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To the Ministry of Foreign Affairs

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Statement of the Finnish League of Human Rights concerning the implementation of the Covenant on Economic, Social and Cultural Rights in Finland in light of the List of Issues

The Finnish League of Human Rights wants to highlight following topics related to the List of Issues. In our statement, we are commenting questions number 3, 5, 7, 8, 12, 13, 18, 22, 25, 28 and 29.

Question 3: Please provide information on the measures adopted to guarantee an adequate protection of the right of the Sámi Indigenous peoples to own, use and freely dispose their lands, territories and natural resources. Please also provide information on the circumstances in which the consultation processes with a view to obtaining the free, prior, and informed consent of Sami indigenous peoples are conducted with regard to the decision-making processes that may affect them, including those granting licenses for development projects. Please also explain how social, environmental and human rights impact assessments are carried out before granting such licenses. Please provide information on the specific measures adopted to mitigate the adverse effect of climate change on the enjoyment of Sámi indigenous peoples' economic social and cultural rights.

Since the previous monitoring cycle we have witnessed negative developments with regard to self-determination of the Sami. The right of the Sami to free, prior and informed consent has been reiterated in several government documents and legislation but it has not been lived up to in all legislative and other procedures where needed. Some branches of the government still fail to respect the obligation to obtain free, prior and informed consent of the Sami in legislative and administrative processes that may affect them.

In the negotiation between Finland and Norway in 2016-17 on common fishing regulations for the Teno River, the Sami were not only neglected but actively ignored. The Finnish Chancellor of Justice stated in 2017 that the negotiations violated the Finnish Constitution and the Act on Sami Parliament. However, the negotiations were not reopened and regulations that have detrimental effect on Sami culture remain in force.

Some positive developments have occurred since then, such as the adoption in 2017 of a guideline memorandum drafted by the Finnish Ministry of Justice and Sami Parliament in cooperation on negotiations between public authorities and the Sami Parliament. The memorandum emphasizes the need to engage in genuine negotiations in a timely fashion. However, even after adopting the guideline memorandum, the Sami have not been properly consulted, for example, with regard to the plans to build a railroad across the Sami homeland from Rovaniemi to the Arctic Ocean.

In some procedures, the negotiation procedure as such has been appropriate but the outcome has not reflected the will of the Sami due to lack of political will from the state. An example of

this is the request of the Sami Parliament in 2019 to delay the Sami parliament elections due to a need to reform the legislation upon the UN Human Rights Committee ruling in early 2019 against the state in the case of complaints about inclusion of persons in the list of people eligible for voting in the Sami parliament elections.

Question 7: Please provide information on court cases in which the Covenant rights were invoked before, or applied by, domestic courts. Please also provide information, including statistical data on remedies provided to victims whose rights protected under the Covenant were violated. Please provide information on how trainings and awareness campaigns on the rights protected under the Covenant have contributed to ensure their justiciability and to raise awareness of the individual communications procedure under the Optional Protocol.

ICESCR is not referred to regularly in the published decisions of highest national courts. After 2010, ICESCR has been referred to in four cases in the Supreme Court of Finland¹ and in one case in the Supreme Administrative Court of Finland². Similarly, of all decisions given by the Supreme Administrative Court of Finland in 1991–2010, ICESCR was referred to only in seven.¹

Person whose rights have been violated might not be able to seek remedy if knowledge of economic and social rights and mechanisms for their protection are insufficient. ICESCR and individual complaints mechanism provided by The Optional Protocol are not well known among rights-holders in Finland nor employees and officials within the social and health sector. Very limited or no training on the ICESCR is carried out for relevant government authorities, eg. municipal social and health offices or workers within municipal social and health services. Related to this, we are also concerned about the inconsistency in financial support for human rights organisations that focus on human rights in Finland, including those very few focusing explicitly on the Gov's duty to protect and promote ESC rights.

Question 8: Please explain the extent to which the financial and human resources allocated to the Finnish National Human Right Institution are adequate to enable it effectively and independently carry out its mandate, particularly in relation to economic, social and cultural rights.

The Human Rights Centre has a wide mandate.² The current resources are very limited in relation to the mandate and tasks, including in relation to economic, social and cultural rights, despite the small extra resource allocated for the Centre in regard to the rights of the elderly.

Question 12: Please provide information on the implementation of the Anti-Discrimination Act and explain the specific functions and competences of the Non-Discrimination Ombudsman and the Non-Discrimination and Equality Tribunal, indicating whether these bodies can deal with cases of discrimination based on any ground in relation to the enjoyment of all economic, social and cultural rights. Please also provide information on the number of administrative and judicial cases of discrimination in the enjoyment of economic, social and cultural rights that have been investigated, the decisions rendered and whether any compensation has been provided to the victims.

¹ <https://www.edilex.fi/oikeus/9294>

² <https://www.humanrightscentre.fi/about-us/human-rights-centre/>

The new, broader Non-Discrimination Act took effect in 2015, simultaneously with the re-formed Act on Equality between Men and Women. The reform has given new groups of people access to the three low threshold monitoring bodies around equality and non-discrimination: The Non-Discrimination Ombudsman, The Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal.

However, there are gaps in the scope of the protections the legislation provides. It is problematic that the Non-Discrimination Ombudsman's supervision mandate excludes individual cases of discrimination in employment.

Although the Equality Act acknowledges gender identity and gender expression, the demand to promote equality applies only to equality between men and women. Concerning gender identity and gender expression, there is an obligation for employers, authorities and schools to prevent discrimination. This is a weaker formulation and has not been effectively implemented.

The National Non-Discrimination and Equality Tribunal can examine cases of discrimination in employment but only regarding gender-based discrimination, including discrimination based on gender identity or expression.

The current legislative framework makes it difficult to recognise multiple discrimination. For an individual experiencing discrimination, the asymmetric mandates of the Ombudsmen and the Tribunal may be confusing and hinder access to justice.

Under the current law, the Non-Discrimination Ombudsman cannot take a case of discrimination to the Tribunal for processing without naming the victim. This is problematic as certain kinds of discriminatory acts may not be targeted at a person but rather at a group of people as a whole, based for example on ethnicity, religion or sexual orientation. It is important that this kind of cases would become eligible for taking to the Tribunal without a specified victim. The threshold for individual victims to agree on their case to be taken into the Tribunal may be high due to stress and fear of repercussions which makes it contradictory to demand that a victim should always be named.

The tribunal cannot award compensation for victims of discrimination. As a rule, a victim of discrimination would have to sue their counterpart in a civil procedure at their own risk within two years from when the discriminatory act has taken place. Very few victims take a demand of compensation further due to the strict time frame, lengthy complaint procedures at the monitoring bodies and the cost risk involved. Thus, victims often get no remedy at all even if the Tribunal or one of the Ombudsmen had stated that discrimination has taken place in the case.

Question 13: Please provide information on the implementation, results and evaluation of the National Policy on Roma and other measures adopted to combat discrimination against Roma, and/or any other ethnic, linguistic and religious minorities, including Russian-speakers and Somali, in the enjoyment of economic, social and cultural rights, particularly in accessing employment, education and health care. Please also explain which measures the State party envisages to adopt in order to overcome the remaining challenges in ensuring the full enjoyment of these rights to all without discrimination.

Experiences of discrimination are prevalent among Finnish Roma³. For example, they face discrimination when applying for work.⁴

Several studies show that minorities and immigrants continue to face discrimination in Finland. For example the recent EU-MIDIS Study found that in Finland 63% of respondents of African descent have experienced racial harassment and 14% had experienced racially motivated violence in the past five years. Studies also show that the level of trust in police is significantly lower amongst minorities than in the population at large.

School education at all levels provides insufficient information about minorities. In addition, anti-discrimination training of government officials such as police, teachers and health care professionals is unsystematic and uncoordinated.

Question 18: Please explain the extent to which measures adopted have promoted opportunities for productive and remunerated employment for persons with disabilities. Please also provide information on measures adopted to provide reasonable accommodation.

The Finnish labour market does not provide adequate support to people with disabilities to facilitate their participation in working life. It is estimated that only 15-20 % of persons with disabilities participate in the labour market. About 30 000 disabled persons could be employed in labour market, either in full-time or part-time work.⁵

The social security system seems to sustain a situation where disabled persons are put on disability pension even when they are capable of paid work. Some disabled persons get a disability pension already when they turn 16.

The government policy in regarding the people with intellectual and developmental disabilities in the labour market has for long been to view them mainly as receivers of social help, not as workers. This view has led to a peculiar system where people with intellectual and development disabilities work in so call work centres (established and organised by municipall authorities) or in regular jobs for example in the care sector or in kitchen-work, but without salary or other work benefits. Instead, they receive a marginal remuneration for of 0-12 e per day.⁶ Yet, the nature of these work activities in many cases correspond to the characteristics of employment, but the work is completely outside the protection of the labour law. Currently, only three percent of the people with intellectual and developmental disabilities in the working-age, work in paid employment. The Finnish League for Human Rights calls for urgent assessment of the current situation, and a holistic renewal of the current system.

Question 19: Please provide information on the specific measures taken to bring the working conditions of migrant workers, particularly seasonal workers, into conformity with the provisions of article 7 of the Covenant, and on the impact of such measures. Please also provide information on the

³ <http://www.julkari.fi/handle/10024/137276>

⁴ [https://www.syrjinta.fi/documents/10181/10850/52878_romaniselvitys_verkkoon+\(1\).pdf/584516fc-d3a7-4f88-8ecc-c8b2271ebf41](https://www.syrjinta.fi/documents/10181/10850/52878_romaniselvitys_verkkoon+(1).pdf/584516fc-d3a7-4f88-8ecc-c8b2271ebf41)

⁵ <https://helda.helsinki.fi/bitstream/handle/10138/144151/Tutkimuksia133.pdf?sequence=4>

⁶ <https://verneri.net/yleis/avotyotoiminta>

number of complaints related to discriminatory practices that have been lodged, the investigations conducted and the sanctions imposed.

One worker group completely lacking labour rights are seasonal migrant workers, mainly Thai and Ukrainian, who pick berries for Finnish companies in forests. The Government must establish employment contracts and provide for labour rights for seasonal forest berry pickers.

Questions 5 & 22 concerning poverty and right to basic social security:

Question 5: Please provide information on the methods and criteria used to ensure that social benefits are set at a level that allows recipients and their families to enjoy an adequate standard of living. Please also indicate how the State party is ensuring that cuts to social security benefits do not disproportionately affect disadvantaged and marginalized individuals and groups.

Question 22: Please provide information on the measures taken to guarantee targeted support to all those living in poverty or at risk of poverty, in particular single-parent families, families with children, as well as young people.

According to the latest data (Statistics Finland, 2019) in 2017, 890 000 people (16,4 % of population) were at risk of poverty or social exclusion. Most of them lived in low income households, which constituted 12,1 % of the population. Poverty in families with children has started increasing and affects 119 000 children (11,1 % of all children in 2017) in Finland. The poverty rate of single-guardian families (25%) is three times higher than of families with two guardians (8 %).⁷ During the past government's term in office (2015-2019) there have been several cuts to social security benefits for families with children, including an 8 % cut to child allowances from the beginning of 2015 and the removal of index increase in child allowance.

It has been stated in the *Evaluation report on the adequacy of basic social security 2015-2019* (2019) by the National Institute for Health and Welfare that the level of basic social security (minimum unemployment benefit, parental daily allowance, sick leave allowance, pensions, home care allowance, student benefit, and supplementary housing benefit) is not sufficient to cover the reasonable minimum consumption budget. For example, financial aid for students has become increasingly loan-based, and covers the reference budget only if supplemented by a student loan. Since the last evaluation in 2015, the percentage of people relying on basic social security has increased from 8,9 to 9,5.⁸

The new Government (June 2019) has committed to increasing the level of basic social security. According to the current government programme, the level of parental daily allowance, rehabilitation allowance, sick leave allowance, minimum unemployment benefit, and labour market subsidy will be increased by 20 euros per month. In addition, there will be an increase of 34 euros in national pension and 50 euros in guarantee pension.⁹ All changes will come into effect in early 2020.

The upcoming increase in basic social security benefits is a step in the right direction. However, these measures are not enough to cover the minimum expenses of those relying and living on basic social

⁷ <http://www.stat.fi/til/eot/index.html>

⁸ <http://www.julkari.fi/handle/10024/137711>

⁹ https://valtioneuvosto.fi/artikkeli/-/asset_publisher/1271139/budjettiriihen-paatokset-parantavat-sosiaaliturvaa-seka-sosiaali-ja-terveyspalveluja

security. The Government should make a long-term plan which includes a commitment to annual increase in the basic social security benefits, in order to protect the economic rights of people in the lowest income-groups.

Question 25: Please provide updated information on the reform of health and social services carried out by the State party, and how such reform envisages to improve accessibility, affordability and quality of health-care goods and services for disadvantaged and marginalized individuals and groups, particularly Roma and Sámi indigenous peoples. Please explain which steps is taking the State party to ensure that asylum-seekers and migrants, including irregular migrants have access to all necessary health-care services.

Little progress has been reached concerning social and health services provided in Sami language. The level of funding for the services has remained on the same level throughout the last five years. The lack of Sami-speaking professionals affects among others children and elderly. What is positive is that the four municipalities in the Sami homeland are preparing a common strategy for Sami languages.

Question 28: Please provide information on the implementation of measures adopted to guarantee access to education in Sami languages, particularly for children living outside de Sámi Homeland. Please also report on the measures taken to increase the number of teachers and improve the availability of education materials in Sámi languages and report on the implementation and resources allocated to the revival programme for such languages.

Some improvement has been reached regarding teaching in Sami outside the Sami homeland. Some of the bigger cities have started primary school education in Sami. Funding has been secured for a few years of national distance education in Sami languages. New Sami-speaking teachers of early education have been trained. The production of teaching materials in Sami languages is still slow and many teaching materials become outdated before they can be updated. From the perspective of language rights and protection of the endangered Sami languages, there is still ground for a serious concern.

Question 29: Please report on the measures taken to ensure that ethnic, linguistic and religious minorities living in the State party, as well as Sámi indigenous are able to preserve, develop, express and disseminate their identity, history, language, culture, traditions and customs. In particular, please explain the considerations of the State party to introducing a special protection for Sami reindeer husbandry.

In order to preserve and develop the Sami culture in a prosperous way, a safe environment for self-expression is needed. However, the atmosphere in the Sami homeland has been tense for years. Hate speech against the Sami is common both online and elsewhere. The implementation of the current legislation against harassment, libel and agitation seems ineffective when it comes to stereotypical presentation of the Sami in public discourse.

The previous government initiated a procedure of a truth and reconciliation commission on human rights violations against the Sami in the past, for example, in Finnish-speaking boarding schools for children. This procedure is welcome, provided that the process is owned by the Sami, that discover-

ing the truth is prioritised and that enough resources are allocated to the implementation. The structure and timing of the continuation of the process is still open. It is essential in order for any kind of reconciliation to happen that the current political procedures affecting the Sami would be handled in a manner that fully respects the rights of the Sami to self-determination.

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