

Mandates of 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

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 28/11 and 24/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding proposed new legislation (HE132/2015) on the Finnish Forest and Parks Enterprise (Metsähallitus) to regulate the management of State owned lands. We have also received information regarding an alleged lack of meaningful and effective public participation and free, prior and informed consent of the Sami and their rights as an indigenous people.

According to information received, the Government through its Ministry of Agriculture and Forestry is has presented new legislation on the Metsähallitus. The last draft bill, which was approved in 2014, included safeguards for the Sami people, including in relation to their rights to traditional livelihoods, lands, territories and resources. However, the current draft Bill does not have any meaningful references to the Sami and their rights as an indigenous people. It was endorsed by the Government and presented to Parliament on 3 December 2015 and it is expected to become operational on 15 March 2016.

According to the information received, with the reform of the Act on the Metsähallitus, most of the Sami Homeland will be transferred to a new State-owned company that has yet to be established. This new company will have the responsibility for all logging carried out on State owned lands in Finland, including in the Sami Homeland region. In this connection, the proposed State owned company will take over the management responsibility for Metsähallitus' property business unit (Laatumaa) which specializes in land plot sales, and offers an extensive selection of plots for holiday homes and wilderness cabins in the Sami Homeland region. It is alleged that Laatumaa has already consumed a large share of the Sami Homeland region for economic gain, without free, prior and

informed consent of the Sami people, nor due consideration to their traditional livelihoods or compensation. In addition, information received suggests that neither the Sami Parliament and Skolt Sami Village Council have been provided with any information on the location of the lands that will be transferred to the new company, and therefore, they have not been able to assess the potential impacts of the transfer of lands on their human rights.

It is also reported that in 2009 and 2010, Sami reindeer herding cooperatives successfully negotiated agreements with the Metsähallitus to establish protection for forests that were deemed important to traditional reindeer herding. Under the agreements reached, approximately 800 square kilometers of land were designated as off-limits from forestry activities, including logging. In this context, the Bill of 2015 suggests that the liabilities of the Metsähallitus will be transferred to the new, yet-to-be established company, whereas under the current Finnish legislation the liabilities of an authority (in the present case Metsähallitus) cannot be automatically transferred to a company.

It is also reported that despite the Sami Parliament's request that the Ministry of Agriculture and Forestry should assess the impacts of the proposed reform on the Sami people and their traditional livelihoods, no such assessment has been conducted to date.

While we do not wish to prejudge the accuracy of these allegations, the information described above raises serious concerns that the business operations of the proposed company will lead to increased deforestation and mining activities in the Sami Homeland region and to further fragmentation and destruction of the Sami people's traditional herding, hunting and fishing grounds. It is alleged that this will result in imminent threats to the Sami people and their traditional livelihoods and other land-based cultural activities.

Concern is also expressed that the draft Bill may jeopardize agreements already reached, and, in combination with the emphasis on centralized decision-making that is proposed in the Bill, may further lead to a situation where reindeer herding co-operatives suffer significant adverse impacts from increased logging in their traditional herding areas. Grave concern has been shared that the transfer of lands in the Sami Homeland region is being pursued without the consent of the Sami Parliament.

Concern has also been expressed that without specific provisions safeguarding the Sami people, the revised Act will significantly weaken the rights of the Sami people, particularly their right to enjoy their own culture and to pursue their traditional livelihoods, and will further limit any recognition of their right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Grave concern is also expressed about the process by which the Ministry of Agriculture and Forestry is currently proposing a new Act regulating the Metsähallitus. In this connection, it has been alleged that the law-making process has not been transparent,

and has not accommodated broad public participation. In particular, concern has been shared over the limited opportunities provided for the Sami Parliament and other Sami organizations to take part in this process. It is reported that the provisions safeguarding the rights of the Sami people have been removed in the new draft Bill, without any consultations with the Sami Parliament to obtain their free, prior and informed consent having taken place.

We wish to draw the attention of your Excellency's Government to its obligations under the International Covenant on Civil and Political Rights (ICCPR) since 1975 to respect and ensure the right of self-determination (article 1) and to prohibit and eliminate racial discrimination and guarantee the right to own property alone or in association with others (article 5 (d)(v)). In addition Finland has been a party to the Convention on the Elimination of All Forms of Racism and Discrimination (CERD) since 1970, whose Committee in General Comment No. 32, 2009, para. 15, states that special measures not be confused with specific rights pertaining to certain categories of persons such as the rights of indigenous peoples, including to lands traditionally occupied by them.

We would also like to draw your Excellency's attention to the UN Declaration on the Rights of Indigenous Peoples which Finland voted in favour of at the General Assembly in 2007 and to the Outcome Document of the High-Level Plenary Meeting known as the World Conference on Indigenous Peoples which your Government endorsed in September 2014 and which re-affirmed its commitment to implement the Declaration. Finland should adhere to the principles and consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, in accordance with the applicable principles of the Declaration.

In addition, we would like to draw your Excellency's attention to the UN Guiding Principles on Business and Human Rights, which Finland has endorsed, and in particular principle 4 that require States to "take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State" and to principle 11 which specifies that business enterprises have a responsibility to respect internationally recognized human rights, independent of State obligations.

We would also like to draw your Excellency's attention to the report of the previous Special Rapporteur on the Rights of Indigenous Peoples on the situation of the Sami people in the Sápmi region of Norway, Sweden and Finland (A/HRC/18/35/Add.2) in which he noted that "for the Sami people...securing rights over land and natural resources is fundamental to their self-determination, and is considered a prerequisite for the Sami people to be able to continue to exist as a distinct people" (para. 79) and recommended that Finland should ensure special protections for Sami reindeer husbandry, given the centrality of this means of livelihood to their culture and heritage. (para. 84).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

We would appreciate a response on the steps taken by your Excellency's Government to ensure that the rights of the Sami people will be adequately safeguarded in the proposed revisions to the Act regulating Metsähallitus.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
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.
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.
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).
5. Please provide information as to whether the revised Act provides for a right to appeal decisions made by the Enterprise.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

It is the intention of the Special Rapporteur on the rights of Indigenous Peoples to publicly express her concerns in the near future as parliament members will go on leave as of this week and will be expected to vote on this legislation as soon as they return. In our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

John Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples