



International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General*
1 February 2019

Original: English
English, French and Spanish only

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2950/2017

** ,***

<i>Communication submitted by:</i>	Klemetti Käkkäljärvi et al. represented by the Saami Arvuut Organization
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Finland
<i>Date of communication:</i>	23 March 2016
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 8 February 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	2 November 2018
<i>Subject matter:</i>	Right to vote for elections to the Sami Parliament
<i>Procedural issues:</i>	Victim status, exhaustion of remedies, non-substantiation
<i>Substantive issues:</i>	Right to self-determination, non-discrimination, political rights, minority rights
<i>Articles of the Covenant:</i>	1, 25, 26, 27
<i>Articles of the Optional Protocol:</i>	1, 2

* Adopted by the Committee during its 124th session (8 October – 2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands-Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia VJ Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval, Andreas B. Zimmermann.

*** Individual opinion (concurring) by Committee member Olivier de Frouville is annexed to the present Views.

1. The authors of the communication, dated 23 March 2016, are Klemetti Käkkäläjärvi (main author) and 24 other persons two of which are Norwegian and the rest are Finnish nationals. They all present themselves as members of the indigenous Saami people. The authors claim violation by the State party of their rights under articles 1, 25, 26 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 2012. The authors are represented by the Sami Arvvut Organisation.

The facts as presented by the authors

2.1 The Sami form an indigenous people living in the Northern parts of Finland, Sweden and Norway and the North-western part of Russia. Since the end of the 17th Century, hunters, fishermen and officials of the Crown started to settle in the Northern parts of Finland and started exploiting and taxing their natural resources. Although their culture has considerably evolved in the 20th Century, the Sami maintain a unique cultural identity, distinct from that of Finns. Since the arrival of Finns in their territory, the Sami culture has been under pressure and many members of the Sami indigenous people have adopted Finnish culture. The authors submit that in Finland many members of the Sami people have faced discrimination and racism, including by their employers when they support the rights of the Sami indigenous people in public. The authors are active members of the Sami community and as such participate in the maintenance of its traditions and culture.

2.2 The 1999 Constitution of Finland contains two provisions regarding the Sami. Section 17(3) stipulates that “the Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture”. Section 121, subsection 3 states that “in their native region, the Sami have linguistic and cultural self-government, as provided by an Act”.

2.3 The Act on the Sami Parliament (974/1995) (“the Parliament Act”) defines the functioning and powers of the Parliament. Its Section 5 describes its tasks as follows: “(1) The task of the Sami Parliament is to look after the Sami language and culture as well as to take care of matters relating to their status as an indigenous people. (2) In matters pertaining to its tasks, the Sami Parliament may make initiatives and proposals to the authorities, as well as issue statements (...)” Section 9 stipulates that: “(1) The authorities shall negotiate with the Sami Parliament in all far reaching and important measures which may directly and in a specific way affect the status of the Sami as an indigenous people and which concern the following matters in the Sámi homeland: (1) community planning; (2) the management, use, leasing and assignment of state lands, conservation areas and wilderness areas; (3) applications for licences to stake mineral mine claims or file mining patents; (4) legislative or administrative changes to the occupations belonging to the Sami form of culture; (5) the development of the teaching of and in the Sami language in schools, as well as the social and health services; or (6) any other matters affecting the Sami language and culture or the status of the Sami as an indigenous people. (2) In order to fulfil its obligation to negotiate, the relevant authority shall provide the Sami Parliament with the opportunity to be heard and discuss matters. Failure to use this opportunity in no way prevents the authority from proceeding in the matter.” The Parliament is composed of 25 individuals. The candidates with the highest number of individual votes are elected, subject to certain quotas allocated to municipalities.

2.4 Elections to the Parliament take place every four years and, under Section 21 of the Parliament Act, every Sami has the right to vote as from 18 years. As to the electoral roll, Section 23 stipulates that the Election Committee of the Parliament shall draw up an electoral roll of the persons with the right to vote, on the basis of the previous electoral roll and the Population Information System. A Sami with the right to vote who has not been entered into the roll shall be entered into it upon request. Section 26 stipulates that “a person who before the counting of the ballots produces to the Election Committee, or on the election day produces to the polling committee, an order of the Supreme Administrative Court to the effect that he or she has the right to vote, shall be reserved the opportunity to obtain the election documents and to vote”. The Act provides for a right of judicial appeal against decisions of the Election Committee and the Board of the Parliament on issues concerning inclusion on the electoral roll, so that the highest court in administrative matters, the Supreme Administrative Court (“the Court”), becomes the ultimate arbiter.

2.5 Section 3 of the Act contains the following definition of who is to be regarded as a Sami for the purposes of being allowed to vote in the elections for the Parliament: “A Sami means a person who considers himself a Sami provided: (1) That he himself or at least one of his parents or grandparents has learned Sami as his first language; (2) that he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or (3) that at least one of his parents has or could have been registered as an elector for an election to the Sami Delegation or the Sami Parliament”.

2.6 Section 3 has been a subject of controversy. It is clear from the wording which has been subsequently confirmed through rulings of the Court, issued before 2011, that the subjective element covered by the chapeau and the objective elements mentioned in subsections 1 to 3 are cumulative in the sense that a person can be registered as a voter only if he or she both considers oneself as a Sami and meets at least one of the three numbered objective criteria. Furthermore, the Sami people have never accepted point (2) of Section 3 of the Parliament Act. They argue that tax records were not accurate¹ and were not ethnic records; anyone who practiced fishing or reindeer herding in the region was registered as a tax payer. Until 2011, the Supreme Administrative Court and the Sami Parliament interpreted that point (2) of Section 3 could not, by itself, be considered sufficient proof of a person’s membership to the Sami indigenous peoples because of the inaccuracy of these records.

2.7 There have been several campaigns organised by non-Sami inhabitants of the northern parts of Finland to register non-Sami persons as voters, with the objective to influence the composition and positions of the Parliament. The Election Board of the Parliament has addressed all individual registrations and sought to determine a coherent and consistent approach to the question of membership, so that both the self-determination of the Sami as a people and the individual rights of the applicants can be respected.

2.8 On 26 September 2011, the Court adopted four controversial decisions against the decisions of the Election Board of the Sami Parliament. The Court gave priority to an individual’s wish to be registered as a voter over objective criteria related to actual active membership in the group or the group’s recognition of the person as a member of the Sami indigenous people. Up until 2011, the Court’s interpretation of Section 3 of the Parliament Act had been compatible to that of the Election Committee. As a result of the controversy raised, the government set up a drafting commission to revise the Sami Parliament Act, so that the uncertainty created through the judicial interpretation of the Sami definition could be removed. In 2013, the commission, with the participation of the Sami, agreed to a reform, which was presented to the Parliament of Finland in 2014 in the form of a Government Bill. Due to a *de facto* political link between the Bill and Finland’s envisaged ratification of ILO Convention 169 on indigenous and tribal peoples, the prospects of the Bill being adopted became slim and in March 2015 the Government decided to withdraw it.

2.9 In the previous months to the elections for the Sami Parliament, which took place between 7 September and 4 October 2015, hundreds of people sought registration as new voters. In many cases, the Parliament’s Election Committee and the Executive Board as the first instance of appeal decided that they did not meet the criteria of the Sami definition. In that regard, 182 persons appealed before the Court the decision of the Board not to include them in the roll. On 30 September 2015, the Court decided to accept the applications of 93 persons, who were then allowed to vote.

2.10 In a majority of these decisions, the Court stated explicitly that the person did not meet any of the objective criteria spelled out in Section 3. The Court resorted to the “overall consideration” of the person’s own “strong” opinion to consider itself a Sami and ignored the explicit requirement of meeting at least one of the objective criteria. The Court justified this position as being a “constitutional rights and human rights friendly” interpretation of the law but did not specify which human rights it was promoting. The Court also argued that not including the appellants in the electoral roll would constitute a discrimination against them.

¹ Not all Sami had to pay taxes, that non-Sami also paid these taxes as this tax was geographical rather than ethnic, and that, even though Sami culture was not patriarchal and there were no specific tasks assigned to each gender, only men were marked in the Lapp tax records, thus adding to its lack of accuracy.

2.11 The Court's rulings demonstrate a lack of understanding of Sami identity, Sami culture and Sami way of life by the Supreme Administrative Court, as many of the decisions have been based on the idea that a person's "strong self-identification" as Sami would have been proven by factors that the Court believes relate to a person's Sami identity but that in fact tell very little about whether the person has any connection with the Sami culture and way of life. The Court has understood the membership in the Sami people as an individual perception, whereas Sami way of life is embodied by its communal structure and common heritage. A Sami is not alone, but is a part of a generational and communal chain of Sami across borders.

2.12 The Supreme Administrative Court decisions also based its findings in, the Committee on the Elimination of Racial Discrimination (CERD) 2009 concluding observations to Finland, which stated that the State party's approach to the definition of who may be considered a Sami under the Parliament Act and as interpreted by the Supreme Administrative Court "is too restrictive."² However, in its 2012 concluding observations, the CERD Committee noted that although the Supreme Administrative Court had relied on that Committee's prior concluding observations in its 2011 decision defining who is a "Sámi" entitled to vote for Members of the Sámi Parliament, that decision gave "insufficient weight to the Sámi people's rights, recognized in the United Nations Declaration on the Rights of Indigenous Peoples, to self-determination (art. 3), in particular their right to determine their own identity or membership in accordance with their customs and traditions (art. 33), as well as their right not to be subjected to forced assimilation or destruction of their culture (art. 8) (art. 5 of the Convention)." Accordingly, the Committee recommended that, in defining who is eligible to vote for Members of the Sámi Parliament, the State party should "accord due weight to the rights of the Sámi people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation".³

2.13 The Court did not exercise deference in relation to the constitutionally guaranteed autonomy and internationally guaranteed self-determination of the Sami. Instead, the Court took full discretionary powers to itself and nullified the capacity of the Sami Parliament to exercise a key dimension of Sami autonomy and self-determination, namely the right to participate in a meaningful way but under a framework based on the rule of law, in determining who is a Sami. By departing from the wording of the statute the Court created a situation of lawlessness, discrimination and arbitrariness.

2.14 Once a person is included in the electoral roll, all descendants have to be included in it if they wish to. This can lead to a snow-ball effect where persons who do not lead a Sami way of life and do not share their identity can take part in the elections. The number of persons included in the electoral roll by the Court or by the snow-ball effect of its findings amounts currently to 1.5% of the electoral roll. There are around 10 000 Samis, including minor children. According to the authors, a study by a mathematician has found that around 512 000 descendant of Lapp tax payers are alive. According to the new interpretation applied by the Court they could potentially apply to be included in the electoral roll.

2.15 Due to the controversial 2011 decisions by the Supreme Administrative Court, many members of the Sami people have not voted in the 2015 elections or have not applied to be in the electoral roll. This includes one of the authors, who resigned from the electoral roll on 1 October 2015.

2.16 The election results were announced by the Election Board on 6 October 2015.⁴ One of the elected candidates was a person who entered the electoral roll through a decision by the Supreme Administrative Court against the decision of the Election Committee and the Board of Parliament. Furthermore, the authors mention, as an example that one of the persons elected to the Sami Parliament was elected by vote count with 81 votes, which gives an idea

² CERD, Concluding Observations regarding the 17th to 19th periodic reports of Finland under the International Convention on the Elimination of All Forms of Racial Discrimination, CERD/C/FIN/CO/19 (13 March 2009), para. 13.

³ CERD, Concluding observations regarding the 20th to 22nd periodic reports of Finland, CERD/C/FIN/CO/20-22 (2012), para. 12.

⁴ On 10 and 17 December 2015, the Government of Finland ordered the elected members to take up their duties for the four-year term of office 2016-2019.

that in such a small electoral roll, the 4 rulings of 2011 and the 93 rulings of 2015 can have a direct impact.

2.17 On 18 November 2015, the Board of the Parliament accepted demands to rectify the election results on the basis that the Court had erroneously accepted the 93 persons as entitled to vote. As a result, the Board decided to hold a new election during 2016 on the basis of the electoral roll certified on 20 August 2015 (prior to the Supreme Court Decisions of 30 September 2015). Appeals against this decision were filed with the Supreme Administrative Court. On 13 January 2016, the Court quashed and set aside the Board's decision. The Court held that the Board of the Sami Parliament had no competence to take up a matter and legal issues already adjudicated by the Court, and that the decisions of the Court are binding upon the Board. Therefore, the decision of the Board to hold new elections was unlawful.

The complaint

3.1 The authors claim that the decisions of the Court granting the right to vote to individuals who had not been considered eligible by the competent organs of the Sami Parliament amount to a direct intervention of the State party into a core area of the enjoyment and exercise of the Sami indigenous people's right to self-determination protected under article 1 of the Covenant. The Court decisions also constitute an intervention in the Sami people's right to define their own identity. General Comment 12 on the Right to Self-determination considers that this right is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.⁵ Additionally, in *Mahuika v New Zealand*⁶ the Committee held that the right to self-determination is inherently connected to article 27 and that States party are required to provide indigenous peoples greater influence in the decision-making processes in matters that affect their natural environment, their means of subsistence and their culture.

3.2 By including non-Sami in the electoral roll corresponding to the Sami Parliament, the Court has corrupted its representative value, affecting their right to effective participation in public affairs. For this reason, one of the authors has decided to resign from the electoral roll.

3.3 The Court decisions disclose a clear lack of understanding by it of the Sami culture and identity. However, in order for the Sami to be considered equal before the law and for Courts to take informed decisions in issues relating to their identity, they need to be able to understand the Sami identity. In the absence of this expertise in the Supreme Administrative Court, the Sami people cannot be equal before the law as mandated by article 26 of the Covenant.

3.4 On the basis of Section 3 subsection 3, hundreds of the new voters' relatives may seek registration as voters in future elections, a fact which will be an additional step in the forced assimilation of the Sami into the mainstream population through the gradual takeover of the Sami Parliament by members of the main (ethnically Finnish) population resident in the northernmost municipalities of Finland, where the Sami constitute a minority. Thus, if non-Sami are to integrate the Sami Parliament, this institution will become a regional representative organ and will no longer represent the Sami indigenous people. Such a situation would constitute irreparable damage for the rights of the Sami under the Covenant, as it would undermine their constitutionally guaranteed autonomy in matters pertaining to their internationally protected rights to enjoy their culture, to political rights of participation, and to self-determination.

3.5 The intervention of the Court impedes their enjoyment of their right to use their language and enjoy their culture in community with other members of the group. The authors submit that the traditional Sami livelihoods, language and identity are endangered by discrimination and forced assimilation. In this context, the Sami Parliament is an essential institution to ensure the survival and continued development of their culture. Under Section 6 the Sami Parliament acts as representative of the Sami people in national and international matters. Section 9 imposes upon all authorities an obligation to negotiate with the Sami

⁵ General Comment 12: Article 1 (The right to self-determination of peoples) (1984), para 2.

⁶ Communication No. 547/1993, [FIX CITE] (2000), para. 9.5.

Parliament in a long list of matters that concern the Sami as an indigenous people or developments within the Sami homeland. This demonstrates how the effective functioning and the capacity to adequately represent the views of the Sami people by the Sami Parliament are essential for the implementation by Finland of article 27 of the Covenant. Therefore, the Court decisions, by including non-Sami in the electoral roll, corrupt the Parliament's role as representative of the Sami's interests and hinders its capacity to protect the rights enshrined under article 27 of the Covenant.

3.6 In *Diergaardt v. Namibia*, the Committee considered that living within the same area for 125 years was not a relationship that would have formed a distinctive culture. The persons that were included in the electoral roll by the Court had similar arguments to those of the authors in *Diergaardt v. Namibia*⁷: they should be considered Sami because their ancestors and they lived in the same area as Sami.

3.7 There are no effective domestic remedies for them to exhaust. According to section 26 of the Parliament Act, only persons who are not approved in the Sami electoral roll can appeal to the Supreme Administrative Court. The Court decisions are final and the Sami Parliament is obliged to enforce them. The Sami Parliament decided that 2015 elections had not been valid. This decision was appealed to the Supreme Administrative Court and it gave its ruling to nullify the Parliament's decision. There is no appeal possible against this decision. There are no additional effective remedies to exhaust.

State party's observations on admissibility

4.1 On 8 February 2017 and 28 July 2017, the State party submitted observations on admissibility. It indicates that the Sami constitute the only indigenous people in Finland. The Sami people have their own language, culture, cultural habits, traditions and livelihoods. Under Section 17, paragraph 3, of the Constitution, the Sami, as indigenous people, have the right to maintain and develop their own language and culture. Section 121, paragraph 4 of the Constitution guarantees the Sami linguistic and cultural self-government within the Sami Homeland Area. The Act on the Sami Parliament regulates the implementation of the self-government. For the tasks relating to their self-government the Sami elect from among themselves the Sami Parliament. There are about 6,000 voters in the electoral roll while there are about 10,000 Sami in Finland. The Sami Parliament is not an authority but an independent institution, a legal person under public law. It does not safeguard a public interest as such but promotes the general interests of the Sami people.

4.2 On 28 March 2017 the Committee declared inadmissible the communication submitted by Ms. Sanila-Aikio with regard to article 1 of the Covenant⁸. The same conclusion should be reached on the present communication. In its General Comment No. 23 on article 27, the Committee considers that "self-determination is not a right cognizable under the Optional Protocol"⁹ and that this interpretation is also reflected in the *Lubicon Lake Band v. Canada* views.¹⁰ According to this criteria, the complaint under article 1 on its own cannot be considered in the present communication.

4.3 The communication has been submitted on behalf of 25 authors. 23 of the authors are Finnish citizens and two of them are Norwegian citizens. Of the 23 Finnish authors, 22 are enlisted in the current electoral roll, whilst the main author resigned from it. Two of the authors are currently members of the Sami Parliament. The current President of the Sami Parliament, Ms. Sanila-Aikio has submitted a communication with the same substance matter as the current one with the authorisation of the Board of the Sami Parliament on behalf of the members of the indigenous Sami people of Finland. The State party submits that, should the Committee consider that Ms. Sanila-Aikio is authorised to represent the indigenous people of Finland, the 23 Finnish authors of the present communication would also be represented in that communication. In such event, it would follow that the communication would be

⁷ See *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1996), para. 10.6.

⁸ CCPR/C/119/D/2668/2015 para.

⁹ General Comment No. 23: Article 27 (Rights of Minorities), para. 3.1.

¹⁰ Communication No. 167/1984, *Ominayak and the Lubicon Lake Band v. Canada*, para. 13.3.

inadmissible with regard to those authors as they could not submit the same facts under the same mechanism twice.

4.4 Another communication has been submitted on the same matter by two other members of the Parliament, among other authors, to the CERD. The State party recalls that under rule 86(g) of the Committee's Rules of Procedure, the authors should have specified the extent to which the same matter is being examined under another procedure of international investigation or settlement, thus, the communication should be considered inadmissible.

4.5 The authors have not specified any domestic remedy exhausted. It also indicates that the authors were not part as such of the proceedings decided by the Supreme Administrative Court on 26 September 2011, 30 September 2015 and 18 January 2016. In their communication the authors appear to be representing the Sami people collectively and that their claim before the Committee constitutes an *actio popularis*. Furthermore, they have not exhausted domestic remedies under article 5(2) (b) of the Optional Protocol. As the highest domestic appellate court for administrative matters, the decisions of the Court cannot be appealed. However, as a mode of extraordinary appeal, the annulment of a decision may be requested from the Court itself.

4.6 The authors' claims before the Committee are indirect and even hypothetical violations of the rights of Sami people in general. They do not allege violations of their individual rights, do not demonstrate having been directly affected by the alleged violations of the Covenant; and do not provide documentary evidence in support of their allegations. Hence, the State party considers that the authors have failed to substantiate their claims for the purposes of admissibility.

4.7 The Court thoroughly assessed the special status and rights of the Sami people, also taking into account Finland's obligations under the Covenant. It is not for the Committee to re-evaluate the facts which have led a national court to adopt one decision rather than another, nor to question the findings and conclusions of national courts.

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

5.1 On 19 September 2017, the authors submitted their comments on the State party's observations. Ms Sanila-Aikio could not act in the name of the Sami Parliament nor in the name of the Sami people without their signed consent. They further disagree that third parties could limit their individual rights to present a communication before the Committee. The authors clarify that they have no knowledge or access to the content of the other communications submitted to this Committee or to the CERD and that none of the authors of the present communication are part of those two communications.

5.2 Although two of them are Norwegian citizens, they fulfil the requirements to be included in the electoral roll, as they are foreign citizens domiciled in Finland.

5.3 On the matter of the exhaustion of domestic remedies, it is not possible for Sami individuals to enter into a process concerning other persons' applications to enter the electoral roll, which is a confidential procedure. Furthermore, the extraordinary appeal to the Supreme Administrative Court's decisions is reserved to the parties involved in the process itself and is not a regular remedy. This appeal has little prospect of success since the Court would have to admit to have made an error which could happen only in very exceptional cases. The Sami Parliament appealed the 2011 decisions, but this appeal was rejected because there was no procedural error which could have materially affected the decision.

5.4 Regarding the State party's observation that the claim is unsubstantiated, the Sami people, of which they are members, have rights that are collective in nature. The survival and continued viability of the Sami people is already endangered, 60% of the Sami population live outside the Sami home region and only 26% of them speak Sami as a native language. In such a context, and given the influence that the powers of the Sami Parliament has on the rights of members of the Sami people to maintain and practice their culture, the negative effects of the inclusion of non-Sami in the electoral roll on their rights under article 27 of the Covenant are more than hypothetical.

State party's observations on merits

6.1 The State party submitted observations on the merits on 28 July 2017 and 20 November 2017.

6.2 On 7 October 2015, the Election Committee of the Sami Parliament confirmed the results of the election held between 7 September and 4 October 2015. On 18 November 2015, the Board of the Sami Parliament ordered that the elections take place again using the electoral roll certified on 20 August 2015 arguing that the Supreme Administrative Court decisions of 20 September 2015 had influenced the election results and that these elections could not be considered to meet the statutory requirement of the principle of cultural autonomy protected by the Parliament Act. However, the Board of the Sami Parliament did not have the competence to take up a matter that had already been finally adjudicated by the Court. On 13 January 2016 the Court quashed the decision of the Board of the Parliament and on 23 February 2016 the newly elected Sami Parliament convened its first organizational meeting.

6.3 The Supreme Administrative Court has, in its case law, paid attention to the safeguarding of the rights of the Sami indigenous people and its obligations under the Covenant. On 30 September 2015, the Court accepted 93 persons to be entered in the electoral roll of the Sami Parliament, exerting exceptional diligence in the examination of the appeals and consulting both the Board of the Sami Parliament and the appellants. In its rulings, it motivated its decision, *inter alia*, on articles 1, 2 (1), 25, 26 and 27 of the Covenant and the UN Declaration on the Rights of Indigenous Peoples. The State party reiterates that, as recently published in a report of the Prime Minister's Office¹¹, the Supreme Administrative Court decisions of 2011 and 2015 applied the recommendation issued by CERD within its Concluding Observations regarding the 9th, 10th and the 17th to 19th periodic reports of Finland¹² to better take into account the individual's self-identification within Sami's definition. The Court rulings reflect the core principles of democracy and the rule of law.

6.4 On 8 November 2017 the Ministry of Justice appointed a committee to draft a number of amendments to the Parliament Act. Its work was mandated by the fundamental rights and other obligations imposed by the Constitution of Finland, international human rights treaties binding on Finland, and the UN Declaration on the Rights of Indigenous Peoples. It also took into account the initialled Nordic Sami Convention and the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (169 Convention).

6.5 The State party is not in a position to assess to what extent the outcome of the Supreme Administrative Court rulings have, as the authors claim, influenced the Sami Parliament's integrity, legitimacy and right to fair elections. The Board of the Sami Parliament, with its decision of 18 November 2015, took up for reconsideration the right to vote of persons who had received such a right by the Court rulings.

6.6 As regards the definition of the Sami, the Government respects self-identification as a key criterion for the determination of a group of peoples or an individual as indigenous, as stipulated, *inter alia*, by article 1(2) of the International Labour Organization's Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. The Government also respects the Sami Parliament's right to determine its membership in accordance with Sami customs and traditions. Accordingly, measures have been taken to protect the identity of the Sami people and the rights of its members to enjoy and develop their culture and language in community with the other members of the indigenous community. These measures respect articles 2(1) and 26 of the Covenant.

6.7 The Committee's General Comment No. 25 indicates that the rights under article 25 of the Covenant are related to, but distinct from, the right of peoples to self-determination. By virtue of the rights covered by article 1(1) of the Covenant, peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution

¹¹ See "Actualizing Sami Rights: International Comparative Research" of 25 January 2017 Publications of the Government's analysis, assessment and research activities 4/2017.

¹² See CERD Concluding observations, A/45/18 (1990) para. 91; CERD/C/63/CO/5 (2003) para. 11, and CERD/C/FIN/CO/19 (2009), para. 13.

or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.¹³

6.8 As article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs, the State party emphasizes that the right to vote at the elections of the Sami Parliament is established by law. In this regard, the Government has taken measures to ensure that all persons entitled to vote are able to exercise that right.

6.9 The authors have failed to substantiate direct violations of their rights under the Covenant. For instance, authors refer to violations that could take place if ethnic Finns invade the Sami Parliament. The State party notes that there are currently about 6,000 persons in the Sami electoral roll, and yet the authors assert that around 512,000 persons could apply to the electoral roll. In general, a complaint must establish how the author has been a personal victim of the violation, it is not sufficient to establish that a law or policy amounts to a violation if the authors have not been affected by it. The authors have not been personally involved in the Supreme Administrative Court rulings and cannot be affected by them.

6.10 Accordingly, no violations of the Covenant have occurred in the present case.

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

7.1 On 16 April 2018, the authors submitted their comments on the State party's observation on the merits.

7.2 The authors assert that the Court decisions of 26 September 2011 and 30 September 2015 have substantially impacted the Sami Parliament and its legitimacy. The Court's interpretation of the definition of Sami has entailed that Sami and ethnic Finns are no longer considered different in their specific culture, ethnicity and livelihoods.

7.3 The Supreme Administrative Court did not apply the Committee's interpretation of article 27 reflected in *Kitok v Sweden*, where the Committee considered that "a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification and to be necessary for the continued viability and welfare of the minority as a whole".¹⁴ Inclusion of non-Sami individuals in the electoral roll could set a precedent that could, at least theoretically, lead to 512 000 non-Sami persons in the electoral roll of the Sami Parliament. This would entail that the Parliament would gradually represent the interests of non-Sami persons and would no longer ensure the preservation of Sami linguistic and cultural heritage, amounting to a gradual forced assimilation of the Sami people in Finland. There are already applications to the Sami electoral roll for the next elections that will take place in 2019, with many anti-Sami organisations offering help to ethnic Finns to apply and eventually appeal to the Supreme Administrative Court and there could be an economic interest in massively including non-Sami individuals in the electoral roll of the Sami Parliament to ensure its acceptance of large-scale projects of mining, mass tourism and infrastructures. By modifying the membership to the electoral roll, the Sami Parliament can become a mere tool for the implementation of governmental decisions and policies regarding funding, policies and government's interests with regards to Sami language and culture.

7.4 There is already an internal dispute in the Sami Parliament, since most of its members do not recognise one of them as a Sami. This person was included in the electoral roll by the Supreme Administrative Court in 2011, and was elected in the 2015 elections. This has blurred the role of the Sami Parliament and impacted its public image and legitimacy.

7.5 The authors disagree with the State party's statement that the Court took into account Finland's international obligations, especially those under the Covenant. Although the Court based its findings on the 2003 and 2009 CERD recommendations, it ignored those of 2012, which criticised the Court's interpretation of section 3 of the Parliament Act. Furthermore, the Court did not apply CERD's General Recommendation 8, which indicates that it "Having considered reports from State parties concerning information about the ways in which

¹³ General Comment No. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) (CCPR/C/21/Rev.1/Add.7), para. 2.

¹⁴ See *Kitok v. Sweden* (CCPR/C/33/D/197/1985), para. 9.8.

individuals are identified as being members of a particular racial or ethnic group or groups, [the Committee] is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned". In this particular case, the authors argue, there was a "justification to the contrary", related to the Sami people's continued viability and welfare as a minority.

7.6 The Court has accepted evidence that relies entirely on the State party's public administration, such as the Church Registry Office and the Provincial Archives of the State, but these documents are unreliable. The Court decisions, when analysing compliance with the Section 3 criteria, have misunderstood the meaning of language in Sami culture, which is not merely a means of communication but a cultural factor, leaving ethnic Sami individuals who have lost their native language but maintained their culture in an unfavourable situation. In Finland everyone is entitled to study Sami language. In some regions, ethnic Finns have applied for their children to be taught Sami language. This has been used as an argument to gain the status of a Sami. The Committee's views in *Lovelace v. Canada*¹⁵ stem from that decision that, to belong to an ethnic group, a person must belong to that ethnicity (or have been adopted to the culture), have been raised in the minority culture and learned the traditions and language of the culture. Additionally, the person must be able to maintain the culture within the community. These are criteria that none of the persons included in the electoral roll by the Court met.

7.7 Furthermore, the Supreme Administrative Court can overrule decisions by the Sami parliament regarding the inclusion of non-Sami persons in the electoral roll. This amounts to a violation of article 1 of the Covenant since it constitutes an interference with the right of the Sami people, as represented by the Sami Parliament, to self-determine its membership.

7.8 Since the electoral roll has been compromised, the authors have proposed that a new definition of Sami be adopted and that the electoral roll be rebuilt on the basis of the new definition. However, they consider it highly premature at this point to assess the merits of the possible proposed draft to reform the Parliamentary Act and it is not likely that the process can be finalised before the next elections. The authors note that since 1996 there have been nine different Committees established to study the rights of the Sami people with very little result. They also consider that, by proposing changes to the Parliament Act, the State party is implicitly admitting that the interpretation by the Supreme Administrative Court of section 3 of the Act violated the Covenant.

7.9 Minorities today face a new set of challenges endangering their rights protected by the Covenant, which is different from the situation in the 1960s when the Covenant was being drafted. In spite of this fact, the Covenant today still has a role in protecting the cultural diversity and heritage of minorities from structural assimilation.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes the State party's argument that another communication on the same matter has been submitted on the same matter by two members of the Parliament to the CERD. The Committee recalls that, for the purposes of article 5(2)(a), "the same matter" concerns the same authors, the same facts and the same substantive rights. The Committee notes that the communication presented before the CERD was not submitted by the same authors. Therefore, the Committee concludes that the same matter is not being examined under another procedure of international investigation or settlement pursuant to article 5(2)(a) of the Optional Protocol.

8.3 The Committee notes the State party's contention that the current President of the Sami Parliament, Ms. Sanila-Aikio, has submitted another communication on the same

¹⁵ *Lovelace v. Canada* (CCPR/C/OP/1 at 83), para. 15.

matter before this Committee on her own behalf. The Committee recalls that on 28 March 2017 it found that communication admissible in so far as the author brought it on her own behalf. That communication accordingly was not submitted by the same authors.

8.4 The Committee notes the State party's claim that the authors of the communication have not exhausted domestic remedies under article 5(2)(b) of the Optional Protocol. The Committee notes that the decisions accepting persons as entitled to vote, contrary to the decision of the Election Committee, were rendered by the Supreme Administrative Court, which is the highest domestic appellate court for administrative matters. It also notes the State party's submission that annulment of that court's decision may be requested from the court itself as an extraordinary appeal. The Committee further notes the authors' submission that it is not possible for Sami individuals to enter into a process concerning other persons' applications to enter the electoral roll, which is a confidential procedure, and that the extraordinary appeal to the Supreme Administrative Court's decisions is reserved to the parties in that process. The Committee further notes the authors' submission that the Sami Parliament appealed the 2011 decisions of the Supreme Administrative Court, but this appeal was rejected. The State party has not contested these submissions. The Committee considers that the State party has not demonstrated that an effective remedy was reasonably available to the authors. Accordingly the Committee finds that article 5(2)(b) of the Optional Protocol does not preclude it from considering the communication.

8.5 The Committee notes the State party's contention that the authors' claims equate to an *actio popularis*: that their claims involve indirect or even hypothetical violations of the rights of the Sami indigenous people in general. The Committee recalls that according to article 2 of the Optional Protocol, only individuals who claim that any of their rights under the Covenant have been violated can submit communications. The Committee further notes that by submitting the communication on their own behalf, the authors bring the communication to the Committee as members of the Sami indigenous people and as voters for the Sami Parliament. The Committee notes that twenty-two of the authors are part of the electoral roll, and two of these are members of the Sami Parliament. The Committee further notes that three of the authors are not part of the electoral roll, including the two Norwegian authors. In the absence of any allegation that these three authors were excluded from the electoral roll against their will or other information to substantiate their claims, the Committee cannot conclude that these three authors are affected by the Supreme Administrative Court decisions regarding membership to an electoral roll in which they are not included and have not sought to be included. Regarding the remaining twenty-two authors included in the electoral roll, the Committee considers that in their individual capacities, they may be affected by issues concerning the functioning of the Parliament and the elections thereto. Accordingly, the Committee considers that the twenty-two authors who are part of the electoral roll are not prevented from submitting a communication to the Committee under article 1 of the Optional Protocol, to the extent that they claim violations of their rights.

8.6 Regarding the authors' claim under article 1 of the Covenant, the Committee recalls its jurisprudence that an author, as an individual, cannot claim under the Optional Protocol to be a victim of a violation of the right of self-determination enshrined in article 1 of the Covenant, which deals with rights conferred to peoples, as such.¹⁶ The Committee also recalls that the Optional Protocol provides for a procedure under which individuals can claim that their individual rights have been violated and that these rights do not include those set out in article 1 of the Covenant.¹⁷ Accordingly, the Committee considers that the authors' claim regarding violations of article 1 of the Covenant is inadmissible under article 1 of the Optional Protocol. Although the Committee does not have the competence under the Optional Protocol to consider a communication alleging a violation of the right to self-determination protected under article 1 of the Covenant, it may interpret article 1, when this is relevant, in determining whether rights protected in parts II and III of the Covenant have been violated.¹⁸

¹⁶ Communication No. 167/1984, *Ominayak and the Lubicon Lake Band v. Canada*, para. 13.3.

¹⁷ General Comment No. 23: Article 27 (Rights of Minorities), paragraph 3.1; Communication No. 1457/2006, *Poma v. Peru*, Views adopted by the Committee on 27 March 2009, para. 6.3.

¹⁸ Communication No. 932/2000, *Guillot et al. v. France*, Views adopted on 15 July 2002, paragraph

8.7 The Committee notes the State party's contention that the authors do not allege violations of their individual rights, have not demonstrated that they directly affected by the alleged violations of the Covenant, have not provided documentary evidence in support of their allegations and have failed to substantiate their claims. The twenty-two authors claim in turn that in determining whether an individual is a member of the Sami indigenous people, the Court departed from the consensual interpretation of the law, that this affected the right of every member of the Sami people to equality before the law under article 26 of the Covenant, and that the Court rulings impeded the enjoyment of their rights under article 27 of the Covenant to use their language and enjoy their culture in community with other members of the group. The Committee further notes the authors' claim that the rulings of the Court accepting the applications to vote of individuals against the decision of the Election Committee corrupted the representative value of the Sami Parliament and affected their rights to effective participation in public affairs. The Committee understands these claims as invoking rights under article 25 of the Covenant.

8.8 The Committee recalls its jurisprudence that any person claiming to be a victim of a violation of a right protected under the Covenant must demonstrate either that a State party has, by act or omission, already impaired the exercise of his right or that such impairment is imminent, basing his arguments for example on legislation in force or on a judicial or administrative decision or practice.¹⁹ The Committee notes that the twenty-two authors are members of the Sami indigenous people, and as such have the right to internal self-determination and to enjoy their own culture and language, including in community with other members of their group. It is also undisputed that the Sami Parliament is the institution established by the State party to guarantee the Sami linguistic and cultural self-government within the Sami Homeland Area and that it may make initiatives and proposals to the State authorities, as well as issue statements. As members of the electoral roll of the Sami Parliament and as two members of that Parliament, the authors have sought to exercise the right take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections for the Sami Parliament.

8.9 The Committee notes that elections to the Sami Parliament take place every four years, that under Section 21 of the Parliament Act, every Sami has the right to vote from 18 years, and that there are currently approximately 6,000 voters on the electoral roll of the Sami Parliament. It also notes the authors' contention that the decisions of the Supreme Administrative Court since 2011 altered the formal rules for determining membership in the electoral roll, thus impeding the right to internal self-determination of the Sami indigenous people, and that the decisions could, at least theoretically, lead to the inclusion of 512,000 non-Sami persons in the electoral roll of the Sami Parliament. The Committee further notes the authors' submission, which is not contradicted by the State party, that there are already applications to the Sami electoral roll for the 2019 elections, with many anti-Sami organisations offering help to ethnic Finns to apply and eventually appeal to the Supreme Administrative Court and that there could be an economic interest in massively including non-Sami individuals in the electoral roll of the Sami Parliament to ensure its acceptance of large-scale projects of mining, mass tourism and infrastructures. The Committee considers that in their individual capacities, the twenty-two authors may be affected by issues concerning the electoral roll of the elections to the Parliament, which may have imminent repercussions for the Parliament's capacity to represent the Sami indigenous people and to protect the authors' rights to participate in the conduct of public affairs as members of that indigenous community. Accordingly, the Committee considers that the twenty-two authors, as members of the Sami indigenous people and the electoral roll may be affected, as individuals, by the Court rulings regarding the electoral roll of the Sami Parliament.

8.10 Accordingly, the Committee considers that, for the purpose of admissibility, the claims of the 22 authors are adequately substantiated and that it is not prevented, under article

13.4 ; Communication No. 547/1993, *Mahuika et al v. New Zealand*, Views adopted on 27 October 2000, para. 9.2.

¹⁹ *Rabbae v. Netherlands* (CCPR/C/117/D/2124/2011) (2017), para. 9.5, citing *Andersen v Denmark*, para. 6.4, and communication No. 1879/2009, *A.W.P. v. Denmark*, Views adopted on 1 November 2013, para. 6.4.

1 of the Optional Protocol, from examining the present communication with respect their claims regarding articles 25, 26 and 27 of the Covenant.

8.11 In view of the foregoing the Committee considers that the twenty-two above-mentioned authors' claims under articles 25, 26 and 27 of the Covenant are admissible.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5(1) of the Optional Protocol.

9.2 The Committee notes the authors' allegations that the Supreme Administrative Court departed from statutory law and the consensual definition of Sami membership for purposes of establishing the electoral roll, in violation of articles 25 and 27 of the Covenant. They further argue that the Court decisions corrupted the representative value of the Sami Parliament, affecting their rights to effective participation in public affairs and to exercise their right to internal self-determination and negatively impacting the authors' and the Sami people's use of their language and enjoyment of their culture in community with other members of the group. According to the authors, these decisions have increased division within the Parliament, which has become less effective in promoting and protecting the rights of the Sami people, and risk further diluting the membership of the Sami indigenous people in the electoral roll of the Parliament, including in the forthcoming election. The authors claim that the criteria applied by the Court had no reasonable and objective justification, in violation of their rights under the Covenant.

9.3 With respect to article 25, the Committee notes the State party's argument that the Supreme Administrative Court's review is established by law and that the State party has taken all measures to ensure that all persons entitled to vote are able to exercise that right in full compliance with article 25 of the Covenant. The State party's contends that it fully respects self-identification as a criterion for the determination of a group of people or an individual as indigenous, in compliance with CERD recommendations. The Committee also notes the authors' assertion that the State party fails to acknowledge the CERD Committee's concern that the definition adopted by the Court gives insufficient weight to the Sami people's rights to determine their own identity or membership in accordance with their customs and traditions and their right not to be subjected to forced assimilation or destruction of their culture, as recognized under articles 33 and 8 of the UN Declaration on the Rights of Indigenous Peoples.²⁰

9.4 The Committee notes that a process is currently ongoing to amend the Sami Parliament Act, including the criteria to determine the right to vote. The Committee also notes the authors' contention that this process is not likely to be finalised by the next elections and that there have been many attempts to study the matter, with very little result.

9.5 The Committee recalls that, according to its General Comment No. 25 on article 25 of the Covenant, "Any conditions which apply to the exercise of the rights to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections should be based on objective and reasonable criteria."²¹ The Committee also recalls its jurisprudence in *Lovelace v. Canada*, that the category of persons belonging to an indigenous people may in some instances need to be defined to protect the viability and welfare of a minority as a whole.²² In *Kitok v. Sweden*, the Committee considered that "a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification and to be necessary for the continued viability and welfare of the minority as a whole".²³

²⁰ CERD, Concluding observations regarding the 20th to 22nd periodic reports of Finland, CERD/C/FIN/CO/20-22 (23 October 2012), para. 12.

²¹ General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) (CCPR/C/21/Rev.1/Add.7).

²² *Lovelace v. Canada* (CCPR/C/OP/1 at 83), para. 15.

²³ See *Kitok v. Sweden* (CCPR/C/33/D/197/1985), para. 9.8.

9.6 The Committee recalls that under article 33 of the UN Declaration, “indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions (...) and the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.” Article 9 of the UN Declaration provides that “Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.” According to Article 8(1) of the Declaration “indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”

9.7 In this context, the Committee notes that according to section 3 of the Parliament Act, for a person to be considered as a Sami for the purposes of being allowed to vote in the elections for the Parliament, he or she must “consider[] himself a Sami provided: (1) that he himself or at least one of his parents or grandparents has learned Sami as his first language; (2) that he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or (3) that at least one of his parents has or could have been registered as an elector for an election to the Sami Delegation or the Sami Parliament”. The Committee also notes that, as undisputed by the parties, in a majority of cases the Supreme Administrative Court stated explicitly that the person did not meet any of the objective criteria spelled out in Section 3.

9.8 The Committee recalls its General Comment No. 23 on article 27 that the exercise of cultural rights manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.²⁴ The Committee further observes that article 27, interpreted in light of the UN Declaration and article 1 of the Covenant, enshrines an inalienable right of indigenous peoples to “freely determine their political status and freely pursue their economic, social and cultural development.”²⁵ Article 1 and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.²⁶

9.9 The Committee notes that, according to the State party, the authors failed to establish in what way they had been directly affected by the Supreme Administrative Court rulings. It also notes the authors’ request that the Committee take into account the individual and collective dimensions of their rights. In this regard, the Committee recalls its General Comment No. 23 on the rights of minorities under article 27, which recognises that “the protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant.”²⁷ Moreover, “although the rights protected under article 27 are individual rights, they depend in turn on the ability of the group to maintain its culture, language or religion.”²⁸ The Committee further recalls that the preamble of the UN Declaration establishes that “indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples”. In view thereof, the Committee considers that in the context of indigenous peoples’ rights, articles 25 and 27 have a collective dimension and some of them can only be enjoyed in community with others. The

²⁴ General Comment No. 23: The rights of minorities (Art. 27) (CCPR/C/21/Rev.1/Add.5) (1994), para. 7.

²⁵ UN Declaration on the Rights of Indigenous Peoples, article 3; article 4 (“Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs”). See also General Comment No. 12, Article 1 (right to self-determination) (1984), para. 2.

²⁶ General Comment No. 12, para 2.

²⁷ General Comment No. 23, para. 9.

²⁸ General Comment No. 23, para. 6.

rights to political participation of an indigenous community in the context of internal self-determination under article 27 read in light of article 1 of the Covenant, and in pursuance of the preservation of the rights of members of the community to enjoy their own culture or to use their own language in community with the other members of their group, are not enjoyed merely individually. Consequently, when considering the individual harm in the context of this communication, the Committee must take into account the collective dimension of such harm. With respect to dilution of the vote of an indigenous community in the context of internal self-determination, harm directly imposed upon the collective may injure each and every individual member of the community. The authors are members of an indigenous community and all of their claims are related to their rights as such.

9.10 The Committee notes the authors' claims that owing to the Parliament's mandate, the effective functioning and the capacity to adequately represent the views of the Sami are essential for the implementation by the State party of articles 25 and 27 of the Covenant, and that the Parliament is an important instrument for the Sami, individually and collectively, to enjoy and exercise these rights. The Committee notes that the powers of the Sami Parliament include looking after the Sami language and culture as well as taking care of matters relating to the Sami's status as an indigenous people; to act as representative of the Sami people nationally and internationally in matters pertaining to its tasks; and to be consulted by all authorities in a long list of matters that concern the Sami as an indigenous people or developments within the Sami homeland. The Committee accordingly considers that the Sami Parliament constitutes the institution by which the State party ensures the effective participation of the members of the Sami people as an indigenous community in the decisions that affect them. Consequently, the State party's obligations contained in article 27 depend on the effective role that the Sami Parliament may play in decisions that affect the rights of members of the Sami community to enjoy their own culture or to use their own language in community with the other members of their group. The electoral process for the Sami Parliament accordingly must ensure the effective participation of those concerned in the internal self-determination process, which is necessary for the continued viability and welfare of the indigenous community as a whole. Pursuant to article 25, the Committee also considers that statutory restrictions affecting the right of members of the Sami indigenous community to effective representation in the Sami Parliament must have a reasonable and objective justification and be consistent with the other provisions of the Covenant, including the principles of internal self-determination relating to indigenous peoples.

9.11 In the current case, the twenty-two authors are members of the Sami people and participate in the electoral process. The Committee observes the authors' uncontested submissions that the decisions of the Supreme Administrative Court, from 2011 onwards, departed from the consensual interpretation of Section 3 of the Sami Parliament Act for determining membership in the electoral rolls of that Parliament. In particular, in the majority of cases the Supreme Administrative Court ignored the requirement of satisfaction of at least one of the objective criteria, instead resorting to an "overall consideration" of a person's own "strong" opinion in considering themselves a Sami and that the Supreme Administrative Court thereby infringed on the capacity of the Sami people, through its Parliament, to exercise a key dimension of Sami self-determination in determining who is a Sami. The Committee further notes the authors' contentions regarding risk of greater dilution of Sami representation through the electoral rolls in the near term (para. 7.3). The Committee considers that the Supreme Administrative Court rulings affected the rights of the twenty-two above-mentioned authors and of the Sami community to which they belong to engage in the electoral process regarding the institution intended by the State party to secure the effective internal self-determination and the right to their own language and culture of members of the Sami indigenous people. The Committee further considers that by departing in this manner from the consensual interpretation of the law determining membership in the electoral rolls of the Sami Parliament, the Supreme Administrative Court's interpretation was not based on reasonable and objective criteria. Accordingly, the Committee considers that the facts before it amount to a violation of the authors' rights under article 25, read alone and in conjunction with article 27, as interpreted in light of article 1 of the Covenant.

9.15 Having found the above violations of article 25 read alone and in conjunction with article 27, the Committee does not consider it necessary to examine the authors' other claims under the Covenant.

10. In light of the above, the Committee, acting under article 5(4) of the Optional Protocol, is of the view that the facts before it disclose a violation of article 25, read alone and in conjunction with article 27 of the Covenant.

11. In accordance with article 2(3)(a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to: review Section 3 of the Sami Parliament Act with a view to ensuring that the criteria for eligibility to vote in Sami Parliament elections are defined and applied in a manner that respects the right of the Sami people to exercise their internal self-determination in accordance with articles 25 and 27 of the Covenant, The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State Party, including ensuring their accessibility to the members of the Sami indigenous community.

Opinion individuelle (concordante) de M. Olivier de Frouville.

1. Je suis en accord avec la conclusion à laquelle parvient le Comité dans cette affaire, à savoir qu'il y a eu violation de l'article 25, lu seul et en conjonction avec l'article 27, interprétés à la lumière de l'article 1er du Pacte international sur les droits civils et politiques.

2. La décision sur la recevabilité dans cette affaire apporte des précisions importantes par rapport à celle qui a été adoptée antérieurement par le Comité dans l'affaire n°2668/2015 *Tiina Sanila-Aikio c. Finlande*. Dans sa décision du 28 mars 2017, le Comité constatait « qu'en présentant la communication en son nom propre, l'auteure le saisit en sa qualité de membre du peuple autochtone Sâme et de membre du Parlement Sâme, dont elle est la Présidente. Il est d'avis qu'en tant que telle, elle pourrait être personnellement concernée par tous problèmes relatifs au fonctionnement du Parlement et aux élections législatives. » De même, un peu plus loin dans la même décision, le Comité relevait que « les décisions des institutions de l'État finlandais qui influent sur la composition du Parlement Sâme et sur l'égalité de représentation des Sâmes peuvent avoir des répercussions sur le droit des membres de la communauté Sâme d'avoir leur propre vie culturelle et d'utiliser leur langue avec les autres membres du groupe, ainsi que sur leur droit à l'égalité devant la loi » La décision de recevabilité reposait donc sur le constat de l'existence d'un double lien de causalité : entre les jugements de la Cour suprême administrative, et la composition et le fonctionnement du Parlement Sâme d'une part ; entre la composition et le fonctionnement du Parlement Sâme, et les droits des membres du peuple Sâme en vertu de l'article 27 du Pacte, d'autre part. Or les arguments développés par l'auteur ne venaient pas clairement étayer ce double lien de causalité et la décision du Comité restait tout aussi évasive. Elle ne démontrait pas en quoi l'application du principe d'auto-identification avait véritablement affecté de manière significative la composition du corps électoral et encore moins affecté la composition ou le fonctionnement du Parlement Sâme. Et aucun exemple concret n'était donné pour démontrer que, dans un cas particulier, ces changements dans la composition du corps électoral avaient eu une incidence sur les droits que les membres du peuple Sâme tenaient de l'article 27. Le Comité n'expliquait donc pas clairement en quoi l'auteur pouvait se prétendre « victime » de violations de ses droits tirés des articles 25, 26 ou 27 du Pacte. La présente décision sur la recevabilité vient remédier a posteriori à ce défaut de motivation.

3. D'abord, elle se recentre à juste titre sur les griefs tirés de l'article 25 du Pacte. L'affaire concerne en effet, avant tout, le droit de prendre part à la direction des affaires publiques des membres du peuple Sâme, en tant qu'ils appartiennent à un peuple autochtone – ce qui justifie par ailleurs pleinement que l'article 25 soit lu en conjonction avec l'article 27, mais aussi avec l'article 1er du Pacte. Ce qui est en cause ici, c'est le droit des Sâmes de décider de leur propre identité ou appartenance, conformément à leurs coutumes et traditions, ainsi que leur droit de déterminer les structures et leurs institutions et d'en choisir les membres selon leurs propres procédures, droits qui sont reconnus par l'article 33 de la Déclaration des Nations Unies sur les peuples autochtones. Les décisions de la Cour administrative d'appel ont effectivement eu un impact important sur cette capacité du peuple de régler collectivement sa composition et, par suite, son droit de prendre part à la direction des affaires publiques par l'intermédiaire de représentants élus au sein d'un organe constitué. Et cela d'autant plus qu'avec ces décisions, la Cour n'a pas correctement appliqué la législation nationale, qui mettait pourtant en avant clairement un critère objectif d'appartenance, tel que voulu par les Sâmes eux-mêmes. En n'appliquant pas ce critère et en lui substituant un critère d'auto-identification, dont elle se faisait elle-même l'interprète au cas par cas, la Cour a restreint les droits des Sâmes d'exercer leur droit de prendre part à la direction des affaires publiques dans le contexte des institutions ayant vocation à garantir leurs droits en tant que membres d'un peuple autochtone, tels que garantis à l'article 27 du Pacte.

4. Par ailleurs, la décision sur la recevabilité vient expliciter le lien de causalité existant entre les décisions de la Cour suprême administrative et les droits politiques des Sâmes. Au paragraphe 8.1., le Comité prend note de l'allégation de l'auteur selon laquelle l'application du critère d'auto-identification pourrait potentiellement conduire à l'inclusion dans le corps électoral de 512 000 personnes non reconnues comme Sâmes par le Parlement des Sâmes. Le

Comité note également l'allégation inquiétante, non contestée par l'Etat partie, selon laquelle, des organisations anti-Sâmes, feraient campagne et aideraient des personnes non-Sâmes à soumettre des demandes pour être reconnues en tant que Sâmes et inclus dans le corps électoral, compte tenu des enjeux économiques sous-jacents. Ces éléments de faits justifient à mon sens la qualité de « victime », au moins potentielle, des 22 auteurs reconnus comme tels par le Comité.