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Expert Mechanism on the Rights of Indigenous Peoples  
Office of the United Nations High Commissioner  
for Human Rights (OHCHR)  
CH-1211 Geneva 10, Switzerland

Letter of the High Commissioner for Human Rights of 3 December 2009

**Study on Indigenous Peoples and the Right to Participate in Decision-Making; Reply of Finland**

In Human Rights Council Resolution 12/13, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was requested to carry out a study on indigenous peoples and the right to participate in decision-making. The EMRIP was mandated to present its final study to the Council at its eighteenth session in 2011.

A draft progress report will be discussed by the EMRIP at its third session in July 2010. In order to prepare the report, the EMRIP welcomed contributions from, *inter alia*, Governments.

The Government of Finland submits the following information for the purpose of the study.

**1. Analysis of the incorporation and implementation of the international human rights framework, including related jurisprudence, with regard to indigenous peoples and the right to participate in decision-making.**

The Sámi people are the only indigenous people in Finland. Section 17, subsection 3 of the Constitution provides the Sámi, as an indigenous people, the right to maintain and develop their own language and culture. Provisions on the right of the Sámi to use the Sámi language before the authorities are to be laid down by an Act.

In addition, Section 121 of the Constitution includes provisions on municipal and other regional self-government. According to subsection 4, the Sámi have a linguistic and cultural self-government within the Sámi Homeland Area (Sámi native regions) as provided by an Act.

The first step in the establishment of the Sámi administration was taken in 1973, when the Delegation of Sámi Affairs, the first representative body elected by the Sámi from among themselves, started its activities. The advisory status of the new body was secured by the *Decree on the Delegation on Sámi Affairs* (988/1990). In 1996, the Decree was substituted by the *Act on the Sámi Parliament* (974/1995).

At present, the Act on the Sámi Parliament guarantees the cultural autonomy of the Sámi as an indigenous people in respect to their language and culture. Section 5 of the said Act entrusts the Sámi Parliament with the task of looking after the Sámi language and culture, as well as taking 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.

Section 9 of the above Act includes a provision on the authorities' obligation to negotiate with the Sámi Parliament in all far-reaching and important measures that may directly and in a specific way affect the status of the Sámi as an indigenous people and which concern such matters in the Sámi Homeland (in the areas of the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the reindeer owners' association of Lapland in Sodankylä) as listed in the provision. According to the provision, the relevant authority shall provide the Sámi Parliament with the opportunity to be heard and discuss such matters as described above. Failure to use this opportunity in no way prevents the authority from proceeding in the matter.

With regard to the national election laws in Finland, there are no specific provisions for the representation of persons belonging to ethnic, national or linguistic minorities in the Parliament, the European Parliament or the municipal councils, which are the bodies nominated by general elections and regulated by the *Election Act (714/1998)*. Politically active persons representing a minority group are members of political parties of their choice. At the local level, there are representatives with Sámi background in municipal councils of the Sámi Homeland Area.

The representation of the Sámi in the Parliament was last examined by the Committee for the Revision of the Election Acts in 1989. The Committee examined three alternatives: 1) the possibility of reserving a seat in the Parliament for the Sámi on the basis of a quota system, 2) the possibility of naming a Sámi representative with the right to be present and to speak and 3) the possibility of hearing the Sámi in the Parliament.

The Committee preferred the third alternative and the current procedure, according to which the Sámi are heard in the Parliament with regard to government bills or other matters specifically involving them, was implemented on the basis of the Committee's proposal in 1991. According to article 37 of the *Rules of Procedure of the Parliament (40/2000)*, the Sámi are heard in the context of the preparation of a matter by a parliamentary committee, because at this stage it is still possible to influence the subject matter of a proposal.

The constitutional right of the Sámi to maintain and develop their own language and culture is ensured also in the *Sámi Language Act (1086/2003)*.

The *Skolt Act (253/1995)* includes provisions on the participation of the Skolt Sámi into decision-making. According to Section 1 of the said Act, the Act purports to enhance the living conditions and livelihoods of the Skolt Sámi, as well as maintain and promote the Skolt culture.

Within the field of administration of the Ministry of Agriculture and Forestry, the Finnish Forest and Park Service (*Metsähallitus*) functions as the State enterprise managing, using and protecting natural resources and other property governed by it. According to Section 4, subsection 2 of the Act on the Finnish Forest and Park Service (*laki Metsähallituksesta; 1378/2004*), the management, use and protection of natural resources governed by the Forest and Park Service in the Sámi Homeland is to be adjusted to ensuring the conditions of the Sámi people to practice their culture. Correspondingly, they are to be adjusted to fulfilling the obligations laid down in the *Reindeer Husbandry Act (848/1990)* in the reindeer herding area referred to in that Act.

In the *Government Bill to the Parliament on an amendment to the Nature Conservation Act (HE 99/2009)*, the Government proposes the introduction of a new Section 16 on the consideration of the Sámi culture when establishing nature reserves. According to the Government Bill, the suggested provision would contribute to the realization of the rights of the Sámi as set out in Section 17 of the Constitution. The Section is not intended to interfere with the negotiation obligation of the authorities with the Sámi Parliament that emanates from Section 9 of the Act on Sámi Parliament.

Finland was actively involved in negotiations on the Declaration on the Rights of Indigenous Peoples and worked for a compromise that would satisfy all parties. Also the Sámi Parliament was actively involved in the negotiation process at both national and international level. The process of translating the Declaration into the national languages, Finnish and Swedish, as well as into Sámi is ongoing.

**2. Identification of indigenous peoples' own decision-making processes and institutions as well as challenges in maintaining and developing them.**

The status of the Sámi as an indigenous people was recognized in the Constitution of Finland in the context of the fundamental rights reform in 1995.

Section 1 of the Act on the Sámi Parliament authorises the Sámi to choose a Sámi Parliament from among themselves through an election for tasks relating to their linguistic and cultural self-government. The Sámi Parliament consists of 21 members and four deputy members chosen for four years at a time. There should be at least three members and one deputy member for each of the municipalities in the Sámi Homeland.

Because of its autonomous nature, the Sámi Parliament is not a state authority or a part of state administration. As it is established by an Act, it is a legal person of public law with an independent status in relation to state and municipal authorities. Even though it belongs to the purview of the Ministry of Justice, it does not work under the subordination of the Ministry.

The activities of the Sámi Parliament are primarily financed by the state. The annual state budget includes appropriations for the activities of the Sámi Parliament. The Ministry of Justice grants the Sámi Parliament a yearly subsidy for the maintenance of the linguistic and cultural self-government of the Sámi. In addition, the Ministry of Education grants two yearly subsidies, one to provide support to cultural and organisational activities of the Sámi and one for the production of educational material in the Sámi language. According to legislation on the school system, a pupil living in the Sámi Homeland has the right to education both on the Sámi language and in the Sámi language.

The social welfare and health services provided to the Sámi in their own language have been developed over the past decade. Since 2002, the annual state budget has included an appropriation for state subsidies for the provision of such services in the Sámi language. The appropriation is distributed to the municipalities in the Sámi Homeland through the Sámi Parliament.

The task of the Sámi Parliament have been partially described under question one above. In addition, the Sámi Parliament uses the powers prescribed in the Act or elsewhere in legislation to decide on the allocation of the funds designated for the common use of the Sámi. Thus, the Sámi Parliament is in charge of the further distribution of the subsidy to the relevant Sámi organisations and other actors and is free to determine any areas of focus. Furthermore, Section 6 of the related Act authorises the Sámi Parliament to represent the Sámi in national and international connections in matters pertaining to its tasks.

The challenges related to the functioning of the Sámi Parliament and its role in decision-making are discussed below under question 4.

**3. Identification of participatory and consultative mechanisms linked to both State and relevant non-state institutions and decision-making processes affecting indigenous peoples as well as challenges in their effective implementation.**

With regard to decision-making processes affecting indigenous peoples, the Sámi have recently been consulted in the following legislative projects within the administrative field of the Ministry of Agriculture and Forestry:

- 1) Decree of the Ministry of Agriculture and Forestry on payments of services produced as public administrative duties (721/2008). A statement was requested from the Sámi Parliament;
- 2) Decree of the Ministry of Agriculture and Forestry on payments of services produced as public administrative duties (1276/2005). A statement was requested from the Sámi Parliament;
- 3) Decree on Amending Section 2 of the Forest Decree (377/2008) A negotiation was organized with the Sámi Parliament within the meaning of Section 9 of the Act on the Sámi Parliament;

- 4) Government Bill of 4 December 2009 on the amending of the Forest Act and Chapter 48, Section 3 of the Penal Code (HE 266/2009). A statement was requested from the Sámi Parliament;
- 5) Government Decision-in-principle (27 March 2008) on a National Forest Programme 2015. A representative of the Sámi Parliament has been involved in the preparation group for social and cultural sustainability in the forest sector. Before the consideration of the Programme in the Government, the Ministry of Agriculture and Forestry arranged negotiations on the Programme pursuant to section 9 of the Act on the Sámi Parliament (974/95). Moreover, the Sámi Parliament issued a statement on the draft Programme;
- 6) In accordance with section 4 of the Forest Act (1093/96), each Forestry Centre has drawn up a target programme for forestry for its territory. The programme includes the general objectives to be set for promoting sustainable management and use of forests, the objectives to be set for the measures and their financing referred to in the Act on the Financing of Sustainable Forestry, and the overall objectives to be set for the development of forestry in the area;
- 7) An advisory committee under section 20 of the Act on the Finnish Forest and Park Service (1378/2004) has been set up in the province of Lapland. The task of the committee is to issue the Finnish Forest and Park Service with statements on significant questions related to the use of state-owned lands and waters, and to submit initiatives to the Finnish Forest and Park Service when it is planning its activities, in order to ensure that the position of the local population is taken into account and the activities are coordinated. The advisory committee in Lapland has a member representing the Sámi Parliament;
- 8) Confirmation of the quota decisions of the Finnish Forest and Park Service concerning hunting, fishing and off-road traffic permits. The Finnish Forest and Park Service has annually negotiated on the decisions concerning the Sámi Homeland with the Sámi Parliament;
- 9) Natural resource planning by the Finnish Forest and Park Service. The Sámi Parliament and the Skolt village meeting participated in the preparation of the natural resources plan for Upper Lapland; and
- 10) PEFC certification of forests. The criteria for PEFC group certification were revised during 2009. The Sámi Parliament participated in the revision.

Furthermore, the Sámi people have been consulted in the following projects by the Department of Fisheries and Game at the Ministry of Agriculture and Forestry:

- 1) Government Bill (278/2004) to the Parliament on an Act to amend the Hunting Act. A statement was requested from the Sámi Parliament;
- 2) Government Bill (90/2008) to the Parliament on a Game Damage Act and an Act to amend section 87 of the Hunting Act. The bill was negotiated with the Sámi Parliament, and its statement was requested;
- 3) Government Bill (60/2009) to the Parliament on an Act to amend the Fishing Act. A statement was requested;
- 4) Government Bill (264/2009) to the Parliament on ratifying the boundary river agreement between Finland and Sweden and on an Act on implementing the provisions of the agreement of a legislative nature, applying the agreement and repealing certain acts. The bill was negotiated with the Sámi Parliament, and its statement was requested. Moreover, the Ministry of Agriculture and Forestry requested the Sámi Parliament to issue a statement on the management plans for the wolf population, the bear population and the lynx population in Finland.

Moreover, Sections 14a and 14b of the *Fishing Act* (286/1982) contain provisions on specific advisory committees to be set up in the Sámi Homeland to examine questions related to fisheries in state-owned

fishing waters in the municipalities of Enontekiö, Inari and Utsjoki. One of the five members of each advisory committee represents the Sámi Parliament. Within their operating areas, the advisory committees issue opinions, make proposals and initiatives and carry out any other tasks assigned to them. Annually, the advisory committees issue an opinion to the Forest and Park Service, which manages state-owned fishing waters, on the organization of fishing and the principles governing the granting of fishing permits. The authority may not deviate from the opinions issued unless there are specific reasons for doing so. The advisory committees convene at least twice a year to discuss such issues as the practical management of fishing waters, fishing restrictions and the sale of fishing permits, and to prepare opinions to different authorities. The decisions of the advisory committees are implemented in practice by the Finnish Forest and Park Service and the regional fishing authorities.

Finally, by virtue of the *agreement between the Republic of Finland and the Kingdom of Norway on common fishing regulations for the Teno River fishing district* (Treaty Series 94/1989), the Centre for Economic Development, Transport and the Environment in Lapland negotiates annually with the governor of the Finnmark province in Norway on such issues as the fishing regulations for non-local fishermen on the Teno River. The fishing tourism on the Teno River is an important livelihood for instance for the Sámi living in the Teno River valley. In accordance with section 9 of the Act on the Sámi Parliament (974/1995), the Centre for Economic Development, Transport and the Environment in Lapland negotiates annually with the Sámi Parliament on the fishing regulations for the Teno River and other issues regulated by the Finnish-Norwegian agreement. Before adopting the fishing regulations, the authorities organise an extensive hearing of the interested parties in the region. On the basis of section 11 of the Skolt Act, the regional fisheries authority manages the fishing waters in the Skolt region. Practical measures are agreed upon annually in an advisory committee, which has a representative of the Skolts as a member.

Lastly, the Sámi have been consulted by the Department of Agriculture at the Ministry of Agriculture and Forestry as follows:

- 1) The Advisory Board on Research on Reindeer Husbandry and Natural Sources of Livelihood issues a statement on applications for subsidies to research projects on reindeer husbandry and natural sources of livelihood. The Sámi have two representatives in the Advisory Board;
- 2) During the drafting of decisions on applying the Skolt Act and the Skolt Decree, Skolt organs are heard by requesting their statements; in addition, meetings have been organised for hearing the Skolts;
- 3) The Sámi Parliament was requested to issue a statement on the draft of the Rural Development Programme for the Finnish Mainland for 2007 – 2013;
- 4) The working group on the Act on the Financing of Reindeer Husbandry and Natural Sources of Livelihood (working group memorandum 2008:10 of the Ministry of Agriculture and Forestry) had a representative of the Sámi Parliament;
- 5) Representatives of the Sámi were requested to issue statements on the following projects: Government Bill 205/2009, Act on Supporting Farm Closure and Government Bill 232/2009, Act on the Organisation of Rural Administration in Local Authorities.

Also the Ministry of Education aims to negotiate with the Sámi Parliament in the preparation of such strategies, policy programmes and legislation that may affect the Sámi people as an indigenous people. For example, the Sámi Youth in Finland (*Suomen saamelaisnuoret, Suoma Sámi Nuorat*) participated in the drafting of the *Youth Act* (72/2006). The association took part also in the preparation of the Government's Policy programme for the well-being of children, youth and families 2007-2011. The issues that are of importance to the Sámi Youth have therefore been taken into consideration in legislation, as well as in the development of youth policy.

**4. Identification of key measures and challenges related to the efforts to guarantee the rights of indigenous peoples to participate in decision-making.**

The obligation to negotiate with the Sámi Parliament applies to all levels of administration, in other words, to local, regional and nationwide authorities, state authorities and municipal authorities. The Sámi Parliament is represented in various advisory bodies, consultative committees, working groups and other organs dealing with issues pertaining to the Sámi or their status as an indigenous people.

Despite the specific provisions to the effect, authorities at all levels of the administration may not always be aware of the obligation to negotiate with the Sámi Parliament. Further guidance and training could be useful in order to raise awareness of indigenous people's rights within the administration.

For instance, in its statement on the *Government Bill on the Sámi Educational Centre (40/2009 vp)*, the Constitutional Committee of the Parliament noted that the Government Bill had been prepared by a working group established by the Ministry of Education. As the issue was closely connected to Sámi language and culture, the representation of the Sámi Parliament should have been ensured from the beginning of the preparation.

In discriminatory situations, the Sámi people may contact the Ombudsman for Minorities. The Ombudsman for Minorities is an authority tasked to, *inter alia*, advance the status and legal protection of ethnic minorities and foreigners as well as equality and non-discrimination in Finland. As part of this mandate, the Ombudsman may investigate individual discrimination cases to assess whether the rights of a Sámi individual have been fulfilled in a concrete case.

Lately, legislative attempts have been made to improve the consideration of the status of the Sámi as an indigenous people and their opportunities to participate in decision-making. As examples, the new Government Bills for Mining Act (*HE 273/2009*), submitted to the Parliament on 22 December 2009, and Water Act (*HE 277/2009*), submitted to the Parliament on 15 January 2010, both include provisions aimed at an improved consideration of the Sámi as an indigenous people. In addition, the Government proposes that the Sámi Parliament are suggested to be given a possibility to appeal, if the rights of the Sámi as an indigenous people were not adequately considered when making decisions pursuant to these Acts.

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