



GEN7M0007-35

## VERBAL NOTE

The Permanent Mission of Finland to the United Nations and other international organisations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the United Nations High Commissioner for Human Rights) and, on behalf of the Government of Finland, has the honour to respond to the communication sent by the Special Rapporteur on the Rights of Indigenous Peoples on 14 March 2016 (OL FIN 1/2016) by submitting following information on the Acts for the reorganization of Metsähallitus:

### **Planning in the Sami Homeland region, the prohibition to weaken the Sami culture, and municipal advisory boards**

The Parliament of Finland adopted the Acts proposed in the Government Bill for the reorganization of Metsähallitus (*HE 132/2015 vp*) on 30 March 2016. The President of the Republic of Finland confirmed the Acts contained in Parliament's response on 8 April 2016, and the Acts took effect on 15 April 2016.

The conception of the Special Rapporteur expressed in the urgent appeal and the subsequent communication requesting for additional information, according to which the most of the Sami Homeland region would be transferred to the new State-owned company with the reorganization of Metsähallitus, is erroneous. After the reorganization the State-owned lands and waters remained entirely in State ownership, and they are administered by Metsähallitus state enterprise. By virtue of the Act on the State-Owned Limited Liability Forestry Company (235/2016) and a decision of the Government of 8 April 2016, only the non-transferable right to practice forestry on the lands and waters governed by Metsähallitus and subject to a yield requirement has been assigned to the subsidiary of Metsähallitus. The right to practice forestry assigned to the subsidiary covers less than 18 per cent of the Sami Homeland region. The Government emphasizes that the legislation adopted by Parliament organized the use of the State-owned land and water property in a competition neutral manner.

According to Section 6(2) of the Act on Metsähallitus (234/2016), the management, use and protection of natural resources governed by Metsähallitus in the Sami Homeland region referred to in the Act on the Sami Parliament (974/1995) must be adjusted to ensuring the conditions of the Sami people to practice their culture. Section 3 of the Act on the State-Owned Limited Liability Forestry Company stipulates that in assigning the right to use 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 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.

According to Section 39(2) of the Act on Metsähallitus, municipal advisory boards are appointed in each municipality located entirely in the Sami Homeland region. The task of the advisory boards is to deal with the sustainable management and use of State-owned

lands and waters and the related natural resources. According to Section 6(2) of the Government Decree on Metsähallitus (247/2016), the task of the municipal advisory boards is to issue opinions to Metsähallitus and to propose initiatives to it on issues 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 fishing industry in State-owned waters. Each municipal advisory board has representation from Metsähallitus, the Sami Parliament, the municipality, the reindeer herding cooperatives, the fisheries region, the limited liability company referred to in the Act on the State-Owned Limited Liability Forestry Company, the economic life, and commercial fishers. The municipal advisory board for Inari municipality must also have a representative of the Skolt Sami Village Council.

The Government states that, unlike the Special Rapporteur suggests, the reorganization of Metsähallitus does not weaken the rights of the Sami to use State-owned lands, areas and natural resources. The only change related to the reorganization of Metsähallitus and affecting the position of the Sami is that the new Act contains provisions on the municipal advisory boards to be established in the Sami Homeland region. The provisions were drafted by a working group of the Ministry of Agriculture and Forestry, with representation from 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.

It is to be stated separately that the composition of the municipal advisory boards to be appointed in the Sami Homeland region or the consideration of matters by them will not replace compliance with the obligation under Section 9 of the Act on the Sami Parliament to negotiate with the Sami Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sami as an indigenous people and which concern in the Sami Homeland region for example the management, use, leasing and assignment of state lands, conservation areas and wilderness areas.

During the current electoral period the Government aims at revising the Act on the Sámi Parliament in the manner proposed in the related Government Bill (*HE 167/2014 vp*), which was submitted and later cancelled during the previous electoral period. The aim is to present most of the proposed revisions to Parliament again. In this context the proposal that the current obligation to negotiate (section 9) should be changed to better comply with the principle of free, prior and informed consent is likely to be reiterated.

### **Participation of the Sami Parliament in Bill drafting**

The Special Rapporteur refers to concerns brought to her attention that the Government Bill on the reorganization of Metsähallitus has been drafted without adequate consultations with the Sami people, through the Sami Parliament.

The Government notes that the reorganization of Metsähallitus was prepared exceptionally long and extensively. During the preparation, numerous consultations, meetings and other occasions were arranged where the reorganization was discussed with representatives of the Sami Parliament and the Skolt Sami Village Councils, too. During the drafting, the draft Bill was circulated for comment to a large number of parties twice. In relation to the reorganization of Metsähallitus, four consultation meetings referred to in Section 9 of the Act on the Sami Parliament were held: on 21 June 2011, 16 January 2014, 23 October 2015 and 10 February 2016. The rights of the Sami were not violated during the drafting process. The new legislation has not weakened the position or the rights of the Sami.

## **Provisions on the prohibition to weaken the Sami culture, human rights due diligence and land use planning**

The Special Rapporteur proposes that the Government, in the legislation on the reorganization of Metsähallitus, should introduce the prohibition to weaken the Sami culture (*heikentämiskielto*) in line with the Mineral Act (621/2011) and the Water Act (587/2011), introduce a requirement for human rights due diligence and enact provisions on the participation of the Sami Parliament and the Skolt Sami Village Council in land use planning in the Sami Homeland region.

The Sami Homeland region is one of the most sparsely populated regions within the European Union, with approximately 20,000 inhabitants in an area of 30,000 square kilometers. In practice, there is no economic activity in most of the region. Moreover, because of the large conservation areas 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 reorganization of Metsähallitus did not narrow these rights in any respect.

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 lands and waters in the Sami Homeland region. 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*).

The Government notes that the provisions of the new Act on Metsähallitus concerning the rights of the Sami as an indigenous people are not uniform with the provisions of the Mining Act and the Water Act, because all the statutes regulate different subject groups. However, compared with the situation so far, the new Act on Metsähallitus 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 region.

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 lands and waters in the Sami Homeland region. The working group, with a representation from 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 ILO 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. This year the Government has commissioned a new study which draws from the international norms, experiences and practices relating to the rights of indigenous peoples. The consideration of the Government Bill is waiting for the study to be submitted and its findings to be considered.

The reorganization of Metsähallitus does not bring into force the provisions of a legislative nature of ILO Convention No. 169 but mainly revises the national provisions on Metsähallitus as a state enterprise and makes its business activities competition neutral. The Government considers that any more extensive issues concerning planning in the Sami Homeland region and the prohibition to weaken the Sami culture must be solved in the context of the possible ratification of ILO Convention No. 169.



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.

The Permanent Mission of Finland to the United Nations and other international organisations in Geneva 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.

12 May 2016



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