

**Subject: Finland's third Universal Periodic Review
April-May 2017
Individual submission from the Sami Parliament of Finland**

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

The Sami Parliament (*Sámediggi, Sämitigge, Sää'mte'g'g'*) is the self-government body of the Sami and the functions of the Parliament are regulated through *the Act on the Sami Parliament*. Its main purpose is to plan and implement the cultural self-government guaranteed to the Sami as an indigenous people by the Constitution of Finland. The Sami Parliament was established in 1995 and it is the supreme political body of the Sami 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 Sami Parliament functions under the administrative sector of the Ministry of Justice. The Sami Parliament represents the Sami in national and international connections and deals with the issues concerning Sami language, culture, and matters relating to their status as an indigenous people. The Sami Parliament can make initiatives, proposals and statements to the authorities. The 21 members, and 4 deputies, are elected among the Sami every four years. Due to its representative nature, the Sami Parliament expresses an official view of the Sami in Finland on the issues concerning them. The political work of the parliament is led by a full time President.

The following submission is based on the Sami Parliaments own views, findings and conclusions. Second-hand information is referenced and used mainly for additional information.

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I. Implementation of previous recommendations: 89.8.¹ Ratify the ILO Convention No. 169

1. According to its Programme², the Government of Finland intended to ratify the Convention during its term of office 2011-2015. In the fall 2014, the Government submitted to the Parliament the government bill for the amendment of the Act on the Sami Parliament³ and the government bill for the ratification of the ILO Convention No. 169.⁴ The Sami Parliament had put a lot of time and effort into preparation and negotiations with the state of Finland in order to draft the content for the new Act on the Sami Parliament and with the measures to be taken in national legislation in order to fulfill the requirements of the ILO Convention No. 169.

2. Unfortunately, the bill for the ratification of the ILO Convention No. 169 didn't become approved by the Parliament of Finland, and the matter was transferred to the post-electoral new Parliament. Once again, The Parliament didn't have the political will and courage to promote the rights of the Sami. Currently, the ratification process of the ILO 169 is pending and the new government has stated that the process is active the year 2016 and a comparative research⁵ to clarify the situation is conducted. The Sami Parliaments sees the situation and the ratification difficult with the new Parliament and it's worrying attitude towards human rights. There is no mention of the Sami rights in the new programme of the Government.⁶

II. The current situation of the Sami People in Finland

A. Rights to lands, waters and natural resources

3. The Sami Parliament expresses its deepest concern over the current situation of Sami People in Finland regarding land rights and the right to self-determination. The recent legislation projects,⁷ rather than advance the Sami rights, have weakened the Sami People's rights to maintain and develop their culture.

4. The indigenous culture of the Sami people is based on the free use of land, water and natural resources. The way of life and identity of the Sami, based on traditional livelihoods such as reindeer herding, fishing, hunting, handicraft and gathering have always depended on the use of land and water. For the Sami 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.

5. Despite Finland has received a notable amount of recommendations⁸ from the United Nations human rights mechanisms and regional human rights institutions to resolve the land right issues and to strengthen the Sami People's right to self-determination, these questions remain unresolved. Regardless of the fact that the traditional livelihoods of the Sami are considered to constitute an essential part of Sami culture, which is protected by the Constitution⁹ and international law¹⁰ there is no legislative provision enshrining the rights of the Sami to land, waters and natural resources; in particular, there is no special provision for exercising these rights.

6. In Finland, the State manages currently 90 percent of the land in the Sami homeland. The state regulates the land use through The Act on Metsähallitus¹¹ (the Forest and Park Enterprise). The Sami Parliament negotiated with the state during the reform of the Act and at the final stage of the consultation in 2014 it included valuable safeguards to the Sami People.¹² These safeguards would have stood as an important step towards recognizing the Sami land rights and the rights of Indigenous

people as determined by international law. It would have been binding to Finland and honored the requests of the Sami.¹³ However, when this Act was unveiled in draft form in December 2015, it no longer contained these essential safeguards for the Sami People, and was approved without them.

7. Furthermore, the new Act changed the management of the land in the Sami Homeland significantly, increasing the pressure of various, harmful industrial land uses in the Sami homeland.¹⁴ The new act establishes municipal advisory boards in the Sami homeland region with a purpose to make proposals and statement of the use of land to the Metsähallitus.¹⁵ However, the Sami Parliament questions its possibility to actually influence to the decision-making, since the Sami People doesn't have full and effective representation in the boards.¹⁶

8. Current Finnish legislation does not acknowledge or grant any special land rights or any exclusive rights for the Sami people to pursue their traditional livelihoods. Furthermore, legislation¹⁷ does not recognize the traditional Sami reindeer husbandry. The basis of the traditional Sami land tenure and land-use has been the *Siida-system*¹⁸ which is not recognized with the Reindeer Husbandry Act. The lack of the recognition of the traditional Sami reindeer husbandry and the competing usage of land threatens the Sami culture.¹⁹ The resolution of the land and water rights and the recognition of the traditional Sami reindeer herding husbandry requires new national legislation that takes into account all cumulative impacts on Sami livelihoods.

9. The Tenojoki River fisheries agreement between Finland and Norway²⁰ has been negotiated and finalized during the summer 2016. The agreement aims to improve space for Tenojoki Salmon stocks and to reduce the fishing mortality rate of salmon. This means cutting of different methods of fishing during different fishing seasons. The restrictions also apply to the traditional Sami net and dam fishing methods. In addition, fishing tourism license practices will also change, thus in the future, Finland and Norway will have country-specific quotas for their permits. The agreement is supposed to come into effect in early 2017. The Sami Parliament of Finland opposes the new agreement, as it violates the right of the Sami people as stated in the Constitution of Finland. It violates the self-determination of the Sami People, and doesn't take into account the traditional livelihoods and customary law of the Sami People with the matter. Sami legal culture is regulated by customary law, and although they are not written laws are they extremely important within the Sami culture and it's well-being.

B. Self-determination

10. Despite the fact that The Sami parliament is the principal vehicle for Sami self-determination in Finland, there is an ongoing need to increase the Sami parliament's autonomy and self-governance authority, as well as to strengthen its ability to participate and genuinely influence decision-making in matters that affect Sami people. The Sami Parliament has very limited decision-making power on issues relating to the cultural autonomy of the Sami People, including rights relating to land and traditional livelihoods and the funding is not sufficient to be able to effectively exercise the Parliament's self-governance functions.²¹ Furthermore, under the Act on the Sami Parliament, the state authorities are required to consult with the Sami Parliament in matters that affect Sami concerns.²² The implementation of the provision has been challenging due the fact that Finland does not have an agreement with the Sami Parliament that establishes how and under what circumstances consultations should be carried out.

11. The Government of Finland submitted to the Parliament the government bill for the amendment of the Act on the Sami Parliament together with the government bill for the ratification of the ILO Convention No. 169. The final draft of the Act on the Sami Parliament contained some of the ele-

ments which would have brought the national legislation closer to some of the main principles expressed in the international law in recent years concerning the rights of the indigenous peoples.²³ However, the bill for the amendment of the Act on the Sami Parliament didn't become approved by the Parliament of Finland.

12. Furthermore, these legislation projects had an important role in the survival of the Sami people as a distinct people through the right to self-determination and not to be assimilated.²⁴ The elections of the Sami Parliament are held every four years, and to be able to vote the person needs to be registered as a Sami in the Sami Parliament's list of voters. Recently, a large group of individuals have been trying to be registered as voters, but in many cases the Electoral Board of the Sami Parliament came to the conclusion that they did not meet the criteria and did not consider these individuals eligible.

13. One of the provisions of the Act on the Sami Parliament includes a so-called "definition" on who is to be regarded as a Sami for the purposes of being allowed to vote in the elections of the Sami Parliament.²⁵ This provision has remained a subject of constant controversy between the state of Finland and the Sami people. According to the Sami Parliament, the current criteria is not adequate and there is an urgent need to revise the Act on the Sami Parliament so that the uncertainty created through the judicial interpretation of the so-called Sami definition could be removed. In 2011, the Supreme Administrative Court decided to grant voting rights to 4 persons not regarded as Sami by the Sami themselves.²⁶ 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 Sami Parliament. This had an effect upon the outcome of the elections.

14. The Sami 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 Sami judge. The rulings in the 2011 and 2015 of the Supreme Administrative Court are in contradiction with the Sami Parliament Act, with the Constitution of Finland, with the core human rights treaties Finland has ratified and with 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 Sami 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.

15. Moreover, the inclusion of 93 persons in the voters' register has affected the composition of the new Sami Parliament by moving its political center of gravity away from policies that emphasize the indigenous distinctiveness of the Sami people and of their culture and a quest for Sami self-determination in respect of the Finnish state and across national borders. The composition of the new Sami 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 Sami Parliament and stand as a candidate in the elections and the conduction of the election are not sufficient, and need to be revised. 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 Sami into the mainstream population through the gradual takeover of the Sami Parliament by members of the dominant (Finnish) population resident in the northernmost municipalities of Finland.

16. The social welfare and health care service reform is probably the reform with the greatest effect on the lives of the Sami people and the people of Lapland. In Lapland, the future social welfare and

health care model for Lapland is being prepared under the leadership of the Regional Council of Lapland. The Sami Parliament considers it extremely unfortunate that, despite the presentation of several proposals, the Sami Parliament has not been included in the operative activities involved in preparing the social welfare and health care model for Lapland led by the Regional Council of Lapland.²⁷ It has been determined that the Sami Parliament should be involved in the cooperation group phase, which includes associations and businesses, among other organizations.

C. Sami language and education

17. Despite recent efforts and the pledges made, the situation of the Sami languages in Finland remain extremely alarming. The Sami languages are of central importance to the preservation of the Sami identity and the Sami culture. All three Sami languages spoken in Finland are considered endangered or severely endangered.²⁸ Implementation of the legislation²⁹ been difficult and the availability of social welfare and health care services in the Sami language is characterized as patchy, even in the heart of the Sami Homeland. In 2012, an action plan with proposals for action was completed in Finland in order to revitalize the Sami languages. The Government made a resolution on actions to revitalize the Sami languages on 3 July 2014. The implementation of the measures under the Sami language revitalization programme is still in its early stages and few separate resources have been allocated for the related measures.

18. In the field of education, most Sami children and young people living outside the municipalities of the Sami Homeland do not receive any teaching in their own language. As a result of this long-standing situation, children and young people who speak Sami as their mother tongue are illiterate in their own languages. Even more children and young people have completely lost contact with the native language of their families and have had no opportunities to learn it. The action plan on the revitalization of the Sami language included also measures to be taken for learning the Sami language outside the Sami Homeland. Furthermore, the Sami culture is given only minimal and general coverage in the national curriculum for basic education, for example no account is taken of the history of the Sami people and the various aspects of the Sami culture.

D. Cultural Heritage

19. Misappropriation of the cultural heritage of the Sami people is common particularly in the northern parts of Finland. For example, the Sami costume, a symbol of the cultural heritage of the Sami people, is misused in many ways by the tourism industry. The Sami cultural heritage has not been defined and there is no legislation to protect it. The biggest threats to Sami cultural heritage are its exploitation and lack of adequate integration of protections for indigenous peoples. Indigenous peoples, including the Sami people, have demanded intellectual property protection for traditional knowledge and traditional cultural expressions. National and international legislation to protect intellectual property are inadequate and the intellectual property system focuses on protecting the intellectual property of individuals, rather than collectives. The systems also fail to recognize that, for indigenous peoples, cultural heritage is holistic and encompasses their spiritual, economic and social connections to their lands and territories. Indigenous peoples' cultural heritage includes tangible and intangible manifestations of their ways of life, world views, achievements and creativity, and should be considered an expression of their self-determination and their spiritual and physical relationships with their lands, territories and resources.³⁰

20. In conclusion, the Sami Parliament would like to point out the active role Finland has ensuring and advancing the rights of the Indigenous peoples in international human rights forums. Hence, the

Sami Parliament hopes Finland finds a way to ensure the policy coherence between the positions they take in international human rights forums and those they take at home.³¹

III. Recommendations

- 1. To introduce reforms as necessary to strengthen the self-governance and decision-making power of the Sami Parliament, including land rights.**
- 2. To introduce *procedures for consultations* between state authorities and the Sami Parliament based on the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.**
- 3. To ratify ILO Convention No. 169.**
- 4. To clarify and legally protect Sami rights to land, water, resources and livelihoods.**
- 5. To ensure the fundamental safeguards and rights are included in the Forestry Act.**
- 6. To include rights of the Sami in the Tenojoki Agreement.**
- 7. To recognize and introduce special protection for the Sami Reindeer Husbandry.**
- 8. In defining who is eligible to vote for Members of the Sami Parliament, the State party accord due weight to the rights of the Sami people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation.**
- 9. To ensure the effective implementation of the National programme for the revitalization of Sami languages.**
- 10. To secure the rights of the Sami in the future social welfare and healthcare model for Lapland and with decision-making.**
- 11. To introduce legislations and develop national action plans for the protection and promotion of the cultural heritage of the Sami People.**

Inari, Finland 6.10.2016

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The President of the Sami Parliament decided upon the submission on the October 6, 2016.

¹ Report of the Working Group on the Universal Periodic Review of Finland A/HRC/21/8 (second cycle), paragraphs 89.8. (Nicaragua, Mexico and Norway).

² See Programme of Prime Minister Jyrki Katainen's Government 2011, p. 30. Available in English at <http://valtioneuvosto.fi/documents/10184/367809/Programme+of+Prime+Minister+Katainen%E2%80%99s+Government/64238eca58cd-43bb-81dc-963a364a422e>.

³ Government Bill No. 167/2014. Available in Finnish at <http://www.finlex.fi/fi/esitykset/he/2014/20140167>.

⁴ Government Bill No. 264/2014. Available in Finnish at <http://www.finlex.fi/fi/esitykset/he/2014/20140264g>

⁵ See more information on the comparative study (VNK/2040/48/2015) in English at <http://www.arcticcentre.org/EN/projects/samirights/Research>.

⁶ See programme of Prime Minister Sipilä's Government 2015, available in English at <http://valtioneuvosto.fi/en/sipila/government-programme>. The Sami Parliament of Finland delivered its proposals for the programme, but they were not taken into consideration.

⁷ The new act on Metsähallitus (the Forest and Park Enterprise) and the Tenojoki River fisheries agreement (see paras. 6,7,9)

⁸ See, for example, CCPR/C/FIN/CO/6 (2013), para. 16, CERD/C/FIN/CO/20-22 (2012), para. 13, CM/ResCMN(2012)3 and A/HRC/18/35/Add.2 para. 84

⁹ The Constitution of Finland (1999), Available in English at www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf. See sections 17, 22 and 121. Traditional livelihoods of the Sami People are considered to constitute an essential part of the Sami culture which is protected by the Constitution (HE 248/1994 vp ja PeVM 17/1994 vp). Furthermore, the section 22 - *Protection of basic rights and liberties*, states that "The public authorities shall guarantee the observance of basic rights and liberties and human rights." The Government has stated that the provision extends public authorities' obligation to protect human rights as they are protected under international law and main human right treaties.

¹⁰ The content of the rights of the Sami to land, water and natural resources and the protection required of their culture, including traditional livelihoods, are largely determined by international law binding upon Finland, particularly Articles 1 and 27 of the UN Covenant on Civil and Political Rights. The Human Rights Committee, monitoring the implementation of the Covenant, has adopted a position whereby the provisions of the Article 1 apply to the Sami as indigenous peoples (see CCPR/C/79/add.112, para. 17). The Committee has also adopted the position that the Article 27 shall be considered to include traditional livelihoods, including Sami reindeer Husbandry. See for example, *Ilmari Länsman et al v. Finland*, Comm. No. 511/1992 and *Jouni E. Länsman et al v. Finland* Comm. No. 671/1995.

¹¹ Act on Metsähallitus (No. 234/2016). Available in Finnish at <http://www.finlex.fi/fi/laki/ajantasa/2016/20160234>.

¹² These Safeguards included so called *prohibition to undermine Sami culture*, a clause strongly inspired by international law to protect the indigenous Sami against activities by the Government Forestry Agency that would amount to a denial of the right of the Sami to enjoy their own culture (in Finnish known as "*heikentämiskielto*").

¹³ The Sami Parliament, the Constitutional Law Committee and many other civil society stakeholders, including all of the Sami Reindeer Herding cooperatives, have demanded to include these important safeguards for the Sami 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. Finally, the whole part concerning these safeguards had been omitted.

¹⁴ Act on Metsähallitus (No. 234/2016) passed in March 2016. With the reform, part of the Sami People's traditional territory is transferred to the State-run enterprise, which has the responsibility for, inter alia, logging in the Sami homeland.

¹⁵ *Ibid.*, chap. 10. section 39.

¹⁶ Decree on Metsähallitus (No. 247/2016). Available in Finnish at <http://www.finlex.fi/fi/laki/alkup/2016/20160247>. Each board has nine members, and the Sami Parliament has only one seat (or in one board, two seats) in each board.

¹⁷ Reindeer herding is regulated through the Reindeer Husbandry Act (No. 848/1990). Available in English at www.finlex.fi/fi/laki/kaannokset/1990/en19900848.pdf. Unlike in Norway and Sweden, in Finland reindeer husbandry is not reserved only for Sami people (see Chap. 1, sect. 4 of the Act), but the Act does not distinguish between Finnish reindeer herding and traditional Sami reindeer herding.

¹⁸For more information, see the Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, the situation of the Sami people in the Sápmi region of Norway, Sweden and Finland (2011), A/HRC/18/35/Add.2, para. 6

¹⁹ For more information, see the Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland (2016), A/HRC/33/42/Add.3 para. 60

²⁰ the *Deatnu* Agreement. See the current Agreement (No. 94/1989) of 1989 in Finnish at <http://www.finlex.fi/fi/sopimukset/sopsteksti/1989/19890094>.

²¹ For more information, see the Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, the Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland (2011), A/HRC/18/35/Add.2 paras. 38, 40, 41, 43 and Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland (2016), A/HRC/33/42/Add.3 paras. 56, 59

²² Act on the Sami Parliament (No. 974/1995), chap. 2, sect. 9. Available in English at www.finlex.fi/fi/laki/kaannokset/1995/en19950974.pdf.

²³ For example, the “duty to co-operate” with the indigenous peoples in those matters which may have impacts to the indigenous peoples’ lands and rights was included into the draft of the new Act on the Sami Parliament, thus it would have brought the Finnish legislation closer to commonly acknowledged principle of FPIC (free prior informed consent) and enhanced the decision-making powers of the Sami Parliament

²⁴ The Bill No. 167/2014 contained, *inter alia*, provisions for the revision of the current definition of Sami, which had been negotiated with the Sami Parliament and would have cleared the controversial definition.

²⁵ The provision reads as follows: Section 3 — Definition of a Sami

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

- (1) That he himself or at least one of his parents or grandparents has learnt Sami 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 Sami Parliament.

²⁶ 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 Sami 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 Sami 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 Sami 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 criticized, 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) and recommended that, in defining who is eligible to vote for Members of the Sami Parliament, the State party accord due weight to the rights of the Sami people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation as the United Nations Declaration on the Rights of Indigenous Peoples declares.

²⁷ The Sami Parliament is involved in the activities of workgroups focusing on customer-oriented service processes within the lower level of preparation of the social welfare and health care model for Lapland. Involvement in this work alone is insufficient to ensure that appropriate account is taken of Sami cultural autonomy and linguistic and cultural basic rights in the future social welfare and health care model for Lapland.

²⁸ See *UNESCO Interactive Atlas of the World's Languages in Danger* at <http://www.unesco.org/languages-atlas/index.php>.

²⁹ Sami language Act (No. 1086/2003). Available in English at www.finlex.fi/fi/laki/kaannokset/2003/en20031086.pdf.

³⁰ For more information, see "*Promotion and protection of the rights of indigenous peoples with respect to their cultural Heritage-Study by the Expert Mechanism on the Rights of Indigenous Peoples*" A/HRC/30/53 (2015) paras. 24, 58, 61

³¹ For more information, see the Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, A/HRC/33/42/Add.3 (2016) paras. 14-15