VERBAL NOTE

The Permanent Mission of Finland to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and referring to the Office’s request, dated 16 October 2012, to submit information on access to justice in the promotion and protection of the rights of indigenous peoples for a study to be prepared by the Expert Mechanism on the Rights of Indigenous Peoples, has the honour to provide the following information:

The only indigenous people within the territory of Finland are the Sámi, who enjoy cultural autonomy in the Sámi Homeland. According to statistics compiled in the context of the Sámi Parliament election in 2011, the total number of Sámi was approx. 10,000 at that time. Of all Sámi approx. 65% were residing outside the Sámi Homeland and abroad.

Section 17, paragraph 3, of the Constitution of Finland protects the right of the Sámi to maintain and develop their own language and culture.

The Constitution also contains a provision on the self-government of the Sámi. According to Section 121, paragraph 4, of the Constitution, the Sami have linguistic and cultural self-government in their native region, as provided by an Act. The Act on the Sámi Parliament regulates the implementation of the self-government in more detail (974/1995). The cultural self-government is intended to evolve, and will be taken into account in future legislative and administrative work.

According to the Act on the Sámi Parliament, the authorities shall negotiate with the Sámi Parliament in all far-reaching and important measures which may directly and specifically affect the status of the Sámi as an indigenous people and which concern matters in the Sámi Homeland as referred to in the Act. The obligation to negotiate with the Sámi Parliament applies to all levels of administration.

The cultural autonomy of the Sami people and the preconditions for the operation of the Sami Parliament will be further developed during this Government’s term of office. The Act on the Sámi Parliament is being reviewed with a view to determining the need for amendments.

Protection under the law

According to Section 21 of the Constitution of Finland everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Compared with the rest of the Finnish population, the Sámi have equal opportunities to have violations of their rights examined by courts of law or other independent judicial bodies.

According to Section 6, paragraph 1, of the Constitution of Finland everyone is equal before the law. As regards the various forms of sentences and the type and level of
penalties provided for in respect of particular offences, a Sámi person cannot be treated differently from other people.

According to Section 22 of the Constitution of Finland the public authorities shall guarantee the observance of basic rights and liberties and human rights.

Customary law

Chapter 1, Section 11 of the Finnish Code of Judicial Procedure provides that, in the absence of statutory law, courts must be guided by the custom of the land, if not unreasonable. Through free evaluation of evidence, too, customary law may have an impact on court rulings. Further, customs of different peoples may be taken into account to some extent in meting out punishment.

Legal aid

Legal aid is available under the Legal Aid Act (257/2002). Legal aid is given at the expense of the state to a person who needs expert assistance in a legal matter and who for lack of means cannot self pay the expenses of having the matter dealt with. Legal aid is available to persons resident in Finland, residents of another member state of the European Union and residents of the European Economic Area. Companies and corporations are not entitled to legal aid (sections 1 and 2 of the Act). The Legal Aid Act does not contain any provisions deviating from this main rule by stipulating on the right of Sámi people to legal aid in general or issues important to them in principle.

Particular right of appeal for the Sámi Parliament

The new Mining Act (621/2011) and Water Act (587/2011) were adopted in March 2011. Both of these laws include provisions on strengthening the statutory obligation to negotiate with the Sámi Parliament on relevant matters, and on the right of the Sámi Parliament to appeal against decisions made pursuant to these laws.

According to the established practice of the Supreme Administrative Court the Sámi Parliament may, without any specific legal provision to that effect, appeal against decisions with a bearing on the Sámi Homeland.

Linguistic rights

The right of the Sámi to use their own language before courts and other authorities as well as the obligations of public authorities to realise and promote the linguistic rights of the Sámi are regulated by the Sámi Language Act (1086/2003), which entered into force on 1 January 2004. Section 24 of the Act provides that an authority must, in its activity and on its own, ensure that the linguistic rights guaranteed in the Act are secured in practice. The authority must show to the public that it offers service also in Sámi, and may provide also better linguistic service than what is required in the Act.

Section 3 of the Sámi Language Act lists the authorities and institutions to which the Act applies. These include the courts in the Sámi Homeland, the Chancellor of Justice of the Government, the Parliamentary Ombudsman, some other national authorities examining complaints, and those administrative authorities of the Government which, in the capacity of appellate authorities, process issues raised before the listed authorities. Thus, the scope of the Act covers for instance the Supreme Court and the Supreme Administrative Court, for their jurisdiction encompasses the Sámi Homeland.

A central goal of the Sámi Language Act is to ensure that the right of the Sámi to use their own language is realised also directly in practice, not only through interpretation and translation. Efforts have been made to reduce the need for interpretation and translation, for example by enacting legal provisions on required linguistic qualifications and language
training. All Sámi languages spoken in Finland (North Sámi, Inari Sámi and Skolt Sámi) are defined in legislation as independent Sámi languages, not as different forms of one language.

A report on the functioning of the Sámi Language Act shows that authorities still have very few employees who know some of the three Sámi languages spoken in Finland, and that Sámi is used only scarcely. A working group set up by the Ministry of Culture and Education has assessed the situation of all three languages and suggested the measures to improve their situation. On the basis of a proposal submitted by the working group in 2012, a comprehensive long-term programme is under preparation for revitalizing the Sámi languages.

In the cooperation between the pre-trial investigation authorities, prosecutors and the District Court of Lapland, the pre-trial investigation authority inquires which language the parties to a criminal case speak as their mother tongue and whether they wish to use Sámi at the pre-trial stage and before court. In this manner it is possible to prepare already at the pre-trial stage for having the relevant documents translated and for rendering services in Sámi. In the view of the Leading District Prosecutor of Lapland, the service provision in Sámi in the administration of criminal justice is satisfactory in the region. Furthermore, the interpretation and translation service attached to the Sámi Parliament is available for use also in criminal matters.

Translations

All Acts of Parliament applicable specifically to the Sámi have been translated into Sámi, mainly North Sámi. By contrast, the principal acts related to the legal protection of individuals, such as the Code of Judicial Procedure, the Administrative Procedure Act and the Land Use and Building Act, do not exist as Sámi translations.

A number of forms used for administration of justice have been translated into all three Sámi languages. Thus, forms are available in Inari and Skolt Sámi, but the users do not always know Sámi terminology, and especially the Skolt Sámi orthography is often deficient. Therefore, Finnish forms are frequently used instead of Sámi forms.

Women and girls' access to justice

As regards the study to be prepared by the Expert Mechanism on the Rights of Indigenous Peoples, the Government wishes to pay particular attention to the global situation of indigenous women and girls who often encounter significant barriers in accessing justice both within indigenous justice and formal state justice institutions. Indigenous women and girls can face difficulties not only due to language and cultural barriers, but also due to physical isolation and poor communications in indigenous areas, as well as due to the absence of an effective judiciary designed for the needs of indigenous communities.

Under international human rights law, States have a legal obligation to ensure that all individuals are able to access competent and impartial judicial and adjudicatory mechanisms equally and without discrimination. Access to justice is not only a fundamental right in itself, but it is an essential pre-requisite for the protection and promotion of all other civil, cultural, economic, political and social rights. Discrimination on the basis of gender, ethnicity and history, structural violence and poverty are among the root causes of indigenous women's lack of access to justice. Multiple discrimination faced by indigenous women and girls should be one of the elements to be addressed in the study. For example, indigenous women and girls with disabilities are the least likely to have access to remedial measures and structures.

Indigenous women and girls seeking redress for violations of their rights can experience multiple challenges. Formal state justice institutions, particularly when lacking a culturally
sensitive perspective on indigenous women's rights, as well as their own traditional justice institutions, which can be discriminatory towards women, may fail to respond to their needs. However, indigenous women can take advantage of the benefits of both institutions but the coordination between traditional indigenous and formal state justice institutions is often weak. Therefore the study should provide examples of good cooperation and dialogue between formal state justice and traditional indigenous justice institutions with the aim of improving access to justice for indigenous women.

Access to justice relates closely to liberty and to personal safety. In many societies, indigenous women and girls are likely to experience gender-based violence as well as violence based on their ethnic identity. As regards indigenous women and girls and their access to justice, the study should also address all forms of violence against women and girls, including interpersonal violence as well as institutional and structural violence, and the complexities that arise from multiple discrimination. The principle of due diligence includes the obligation to prevent infringements by private individuals, to investigate them, to punish offenders and to offer appropriate compensation to victims.

In Finland the National Action Plan to Reduce Violence against Women takes a broad and comprehensive approach to the challenge of reducing violence against women, following the three P's principle (prevention of violence against women, protection of victims and prosecution of perpetrators of violence against women).

The Permanent Mission of Finland to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurance of its highest consideration.

12 February 2013

Office of the United Nations High Commissioner for Human Rights
Geneva