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SAAMELAISNEUVOSTO
THE SAAMI COUNCIL
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**TO THE UN HUMAN RIGHTS COUNCIL –
UNIVERSAL PERIODIC REVIEW WORKING
GROUP (13th session, 21 May – 4 June, 2012)**

Input provided by the Saami Council - an NGO with consultative status with the ECOSOC representing the indigenous Saami people - with regard to Finland for the inclusion in the Summary of Stakeholders' information

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1. Briefly about the Saami people and the Saami Council

1.1 The Saami people has inhabited its traditional territory - covering what today constitute the northern parts of Finland, Norway and Sweden and the Kola Peninsula in the Russian Federation – since well before the present day states drew their borders across the Saami territory. The Saami have their own culture, livelihoods and language, distinct from the cultures of the non-Saami population. The Saami people is hence indigenous to northern Finland, which Finland also recognizes.

1.2 The Saami Council, established in 1953, is a non-governmental organization with consultative status with the ECOSOC and the ILO. It is also a Permanent Participant to the Arctic Council. The Saami Council is an umbrella organization, with the major national Saami organizations in Finland, Norway, Russia and Sweden as members.

2. Issues

Saami land rights

2.1 Although it is undisputed that the indigenous Saami people were the first inhabitants of its traditional territories, current Finnish legislation does not acknowledge any rights to land of the Saami – including to the Saami reindeer herding communities.¹ That is so albeit contemporary international law proclaims that indigenous peoples hold property rights to land and natural resources traditionally used, and that further e.g. jurisprudence from the UN Human Rights Committee has confirmed that Saami reindeer husbandry is protected under the right to culture.² The question is hence not whether the Saami hold rights to land in its homeland territory, but what land areas more specifically are subject to such rights, and what are the more precise nature of these rights. Finnish policy towards the Saami people has, however, ensured that these questions remain unanswered.

2.2 UN treaty bodies have repeatedly criticized Finland for not solving the Saami land rights issue.³ Finland's standard response has for decades been the same; that it is currently surveying the matter. Finland hence acknowledges that the Saami have legitimate claims to have their land-rights recognized, but has not been capable of transforming this formal recognition into concrete action. Rather than to tackle the Saami land rights issue, Finland has appointed commission after commission to study the matter. Often, these commissions have been given directives rendering it clear from the outset that they will not produce an outcome allowing Finland to effectively address the Saami land rights issue. As a consequence, none of the conclusions of these official Finnish commissions have been acted on. It is difficult not to get the impression that the rationale for appointing all these commissions is more an attempt to find an excuse not to act on the Saami land rights issue, rather than a genuine interest in finding a solution to these matters. It is therefore time for a different approach. For way too long, Finland's attitude towards Saami land rights have been to try to first document Saami and Finnish land use in the Saami traditional territories, before

¹ See conclusions by the Special Rapporteur on the Rights of Indigenous Peoples (the Special Rapporteur) in his report on the Saami people (the Saami Report), A/HRC/18/35/Add. 2, paras. 29 and 52

² See e.g. *Ivan Kitok v. Sweden*, Comm. No. 197/1985, *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada*, Comm. No. 167/1984, and, in particular, *Ilmari Länsman et al v. Finland*, Comm. No. 511/1992, views adopted 26 October 1994, *Jouni E. Länsman et al v. Finland* Comm. No. 671/1995.

³ For the most recent criticism, see e.g. CERD/C/FIN/CO/19 (2009), para. 14, E/C.12/FIN/CO/5 (2008), paras. 11 and 20, and CCPR/CO/82/FIN (2004), para. 17.

enacting any legislation on Saami land rights. This approach has clearly not worked. Therefore, it is time for the opposite strategy. Finland should first – and without further delay – enact legislation recognizing Saami land rights in principle. Subsequently, Finland – in cooperation with the Saami – can increase its efforts to map out the factual circumstances.

2.3 At the same time as Finland is postponing any action on Saami land rights, the Saami reindeer herding communities are in practice prevented from taking their land-rights issues to courts, as they lack the financial resources to do so. Finland has so far refused to provide the Saami with resources awarding them a fair trial. As a result, even though the Saami are entitled to own and use their land *in principle*, Finland *effectively* denies the Saami a fair chance to defend these rights in courts of law. In short, Finland has until now effectively blocked the Saami from using both the political and judicial avenues to achieve recognition of their land-rights.

2.4 The failure to solve the Saami land rights issue places the Saami culture under an imminent threat. Reindeer husbandry is the principal traditional livelihood of the Saami population in Finland. Continued possibility to pursue reindeer husbandry is a pre-requisite, should the Saami survive as a distinct people, society and culture. Loss of land inevitably leads to the destruction of the Saami culture, and eventually to assimilation. As Finnish law continuously fails to recognize Saami reindeer herders' right to land, resource extraction and development projects continue to consume the reindeer pasture areas. Already, the construction of roads, hydroelectric dams, mining, forestry and tourism have resulted in loss and fragmentation of pasture lands, with detrimental effects on reindeer herding.⁴ If Finland does not address this problem by recognizing Saami rights to lands and natural resources, the base for the Saami culture may soon be destroyed.

Predator animals

2.5 In Finland, as in the other countries with Saami population, predator animals, mainly wolf, wolverine, lynx, brown bear and golden eagle, together with the mentioned industrial activities, constitute the greatest threat to the reindeer husbandry. The government regulates the number of reindeer that the reindeer herding areas must feed, and to what extent the reindeer herders are allowed to defend their herds. In other words, the Saami reindeer herders exercise no control over how many of their reindeer are killed by predators each year. This number is completely determined by political decisions by the Finnish state. In some areas, the number of reindeer killed by predators has reached such levels that there is an imminent risk that the herd can no longer reproduce itself, and will hence collapse.⁵ The Finnish government further fails to fully compensate the Saami reindeer herders for damages caused to them by predators.⁶

Reindeer herding as a sole right of the Saami

2.6 Norway and Sweden protects the Saami culture by acknowledging that rendering reindeer husbandry is a distinct Saami traditional livelihood, and that hence only Saami individuals are allowed to pursue reindeer husbandry. In contrast, in Finland, reindeer husbandry is open to any citizen of the European Union.⁷ Allowing other than the Saami to engage in the Saami traditional livelihood reindeer husbandry dilutes the borders between the Saami and Finnish culture, and can with time foster assimilation.

⁴ See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 55.

⁵ See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 62.

⁶ Compare conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 87

⁷ See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 29.

2.7 The fact that Finland refuses to acknowledge reindeer husbandry as an exclusive Saami livelihood can also result in an imminent threat to the cultural identity of individual Saami reindeer herders. In Finland, reindeer husbandry is organized in so called reindeer cooperatives. The cooperatives blend Saami and Finnish individuals, although traditional Saami reindeer husbandry differs considerably from Finnish reindeer farming. Put simply, in Saami reindeer husbandry, the reindeer are free-roaming, whereas Finnish reindeer farmers keep the reindeer fenced. In many of the cooperatives, the Saami are now in a minority, placing them in a vulnerable position.

2.8 Recently, one cooperative where the majority of the members are reindeer farmers decided that the entire herd of four Saami reindeer herders in the Nellim area should be forcefully slaughtered, thus forcing the Saami out of the traditional livelihood their ancestors have pursued since time immemorial. As a result of Finnish law not acknowledging reindeer husbandry as an exclusive livelihood of the Saami, the cooperative's decision was in perfect conformity with Finnish domestic law, which is evidenced by the Finnish Supreme Court upholding the cooperative's decision. The forceful slaughter was only stopped because on 26 September 2011, the UN Human Rights Committee intervened, calling on Finland to halt the forced slaughter with reference to Article 27 of the International Covenant on Civil and Political Rights.⁸ The Human Rights Committee's intervention rectified, at least for the time being, the outlined situation. But as long as Finland fails to acknowledge reindeer husbandry as a distinct Saami traditional livelihood, the underlying problem remains. This implies that anytime, reindeer cooperative with a majority of Finnish reindeer farmers may take decisions that violate the human rights of Saami reindeer herders, in complete conformity with Finnish law.

The right to self-determination

2.9 The Finnish Constitution recognizes the Saami as an indigenous people and acknowledges their right to cultural autonomy within its homeland. Further, the Finnish Saami Parliament Act establishes the Saami parliament, and affirms that the Saami shall be ensured cultural autonomy within the homeland area.

2.10 The constitutional and legislative framework for the implementation of the Saami people's right to self-determination is hence, formally speaking, relatively strong. But Finland has taken few concrete actions to render it possible for the Saami people to exercise this right in practice. In most areas of importance to the Saami, including in matters concerning lands and natural resources, despite the establishment of the Saami parliament, decisions are still taken by Finnish authorities, and not by the Saami parliament or any other Saami authority.⁹

2.11 Today, there are a little bit more than 5,000 Saami individuals registered in the electoral register to the Saami parliament. This number corresponds well with the estimated number of Saami in Finland, which amounts to 7-8,000. The number of registered Saami in the electoral register has been arrived at basically by relying on an objective language-criterion for determining who constitutes a Saami, for the purposes of the Saami Parliament Act.¹⁰ In addition, the person must self-identify as Saami. However, in a ruling of 26 September 2011, the Finnish Supreme Administrative Court overturned the Saami parliament's own decision not to add four applicant individuals to the electoral register. Doing so, the Court set the language-criterion more or less

⁸ See *Kalevi Paadar et al v. Finland* (Communication No. 2102/2011 of 22 September 2011)

⁹ See conclusions by the Special Rapporteur in the Saami Report), A/HRC/18/35/Add. 2, paras. 38 and 40.

¹⁰ In short, according to the language-criterion, a person constitutes a Saami if she/he, or one of her/his parents, or one of her/his grandparents has had Saami as mother-tongue.

aside. In essence, it relied almost exclusively on the self-identification criterion. The only additional objective criterion the applicants needed to fulfil was to be able to point to one ancestor being registered as “Lapp” in registers dating back to the 1700s. The Supreme Administrative Court’s ruling presumably implies that tens of thousands of Finnish persons, including most likely essentially the entire population in northern Finland, can now claim legal status as Saami. This in turn implies that there is an imminent risk of mass-enrolment of Finnish persons into the electoral register of the Saami parliament. This will in turn result in the Saami losing control over its own parliament, catering for assimilation of the Saami people into the majority Finnish population.

International instruments

2.12 Finland has on numerous occasions declared its intention to ratify ILO Convention No. 169 on Indigenous Tribal Peoples in Independent Countries, most recently in this government’s political program. Also when Finland was up for review in the Universal Periodic Review Working Group the first time, the Working Group recommended Finland to ratify the ILO Convention No. 169.¹¹ Finland has, however, so far not taken concrete action to ratify the ILO Convention No. 169.

2.13 Finland voted in favour of the adoption of the UN Declaration on the Rights of Indigenous peoples. Finland has, however, taken few initiatives to implement the rights enshrined in the Declaration, including within the areas of lands and natural resources and the right to self-determination.

3. Questions

The Saami Council believes that it would be appropriate for member states to ask Finland:

1. Will Finland ratify ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries within the term of the current government administration?
2. What measures has Finland taken to implement the UN Declaration on the Rights of Indigenous Peoples, and what measures does the present Finnish government administration plan to take to implement the UN Declaration?
3. To what extent has Finland started a process of land-demarcation and recognition which clearly provides legal rights to of the Saami communities to their traditional lands?
4. What measures will Finland take to delimit spheres of responsibility where the Saami parliament has independent decision-making authority, in line with the UN Declaration on the Right of Indigenous Peoples Article 4?¹²
5. In what way does Finland intend to amend the Reindeer Herding Act, in light of the Finnish Supreme Administrative Court’s ruling that the entire herd of four Saami reindeer herders in the Nellim area should be forcefully slaughtered, and the UN Human Rights Committee’s subsequent intervention in the matter?
6. What will Finland do to rectify the ruling of the Supreme Administrative Court of 26 September 2011, implying that presumably the vast majority of the population in northern Finland can now claim legal status as Saami?

¹¹ Doc. A/HRC/8/24, para. 50, point 5

¹² Compare conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, paras. 41 and 76.

7. What legislation is in place in Finland ensuring that Finnish corporations do not violate human rights of indigenous peoples as enshrined in the UN Declaration on the Rights of Indigenous Peoples when such corporations operate abroad?

8. To what extent does Finnish statistics provide disaggregated data on the Saami population, i.e. separate from the Finnish population, including on Saami reindeer herders and Finnish reindeer farmers?

4. Recommendations

The Saami Council thinks that it would be appropriate for the UPR WG to recommend Finland:

1. To ratify ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.
2. To in cooperation with the Saami, formulate a national action plan for the implementation of the UN Declaration on the Rights of Indigenous Peoples in Finland.
3. To recognize reindeer husbandry as an exclusive livelihood of the Saami people.
4. To enact legislation recognizing the the Saami people's right to land and natural resources, prior to Finland's third appearance before the Universal Periodic Review Working Group.¹³
5. To introduce legislation that requires the extractive industry to obtain the free, prior and informed consent of concerned Saami reindeer herding communities before pursuing industrial activities in their areas.¹⁴
6. To provide Saami reindeer herding communities with legal aid in cases pertaining to rights to lands and natural resources.
7. To take measures to reduce the predator population in the Saami reindeer herding areas to a level the reindeer herding communities can sustain, and to fully compensate Saami reindeer herders for damages caused by predators.¹⁵
8. To comply with UN Declaration on the Rights of Indigenous Peoples Article 8, pursuant to which the Saami people must not be subject to forced assimilation, and Article 33.1 proclaiming that the Saami people is allowed to self-determine the membership of its group, by rectifying the Finnish Supreme Administrative Court's ruling of 26 September 2011.

¹³ See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 84

¹⁴ See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 85

¹⁵ See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 87