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UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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CERD@ohchr.org

92nd session - Examination of Finland

Please find attached the submission by the NHRI of Finland, the Human Rights Centre for your information before the examination of Finland on 25 and 26 April 2017.

The Human Rights Centre will attend the meeting and also make an oral statement on the 26 April 2017.

with regards,

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Expert

Human Rights Centre

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I. Introduction

1. This report is delivered by the Finnish Human Rights Centre (HRC). The HRC, its Human Rights Delegation and the Parliamentary Ombudsman together form Finland's National Human Rights Institution (Finnish NHRI). The HRC is an autonomous and independent expert institution that promotes human rights. In accordance with its statutory tasks, the HRC takes part in and represents the Finnish NHRI in international and European cooperation and promotes and monitors fundamental and human rights in Finland.
2. This report aims to independently review plus further develop and complement issues raised in the 23rd periodic report of the Government of Finland on the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination. The Government report covers the period from November 2011 to December 2015.
3. This report follows the structure of the Government report, but focuses only on a few current subject matters raised in the said report and in the List of Themes, provided by the CERD Committee in March 2017.

II. Implementation of Articles 1-7

Article 2

New Non-Discrimination Act

4. As the Government submits, the new Non-Discrimination Act (1325/2014) brought along many needed reforms with regard to the scope of application, duties of service providers and supervision. It also covered the concerns of the Committee with regard to the private transactions. Reference is made to the written submission by the Non-Discrimination Ombudsman in March 2017.
5. The situation with regard to discrimination in work-life is still being monitored by multiple authorities. According to the new Law, the Non-Discrimination Ombudsman monitors all discrimination grounds. However, the discrimination in individual work-life cases is monitored by the occupational safety and health authorities. The Equality Ombudsman continues to monitor compliance with the Act on Equality between Women and Men.
6. The National Non-Discrimination and Equality Tribunal of Finland (former Discrimination Board and the Equality Board merged) with its wide powers and possibilities to impose penalty payments, prohibitions, obligation decisions and even reconciliations does not monitor the application of the Non-Discrimination Act in working life. However, complaints based on the Act on Equality between Women and Men fall within the mandate of the Tribunal also in the working life. For an individual to receive compensation in cases of work-life discrimination a

criminal investigation needs to be performed by the police, on the initiation of the occupational safety and health authorities, and depending on the outcome of criminal proceedings.

7. All this is likely to create confusion on the right forum for the victim of discrimination, especially if the victim has lacking skills in national languages or is unaware or unsure of his right not to be discriminated against.

Recommendation: Continue the process of improving and clarifying the human rights structures in Finland, especially with regard to monitoring equality and non-discrimination.

Hate speech, racism and political parties

8. As the Government points out, all parties in Parliament signed the Charter of European Parties for a non-racist Society in 2015. This way they committed themselves to combat all forms of racism, to defend human rights and to reject all forms of racist violence and incitement to racial hatred. They also committed to refuse to display, to publish or to distribute views and positions which stir up or invite prejudices and hostility.
9. However, in practice these principles have not always been visible in actions of individual party members or general line of politics. Especially due to the increased amount of migrants and asylum seekers since late 2015 several politicians and party functionaries have repeatedly stated discriminatory and even racist views in public, in clear disregard of the said Charter. Those have either been disregarded or silently accepted by persons higher up in the party organisations or who are indeed in the government. Very few visible condemnations or criminal proceedings have taken place on hate speech and racist speech.

Recommendation: Encourage political parties to take more effectively and openly action against hate speech and racism among their members in their behavior, on-line writing and appearances in other media.

Article 5

Sámi issues

General on Sámi issues

10. Disagreement and tensions surrounding not just the Sámi definition but also Sámi people's right to self-determination, their traditional livelihoods and lands and exploitation and use of their culture continue. There are acrimonious debates and conflicting views in the context of some legislative initiatives, agreements and processes but also with regard to less formal processes and actions.
11. Local non-Sámi inhabitants, those not accepted as Sámi by the Sámi community, local municipalities, politicians, scholars and media all have views that often are contradictory. This has led to violent threats locally and in general has had a

negative effect on the reputation of Sámi. The fact that the government seems not to be supporting nationally the same indigenous rights that it flags actively in international context is not helping the situation and increases the frustration among the Sámi. Also the Government does not seem to be unified in its approach to these issues.

Recommendation: Take immediate steps to remedy the current situation with regard to various Sámi related issues to end the continuous unclear and uncertain state of affairs and to enable further development of the Sámi languages and culture and to improve the implementation of the human rights of Sámi.

Definition of Sámi and inclusion in the Sámi electors register

12. Definition of Sámi has been a cause for many disputes and unclear situation for decades. The Committee has given several recommendation on the issue, among others, stressing the rights of the Sámi people to self-determination as a group to avoid assimilation and on the process of deciding who is Sámi for the purposes of being included in the Sámi electors register and who gets to decide on the inclusion in the end.
13. A Bill on the revision of the Act on the Sámi Parliament (Bill 167/2014) containing, *inter alia*, provisions for the revision of the current definition of Sámi was withdrawn on 12 March 2015 due to lack of sufficient support for the said definition within the parliament. No further legislative action has been taken since. It is expected that now, after having agreed to the Nordic Sámi Convention, including its definition, the required amendments to the national legislation on the right to vote will be made before the next elections, which will be held in the autumn 2019.
14. In September 2015 the Supreme Administrative Court accepted 93 out of 182 appeals against Sámi parliament's decision on certain persons inclusion in the Sámi electors register. Some decisions by the Supreme Administrative Court can be criticized for a reason. The decisions are not always following all the established and legal principles, an unclear concept of "overall consideration" has been used in many cases and many decisions are not comparable to others of similar situation.
15. A report "Actualising Sámi rights – International Comparative Research and the related study were commissioned by the Government and it was published in January 2017. The research in the report shows that even though the court takes into consideration self-determination and group identification, this is not necessarily always reflected in the outcome.
16. The current situation is unsatisfactory and at times even discriminatory. Legal certainty is not visible in the recent decisions.

Recommendation: Take immediate steps to clarify the definition of Sámi and the related process so that the self-identification of the Sámi as a group plays stronger role, the decisions are not discriminatory and that the

legal certainty exists.

Nordic Sámi Convention

17. Nordic Sámi Convention was agreed upon and signed in January 2017 after more than a decade of discussions and negotiations. The Convention contains a co-Nordic provision on the persons entitled to vote in the elections to the Saami Parliament. The common provision on the right to vote corresponds to the legislation in force in Norway. In Finland, the required amendments to the national legislation on the right to vote will be made before the next elections, which will be held in the autumn 2019.
18. The Convention safeguards the Sámi people's constitutional right to maintain and develop their own language and culture. It does not bring any changes to the Sámi rights to land and water in the Saami homeland. The Act bringing into force the Convention will contain more detailed provisions on the rights to land and water. The Sámi's opportunities to participate in the planning of the management and use of the state's land and water areas will be developed by the municipality-specific advisory councils established under Metsähallitus in Enontekiö, Inari and Utsjoki.
19. The Convention emphasises the significance of the traditional Sámi livelihoods to the Sámi language, culture and social life. In addition to reindeer husbandry, fishing, hunting and Sámi handicraft (Duodji), the Convention also mentions cultural and creative livelihoods, tourism and modern ways of engaging in trades. The provisions concerning the livelihoods will be elaborated in the national legislation in connection with the bringing into force of the Convention.

Recommendation: Ensure that in the Act bringing the Convention into force the FPIC process is utilized and the views of the Sámi Parliament are taken effectively into consideration and that they are duly represented in the advisory councils in order to protect their right to practice the traditional livelihood and maintain and develop their language and culture with no unnecessary and unreasonable limitations.

Free prior and informed consent (FPIC)

20. An integral part of political rights is participation. With regard to indigenous communities, such as Sámi, the *free prior and informed consent*, also known as FPIC, is an essential part of effective participation and self determination. This is a process of good will and mutual trust which enables the state to take into account the views and concerns of the indigenous communities and allows the communities to express them. The process or the lack of consent as such do not necessarily prohibit proceeding (no unlimited veto powers), although there needs to be a real possibility that they may have a real effect and even stop the proceedings, if needed.
21. Although the consultation requirement with the Sámi in matters that concern them is regulated in various laws, in practice it is not functioning as well as it should.

There are several examples of disregard or insufficient implementation of the consultation requirement and what actually seems like “ill will” towards the Sámi and their special status as indigenous people.

22. Problems arise both in drafting legislation as well as negotiating international and domestic agreements. This disregard often manifests itself by insufficient or non-existing consultation, lack of documents in Sámi languages, too short deadlines, consultation after the matter at hand has already been agreed upon elsewhere etc. the Sámi feel that in general the matters being discussed are those selected by the government and issues that Sámi themselves find worth discussion and consultation are not taken onboard.

Examples of disregard of FPIC-process recently

Ø Amendment of the Act on Metsähallitus (Finnish Forest and Park Service)

23. Originally the Bill for the amendment of the Act on Metsähallitus (Finnish Forest and Park Service) was prepared by the previous Governments during 2008-2014 and a wide and open round of consultations was organized in 2014. The draft included a chapter (two Articles) on Special regulation concerning Sámi homeland. One Article covered planning the maintenance and use of the Government owned land and water areas in the Sámi homeland and related consultation and consideration of possible effects by the actions on the rights of indigenous people to maintain and develop their language and culture.
24. The second Article stipulated a prohibition to weaken the possibilities of the Sámi to use their traditional livelihoods or to maintain the language and culture. Additionally it granted a right to appeal to Sámi parliament and Skolt villages to certain administrative decision by the Forest and Park Services regarding effects in the Sámi homeland. This drew criticism from local municipalities and persons not accepted as Sámi as giving too much power to the Sámi Parliament.
25. The new government redrafted the Bill in 2015 and during the process, in which the consultations were done in a rather haphazard and speedy fashion, the entire chapter concerning Sámi issues was removed. The fact that ILO Convention No. 169 has not been ratified yet by Finland, was given as a reason for the removal of those Articles.
26. Despite hard criticism, especially on its negative effects on the maintenance and development of the Sámi traditions, language and culture, the Government Bill (132/2015) for the amendment of the Act on Metsähallitus (Finnish Forest and Park Service) was adopted by the Parliament in April 2016.

Ø Tana Fishery Agreement

27. Based on a complaint by the Sámi Parliament, the Chancellor of Justice has recently concluded in a decision on the Tana Fishery Agreement that the Government had partially neglected its lawful obligation to negotiate with the Sámi Parliament in a timely manner thus depriving it the possibility to participate in a

meaningful way (in matters concerning it). The Constitutional Committee of the Parliament expressed similar views in its statement on the Tana Fishery Agreement.

28. The agreement aims to improve space for Tana river salmon stocks and to reduce the fishing mortality rate of salmon. This means cutting of different methods of fishing during different fishing seasons. The restrictions also apply to the traditional Sámi net and dam fishing methods. In addition, fishing tourism license practices will also change, thus in the future, Finland and Norway will have country-specific quotas for their permits.
29. The fishery agreement is one of the few issues that the Sámi in Finland, Norway and Sweden had a joint position on and which was, according to the Finnish Sámi parliament, ignored resulting in decreased possibilities to practice traditional livelihood of fishing.

Recommendation: Make sure there is a functioning process of FPIC in all matters that concern Sámi and the issues affecting the maintenance and development of their traditions, language and culture.

ILO Convention No. 169 on Indigenous and Tribal Peoples

30. The Committee's recommendation to find a solution to the dispute regarding the rights of Sámi people in their traditional lands, ratification of ILO Convention No. 169 and maintenance of Sámi traditional livelihood of reindeer husbandry is a reoccurring recommendation. It is echoed by several other international monitoring bodies, most recently in March 2017 by the Committee of Ministers of the Council of Europe, based on the work of the Advisory Committee on the Framework Convention on National Minorities.
31. The Government Bill (264/2014) on the ratification of the ILO Convention No. 169 on the rights of indigenous peoples was introduced into Parliament on 27 November 2014. The reading of the matter was transferred to the new post-electoral parliament and it has been pending for the outcome of the report "Actualising Sámi rights – International Comparative Research. The study and related report was commissioned by the Government and it was published in January 2017.
32. The study includes recommendations to strengthen co-operation and dialogue between officials and Sámi Parliament, to ensure equal and actual participation of the Sámi in matters related to the use of land and waters, to protect their traditional livelihoods by prohibition to weaken the culture of Sámi, to increase knowledge among officials on Sámi culture and to clarify Sámi definition by amending the Act on the Sámi Parliament.
33. According to the study many of these measures would also contribute to the ratification of the ILO Convention No. 169. It remains to be seen what steps the parliament and the government will take in the light of this very esteemed and thorough research report.

Recommendation: Continue the process to ratify the ILO Convention No.

169 concerning Indigenous and Tribal Peoples in Independent Countries and in a constructive, meaningful and structured manner engage the Sámi people in all matters concerning them.

Asylum seekers and other Aliens

Changes in the Asylum and Aliens Rights in 2016

34. In autumn 2015 the number of arriving asylum seekers in Finland suddenly became tenfold (c. 32.500) of the usual amount. This was somewhat unexpected and brought along many different types of challenges for the Government, NGOs, local municipalities and their inhabitants.
35. This submission lists numerous legislative and policy measures taken to limit the rights of asylum seekers and refugees in Finland. Other changes have also taken place. Many of these changes have decreased legal protection of foreign national, especially those seeking asylum or family reunification. They have caused uncertainty in the lives of many.
- Removing the category of *humanitarian protection* from the legislation.
 - Restrictions to *legal aid* during asylum investigation. Currently free legal aid is provided only if there are weighty reasons for it or if the asylum seeker is under 18 years of age and has arrived unaccompanied.
 - The *time to lodge an appeal* against the asylum decision was made shorter than the general time for appeal in other administrative matters of similar nature. This in connection with lack of legal aid can prove a hurdle that cannot be overcome by persons with limited knowledge of languages and procedures.
 - The *examination of all the appeals* against asylum decisions was previously dealt with by one Administrative Court. Recently, three additional Administrative Courts have taken charge of the appeals. This is positive with regard to the Courts' workload but increases the possibility of undue differences in the decisions.
 - *Requirements for family reunification* have been tightened several times recently. In their current form they could actually prevent reunifications completely. The suggestive income requirement set for the sponsors may be so high that it is impossible for most to achieve. Stricter provisions are problematic with regard to the right to respect for family life of sponsors and to the best interest of the child in cases where the sponsor is a minor. Also changes in the application process have made it more difficult to achieve reunification.
36. More details are found in the submission by the Non-Discrimination Ombudsman to CERD-committee in March 2017. The HRC remains very concerned about the cumulative impact of the amendments made to laws on the fairness of the asylum procedure and the right to family reunification.

Recommendation: Initiate without delay a study on the cumulative effects

of the legislative and policy changes and the current state of affairs to the asylum process in order to ensure and monitor that Finland is fulfilling its obligations under international conventions and continues respecting human rights of all persons.

Non-Discrimination Ombudsman - Supervisor of forced returns

37. The Non-Discrimination Ombudsman is competent to supervise enforcements of removals from the country of foreigners in all their stages, as stated by the Government. However, currently the resources (funding and personnel) for such activities is limited to 1.5 persons employed by the Non-Discrimination Ombudsman.
38. This in practice makes the supervision very superficial and random. Considering that currently and also in the near future a large amount of forced-returns will take place as a result of the highly increased amount of migrants and asylum seekers in 2015-2016, this supervisory function is close to non-existing and only in letter fulfilling the provisions of the EU Return Directive, according to which Member States shall provide for an effective forced-return monitoring system.

Recommendation: Ensure that the office of the Non-Discrimination Ombudsman has sufficient resources to supervise forced-returns in a more coordinated and extensive capacity.

Health Care Services for Paperless Persons

39. The HRC welcomes the Government's sponsored study on the need and use of health care services among undocumented migrants. At the same time, it is regrettable that the Government Bill which would have improved the access of undocumented minors, pregnant women and persons with chronic diseases to the aforementioned services expired.
40. In the current national legislation, the access of undocumented migrants to health care is limited to emergency health care only. At the minimum, and to better comply with human rights obligations, access to other preventive health care services considered necessary by the health care professionals should be provided. Some municipalities provide more services than others, creating thus inequality amongst the undocumented migrants and can act as incentive for them to relocate within the country.

Recommendation: Amend the legislation so that all undocumented migrants would have access to both necessary and emergency health care services. Undocumented minors should be provided all health care services defined by the Health Care Act.
