



GEN7M0004-35

## VERBAL NOTE

The Permanent Mission of Finland to the United Nations and other international organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the United Nations High Commissioner for Human Rights) and with reference to the joint urgent appeal (UA FIN 1/2015) sent by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the rights of indigenous peoples, on 15 December 2015, has the honour to provide the following information:

### **1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.**

In the urgent appeal it has been alleged that the Government Bill for reorganising Metsähallitus (HE 132/2015 vp), submitted to Parliament on 3 December 2015, does not have any meaningful references to the Sami and their rights as an indigenous people. However, section 6(2) of the proposed new Act stipulates that the management, use and protection of the natural resources governed by Metsähallitus in the Sami Homeland region, referred to in the Act on the Sámi Parliament (974/1995), must be coordinated in a manner that ensures the Sami the necessary conditions for enjoying their culture. Further, according to section 39(2) of the proposed Act, municipal advisory boards will be set up in each municipality located entirely in the Sami Homeland region. Moreover, the task of the advisory boards will be to deal with the sustainable management and use of State-owned land and water areas and the related natural resources.

In the urgent appeal it has also been alleged that the proposed new Act for reorganising Metsähallitus would transfer most of the Sami Homeland region to a State-owned company to be established. However, the State-owned land and water areas will remain entirely in the ownership of the State and be administered by a State enterprise, Metsähallitus. Further, according to section 2 of the proposed Act on the limited liability forestry company of the State, included in the above-mentioned legislative proposal (HE 132/2015 vp), the company could be vested only with a non-transferable right to practise forestry. Furthermore, according to section 1(2) of the proposed Act relating to the new State-owned forestry company, the field of operation of the company would be to practise forestry on State-owned lands under an exclusive right, and to supply timber to clients. Finally, the company would have no right to carry on any other industries, for instance mining, as incorrectly suggested in the urgent appeal.

In the urgent appeal it has further been alleged that the forestry company to be established will take over the management responsibility related to State-owned lands from the current property business unit of Metsähallitus (Laatunmaa). However, the proposed legislation will not vest the new State company with any right to, for example, sell land property of the State.

According to the urgent appeal, the agreements concluded between Metsähallitus and certain Sami reindeer herding cooperatives in 2009 and 2010, to designate grazing grounds important to reindeer herding as off-limits from forestry activities for 20 years, could not be transferred automatically to the State-owned company to be established. However, the proposed legislation will transfer the rights and obligations of the current Metsähallitus to the reorganised Metsähallitus referred to in the proposed Act, and that the transfer also concerns the agreements with the Sami reindeer herding cooperatives. The

land and water property of the State will remain in the direct ownership of the State. Furthermore, according to the proposed Act, the State company to be established will get a non-transferable right to practise forestry on the lands and waters subject to a yield requirement that have been assigned, or are to be assigned, to Metsähallitus for management. Moreover, the proposed Act stipulates that in transferring the right to use the land and water property, and in revising the conditions of this right, it must be ensured that the general social obligations under section 6 of the new Act on Metsähallitus and the other social obligations under section 7 of the Act are fulfilled, and that the regional plans adopted by Metsähallitus for the use of natural resources are complied with. Finally, the agreements between Metsähallitus and the Sami reindeer herding cooperatives will limit the right of the new State company to practise forestry.

In the urgent appeal it has been alleged that the centralized decision-making on the State-owned lands and waters, envisaged in the legislative proposal, would increase logging and mining activities and thus cause adverse impacts on the Sami reindeer herding cooperatives. The Government observes that the proposal submitted to Parliament is not intended to increase logging in the Sami Homeland region. The scale of the logging will be based on existing and future natural resource plans. In preparing such plans for the Sami Homeland region, account will be taken of both the obligations to ensure the Sami the necessary conditions for enjoying their culture as well as the preservation and meaningful increase of biological diversity. These targets will be reconciled with each other so that Metsähallitus will also be able to meet the yield requirements set on it.

According to the urgent appeal, the drafting of the legislative proposal on Metsähallitus has not been transparent and participatory. However, the proposal was circulated for comments to a large number of interested parties in May-June 2014 and October 2015. In addition, a total of seven consultation meetings were held in Helsinki, Oulu and Rovaniemi cities during the law-making process. Furthermore, the Sami Parliament was consulted on the draft Bill on three different occasions.

The Sami Homeland is one of the most sparsely populated regions within the European Union, with approximately 20,000 inhabitants in an area of 30,000 square kilometres. In practice, there is no economic activity in most of the region. Moreover, because of the large nature reserves located in the region it is not possible, even in theory, to pursue any extensive economic activities in the region. There are no active mines in the region. The local population has extensive rights to use the renewable natural resources of the region for recreation, and the proposed new Act for reorganising Metsähallitus will not narrow these rights in any respect.

## **2. Please provide information as to any steps taken by the Government to ensure meaningful and effective participation of the Sami Parliament and the Skolt Sami Village Council to participate in land use planning in the Sami Homeland Region.**

Project no. 45 under Finland's National Action Plan on Fundamental and Human Rights for 2012 and 2013 aims to increase the rights of the Sami to participate in planning the use of State-owned lands and waters. On 16 July 2013, the Ministry of Agriculture and Forestry set up a working group to prepare a proposal for increasing the rights of the Sami to participate in decision-making on the use of State-owned land and water areas in the Sami Homeland. The working group, with a strong representation of the Sami Parliament and the Skolt Sami Village Council, submitted its report on 19 March 2014. The provisions drafted by the working group to strengthen the participation rights of the Sami are contained in the Government Bill to Parliament for the ratification of the Convention concerning Indigenous and Tribal Peoples in Independent Countries and for Acts bringing into force the provisions of a legislative nature of the Convention and amending the Act on Metsähallitus (HE 264/2014 vp). This Government Bill, submitted to Parliament on 27 November 2014, is still being considered by Parliament.

The Government notes that Metsähallitus has continuously enhanced its measures to strengthen the participation of the Sami Parliament and the Skolt Sami Village Council in planning the management and use of State-owned land and water areas in the Sami Homeland. Metsähallitus largely bases its land use decisions on natural resource plans, as well as management and use plans. It has developed methods for participatory planning. For instance, the management and use plan for Hammastunturi

wilderness area was prepared in accordance with the Akwé:Kon Guidelines based on Article 8(j) of the Convention on Biological Diversity (Finnish Treaty Series 78/1994).

**3. Please provide information as to any steps taken by your Government, in cooperation with the Sami Parliament and the Skolt Sami Village Council, to assess the impacts from any proposed activities in the Sami Homeland Region on the Sami as an indigenous people as well as to avoid any potential adverse impacts and mitigate risks.**

Chapter 4.4 (*Yhteiskunnalliset vaikutukset, i.e. "Social impacts"*) of the Government Bill for reorganising Metsähallitus assesses the impacts that the proposed measures under the draft revised Act on Metsähallitus will have on the Sami as an indigenous people. According to the Bill, the measures of Metsähallitus should be coordinated in a manner that safeguards the right of the Sami to enjoy their culture in the Sami Homeland region and ensures that the necessary conditions for reindeer herding stipulated in the Reindeer Herding Act are duly taken into consideration in the herding area. This provision of the proposed Act largely corresponds to the regulation currently in force. The procedures based on the current regulation function well in practice.

The municipal advisory boards to be appointed in the Sami Homeland would be a new institution introduced by the proposed Act. The relevant provision was drafted by the above-mentioned working group of the Ministry of Agriculture and Forestry, with a strong representation of the Sami Parliament and the Skolt Sami Village Council. The advisory boards are estimated to strengthen to some extent the right of the Sami as an indigenous people to maintain and develop their language and culture. The advisory boards will also provide an opportunity to reconcile different views on the use and management of State-owned lands.

The reorganisation of Metsähallitus has been prepared exceptionally long and extensively. During the preparation, numerous consultations, meetings and other occasions have been arranged for discussing the reorganisation with representatives of the Sami Parliament and the Skolt Sami Village Councils, too.

**4. Please provide information as to whether activities referred to in the Act have been adapted in the Sami Homeland so as to secure the rights of the Sami as an indigenous people (known as *heikentämiskielto*), in line with similar safeguards already established in the revised Mineral Act (621/2011) and Water Act (587/2011).**

The provisions of the proposed Act for reorganising Metsähallitus concerning the rights of the Sami as an indigenous people are not fully uniform with the provisions of the Mining Act and the Water Act, because all the statutes regulate very different subject groups. However, compared with the current situation, the proposed Act is estimated to improve the opportunities of the Sami as an indigenous people to exercise their rights to maintain and develop their language and culture in practice. The provisions of the Water Act and the Mining Act also apply to projects implemented under these Acts on State-owned lands located in the Sami Homeland.

**5. Please provide information as to whether the revised Act provides for a right to appeal decisions made by the Enterprise.**

The proposed Act for reorganising Metsähallitus does provide for such a right to appeal. The provisions on appeals against an administrative decision made by Metsähallitus are laid down in sections 21 and 22 of the new Act. The parties subject to the decision have the right of appeal.

**Interim measures**

In the urgent appeal, the Special Rapporteurs urge the Government to take the necessary interim measures to halt the alleged violations of human rights and to prevent their reoccurrence. The Government states that the Government Bill for reorganising Metsähallitus was drafted and submitted to Parliament primarily in order to make the market-based forestry business of Metsähallitus meet the

requirements of competition neutrality set by the European Union. The matter is urgent because the arrangement based on the right of use conferred to the new State company must be brought entirely into force before the time limit for implementing the new EU Directive on the award of concession contracts expires in April 2016. Any delay in the entry into force of the arrangement might compel the Government to transfer the State-owned lands in economic use to the ownership of the new State company.

The Government observes that the process at issue has not violated the rights of the Sami. The proposed Act does not involve any change in the position or rights of the Sami. The Government Bill submitted to Parliament is above all aimed to organise the use of the State-owned land and water property in a competition neutral manner. In Finland, the rights of land ownership have been examined and determined by legally valid rulings. On the above-mentioned grounds, it is not warranted to interrupt the consideration of the Government Bill in Parliament, but it is for Parliament itself as the highest organ of the State to decide on the consideration of the proposals submitted to it.

### **Press release**

The Government attaches great importance to the work of the Special Procedures mandate holders within the UN human rights system in general and to the advancement of the rights of indigenous peoples specifically. The Government wishes to thank the Special Rapporteur on the rights of indigenous peoples, Ms. *Victoria Tauli-Corpuz*, for continuous constructive dialogue with the Government.

As regards the ongoing dialogue, it would have been more appropriate and desirable to provide the Government with an opportunity to present on its part the necessary information and comments on the issues addressed in the urgent appeal before the issuance a press release on the matter.

The Permanent Mission of Finland to the United Nations and other international organizations avails itself of this opportunity to renew to the Secretariat of the United Nations (Office of the United Nations High Commissioner for Human Rights) the assurance of its highest consideration.

22 December 2015



Secretariat of the United Nations  
Office of the United Nations High Commissioner for Human Rights