**Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)**

**Response by the Government of Finland to the questionnaire on “Right to Land under the UN Declaration on the Rights of Indigenous Peoples: A Human Rights focus”**

**15 January 2020**

***Effective mechanisms/programmes/remedies (articles 8, 10, 28, 29, 32 of the UNDRIP)***

*Constitution and legislation*

Under section 121, paragraph 4 of the *Constitution of Finland*, the Sámi have linguistic and cultural self-government in their native region, as provided by an Act of Parliament. Section 17, paragraph 3 of the Constitution guarantees the Sámi, as an indigenous people, the right to maintain and develop their own language and culture. In this provision, culture is understood as a broad concept. The provision is not limited to safeguarding and developing linguistic rights only, but also extends to safeguarding the Sámi form of culture, which includes traditional Sámi livelihoods, such as reindeer husbandry, fishing and hunting (*government proposal HE 309/1993 vp, p. 65)*.

The fundamental right of the Sámi as an indigenous people to practise and maintain their language and culture inherently includes the idea that the Sámi are free to determine these matters themselves and guide their future development (*government proposal HE 248/1994* vp). The provision of section 17, paragraph 3 of the Constitution also obliges public authorities to safeguard the development of the language and culture of the groups referred to in the provision. Thus, the effective implementation of fundamental rights also requires active measures from public authorities (*government proposal HE 309/1993 vp*). The provisions of the Constitution form the basis for Sámi self-government over their own language and culture. More detailed provisions are laid down in the Act on the Sámi Parliament, which entered into force on 1 January 1996.

In addition, the Sámi also have minority rights and the fundamental rights that apply to all citizens. The constitutional status of the Sámi as the only indigenous people in Finland and their community rights are substantively derived from rights set forth in international treaties.

*Nordic Sámi Convention*

In December 2016, Norway, Sweden and Finland achieved a preliminary result in their negotiations on *a Nordic Sámi Convention*, and on 13 January 2017, the chairpersons of the States’ delegations for the negotiations initialled the text. The objective of the Convention is to affirm and strengthen the rights of the Sámi so that they can preserve, practise and develop their culture, languages and social life with the smallest possible interference by the national borders.

The Convention safeguards the indigenous Sámi people’s constitutional right to maintain and develop their own language and culture. The Convention contains a chapter on land and water rights. According to the article on the approval of the Convention, the Convention, after being signed, will be submitted to all three Sámi Parliaments for approval. By letter dated 15 February 2017, the Finnish Ministry of Justice, in accordance with Article 42 of the Convention, submitted the Convention to the Sámi Parliament of Finland for approval.

On 7 December 2017, in the Sámi Parliamentary Council, the Sámi Parliaments of Finland, Sweden and Norway jointly decided to submit a proposal to the national Governments to renegotiate the Nordic Sámi Convention. In June 2018, the Sámi Parliamentary Council submitted a proposal to the three Governments to amend certain parts of the text of the Convention. The new Government of Finland has not yet taken a stand on whether it is prepared to continue negotiations on certain parts of the Convention.

*The Act on the Sámi Parliament and the Skolt Act*

Under the *Act on the Sámi Parliament* (974/1995), the members of the Parliament are elected by the Sámi from among themselves for the tasks relating to the autonomy over their own language and culture. According to section 5 of the Act, the task of the Sámi Parliament is to look after the Sámi language and culture, as well as to take care of matters relating to their status as an indigenous people. In matters pertaining to its tasks, the Sámi Parliament may make initiatives and proposals to the authorities, as well as issue statements. In the pursuance of these matters, the Sámi Parliament furthermore uses the powers prescribed in the *Act on the Sámi Parliament* or elsewhere in the law. Moreover, it is the task of the Sámi Parliament to represent the Sámi (section 6), to draw up a report to the Government each year (section 7), to decide how the funds designated for the common use of the Sámi must be allocated (section 8) and to negotiate with authorities (section 9). Section 4 of the Act lays down provisions on the Sámi homeland. According to section 4, the Sámi homeland means the areas of the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the reindeer owners’ association of Lapland in Sodankylä municipality.

Section 9 of the *Act on the Sámi Parliament* contains a provision on the obligation of authorities to negotiate certain matters with the Parliament. According to section 9, authorities must 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) the prospecting for and exploitation of deposits that contain mining minerals, or gold panning in state-owned lands and waters; (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. According to section 9, subsection 2, the Sámi Parliament must be provided with the opportunity to be heard and discuss matters.

On 23 November 2017, the Ministry of Justice issued a memorandum (*OM 2/551/2017*) on the obligation to negotiate under section 9 of the *Act on the Sámi Parliament*. According to the memorandum, prepared in agreement with the Sámi Parliament, any negotiations between authorities and the Parliament must be conducted with a view to reaching an agreement. In addition, the negotiations must be conducted in good faith, in a spirit of mutual appreciation and in a timely manner so that the negotiations can genuinely influence the planned measure.

Specific legislation in different sectors also includes provisions concerning cooperation with the Sámi Parliament or prohibitions against weakening the conditions of the Sámi. Examples of these are chapter 2, section 8 of *the Water Act* (587/2011), section 38 of *the Mining Act* (621/2011), section 42 of *the Environmental Protection Act* (527/2014) and section 8 of the Act on the Implementation of the Nagoya Protocol to the Convention on Biological Diversity (394/2016).

The objective of *the Skolt Act* (253/1995) is to promote the living conditions and livelihoods of the Skolt population and area, and to maintain and promote the Skolt culture. In the measures provided for in the Act, particular attention must be paid to: 1) promoting the natural and other livelihoods and culture of the Skolts and diversifying their livelihoods; 2) improving housing conditions and living and working environments; 3) developing the Skolt estates and their preservation in the ownership and management of Skolts; 4) the sustainable use of natural resources and preservation of the traditional environment as well as other environmental aspects; and 5) the development of the Skolt area in other respects.

*Government Programme*

In its programme, Prime Minister Sanna Marin's Government is committed to respecting and promoting the linguistic and cultural rights of the indigenous Sámi people as part of fundamental rights. International treaties will be taken into account in this work. According to the Government Programme, the work on reforming the Act on the Sámi Parliament will be continued. The possibility of ratifying ILO Convention No. 169 will be examined during the present government term.

*Legislation on environment and nature conservation*

Section 49 of the *Environmental Protection Act* *(527/2014)* lays down the conditions for granting an environmental permit. One condition for granting a permit is that the activity in question alone or in combination with other activities, taking permit regulations and the location of the activity into account, does not cause substantial deterioration in the conditions under which the Sámi people practise their traditional livelihoods in the Sámi homeland or otherwise maintain and develop their culture, or substantial deterioration in the living conditions of the Skolts or reduced opportunities to engage in nature-based livelihoods in the Skolt area referred to in the Skolt Act.

Section 14 of *the Nature Conservation Act* provides that any action necessary for the appropriate maintenance and use of a nature reserve is permissible in a national park or strict nature reserve if it does not jeopardise the purpose for which the park or reserve was established. In these areas, it is permissible to pick berries and mushrooms, to fish by means of angling or ice fishing, and to practise reindeer herding in accordance with *the Reindeer Husbandry Act (848/90)*. However, the authority or agency in charge of a strict nature reserve may, for scientific research or some other special purpose, impose restrictions on the grazing of reindeer there. The State is responsible for the resulting fencing costs and other related expenses.

Section 15 of the *Nature Conservation Act* provides that, with permission from the authority or agency in charge of a national park or a strict nature reserve, it is permissible to fish in the park or reserve by means other than angling or ice fishing, to remove a dead game animal from the area, and to construct buildings or other fixed installations for the purpose of reindeer herding, provided that this does not jeopardise the purpose for which the park or reserve was established.

According to section 16 of the *Nature Conservation Act*, conditions for the maintenance and development of the Sámi culture must be secured in national parks and strict nature reserves located in the Sámi homeland. When an area is being established, the specific objectives of its protection and, if the area to be established is a national park, the interests of visitors to the area must be taken into account in an appropriate manner.

The State Forest Enterprise (*Metsähallitus*), responsible for the management of state nature reserves, has decided that the management and use of national parks and strict nature reserves in the Sámi homeland will be planned in compliance with the *Akwé: Kon recommendations* on the implementation of CBD Article 8(j), which promote the participation of the Sámi in planning the use of the protected areas. This is of considerable importance, as the majority of the Sámi homeland has been protected. Studies have shown that the principles of the guidelines have also been favourable for the Sámi. In 2019, the Sámi Parliament and the State Forest Enterprise jointly revised the practical instructions for the application of the recommendations. The application of the procedure is also being promoted in other land use and environmental planning.

According to section 1 of the *Act on the Protection of Wilderness Reserves* (*62/1991),* wilderness areas are established in order to preserve the wilderness nature of the areas, to safeguard the Sámi culture and nature-based livelihoods, and to develop versatile use of nature and the conditions for it. There are 10 wilderness areas in the Sámi homeland, with a total area of 1,437,000 ha. According to section 7 of the *Act on the Protection of Wilderness Reserves,* the management and use of a wilderness area must follow a management and use plan drawn up by the State Forest Enterprise and confirmed by the Ministry of the Environment.

Forests in wilderness areas are kept in natural condition or are subject to organic forest management. The State Forest Enterprise draws up instructions for the management of organically managed forests in wilderness areas. The instructions are taken into account in preparing the management and use plan for the area.

***Recognition of a right to land/establishment of processes to adjudicate land rights / involvement of indigenous peoples (articles 25, 26, 27, 30, 32 of the UNDRIP)***

*The extent to which domestic law, policies or practices relating to the recognition and protection of indigenous peoples’ right to own, live and use their lands, territories and resources conforms with the UNDRIP*

*ILO Convention No. 169*

So far, Finland has not ratified *the Convention concerning Indigenous and Tribal Peoples in Independent Countries*, adopted by the International Labour Organization (ILO) in 1989 (ILO Convention No. 169). On several occasions, however, Finland has studied the possibility of ratifying the Convention, including by studying the land ownership conditions in the Sámi homeland and the use of Sámi land and water rights.

The government proposal to Parliament for accepting *the Convention concerning Indigenous and Tribal Peoples in Independent Countries* and for an act bringing into force the provisions of the Convention of a legislative nature and an Act amending *the Act on The State Forest Enterprise* (*government proposal HE 264/2014 vp*) was submitted to Parliament in November 2014.

According to the proposal, Parliament should accept a declaration to be made by the Finnish Government and the Finnish Sámi Parliament upon the ratification of the Convention for declaring their mutual agreement as the basis for implementing the Convention, and in particular the provisions of its Article 14, in Finland. The main content of the declaration is that the Convention will not lead to interference with the rights to own, use or possess the land and water areas located in the Sámi homeland. This applied not only to private but also to state-owned lands and waters. In the declaration, Finland committed itself to safeguarding and developing the rights of the Sámi to use these areas for the purpose of practising, maintaining and promoting the Sámi culture. According to the declaration, the Government of Finland will also ensure the Sámi the right to participate in and influence the planning of the use of any state-owned land and water areas located in the Sámi homeland and the related decision-making, in order to safeguard and promote the rights of the Sámi as an indigenous people. Furthermore, the Sámi will be ensured the right to use these areas for practising, maintaining and promoting Sámi culture, and the right to pursue traditional Sámi livelihoods, such as reindeer husbandry, hunting and fishing, there.

In connection with the proposal to accept the Convention, it was also proposed that the *Act on the State Forest Enterprise* be amended by including in it provisions on planning the management and use of the state-owned lands and waters in the Sámi homeland and on the prohibition against weakening the Sámi culture. In other respects, the Government proposal did not intend to amend national legislation.

Parliament deferred the government proposal to ratify the ILO Convention and had no time to consider it before the next parliamentary elections. In January 2019, the proposal was withdrawn from Parliament because it had become obsolete and it was no longer possible to prepare a new proposal in cooperation with the Sámi Parliament during the government term. The withdrawal of the proposal does not include a statement on whether the Convention will be ratified at a later stage.

A study commissioned by the Government and completed in January 2017 as part of its analysis, assessment and research activities sought to respond to the Government’s need for information regarding, in particular, the Sámi land and participatory rights and the definition of a Sámi. The international study report “*Actualizing Sámi Rights: International Comparative Research*” (Heinämäki *et al.*) contains a number of recommendations and stresses that, regardless of the ratification of ILO Convention No. 169 or the Nordic Sámi Convention, the current legal obligations binding on Finland – the Constitution and international law – already require that the rights of the Sámi be taken into account more closely in legislation. The report recommends that the prohibition against weakening the Sámi culture be included in the *Act on the State Forest Enterprise* and other Acts of Parliament relating to lands and waters and relevant to the rights of the Sámi.

According to the report, ratifying ILO Convention No. 169 does not, particularly in circumstances such as Finland, require that the land ownership rights of the Sámi be safeguarded. On the other hand, strong rights to use the lands and to participate effectively in their management are in line with the Convention, the position of the monitoring committee and the practices of the States that have ratified the Convention.

In practice, the rights of the Sámi to participate in decision-making on land use have been ensured in legislation by means of the obligation to negotiate under the Act on the Sámi Parliament and of the relevant provisions in the above-mentioned special acts.

Finland does not restrict the ownership of land by Finnish citizens or nationals of the EU or EEA Member States. Thus, the Sámi, too, have an equal right to own land, and most of them presumably do own some land. In the Sámi homeland, estates have been established for all wishing it, on the basis of the legislation on Skolts, reindeer farms and husbandry, and nature-based livelihoods.

*Other information*

In 2016, an international comparative legal study on the implementation of the rights of the Sámi was carried out as part of the analysis and research activities carried out in support of the Government's decision-making. The study presents legislation of different countries on issues such as the definition of an indigenous people and land rights, and examines in more detail the content of the ILO Convention and the practice of applying it both at international level and in the countries that have ratified it. The study is available here:

[https://valtioneuvosto.fi/documents/10616/3866814/4\_Saamelaisten+oikeuksien+toteutuminen+kansainv%C3%A4linen+oikeusvertaileva+tutkimus/e765f819-d90c-4318-9ff0-cf4375e00688?version=1.0](https://valtioneuvosto.fi/documents/10616/3866814/4_Saamelaisten%2Boikeuksien%2Btoteutuminen%2Bkansainv%C3%A4linen%2Boikeusvertaileva%2Btutkimus/e765f819-d90c-4318-9ff0-cf4375e00688?version=1.0)

*The extent to which these laws, policies, practices respect the traditions and land tenure systems of indigenous peoples*

In Finland, the questions of land ownership in the Sámi homeland were solved finally by the general parcelling out of land, between the 1750s and the 1950s, at the latest. The State of Finland owns approximately 90 per cent of the Sámi homeland. The State-owned areas are governed by the State Forest Enterprise.

Section 6 of the *Act on the State Forest Enterprise*  *(234/2016)* sets forth the general social obligations of the State Forest Enterprise. According to section 6, subsection 2, the management, use and protection of the natural resources governed by the State Forest Enterprise in the Sami homeland referred to in the *Act on the Sámi Parliament (974/1995)* must be adjusted to ensuring the conditions of the Sami people to practice their culture, and in the reindeer herding area referred to in the *Reindeer Husbandry Act* *(848/1990)* they must be adjusted to fulfilling the obligations laid down in *the Reindeer Husbandry Act*. According to section 6, subsection 5, the responsibility for the general social obligations is taken into account in setting the performance target for the State Forest Enterprise.

The adjustment of the forestry operations of the State Forest Enterprise is based on an agreement concluded in 2014 between the Sámi Parliament, the Skolt Village Assembly, the reindeer owners’ associations in the Sámi homeland and the State Forest Enterprise concerning the practices to be followed in the Sámi homeland and more detailed local agreements. The parties monitor the implementation of the agreement at an annual consultation.

The reindeer owners’ associations in the Sámi homeland are given an advance opportunity to influence all felling and tilling plans and the construction of new roads in the homeland. Maps of the plans are sent to the chairman of each association in advance, for their notifying the State Forest Enterprise , within three weeks, of any needs for changes, negotiations or more time for considering the matter. The negotiations are conducted with an aim towards mutual understanding. The agreed matters and the maps are recorded in a memorandum. The State Forest Enterprise Group does not fell trees in the Sámi homeland unless it has reached mutual understanding on it with the local reindeer owners’ association in advance.

Regarding the principles for assigning and planning lands governed by the State Forest Enterprise, the Government notes that new sites for building holiday housing in the Sámi homeland are leased only in plan areas. Unplanned areas are governed by the agreement between the State Forest Enterprise and the Sámi Parliament, the Skolt Village Assembly and the reindeer owners’ associations located in the homeland. When planning to conclude agreements on rights of use, leasehold and routes in unplanned areas in the Sámi homeland, the State Forest Enterprise requests an advance opinion of the associations in the homeland. Before concluding such agreements, the State Forest Enterprise endeavours to reach mutual understanding with the associations.

The following legislative provisions contribute to guaranteeing the right of the Sámi to use State-owned lands in the Sámi homeland:

Section 8 of *the Hunting Act* *(615/1993)* provides that, among others, persons whose domicile is in the Sámi homeland have the right to hunt on State-owned land in their home municipality.

Under section 10 of the *Fishing Act* *(379/2015),* a person whose home municipality referred to in section 2 of the *Act on the Municipality of Domicile* *(201/1994)* is Enontekiö, Inari or Utsjoki has the right to obtain a permit from the State Forest Enterprise for fishing in State-owned water areas in the above-mentioned municipalities free of charge. The permit does not apply to the salmon and trout migration areas in the region. For such areas, the person has the right to receive from the State Forest Enterprise a personal season permit entitling him or her to lure fishing in the State-owned salmon and trout migration areas located in his or her home municipality, on conditions set by the State Forest Enterprise. The season permit is cost-free for persons under 18 years of age.

According to section 2 of the *Reindeer Husbandry Act* *(848/1990),* the reindeer herding area covers the entire Sámi homeland. All State-owned lands located in the Sámi homeland are also covered by the area specifically intended for reindeer herding. State-owned lands in this area may not be used in a manner that may significantly hinder reindeer herding. Transfer of ownership or leasing of land in this area may only be on the condition that the landowner or lessee does not have a right to receive compensation for damage caused by reindeer. According to section 3 of *the Reindeer Husbandry Act*, reindeer herding may be practised in the reindeer herding area irrespective of land ownership or possession rights.

Under the fishing regulation related to the *agreement between Finland and Norway on fishing in the Tenojoki River* (*Finnish Treaty Series* *41/2017*), only a fishing right holder referred to in section 4, subsection 1, paragraph 10 of the *Fishing Act* *(379/2015)* who lives permanently in the Tenojoki River valley has the right to catch salmon, sea trout and Arctic char with traditional traps, *i.e.* salmon weirs and a drift net. In addition, these fishing right holders are entitled to fish with an ordinary bar net.

*Positive examples of processes established by States to recognise and adjudicate the rights of indigenous peoples to their lands, territories and resources and the extent to which indigenous peoples are involved in this process*

According to section 39, subsection 2 of *the Act on* *the State Forest Enterprise* municipal advisory committees must be set up in each municipality located entirely in the Sámi homeland to deal with the sustainable management and use of State-owned lands and waters and the related natural resources. According to section 6, subsection 2 of *the Government Decree on the State Forest Enterprise (247/2016),* the task of the municipal advisory committees is to issue statements and submit initiatives to State Forest Enterprise in matters concerning forestry; the sale, purchase, exchange and lease of State-owned lands; natural resource planning; the planning of snowmobile routes and tracks; permits for off-road traffic, hunting and fishing; and fishery in State-owned waters. The committees consist of representatives of the State Forest Enterprise, the Sámi Parliament, the municipality, the local reindeer owners’ association, the local fishery region, the limited liability company referred to in the Act on the State-owned Limited Liability Company for Forestry, businesses and commercial fishers. The advisory committee to be set up in Inari municipality must also have a representative of the Skolt Village Assembly.

The adjustment of the forestry operations of the State Forest Enterprise is based on an agreement concluded in 2014 between the Sámi Parliament, the Skolt Village Assembly, the reindeer owners’ associations in the Sámi homeland and the State Forest Enterprise concerning the practices to be followed in the Sámi homeland and more detailed local agreements. The parties monitor the implementation of the agreement at an annual consultation.

The reindeer owners’ associations in the Sámi homeland are given an advance opportunity to influence all felling and tilling plans and the construction of new roads in the homeland. Maps of the plans are sent to the chairman of each association in advance, for their notifying the State Forest Enterprise, within three weeks, of any needs for changes, negotiations or more time for considering the matter. The negotiations are conducted with an aim toward mutual understanding. The agreed matters and the maps are recorded in a memorandum. The State Forest Enterprise Group does not fell trees in the Sámi homeland unless it has reached mutual understanding on it with the local reindeer owners’ association in advance.

*Experiences from Land Tribunals that have a mandate to identify and recognize indigenous ownership and usufruct rights to lands and extent to which these experiences are positive, and if not why not. The extent to which they apply or respect indigenous customary law when assessing land claims*

Land tribunals do not exist in Finland because the questions of land ownership in the Sámi homeland were solved finally by the general parcelling out of land, between the 1750s and the 1950s, at the latest.

*Extent to which indigenous peoples can determine and develop priorities and strategies for the development or use of their lands or territories and other resources, including by exercising their traditional occupations and ensuring their livelihoods*

Section 39 of *the Act on the State Forest Enterprise* provides that provincial or regional advisory committees assist the State Forest Enterprise in decision-making concerning State areas governed by the State Forest Enterprise to take the position of the local residents into account and promote the harmonisation of activities. In each municipality located entirely in the Sámi homeland, a municipal advisory committee must be set up to deal with the sustainable use and management of State-owned lands and waters and the related natural resources. The Government considers that, in the Sámi homeland, the municipal advisory committees are a successful way of organising the participation of Sámi people and other local inhabitants in the planning of the use of State-owned lands.

Since 2002, the Ministry of the Environment has held regular cooperation meetings in nature conservation matters with the Sámi Parliament, the State Forest Enterprise and the Lapland Centre for Economic Development, Transport and the Environment. Representatives of the Sámi Parliament are invited to participate in preparatory work on the conservation of biodiversity and the sustainable use of nature in the Sámi homeland. The Ministry prepares Finland's positions for the meetings and working groups under the *Convention on Biological Diversity (CBD)* jointly with the Sámi Parliament, and invites a representative of the Sámi Parliament to the Finnish delegations to the working groups and, of course, the Conference of the Parties. The negotiation obligation referred to in section 9 of *the Act on the Sámi Parliament* is being complied with.

This cooperation has played a major role in nature conservation by the Ministry of the Environment. Authorities have received a great deal of information and gained more understanding in matters related to the traditional knowledge of the Sámi.

Article 8(j) of the *Convention on Biological Diversity* (CBD) regulates the use of traditional data in the conservation and sustainable use of biodiversity. In Finland, the Ministry of the Environment has set up a special working group for the implementation of the Convention. The working group is composed of representatives of the Sami Parliament (chairperson, members and experts) and the key ministries, state authorities and research institutes. The working group promotes the national implementation of the work programme on CBD Article 8(j).

Climate change is most rapid in the northern regions. Its effects on, for example, the flora and fauna of the Sámi homeland are already evident. In the pursuit of reindeer husbandry, fishing and other livelihoods based on traditional knowledge, such factors as exceptional weather conditions, changes in the snow situation and the behaviour of water bodies increase uncertainty. The Finnish Government has launched a research project on this subject (*Saamelaiset muuttuvassa ilmastossa (“The Sámi in a changing climate”)).* The project is interdisciplinary and aims to combine information from different disciplines with traditional knowledge. The results of the research project will be published in January 2020.

*Extent to which States apply the norm of free, prior and informed consent for the approval of projects affecting indigenous peoples lands, territories and resources, bearing in mind the Study produced by the EMRIP on this topic, in 2018*

Please see the replies above.

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ANNEX: Metsähallitus aiming at consent with the Sámi Parliament and Sámi Communities