

**Report of the Saami Council to the Human Rights Committee – Supplementing and commenting on Finland's seventh periodic report of States parties due in 2020 (CCPR/C/FIN/7) – International Covenant on Civil and Political rights**

**Introduction**

1. Explanatory notes: This report follows Finland’s reply to “List of issues prior to

submission of the seventh Periodic Report of Finland” (CCPR/C/FIN/QPR/7).

1. This report covers Saami Council´s views on areas of relevance to the UN International Convention on Civil and Political Rights (ICCPR).
2. This report is made on 14 September 2020 by the Saami Council.

**About the Saami Council**

1. The Saami Council is a voluntary Sámi organization (a non-governmental organization), with Sámi member organizations in Finland, Russia, Norway and Sweden. Since it was founded in 1956 the Saami Council has actively dealt with Sámi policy tasks. For this reason the Saami Council is one of the indigenous peoples’ organizations which have existed the longest. The primary aim of the Saami Council is the promotion of Sámi rights and interests in the four countries where the Sámi live.
2. The main task of the Saami Council is to consolidate the feeling of affinity among the Sámi people, to attain recognition for the Sámi as a nation and to maintain the cultural, political, economic and social rights of the Sámi in the legislation of the four states (Norway, Sweden, Russia and Finland) and in agreements between states and Sámi representative organizations.
3. The Saami Council's work is based on the decisions, statements, declarations and political programmes of the Saami Conference. The Saami Council renders opinions and makes proposals on questions concerning Sámi people’s livelihoods, rights, language and culture and especially on issues concerning the Sámi in different countries.
4. The Saami Council has nine member organizations: three in Norway, three in Sweden, two in the Russian Federation and one in Finland. The representatives of the organizations are members of the council and they are nominated by the member organizations' delegations to the Saami Conference and appointed by the Saami Conference. An organization can become a member organization by adopting the purpose of the Saami Council.
5. Central Saami Association (Finland) (Suoma sámiid guovddášsearvi) is Saami Council’s only member organization in Finland. Central Saami Association has seven member associations: Sámi Siida rs., Johtti Sápmelaččat rs., Roavvenjárgga Sámiid Searvi Mii rs., Suoma Sámi Nuorat SSN rs, Sámi Soster rs., Suoma Boazosámit rs. and Saa’mi Nue’tt rs.

**Replies to the questions in part B chapter 23 section a subsection (i) (Self Determination)**

1. Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) reads: *“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural*

*development.”*

1. This provision of the UNDRIP mirrors the common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.[[1]](#footnote-1)
2. According to the Constitution of Finland (731/1999) section 121 subsection 4, in their native region, the Sámi have linguistic and cultural self-government, as provided by an Act. According to the Sámi Parliament Act (974/1995) section 1, the Sámi shall elect from among themselves a Sámi Parliament for the tasks relating to cultural autonomy.
3. In Finland, in particular, the statutory mandate of the Sámi Parliament is focused on matters concerning the Sámi languages, culture and indigenous status. Even within these areas, the Sámi Parliament’s input is modest. Also, as a general matter, with a few exceptions, Sámi parliaments lack state-recognized decision-making powers in matters pertaining to the use of lands, waters and natural resources. According to the government bill related to Sámi cultural self-government (GB 248/1994 vp, p. 21), and as studied in a recent doctoral thesis (Guttorm 2018), it was originally the legislator’s intention that the Sámi self-government by the Sámi Parliament ought to be dynamic in nature. It was meant to gradually create material content by developing the Sámi Parliament Act and other legislation. This was meant to be done under the guidance of the Sámi and from their own cultural starting points. However, in this regard, the legislator’s intention has not been respected in Finland.
4. According to the section 17 subsection 3 of the Constitution of Finland, the Sámi, as an indigenous people, have the right to maintain and develop their own language and culture. Section 121 subsection 4 of the Constitution is directly connected to section 17 subsection 3 of the constitution (GB[[2]](#footnote-2) 248/1994 vp, p. 23). The cultural right as an indigenous people must be read in conjunction with the right of indigenous peoples to self-determination. It is mentioned in the preliminary works that section 17 subsection 3 of the Constitution is read in conjunction with international human rights treaties (GB 309/1993 vp, p. 65). According to the preliminary works of the section 17 subsection 3 of the Constitution (GB 309/1993 vp, p. 65), the concept of culture includes traditional livelihoods such as reindeer herding, fishing and hunting. In regard to this, it is hugely problematic that in reality and in practice, the self-government of the Sámi people in Finland, as interpreted and implemented by the Government of Finland, does not cover and include issues related to the use lands and waters.
5. The State party should continue to enhance their efforts to implement the rights of the Sámi people to self-determination and to more genuinely influence decision-making in areas of concern to them as already the Special Rapporteur of the rights of indigenous peoples recommended in 2010.[[3]](#footnote-3)
6. The Saami Council points out that strengthening of the self-determination also includes the strengthening of the local self-determination of the Sámi people in Finland. This includes for example the strengthening of the position of Sámi associations and recognition of the traditional decision-making authority of local Sámi institutions, like the siidas (customary reindeer herding units). The state party should provide also the Central Saami Association (Finland) with sufficient funding for them to be able to effectively exercise local self-determination functions. In particular, greater funding should be available for projects and initiatives that the Central Saami Association themselves identify, develop and implement. This is an important way of removing structural racism and recognizing de facto equality of Sámi people.
7. **The Saami Council recommends the ICCPR to question the State party on how they will strengthen in practical manner the self-determination of the Sámi Parliament and traditional Sámi institutions?**

**Replies to the questions in part B chapter 23 section (a) subsection (ii) (Saami Parliament Act)**

1. The State party tells in their report (Q23) that the proposed amendment of the Sámi Parliament Act was never submitted to Parliament, because the Sámi Parliament rejected it on 24 September 2018.
2. The Saami Council points out that the so-called Hallberg Committee’s proposed amendment of the Sámi Parliament Act in 2018 received strong criticism from the Sámi society in Finland, as demonstrated by the official statements submitted on the proposed amendment by a large number of Sámi associations and individuals. The key point of the criticism was that the proposed amendment to the Act did not meet the standards of international law and would have even undermined the self-determination of the Sámi Parliament compared to the current law, which is already itself fundamentally below the standards of international law. The problematic so-called Sámi definition in section 3 of the current law would not have been amended to the 2019 Sámi Parliament elections due to the proposed transition period that would have retained the current, problematic so-called Sámi definition, that violates ICCPR, in effect in the 2019 elections.
3. In addition, in the proposed amendment the process concerning the preparation of the electoral roll of the Sámi Parliament and the requests by persons to be entered into the electoral roll, would have fallen more to the hands of the non-Sámi majority population of Finland. According to current law and the proposed amendment, the final decision power (ie., the third and final instant) about the electoral roll lies in the hands of the Supreme Administrative Court. The proposed amendment of the Sámi Parliament Act included an introduction of a new second instant that would have replaced the current second instant, the Board of the Sámi Parliament, that consist entirely of Sámi members. The proposed second instant would have been called the Board of Adjustment. On the de facto majority position on the Board of Adjustment would have been the members that are proposed and named by the Ministry of Justice, and the members of the Board of Adjustment would not have necessarily been Sámi persons. The first instant is currently, and would have remained in the proposed amendment, with the Election Committee of the Sámi Parliament.
4. As the aforementioned proposed amendment was so weak, then it was understandable that the Sámi Parliament could not accept it, rejected it in September 2018 and did not want the proposed amendment to proceed to the Parliament of Finland, as there was a risk that the amendment would have been further undermined. When the previous bill for the Sámi Parliament Act (GB 167/2014) proceeded to the Parliament in 2015, the Constitutional committee, due to strong lobby and disinformation, took the stance to oppose the Sámi definition included in the Government Bill (GB 167/2014), which was also approved by the Sámi Parliament. The statements by the Constitutional committee play a major role in the Finnish legislation and the legal praxis of the courts.
5. According to Sanna Marin’s Government’s Programme, the work to amend the Act on the Sámi Parliament is supposed to continue during this parliamentary term. A preparatory working group was appointed in January 2020 with the task of assessing the needs for amendments. The working group proper is supposed to commence its work during autumn 2020. The Sámi Parliament named their representatives to the working group on amending the Sámi Parliament Act in July 2020. At the time of the writing of this report on 14 September 2020, the State representatives (the government parties) have not named their representatives to the working group yet.
6. The Saami Council is concerned that if the aforementioned naming process is delayed, then there is a risk that the working group will be in a hurry with the work before the end of the parliamentary term. This is likely to affect to the quality of the drafting of the new legislation, and especially at the end of the parliamentary term, parliamentary parties may begin to turn their attention to the next elections and their commitment to the current Government’s Programme may weaken.
7. The Saami Council points out that the whole Sámi Parliament Act should be amended to comply with international law, but especially the Act’s Sámi definition in section 3 remains fundamentally flawed and violates the ICCPR. In addition the provisions in chapter 4 Election to the Sámi Parliament are dated. The amendment of the aforementioned section and provision should be prioritised.

**Replies to the questions in part B chapter 23 section (a) subsection (iii) (The so-called Saami Definition)**

1. Article 33 of the UNDRIP reads:

*1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.*

*2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.*

1. According to Sámi Parliament Act section 3, a Sámi means a person who considers himself a Sámi, provided:

*(1) That he himself or at least one of his parents or grandparents has learnt Sámi as his first language;*

*(2) That he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp;*

*or*

*(3) That at least one of his parents has or could have been registered as an elector for an election to the Sámi Delegation or the Sámi Parliament.*

1. The section 3 paragraph 2 is the so-called Lapp criterium. The Sámi Parliament has never accepted the Lapp criterium in the form it has been formulated in the Sámi Parliament Act. The documents that are mentioned in the section 3 paragraph 2, ie. land, taxation and population registers have existed in the historical Sweden-Finland since the 16th century. In these documents, the term Lapp refers to a person who practiced the so-called Lapp livelihoods reindeer herding, fishing or hunting. Ie., the term in the aforementioned documents makes a reference to a person’s livelihood, and not ethnicity. Originally the time limit of the section 3 paragraph 2 was supposed to be the year 1875 and newer documents (GB 284/1994, p. 24), but the Constitution Committee of Finland removed the time limit from the paragraph (Constitution Committees report 17/1994 vp., p. 2).
2. In 1999 the Supreme Administrative Court introduced an interpretation, that the time limit of the section 3 paragraph 2 cannot go further than the generation limitation that is on the section 3 paragraph 1 language criteria (grandparents). This was a consensual interpretation of section 3.
3. The 2011 and 2015 decisions of the Supreme Administrative Court of Finland departed from the 1999 consensual interpretation of Section 3 of the Sámi Parliament Act defining who is entitled to enter to the electoral roll of the Sámi Parliament. In year 2011 the Supreme Administrative Court introduced a new interpretation, as compared to the 1999 interpretation, of the section 3 of the Sámi Parliament Act. The Supreme Administrative Court employed a so-called overall consideration when considering who should be entered to the election roll of the Sámi Parliament. The overall consideration put undue weight to the self-identification of a person (applicant), and departed from the consensual interpretation of the criteria in the paragraph 1, 2 or 3 of the 3rd section, in that the Supreme Administrative Court interpreted that a person does not unequivocally need to fill the criteria, which is the consensual interpretation of the section 3. The Court subsequently entered into the electoral roll, ie. gave the right to vote, to 97 persons in total, who however had been found ineligible by the Sámi Parliament to be entered to the electoral roll. This is a relatively large number of persons when compared to 5800, ie. the total number of persons in the electoral roll of the Sámi Parliament of Finland in the 2019 elections.
4. The Saami Council points out that the overall consideration adopted in 2011 by the Supreme Administrative Court is arbitrary and unequal. It also violates the sovereignty of the indigenous people Sámi.
5. Two individual communications were made after the 2015 Sámi Parliament elections to the UN Human Rights Committee on the aforementioned Supreme Adminstrative Court’s decisions in 2011 and 2015.
6. In February 1st 2019, the Human Rights Committee published its Final Views about the communications. In both communications (Sanila-Aikio v. Finland and Näkkäläjärvi et. al v. Finland) the Committee further considered that by departing in the manner from the consensual interpretation of the law determining membership in the electoral rolls of the Sámi Parliament, the Supreme Administrative Court’s interpretation was not based on reasonable and objective criteria. Accordingly, the Committee considered that the facts before it amount to a violation of the authors’ rights under article 25, read alone and in conjunction with article 27, as interpreted in light of article 1 of the Covenant.[[4]](#footnote-4)
7. The Human Rights Committee pointed out, that in accordance with article 2(3)(a) of the Covenant, the State party is under an obligation to provide the authors with an **effective remedy**. This requires it to make **full reparation** to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to review Section 3 of the Sámi Parliament Act with a view to ensuring that the criteria for eligibility to vote in Sámi Parliament elections are defined and applied in a manner that respects the right of the Sámi people to exercise their internal self-determination, in accordance with articles 25 and 27 of the Covenant. The State party is also under an obligation to take all steps necessary to prevent similar violations in the future.[[5]](#footnote-5)
8. In April 3rd 2019, the Board of the Sámi Parliament made an extraordinary appeal (annulment) to the Supreme Administrative Court based on the Administrative Judicial Procedure Act (586/1996) section 63 on the 2011 and 2015 decisions (the aforementioned 97 persons). The main argument on the Board of Sámi Parliament’s annulment application was that the Human Rights Committee found out that the aforementioned decisions by the Supreme Administrative Court in 2011 and 2015 violated the ICCPR.[[6]](#footnote-6)
9. In July 1st 2019, the Election Committee of the Sámi Parliament made a self-rectification based on the section 26a on the Sámi Parliament Act. According to the Election Committee, the reason for the self-rectification, ie., removal from the electoral roll, was an unlawful entry of persons in the electoral roll of the Sámi Parliament by the Supreme Administrative Court in 2011 and 2015.[[7]](#footnote-7)
10. The Supreme Administrative Court (SAC) rejected the annulment application (concerning the aforementioned 97 persons) of the Board of Sámi Parliament in July 5th 2019.[[8]](#footnote-8) The Supreme Administrative Court ruled that 33 decisions sought for annulment were not decisions based on the so-called overall consideration. In these decisions, the person was entered in the electoral roll either on the basis of language criterium (Section 3 paragraph 1 of the Sámi Parliament Act) or on the basis of the descendant criterium (Section 3 paragraph 3 of the Sámi Parliament Act). With regard to these decisions, the Supreme Administrative Court unanimously rejected the application for annulment. The Supreme Administrative Court ruled that 64 decisions sought for annulment had been entered in the electoral roll on the basis of the overall consideration. With regard to these decisions, the Supreme Administrative Court rejected the annulment application after a vote. One judge was in the opinion that Supreme Administrative Court should have annulled the 64 aforementioned overall consideration decisions.[[9]](#footnote-9)
11. Supreme Administrative Court annulled the self-rectification decisions of the Election Committee of the Sámi Parliament in August and September 2019.[[10]](#footnote-10)
12. In August and September 2019, the Election Committee of Sámi Parliament made procedural complaints on the self-rectification decisions by Supreme Administrative Court. The procedural complaints were based on the Administrative Judicial Procedure Act section 59. According to the Election Committee, the decisions of the Supreme Administrative Court have been given without consulting and notifying The Election Committee on the appeals that were made on the self-rectification decisions by the Election Committee to the Supreme Administrative Court. According to the Election Committee, the procedure by the Supreme Administrative Court violated the basic principles of fair trial and all jurisprudence regarding the hearing of a party and the equality of the parties. [[11]](#footnote-11)
13. Supreme Administrative Court rejected the procedural complaints by The Election Committee of Sámi Parliament in October 2019.[[12]](#footnote-12)
14. In September 2019, before the Sámi Parliament elections had ended, the Supreme Administrative Court announced decisions that it will enter new persons in the electoral register of the Sámi Parliament against the will of the Election Committee and the Board of Sámi Parliament. These persons had requested to be entered in the electoral roll in 2019, and their parents had been entered by the Supreme Administrative Court in the electoral register of the Sámi Parliament in 2015.[[13]](#footnote-13)
15. The Saami Council points out that so far Finland has done nothing in order to fulfil the obligations set by the Human Rights Committee in February 2019. Finland has in effect continued the violation of the Convention and the self-determination of the Sámi people as demonstrated by the 2019 Supreme Administrative Court decisions.
16. The Saami Council points out that if the situation is not urgently repaired, then the line of interpretation set by the 2011 and 2015 Supreme Administrative Court’s yearbook decisions may, in the worst case, lead to a situation that most of the persons on the Sámi Parliament's electoral roll are in fact non-Sámi. The Supreme Administrative Court has introduced a line of interpretation in which the so-called Lapp criterium, which forms part of its own so-called overall consideration, can be based on a single document entry from the 18th century. Associate professor Tapani Matala-aho has calculated that there may today theoretically be as many as 512,000 descendants of the persons that have been recorded as Lapps in the documents in mid 18th century. If even a small amount of these descendants request to be entered in the electoral roll and their applications are approved by the Supreme Administrative Court with the overall consideration, this would impact the composition and legitimacy of the Parliament of the indigenous people decisively.
17. The Saami Council points out that in order to effectively remedy the situation with regard to the so-called Sámi definition, the section 3 paragraph 2 of the Sámi Parliament Act, ie., the so-called Lapp criterium, should be removed from the Act. However, this alone would not necessarily abolish the application by the Supreme Administrative Court of the overall consideration. The reason is that the Supreme Administrative Court argues that the overall consideration starts from the individual self-identification and the Lapp criterium, but is complemented by evidence put forward by applicants concerning the language criterium. Due to this, the strongest remedy would be to recognise and strengthen the Sámi group acceptance and self-determination as CERD recommended in 2012 (CERD/C/FIN/CO/20-22) and in 2017 (CERD/C/FIN/CO/23), and to amend the Sámi Parliament Act accordingly. The ultimate decision-making power of the Supreme Administrative Court in the appeal process should be replaced, in line with the right of peoples for self-determination (as per ICCPR article 1), ie. the Sámi should have the final say in who is entered in the electoral roll of the Sámi Parliament.

**Replies to the questions in part B chapter 23 section (b) (FPIC)**

1. Free, Prior and Informed Consent (FPIC) is a principle protected by international human rights standards that state, ‘all peoples have the right to self-determination’ and – linked to the right to self-determination – ‘all peoples have the right to freely pursue their economic, social and cultural development’. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity and the International Labour Organization Convention 169 are the foundation for the FPIC.[[14]](#footnote-14)
2. Article 32 of the UNDRIP reads:

*1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*

*2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*

*3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

1. In Finland the authorities’ obligation to negotiate with the Sámi Parliament of Finland ought to be complemented, supported and reinforced by the FPIC principle. This negotiation obligation is regulated in the Act on The Sámi Parliament (974/1995). According to the Sámi Parliament Act section 9 subsection 2, in order to fulfil its obligation to negotiate, the relevant authority shall provide the Sámi Parliament with the opportunity to be heard and to discuss matters. According to the ILO Convention No. 169 bill (GB 264/2014, p. 14) the principle of prior consent is interpreted in international law as meaning that the state must consult with the indigenous people before undertaking projects and measures (GB 264/2014 vp, p. 14). Consent to the conciliation procedure requires that the indigenous people are given the opportunity to support or oppose the matter for which consent is sought. According to the bill of the Teno River Fishing Agreement, the possibility of expressing consent should be seen as a procedure and should not be interpreted as a veto (HE 239/2016 vp, p. 21). Currently, even if the Sámi do not give their consent, there are no direct legal sanctions to the other party. On the other hand, the authorities are not entitled to take measures that violate the fundamental and human rights of the Sámi, even with the consent of the Sámi, taking into account the obligation of public authorities in Article 22 of the Constitution of Finland to ensure the realization of fundamental and human rights.
2. **The Saami Council recommends the ICCPR to question the State party on how they will recognize the FPIC principle in the amendment process of the Sámi Parliament Act and implement the FPIC principle to the Act?**
3. The negotiation obligation in the Sámi Parliament Act has serious weaknesses. The negotiation obligation of the Sámi Parliament Act is incomplete and does not correspond to the development and the current state of international law. In addition, e.g. the Deputy Chancellor of Justice has stated in their decision (OKV/12/21/2016) that the Ministry of Agriculture and Forestry had in certain respects failed to comply with the obligation to negotiate under the Sámi Parliament Act in the Teno Agreement negotiations in 2016. The negotiation obligation in the Sámi Parliament Act does not in fact alter or limit the powers of the national authorities as defined by law, nor does it entitle the Sámi to participate in the exercise of those powers. The authorities have full power over matters covered by the obligation to consult. After consulting with the Sámi Parliament, the authority may, within the limits of its competence and the relevant legal regulations, decide as it wishes. The Ministry of Justice prepared in 2017, in co-operation with the Sámi Parliament, a memorandum in which good practices have been collected regarding the implementation of the obligation to negotiate. The memorandum recognizes the FPIC principle and interprets the section 9 of the Sámi Parliament Act in the light of FPIC. Saami Council notes that the memorandum is a good step forward, but however, this memorandum is not legally binding and has nebulous legal status. Saami Council urges that the FPIC principle should be implemented in the Sámi Parliament Act.
4. In Saami Council’s opinion, the FPIC principle is interpreted in public administration mainly as a new interesting concept without any real content or obligation to act. The Arctic Railway project is a recent example of the real significance and binding nature of the FPIC principle in Finland in large-scale projects or plans with a wide-ranging impact and significant economic interests. The issue has arisen in connection with the preparation of the 2040 Regional Land Use Plan for Northern Lapland, which is currently being amended. Almost 80% of the area of ​​this area is located in the Sámi homeland. According to the Land Use and Construction Act (132/1999), the preparation of the land use plan is the responsibility of the relevant provincial association, in this case the Regional Council of Lapland (Lapin Liitto).
5. State party tells in their report (Q23) that report on the Arctic railway by a Finnish-Norwegian working group was published in February 2019. It does not present any further measures for promoting the railway project at this time. Saami Council points out that the default assumption of the Regional Council of Lapland has been to include in the regional land use plan the Arctic Railway from Rovaniemi or Kemijärvi via Sodankylä and Inari to Kirkenes in Norway and the railway reservation has not been moved from the land use plan. If implemented, the railway would split almost the entire Sámi homeland in ​​Finland into two. There has been a united front by the Sámi Parliament in Finland, the Skolt Sámi village committee, the Saami Council, and the Sámi reindeer-herding associations situated in the area of the land use plan to vehemently oppose the Arctic Railway project, and the registering of the Railway on the land use plan, and have not given their consent to such a project. Saami Council urges Finland to stop the Arctic Railway project.
6. The state party has not succeeded in seeking the prior, free and informed consent of the Sámi people before granting licenses to private companies for economic activities on territories traditionally occupied or used by the Sámi communities. According to the Mining Act in Finland, Finnish authorities (in this case, the Finnish Safety and Chemicals Agency – Tukes) are not obliged to separately notify the Sámi rights holders or the Sámi Parliament in Finland on the reservation decisions in the Sámi homeland[[15]](#footnote-15). This, together with court rulings during the recent years (such as SAC 2013:179), stating that Sámi rights holders and the Sámi Parliament are not entitled to file complaints on such decisions regarding the reservation of areas, is highly worrying with regard to the respect for the rights of the Sámi people in the Finnish side of Sápmi. The Saami Council urges Finland to take the opportunity to make necessary amendments to the inadequate Mining Act in order to make sure that the principle of free, prior of informed consent is included. That also

includes the right to refrain from giving consent.

1. As the state party mentions in their report, according to the Government Programme, the system of assistance for reindeer husbandry will be improved, and investment grants for reindeer husbandry will be safeguarded. Reindeer husbandry will be supported as a profitable, sustainable and culturally significant livelihood. Conflicts between reindeer husbandry and other forms of land use will be mitigated. Legislation concerning the evaluation of and compensation for damage caused by reindeer will be revised.
2. Saami Council points out that so far there has not been any improvements in fullfilling the aforementioned promises that are on the Governmet Programme. For example last winter (2019-2020) was extremely difficult for the reindeer because there was more snow than on average, there were several ice layers in the snow, and the snow melted much later than usually. According to Natural Resources Institute Finland’s research the cost of reindeer husbandry rose by 80 to 90 percent higher than usual in last winter. However the state waits more information and has not yet compensated economically the damages and losses even if the compensation would be possible according the Act on compensation for damages that affected reindeer husbandry (987/2011). Also in 2019, the need for replacement benefits for reindeer herders exceeded the budget allocated to them in the Ministry of Social Affairs and Health. As a result, the Farmers' Social Insurance Institution of Finland (MELA) has not been able to pay replacement benefits to reindeer herders for the rest of 2019. These surrogates are still unpaid, further weakening the already challenging financial situation of reindeer herders after the exceptionally difficult winter.[[16]](#footnote-16)
3. The Reindeer Husbandry Act of Finland (848/1990) does not contain separate provisions specifically for the special protection of Sámi reindeer husbandry. Saami Council urges Finland to amend the Reindeer Husbandry Act to recognize the rights of the Sámi as an indigenous people and the customary laws of the Sámi reindeer herding in the Reindeer Husbandry Act.
4. The reindeer herding in Finland is governed by an association called Paliskuntain yhdistys and the Finnish reindeer herders are on majority position of the association. Paliskuntain yhdistys does not recognize Sámi reindeer herding and Sámi customary law. On example is the reindeer earmark system based on kinship (family mark) which is a special customary law in the Sámi reindeer herding. Only a member of a certain family can use certain combinations of the earmarks. Family earmark principle is recognized in the Reindeer Husbandry Act, but very loosely. Supreme Administrative Court confirmed in a yearbook decision issued in year 2016 (SAC 212:2016) the Paliskuntain yhdistys's competence and guidelines in matters of reindeer earmarks and the Paliskuntain yhdistys's reasoning for granting reindeer earmarks. Saami Council is very concerned that this decision by the Supreme Administrative Court could lead to a situation where the Paliskuntain yhdistys can continue to walk over the Sámi family reindeer earmark principle and in general over the local knowledge of the earmarks. The guidelines of the Paliskuntain yhdistys regarding the definition of the reindeer earmark system do not correspond to the way in which the Sámi themselves define the principle of the family reindeer earmark system.
5. The Sámi way of life, especially in relation to reindeer husbandry, is threatened significantly by competing usage of land, often promoted by the Governments themselves through natural resource extraction or other development projects. In a common level the competing forms of land use affect directly to the reindeer pastures so that the pastures perish and/or the pastures fragment. There are also cumulative effects that the competitive forms of land usage bring.
6. The State party does not define in their report that how the concept of “significant harm” is defined and applied in practice when assessing the impact of measures, including development projects, that may directly or indirectly affect the Sámi culture and traditional

livelihood.

1. The Human Rights Committee noted in the individual communication, about mining activities in Angeli area in Sámi homeland, Ilmari Länsman v. Finland (CCPR/C/52/D/511/1992) that economic activities must, in order to comply with article 27, be carried out in a way that the authors continue to benefit from reindeer husbandry. Furthermore, if mining activities in the Angeli area were to be approved on a large scale and significantly expanded by those companies to which exploitation permits have been issued, then this may constitute a violation of the authors' rights under article 27, in particular of their right to enjoy their own culture. The State party is under a duty to bear this in mind when either extending existing contracts or granting new ones.
2. The concept of significant harm is based on the 27 article of the ICCPR and could be in other words also called the prohibition of cultural undermining. The significance harm or prohibition of cultural degradation has been recognized in several Acts in Finland for example in the Water Act (587/2011), Mining Act (621/2011) and Reindeer Husbandry Act of Finland. According to the Reindeer Husbandry Act section 2 subsection 2 *“state land situated north of the line marked on the map appended to this Act forms an area specifically intended for reindeer herding. The land in this area may not be used in a manner that may significantly hinder reindeer herding”.*
3. The significant hinder is not explained in more detail on the bill of the Reindeer Husbandry Act (GB 244/89 vp.), but together with the Constitution of Finland section 17 subsection 3 and ICCPR Convention article 27 it should mean that especially the estimation of possibility significant hinder should be taken very seriously if it affects the Sámi reindeer herding as the Supreme Administrative Court has stated in 1999 (SAC 14:1999). Therefore, the disadvantages of the Sámi reindeer herding caused by for example mining occupation must be clarified before a decision is taken, and it must be considered whether, in order to safeguard the reindeer herding, it is necessary to reject the takeover applications or the provisions of the decision for example, the need to restrict the execution of seizure-based measures at certain times or in certain places. In addition, there is take into account which areas important for reindeer husbandry are being taken over by other decisions under force and how large sensitive or important for reindeer husbandry the relevant takeover requests.[[17]](#footnote-17)
4. The Sámi Parliament in Finland, the Skolt Sámi village committee and the Sámi reindeer-herding associations have stated that the securing of the prohibition to undermine the Sámi culture should include at least two parts: to assess the significant disadvantages of impact assessment and an effective consultation-based consultation process on Sámi culture.[[18]](#footnote-18)
5. However in practice the Finnish authorities capacity in impact assesments of the significant hinder has been incomplete. Sámi Parliament has several times criticized the assesments made by Finnish authorities on Mining Act. For example according to the Mining Act the effects of past projects and other land use on an individual site must be taken into account when granting new mining authorizations. According to Sámi Parliament realized effects are not monitored or documented. Monitoring and documentation of cumulative effects in its absence altogether, it has been easy for the mining authority to grant all the permits applied for without exception, as in the eyes of the authority what is not documented does not exist.[[19]](#footnote-19)
6. The Mining Act section 50 contains prohibition to undermine the culture of Sámi people. However the Administrative Court of Northern Finland decided in year 2018 that exploration permit that was given to Geological Survey of Finland by the Finnish Safety and Chemicals Agency in Enontekiö area in Sámi homeland did not undermine the preconditions for engaging in traditional Sámi sources of livelihood or otherwise to maintain and develop the Sámi culture in that area. This is a first ever exploration permit made under the new Mining Act in the Sámi homeland. This case is still in progress at Supreme Administrative Court.
7. Sámi Council agrees with the recommendations made in the Government's research report that the prohibition of degradation of Sámi culture and the assessment of cultural effects, as well as the consideration of traditional information related to Sámi land use, should be recorded in all cases directly related to Sámi rights, in particular lower legislation on the environment and land use, the Forest Government Act (Metsähallitus Act) as the most important, but not the only example.[[20]](#footnote-20) A good model should be created for assessing the cultural impact of a restraining order. The cultural impact assessment under the current Mining Act has not yet worked in an appropriate way. In particular, cumulative effects should be taken into account in the impact assessment. It would also be essential to train the authorities on issues related to Sámi culture. A workable model for cultural impact assessment should be created, with the know-how of licensing authorities issues related to Sámi culture is central. Creating good practice cooperation between key actors would reduce the need for legal appeals. Particular attention should be paid to the assessment of

cumulative effects.[[21]](#footnote-21)

**Replies to the questions in part B paragraph 23 section c (ILO Convention 169)**

1. Finland has not yet ratified the ILO Convention no. 169. It is mentioned in the current Government of Finland’s programme that the Government will respect and promote the realisation of the linguistic and cultural rights of all Sámi people and Sámi groups in a way that takes the relevant international conventions into account. As part of this work, the Government will examine the possible ratification of the ILO Convention No. 169. Saami Council points out that there have been almost ten different studies or examinations by the Government of Finland on ratifying the ILO Convention No. 169 over the years so the ratification doesn’t need any extra reviews, studies or examinations.
2. Saami Council points out that it seems to be clear that the main reason in Finland not ratifying the ILO Convention no. 169 has been that the state has not been willing to recognize Sámi land rights as the article 14 of the ILO Convention no. 169 obliges. Human Rights Committee has also drawn attention to the solving of Sámi land rights, at least in the fourth (CCPR/C/79/Add.91), fifth (CCPR/CO/82/FIN) and sixth (CCPR/C/FIN/CO/6) concluding observations to Finland. However the legal status of the lands that Sámi people have traditionally used and occupied in Finland has remained unresolved. Saami Council urges Finland to recognize the land rights of Sámi people as the Article 14 the Convention obliges and finally ratify the ILO Convention no. 169.
3. **The Saami Council recommends the ICCPR to question the State party what are the reasons of the state party for not yet solving the land right issue of the Sámi people?**

1. A/HRC/18/35/Add.2. [↑](#footnote-ref-1)
2. GB = Government Bill (In Finnish HE = *Hallituksen esitys*). [↑](#footnote-ref-2)
3. A/HRC/18/35/Add.2. [↑](#footnote-ref-3)
4. CCPR/C/124/D/2668/2015 and CCPR/C/124/D/2950/2017. [↑](#footnote-ref-4)
5. CCPR/C/124/D/2668/2015 and CCPR/C/124/D/2950/2017. [↑](#footnote-ref-5)
6. Sámediggi, Dnro 225/D.a.9/2019. [↑](#footnote-ref-6)
7. ECLI:FI:KHO:2019:T3561. [↑](#footnote-ref-7)
8. SAC 2019:89 and SAC 2019:90. [↑](#footnote-ref-8)
9. https://www.kho.fi/fi/index/ajankohtaista/tiedotteet/2019/korkeinhallinto-oikeushylkasisaamelaiskarajienhallituksenpurkuhakemuksen.html [↑](#footnote-ref-9)
10. ECLI:FI:KHO:2019:T3561 and ECLI:FI:KHO:2019:T5019. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. ECLI:FI:KHO:2019:T5019. [↑](#footnote-ref-12)
13. ECLI:FI:KHO:2019:123. [↑](#footnote-ref-13)
14. Free Prior and Informed Consent – An Indigenous Peoples’ right and a good practice for local communities – FAO. [↑](#footnote-ref-14)
15. The Sámi homeland means the areas of the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the reindeer owners’ association Lappi in Sodankylä. [↑](#footnote-ref-15)
16. https://www.samediggi.fi/2020/09/01/samediggi-doarjala-ministtar-kiurui-boazodolliid-loahppajagi-2019-mavssekeahtes-sadjasasveahkkebuhtadusaid-maksima-varas/?lang=dav [↑](#footnote-ref-16)
17. HE 273/2009 vp, p. 14. [↑](#footnote-ref-17)
18. Heinämäki and Rautio: Tiivistelmä saamelaiskulttuurin heikentämiskiellosta: edellytyksenä tehokkaat neuvottelut ja vaikutusten arviointi, 2019, p. 29. [↑](#footnote-ref-18)
19. Sámediggi, 281/D.a.4/2016, p. 3. [↑](#footnote-ref-19)
20. Actualizing Sámi Rights: International Comparative Research 2017, p. 510. [↑](#footnote-ref-20)
21. Ibid, p. 518. [↑](#footnote-ref-21)