

## 1. Issues

### *Saami land and water rights*

3. 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.<sup>1</sup> 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.<sup>2</sup> 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 is the more precise nature of these rights. Finnish policy towards the Saami people has, however, ensured that these questions remain unanswered.

4. UN treaty bodies have repeatedly criticized Finland for not solving the Saami land rights issue.<sup>3</sup> Finland's standard response has been for decades the same; that it is currently surveying the matter, the latest survey started in the end of 2015. 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. 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 the decisions and legislative history of the state of Finland, but the factual, traditional land use of the Saami communities has not been documented. This approach of documenting written history has clearly not worked, while the oral, traditional knowledge has been left undocumented. Therefore, it is time for the opposite strategy. Finland should first – and without further delay – should start mapping traditional, customary Saami land use in co-operation with Saami communities. It is crucial that Saami communities are involved, and the mapping process has their consent. Without their consent, the process could be harmful for the community in concern. The fact is that through traditional use, the Saami people have established property rights to their lands and resources and to property in the form of rights to continue to pursue their traditional livelihoods. Mapping of traditional land use would for example to facilitate State authorities to avoid planning activities to the core areas concerning Saami culture.

<sup>1</sup> 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 and also in the following report (A/HRC/33/42/Add.3 para 61.

<sup>2</sup> 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.

<sup>3</sup> For the most recent criticism, see e.g. CERD/C/FIN/CO/20-22 (2012), para 13, 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.

5. 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 constructions of roads, hydroelectric dams, mining, forestry and tourism have resulted in loss and fragmentation of pasturelands, with detrimental effects on reindeer herding.<sup>4</sup> 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.

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.

6. The Deatnu River is a border river between Finland and Norway. Fishing North Atlantic salmon is the basis for the Saami culture in the Deatnu Valley, and has provided livelihood for the local Saami's since time immemorial. The salmon fishing in Deatnu has been regulated through bilateral agreements since 1873. The current Agreement between the Republic of Finland and the Kingdom of Norway on joint fishing regulations concerning the fishing area of the Tana Rivers entered into force in 1990.

The agreement does not set forth any specific rights for the Saami people. In the agreement, there are two different fishing license groups: the local and the recreational fishers. Saami are in both of the groups of fishing licenses, depending if they have moved away from their home municipality or not. The property rights of the traditional Saami fishing have been validated in numerous judgments.

In November 2011, Finland and Norway started renegotiating the Deatnu Agreement. In June 2016 the parties released a Draft Agreement and it does not contain a single norm on Saami fishing rights. In the Draft Agreement about 80 per cent of the traditional Saami fishing is reduced compared to the agreement in force. In Finland, where the fishing rights are mostly property rights of Saami, this could be stated as expropriation without compensation of any kind - and the target group of the expropriation is Saami fishing right holders. Also the Draft Agreement violates the right to culture, which is safeguarded in the Finnish Constitution. Not to mention the disappearance of Saami traditional knowledge on fishing, when Saami are not allowed to fish using the traditional means of fishing. The Draft Agreement prohibits completely the traditional fishing of those Saami, who have property rights in fishing and who are non-local in the Deatnu Valley in Finland. The Sami society in the Deatnu Valley and elsewhere is strongly opposing the Draft Agreement, as well as Finnish people in Lapland.

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

<sup>5</sup> Act 94/1989. <https://treaties.un.org/doc/Publication/UNTS/Volume%201588/volume-1588-I-27809-English.pdf>

7. The Finnish Forest and Park Enterprise (Metsähallitus) governs 90 per cent of the Saami Homeland, even though the Saami land rights' issue is unsolved. In the recent reform of the Forest and Park Enterprise, the Government had proposed amendments that would have guaranteed safeguards for Saami culture. But in the final bill the Government had removed the safeguards. Finland has promised, that the management, use and protection of natural resources governed by the Finnish Forest and Park Enterprise (Metsähallitus) in the Saami Homeland takes into account the opportunities of the Saami people to practice their culture. But lack of safeguards, i.e. right to appeal makes it difficult to realize the promise in practice.<sup>6</sup>

New municipal advisory committees are set up in municipalities located entirely in the Saami Homeland. The aim of the committees is to make proposals to the Enterprise on the sustainable management and use of so called State-owned lands and waters and related natural resources. There is no guarantee that the proposals are taken into account in the decision making process of the Enterprise, which is not transparent since it is a company, after all. The Saami Parliament has nominated a representative (in one municipality, Utsjoki two representatives) to these municipal advisory committees. One member out of nine members does not strengthen Saami rights, just fulfills the principle of participation but not principle of free, prior and informed consent.

#### *Reindeer herding as a sole right of the Saami*

8. 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.<sup>7</sup> 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.

9. 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.

10. Saami Reindeer Herding Cooperatives do not have a trade union. Instead, Saami reindeer herding Cooperatives are members in the The Reindeer Herders' Association (Paliskuntaryhdistys), which is the steering, advisory and expert organization for reindeer husbandry under the Finnish Ministry of Agriculture and Forestry. The special needs of free roaming reindeer herding is not recognized enough in the governance structure of the Reindeer

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<sup>6</sup> A result of 2,5 years of negotiations between the Finnish Saami Parliament and the Finnish government, there was a reached agreement on the chapter for the new Forestry Act about Saami Culture and the legal procedures which ensure the rights of the Saami people in the Saami area in Finland. Without any consultations or communications with the Saami Parliament, Finnish government and the Forest and Park Enterprise one-sidedly edited the chapter from the Act that was passed in the Finnish Parliament in 2016. At the same time, a disinformation campaign targeted against Saami rights and the legality of the Saami Parliament stormed big in volume both in social and traditional media. This disinformation reached even the members of Finnish government.

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

Herders' Association. Although the Saami Reindeer Herding Cooperatives are the biggest in regards to amount of reindeer and economical profit, the Saami Reindeer Herding Cooperatives are a minority in the decision making process of the Reindeer Herders' Association. Therefore Finland should financially support the Saami Reindeer Herding Cooperatives to establish an organization or union, which defends their rights and supervises their interests. The failure to solve Saami land rights together with the recent reform of the Forest and Park Enterprise (Metsähallitus) have led to the situation where the Saami Reindeer Herding Cooperatives are increasingly in need to defend their right to culture and livelihood.

### *The right to self-determination*

11. 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.

12. 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.<sup>8</sup>

13. 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 10,000. 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.<sup>9</sup> 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 parliaments own decision not to add four applicant individuals to the electoral register. Similarly, in a ruling of 30 of September 2015, the same court overturned the Saami parliaments own decision to add 93 applicant individuals to the electoral register. Doing so, the Court set the language-criterion more or less 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.<sup>10</sup>

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<sup>8</sup> See conclusions by the Special Rapporteur in the Saami Report), A/HRC/18/35/Add. 2, paras. 38 and 40.

<sup>9</sup> 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.

<sup>10</sup> Also the CERD Committee recommends that, in defining who is eligible to vote for Members of the Saami Parliament, the State party accord due weight to the right of the Saami people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation. (CERD/C/FIN/CO/20-22, para 12).

### *Education*

14. Over 70 per cent of Saami children live outside of the Saami Homeland. However, the right to have to Saami education outside Saami Homeland is not secured in the education acts. Saami language as a mother tongue outside Saami homeland is not treated equally with Finnish and Swedish, nor with the Saami languages compared to education in Saami languages in Saami homeland. The Saami languages outside the Saami homeland have the same status as languages of immigrants. Since laws do not obligate municipalities outside Saami homeland to arrange education in the Saami languages, only few municipalities outside Saami area arrange education in Saami language and some that do not even use immigrant status. For example in Rovaniemi, classes are arranged after school, grades are marked in additional paragraph of the certificate and in autumn 2016 schools started in early august and the city started recruiting teacher in mid-September. Hence, Saami languages are not at the same level with other schools subjects and far from being treated equally. In the year 2015, there were 1255 Saami children on the age between 7 to 17 years living outside Saami homeland. As a result of the of the poor legal status of Saami languages outside of Saami homeland only 93 children, which makes 7.4 % of school aged Saami children living outside of Saami homeland, receive education in Saami languages.

### *International instruments*

15. Finland has on numerous occasions declared its intention to ratify ILO Convention No. 169 on Indigenous Tribal Peoples in Independent Countries. Today, a proposal for ratification is under consideration in the Finnish Parliament since 2015. 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<sup>11</sup> and in the second report Finland supported the recommendation concerning ratification (para 89.9).

16. 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.

## **2. 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. In the ratification process, the amendments of safeguard Saami culture should be added to the Act on the Forest and Park Enterprise and free, prior and informed consent of Saami Parliament and affected Saami societies is secured in the Act.
2. To start mapping Saami customary land and water use in co-operation with Saami communities and with their consent.

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<sup>11</sup> Doc. A/HRC/8/24, para. 50, point 5.

3. To increase the number of members nominated by the Saami Parliament to the Municipal Advisory Board of the Forest and Park Enterprise in a way that Saami representatives are in majority in the Committee.<sup>12</sup>
4. To recognize reindeer husbandry as an exclusive livelihood of the Saami people.<sup>13</sup>
5. To financially support the Saami Reindeer Herding Cooperatives to establish an organization or union, which defends their rights and supervises their interests.
6. To secure the rights of the Saami fishing right holders in the Deatnu Agreement.
7. To enact legislation recognizing the the Saami people's right to land and natural resources, prior to Finland's fourth appearance before the Universal Periodic Review Working Group.<sup>14</sup>
8. 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.<sup>15</sup>
9. To provide Saami reindeer herding communities with legal aid in cases pertaining to rights to lands and natural resources.
10. 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 and ruling of 30 of September 2015.<sup>16</sup>
11. To secure the right to education in Saami languages outside Saami homeland in education acts, as well as economical support.

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<sup>12</sup> See conclusions by the Special Rapporteur in the Saami Report, A/HRC/33/42/Add.3 para 88.

<sup>13</sup> See conclusions by the Special Rapporteur in the Saami Report, A/HRC/33/42/Add.3 para 86.

<sup>14</sup> See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 84 and

<sup>15</sup> See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 85

<sup>16</sup> See conclusions by the Special Rapporteur in the Saami Report, A/HRC/33/42/Add.3 para 85.