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Committee on Economic, Social and Cultural Rights

Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communications No. 251/2022 and No. 289/2022*, **, ***, ****

Communications submitted by:	J.T., J.P.V., P-M.V., P-A.L., P-T.J., O.A.V., M-L.V., N-M.V., L-T.V., J-O.J., N-A.L., Á-M.L., M.L., M.L., J-T.L., V.T. and N-M.V. (represented by counsel, Martin Scheinin)
Alleged victims:	The authors and S.V., E.S.V. and E.A.V.
State party:	Finland
Dates of communications:	31 December 2021 (communication No. 251/2022) and 15 May 2022 (communication No. 289/2022) (initial submissions)
Date of adoption of Views:	27 September 2024
Subject matter:	Granting of a mineral exploration permit (communication No. 251/2022) and a reservation (communication No. 289/2022) in respect of areas on the Sami people's traditional territory without an impact assessment or free, prior and informed consent
Procedural issues:	Victim status; exhaustion of domestic remedies; substantiation of claims
Substantive issues:	Right to self-determination; non-discrimination and equality; right to an adequate standard of living; right to take part in the cultural life of a community; Indigenous Peoples; right to land
Articles of the Covenant:	1, 2 (2), 6, 7 (a) (ii), 11, 12 and 15 (1) (a)

* Adopted by the Committee at its seventy-sixth session (9–27 September 2024).

** The following members of the Committee participated in the examination of the communication: Aslan Abashidze, Mohamed Ezzeldin Abdel-Moneim, Nadir Adilov, Mohammed Amarti, Asraf Ally Caunhye, Laura-Maria Crăciunean-Tatu, Peters Sunday Omologbe Emuze, Santiago Manuel Fiorio Vaesken, Ludovic Hennebel, Joo-Young Lee, Karla Vanessa Lemus de Vásquez, Mikel Mancisidor de la Fuente, Seree Nonthasoot, Lydia Carmelita Ravenberg, Julieta Rossi, Preeti Saran, Shen Yongxiang and Michael Windfuhr.

*** An individual opinion by Committee member Ludovic Hennebel (concurring) is annexed to the present Views.

**** The annex is being circulated in the language of submission only.

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Article of the Optional Protocol: 3 (1) and (2) (e)

1.1 The authors of the communications are J.T. (born in 1960), J.P.V. (born in 1945), P-M.V. (born in 1981), P-A.L. (born in 1981), P-T.J. (born in 1937), O.A.V. (born in 1970), M-L.V. (born in 1971), N-M.V. (born in 1998), L-T.V. (born in 2000), J-O.J. (born in 1948), N-A.L. (born in 1960), Á-M.L. (born in 1990), M.L. (born in 1996), M.L. (born in 1998), J-T.L. (born in 1957), V.T. (born in 1954) and N-M.V. (born in 1965), nationals of Finland all belonging to Kova-Labba Siida, a community of Sami reindeer herders. J.T., J.P.V. and P-M.V. submit the communications on their own behalf and on behalf of three children, S.V., E.S.V. and E.A.V. The other authors submit the communications on their own behalf only. The authors submit that, by granting a mineral exploration permit (communication No. 251/2022) and a reservation (communication No. 289/2022) in respect of areas on their traditional territory without proper impact assessment and without a process of consultation aimed at obtaining their free, prior and informed consent, the State party violated their rights to take part in the cultural life of a community (art. 15) and to enjoy just and favourable conditions of work that ensure remuneration that provides them with a decent living (art. 7 (a) (ii)), both interpreted in the light of the rights to self-determination (art. 1), to work (art. 6), to an adequate standard of living (art. 11) and to health (art. 12), and both interpreted in conjunction with the right not to be discriminated against (art. 2 (2)). The authors requested the adoption of interim measures to halt the exploration works (communication No. 251/2022) and to ensure the refusal of any request for exploration works in the reservation area (communication No. 289/2022). The Optional Protocol entered into force for the State party in April 2014. The authors are represented by counsel.

1.2 On 12 January 2022, pursuant to article 6 of the Optional Protocol, the Committee, acting through its Working Group on Communications, registered communication No. 251/2022 and requested the State party, pursuant to article 5 of the Optional Protocol, to postpone the mining exploration project while the case was under consideration by the Committee. On 22 August 2022, the Committee registered communication No. 289/2022, deciding to join it with communication No. 251/2022, and requested the State party to postpone the mining exploration project while the case was under consideration by the Committee.

1.3 On 14 March 2022 (communication No. 251/2022) and 15 October 2022 (communication No. 289/2022), the State party requested the Committee to examine the question of admissibility separately from the merits and, for communication No. 251/2022, informed the Committee that the permit holder had not taken any practical measures after receiving the permit and did not intend to conduct survey drillings until winter 2023/24 at the earliest. On 23 March 2023, the Committee decided, pursuant to rule 6 of its rules of procedure under the Optional Protocol, to examine the admissibility of the communications together with the merits.

A. Summary of the information and arguments submitted by the parties

Factual background[1]

2.1 The authors are Indigenous Sami persons and practise traditional Sami reindeer herding. They belong to Kova-Labba Siida, which is one of the three traditional reindeer herding villages that are part of the Käsivarsi Reindeer Herders' Cooperative.[2] Sami reindeer husbandry is semi-nomadic due to the seasonal and weather-dependent rotation of pastures and is an essential part of Sami culture, maintained by small groups of kin- or village-based herders ("*siida*" in the Northern Sami language) and transmitted from generation to generation.

2.2 The State party's Forest Agency (Metsähallitus) is the landowner of approximately 90 per cent of the Sami homeland, including the authors' traditional reindeer herding territory.

[1] The factual background has been reconstructed on the basis of the initial submissions and the information subsequently provided by the parties.

[2] The cooperative is an administrative division of the State party.

According to the Mining Act, exploration work can be carried out with the consent of the landowner, and the exploration permit holder is obliged to pay compensation to the owners of the land included in the exploration area (sects. 7 and 99).

2.3 The regions where the Sami live are warming more than three times faster than the global average. Frozen and mouldy pastures and extreme snow conditions pose challenges for reindeer and reindeer herders, threatening the ability of the Sami to continue reindeer herding. This has a detrimental effect on the culture, language and traditional knowledge of the Sami, as it disrupts the practice of their traditional livelihoods, which is central to maintaining and transmitting their culture.[3]

Communication No. 251/2022

2.4 On 28 March 2014, the Geological Survey of Finland, an agency under the Ministry of Economic Affairs and Employment, applied for a mineral exploration permit, for a project called "Lätäs 1", requesting permission for exploration works for gold, copper and iron, to include the drilling of 100- to 300-metre-deep holes into the bedrock in about 20 different locations over an area of 390 hectares in Kova-Labba Siida, the authors' traditional reindeer herding territory. The project entails bringing into the territory one-ton drilling machines and five-ton support vehicles to provide a water source for the drilling.

2.5 The Safety and Chemicals Agency, which is responsible for mining permits, sought written comments from the Sami Parliament and the Käsivarsi Reindeer Herders' Cooperative in October and November 2014 and invited them to participate in meetings on 17 May 2015 and 17 May 2016. On 14 November 2014 and 19 June 2016, the Käsivarsi Reindeer Herders' Cooperative, acting on behalf of its members, including the authors, submitted statements concerning the negative impact of the mineral exploration works on Sami reindeer herding. The Sami Parliament stated on three occasions – 13 November and 15 December 2014 and 22 June 2016 – that the basic preconditions for free, prior and informed consent had not been met, given the lack of an assessment of the impact of the works on Sami culture. Under the Mining Act, the State party's mining authority is obliged to assess the impact of mining or exploratory activities under consideration on the rights of the Sami as an Indigenous People (sect. 38). In this regard, the Supreme Administrative Court clarified, in its ruling KHO 2014:111, that the Safety and Chemicals Agency, as the permit authority, was obliged to contribute to ensuring that appropriate opportunities existed for the cooperation procedure, which involved making sufficient materials available to the Sami Parliament for assessing the impacts that the activities referred to in the application would have on Sami culture.

2.6 On 7 July 2016, the Safety and Chemicals Agency granted the Geological Survey of Finland a permit for an initial period of four years, renewable for up to 15 years, finding that the application met the requirements of the Mining Act.

2.7 On 8 August 2016, the Käsivarsi Reindeer Herders' Cooperative submitted an appeal, signed by J.T., one of the authors of the communications, on behalf of all members of the cooperative, including himself and the other authors, to the Administrative Court of Northern Finland.

2.8 On 19 December 2018, the Administrative Court of Northern Finland dismissed the appeal and upheld the decision to grant the exploration permit, noting the involvement of the Sami Parliament and the Käsivarsi Reindeer Herders' Cooperative in the permit procedure.

2.9 On 18 January 2019, the Käsivarsi Reindeer Herders' Cooperative, together with the Sami Parliament, filed a request for leave to appeal and an appeal before the Supreme Administrative Court.

2.10 On 21 June 2021, the Supreme Administrative Court rejected the appeal, considering: (a) that the cooperation procedure had ensured that the Sami had had a de facto opportunity to participate in the permit procedure; (b) that the exploration permit included conditions intended to reduce and prevent possible damage to reindeer herding, such as the conditions

[3] Finland, "The Sámi in Finland and Climate Change" (2023), available at https://unfccc.int/documents/628002.

that work must be carried out outside the calving season, limited during times important for reindeer husbandry and commenced only after areas possibly containing reindeer had been cleared in advance; that the permit holder must secure agreement, at the local level, on the means by which the harmful movement of reindeer from one area to another were to be prevented; that the permit holder must notify the cooperative and the *siida* of the date and time of any exploration activities in advance; and that the permit holder must ensure that any tracks left by snowmobiles or tracked vehicles that were temporarily visible in the area or disturbances caused by off-road traffic did not increase the uncontrolled movement of reindeer from one area to another; and (c) that the exploration work was to be carried out over a relatively small area. The authors note that the Court compared the exploration area not with the size of Kova-Labba Siida but with the size of the Käsivarsi Reindeer Herders' Cooperative, consisting of Kova-Labba Siida and two other villages.

2.11 The authors submit that the Safety and Chemicals Agency granted the Geological Survey of Finland an exploration permit in respect of an area within their traditional reindeer herding lands without a proper assessment of the adverse impact of the exploration activities on Sami reindeer herding and without good faith efforts to obtain their free, prior and informed consent. The obligations arising from the Mining Act regarding the impact assessment must be interpreted in the light of international standards on Indigenous rights. However, the State party replaced the impact assessment with a pro forma consultation. Moreover, given that the Sami should be consulted on the basis of an impact assessment, the procedure followed before the permit was issued did not meet the standards of free, prior and informed consent.

2.12 The authors argue that the exploration permit area is in the heart of their winter herding lands. The winter months are critical for reindeer's survival. Indeed, in winter, snow cover is at its thickest, and the reindeer have either to dig through layers of snow to reach the ground lichen or, in pristine forests, to feed on the lichen growing on the branches of old trees. Moreover, climate change-induced frozen and mouldy pastures and extreme snow conditions add to the difficulties of reindeer herding. Ensuring that the reindeer graze in winter is very delicate work; grazing can be easily disturbed. The presence of heavy machinery, support vehicles and workers and the tracks left in the snow would cause great harm to the herders. Allowing the herds to leave their natural winter grazing areas would disrupt the annual cycle between seasonal herding lands and thus the sustainable use of scarce natural resources. The provisions of the exploration permit aimed at reducing damage to reindeer herding are impossible to enforce in practice, considering the natural environment and reindeer behaviour. In addition, the herders' working conditions would become more demanding and, despite all their extra effort, the benefits of the work, including remuneration, would be less than would otherwise be the case. This would make Sami reindeer herding unsustainable.

2.13 The authors submit that all domestic remedies have been exhausted, as they appealed against the exploration permit to the Supreme Administrative Court, the highest competent court, explicitly invoking the same substantive rights that are invoked in the communication: their rights to take part in the cultural life of their community, to property, not to be discriminated against and to work or livelihood of their choice.

Communication No. 289/2022

2.14 On 16 March 2022, a private mining company, Element 92 Suomi Oy, submitted an application to the Safety and Chemicals Agency to reserve 284 km² in Kova-Labba Siida for the purpose of surveying the area for battery minerals (nickel, copper and cobalt).

2.15 On 20 April 2022, the Safety and Chemicals Agency granted a reservation, in respect of an area called "Ruossakero", for a period of two years.

2.16 The company did not make any contact with the authors before or after submitting the application, and the mining authority did not contact them before or after taking its decision.

2.17 Under the Mining Act, exploration can be carried out with the consent of the landowner. The owner of the Sami lands in question is the Forest Agency, meaning that the State can determine the nature and scope of the reserving company's exploration works on the authors' traditional lands, including highly intrusive operations such as the use of heavy

machinery and drilling into the bedrock. The authors submit that, together with the highly unstable weather conditions driven by ongoing climate change, any new disturbances could lead to unpredictable and adverse consequences for both the reindeer and their herders.

2.18 According to the authors, the Ruossakero area contains important reindeer pastures and critical winter herding lands. Rich with lichen and ecologically diverse, it provides the Sami with crucial flexibility in the annual herding cycle, as it can be used at different times of the year, depending on weather conditions. This is an important factor, as climate change has made weather conditions more unpredictable. Consequently, any lack of availability of the area will disrupt the annual cycle between seasonal herding lands, as winter pastures recover only if the reindeer are kept elsewhere. The area reservation will inevitably lead to an increase in the human presence in an area that has been a refuge for reindeer even during the active tourist season. The granting of the reservation will affect the sustainability of Sami reindeer herding, regardless of the kind of exploration work that the company intends to carry out at a later stage.

2.19 According to the authors, there is no domestic remedy available to them, as the Supreme Administrative Court has already firmly established that they do not have legal standing to appeal against the granting of a reservation.[4]

Complaint

3.1 The authors submit that the granting, despite their consistent opposition and in the absence of an impact assessment, of a permit for a mineral exploration project (communication No. 251/2022) and the granting of a reservation (communication No. 289/2022) in respect of areas on their traditional territory without obtaining their free, prior and informed consent and in the context of ongoing climate change and the cumulative effect of other interferences, such as wind farms, military activities and organized group tourism, have the effect of eroding the preconditions for communal reindeer herding and its transmission from generation to generation. Consequently, these acts constitute a violation of their rights to take part in the cultural life of a community and to enjoy just and favourable conditions of work that ensure remuneration that provides them with a decent living for themselves and their families, both of these rights being interpreted in the light of articles 1, 6, 11 and 12, and both in conjunction with article 2 (2), of the Covenant. The right to transmit an Indigenous way of life and a traditional economic activity from generation to generation constitutes a core dimension of articles 15 and 7 (a) (ii) of the Covenant in the context of Indigenous Peoples.

3.2 In submitting that both provisions should be read alone and in conjunction with article 2 (2) of the Covenant, the authors claim, for communication No. 251/2022, that they are subject to substantial, indirect and systematic discrimination in respect of the unilateral power of the State party to conduct (through the Geological Survey of Finland), authorize (through the Safety and Chemicals Agency) and uphold authorization to conduct (through the courts) mineral exploration works on their traditional territory without good faith efforts to obtain their free, prior and informed consent. Furthermore, the discriminatory nature of the Mining Act is demonstrated by the fact that, as the State has declared itself to be the owner of their lands, it will receive annual compensation from its own agency (the Geological Survey of Finland), while, by contrast, the Sami, who are not recognized as owners of their traditional lands, will not receive any compensation for the adverse impact on their lands. While clarifying that this does not imply that they would accept monetary compensation as an adequate remedy, the authors assert that no landowner is in the same situation as the Sami, where even their right to compensation is denied. In communication No. 289/2022, the authors are at the mercy of the State party's Forest Agency with regard to the intensity of the exploration works that will be conducted. Furthermore, the discriminatory nature of the Mining Act is demonstrated by the fact that they have no right of appeal against the granting of a reservation, nor are they in a position to control the nature of the works.

[4] The authors were denied victim status when appealing against the granting of the reservation for the "Lätäs 1" project (Supreme Administrative Court, KHO 2013:179). The Supreme Administrative Court later upheld this precedent, declaring inadmissible an appeal filed by another *siida* against another request for reservation (KHO H731/2021).

3.3 In both communications, the authors argue that their claims of violations of the Covenant must be assessed in the context of the cumulative effects of earlier interventions on their lands, aggravated by ongoing climate change, leading to an increase in work for the Sami and unpredictability in the direction and timing of the reindeer's movements. They draw attention to the concern that the Committee has expressed about the impact of climate change on Indigenous Peoples living in the Arctic region.[5]

State party's observations on admissibility

4.1 The State party submitted its observations on admissibility in relation to communications No. 251/2022 and No. 289/2022 on 14 March and 15 October 2022, respectively. The State party submits that both communications have an *actio popularis* nature, as the authors lack locus standi and the communications are premature. For communication No. 251/2022, the authors have not yet been personally affected by the permit, as the Geological Survey of Finland has not taken any practical measures since receiving it, has no ongoing project or exploration activities in the area, has no potential survey drillings scheduled and will not conduct a survey until the communication has been decided.

4.2 For both communications, the State party submits that the areas in question are owned by the State, that determining the owner is ultimately a private law issue and that the Mining Act is not discriminatory, as it applies to both Sami and non-Sami persons, regardless of origin.

Communication No. 251/2022

4.3 The State party submits that the Geological Survey of Finland conducts self-financed geological research for the needs of businesses and society in general; it does not conduct mining but surveys the bedrock to map the mineral potential of the region, focusing on data collection. It has no reasonable grounds to deviate from the position of the Supreme Administrative Court, as, taken as a whole, the exploration area is relatively small-scale, and the permit contains conditions to alleviate and prevent damage to reindeer herding during the exploration.

4.4 The State party recalls relevant domestic legislation. First, the Constitution provides that the Sami have linguistic and cultural self-government in their native region and the right to maintain and develop their own language and culture, which safeguards the practice of their traditional livelihoods, such as reindeer herding. The Human Rights Committee has connected the concept of the right of Indigenous Peoples to self-determination not only with article 1 but also with article 27 of the International Covenant on Civil and Political Rights, which served as a model for the Constitution of Finland. Second, the Act on the Sami Parliament obligates the public authorities to negotiate with the Sami Parliament regarding all far-reaching and important measures that may directly affect the status of the Sami as an Indigenous People. In November 2017, the Ministry of Justice issued a memorandum on the obligation to negotiate under the Act on the Sami Parliament, according to which consensus must be sought in all negotiations between the public authorities and the Sami Parliament. Third, the Mining Act provides that the permit authority must establish the impacts caused by the planned activities on the rights of the Sami and consider measures required for reducing and preventing damage. A permit must not be granted if activities would cause considerable harm to reindeer herding.

4.5 The State party submits that the communication should be declared inadmissible because the authors have not exhausted domestic remedies in relation to their allegations concerning climate change.

4.6 The State party also submits that the Committee should decline to consider the communication, as it does not reveal any clear or concrete disadvantage suffered by the authors and does not raise any serious issue of general importance.

4.7 Lastly, the State party claims that the communication is manifestly ill-founded on the ground that the authors have failed to substantiate how their rights under each of the articles

[5] E/C.12/RUS/CO/6, paras. 42 and 43; and E/C.12/CAN/CO/6, paras. 53 and 54.

of the Covenant that they invoke have been violated. The core of the communication appears to be the authors' dissatisfaction with the outcome of the domestic proceedings, but it is not the role of the Committee to act as a fourth instance.

Communication No. 289/2022

4.8 The State party notes that the Mining Act is being reformed, with a new, tax-like charge for reservation areas and a shorter reservation period. A reservation gives the reserving party priority to submit an exploration permit application for the reservation area but does not entitle the reserving party to commence exploration. Thus, a reservation does not affect the practice of reindeer herding or the right to pursue this livelihood. Exploration with the consent of the landowner is permissible, unless the use of the land is unlawful or subject to a permit.

4.9 The State party claims that the authors have not exhausted domestic remedies, as they did not appeal against the decision of the Safety and Chemicals Agency of 20 April 2022. The Mining Act provides for the right of the Sami Parliament to appeal against a decision to grant an exploration permit or a mining permit but not against reservation decisions. The right of appeal against reservation decisions is determined in accordance with the Administrative Judicial Procedure Act, and a person concerned by an administrative decision, or whose right, obligation or interest is directly affected by the decision, may seek review of the decision by means of an appeal. The party making the reservation, a holder of a permit for the same area or an applicant who has filed an application for the same area may be considered to have a right of appeal. According to the Supreme Administrative Court, a reservation decision has no impact on the practice of reindeer herding, as it does not grant a right to explore for ore; it merely grants priority to submit an exploration permit application in respect of the reservation area. The purpose of the reservation procedure, according to the Court, is to ensure that a potential applicant for an exploration permit has sufficient opportunity to prepare the application carefully.[6] The State party therefore claims that, according to its domestic law, the Sami do not have an automatic right to appeal against reservation decisions but may have the right to appeal, depending on the case.

4.10 Lastly, the State party claims that the communication is manifestly ill-founded, citing the finding of the Supreme Administrative Court that a reservation decision does not affect the practice of reindeer herding or restrict the right of the Sami as an Indigenous People to maintain and develop their culture.

Authors' comments on the State party's observations on admissibility

5.1 In their comments of 5 May and 26 September 2022 regarding communication No. 251/2022, the authors observe that some of the State party's observations on admissibility pertain to the merits of the case and demonstrate ignorance of Indigenous Peoples' rights. The State party misunderstands their claim in respect of article 2 (2) of the Covenant. They clarify that the issue of compensation was mentioned in their complaint as a factual matter in order to demonstrate the discrimination faced by the Sami when they are not in control of their own lands. As the Committee on the Elimination of Racial Discrimination has explained, international human rights law, including article 2 (2) of the Covenant, requires that Sami be treated differently from non-Sami who use so-called government-owned lands. Discrimination occurs when groups or individuals in different situations are treated identically, with the State failing to address their particular situation.[7] The Sami are discriminated against under mining legislation, not because they are treated differently from the rest of the population thereunder, but because, as they are not treated differently, the particularities of Sami cultural identity, traditional livelihoods and dependence on reindeer herding for survival are ignored.

5.2 According to the authors, another matter pertaining to the merits of the case and demonstrating ignorance of reindeer behaviour is the State party's assertion that, taken as a

[6] See Supreme Administrative Court, KHO 2013:179 and KHO 2021:145.

[7] *Ågren et al. v. Sweden* (CERD/C/102/D/54/2013), para. 6.23. See also European Court of Human Rights, *Thlimmenos v. Greece*, Application No. 34369/97, Judgment, 6 April 2000.

whole, the exploration area is relatively small-scale and that the exploration will be temporary. The area of the "Lätäs 1" project falls within a scarce resource, namely, critical winter herding lands, the availability of which determines the size of the herd that the whole area of the *siida* can sustain. Disrupting herding in the critical winter months in the scarce winter herding pastures would cause permanent damage to reindeer herds and to Sami reindeer herding.

5.3 The authors contend that the State party's submission that the Geological Survey of Finland has a merely scientific mission is misleading. The State party confirms that the mission of the Survey includes serving the needs of businesses and society in general. While it does not engage in mining as such, its activities promote "the competitiveness of business and regions", according to the Act on the Geological Survey of Finland (sect. 2), and pave the way for companies interested in exploiting mineral resources. Its permit application indicated that it was looking for copper, iron and gold; the permit was granted for the purpose of exploring for deposits of these metals.

5.4 According to the authors, the State party's submission is misleading regarding the memorandum prepared by the Ministry of Justice in November 2017, which states that consensus must be sought in all negotiations between the public authorities and the Sami Parliament. The memorandum has no legal force; it was issued after the exploration permit had been granted and was not subsequently applied by the Administrative Court of Northern Finland or the Supreme Administrative Court.

5.5 As for the State party's argument that they lack victim status, the authors submit that the violations have already occurred, as the international standard of free, prior and informed consent was not complied with when the Safety and Chemicals Agency granted the permit and the Supreme Administrative Court upheld that decision. Indeed, in its Views in *Billy et al. v. Australia*, the Human Rights Committee considered that the risk of impairment of the authors' rights was more than a theoretical possibility, given that their lives were highly dependent on the availability of the limited natural resources to which they had access.[8] According to the authors, taking into account the intergenerational nature of the right of Indigenous Peoples to transmit their culture to new generations, a chain of cultural transmission is interfered with much earlier than an Indigenous culture is destroyed, such that, when such interference with cultural transmission occurs, the admissibility conditions of victimhood and substantiation are already met.

5.6 With regard to the State party's argument that they have not exhausted domestic remedies, the authors claim that they did raise climate change arguments in the domestic proceedings and that they have raised the issue before the Committee not to include a claim that climate change as such would constitute a violation but only to substantiate their claims.

5.7 With regard to the State party's argument that communication No. 251/2022 is manifestly ill-founded and that the authors seek to have the Committee act as a fourth instance, the authors submit that the Supreme Administrative Court was both formalistic and wrong in holding that the international standard of free, prior and informed consent had been met merely by giving the Sami an opportunity to be heard.

5.8 Lastly, the authors indicate that some children who are members of their community have submitted a communication to the Committee on the Rights of the Child, but that case relates to different victims and a different set of human rights violations.

5.9 In their comments of 23 February 2023 regarding communication No. 289/2022, in response to the State party's argument relating to their alleged lack of victim status, the authors claim that the principle of free, prior and informed consent was not upheld before the reservation decision and that, under Finnish law, they have no judicial recourse. They submit that the mere existence of the area reservation places them in a position of vulnerability and unpredictability and could have a grave adverse effect on the transmission of Sami culture from generation to generation, as this process requires the Sami to have confidence that their efforts to cope with the challenges caused by climate change will not be frustrated by mineral exploration works.

[8] CCPR/C/135/D/3624/2019, paras. 7.10 and 8.14.

5.10 With regard to the alleged non-exhaustion of domestic remedies, the authors submit that, in a ruling that set a precedent (KHO 2013:179), the Supreme Administrative Court held that reindeer-herding Sami were not entitled to appeal against a decision to grant a reservation pursuant to the Mining Act. On the basis of this precedent, the Sami have been denied standing in domestic proceedings seeking to challenge area reservations.

5.11 Lastly, with regard to the alleged lack of substantiation, the authors observe that the State party cites only the ruling in which the Supreme Administrative Court set its precedent, in which the Court held that a reservation as such had no impact on reindeer herding or the right of the Sami as an Indigenous People to maintain and develop their culture. The Court did not examine how their rights and culture were affected by an area reservation but instead issued a blanket, in abstracto denial of such effects.

State party's observations on the merits

6.1 In its observations of 14 July 2023, the State party submits the following common considerations in respect of both communications: (a) according to the Constitution, the Sami have linguistic and cultural self-government in their native region, and the right to reindeer herding is a Sami historical usufruct right; (b) article 15 of the Covenant, like the Constitution, guarantees the right to transfer culture and language to the next generations; (c) in interpreting the provisions of the Covenant, it is necessary to take into account article 27 of the International Covenant on Civil and Political Rights, which, according to the jurisprudence of the Human Rights Committee, must be read in the light of the right of Indigenous Peoples to self-determination; (d) the United Nations Declaration on the Rights of Indigenous Peoples reflects the legal principles and aspirational goals followed by Finland; (e) a working group is preparing a reform of the Act on the Sami Parliament to strengthen the current obligation to negotiate in order to obtain free, prior and informed consent; (f) as reindeer herding cooperatives carry out their activities over a wide area, it is necessary to reconcile "different interests" with regard to land use; (g) the Mining Act is not discriminatory, as it applies to both Sami and non-Sami and the determination of the owner is ultimately a private law issue; and (h) a new Mining Act entered into force on 1 June 2023 (Act No. 505/2023), setting additional conditions for the granting of a mining permit and for extending the validity of an exploration permit and setting a new reservation fee to discourage reservations that are unnecessarily extensive.

6.2 With regard to the merits of communication No. 251/2022, the State party submits: (a) that the permit procedure included an extensive opinion-gathering and consultation procedure; (b) that consensus was sought on concrete solutions that could minimize the effects of mineral exploration on the rights of the Sami (such as the placement of barriers or tarpaulins to control the movement of reindeer and thus prevent their dispersal); (c) that the exploration permit decision included conditions aimed at reducing the harm caused to reindeer herding; and (d) that the Mining Act requires the exploration permit holder to pay annual compensation to landowners in the area.

6.3 With regard to the merits of communication No. 289/2022, the State party observed that, according to the legislation currently in force and the well-established case law of the Supreme Administrative Court, the authors did not have a right to appeal against an area reservation decision. It adds that, in 2014, the Forest Agency concluded an agreement with the Sami Parliament on forest management, according to which it will not give consent to exploration within the Sami homeland unless the Safety and Chemicals Agency has given its authorization.

Authors' comments on the State party's observations on the merits

7.1 In their comments of 28 August 2023 regarding communication No. 251/2022, the authors argue that they did not consent to the exploration project, contrary to the State party's claims. There is no reference to agreement in the minutes of the meetings, at which none of the authors was present. They objected to the project and appealed through the domestic courts before submitting the communication.

7.2 The authors claim that the failure to conduct an impact assessment is visible in the State party's erroneous argument that the reindeer could be moved away from where the Geological Survey of Finland conducts drilling works when it conducts them.

7.3 The authors argue that the State party admits to practising discrimination when it asserts that the law treats the Sami identically to non-Sami.

7.4 Regarding communication No. 289/2022, the authors observe that there is no disagreement between the parties that the State party explicitly confirmed that they did not have a right to appeal the granting of a reservation, but they disagree as to whether an area reservation affects the rights of the Sami. According to the authors, as it is possible for a reservation holder – with the consent of the landowner (the State party's own Forest Agency) – to conduct intrusive exploration works before applying for an exploration permit, they have been placed in a situation of uncertainty concerning whether they can use their lands according to their traditions and the needs of their reindeer, as any day the reservation holder may enter their lands.

7.5 The authors request, for communication No. 251/2022, that the Geological Survey of Finland refrain from any exploration works on their lands; for communication No. 289/2022, that the Forest Agency refrain from giving its consent to any exploration works on their lands; and, for both communications, that the State party proceed to amend the Mining Act to recognize a special status for the Sami people, including new provisions on the free, prior and informed consent of the Sami.

Additional information from the parties

8. In additional information provided on 30 October 2023, the State party clarifies that it does not follow from the principle of free, prior and informed consent that consensus must be reached if sufficient guarantees of effective participation have been provided (communication No. 251/2022). Even though the Sami do not have an automatic right to appeal against reservation decisions, they may have such a right, depending on the case (communication No. 289/2022).

9. In additional information provided on 23 November 2023, the authors observe that the State party no longer claims that they consented to the project (communication No. 251/2022). It appears to reopen the matter of whether they had a right to appeal against the reservation decision (communication No. 289/2022).

B. Committee's consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 10 (2) of its rules of procedure under the Optional Protocol, whether the communication is admissible.

10.2 The Committee recalls that, under article 3 (2) (c) of the Optional Protocol, it shall declare inadmissible any communication that concerns a matter that has already been or is being examined under another procedure of international investigation or settlement. The Committee takes note of the authors' statement that children from their community have submitted a communication to the Committee on the Rights of the Child concerning the same mineral exploration project as that dealt with in communication No. 251/2022. The Committee on Economic, Social and Cultural Rights notes that the communications procedure of the Committee on the Rights of the Child constitutes a "procedure of international investigation or settlement" within the meaning of the above-mentioned provision. The Committee on Economic, Social and Cultural Rights recalls that the "same matter" means one and the same claim relating to the same parties, events and substantive rights.[9] Given that the complaint filed with the Committee on the Rights of the Child does not have the same authors, the Committee on Economic, Social and Cultural Rights concludes that it is not the "same matter" and that article 3 (2) (c) of the Optional Protocol is therefore not an obstacle to the admissibility of the present communications.

[9] See, mutatis mutandis, *Merino Sierra and Merino Sierra v. Spain* (E/C.12/59/D/4/2014), para. 6.4.

10.3 The Committee notes the State party's argument that the authors' claims are of an *actio popularis* and premature nature and that the authors thus lack victim status. The Committee notes, however, that the authors allege that the State party failed to obtain their free, prior and informed consent or to make good faith efforts to obtain it when granting the exploration permit (communication No. 251/2022) and the reservation (communication No. 289/2022) in respect of areas on their traditional territory and that this allegedly constitutes a violation of their own rights, irrespective of any future development. The Committee accordingly considers that the authors have victim status and that article 2 of the Optional Protocol is not an obstacle to the admissibility of the communications.

10.4 The Committee notes the State party's claims of inadmissibility for lack of exhaustion of domestic remedies regarding communication No. 251/2022, on the basis that the authors did not raise an allegation relating to climate change before the domestic courts, and regarding communication No. 289/2022, on the basis that the authors did not appeal against the decision granting the reservation.

10.5 The Committee notes the authors' argument, regarding communication No. 251/2022, that the issue of climate change has been raised before the Committee to substantiate their claims and not as part of a separate claim based on climate change. The Committee also notes the authors' uncontested argument that they explicitly invoked before the national courts the same substantive rights that are invoked in the communication (rights to take part in the cultural life of the community, to traditional property, not to be discriminated against and to work or livelihood of their own choice). The Committee observes that the authors pursued their claims through the courts, including the highest competent court, namely, the Supreme Administrative Court. The Committee considers, therefore, that all available domestic remedies have been exhausted and concludes that communication No. 251/2022 is admissible under article 3 (1) of the Optional Protocol.

10.6 Regarding communication No. 289/2022, the Committee notes the authors' argument that there is no domestic remedy to exhaust in respect of either the absence of free, prior and informed consent or the granting of a reservation. The Committee notes the State party's observations that the Sami do not have an automatic right to appeal against reservation decisions, which allegedly have no impact on the practice of reindeer herding or on the rights of the Sami as an Indigenous People, and that, according to the legislation currently in force and the well-established case law of the Supreme Administrative Court, the authors did not have a right to appeal against such an area reservation decision. The Committee therefore concludes that article 3 (1) of the Optional Protocol does not constitute an obstacle to the admissibility of communication No. 289/2022.

10.7 The Committee notes the State party's argument that the communications should be declared inadmissible as manifestly ill-founded on the basis that the Supreme Administrative Court has already held that a reservation decision does not affect the practice of reindeer herding (communication No. 289/2022) and that the Committee cannot act as a fourth instance (communication No. 251/2022). However, the Committee notes the authors' arguments that, in communication No. 251/2022, the domestic courts did not adequately examine the impact on their rights and concluded that the international standard relating to the rights of Indigenous Peoples of free, prior and informed consent had been met by merely giving the Sami an opportunity to be heard and that, in communication No. 289/2022, the ruling in which the Supreme Administrative Court set its precedent did not examine how the rights and culture of the Sami were affected by an area reservation but instead amounted to a blanket, in abstracto denial of such effects.

10.8 The Committee considers that the authors have sufficiently substantiated their claims, for the purpose of admissibility, that the State party's failure to ensure a process of free, prior and informed consent in the granting of the mineral exploration permit and the reservation has violated their rights to enjoy their own culture (art. 15 (1) (a)), read alone and in conjunction with their rights to an adequate standard of living, through their traditional means of livelihood, that is, reindeer herding (art. 11), to non-discrimination (art. 2 (2)) and to

self-determination (art. 1), in particular with regard to the economic and cultural dimensions of the right of Indigenous Peoples to self-determination.[10]

10.9 The Committee nevertheless considers that the authors have not sufficiently substantiated their claim under article 15 (1) (a) of the Covenant, read in the light of the rights to work (art. 6) and to health (art. 12), and their claim under article 7 (a) (ii), read alone and in the light of articles 1, 6, 11 and 12, in conjunction with article 2 (2), of the Covenant. The Committee therefore declares these claims inadmissible under article 3 (e) of the Optional Protocol.

10.10 The Committee concludes that the communications are admissible insofar as they raise issues under article 15 (1) (a) of the Covenant, read alone and in conjunction with articles 1, 2 (2) and 11 of the Covenant, and proceeds to examine the merits.

C. Committee's consideration of article 4 of the Optional Protocol and rule 13 of the rules of procedure thereunder

11. The Committee notes the State party's argument that the Committee should decline to consider communication No. 251/2022 pursuant to article 4 of the Optional Protocol, as it does not reveal that the authors have suffered any clear disadvantage and does not raise a serious issue of general importance. The Committee clarifies that the purpose of article 4 is to provide the Committee with discretionary power and not to establish an admissibility requirement. In addition, the Committee considers that both communications reveal that the authors have suffered a clear disadvantage and that they raise a serious issue of general importance, namely, the protection of Indigenous Peoples' rights under the Covenant.

D. Committee's consideration of the merits

Facts and legal issues

12.1 The Committee has considered the present communications, taking into account all the information provided to it, in accordance with the provisions of article 8 of the Optional Protocol.

12.2 The Committee will proceed to set out the facts that it deems to be established and relevant.

Communication No. 251/2022

12.3 The authors belong to a Sami traditional semi-nomadic herding community, reindeer herding being a cornerstone of Sami culture and way of life. On 28 March 2014, the Geological Survey of Finland applied for a permit for exploration works for gold, copper and iron, entailing the drilling of 100- to 300-metre-deep holes into the bedrock in about 20 different locations over an area of 390 hectares in the authors' traditional reindeer herding territory. The Safety and Chemicals Agency sought written comments from the Sami Parliament and the Käsivarsi Reindeer Herders' Cooperative in 2014 and invited them to participate in meetings in 2015 and 2016. Both institutions opposed the granting of the permit. However, the permit was granted on 7 July 2016. Both institutions appealed this decision. On 19 December 2018, the Administrative Court of Northern Finland dismissed the appeal and upheld the decision to grant the exploration permit. Both institutions appealed again, to the Supreme Administrative Court, which rejected their appeal on 21 June 2021, considering that the Sami had been sufficiently consulted for the purposes of the Mining Act, that the conditions set out in the exploration permit to reduce possible damage to reindeer herding were sufficient and that the surface area of the exploration works was relatively small.

[10] Article 2 of the Optional Protocol states that a communication may be submitted regarding a violation of any of the rights set forth in the Covenant, and it is possible to infer from the relevant *travaux préparatoires* an intention to include article 1 within the scope of the communications procedure, since its initial exclusion (with specific reference to the jurisprudence of the Human Rights Committee) was eventually undone.

Communication No. 289/2022

12.4 On 16 March 2022, the company Element 92 Suomi Oy submitted to the Safety and Chemicals Agency a request to reserve 284 km² in Kova-Labba Siida for the purpose of surveying the area for battery minerals (nickel, copper and cobalt). On 20 April 2022, the Safety and Chemicals Agency granted the reservation for a period of two years, renewable for one more year. The authors were not contacted at any point in the process of the granting of this reservation. The authors did not file any domestic remedies, since it had been established in the case law of the Supreme Administrative Court that a reservation decision did not affect the practice of reindeer herding or restrict the right of the Sami as an Indigenous People to maintain and develop their culture and that the Sami did not have legal standing to appeal against the granting of a reservation.

12.5 The Committee considers that the issue before it is to determine whether the granting, despite the authors' consistent opposition and in the absence of an impact assessment, of an exploration permit (communication No. 251/2022) and the granting of a reservation (communication No. 289/2022) in respect of areas on their traditional territory without obtaining their free, prior and informed consent, in the context of ongoing climate change and the cumulative effect of other interferences with reindeer herding, constitute a violation of the authors' right to take part in the cultural life of their community (art. 15 (1) (a)), read alone and in conjunction with articles 1, 2 (2) and 11 of the Covenant.

General considerations

13. The Committee concurs with the State party that human rights treaties are living instruments.[11] The Committee will, therefore, read the Covenant in the light of the evolving interpretation of the rights of Indigenous Peoples, as reflected in relevant general comments of the Committee.

Article 15 (1) (a), read alone and in conjunction with articles 1, 2 (2) and 11, of the Covenant

14.1 The Committee notes that the authors are Indigenous Sami persons and practise reindeer herding on their traditional territory, which is an essential part of Sami culture and livelihood and has been transmitted from generation to generation. This is uncontested by the State party. The Committee considers that the aforementioned elements can be considered to fall within the scope of the right to take part in the cultural life of the community, as enshrined in article 15 (1) (a) of the Covenant, and the right to an adequate standard of living, as provided for in article 11 of the Covenant.

14.2 The Committee recalls its general comment No. 21 (2009), in which it notes that article 15 (1) (a) of the Covenant recognizes the right of all persons to exercise their cultural practices and way of life and that, in the case of Indigenous Peoples, the value of the communal dimension of cultural life should be taken into account (paras. 49 (a) and 36, respectively). The Committee also recalls that the right to take part in the cultural life of a community includes traditional economic activities, such as reindeer herding and fishing, as a means of subsistence,[12] which has a bearing on the right to an adequate standard of living. The Committee further recalls that the communal dimension of Indigenous Peoples' cultural life, including traditional activities, is closely linked to their traditional lands, territories and resources, and is indispensable to their existence, well-being and full development.[13] The Committee recalls its general comments No. 21 (2009) and No. 26 (2022), in which it notes that article 15 (1) (a) of the Covenant enshrines the inalienable right of Indigenous Peoples to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.[14] In this respect, Indigenous Peoples' cultural values and rights

[11] Human Rights Committee, *Roy et al. v. Australia* (CCPR/C/137/D/3585/2019), para. 8.14; European Court of Human Rights, *Tyrer v. the United Kingdom*, Application No. 5856/72, Judgment, 25 April 1978, para. 31; and Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001, para. 146.

[12] Human Rights Committee, general comment No. 23 (1994), para. 7.

[13] General comment No. 21 (2009), para. 36.

[14] Ibid.; and general comment No. 26 (2022).

associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, and the loss of their natural resources and, ultimately, their cultural identity.[15] The Committee observes that the protection of traditional lands, territories and resources is a prerequisite for the right to an adequate standard of living for Indigenous Peoples, as their traditional lands, territories and resources are an important basis for their livelihoods.

14.3 The Committee notes that the recognition of Indigenous Peoples' right to land as an indispensable part of their right to take part in cultural life is in line with international human rights jurisprudence in this area. The Committee on the Elimination of Racial Discrimination has affirmed that the close ties of Indigenous Peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival and that their relations to the land are a material and spiritual element that they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations, and are, therefore, a prerequisite to prevent their extinction as a people.[16] The Human Rights Committee has recognized that ownership of and control over ancestral territories are essential to Indigenous Peoples' survival as peoples, with the preservation of their distinct culture; and that any denial of the exercise of their territorial rights is detrimental to values that are very representative for members of Indigenous Peoples who are at risk of losing their cultural identity and the heritage to be passed on to future generations.[17] The Inter-American Court of Human Rights has held that the culture of the members of Indigenous Peoples "corresponds to a specific way of life, of being, seeing and acting in the world, constituted on the basis of their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they are an integral element of their cosmology, their spirituality and, consequently, their cultural identity".[18] Cultural rights have an intergenerational aspect, which is fundamental to the cultural identity, survival and viability of Indigenous Peoples.[19]

14.4 The Committee recalls that land is closely linked with the right to self-determination, as enshrined in article 1 of the Covenant.[20] Indeed, it is in the light of the right to self-determination, as set out in the International Covenants on Human Rights, that the Inter-American Court of Human Rights interprets the rights of Indigenous Peoples to traditional property, understood as traditional territories, lands and resources.[21] The Committee observes that there is a "growing tendency to recognize more forcefully the right to self-determination as a key principle when it concerns the collective rights" of Indigenous Peoples.[22] In particular, the three United Nations mechanisms for the rights of Indigenous Peoples have considered that the most important right for Indigenous Peoples is the right to self-determination, as, without the enjoyment of this right, they could not enjoy their other fundamental human rights.[23] Accordingly, the Committee reiterates that the realization of self-determination is an essential condition for the effective guarantee and observance of the

[15] General comment No. 21 (2009), para. 36.

[16] *Ågren et al. v. Sweden*, para. 6.6, quoting the Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001, para. 149; and *Saramaka People v. Suriname*, Judgment, 28 November 2007, para. 121.

[17] *Roy et al. v. Australia*, para. 8.3, quoting the Inter-American Court on Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005, para. 203; the African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, No. 276/03, Decision, 2009, paras. 158 and 227; and the African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Application No. 006/2012, Judgment, 26 May 2017, para. 109.

[18] *Xákmok Kásek Indigenous Community v. Paraguay*, Judgment, 24 August 2010, para. 174.

[19] E/CN.4/Sub.2/2001/21, para. 20.

[20] General comment No. 26 (2022), para. 11.

[21] *Saramaka People v. Suriname*, Judgment, 28 November 2007, para. 93.

[22] Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, para. 69, in Inter-American Court of Human Rights, *Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, Judgment, 6 October 2021.

[23] E/C.19/2013/16, para. 19. See also United Nations Declaration on the Rights of Indigenous Peoples, art. 3.

rights of Indigenous Peoples[24] and is considered to be the fundamental premise of the right to consultation and consent.[25]

14.5 The Committee, therefore, is of the view that, in the context of Indigenous Peoples, article 15 (1) (a), read in conjunction with articles 1 and 11, of the Covenant entails the right of Indigenous Peoples to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired and requires States parties to take measures to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources.[26] It follows that States parties must ensure the effective participation of Indigenous Peoples in decision-making processes that may affect their way of life, in particular their right to land, based on the principle of their free, prior and informed consent, so as not to endanger the very survival of the community and its members,[27] as enshrined in article 32 (2) of the United Nations Declaration on the Rights of Indigenous Peoples and reaffirmed in the Committee's general comments.[28]

14.6 In the case of communication No. 251/2022, the Committee notes that the State party invited comments from the Käsivarsi Reindeer Herders' Cooperative and the Sami Parliament and arranged two negotiation meetings to consider the exploration permit with them. The Committee also notes that, despite both institutions' opposition, the Safety and Chemicals Agency granted the permit to the Geological Survey of Finland. The Committee further notes that the Supreme Administrative Court considered that the aforementioned procedure had provided the conditions to ensure that the Sami, as an Indigenous People, had had a de facto opportunity to participate in the permit procedure.[29] The Committee observes that, throughout the process, there was no independent assessment of the impact of the exploration activities on reindeer herding as a fundamental part of the Sami culture and livelihood, the intergenerational transmission of the practice and the right of the Sami as an Indigenous People to engage in the practice. The Committee is of the view that an adequate and effective process of free, prior and informed consent, when the rights of Indigenous Peoples may be affected by projects carried out in their traditional territories, must include not only the sharing of information with and the gathering of comments from the affected community, but also an interactive and continuous dialogue through Indigenous Peoples' own representative institutions, from the outset and through culturally appropriate procedures, respecting the right of Indigenous Peoples to influence the outcome of decision-making processes affecting them. The Committee considers that environmental, social and cultural impact studies, conducted by independent and technically competent entities, should serve as the basis for a process of consultation aimed at obtaining free, prior and informed consent.[30] The Committee notes the State party's observation that the principle of free, prior and informed consent does not mean that consensus must be reached, as long as sufficient guarantees of effective participation have been provided. The Committee finds, nonetheless, that the procedure provided in this case does not meet the standard of effective participation in accordance with the principle of free, prior and informed consent.

14.7 In the case of communication No. 289/2022, the Committee notes that the authors were not contacted at any point in the process of the granting of the reservation, that,

[24] General comment No. 26 (2022), para. 11; Human Rights Committee, general comment No. 12 (1984), para. 1; and A/HRC/48/75, para. 62.

[25] Inter-American Commission on Human Rights, *Derecho a la libre determinación de los Pueblos Indígenas y Tribales* (2021), para. 177.

[26] General comment No. 21 (2009), para. 36; and the United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (2).

[27] Human Rights Committee, *Oliveira Pereira et al. v. Paraguay* (CCPR/C/132/D/2552/2015), para. 8.7; and *Roy et al. v. Australia*.

[28] General comments No. 21 (2009), paras. 37, 49 (e) and 54 (a); No. 24 (2017), paras. 12 and 17; and No. 26 (2022), para. 21.

[29] Supreme Administrative Court, KHO 2021:83.

[30] See also general comments No. 26 (2022), para. 21; and No. 24 (2017), paras. 12 and 17; Committee on the Elimination of Racial Discrimination, *Ågren et al. v. Sweden*, para. 6.18; A/HRC/39/62; Inter-American Court of Human Rights, *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment, 27 June 2012, para. 167; and *Saramaka People v. Suriname*, Judgment, 28 November 2007, para. 133; and Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources* (2010), paras. 318 and 319.

according to a precedent set by the Supreme Administrative Court, a reservation decision does not affect the practice of reindeer herding or restrict the right of the Sami as an Indigenous People to maintain and develop their culture and that the Sami do not have legal standing to appeal against the granting of a reservation. The Committee notes that, according to a report commissioned by the Ministry of Economic Affairs and Employment of the State party on the functioning of the reservation mechanism under the Mining Act, while "a reservation under the Mining Act has not been considered to have legal effects extending beyond the parties engaged in exploration", "making a reservation notification creates uncertainty regarding the future opportunities to use and manage the area subject to the reservation". It was stated in the report that this uncertainty "can also be considered to affect the Sámi people's views on conditions for practicing traditional economic activities and the perceived fairness in general of the claim procedure under the Mining Act".[31] The Committee notes that the area reservation concerns the traditional territory of the authors as members of an Indigenous People. The Committee considers, however, that the procedure for the granting of a reservation takes no account of the rights of Sami living in the affected area to control and use their land and transmit their traditional livelihoods from generation to generation.

14.8 In the light of the above, the Committee considers that the State party has not demonstrated that, in the process of granting the exploration permit (communication No. 251/2022) and the reservation (communication No. 289/2022), adequate account was taken of the right of Indigenous Peoples to land, as part of the right to take part in cultural life, read alone and in conjunction with the rights to self-determination and to an adequate standard of living, and the obligation to ensure their effective participation, as established in international human rights law.

14.9 In addition, the Committee observes that the State party did not refute that Kova-Labba Siida is part of the authors' traditional territory. The Committee notes the submission by the State party that exploration work can be carried out with the consent of the landowner, that the exploration permit holder is obliged to pay compensation to the landowner in accordance with the Mining Act and that, in both communications, the owner of the area concerned is the State. The Committee notes the State party's observation that the legislation in question applies to both Sami and non-Sami, regardless of origin.

14.10 The Committee recalls its general comment No. 20 (2009), in which it stated that eliminating discrimination in practice requires paying sufficient attention to groups of individuals that suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations (para. 8). The Committee also recalls that, as noted by the Committee on the Elimination of Racial Discrimination, to treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same.[32] Positive measures are required to prevent and eliminate conditions that perpetuate discrimination and to ensure the equal enjoyment of the rights enshrined in the Covenant.[33] In the context of Indigenous Peoples, this necessitates measures to give legal recognition to their rights to their traditional lands, including through forms of collective ownership, and to ensure protection of those rights, as an essential element of the right to take part in the cultural life of the community, and to provide effective remedies when these rights are infringed.[34]

14.11 The Committee observes that the State party's failure to give legal recognition to the rights of Indigenous Peoples in respect of their traditional lands, which are the basis for their livelihood and income, has led to a situation in which the Sami are not entitled to compensation when their traditional lands are made the site of mineral exploration

[31] Finland, Ministry of Economic Affairs and Employment, *Report on the Functioning of the Reservation Mechanism under the Mining Act* (Helsinki, 2022), p. 29.

[32] Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 8. See also European Court of Human Rights, *Thlimmenos v. Greece*, Application No. 34369/97, Judgment, 6 April 2000.

[33] General comment No. 20 (2009), paras. 8 and 9.

[34] General comment No. 21 (2009), para. 36; and United Nations Declaration on the Rights of Indigenous Peoples, art. 26.

(communication No. 251/2022) and in which they are not recognized as an interested party in the granting of a reservation (communication No. 289/2022), which has the effect of nullifying the recognition of the rights of Indigenous Peoples to their traditional territories and natural resources and their enjoyment or exercise of those rights.[35] The Committee, therefore, considers that the State party has not demonstrated how, in the processes of granting the permit and the reservation under the Mining Act, the authors' rights under article 15 (1) (a), read in conjunction with article 2 (2), of the Covenant were adequately taken into account.

E. Conclusion and recommendations

15. The Committee, acting under article 9 (1) of the Optional Protocol, is of the view that the facts and information before it disclose a violation of article 15 (1) (a), read alone and in conjunction with articles 1, 2 (2) and 11, of the Covenant.

Recommendations in respect of the authors

16. The State party should provide the authors with effective reparation for the violations suffered, including through an effective review of the decisions concerning the mineral exploration project and the area reservation, based on an adequate process for free, prior and informed consent, accompanied by an independent assessment of the impact on their rights.

General recommendations

17. The State party is under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the State party is requested to pursue its efforts to amend its legislation and administrative procedures to enshrine therein the international standard of free, prior and informed consent and to include therein provision for environmental, social and cultural impact assessments.[36] The State party is also requested to initiate the process of legal recognition of the rights of Indigenous Peoples to their traditional lands, including through collective ownership.

18. In accordance with article 9 (2) of the Optional Protocol and rule 21 (1) of the rules of procedure under the Optional Protocol, the State party is requested to submit to the Committee, within a period of six months, a written response, including information on measures taken in follow-up to the Views and recommendations of the Committee. The State party is also requested to publish the present Views, to have them translated into the official languages of the State party and into Northern Sami and to distribute them widely, in an accessible format, so that they reach all sectors of the population.

[35] Committee on the Elimination of Racial Discrimination, *Ågren et al. v. Sweden*, para. 6.7.
[36] E/C.12/FIN/CO/7, paras. 50 and 51.

Annex

[English only]

Individual opinion of Committee member Ludovic Hennebel (concurring)

1. I fully concur with the conclusions reached by the Committee in its determination of the case, finding significant violations of the Sami people's rights under the International Covenant on Economic, Social and Cultural Rights, in particular their rights to self-determination, cultural participation and an adequate standard of living, as set out in articles 1, 11 and 15 of the Covenant. However, I wish to emphasize that the exclusion of self-determination from justiciable rights, as seen in the jurisprudence of the Human Rights Committee, must be reconsidered. Self-determination is an autonomous and enforceable right, crucial for Indigenous Peoples, and its full justiciability must be affirmed.

2. As recently recalled by both the Human Rights Committee – whose recent jurisprudence ushers in a paradigm shift[1] – and the African Commission on Human and Peoples' Rights,[2] the right to self-determination is a cornerstone of modern international human rights law, enshrined in common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This right guarantees that the Sami, as an Indigenous People, can freely pursue their economic, social and cultural development, which inherently includes the right to manage and control their traditional lands and resources. The link between self-determination and land is crucial: without access to their lands, Indigenous Peoples cannot exercise their right to self-determination effectively. States must protect Indigenous Peoples' rights to their lands, territories and resources to prevent the erosion of their way of life and identity.[3]

3. In the present case, the violation of the right of the Sami to self-determination stems directly from the State party's failure to implement a meaningful process for free, prior and informed consent. Free, prior and informed consent is not a mere procedural formality; it is a substantive right essential for allowing Indigenous Peoples to participate in decisions affecting their lands, which are fundamental to their cultural and economic survival.[4] The control over land is not only an economic matter but also a core component of self-determination, as it allows Indigenous Peoples such as the Sami to maintain their cultural heritage, livelihoods and identity.

4. For the Sami, reindeer herding is intimately connected to their land and is central to their cultural identity.[5] The Committee on Economic, Social and Cultural Rights, like other human rights bodies, has previously acknowledged that the cultural rights of Indigenous Peoples are inextricably tied to their access to and control over their traditional lands and resources. Without sustainable access to these lands, the ability of the Sami to exercise

[1] *Roy et al. v. Australia* (CCPR/C/137/D/3585/2019), paras. 7.2 and 7.3. Even though the Human Rights Committee does not take the step of affirming the justiciability of article 1 of the International Covenant on Civil and Political Rights, its jurisprudence is remarkable and signals real progress towards a direct protection of self-determination.

[2] *Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo (DRC)*, Communication No. 588/15, Decision, 2022, paras. 188 ff.

[3] Committee on the Elimination of Racial Discrimination, *Ågren et al. v. Sweden* (CERD/C/102/D/54/2013), para. 6.6; and Human Rights Committee, general comment No. 23 (1994), para. 9. See also Human Rights Committee, *Oliveira Pereira et al. v. Paraguay* (CCPR/C/132/D/2552/2015), para. 8.6; *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006), para. 7.2; and *Roy et al. v. Australia*, para. 8.3.

[4] See Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001; *Saramaka People v. Suriname*, Judgment, 28 November 2007; *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment, 27 June 2012; and *Kaliña and Lokono Peoples v. Suriname*, Judgment, 25 November 2015.

[5] Human Rights Committee, *Sara v. Norway* (CCPR/C/141/D/3588/2019), para. 10.3.

self-determination is compromised, and the transmission of their culture from one generation to the next is jeopardized. Therefore, the violation of the land rights of the Sami is, in effect, a violation of their right to self-determination.

5. The justiciability of article 1 of the International Covenant on Economic, Social and Cultural Rights, which enshrines the right of peoples to self-determination, has historically been contested, with some States arguing that it is a political principle rather than a legally enforceable right. However, recent developments in international law, along with the evolving jurisprudence of the treaty bodies and regional human rights mechanisms, invite us to reconsider this obsolete approach and affirm that the right to self-determination is indeed fully justiciable within the framework of human rights law.

6. The Optional Protocol to the Covenant itself does not preclude the justiciability of article 1 of the Covenant. On the contrary, article 2 of the Optional Protocol explicitly allows for the submission of complaints alleging any violation of the rights set forth in the Covenant, which includes the right to self-determination. The Committee has further recognized that the right to self-determination is intrinsically linked to the rights enshrined in the Covenant, in particular the rights to freely dispose of natural wealth and resources (art. 1 (2)) and to pursue economic, social and cultural development without outside interference. Therefore, it can be considered that self-determination is a right enforceable and justiciable at the international level, including through article 1 of the Covenant, and its violation affects not only the peoples concerned but also the international order as a whole.

7. In the present case, the right of the Sami to self-determination is not abstract or political in nature; it is an actionable right that has a direct impact on their ability to maintain their cultural identity, economic sustainability and social structure. In my opinion, the State party's failure to respect this right, due to a lack of meaningful consultation and the absence of mechanisms to ensure Sami participation in decisions affecting their traditional lands, constitutes a direct and autonomous violation of article 1 of the Covenant. This breach is all the more significant in the light of the cultural and economic dimensions of the right to self-determination, as emphasized in the Covenant and in the Committee's work.

8. While the Committee stops short of affirming an autonomous violation of article 1 in the present case concerning the Sami people, its decision is particularly promising. It reflects a broader, progressive trend in the jurisprudence of the treaty bodies towards stronger protection of self-determination. It opens the door to even more ambitious, bold and protective case law, highlighting the growing need to fully recognize self-determination as a justiciable and enforceable right.