



# 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\*\*\*, \*\*\*\*, \*\*\*\*\*, \*\*\*\*\*

<i>Communication submitted by:</i>	M.E.V., S.E.V. and B.I.V. (represented by counsel, Martin Scheinin)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Finland
<i>Date of communication:</i>	12 January 2022 (initial submission)
<i>Date of adoption of Views:</i>	13 September 2024
<i>Subject matter:</i>	Granting of a mineral exploration permit in respect of an area on traditional territory of the Sami people without an impact assessment or free, prior and informed consent
<i>Procedural issues:</i>	Victim status; exhaustion of domestic remedies; substantiation of claims; fourth instance
<i>Substantive issues:</i>	Non-discrimination; right to identity; right to health; right to an adequate standard of living; right to culture
<i>Articles of the Convention:</i>	2 (1), 8, 24, 27 and 30
<i>Article of the Optional Protocol:</i>	7 (e) and (f)

1.1 The authors of the communication are M.E.V., S.E.V. and B.I.V., nationals of Finland born on 3 March 2005, 3 January 2007 and 19 November 2008, respectively. They are three sisters belonging to the Sami people. Specifically, they are members of Kova-Labba *siida*, a community of reindeer herders. The authors submit that their rights under articles 8, 27 and 30, all interpreted in the light of article 24 and all read alone and in conjunction with article 2 (1), of the Convention have been violated by the State party in permitting a mineral

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

\*\*\* The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aïssatou Alassane Sidikou, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Rinchen Chopel, Rosaria Correa, Bragi Gudbrandsson, Philip Jaffé, Sopio Kiladze, Otani Mikiko, Luis Ernesto Pedernera Reyna, Ann Skelton, Velina Todorova, Benoit Van Keirsbilck and Ratou Zara.

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

\*\*\*\*\* The annexes are being circulated in the languages of submission only.



exploration project on their traditional territory without a 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. On 27 January 2022, the State party informed the Committee that the works had been suspended in response to a request for interim measures issued by the Committee on Economic, Social and Cultural Rights in respect of communications No. 251/2022 and No. 289/2022,<sup>1</sup> concerning the same Sami *siida* (small group of kin- or village-based herders). On 15 March 2022, the Committee on the Rights of the Child, 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 (6) of its rules of procedure under the Optional Protocol, to examine the admissibility of the communication together with its merits.

### Factual background

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

2.2 The authors submit that the Sami way of life is being challenged by outside threats to their culture, such as mining, tourism, wind farms and rapidly changing environmental conditions.<sup>3</sup> In particular, their family has been forced to start providing additional food to the reindeer, as the winters have varied in terms of snow conditions during the authors' lifetimes, but providing additional food – with methods more similar to cattle breeding – does not belong to traditional Sami reindeer herding. The authors are nevertheless determined to learn the traditions of Sami reindeer herding, which is a cornerstone of the Sami culture and way of life. Reindeer herding has been the culture, livelihood and identity of their family for centuries. As such, they participate in reindeer herding during weekends and on school holidays. During the summer, they participate in the earmarking of reindeer calves; their father taught them at an early age how to cut their own individual earmarks, and each of the authors has her own distinctive reindeer earmark based on the earmarks used in the family for centuries. The authors are also actively teaching their younger brothers the Sami way of life and reindeer herding and are involving them.

2.3 The authors have also learned from an early age, from older family members, the traditional Sami way of singing (*luohti yoik*), which is used by women in the fells during their

<sup>1</sup> [E/C.12/76/D/251/2022-E/C.12/76/D/289/2022](#).

<sup>2</sup> The cooperative is an administrative division of the State party.

<sup>3</sup> Referring to the Committee's findings in *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019), the authors mention that the fact that Finland is the fifty-seventh largest emitter of carbon dioxide among all countries in absolute terms, and twenty-ninth per capita, supports the argument that the mineral exploration project described in the present 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 transition may have a serious impact on their culture if the transition entails mining (to acquire battery minerals for electric cars and solar panel systems) and the creation of windmill parks on the Sami territory, which is already subject to other great pressures.

reindeer watch to scare away predators. In addition, as girls, they bear a special responsibility in accordance with Sami traditions for the production of traditional Sami handicrafts (*duodji*). From an early age, the authors have been taught by older women in their family and are now able to create everything themselves, from traditional reindeer fur boots (*nuvttohat*) to the traditional outfit worn in ceremonial contexts (*gákti*). As reindeer provide a range of materials for traditional handicrafts, including fur, skin, veins and bones, if traditional reindeer herding is lost, the Sami culture will suffer as well. In the same way, their mother tongue, Northern Sami, is a language deeply rooted in nature: the entire vocabulary of reindeer herding consists of Northern Sami words,<sup>4</sup> and children do not learn that vocabulary other 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 a mineral exploration permit for a project called “Lätäs 1”, requesting permission for exploration works for gold, copper and iron, entailing the drilling of 100- to 300-metre-deep holes into the bedrock in about 20 different locations within an area of 390 hectares on the authors’ traditional reindeer herding territory.

2.5 As the Mining Act (No. 621/2011) requires the State party to identify the impacts of mining or exploratory activities on the right of the Sami 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 Sami Parliament and the Käsivarsi Reindeer Herders’ Cooperative and invited them to participate in meetings on 17 May 2015 and 17 May 2016. 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 that the State party had made to obtain their free, prior and informed consent. The Sami Parliament stated on three occasions – 13 November and 15 December 2014 and 22 June 2016 – that, given the lack of an assessment of the consequences for Sami reindeer herding,<sup>5</sup> the basic preconditions for free, prior and informed consent did not exist. Indeed, only once an assessment has been completed should the State party’s mining authority request the opinion of the Sami Parliament.

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

2.8 The planned exploration is to be carried out in the heart of the authors’ winter herding lands, every winter. According to the authors, winter is the worst possible time for the exploration work as regards traditional reindeer herding. Indeed, the winter months are the most critical for the survival of the reindeer, which have to dig through thick snow in order to reach ground lichen or, where pristine forests can be found, to 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>6</sup> Moreover, the project entails bringing into the pristine natural

<sup>4</sup> For instance, there are over 200 words just for describing snow; every part of nature and every landscape is known only in the Northern Sami language.

<sup>5</sup> The State party’s mining authority must, in accordance with decision KHO:2014:111 of the Supreme Administrative Court, assess the impact of the project on the rights of the Sami as an Indigenous People.

<sup>6</sup> The authors submit that, while traditional Sami reindeer herding is dependent on normal – variable but predictable – winter and snow conditions (which determine the reindeer’s ability to graze), the body mass of the reindeer decreases during winters with difficult snow conditions, resulting in reduced calf production in the spring and 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

environment 1-ton drilling machines and 5-ton support vehicles to 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 Sami herders: the herds may follow such tracks or be dispersed by what they see and hear, and the exploration project would therefore make Sami reindeer herding unsustainable, due to a collapse in the herding system. As explained by the chair of the Käsivarsi Reindeer Herders' Cooperative, reindeer follow tracks in the snow, and any unknown tracks cause problems for traditional reindeer herding; reindeer could end up in areas that do not have favourable conditions for digging and finding food and start losing weight. According to the chair of the Käsivarsi Reindeer Herders' Cooperative, those are the kinds of threats and fears that the Sami have to constantly fight to ensure the survival of their culture. However, despite fighting, there is no certainty for the future, which undermines the belief of young Sami in their future in reindeer herding.

2.9 According to the authors, the Safety and Chemicals Agency granted the permit to the Geological Survey of Finland without a proper impact assessment and without the proper involvement of their reindeer herding community. At no stage was there even a proper assessment of the adverse impact on reindeer herding in the area affected by the exploration works. According to the authors, the obligations arising from the Mining Act in relation to the impact assessment must be interpreted in the light of international standards on Indigenous rights.<sup>7</sup> Furthermore, while the performance of an assessment requires an understanding of Sami culture, neither the Safety and Chemicals Agency nor the Geological Survey of Finland is familiar with Sami culture, leading to a situation in which the conditions set out in the exploration permit to reduce harm to reindeer herding are impossible to enforce. According to the permit, the holder is to see to it that the momentarily visible tracks created by snowmobiles or tracked vehicles do not increase the unmanaged movement 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. In the absence of the effective participation of the Sami, considering that effective consultation should be based on an independent impact assessment, the procedure applied before issuing the permit did not meet the standards of free, prior and informed consent. Moreover, representatives of Kova-Labba *siida* were not invited to the negotiations. Two representatives of the Käsivarsi Reindeer Herders' Cooperative were heard, but they are not members of the village that herds reindeer in the planned exploration area.

2.10 On 8 August 2016, the chair of the Käsivarsi Reindeer Herders' Cooperative, on behalf of all members of the Cooperative, including the authors, together with the Sami Parliament and the Lapland Branch of the Finnish Association for Nature Conservation, appealed the decision of 7 July 2016 to the Administrative Court of Northern Finland.

2.11 On 19 December 2018, the Administrative Court of Northern Finland dismissed the appeal and upheld the decision to grant the exploration permit, pointing to the involvement of the Sami 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 Sami Parliament and the Lapland Branch of the Finnish Association for Nature Conservation, filed a request for leave to appeal and an appeal before the Supreme Administrative Court.

2.13 On 21 June 2021, the Supreme Administrative Court rejected the appeal, considering that: (a) consulting the Sami had been sufficient for the purposes of the Mining Act; (b) the conditions set out in the exploration permit to reduce possible harm to reindeer herding (namely, requirements that works were to be carried out outside the calving season, limited at times of the year that were important for reindeer husbandry and carried out only when the areas in which reindeer might be located had been cleared in advance) were sufficient; and (c) the area of the planned exploration works was relatively small. However, the Court compared the exploration area not with the size of Kova-Labba *siida*, the community directly

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cover has not frozen over the vegetation; these conditions keep the vegetation edible and available so that reindeer can smell lichen and dig through the snow.

<sup>7</sup> See also United Nations Declaration on the Rights of Indigenous Peoples, preambular para. 10 and art. 32 (2).

affected, but with the size of the three communities that make up 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 Sami culture and the associated work and livelihood. As the continued practice of Sami children's culture and way of life is strongly dependent on traditional reindeer herding, if traditional reindeer herding is lost due to additional threats, which the State party has allowed to arise through mineral exploration works, further aggravating the situation and destroying the sustainability of reindeer herding, their identity, adequate standard of living, language and culture more broadly will suffer and be lost, as all these elements are grounded in living with reindeer.

2.15 The authors submit that, even though other members of their *siida* have submitted communications to the Committee on Economic, Social and Cultural Rights that concern 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 Indigenous girls who have the right to benefit from the unhindered intergenerational transmission of the Sami culture and way of life. The authors emphasize that the right 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 communications submitted to the Committee on Economic, Social and Cultural Rights relate not only to different victims but also to a different set of human rights violations.

2.16 The authors submit that all domestic remedies have been exhausted because, in their opposition to the granting of the exploration permit and subsequent appeals before the domestic courts, they explicitly invoked the same substantive rights that are invoked in the present 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, to provide their free, prior and informed consent in relation to activities harmful for the continuity of their culture. The authors submit that, before the Supreme Administrative Court, they testified that the threats to reindeer herding affect the perception among young Sami of the possibility of their continued involvement in reindeer herding and that reindeer herding has significant importance for how traditional knowledge is maintained and protected for future generations.

## Complaint

3.1 The authors claim that the mineral exploration works would violate their right to enjoy their own culture in community with other Sami (art. 30), their right to their identity as Sami (art. 8) and their right to an adequate standard of living as members of a community based on reindeer herding (art. 27), all interpreted in the light of the right to health (art. 24) and all read alone and in conjunction with the right to non-discrimination (art. 2 (1)).

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

3.3 With regard to 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 an impact assessment deprives them of an adequate standard of living as members of a community based on reindeer herding.<sup>9</sup>

<sup>8</sup> The authors refer to paragraphs 18 and 44 of the Committee's general comment No. 11 (2009) on Indigenous children and their rights under the Convention.

<sup>9</sup> They refer to paragraph 34 of general comment No. 11 (2009).

3.4 The authors also submit that, in a situation where the sustainability and transmission to new generations of Sami reindeer herding culture is already under threat, the violations needing to be assessed in the context of the cumulative effects of earlier interventions on their territory, which are now being 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 with other Sami, not to be denied the enjoyment of their own culture, as protected by article 30 of the Convention, specifically if such denial is undertaken without their free, prior and informed consent.<sup>10</sup>

3.5 The authors further submit that all the above-mentioned provisions should be interpreted in the light of article 24 of the Convention, mentioning in particular paragraphs 2, 5, 7 and 50 of the Committee's general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.

3.6 The authors submit that all the above-mentioned provisions should be read alone and in conjunction with article 2 (1) of the Convention. Regarding their right not to be discriminated against, the authors submit that their status as children who are members of the Sami 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 (through the Geological Survey of Finland), authorize (through the Safety and Chemicals Agency) and uphold the authorization to conduct (through the courts) mineral exploration works on 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 by the fact that, as the State has declared itself to be the owner of Sami lands, it will receive annual compensation from its own agency (the Geological Survey of Finland), while, by contrast, the Sami, who are not recognized as owners of their traditional lands, will receive no compensation for the adverse impact on their lands. The authors clarify that this does not imply that they would accept monetary compensation as an adequate remedy and claim that no landowner is in the same situation as the Sami, for whom even the 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 deviate from the position of the Supreme Administrative Court, as the Sami had an opportunity to participate in the permit procedure, during which mutual agreement was reached, and that, taken as a whole, the exploration area is relatively small. Second, the State party submits that the Mining Act is not discriminatory, as it applies to both Sami and non-Sami, and that the authors cannot claim compensation, as the lands in question are owned by the State. Third, the State party indicates that the Geological Survey of Finland conducts self-financed geological research for the needs of businesses and society in general; it does not conduct mining but surveys the bedrock to map the mineral potential of the region, focusing on data collection.

4.2 The State party also recalls some relevant domestic legislation. First, the Constitution provides that the Sami 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-determination not only with article 1 of the International Covenant on Civil and Political Rights but also with article 27 thereof, which served as a model for the Constitution of Finland. Second, the Act on the Sami Parliament obligates public authorities to negotiate with the Sami Parliament in relation to all far-reaching and important measures that may directly and in a specific way affect the status of the Sami as an Indigenous People (sect. 9). In November 2017, the Ministry of Justice issued a memorandum – prepared with the Sami Parliament – on the obligation to negotiate under the Act on the Sami Parliament, according to which consensus must be sought in all negotiations between the public authorities and the Sami Parliament. Third, the Mining Act provides that the permit authority should determine the impacts caused by the planned activities on the rights of the Sami as an Indigenous People to maintain and

<sup>10</sup> They refer to paragraphs 16, 17 and 29 of general comment No. 11 (2009).

develop their own language and culture and should consider measures required for reducing and preventing harm, assessing the harm that would be caused to reindeer herding by activity conducted under the permit (sect. 38). A permit must not be granted if activities conducted under the permit would cause considerable harm to reindeer herding or substantially undermine the preconditions for engaging in traditional Sami livelihoods or otherwise maintaining and developing the Sami culture (sect. 50).

4.3 With regard to admissibility, the State party submits that the communication has an *actio popularis* nature, as the Geological Survey of Finland has not taken any practical measures since being granted the exploration permit, meaning that the authors have not yet been personally affected by it. 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 (and is therefore of paramount importance for the transfer of traditional reindeer herding, as well as the Northern Sami language, to the next generations), submits that transferring Sami culture to Sami children is becoming increasingly difficult because as many as 70 per cent of all Sami children now live outside the Sami 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 concerning climate change.

4.5 Lastly, the State party claims that the communication is manifestly ill-founded, the authors having failed to substantiate in what way their rights under each of the articles of the Convention that they invoke have been violated. The State party links that claim with its argument that the core of the communication appears to be the authors' dissatisfaction with the outcome of the domestic proceedings, yet it is not the role of the Committee on the Rights of the Child to act as a fourth instance.

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

5.1 In their comments of 5 May 2022, supplemented on 26 September 2022, the authors observe that several of the State party's observations on admissibility raise matters pertaining to the merits of the case and demonstrate ignorance of the nature and rationale of Indigenous Peoples' rights. In particular, the State party misunderstands the claim under article 2 (1) of the Convention. As explained by the Committee on the Elimination of Racial Discrimination, the Sami must be treated differently from non-Sami users of so-called government lands precisely because they are Sami; the mining legislation discriminates against the Sami reindeer herders specifically, not by treating them differently from the rest of the population but by not doing so, ignoring the particularities of Sami cultural identity, traditional livelihoods and dependence on reindeer herding for survival.<sup>11</sup>

5.2 According to the authors, another matter pertaining to the merits of the case and demonstrating ignorance of reindeer behaviour and Sami reindeer herding is the State party's assertion, itself a repetition of the finding of the Supreme Administrative Court, that, taken as a whole, the exploration area is relatively small and that the exploration will be temporary. Indeed, disrupting herding in the critical winter months in the scarce winter herding pastures would cause permanent harm to the reindeer herds and to Sami reindeer herding (see para. 2.8 above). Moreover, the significance of the area is more critical than ever before due to the cumulative effects of other, competing uses by third parties of their traditional lands.

5.3 The authors contend that the State party's submission that the Geological Survey of Finland has a merely scientific mission is also misleading. According to the authors, the State party made a crucial admission by confirming that the mission of the Geological Survey of Finland included serving the needs of businesses and society in general (see para. 4.1 above). While the Geological Survey of Finland does not engage in mining proper, its activities promote "the competitiveness of business and regions"<sup>12</sup> and pave the way for private

<sup>11</sup> *Ågren et al. v. Sweden* (CERD/C/102/D/54/2013), paras. 6.7, 6.12 and 6.23.

<sup>12</sup> Finland, Act on the Geological Survey of Finland, sect. 2.

companies interested in exploiting mineral resources. The Geological Survey of Finland indicated in its permit application that it was looking for copper, iron and gold, and the permit was granted for the purpose of exploring for deposits of these metals and not in pursuit of some scientific mission. To illustrate the fact that the Geological Survey of Finland paves the way for private companies, the authors note that, on 20 April 2022, the Safety and Chemicals Agency granted a new reservation in respect of an area in Kova-Labba *siida*, called “Ruossakero”, to a company that had stated its intention to survey the area for nickel, copper and cobalt. While the authors are not seeking to include a claim based on this new fact in the communication, they bring it to the attention of the Committee to show that the State party conducts preliminary surveying before projects are taken further by private companies.

5.4 The State party’s submission is also misleading insofar as it invokes the memorandum prepared by the Ministry of Justice in November 2017, according to which consensus must be sought in all negotiations between the public authorities and the Sami Parliament (see para. 4.2 above). Not only does the memorandum have no force of law, but it also postdates the consideration of the exploration permit dealt with in the present communication and was not subsequently applied by the Administrative Court of Northern Finland or the Supreme Administrative Court, which satisfied themselves with a merely formal consultation of the Sami.

5.5 As for the State party’s argument that they lack victim status, the authors submit that the violations have already occurred, as the international standard of free, prior and informed consent was not complied with when the Safety and Chemicals Agency granted the permit and when the Supreme Administrative Court upheld that decision. In its Views in *Billy et al. v. Australia*, the Human Rights Committee considered that the risk of impairment of the authors’ rights was more than a theoretical possibility because their lives were highly dependent on the availability of the limited natural resources to which they had access.<sup>13</sup> In the present communication, 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 already met when such interference with cultural transmission occurs.

5.6 As for the State party’s argument that the authors have not exhausted domestic remedies, the authors claim that they did raise climate change arguments in the domestic proceedings but that they have raised the issue of climate change before the Committee on the Rights of the Child 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 As for the State party’s argument that the communication is manifestly ill-founded and that the authors are seeking to have the Committee act as a fourth instance, the authors submit that the State party is mistaken in its opinion that the domestic courts properly considered their rights, as the Supreme Administrative Court was both formalistic and wrong in stating that the international standard of free, prior and informed consent had been met merely by giving the Sami an opportunity to be heard.

#### **State party’s observations on admissibility and the merits**

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

6.2 On the merits, the State party first indicates that a working group has prepared a bill to amend the Act on the Sami 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 will be temporary, that research carried out at individual sites does not cause significant disturbance to areas outside those sites, that research activities must not have far-reaching effects and that one-off surveys do not have long-lasting effects. The State party claims that, in its exploration permit decision, the Safety and Chemicals Agency complied with the Mining Act by setting several conditions

<sup>13</sup> CCPR/C/135/D/3624/2019, paras. 7.10 and 8.14.



under which the exploration may be carried out, the aim being to reduce the harm caused to reindeer herding: exploratory drilling may be carried out only outside the reindeer calving season, must be limited at certain points in time that are important for reindeer husbandry and may only be carried out when areas possibly containing reindeer have been cleared; and the permit holder must agree locally about the means by which the harmful movement of reindeer from one area to another can be prevented. The State party submits that consensus was reached among the participants in the consultation event on 17 May 2016, when it was concluded that the best way to prevent the dispersal of reindeer was to control their movement with correctly placed barriers, namely, tarpaulins.

6.4 With regard to the authors' allegation relating to discrimination, the State party reiterates that the exploration permit holder must pay annual compensation to the owners of the land (the State) 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 International Covenant on Civil and Political Rights by the Human Rights Committee, read in the 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 Sami cultural life, the State party reiterates that transferring Sami culture to Sami children is becoming increasingly difficult because 70 per cent of Sami children live outside the Sami homeland.

6.6 The State party notes that, while considerable harm caused by activities in the reindeer herding area may undermine the ability of the Sami to use their language and practise their 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 was conducted before the granting of the permit, and the exploration permit contains several conditions aimed at mitigating the possible harm caused to reindeer herding in the area.

#### **Authors' comments on the State party's observations on admissibility and the merits**

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 Sami 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 temporary event. Exploration works are likely to disturb the reindeer to a degree that may disrupt the whole annual cycle of nature-based herding, which takes place at different locations that are affected by regular seasonal factors, increasing year-to-year variations related to climate change, and rapidly changing weather conditions.

7.3 Regarding the discrimination claim, the authors note that, in *Ågren et al. v. Sweden*,<sup>14</sup> the Committee on the Elimination of Racial Discrimination dismissed the State party's argument that the Sami had been treated on an equal footing, as there was a need to apply different rules to protect the specific rights of the Sami. These rules have been judicially recognized in Finland, as evidenced by two recent Supreme Court rulings in which Sami defendants were acquitted of criminal charges concerning unlawful fishing, because the uniform application of the total ban on salmon fishing was held to be unconstitutional.<sup>15</sup>

7.4 The authors further submit that the State party "confuses" the Committee with regard to the consent that they 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 disagree with the State party's assertion that the consultation process was "extensive".

<sup>14</sup> Paras. 6.7, 6.12 and 6.23.

<sup>15</sup> Decisions KKO:2022:25 and KKO:2022:26.

7.5 Lastly, the authors welcome the submission by the Government to Parliament, on 17 November 2022, of a bill on amendments to the Act on the Sami Parliament that would bring Finland closer to complying with the international standard of free, prior and informed consent (see para. 6.2 above). Nevertheless, even that bill, if enacted, would have no effect in respect of violations that have already occurred. The pending bill is highly controversial, and it is quite probable that it will not be enacted. Currently, the rules are set by the Mining Act: primacy is given to the interests of the exploration permit holder, which is 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 Sami should be informed of the activities planned so that they can decide to remove their reindeer from the area.

## Issues and proceedings before the Committee

### *Consideration 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 that concerns a matter that has already been or is being examined under another procedure of international investigation or settlement. The Committee takes note of the authors' statement that other members of their community have submitted communications to the Committee on Economic, Social and Cultural Rights concerning the same mineral exploration project. The Committee on the Rights of the Child notes that the communications procedure of 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>16</sup> The Committee on the Rights of the Child 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>17</sup> Given that the complaints currently pending before the Committee on Economic, Social and Cultural Rights have not been filed by the same authors, the Committee on the Rights of the Child concludes that they do not relate to the "same matter" as the present communication and that article 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 (see para. 4.3 above). The Committee notes, however, that the authors are alleging violations of their own rights under the Convention, which have already occurred as a result of the granting and upholding of the granting of the permit, without the free, prior and informed consent of the Sami. The Committee considers that, if the granting of the permit in respect of an area on the authors' traditional territory occurred without seeking the free, prior and informed consent of their community, this fact may represent in itself, irrespective of future developments, a breach of the authors' rights under the Convention.<sup>18</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 that the communication should be declared inadmissible because the authors have not exhausted domestic remedies in relation to their allegations concerning climate change (see para. 4.4 above). The Committee also notes the authors' argument that, while they did raise claims concerning climate change in the domestic proceedings, the issue of climate change is raised before the

<sup>16</sup> See, mutatis mutandis, Human Rights Committee, *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>17</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.

<sup>18</sup> See also Committee on the Elimination of Racial Discrimination, *Ågren et al. v. Sweden*, paras. 1.5 and 6.18.

Committee only to substantiate their claims under 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 the national courts the same substantive rights that are invoked in the present communication (the 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 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 The Committee takes note of the State party's argument that the communication should be declared inadmissible as manifestly ill-founded, as the authors are asking the Committee to act as a fourth instance to review the outcome of the domestic proceedings (see para. 4.5 above). 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 violated their rights under articles 8, 27 and 30, 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 articles 8, 27 and 30, 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 the authors' claim of an 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, read alone and in conjunction with articles 2 (1) and 12, of the Convention, and proceeds to its examination of the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information made available 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 Sami reindeer herding culture, the mineral exploration permit granted by the State party for exploration for copper, iron and gold on their traditional territory during the critical winter months in scarce winter herding pastures, without an impact assessment and without obtaining the free, prior and informed consent of their community, violates their fundamental rights under the Convention as children who are members of the Sami people. In particular, the Committee takes note of the authors' claim that the project would cause irreparable harm to their reindeer herding community by disrupting the whole annual reindeer herding cycle, making Sami reindeer herding unsustainable and therefore damaging a core dimension of their rights, as Indigenous children, to be active and willing recipients of the unhindered transmission of: (a) the Sami way of life (art. 30, concerning continuity of their cultural heritage); (b) the Sami identity (art. 8); and (c) traditional Sami economic activities based on reindeer herding (art. 27, concerning livelihood and adequate standard of living). 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 is of significant importance for the maintenance and protection of traditional knowledge for future generations. The Committee also takes note of the authors' claim relating to the intergenerational nature of Indigenous Peoples' right to transmit their culture to new generations and the fact that a chain of cultural transmission is interfered with much earlier than an Indigenous culture is destroyed.

9.3 The Committee further takes note of the State party's argument that, while recognizing that traditional Sami livelihoods, including reindeer herding, constitute the foundation of Sami cultural life and language, such that it is for the State party of paramount importance to ensure the transfer of traditional reindeer herding to the next generations,

transferring Sami culture to Sami children is becoming increasingly difficult because as many as 70 per cent of all Sami children live outside the Sami homeland. The Committee takes note of the State party's claim that the exploration works would be relatively small in scale and temporary and would thus not have 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 the decision to grant that permit. Pursuant to the Mining Act, the permit holder is required only to adjust its operations in order to avoid significant harm to reindeer herding, and the authors were merely given an opportunity to be heard during consultations.

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

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-Sami population, with the State party ignoring the particularities of Sami cultural identity, traditional livelihoods and dependence on reindeer herding for survival. The Committee also takes note of the State party's claim that the applicable legislation is not discriminatory, as it applies to both Sami and non-Sami, 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 allegedly had multiple consequences for the enjoyment of their rights.

9.8 The Committee observes that both parties agree on the following facts: (a) the three authors, from a traditional semi-nomadic herding community, are trying to learn traditional Sami reindeer herding, passed down from their ancestors, and are determined to continue the Sami way of life in which they grew up, despite outside threats to their culture; (b) Sami reindeer herding is a cornerstone of the Sami culture and way of life; and (c) the authors' culture, identity, livelihood and mother tongue (Northern Sami) 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 for the survival of reindeer and, therefore, for traditional Sami reindeer herding; and that the authors and their *siida* are permanently fighting for the survival of their culture.

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 whether the drilling of 100- to 300-metre-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 have 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 winter months in the scarce winter herding pastures, on the composition of the herd would be long-lasting, limiting their ability to benefit from the transmission of the Sami culture and the associated work and livelihood. According to the State party, the works would be temporary and relatively small in scale.

9.11 The Committee acknowledges the State party's assertions: (a) that the right of Indigenous Peoples to self-determination served as a model for the Constitution of Finland; (b) that it recognizes the need to strengthen the current obligation under its legislation to negotiate, to ensure closer alignment with the international standard of free, prior and informed consent; and (c) that the case law on article 27 of the International Covenant on

Civil and Political Rights, read in the light of the right of Indigenous Peoples to self-determination, must be taken into account when 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 evolving interpretation of Indigenous Peoples' rights,<sup>19</sup> in particular in the light of 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>20</sup> keeping in mind that Indigenous children are also impacted by the challenges facing their families and communities.<sup>21</sup>

9.13 The Committee notes that, in its Views in *Roy et al. v. Australia*, the Human Rights Committee indicated that, in the case of Indigenous Peoples, the enjoyment of culture might relate to a way of life closely associated with their traditional lands, territories and resources and that, 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 Human Rights Committee also indicated that ownership of and control over ancestral territories were essential to Indigenous Peoples' survival as peoples, with the preservation of their distinct culture, and that any denial of the exercise of their territorial rights was detrimental to values that were very representative for members of Indigenous Peoples who were at risk of losing their cultural identity and the heritage to be passed on to future generations (para. 8.3). The Human Rights Committee further indicated that it was of vital importance that measures that compromised Indigenous Peoples' culturally significant territories were 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 (para. 8.5).

9.14 The Committee on the Rights of the Child also recalls that the integrity and durability of a culture depend on having, in times to come, the conditions for its own ways of life; that cultural rights have an intergenerational aspect that is fundamental to the cultural identity, survival and viability of Indigenous Peoples;<sup>22</sup> that the right of Indigenous Peoples not to be subjected to the destruction of their culture is recognized in article 8 of the United Nations Declaration on the Rights of Indigenous Peoples; that, in its general recommendation No. 23 (1997), the Committee on the Elimination of Racial Discrimination called upon the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to recognize and respect the distinct culture, history, language and way of life of Indigenous Peoples as an enrichment of the State's cultural identity and to promote its preservation; and that, in its own general comment No. 11 (2009) on Indigenous children and their rights under the Convention, the Committee on the Rights of the Child stated that there existed a close link between article 30 of the Convention and article 27 of the International Covenant on Civil and Political Rights 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 (para. 16). 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 (para. 35).

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>23</sup>

<sup>19</sup> Human Rights Committee, *Roy et al. v. Australia* (CCPR/C/137/D/3585/2019), para. 8.14; European Court of Human Rights, *Tyrer v. the United Kingdom*, Application No. 5856/72, Judgment, 25 April 1978, para. 31; and Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001, para. 146.

<sup>20</sup> See also Committee on the Elimination of Discrimination against Women, general recommendation No. 39 (2022) on the rights of Indigenous women and girls, para. 13.

<sup>21</sup> A/HRC/48/74, para. 14.

<sup>22</sup> E/CN.4/Sub.2/2001/21, para. 20.

<sup>23</sup> A/HRC/48/74, para. 83.

9.16 The Committee considers that it is precisely because the State party is aware that transferring Sami culture to Sami 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>24</sup>

9.18 The Committee observes that, in the State party, the procedure for an exploration permit application begins with a public announcement of the application on the bulletin board of the municipality and the notification of the legally recognized landowners. The Committee further observes that, under the Mining Act, the State party is required to identify the impacts of exploratory activities on the right of the Sami to maintain their culture, but that, according to the Supreme Administrative Court, the Mining Act does not provide further stipulations as to the practical execution of the assessment in each individual case. In the present case, the Käsivarsi Reindeer Herding Cooperative was invited to submit comments and, following the public announcement and procedure for obtaining comments, a negotiation meeting was arranged in connection with the permit consideration. The Committee also notes that, for the Supreme Administrative Court, it was sufficient that the permit holder sought to minimize the disruptions caused to Sami reindeer herding and sought to notify the Käsivarsi Reindeer Herding 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 States are to 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 held consultations in good faith and with a view to reaching a consensus. In particular, whenever Indigenous Peoples' rights may be affected by projects carried out in their traditional territories, an adequate and effective process for obtaining free, prior and informed consent must imply not only the sharing of information and the gathering of comments from the community affected, but also an interactive and continuous dialogue, from the early stages and through culturally appropriate procedures, with a genuine and sincere ambition to reach consensus as opposed to starting the process with predefined ideas according to which the project must necessarily be carried out.<sup>25</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, States parties must play an important role in promoting consultations with Indigenous children on all matters affecting them,<sup>26</sup> including issues concerning their traditional territories and environment.<sup>27</sup> The Committee moreover considers that Indigenous

<sup>24</sup> See also Human Rights Committee, *Roy et al. v. Australia*, para. 8.6.

<sup>25</sup> See also general comment No. 11 (2009), para. 20; Committee on the Elimination of Racial Discrimination, *Ågren et al. v. Sweden*, para. 6.18; [A/HRC/39/62](#); Inter-American Court of Human Rights, *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment, 27 June 2012, para. 167; and *Saramaka People v. Suriname*, Judgment, 28 November 2007, para. 133; and Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources* (2010), paras. 318 and 319.

<sup>26</sup> General comment No. 11 (2009), para. 39.

<sup>27</sup> [A/HRC/48/74](#), para. 20.

children must be at the very heart of the process, from their consideration in the context of impact assessments to their effective participation in processes of consultations aimed at obtaining their free, prior and informed consent.

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

9.24 Lastly, the Committee recalls that to ignore the right of Indigenous Peoples to use land and to refrain from taking appropriate measures to ensure respect in practice for their right to give their free, prior and informed consent whenever their rights may be affected by projects carried out on their traditional territories constitutes a form of discrimination, as it results in nullifying or impairing the recognition, enjoyment or exercise by Indigenous Peoples of their rights to their ancestral territories, natural resources and, as a result, their identity.<sup>28</sup> The Committee moreover considers that the discrimination suffered by an Indigenous People also has an impact on children, the preservation of whose 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 permit without having ensured the effective participation of the authors through a consultation process based on a prior assessment of the consequences of the exploration works for Sami 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 the 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 8, 27 and 30, 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 reviewing its decision to permit 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 to obtain the free, prior and informed consent of the authors' *siida*, in which the authors should participate effectively. The State party is also under an obligation to take all the steps necessary to prevent similar violations from occurring in the future. In that 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 by ensuring the participation of affected Indigenous children, and to include an environmental and social impact assessment, including a 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 languages and into Northern Sami and to disseminate them widely.

<sup>28</sup> Committee on the Elimination of Racial Discrimination, *Ågren et al. v. Sweden*, para. 6.7, citing the jurisprudence of the Inter-American Court of Human Rights and the African human rights system.

## Annex I

[Spanish only]

**Voto particular (concurrente) de Rosaria Correa, miembro del Comité**

1. Comparto el pronunciamiento del Comité contenido en el presente dictamen. Sin embargo, he decidido externar el presente voto separadamente porque considero que debo extenderme en algunos aspectos que guardan relación con planteamientos esbozados por las autoras, relativos al rol que juegan las niñas samis en su pueblo y el derecho a no discriminación (artículo 2, párrafo 1, leído conjuntamente 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.

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 la más tierna edad, las autoras han recibido formación de las mujeres mayores de la familia y ahora crean ellas mismas todo tipo de objetos, desde las botas tradicionales de piel de reno (*nuvttohat*) hasta el traje tradicional que se utiliza en ceremonias (*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 verá seriamente afectada (véase el párr. 2.3 del dictamen).

3. Inferimos del planteamiento que hacen las autoras que estas reclaman el reconocimiento de su papel o rol dentro de su pueblo de manera diferenciada, es decir, como niñas, pues, de lo contrario se daría 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 las autoras reconocidos en los artículos 8, 27 y 30 de la Convención, leídos aisladamente y en conjunción con los artículos 2, párrafo 1, y 12 de la Convención, y que, 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 hecho de 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 parte debe tener presente que la tierra y los territorios son parte esencial de la identidad, los puntos de vista, los medios de vida, la cultura y el espíritu de las mujeres y las niñas Indígenas<sup>1</sup>, los Estados deben exigir el consentimiento libre, previo e informado también de las niñas indígenas, antes de autorizar proyectos en sus tierras y territorios, adoptando las medidas necesarias para garantizar esa participación.

5. Además, el Estado parte, en sus respuestas a la presente comunicación, fue enfático en señalar que muchos de los indígenas no viven en esas tierras, por lo que desconoce la importancia y pertinencia de la recomendación general núm. 39 (2022) del Comité para la Eliminación de la Discriminación contra la Mujer, 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 sean tenidas en cuenta en el proceso de elaboración.

<sup>1</sup> Comité para la Eliminación de la Discriminación contra la Mujer, recomendación general núm. 39 (2022), párrs. 56 y 57.



6. Por otro lado, es importante reconocer que en materia ambiental el sistema de las Naciones Unidas ha hecho énfasis en reconocer su papel clave como líderes, portadoras de conocimientos y transmisoras de cultura dentro de sus pueblos, comunidades, familias y de la sociedad en su conjunto<sup>2</sup>.

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

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<sup>2</sup> [A/HRC/52/33](#), párr. 83.

## Annex II

[English only]

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

1. I agree with much of the reasoning included in the Committee's Views. 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, namely, 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, greater emphasis should have been placed in the Views 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 great importance for 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 communications brought before the Committee under the Optional Protocol on a communications procedure.<sup>2</sup> In the Pact for the Future, which was in the final stage of its development at the time of the adoption of the Committee's Views in the present case, children are recognized as "critical agents of positive change" and it is declared 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 Human Rights of Future Generations locates this special affinity in the recognition that children occupy a "proximate position to future generations",<sup>4</sup> which makes children "closest in time to generations still to come" and thus means that they "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>5</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 No. 11 (2009) on Indigenous children and their rights under the Convention, the Committee envisaged both individual and collective participation of children and observed that States parties should design special strategies to guarantee that their participation is effective.<sup>6</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

<sup>1</sup> "To think and act for future generations", Our Common Agenda policy brief No. 1 (March 2023), p. 4.

<sup>2</sup> See *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019), *Sacchi et al. v. Brazil* (CRC/C/88/D/105/2019), *Sacchi et al. v. France* (CRC/C/88/D/106/2019), *Sacchi et al. v. Germany* (CRC/C/88/D/107/2019) and *Sacchi et al. v. Turkey* (CRC/C/88/D/108/2019).

<sup>3</sup> General Assembly resolution 79/1, para. 58.

<sup>4</sup> Principle 22 (c).

<sup>5</sup> Preamble, para. VII.

<sup>6</sup> General comment No. 11 (2009) on Indigenous children and their rights under the Convention, para. 39.

meaningfully engage with Indigenous children and their families in responding to such harm.<sup>7</sup> Their views should be proactively sought, and may be gathered through creative means.<sup>8</sup>

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

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<sup>7</sup> General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, para. 58.

<sup>8</sup> Ibid., para. 26.