanism on the Rights of Indigenous Peoples from its Country Engagement Mission to Finland in 2018, which highlights the centrality of such impact assessments for effective negotiations between the State party and the Sami<sup>9</sup>.

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<sup>7</sup> <https://mmm.fi/hanke2?tunnus=MMM039:00/2018>

<sup>8</sup> Poma Poma v. Peru, CCPR/C/95/D/1457/2006, 24 April 2009; Several concluding observations of the UN Human Rights Committee embrace the principle of free, prior and informed consent. See, eg. Human Rights Committee, Concluding Observations on Sweden, 28 April 2016, CCPR/C/SWE/CO/7, paras 38-39. Arts. 1, 2, 14, 26 and 27. See also Human Rights Committee, Concluding Observations on New Zealand, 28 April 2016, CCPR/C/NZL/CO/6, para. 45-46, Arts. 2, 26, 27; Human Rights Committee, Concluding Observations on Ecuador, 11 August 2016 CCPR/C/ECU/CO/6, para 35, Art. 27; Human Rights Committee, Concluding Observations on Costa Rica, 21 April 2016, CCPR/C/CRI/CO/6, para. 41, Art. 27. See, also Human Rights Committee, Concluding Observations on Canada, 20 April 2016, CCPR/C/CAN/CO/S, para. 22.

<sup>9</sup> <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session11/AdvisorynoteFinlandFinaltoParties.docx>, para 24, 25, 29.

Respectfully,

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