

# Convention on the Rights of the Child

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### Committee on the Rights of the Child

## Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 172/2022<sup>\*,\*\*,\*\*\*</sup>

<i>Communication submitted by:</i>	M. E. V., S. E. V. and B. I. V. (represented by Martin Scheinin)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Finland
<i>Date of communication:</i>	12 January 2022
<i>Date of Views:</i>	13 September 2024
<i>Subject matter:</i>	Granting of a mineral exploration permit on Sámi people's traditional territory without impact assessment nor free, prior and informed consent.
<i>Procedural issue:</i>	Victim status; failure to exhaust domestic remedies; substantiation of claims; fourth instance.
<i>Substantive issues:</i>	No discrimination; right to identity; right to health; right to a standard of living adequate; right to culture.
<i>Articles of the Convention:</i>	2.1, 8, 24, 27 and 30.
<i>Articles of the Optional Protocol:</i>	7 (e) and (f)

\* Adopted by the Committee at its ninety-seventh session (26 August-13 September 2024)

\*\* The following Committee Members participated in the examination of the communication: Suzanne Aho, Thuwayba Al Barwani, Aissatou Alassane Sidiku, Hynd Ayoubi Idrissi, Mary Beloff, Rinchen Chopel, Rosaria Correa, Bragi Gudbrandsson, Philip Jaffé, Sopia Kiladze, Otani Mikiko, Luis Ernesto Pedernera Reyna, Ann Marie Skelton, Velina Todorova, Benoit Van Kiersbilck and Tatou Zara.

\*\*\* Two individual opinions by Committee members Rosaria Correa Pulice and Ann Skelton (concurring and partially concurring) are annexed to the present Views.



1.1 The authors of the communication, dated 12 January 2022, are M. E. V. (born on 3 March 2005), S. E. V. (born on 3 January 2007) and B. I. V. (born on 19 November 2008). They are three sisters belonging to the Sámi People and specifically members of the Kova-Labba Siida, a community of reindeer herders. The authors submit that their rights under articles 8, 27 and 30 of the Convention, all interpreted in the light of article 24 and all read alone and in conjunction with article 2.1, have been violated by the State party in permitting a mineral exploration project on their traditional territory without proper impact assessment and without obtaining the free, prior and informed consent of their community. The authors requested the adoption of interim measures to halt the exploration works. The Optional Protocol entered into force for the State party in November 2015. The authors are represented by counsel.

1.2 On 17 January 2022, pursuant to article 6 of the Optional Protocol, the Committee, acting through its Working Group on Communications, registered the communication and decided to request the State party to submit preliminary observations on the authors' request for interim measures within 10 days or prior to the commencement of drilling on the authors' traditional territory. On 27 January 2022, the State party informed that the implementation of the permit was suspended in response to the interim measures issued by the Committee on Economic, Social and Cultural Rights in its communication 251/2022 concerning the same Sámi siida (community). On 15 March 2022, the Committee, acting through its Working Group on Communications, decided not to issue a request for interim measures.

1.3 On 17 March 2022, the State party requested the Committee to examine the question of admissibility separately from the merits. On 7 November 2022, the Committee, acting through its Working Group on Communications, decided, pursuant to rule 18, paragraph 6, of its Rules of Procedure under the Optional Protocol, to examine the admissibility of the communication together with its merits.

### **Factual background<sup>1</sup>**

2.1 The authors are three sisters aged 13, 15 and 16 at the time of submission, members of a multigenerational Sámi reindeer herding family from the Kova-Labba Siida, which is one of the three traditional reindeer herding villages part of the Käsivarsi Reindeer Herders' Cooperative<sup>2</sup>. The Kova-Labba Siida represents the Sámi reindeer herding culture in Finland, based on semi-nomadic herding of relatively small herds by small kin or village-based ("siida" in Sámi language) groups of herders, living there since time immemorial.

2.2 The authors submit that the Sámi way of life is being challenged by outside threats to their culture, such as mining, tourism, wind farms and the rapidly changing environment.<sup>3</sup> In particular, their family have been forced to start providing additional food to the reindeer as the winters have varied during the authors' lifetime, while additional feeding -with methods more similar to cattle breeding- does not belong to traditional Sámi reindeer herding. The

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<sup>1</sup> The information complementing the facts presenting by the authors are found in Annexes 1 and 2 (Decision from 7 July 2016 of the Safety and Chemicals Agency to grant a mineral exploration permit and translation summary); Annexes 3 and 4 (appeal submitted on 8 August 2016 before the Administrative Court of Northern Finland by the Käsivarsi Reindeer Herders' Cooperative and translation summary); Annexes 5 and 6 (Judgment by the Administrative Court of Northern Finland from 19 December 2018 and translation summary); Annexes 7 and 8 (request for leave of appeal and appeal at the Supreme Administrative Court, submitted by the Käsivarsi Reindeer Herders' Cooperative and Finnish Association for Nature Conservation on 18 January 2019, and translation summary); and Annexes 9 and 10 (Judgment by the Supreme Administrative Court from 21 June 2021 and translation summary).

<sup>2</sup> The cooperative is a State party' administrative division.

<sup>3</sup> Referring to the findings in *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019), the authors mention that the fact that Finland's CO<sub>2</sub> emissions put it on place 57 among all countries in absolute terms, and 29 per capita, as responsible for climate change, is an argument of why the mineral exploration project object of the current communication violates the Convention in the current circumstances created by climate change. While the authors understand that mitigating climate change requires replacing fossil fuels with renewable energy, they fear that badly chosen forms of such transition may have serious impact on their culture if the transition entails mining (to get battery minerals for electric cars and solar panel systems) and windmill parks in the Sámi territory which already is subject to other great pressures.

authors are nevertheless determined to learn the traditions of Sámi reindeer herding, which is a cornerstone of Sámi culture and way of life. Reindeer herding has been the culture, livelihood, heart and soul of their family for centuries. As such, they participate during weekends and school holidays in reindeer herding. During the summer, they participate in the earmarking of reindeer calves; their father has taught them in their early age how to cut their own individual earmark and each has her own registered reindeer earmark based on the earmarks used in the family for centuries. The authors are also actively teaching and involving their younger brothers to the Sámi way of life and reindeer herding.

2.3 The authors have also learned since early age, from elder family members, the traditional Sámi way of singing (*luohti yoik*), used by women in the fells during their reindeer watch, to scare away predators. In addition, as girl children, they bear a special responsibility in accordance with Sámi traditions for the production of traditional Sámi handicrafts (*duodji*). Since early age, the authors have been taught by elder female family members and now create themselves everything, from traditional reindeer fur boots (*nuvttohat*) to traditional outfit worn in ceremonial contexts (*gákti*). As reindeer provides a range of materials for traditional handicrafts, including fur, skin, veins and bones, if traditional reindeer herding is lost, the Sámi culture will suffer as well. In the same way, their mother tongue, Northern Sámi, is a language deeply rooted in nature: the whole vocabulary used in reindeer herding is in Northern Sámi,<sup>4</sup> so children do not learn the special vocabulary of the language otherwise than by being part of the reindeer herding community. There is no future for their mother tongue if there is no place for traditional reindeer herding because of activities negatively affecting their ancestral territories.

2.4 On 28 March 2014, the Geological Survey of Finland (an agency under the Ministry of Economic Affairs and Employment), applied for the mineral exploration permit called “Lätäs 1”, requesting permission for the exploration works of gold, copper and iron entailing the drilling of 100 to 300 metres deep holes into the bedrock in about 20 different locations within an area of 390 hectares in the authors’ traditional reindeer herding territory.

2.5 As the Mining Act<sup>5</sup> requires the State party to identify impacts of mining or exploratory activities on the right of the Sámi to maintain their culture, the Safety and Chemicals Agency (the State party’s mining authority) sought written comments in October and November 2014 from the Sámi Parliament and the Käsivarsi Reindeer Herders’ Cooperative and invited them to participate in meetings on 17 May 2015 and 17 May 2016. The Kova-Labba Siida was not specifically invited to provide comments or to participate in the meetings.

2.6 The Käsivarsi Reindeer Herders’ Cooperative, acting on behalf of its members - including the authors-, opposed the approval of the permit due to the harm that the mineral exploration works would cause to them and due to the lack of effort from the State party to obtain their free, prior and informed consent. The Sámi Parliament stated in three occasions<sup>6</sup> that, given the lack of an impact assessment of the consequences for Sámi reindeer herding<sup>7</sup>, the basic preconditions for a free, prior and informed consent did not exist. Indeed, only once the assessment has been completed shall the State party’s mining authority request the opinion of the Sámi Parliament.

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

2.8 The exploration area is planned to be located in the heart of the authors’ winter-herding lands and to happen every year in winter, while, according to the authors, it is the worst possible period of time as regards traditional reindeer herding. Indeed, the winter months are the most critical ones for the survival of the reindeer that have to dig through the

<sup>4</sup> For instance, there are over 200 words only for snow; every shape of nature and every landscape is known only in Sámi language.

<sup>5</sup> 621/2011.

<sup>6</sup> 13 November 2014, 15 December 2014 and 22 June 2016.

<sup>7</sup> While the State party’s mining authority must, in accordance with the Administrative Court decision 2014:111, assess the impact of the project on the rights of the Sámi as an Indigenous People.

thick snow in order to reach ground lichen or, where pristine forests can be found, feed on the lichen that grows on the branches of old trees. According to the authors, winter and spring-winter are therefore challenging seasons for reindeer and reindeer herding because the snow cover is at its thickest; to get the reindeer to graze during winter is very sensitive work and the grazing can be easily disturbed<sup>8</sup>. Moreover, the project entails bringing into the pristine nature one-ton drilling machines and five-ton support vehicles that would provide a water source for the drilling. The authors note that the machines, the workers and the tracks left in the snow would cause great harm to the reindeer and their Sámi herders: the herds may follow such tracks or be dispersed by the sight and noises, and the exploration project would therefore make Sámi reindeer herding unsustainable due to a collapse of the system. As explained by the chairperson of the Käsivarsi Reindeer Herders' Cooperative,

“Reindeer follow tracks in the snow and all unknown tracks cause trouble to traditional reindeer herding [...] reindeer [could end in] areas that do not contain favorable conditions for digging and finding food [...] reindeer start losing weight [...] losing important male reindeer (bull) lead to lesser calves, losing female, mother reindeer (cow) lead to losing calves and the effects last for years [...] These kinds of threats and fears, that we have to fight for our culture's survival the whole time and despite fighting there is no certainty of our future, they affect negatively our youngsters believe in their future in reindeer herding”.

2.9 According to the authors, the Safety and Chemicals Agency granted the permit to Geological Survey Finland without proper impact assessment and without proper involvement of their reindeer herding community. At no stage was there even a proper assessment made of the adverse impact upon reindeer herding in the area affected by the exploration works. According to the authors, the obligations arising from the Mining Act on the impact assessment must be interpreted in light of international standards on Indigenous rights<sup>9</sup>. Furthermore, while the performance of an assessment requires an understanding of the Sámi culture, neither the Safety and Chemicals Agency nor Geological Survey of Finland are familiar with the Sámi culture, ending in regulations in the exploration permit intended to decrease damage to reindeer herding impossible to enforce, as “the permit holder shall see to it that the momentarily visible tracks created by snowmobiles or tracked vehicles will not increase the unmanaged moving of reindeer from one area to another”. According to the authors, the impact assessment was substituted by a *pro forma* consultation that did not entail a good faith effort to obtain their free, prior and informed consent. On the absence of effective participation of the Sámi, considering that it is based on an independent impact assessment that they could efficiently be consulted, the procedure applied before issuing the permit did not meet the standards of free, prior and informed consent. Moreover, representatives from the Kova-Labba Siida were not invited to the negotiation meeting (two representatives from the cooperative were heard but they are not members of the village that herds reindeer in the exploration area).

2.10 Therefore, on 8 August 2016, the chairperson of the Käsivarsi Reindeer Herders' Cooperative (on behalf of all members of the cooperative, including the authors), appealed against the decision of 7 July 2016 to the Administrative Court of Northern Finland, together

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<sup>8</sup> The authors submit that, while traditional Sámi reindeer herding is dependent on normal -varying but predictable- winter and snow conditions (conditioning the reindeer's ability to graze and eat), reindeer body mass decreases during winters with difficult snow conditions, resulting in reduced calf production in the spring and early miscarriages. Good grazing conditions are formed when the snow is dry and granular in early winter, the ground is properly frozen before snowfall and the snow cover has not frozen over the vegetation; these conditions keep the vegetation edible and available for reindeer to smell lichen and dig through the snow.

<sup>9</sup> The Preamble, para 10, of the UN Declaration on the Rights of Indigenous Peoples reads that “control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs”; article 32, para 2, reads that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”.

with the Sámi Parliament and the Lapland Branch of the Finnish Association for Nature Conservation.

2.11 On 19 December 2018, the Administrative Court of Northern Finland dismissed the appeal and upheld the exploration permit, pointing to the involvement of the Sámi Parliament and the Käsivarsi Reindeer Herders' Cooperative in the permit procedure.

2.12 On 18 January 2019, the Käsivarsi Reindeer Herders' Cooperative (on behalf of all members of the cooperative, including the authors), the Sámi Parliament and the Lapland Branch of the Finnish Association for Nature Conservation, filed a request for leave of appeal and an appeal before the Supreme Administrative Court.

2.13 On 21 June 2021, the Supreme Administrative Court rejected the appeal, considering that: i) consulting the Sámi was sufficient for purposes of the Mining Act; ii) the regulations imposed in the exploration permit intended to decrease possible damage to reindeer herding (works outside of the calving season, limited in time important for reindeer husbandry, and only when the location of possible reindeer has been cleared in advance), were sufficient; and that iii) the surface area of the exploration works was relatively small-scale. But the Court compared the exploration area not against the size of the Kova-Labba Siida, the community directly affected [we do not have the extension of the specific siida], but against the size of the three communities composing the Käsivarsi Reindeer Herders' Cooperative.

2.14 According to the authors, the exploration works would cause unpredictable adverse consequences for the continuity of their culture, limiting their ability to benefit from the transmission, from older generations, of Sámi culture and associated work and livelihood. As the continuance of the Sámi children culture and way of life is strongly dependent on traditional reindeer herding, if traditional reindeer herding is lost due to additional threats on it -allowed by the State party as mineral exploration works which are further aggravating the situation and destroying the sustainability of reindeer herding-, their identity, standard of living adequate, language, and more broadly their culture, will suffer and be lost as all those elements are grounded in living with reindeer.

2.15 The authors submit that, even though other members from their siida have submitted a communication to the Committee on Economic, Social and Cultural Rights that addresses the same mineral exploration project, they decided to submit their own communication to the Committee on the Rights of the Child in order to address their individual circumstances as female Indigenous children beneficiaries of the unhindered intergenerational transmission of the Sámi culture and way of life. The authors emphasise that the right of an Indigenous child to the transmission, from generation to generation, of an Indigenous identity, way of life and traditional economic activity, constitutes a core dimension of the rights of Indigenous children. Therefore, according to the authors, the communication before the Committee on Economic, Social and Cultural Rights relates not only to different victims but also to a different set of human rights violations.

2.16 The authors further submit that all domestic remedies have been exhausted as, in their opposition to the granting of the exploration permit and subsequent appeals before domestic courts, they explicitly invoked 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, to work or livelihood of their choice, and more generally their right to provide their free, prior and informed consent to activities harmful for the continuity of their culture. The authors also submit that their actions before the Supreme Administrative Court also included testimonies on the threats to reindeer herding that affect the youth's perception of their possibilities to continue in reindeer herding, as well as on the significant importance that reindeer herding has on how traditional knowledge is maintained and protected for future generations.

### **The complaint**

3.1 The authors claim that the mineral exploration works would violate their right to enjoy their own culture in community with other Sámi (article 30), their right to identity as Sámi (article 8), their right to an adequate standard of living based on reindeer herding (article 27), all interpreted in the light of article 24 (health) and all read alone and in conjunction with article 2.1 (non-discrimination).

3.2 In particular, the authors submit that the granting of the permit despite their consistent opposition and in the absence of impact assessment, infringes their right to preserve their identity (article 8 of the Convention) as Sámi because, where the preconditions of continued membership and participation in the way of life of a Sámi reindeer-herding community become unsustainable due to external interferences in the Sámi use of their lands and resources, the Indigenous identity is denied.<sup>10</sup>

3.3 On the violation of article 27 of the Convention, the authors submit that the granting of the permit despite their consistent opposition and in the absence of impact assessment may deprive them of a standard of living based on reindeer herding.<sup>11</sup>

3.4 The authors further submit that, in a situation where the sustainability and transmission to new generations of Sámi reindeer herding culture is already under threat (the violation needing to be assessed in the context of cumulative effects of earlier interventions in their territory and now aggravated by ongoing climate change), any new intervention allowed by the State party also amounts to a violation of their right, as Indigenous children, individually and in community with each other and other Sámi, not be denied the right to enjoy their own culture, as protected by article 30 of the Convention, specifically if undertaken without their free, prior and informed consent.<sup>12</sup>

3.5 The authors further submit that all above-mentioned provisions should be interpreted in the light of article 24 of the Convention, mentioning in particular General Comment No. 15, paragraphs 2, 5, 7 and 50.

3.6 The authors finally submit that all above-mentioned provisions should be read alone and in conjunction with article 2.1 of the Convention. On their right not to be discriminated against, the authors submit that their status as children members of the Sámi People, together with the persistent denial of their right to their traditional lands, makes them subject to substantial, indirect and systematic discrimination in respect of the unilateral power of the State party to conduct (Geological Survey Agency), authorize (Safety and Chemicals Agency) and uphold (the Courts) mineral exploration works in their traditional territory without the free, prior and informed consent of their community. In addition, according to the authors, the discriminatory nature of the Mining Act is demonstrated through the fact that, as the State has declared itself as the owner of Sámi lands, it will receive annual compensation from its own agency -Geological Survey Agency- while, in contrast, the Sámi (who are not recognized as owners of their traditional lands) will receive no compensation for the adverse impact upon their lands. Clarifying that this does not imply that they would accept monetary compensation as an adequate remedy, the authors claim that no other landowner than the Sámi is in the same situation that even their right to compensation is denied.

#### **State party's observations on admissibility**

4.1 In its observations of 17 March 2022, the State party submits, first, that it has no reasonable cause to differ from the position of the Supreme Administrative Court, as the Sámi had opportunity to participate in the permit procedure where a mutual agreement was reached, and that, taken as a whole, the exploration area is relatively small-scale. Secondly, the State party submits that the Mining Act is not discriminatory as the legislation applies to both Sámi and Finnish landowners, and that the authors cannot pretend to receive a compensation as they are not the owners of the lands (owned by the State). Third, the State party indicates that Geological Survey of Finland conducts self-financed geological research for the needs of businesses and society in general; it does not conduct mining but survey the bedrock to map the mineral potential in the region, focusing on data collection.

4.2 The State party also recalls some relevant domestic legislation. Firstly, the Constitution provides that the Sámi have linguistic and cultural self-government in their native region and that their right to maintain and develop their own language and culture is a safeguard of 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-

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<sup>10</sup> The authors refer to paragraphs 18 and 44 of the Committee's General Comment 11.

<sup>11</sup> They refer to paragraph 34 of General Comment No. 11.

<sup>12</sup> They refer to paragraphs 16, 17, and 29 of General Comment No. 11.

determination not only with article 1 of the Covenant but also with its article 27, which served as a model for the Constitution of Finland. Secondly, the Act on the Sámi Parliament obligates public authorities to negotiate with the Sámi Parliament “in all far-reaching and important measures which may directly and in a specific way affect the status of the Sámi as an indigenous people”<sup>13</sup>. In November 2017, the Ministry of Justice issued a memorandum-prepared with the Sámi Parliament- on the obligation to negotiate under the Act on the Sámi Parliament, according to which consensus must be sought in all negotiations between public authorities and the Sámi Parliament. Thirdly, the Mining Act provides that the permit authority shall “establish the impacts caused by [the planned activities] on the rights of the Sámi as an indigenous people to maintain and develop their own language and culture and shall consider measures required for decreasing and preventing damage”, assessing “the damage caused to reindeer herding through activity under the permit”. A permit must not be granted if activities under the permit “would cause considerable harm to reindeer herding” or “substantially undermine the preconditions for engaging in traditional Sámi sources of livelihood or otherwise to maintain and develop the Sámi culture”.<sup>14</sup>

4.3 On the admissibility, the State party submits that the communication has an *actio popularis* nature, as Geological Survey Agency did not take any practical measures after receiving the exploration permit, so the authors have not yet been personally affected by the permit. The communication is therefore premature and the alleged violations are mainly hypothetical. Linking this point to the merits of the case, the State party, while acknowledging that article 30 of the Convention, in the same way as article 27 of the International Covenant on Civil and Political Rights, guarantees the right to transfer culture and language to the next generations, which is a precondition for the maintenance and development of culture (so it is of paramount importance to transfer traditional reindeer herding -relevant to the Sámi language, too- to the next generations), submits that transferring Sámi culture to Sámi children is becoming increasingly difficult because even 70 per cent of all Sámi children now live outside the Sámi Homeland.

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

4.5 Lastly, the State party claims that the communication is manifestly ill-founded, the authors having failed to substantiate in which way their rights under each of the articles of the Convention have been violated. The State party links the previous with the argument that the core of the communication appears to be the authors’ dissatisfaction with the outcome of the domestic proceedings, while it is not the role of the Committee to act as a fourth instance.

#### **Authors’ comments on the State party’s observations**

5.1 In their comments of 5 May 2022, completed on 26 September 2022, the authors observe that various of the State party’s observations on admissibility are matters pertaining to the merits of the case and represent ignorance of the nature and *rationale* of Indigenous Peoples’ rights. In particular, the State party misunderstands the claim on article 2.1 of the Convention. As explained by the CERD, it is precisely because they are Sámi that they must be treated differently from non-Sámi users of so-called government lands; the mining legislation discriminates against the Sámi reindeer herders specifically, not by treating them differently from the rest of the population but by not doing so, ignoring the particularities of the Sámi cultural identity, traditional livelihoods and dependence on reindeer herding for survival.<sup>15</sup>

5.2 According to the authors, another matter pertaining to the merits of the case and representing ignorance of reindeer behaviour and Sámi reindeer herding is the State party’s assertion, repeating the finding of the Supreme Administrative Court, that, taken as a whole, the exploration area is relatively small-scale or temporary. Indeed, disrupting the herding in the critical time of the winter months in the scarce winter herding pastures would cause

<sup>13</sup> Section 9.

<sup>14</sup> Section 38.

<sup>15</sup> *Cf.* CERD/C/102/D/54/2013, para. 6.7, 6.12, 6.23.

permanent damage to the reindeer herds and to Sámi reindeer herding (*supra* para. 2.8). Moreover, the critical significance of the area is larger than ever before due to the cumulative effects of other competing uses by third parties of their traditional lands (*supra* para. 2.1).

5.3 The authors contend that the State party's submission that Geological Survey Agency would have merely a scientific mission is also misleading. According to the authors, a crucial admission by the State party is made where it confirms that the mission of Geological Survey Agency includes serving the "needs of businesses and society in general" (*supra* para. 4.1). While Geological Survey Agency does not properly engage in mining, its activities promote "the competitiveness of business and areas"<sup>16</sup> and pave the way for companies interested in exploiting the mineral resources. Geological Survey Agency indicated in its permit application to be looking precisely for Copper, Iron and Gold, and the permit was granted for the purpose of exploring the deposits of these metals, not in pursuit of some scientific mission. To illustrate the fact that Geological Survey Agency pave the way for companies, the authors inform that, on 20 April 2022, the Safety and Chemicals Agency granted a new area reservation in their Kova-Labba siida, called "Ruossakero", to a company which stated its intention to survey the area for Nickel, Copper and Cobalt. While the authors are not seeking to include this new fact in the communication, this is brought to the attention of the Committee to support how the State party first conducts preliminary surveying and then private companies take the projects further.

5.4 The State party's submission is also misleading on the memorandum prepared by the Ministry of Justice in November 2017 on *consensus* that must be sought in all negotiations between public authorities and the Sámi Parliament (*supra* para. 4.2). Not only it has no force of law, but it postdates the consideration of the exploration permit subject to the communication and was not applied subsequently by the two courts, satisfied with mere formal consultation of the Sámi.

5.5 On the State party's argument on alleged lack of victim status, the authors submit that the violations 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 when the Supreme Administrative Court upheld that permit. The authors further mention the Human Rights Committee's Views in *Daniel Billy et al. v. Australia* in which the risk of impairment of the authors' rights was more than a theoretical possibility because those authors' lives are highly dependent on the availability of the limited natural resources to which they have access to<sup>17</sup>. According to the authors, taking into account the intergenerational nature of Indigenous peoples' right to transmit their culture to new generations, it is precisely because a chain of cultural transmission is interfered with much earlier than an Indigenous culture is destroyed (through action or inaction), that the admissibility conditions of victimhood and substantiation are met already at the point of time when such interference with cultural transmission occurs.

5.6 On the State party's argument on alleged lack of exhaustion of domestic remedies, the authors claim that they did raise in the domestic proceedings climate change arguments but that they have raised the issue of climate change before the Committee not to include a claim that climate change as such would constitute a violation of the Convention but only to substantiate their claims under articles 8, 27 and 30.

5.7 On the State party's argument that the communication is manifestly ill-founded and seek the Committee to act as a fourth instance, the authors submit that the State party is mistaken in its opinion that the domestic courts would have appropriately addressed their rights, as the Supreme Administrative Court was both formalistic and wrong in stating that the international standard of free, prior and informed consent would have been met by merely giving the Sámi an opportunity to be heard.

#### **State party's observations on admissibility and merits**

6.1 On 18 July 2022, the State party reiterated its observations on admissibility.

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<sup>16</sup> Section 2 of the Act on the Geological Survey Agency.

<sup>17</sup> CCPR/C/135/D/3624/2019, para. 7.10 and 8.14.



6.2 On the merits, the State party first indicates that a working group has prepared a reform to the Act on the Sámi Parliament proposing that the current obligation to negotiate be strengthened in order to implement the international standard of free, prior and informed consent.

6.3 The State party further submits that the mineral exploration is a momentary event, that the research on individual sites does not cause a significant disturbance to the outside of that site, that research activities must not cause far-reaching effects, and that one-time surveys do not cause long-lasting effects. The State party claims that, in its exploration permit decision, the Safety and Chemicals Agency has complied with the Mining Act by setting several conditions under which the exploration can be done, aiming at reducing the harm caused to reindeer herding: exploratory drilling may only be carried out outside of the calving season of reindeer; are limited at certain points in time important for reindeer husbandry; may only be carried out when the location of possible reindeer in the area has been cleared; and the permit holder must agree locally about the means by which the harmful movement of reindeer from one area to another be prevented. The State party also submits that a consensus was reached among the participants at the consultation event on 17 May 2016, where it was concluded that the best way to prevent dispersal of reindeer is to control their movement with correctly placed barriers (tarpaulins).

6.4 On the authors' allegation on discrimination, the State party reiterates that the exploration permit holder shall pay annual compensation to the owners of the land (the State party) and claims that determining the owner is ultimately a private law issue.

6.5 The State party further submits that the case law on the interpretation of article 27 of the ICCPR by the Human Rights Committee, read in light of the right of Indigenous Peoples to self-determination, must be taken into account in applying article 30 of the Convention, which guarantees the right to transfer culture and language to the next generations, as a precondition for the maintenance and development of culture. However, and while recognizing that traditional reindeer herding constitutes the foundation of Sámi cultural life, the State party reiterates that transferring Sámi culture to Sámi children is becoming increasingly difficult because 70 per cent of Sámi children live outside the Sámi Homeland.

6.6 Finally, while the State party notes that considerable harm caused by activities in the reindeer herding area may undermine the ability of the Sámi to use and practise their language, culture and traditional livelihoods, there is no breach of the Convention because it cannot be concluded that it has failed to consult the authors and to acquire their free, prior and informed consent. An extensive hearing process has been conducted before the granting of the permit and the exploration permit contains several provisions which aim at mitigating the possible harm caused to the reindeer herding in the area.

#### **Authors' comments on the State party's observations**

7.1 On 9 January 2023, the authors acknowledged and endorsed the State party's interpretation of article 30 of the Convention, mentioning that it is precisely what makes their communication a distinct case about their rights, as children, not to be denied the right to be active and willing recipients of the Sámi reindeer herder culture and way of life.

7.2 The authors submit that the State party is misleading when it claims that the mineral exploration would be a momentary event with a single support object. Exploration works are likely to disturb the reindeer to a degree that they may disrupt the whole annual cycle of nature-based herding exercised at different locations that are contingent on regular seasonal factors, on increased year-to-year variation related to climate change, and also on daily adjustments related to rapidly changing specific weather conditions.

7.3 Regarding the discrimination claim, the authors note that in *Lars-Anders Ågren et al. v. Sweden*<sup>18</sup>, the CERD dismissed the State party's argument that the Sámi had been treated on an equal footing, as there is precisely a need to apply different rules to protect the specific rights of the Sámi. These have actually been judicially recognized in Finland as evidenced by two recent Supreme Court rulings in which the Sámi defendants were acquitted of criminal

<sup>18</sup> CERD/C/102/D/54/2013, para. 6.7, 6.12, 6.23.

charges concerning unlawful fishing, because the uniform application of the total ban on salmon fishing was held unconstitutional<sup>19</sup>.

7.4 The authors further submit that the State party “confuses” the Committee on the supposed consent that they had allegedly expressed during the consultation event held on 17 May 2016. No consensus was reached among the participants, as observed by the Supreme Administrative Court and as demonstrated by the minutes of the meeting. The authors further disagree with the State party’s assertion that the consultation process was “extensive”.

7.5 Finally, the authors welcome the submission by the Government to Parliament, on 17 November 2022, of a Bill concerning amendments to the Sámi Parliament Act that would bring Finland closer to meeting the international standard of free, prior and informed consent (*supra* para. 6.2). Nevertheless, not only this amendment, if enacted into law, would have no effect in respect of the violations that have already occurred, but the pending legislative amendment is highly controversial and it is quite probable that it will not be enacted into law. Currently, the rules are set by the Mining Act: primacy is given to the interests of the exploration permit holder, instructed to adjust its operations to mitigate harms to reindeer husbandry. This does not meet the standard of free, prior and informed consent; instead, the Sámi should be informed of the activities planned so they may decide to remove their reindeer from the area.

## Issues and proceedings before the Committee

### *Considerations of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of the rules of procedure under the Optional Protocol, whether the claim is admissible under the Optional Protocol.

8.2 The Committee recalls that, under article 7 (d) of the Optional Protocol, it shall declare inadmissible any communication which 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 other members of their community have submitted a communication to the Committee on Economic, Social and Cultural Rights concerning the same mineral exploration project. The Committee notes that the petition procedure before the Committee on Economic, Social and Cultural Rights constitutes a “procedure of international investigation or settlement” within the meaning of the above-mentioned provision.<sup>20</sup> The Committee also recalls that the “same matter” within the meaning of the above-mentioned provision means one and the same claim relating to the same individual, the same facts and the same substantive rights.<sup>21</sup> Given that the complaint currently pending with the Committee on Economic, Social and Cultural Rights has not been filed by the same authors, the Committee concludes that it is not the “same matter” as the present communication and that articles 7(d) is therefore not an obstacle to the admissibility of the present communication.

8.3 The Committee takes note of the State party’s argument that the communication should be declared inadmissible due to its *actio popularis* and premature nature, as the authors have not yet been personally affected by the exploration permit (*supra* para. 4.3). The Committee notes, however, that the authors are alleging violations of their own rights under the Convention, which occurred already with the granting and upholding of the permit, without the Sámi free, prior and informed consent. The Committee considers that if the granting of the permit on the authors’ traditional territory occurred without seeking the free, prior and informed consent of their community, this fact may represent in itself, irrespective

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<sup>19</sup> KKO:2022:25 and KKO:2022:26.

<sup>20</sup> See, *mutatis mutandis*, *Moreno de Castillo v. Bolivarian Republic of Venezuela* (CCPR/C/121/D/2610/2015 and CCPR/C/121/D/2610/2015/Corr.1), para. 8.3.

<sup>21</sup> *M. F. v. Switzerland* (CRC/C/94/D/125/2020), para. 6.2; and, *Mutatis mutandis*, *A.B. v. Finland* (CRC/C/86/D/51/2018), para. 11.2.

of future developments, a breach to the authors' rights under the Convention.<sup>22</sup> Taking all the above-mentioned factors into account, the Committee concludes that the authors have victim status under article 5 (1) of the Optional Protocol.

8.4 The Committee takes note of the State party's argument in the sense that the communication should be declared inadmissible because the authors have not exhausted domestic remedies in relation to their allegations on climate change (*supra* para. 4.4). The Committee also notes the authors' argument that, while they did raise claims on climate change in the domestic proceedings, the issue of climate change is raised before the Committee only to substantiate their claims on articles 8, 27 and 30 of the Convention, and not to present a separate claim based on climate change. The Committee further takes note of the authors' uncontested argument that they explicitly invoked before national courts the same substantive rights that are invoked in the communication (rights to take part in the cultural life of their community, to traditional property, not to be discriminated against, to work or livelihood of their own choice, and to identity). The Committee further observes that the authors pursued their claims all the way to the Supreme Court. The Committee considers, therefore, that all available domestic remedies have been exhausted and concludes that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

8.5 Finally, the Committee takes note of the State party's argument that the communication should be declared inadmissible as manifestly ill-founded as it is asking the Committee to act as a fourth instance to review the outcome of the domestic proceedings (*supra* para. 4.5). However, the Committee considers that the authors' claim that the alleged breach of the international standard of free, prior and informed consent in the granting of the permit for mineral exploration on their traditional territory violate their rights to identity, to an adequate standard of living and to culture, read alone and in conjunction with article 2.1 of the Convention, has been sufficiently substantiated for the purpose of admissibility. The Committee nevertheless considers that the claim based on these three articles interpreted in the light of article 24 of the Convention has not been sufficiently substantiated and declares it inadmissible pursuant to article 7 f) of the Optional Protocol.

8.6 The Committee further considers that this authors' claim on the alleged breach of the international standard of free, prior and informed consent in the granting of the permit for mineral exploration also raises, in substance, issues under articles 8, 27 and 30 read in conjunction with article 12 of the Convention.

8.7 The Committee concludes that the communication is admissible insofar as it raises issues under articles 8, 27 and 30 of the Convention, read alone and in conjunction with articles 2.1 and 12 of the Convention, and proceeds to its examination of the merits.

#### *Considerations of merits*

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 10.1 of the Optional Protocol.

9.2 The Committee takes note of the authors' general claim that, in the current circumstances created by climate change and other outside threats to the sustainability and transmission of Sámi reindeer herding culture, the mineral exploration project granted by the State party for the exploration of Copper, Iron and Gold on their traditional territory during the critical time of the winter months in scarce winter herding pastures, without impact assessment and without obtaining the free, prior and informed consent of their community, violates their fundamental rights as child members of the Sámi People under the Convention. In particular, the Committee takes note of the authors' claim that the project would cause irreparable damage to their reindeer herding community by disrupting the whole annual cycle, making Sámi reindeer herding unsustainable and therefore damaging the core dimension of their rights as indigenous children to be active and willing recipients of an unhindered

<sup>22</sup> See, in this same sense, *Cfr.* CERD/C/102/D/54/2013, para. 1.5: the Committee "found that the petitioners had victim status, as the mere fact that the exploitation concessions were granted without prior consultation and consent has had an impact on the petitioners' rights under the Convention, irrespective of future developments that could determine whether the mining plans would be carried out", and 6.18.

transmission of: i) the Sámi way of life (continuity of their cultural heritage – article 30), ii) the Sámi identity (article 8), and iii) the Sámi traditional economic sustainability based on reindeer herding (livelihood and adequate standard of living – article 27). The Committee takes note of the authors' argument that all those elements (culture, language, identity and livelihood) are strongly dependent on traditional reindeer herding and that reindeer herding has significant importance on how traditional knowledge is maintained and protected for future generations. The Committee takes note of the authors' claim on the intergenerational nature of Indigenous Peoples' right to transmit their culture to new generations, and that a chain of cultural transmission is interfered with much earlier than an indigenous culture is destroyed.

9.3 The Committee also takes note of the State party's argument that, while recognizing that traditional Sámi livelihoods, including reindeer herding, constitute the foundation of Sámi cultural life and language -so it is for the State party of paramount importance to transfer traditional reindeer herding to the next generations-, transferring Sámi culture to Sámi children is becoming increasingly difficult because even 70 per cent of all Sámi children live outside the Sámi Homeland. The Committee also takes note of the State party's claim that the exploration works would be relatively small-scale and temporary, not causing far-reaching effects that would cause reindeer husbandry to collapse.

9.4 The Committee takes note of the authors' claim that their rights have been violated because the international standard of free, prior and informed consent was not complied with when the Safety and Chemicals Agency granted the exploration permit within their traditional territory and when the Supreme Administrative Court upheld that permit. Pursuant to the Mining Act, the permit holder must only adjust its operations in order to avoid essential harm to reindeer herding, and they were merely given an opportunity to be heard during consultation events.

9.5 The Committee takes note of the State party's claim that there is no breach of the Convention because it complied with the Mining Act: the authors were consulted before the granting of the permit, an extensive hearing process has been conducted where a mutual agreement was reached to prevent the dispersal of the reindeer, and the exploration permit decision set several conditions to reduce the harm caused by mineral exploration to reindeer herding (*supra* para. 6.3).

#### *Parties' claims on discrimination*

9.6 The Committee also takes note of the authors' claim that they suffer discrimination by not being recognized as owners of their traditional lands and by not being treated differently from the non-Sámi population, the State party ignoring the particularities of the Sámi cultural identity, traditional livelihoods and dependence on reindeer herding for survival. The Committee also takes note of the State party's claim that the legislation is not discriminatory as it applies to both Sámi and Finnish landowners, and that determining the owner of the lands is ultimately a private law issue.

9.7 The Committee observes that, due to the specificities of the communication, the authors' claims are interrelated, the granting of the mineral exploration permit in their traditional lands allegedly without effective participation, having had allegedly multiple consequences on the enjoyment of their rights.

9.8 The Committee observes that both parties agree on the facts that: i) the three authors, from a traditional semi-nomadic herding community, are trying to learn traditional Sámi reindeer herding from their ancestors and determined to continue the Sámi way of life they are grown into despite outside threats to their culture; ii) that Sámi reindeer herding is a cornerstone of Sámi culture and way of life; and that iii) the authors' culture, identity, livelihood and mother tongue (Northern Sámi), are strongly dependent on traditional reindeer herding.

9.9 The Committee further observes that it has not been contested by the State party that the winter months are the most critical ones for the survival of the reindeer and therefore for traditional Sámi reindeer herding; and that the authors and their *siida* are permanently fighting for their culture's survival.

9.10 The Committee observes that the element in dispute between the parties is linked to the effects of mineral exploration on reindeer herding, in particular, on whether the drilling of 100 to 300 metres deep holes into the bedrock in about 20 different locations within an area of 390 hectares in the heart of the authors' traditional reindeer herding territory, would cause temporary or, on the contrary, long-lasting effects on their distinct culture. According to the authors, the effects of the works, disrupting the herding in the critical time of the winter months in the scarce winter herding pastures, would imply long-lasting effects on the composition of the herd limiting their ability to benefit from the transmission of Sámi culture and associated work and livelihood. On the contrary, according to the State party, the works would be momentary and relatively small-scale.

9.11 The Committee acknowledges the State party's assertions: i) that the right of Indigenous Peoples to self-determination served as a model for the Constitution of Finland; ii) of the importance to increase the current obligation under its legislation to negotiate, to get closer to the international standard of free, prior and informed consent; iii) that the case law on article 27 of the ICCPR, read in light of the right of Indigenous Peoples to self-determination, must be taken into account in applying article 30 of the Convention.

9.12 The Committee concurs with the State party that human rights treaties are living instruments. The Committee will therefore read the Convention in the light of the evolutionary interpretation of Indigenous Peoples' rights,<sup>23</sup> in particular, the United Nations Declaration on the Rights of Indigenous Peoples, as an authoritative framework for interpreting State party obligations under the Convention concerning Indigenous peoples' rights<sup>24</sup>, keeping also in mind that "Indigenous children are also impacted by the challenges facing their families and communities".<sup>25</sup>

9.13 The Committee notes that, according to the Human Rights Committee's jurisprudence on article 27 of the ICCPR,

"in the case of Indigenous Peoples, the enjoyment of culture may relate to a way of life that is closely associated with their traditional lands, territories and resources, and that the protection of this right 'is directed towards ensuring the survival and continued development of [...] cultural identity'. Therefore, Indigenous Peoples' cultural values and rights 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. [...] the Committee on the Elimination of Racial Discrimination has stated, citing regional jurisprudence, 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; their relations to the land are a material and spiritual element that they must fully enjoy to preserve their cultural legacy and transmit it to future generations and are, therefore, a prerequisite to prevent their extinction as a people. [...] ownership of and control over ancestral territories are essential to Indigenous Peoples' survival as peoples, with the preservation of their distinct culture; indeed, 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".<sup>26</sup> Therefore, "it is of vital importance that measures that compromise Indigenous Peoples' culturally significant territories are taken after a process of effective participation and with the free, prior and informed consent of the community concerned, so as not to endanger the very survival of the community and its members"<sup>27</sup>.

<sup>23</sup> CCPR/C/137/D/3585/2019, para. 8.14; ECHR, *Tyrer v. The United Kingdom*, Application No. 5856/72, Judgment, 25 April 1978, para. 31; IACrHR, *Awás Tingni v. Nicaragua*, para. 146.

<sup>24</sup> *Cf.* CEDAW/C/GC/39, General recommendation No. 39 (2022) on the rights of Indigenous women and girls, para. 13.

<sup>25</sup> A/HRC/48/74, Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples, Expert Mechanism on the Rights of Indigenous Peoples (2021), para. 14.

<sup>26</sup> CCPR/C/137/D/3585/2019, para. 8.3, quoting CCPR/C/132/D/2552/2015, para. 8.6, as well as Interamerican and African jurisprudence.

<sup>27</sup> CCPR/C/137/D/3585/2019, para. 8.5.

9.14 The Committee also recalls that the integrity and durability of culture depend on having in times to come the conditions for the own ways of life,<sup>28</sup> that cultural rights have an intergenerational aspect which is fundamental to the cultural identity, survival, and viability of Indigenous Peoples,<sup>29</sup> that article 8 of the United Nations Declaration on the Rights of Indigenous Peoples recognizes their right not to be subjected to the destruction of their culture; that, in its General Recommendation No. 23 (1997), the CERD has called on the States parties to recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation; that it stated, in its own General Comment No. 11 (2009) on Indigenous children and their rights under the Convention, the close linkage between article 30 of the Convention and article 27 of the ICCPR, and that Indigenous Peoples' right to exercise cultural rights "may be closely associated with the use of traditional territory and the use of its resources".<sup>30</sup> In particular, in "the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture".<sup>31</sup>

9.15 The Committee also recalls that language, which is the "principal mode of transmission of traditional knowledge", is "a foundational element of indigenous cultures and identity. Indigenous children learning and using their languages are key to preserving indigenous cultures, historical memory and worldview".<sup>32</sup>

9.16 The Committee considers that it is precisely because the State party is aware that transferring Sámi culture to Sámi children is "becoming increasingly difficult", that it must be particularly cautious when regulating activities that may endanger the continuity of their culture.

9.17 In the light of the above, the Committee considers that article 30 of the Convention enshrines the right of Indigenous children to enjoy their traditional territories and that any decision affecting them should be taken with their effective participation.<sup>33</sup>

9.18 The Committee observes that, in the State party, the procedure for an exploration permit application began with a public announcement of the application on the bulletin board of the municipality, and by notifying the legally recognized landowners. The Committee further observes that, under the Mining Act, the State party is required to identify impacts of exploratory activities on the right of the Sámi to maintain their culture, but that, according to the Supreme Administrative Court, the Mining Act does not provide "further stipulations for the practical execution of the [...] assessment [...] in each individual case". In the present case, comments were invited from the Käsivarsi Reindeer Herding Cooperative and, following the public announcement and the procedure for obtaining comments, a negotiation meeting was arranged to support the permit consideration. The Committee also takes note that, for the Supreme Administrative Court, it was sufficient that the permit holder sought to minimize the disruptions caused to Sámi reindeer herding and sought to notify the Cooperative of exploration activities and their scheduling.

9.19 The Committee recalls that article 32.2 of the United Nations Declaration on the Rights of the Indigenous Peoples provides that the States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

9.20 The Committee considers that it is incumbent upon States parties to prove that they organized and operated consultations in good faith and with a view to reaching consensus. In

<sup>28</sup> *Cfr.* Jurisdicción Especial para la Paz (Colombia), Caso 03: análisis del daño a pueblos indígenas Wiwa y Kankuamo, Auto 033 de 2021.

<sup>29</sup> Report from Erica-Irene Daes, former Special Rapporteur of the Working Group on Indigenous Populations, E/CN.4/Sub.2/2001/21, para. 20.

<sup>30</sup> CRC/C/GC/11, para. 16.

<sup>31</sup> CRC/C/GC/11, para. 35.

<sup>32</sup> A/HRC/48/74, *op. cit.*, para. 83.

<sup>33</sup> *Cfr.* CCPR/C/137/D/3585/2019, para. 8.6.

particular, an adequate and effective process of free, prior and informed consent whenever Indigenous Peoples' rights may be affected by projects carried out in their traditional territories, must not only imply the sharing of information and the reception of comments by the community affected, but an interactive and continuous dialogue, since the earlier stage and through culturally appropriate procedures, with a genuine and sincere ambition to reach consensus and not starting with predefined ideas according to which the project must necessarily be carried out.<sup>34</sup>

9.21 The Committee also considers that impact assessments should be part of the consultation process with Indigenous peoples. Environmental and social impact studies, conducted by independent and technically competent entities, should be part of this consultation process, and it is based on these studies that consultations must be held from the early stages and before the design of the project.

9.22 The Committee recalls that, under article 12 of the Convention, it is the obligation of the States parties to provide children with the opportunity to be heard in any judicial and administrative proceedings affecting them. In application of this article to Indigenous children, State parties must play an important role in promoting Indigenous children's consultation on all matters affecting them,<sup>35</sup> including issues concerning their traditional territories and environment.<sup>36</sup> The Committee moreover considers that Indigenous children must be particularly at the heart of the processes, from their consideration in impact assessments to their effective participation in processes of consultations aimed at obtaining their free, prior and informed consent.<sup>37</sup>

9.23 In light of the above, the Committee considers that the State party has not demonstrated how the process of granting the permit under the Mining Act correctly took into account the standards established in international human rights law for the participation of Indigenous Peoples, including Indigenous children, in the decision to grant the exploration permit on the authors' traditional lands used for reindeer herding, which affected their culture, identity and standard of living, in violation of articles 8, 27 and 30 read in conjunction with article 12 of the Convention.

9.24 Finally, the Committee recalls that to ignore the right of Indigenous peoples to use and enjoy land rights and to refrain from taking appropriate measures to ensure respect in practice for their right to offer free, prior and informed consent whenever their rights may be affected by projects carried out in their traditional territories, constitutes a form of discrimination, as it results in nullifying or impairing the recognition, enjoyment or exercise by Indigenous peoples, on an equal footing, of their rights to their ancestral territories, natural resources and, as a result, their identity.<sup>38</sup> The Committee moreover considers that the discrimination suffered by an Indigenous people also impacts their children, whose preservation of cultural identity is crucial as they represent the continuity of their distinct people.

9.25 The Committee therefore concludes that the information before it reveals that the granting of the exploration permits without having ensured the effective participation of the authors in a consultation process based on a prior impact assessment of the exploration works on the consequences for Sámi reindeer herding, amounted to violations of the authors' rights under articles 8, 27 and 30, read in conjunction with article 2.1 of the Convention.

9.26 In light of all the above, the Committee, acting under article 10 (5) of the Optional Protocol, concludes that the granting of the permit violated the authors' rights under articles

<sup>34</sup> *Cfr.* CRC/C/GC/11, para. 20; CERD/C/102/D/54/2013, para. 6.18; Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based Approach*, 10 August 2018, A/HRC/39/62; IACrtHR, *Sarayaku v. Ecuador*, 2012, para. 167; IACrtHR, *Saramaka v. Suriname*, 2007, para. 133; IAComHR, *Indigenous and Tribal peoples' rights over their ancestral lands and natural resources*, *op. cit.*, para. 318 and 319.

<sup>35</sup> CRC/C/GC/11, para. 39.

<sup>36</sup> A/HRC/48/74, *op. cit.*, para. 20.

<sup>37</sup> CERD/C/102/D/54/2013, para. 6.7, based on the Inter-American Court of Human Rights' jurisprudence and on the African Human Rights System's jurisprudence.

<sup>38</sup> CERD/C/102/D/54/2013, para. 6.7, based on the Inter-American Court of Human Rights' jurisprudence and on the African Human Rights System's jurisprudence.

8, 27 and 30 of the Convention, read alone and in conjunction with articles 2.1 and 12 of the Convention.

10. The State party should therefore provide the authors with effective reparation for the violations suffered, including by effectively revising the mineral exploration project, after a child rights-oriented impact assessment, as a first stage that would make it possible to carry out an adequate process of free, prior and informed consent of the authors' *siida*, in which the authors should effectively participate. The State party is also 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 to enshrine the international standard of free, prior and informed consent, specifically ensuring the participation of affected Indigenous children, and to include an environmental and social - including children's rights oriented- impact assessment.

11. In accordance with article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the measures it has taken to give effect to the Committee's Views. The State party is requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views, to have them translated into the official language and into Northern Sámi and to disseminate them widely.



## Annex 1

### Individual opinion by Committee member Ann Skelton (partially concurring)

1. I agree with much of the reasoning included in the Views of the majority of the members of the Committee. However, I would not have relied as heavily on the international standard of free, prior and informed consent. I would have centred the reasoning on article 12, the right of children to express their views and have their views be given due weight. I would have found that the granting of the permit violated the authors' rights under article 12 read alone and in conjunction with articles 2.1, 8, 27 and 30 of the Convention. The reasons for this I set out below.

2. In my respectful opinion, the Views should have placed greater emphasis on the authors' argument that elements such as culture, language, identity and livelihood are strongly dependent on traditional reindeer herding and that reindeer herding has significant importance on how traditional knowledge is maintained and protected for future generations. This in turn raises an interesting point about the special affinity between children and future generations. While children who are alive today should not alone bear the burden of advocating for future generations,<sup>1</sup> they have, in recent years, taken up this responsibility, including in a communication brought to this Committee under the third optional protocol<sup>2</sup>. The Pact for the Future, in the final stage of development as these Views are adopted, recognizes that children are 'critical agents of positive change' and declares that States will 'invest in and promote engagement by young people at national and international levels'<sup>3</sup>.

3. The Maastricht Principles on the Rights of Future Generations,<sup>4</sup> locates this special affinity in the recognition that children are 'proximate to future generations',<sup>5</sup> which makes children 'closest in time to generations still to come and thus occupy a unique position, and have an important role to play, within this transition to long-term, multigenerational thinking. Accordingly, their perspectives and participation in decision-making with respect to long-term and intergenerational risks must be accorded special weight'.<sup>6</sup>

4. We therefore need to pay particular attention to the obligation of States Parties to ensure children's right to express their views, and have them given due weight, particularly in relation to decisions pertaining to the environment and the preservation of the environment for future generations. Children, who often make up a large percentage of indigenous populations, should be included in these processes in a meaningful way. In General Comment 11 (2009) on Indigenous children and their rights the Committee envisaged both individual and collective participation of children, and observed that State parties 'should design special strategies to guarantee that their participation is effective'.<sup>7</sup> In General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, the Committee noted that considering the disproportionate effect of environmental harm on indigenous children's rights, States must undertake measures to meaningfully engage with

<sup>1</sup> Our Common Agenda Policy brief 1: to think and act for future generations (A/77/CRP.1).

<sup>2</sup> *Sacchi and others v Argentina and others* 11 November 2021. It must be noted that this case was against five different states parties and therefore, the Committee on the Rights of the Child gave five different views which can be found in the following citations: CRC/C/88/D/104/2019 (Argentina), CRC/C/88/D/106/2019 (France), CRC/C/88/D/108/2019 (Turkey), CRC/C/88/D/105/2019 (Brazil), CRC/C/88/D/107/2019 (Germany).

<sup>3</sup> Pact of the Future, Revision 4, 2024.

<sup>4</sup> Maastricht Principles on the Rights of Future Generations, drafted by an expert group, and adopted 3 February 2023.

<sup>5</sup> *Ibid* 22(c).

<sup>6</sup> *Ibid* Preamble, para VII.

<sup>7</sup> Committee on the Rights of the Child, General Comment 11 (2009) on Indigenous children and their rights under the Convention (CRC/C/GC/11), para 39.



Indigenous children and their families in responding to such harm.<sup>8</sup> Their views should be proactively sought, and may be received through creative means.<sup>9</sup>

5. To conclude, even if Indigenous children are consulted within broader consultation processes within their families and communities, this engages their rights under article 12 of the Convention.

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<sup>8</sup> Committee on the Rights of the Child, General Comment 26 (2023) on children's rights and the environment, with a special focus on climate change (CRC/C/GC/26), para 58.

<sup>9</sup> Ibid para 26.

## Annex 2

### Individual opinion of Committee member Rosaria Correa Pulice (concurring)

1. Comparto el pronunciamiento del Comité contenido en la presente comunicación No. 172/2022. Sin embargo, he decidido externar esta opinión separada porque considero que debo extenderme en algunos aspectos que guardan relación con planteamientos esbozados por las autoras, relativo al rol que juegan las niñas Samis en su pueblo y el derecho a no discriminación (artículo 2.1 en conjunto con los artículos 8, 27 y 30 de la Convención) y sobre los cuales no se hizo referencia, siendo importante hacer el análisis desde la óptica de la perspectiva de género ya que se está analizando un asunto que guarda relación con temas ambientales, pues, se trata de una “concesión de un permiso de exploración minera en territorio tradicional del pueblo sami sin evaluación de impacto ni consentimiento libre, previo e informado.” Por lo tanto, procedo a explicar:

2. Las autoras han señalado que: “como niñas, tienen una responsabilidad especial, de acuerdo con las tradiciones sami, en la producción de artesanía tradicional sami (duodji). Desde temprana edad, las autoras han sido instruidas por las mujeres mayores de la familia y ahora crean ellas mismas todo, desde las botas tradicionales de piel de reno (nuvttohat) hasta los trajes tradicionales usados en contextos ceremoniales (gákti). Dado que el reno proporciona una serie de materiales para la artesanía tradicional, como pieles, venas y huesos, si se pierde la cría tradicional de renos, la cultura sami también se resentirá...”.

3. Inferimos del planteamiento que hacen las autoras que las mismas reclaman el reconocimiento de su papel o rol dentro de su pueblo de manera diferenciada, es decir, como niñas, pues, de lo contrario esto constituye una discriminación adicional, por ser indígenas y personas menores de edad.

4. En ese sentido, si bien la mayoría del Comité determinó, que: “la concesión del permiso violó los derechos de los autores reconocidos en los artículos 8, 27 y 30 de la Convención, leídos aisladamente y en conjunción con artículos 2.1 y 12 de la Convención” y por lo tanto, “se pide al Estado parte que prosiga sus esfuerzos para enmendar su legislación a fin de consagrar la norma internacional del consentimiento libre, previo e informado, garantizando específicamente la participación de los niños indígenas afectados, y que incluya una evaluación del impacto ambiental y social -incluida la orientada a los derechos del niño”; no ponderó la importancia que tiene el incorporar la perspectiva de género y el enfoque diferencial en materia ambiental, es decir, se ha obviado la necesaria integración y transversalidad de la protección universal de los derechos humanos. Así las cosas, el Estado debe tener presente que “la tierra y los territorios son parte integrante de la identidad, las opiniones, los medios de vida, la cultura y el espíritu de las mujeres y las niñas indígenas”<sup>1011</sup>, los Estados deben exigir el consentimiento libre, previo e informado de las niñas indígenas también, antes de autorizar proyectos en sus tierras y territorios, adoptando las medidas necesarias para garantizar esa participación.

5. Además, el Estado Finlandés en sus respuestas a esta comunicación fue enfático en señalar que muchos de los indígenas no viven en esas tierras, desconociendo la importancia y pertinencia la Recomendación General 39 (2022) de CEDAW, en la que se señala que es irrelevante si las mujeres y niñas viven dentro o fuera de los territorios, pues, se busca promover las voces de las mujeres y las niñas indígenas como agentes impulsores y líderes dentro y fuera de sus comunidades, y que esas voces sea tenidas en cuenta en el proceso de elaboración.

6. Por otro lado, es importante reconocer que en materia ambiental el Sistema de Naciones Unidas ha hecho énfasis en reconocer su papel clave como líderes, portadoras de

<sup>11</sup> CEDAW/C/GC/9, para 56 a 57

conocimientos y transmisoras de cultura dentro de sus pueblos, comunidades, familias y de la sociedad en su conjunto<sup>12</sup>.

7. En conclusión, las autoras han sido víctimas de diferentes formas de discriminación interseccional, por ser niñas, por ser indígenas y personas menores de edad, es por ello, que, para garantizarles los derechos a las niñas indígenas Sami, se debe adoptar un enfoque diferencial, y de esta manera evitar la discriminación.

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<sup>12</sup> A/HRC/52/33. “Las mujeres y las niñas y el derecho a un medio ambiente limpio, saludable y sostenible”. 83. Las mujeres y niñas indígenas tienen un vínculo especial con su entorno, que describen como “territorios de vida”, Pachamama o Madre Tierra... Los Estados deben: a) Reconocer y priorizar los derechos y las necesidades colectivos e individuales de las mujeres y las niñas de esas comunidades en todas las medidas e iniciativas climáticas destinadas a la conservación, la protección y la restauración de la naturaleza, su utilización sostenible, y la participación equitativa en sus beneficios; b) Adoptar medidas para preservar los conocimientos tradicionales, las prácticas consuetudinarias y los derechos culturales de las mujeres indígenas, afrodescendientes y otras mujeres rurales dependientes de la naturaleza; c) Apoyar el fomento de las capacidades de las mujeres y las niñas cuyo medio de vida e identidad cultural dependen directamente de la naturaleza, a fin de conservar y utilizar la naturaleza de forma sostenible recurriendo a los conocimientos tradicionales, las costumbres y las responsabilidades de gestión; d) Respetar el derecho de las mujeres y niñas indígenas al consentimiento libre, previo e informado en todas las decisiones que afecten a sus territorios, patrimonio cultural y derechos, antes de autorizar proyectos económicos, de desarrollo, extractivos o climáticos, o de designar sus tierras áreas protegidas.