

# Advance unedited version

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## Committee on Economic, Social and Cultural Rights

### Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communications Nos. 251/2022 and 289/2022\*, \*\*, \*\*\*

<i>Communications submitted by:</i>	J.T., J.P.V. and P.M.V., on their own behalf and on behalf of their minor children S.V., E.S.V. and E.A.V.; P.A.L., P.T.J., O.A.V., M.L.V., N.M.V., L.T.V., J.O.J., N.A.L., Á.M.L., M.L., M.L., J.T.L., V.T. and N.M.V. (represented by counsel Martin Scheinin)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Finland
<i>Date of initial submissions:</i>	31 December 2021 (communication 251/2022), 15 May 2022 (communication 289/2022)
<i>Date of adoption of decisions:</i>	27 September 2024
<i>Subject matter:</i>	Granting of a mineral exploration permit (251/2022) and an area reservation (289/2022) on Sámi people's traditional territory without impact assessment nor free, prior and informed consent
<i>Procedural issues:</i>	Victim status; failure to exhaust domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Right to self-determination; non-discrimination and equality; right to an adequate standard of living; right to take part in the cultural life of a community; Indigenous Peoples; right to land
<i>Article of the Covenant:</i>	1; 2(2); 6; 7(a)(ii); 11; 12; 15(1)(a)
<i>Article of the Optional Protocol:</i>	3 (1) and 3 (2) (e)

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

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

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

1.1 The authors of both communications, dated 31 December 2021 and 15 May 2022 respectively, are J.T., J.P.V., P.M.V., S.V., E.S.V., E.A.V., P.A.L., P.T.J., O.A.V., M.L.V., N.M.V., L.T.V., J.O.J., N.A.L., Á.M.L., M.L., M.L., J.T.L., V.T. and N.M.V., all belonging to the Kova-Labba Siida, a community of Sámi reindeer herders. The authors submit that, by granting a mineral exploration permit (communication no. 251/2022) and an area reservation (communication no. 289/2022) on their traditional territory without proper impact assessment and without a process of consultations aimed at obtaining the free, prior and informed consent, the State party violated their rights to take part in the cultural life of a community (article 15) and to enjoy just and favourable conditions of work which ensures remuneration that provides a decent living (article 7(a)(ii)), both interpreted in the light of the rights to self-determination (article 1), to work (article 6), to an adequate standard of living (article 11) and to health (article 12), and both in conjunction with the right not to be discriminated against (article 2(2)). The authors requested the adoption of interim measures to halt the exploration works (251/2022) and to reject any request for exploration works in the area reservation (289/2022). The Optional Protocol (OP) entered into force for the State party in April 2014. The authors are represented by counsel.

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

1.3 On 14 March 2022 (251/2022) and 15 October 2022 (289/2022), the State party requested the Committee to examine the question of admissibility separately from the merits and informed, for communication no. 251/2022, that the permit holder had not taken any practical measures after receiving the permit and did not intend to conduct survey drillings until winter 2023/2024 at the earliest. On 23 March 2023, the Committee decided, pursuant to rule 6 of its Rules of Procedure under the OP, to examine the admissibility of the communications together with its merits.

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

### **Common factual background<sup>1</sup>**

2.1 The authors are indigenous Sámi people and practise traditional Sámi reindeer herding. They belong to the 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> Sámi reindeer husbandry is semi-nomadic due to the seasonal and weather-dependent rotation of pastures, and is an essential part of Sámi culture, maintained by small groups of kin or village-based herders ("siida" in Sámi language) and transmitted from generation to generation.

2.2 The State Party's Forest Agency, Metsähallitus, is the landowner of approximately 90% of the Sámi homeland, including the authors' traditional reindeer herding territory.<sup>3</sup> According to the Mining Act, exploration work can be carried out with the consent of the landowner, and the exploration permit holder is obliged to pay compensation (exploration fee) to the owners of the land included in the exploration area.<sup>4</sup>

2.3 The regions where the Sámi live are warming more than three times faster than the global average. Frozen and moulting pastures and extreme snow conditions pose challenges for reindeer and reindeer herders, threatening the Sámi's ability to continue reindeer herding as a main source of income. This has a detrimental effect on the culture, languages and

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<sup>1</sup> The factual background has been reconstructed on the basis of the individual communications and the information subsequently provided by the parties in their observations and comments on admissibility and the merits of the communication.

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

<sup>3</sup> The Act on Metsähallitus.

<sup>4</sup> Section 7 and 99.

traditional knowledge of the Sámi, as it disrupts the practice of traditional livelihoods, which is central to maintaining and transmitting their culture.<sup>5</sup>

### **Factual background regarding communication no. 251/2022**

2.4 On 28 March 2014, the Geological Survey of Finland (an agency under the Ministry of Economic Affairs and Employment - GTK), applied for a mineral exploration permit called "Lätäs 1", requesting permission for the exploration works of gold, copper and iron, which includes 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 Kova-Labba Siida, the authors' traditional reindeer herding territory. The project entails bringing into the territory one-ton drilling machines and five-ton support vehicles that would provide a water source for the drilling.

2.5 The Safety and Chemicals Agency (Tukes), which is responsible for the mining permit, 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 Käsivarsi Reindeer Herders' Cooperative, acting on behalf of its members -including the authors-, submitted the statements concerning the negative impact of the mineral exploration works on Sámi reindeer herding and the failure of the State party to carry out a proper assessment of the impact of exploration and other forms of land use on reindeer herding in the area and on the rights of Sámi.<sup>6</sup> The Sámi Parliament stated in three occasions that, the basic preconditions for a free, prior and informed consent had not been met, given the lack of an assessment of the impact on the Sámi culture.<sup>7</sup> Under the Mining Act, the State party's mining authority is obliged to assess the impact of mining or exploratory activities under its consideration on the rights of the Sámi as an Indigenous People.<sup>8</sup> In this regard, the Supreme Administrative Court (SAC) 2014:111 clarified that "The Finnish Safety and Chemicals Agency as the permit authority was obliged to contribute to ensuring that appropriate opportunities existed for the co-operation procedure for clarifying the matter under section 38 of the Mining Act. This involved, inter alia, making sufficient material available to the Sámi Parliament for assessing the impacts that the activities referred to in the application would have on Sámi culture".

2.6 On 7 July 2016, Tukes granted GTK for an initial period of four years and renewable for up to 15 years, finding that the application met the requirements of the Mining Act.

2.7 On 8 August 2016, the Käsivarsi Reindeer Herders' Cooperative, signed by J.T., the first author of the communications, 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.

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

2.9 On 18 January 2019, the Käsivarsi Reindeer Herders' Cooperative (on behalf of all members of the cooperative, including the authors), together with 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.

2.10 On 21 June 2021, the Supreme Administrative Court rejected the appeal, considering that: i) the co-operation procedure provided conditions to ensure that the Sámi had a de facto opportunity to participate in the permit procedure; ii) the exploration permit included conditions intended to reduce and prevent possible damage to reindeer herding (e.g. work must be carried out outside of the calving season, limited during times important for reindeer husbandry and only after the location of possible reindeer has been cleared in advance; the permit holder must agree locally on the means by which the harmful movement of reindeer from one area to another is to be prevented; the permit holder must notify the cooperative

<sup>5</sup> Finland, The Sámi in Finland and Climate Change (2023) <https://unfccc.int/documents/628002>

<sup>6</sup> 14/11/2014, 19/06/2016.

<sup>7</sup> 13/11/2014, 15/12/2014, 22/06/2016.

<sup>8</sup> Section 38.

and the siida of any exploration activities and their schedule in advance of the start of the exploration activities; and the permit holder must ensure that any tracks of snowmobiles or tracked vehicles briefly visible in the area or disturbances caused by off-road traffic do not increase the uncontrolled movement of reindeer from one area to another); and that iii) the surface area of the exploration work was relatively small. The authors note that the Court compared the exploration area not against the size of the Kova-Labba Siida but against the size of the Käsivarsi Reindeer Herders' Cooperative consisting of the Kova-Labba Siida and two other villages.

2.11 The authors submit that Tukes granted GTK the exploration permit within the traditional reindeer herding lands of the indigenous Sámi community without a proper assessment of the adverse impact of the exploration activities on Sámi reindeer herding, and without good faith efforts to obtain their free, prior and informed consent. According to the authors, the obligations arising from the Mining Act on the impact assessment must be interpreted in the light of international standards on Indigenous rights. However, the State party replaced the impact assessment with a *pro forma* consultation. Moreover, given that the Sámi should be consulted based on an impact assessment, the procedure followed before the permit was issued did not meet the standards of free, prior and informed consent.

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

2.13 The authors submit that all domestic remedies have been exhausted as they appealed against the exploration permit all the way to the final judicial instance, the SAC, and in the proceedings, they explicitly invoked the same substantive rights that are included in the communication: their rights to take part in the cultural life of their community, to property, not to be discriminated against, and to work or livelihood of their choice.

#### **Factual background regarding communication no. 289/2022**

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

2.15 On 20 April 2022, Tukes granted an area reservation, called "Ruossakero", for a period of two years. According to the Mining Act, the holder of an area reservation has a priority in applying for an exploration permit for the reserved area.

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

2.17 Under the Mining Act, exploration can be carried out based on the consent of the landowner. The property owner of the Sámi lands in question is the State's Forest Agency (Metsähallitus). It means that in principle, the State can determine the nature and scope of the reserving company's exploration works in their traditional land, including highly intrusive operations such as the use of heavy machinery and drilling into the bedrock. The authors submit that together with the highly unstable weather conditions driven by ongoing

climate change, any new disturbances could lead to unpredictable and adverse consequences for both the reindeer and their herders.

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

2.19 According to the authors, there is no domestic remedy available to them as the Supreme Administrative Court has already firmly established that they do not have legal standing to appeal against the granting of a reservation area.<sup>9</sup>

### **The complaint**

3.1 The authors submit that the granting of the permit for a mineral exploration project, despite their consistent opposition and in the absence of an impact assessment (251/2022), and the granting of an area reservation (289/2022) on their traditional territory without obtaining their free, prior and informed consent and in the context of ongoing climate change and the cumulative effect of other interferences, such as wind farms, activities by the military and organised group tourism, with reindeer herding, has the effect of eroding the preconditions of communal reindeer herding and its transmission from generation to generation, and therefore constitutes a violation of their rights to take part in the cultural life of a community and to enjoy just and favourable conditions of work that ensures remuneration which provides a decent living for themselves and their families, both rights interpreted in the light of articles 1, 6, 11 and 12, and both in conjunction with article 2(2). They emphasize that the right to transmit an Indigenous way of life and a traditional economic activity from generation to generation constitutes a core dimension of articles 15 and 7(a)(ii) in the context of Indigenous Peoples.

3.2 In submitting that both provisions should be read alone and in conjunction with article 2(2), the authors claim, for 251/2022, that they are subject to substantial, indirect and systematic discrimination in respect of the unilateral power of the State party to conduct (GTK), authorize (Tukes) and uphold (the Courts) mineral exploration works in their traditional territory without good faith efforts to obtain their free, prior and informed consent, and that the discriminatory nature of the Mining Act is demonstrated through the fact that, as the State has declared itself as the owner of their lands, it will receive annual compensation from its own agency (GTK) 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 assert that no other landowner is in the same situation as the Sámi where even their right to compensation is denied. In communication no. 289/2022, the authors claim that they are at the mercy of the State party’s Forest Agency as to the intensity of exploration works that will be conducted, and that the discriminatory nature of the Mining Act is demonstrated through the fact that they have no right of appeal against the granting of a reservation nor are in a position to control the nature of the works.

3.3 In both communications, the authors further argue that the violations of the Covenant must be assessed in the context of the cumulative effects of earlier interventions in their lands, aggravated by ongoing climate change. They explain that ongoing climate change has increased the challenges faced by the reindeer in their ability to dig through the snow in

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<sup>9</sup> The authors were denied victim status when appealing against the granting of the area reservation in “Lätäs 1” (KHO 2013:179); the SAC upheld this precedent declaring inadmissible an appeal filed by another siida against another request for reservation (KHO H731/2021).

search of ground lichen during the critical winter months. This has led to an increase in work for the Sámi and unpredictability in the location and timing of the reindeers' movements. Furthermore, the alternating winter temperatures result in impenetrable sheets of ice between layers of new snow, preventing the reindeer from accessing the ground lichen. They mention the Committee's expressed concern about the impact of climate change on Indigenous Peoples living in the Arctic region.<sup>10</sup>

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

4.1 The State party submitted its observations on admissibility in communications no. 251/2022 and no. 289/2022 on 14 March 2022 and 15 October 2022, respectively. In both observations, the State party submits that the communications have an *actio popularis* nature, the authors lacking *locus standi* and the communications being premature. For 251/2022, the State party added that the authors have not yet been personally affected by the permit as GTK did not take any practical measures after receiving the permit, has no ongoing project or exploration activities in the area, has no potential survey drillings scheduled, and will not conduct a survey until the communication has been decided.

4.2 In both observations, the State party also submits that the areas are owned by the State and that determining the owner is ultimately a private law issue, and that the Mining Act is not discriminatory as it applies to both Sámi and Finnish persons, regardless of their origin.

#### *Specific observations regarding communication No. 251/2022*

4.3 The State party submits that GTK 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. The State party also states that it has no reasonable grounds to deviate from the position of the SAC as, taken as a whole, the exploration area is relatively small-scale and that the permit contains conditions for the exploration to alleviate and prevent damage to reindeer herding.

4.4 The State party indicates some relevant domestic legislation. Firstly, the Constitution provides that the Sámi have linguistic and cultural self-government in their native region and their right to maintain and develop their own language and culture, and this safeguards the practice of their traditional livelihoods, such as reindeer herding. The State party recalls that the Human Rights Committee has connected the concept of the right of Indigenous Peoples to self-determination not only with article 1 but also with article 27 of the ICCPR, 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 affect the status of the Sámi as an Indigenous People. In November 2017, the Ministry of Justice issued a memorandum 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 and shall consider measures required for reducing and preventing damage. A permit must not be granted if activities would cause considerable harm to reindeer herding.

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

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

4.7 Lastly, the State party claims that the communication is manifestly ill-founded on the grounds that the authors failed to substantiate in which way their rights under each of the articles of the Covenant have been violated. The State party considers that the core of the

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<sup>10</sup> E/C.12/RUS/CO/6 para. 42, 43; E/C.12/CAN/CO/6 para. 53, 54.

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.

*Specific observations regarding communication No. 289/2022*

4.8 The State party informed that the Mining Act was being reformed, with a new tax-like charge for the reservation area and a shorter reservation period. It asserts that a reservation gives the party priority to submit an exploration permit application for the reservation area and it does not entitle the party to commence exploration. Thus, the State party claims that a reservation does not affect the practice of reindeer herding or the right to practice this livelihood. It states that exploration with the consent of the landowner is permissible, regardless of reservation, unless the use is unlawful or subject to a permit.

4.9 The State party also claims non-exhaustion of domestic remedies as the authors did not appeal against the decision of Tukes from 20 April 2022. It indicates that the Mining Act provides for the right of the Sámi Parliament to appeal against an exploration permit or a mining permit, but not against reservation decisions. It further states that the right of appeal in the case of reservation decisions is determined in accordance with the Administrative Judicial Procedure Act, and a person whom a decision concerns, or whose right, obligation or interest is directly affected by the decision, may seek review of an administrative decision by appeal. It submits that the party making the reservation, a holder of a permit for the same area, or an applicant who filed an application for the same area, may be considered to have a right of appeal. According to the SAC, a reservation decision has no impact on the practice of reindeer herding as it does not grant a right to explore for ore. It only gives a priority to submit an exploration permit application for the reservation area; the "purpose of the reservation procedure is to ensure that a potential applicant for an exploration permit has a sufficient opportunity to prepare the application carefully".<sup>11</sup> The State party therefore claims that, according to its domestic law, the Sámi do not have an *automatic* right to appeal against reservation decisions but that they may or may not have the right to appeal, depending on the case.

4.10 Finally, the State party claims that the communication is manifestly ill-founded, citing the ruling of the SAC that a reservation decision does not affect the practice of reindeer herding, nor restricts the right of the Sámi as an indigenous people to maintain and develop their culture.

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

5.1 In their comments of 5 May 2022 and 26 September 2022 regarding 251/2022, the authors observe that various of the State party's observations on admissibility are matters pertaining to the merits of the case and demonstrate ignorance of Indigenous Peoples' rights. The State party misunderstands their claim in respect of article 2.2. They clarify that the issue of compensation was mentioned in their claim as a factual matter in order to demonstrate the discrimination faced by the Sámi when they are not in control of their own lands. As explained by the Committee on the Elimination of Racial Discrimination, because they are Sámi, international human rights law including article 2(2) of the Covenant requires that they must be treated differently from non-Sámi who use so-called government owned lands. Discrimination also occurs when groups or individuals that are situated differently are treated identically, with the State failing to address their particular situation.<sup>12</sup> The mining legislation discriminates against the Sámi, 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.

5.2 According to the authors, another matter pertaining to the merits of the case and demonstrating ignorance of reindeer behaviour is the State party's assertion that, taken as a whole, the exploration area is relatively small-scale or temporary. The "Lätäs 1" area falls within a scarce resource, critical winter herding lands, the availability of which determines the size of the herd that the whole area of the siida can sustain. The authors argue that

<sup>11</sup> KHO:2013:179 and KHO:2021:145.

<sup>12</sup> *Cfr.* CERD/C/102/D/54/2013, para. 6.23; ECHR, *Thlimmenos v. Greece*.

disrupting the herding in the critical time of the winter months in the scarce winter herding pastures would cause permanent damage to the reindeer herds and to the Sámi reindeer herding.

5.3 The authors also contend that the State party's submission that GTK would have merely a scientific mission is misleading. The State party also confirms that the mission of this agency includes serving the "needs of businesses and society in general". While GTK does not engage in mining as such, its activities promote "the competitiveness of business and areas" according to the Act on the Geological Survey Agency<sup>13</sup> and pave the way for companies interested in exploiting the mineral resources. Its permit application indicated that it was looking for Copper, Iron and Gold; the permit was granted for the purpose of exploring for deposits of these metals.

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

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 Tukes granted the permit and the SAC upheld it. The authors mention the views of the Human Rights Committee in *Daniel Billy et al. v. Australia*, in which the Committee considered that the risk of impairment of the authors' rights was more than a theoretical possibility, given that those authors' lives were highly dependent on the availability of the limited natural resources to which they had access.<sup>14</sup> According to the authors, taking into account the inter-generational nature of the right of Indigenous peoples to transmit their culture to new generations, a chain of cultural transmission is interfered with much earlier than an Indigenous culture is destroyed, when such interference with cultural transmission occurs, the admissibility conditions of victimhood and substantiation are already met

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

5.7 On the State party' argument that the communication is manifestly ill-founded and that it seeks to have the Committee act as a fourth instance, the authors submit that the SAC was both formalistic and wrong in holding that the international standard of free, prior and informed consent would have been met by merely giving the Sámi an opportunity to be heard.

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

5.9 In their comments on 23 February 2023 regarding 289/2022, on the State party's argument on alleged lack of victim status, the authors claim that they were not provided the protection of the principle of free, prior and informed consent before the reservation decision, and that the Finnish law denies them any judicial recourse. They also submit that the mere existence of the area reservation places them in a position of vulnerability and unpredictability, and can cause grave adverse effect to the transmission of the Sámi culture from generation to generation, because this process requires the Sámi to have confidence that their efforts to cope with the challenges caused by climate change will not be frustrated by mineral exploration works.

5.10 On the alleged non-exhaustion of domestic remedies, the authors submit that the precedent ruling by the SAC (KHO 2013:179) held that reindeer herding Sámi are not entitled to appeal against an area reservation granted pursuant to the Mining Act. Through this present,

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<sup>13</sup> Section 2.

<sup>14</sup> CCPR/C/135/D/3624/2019, para. 7.10 and 8.14.



the Sámi have been denied standing in domestic proceedings seeking to challenge area reservations.

5.11 Finally, on the alleged lack of substantiation, the authors observe that the State party only cites the precedent SAC's ruling, which held that a reservation as such had no impact on reindeer herding or the right of the Sámi as an indigenous people to maintain and develop their culture. The authors claim that the Court did not examine how their rights and culture are affected by an area reservation but instead issued a blanket *in abstracto* denial of such effects.

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

6.1 In its observations of 14 July 2023, the State party submits common considerations for both communications: i) according to the Constitution, the Sámi have linguistic and cultural self-government in their native region and the right to reindeer herding is a Sámi historical usufruct right; ii) article 15 of the Covenant, in the same way as the Constitution, guarantees the right to transfer culture and language to the next generations; iii) in interpreting the provisions of the Covenant, it is necessary to take into account article 27 of the ICCPR, and the jurisprudence of the Human Rights Committee indicate that article 27 must be read in light of the right of Indigenous Peoples to self-determination; iv) the United Nations Declaration of the Rights of Indigenous Peoples reflects the legal principles and aspirational goals followed by the State party; v) a working group is preparing a reform to the Act on the Sámi Parliament to strengthen the current obligation to negotiate into free, prior and informed consent; vi) as reindeer herding cooperatives "carry out their activities in a wide area", it is necessary to reconcile "different interests" in land use; vii) the Mining Act is not discriminatory as it applies to both Sámi and Finnish landowners and determining the owner is ultimately a private law issue; viii) a new Mining Act entered into force on 1/06/2023,<sup>15</sup> setting additional conditions for the granting of a mining permit and for extending the validity of an exploration permit, and setting a new reservation fee discouraging reservations that are unnecessarily extensive.

6.2 Specifically on the merits of communication 251/2022, the State party submits that: i) the permit procedure included an extensive opinion and consultation procedure; ii) a consensus was sought on concrete solutions that could minimize the effects of mineral exploration on the rights of the Sámi (such as the placement of barriers -tarpaulins- to control the movement of reindeer and thus prevent their dispersal); iii) the exploration permit decision included conditions aimed at reducing the harm caused to reindeer herding, and iv) the Mining Act requires the exploration permit holder to pay annual compensation to the landowners in the area.

6.3 Specifically on the merits of communication 289/2022, the State party observed that "according to the legislation currently in force and well-established case law of the SAC [...] the authors would not have had a right to appeal against" such an area reservation decision. It adds that in 2014, the State party's Forest Agency concluded an agreement with the Sámi Parliament on forest management according to which it will not grant a consent to exploration within the Sámi Homeland, unless there is an authorisation from Tukes.

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

7.1 On 28 August 2023, regarding communication no. 251/2022, the authors claim that they did not consent to the exploration project contrary to what the State party claims: there is no reference to agreement in the minutes of the meetings, in which none of the authors were present, they objected to the project and appealed through domestic courts before submitting the communication.

7.2 The authors further claim that the failure to conduct an impact assessment is visible in the erroneous argument of the State party that the reindeer could be moved away when and where GTK decides to conduct drilling works.

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<sup>15</sup> 505/2023.

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

7.4 Regarding communication no. 289/2022, the authors observe that there is no disagreement between the parties that the State party explicitly confirmed that they would not have had a right to appeal in respect of the granting of an area reservation, but they disagree on whether an area reservation affects the rights of the Sámi. According to the authors, as it is possible for a reservation holder to conduct intrusive exploration works, before applying for an exploration permit, based on the consent of the landowner, and Finnish law treats the State party's own Forest Agency as the landowner, which would be in a position to consent, without the Sámi having a right of appeal. Therefore, the authors and their Sámi community have been placed in a situation of uncertainty concerning whether they can use their lands according to their traditions and the needs of their reindeer, as any day the reservation holder, with the consent from the State's Forest Agency, may enter their lands.

7.5 The authors request, for communication no. 251/2022, that GSF refrain from any exploration works in their lands; for communication no. 289/2022, that the Forestry Agency refrain from giving its consent to any exploration works in their lands; and for both communications, that the State party proceed to amend the Mining Act to recognize a special status for the Sámi People, including new provisions on the free, prior and informed consent of the Sámi.

#### **Parties' additional information**

8. On 30 October 2023, the State party clarifies that the free, prior and informed consent does not mean that a consensus should be reached if sufficient guarantees of effective participation have been provided (251/2022), and that, even though the Sámi do not have an *automatic* right to appeal against reservation decisions, they may or may not have this right depending on the case (289/2022).

9. On 23 November 2023, the authors observe that the State party no longer claims that they consented to the project (251/2022) and that it appears to reopen the matter whether they had a right to appeal against the reservation decision (289/2022).

## **B. Committee's considerations of admissibility**

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 10(2) of its Rules of Procedure under the OP, whether or not the communication is admissible.

10.2 The Committee recalls that, under article 3(2)(c) of the OP, 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 children from their community have submitted a communication to the Committee on the Rights of Child concerning the same mineral exploration project as communication no. 251/2022. The Committee notes that the petition procedure before the CRC constitutes a "procedure of international investigation or settlement" within the meaning of the above-mentioned provision.<sup>16</sup> The Committee also recalls that the "same matter" means one and the same claim relating to the same parties, events and substantive rights.<sup>17</sup> Given that the complaint with the CRC has not been filed by the same authors, the Committee concludes that it is not the "same matter" and that articles 3(2)(c) is therefore not an obstacle to the admissibility of the communications.

10.3 The Committee notes the State party's argument that the authors' claims are of an *actio popularis* and premature nature, and thus they lack victim status. The Committee notes, however, that the authors present information in their communications alleging that State party failed to obtain the free, prior and informed consent or undertake good faith efforts to obtain it when granting the exploration permit (251/2022) and the area reservation (289/2022)

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<sup>16</sup> See, *mutatis mutandis*, E/C.12/59/D/4/2014, para. 6.3.

<sup>17</sup> *Cfr.* E/C.12/59/D/4/2014, para. 6.4.

in the authors' traditional territory, and that this allegedly constitutes a violation of their own rights, irrespective of future development. The Committee accordingly considers that the authors have victim status and that article 2 of the OP is not an obstacle to the admissibility of communication no.251/2022 and communication no. 289/2022.

10.4 The Committee takes note of the State party's arguments on inadmissibility for lack of exhaustion of domestic remedies: 1) of communication no. 251/2022 because the authors did not raise an allegation on climate change before domestic courts, and 2) of communication no. 289/2022 because the authors did not appeal against the decision granting the area reservation.

10.5 The Committee also notes the authors' argument regarding communication no. 251/2022 that the issue of climate change is raised before the Committee to substantiate their claims, 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, traditional property, not to be discriminated against, work or livelihood of their own choice). The Committee observes that the authors pursued their claims all the way to the SAC. The Committee considers, therefore, that all available domestic remedies have been exhausted and concludes that communication no.251/2022 is admissible under article 3(1) of the OP.

10.6 The Committee notes the authors' argument regarding communication no. 289/2022 that there is no domestic remedy to exhaust against the absence of free, prior and informed consent, as well as against the granting of an area reservation. The Committee takes note of that the State party's observations that the Sámi may not have an automatic right to appeal against reservation decisions as they allegedly have no impact on the practice of reindeer herding or on the right of the Sámi as an indigenous people, and that, "according to the legislation currently in force and well-established case law of the SAC [...] the authors would not have had a right to appeal against" such an area reservation decision. The Committee therefore concludes that article 3(1) of the OP does not constitute an obstacle to the admissibility of communication no. 289/2022.

10.7 Finally, the Committee takes note of the State party's argument that the communications should be declared inadmissible as manifestly ill-founded, because the SAC already held that a reservation decision does not affect the practice of reindeer herding (289/2022) and that the Committee cannot act as a fourth instance (251/2022). However, the Committee notes the authors' arguments that, in communication no. 251/2022, the domestic courts did not adequately examine the impact on their rights and concluded that the international standard relating to the rights of Indigenous Peoples was met by merely giving the Sámi an opportunity to be heard, and that, in communication no. 289/2022, the precedent ruling of the SAC did not examine how the rights and culture of the Sámi were affected by an area reservation but instead issued a blanket *in abstracto* denial of such effects.

10.8 The Committee considers that the authors have sufficiently substantiated their claims, for the purpose of admissibility, that the State party's failure to ensure a process of free, prior and informed consent in the granting of the mineral reservation permit and the area reservation has violated their rights to enjoy their own culture (article 15(1)(a)), read alone and in conjunction with their rights to an adequate standard of living through their traditional means of livelihood, i.e. reindeer herding (article 11), to non-discrimination (article 2.2) and to self-determination (article 1), particularly with regard to the economic and cultural dimensions of the right of Indigenous Peoples to self-determination.<sup>18</sup>

10.9 The Committee nevertheless considers that the authors have not sufficiently substantiated their claim under article 15(1)(a) read in the light of the rights to work (article 6) and to health (article 12); and their claim under article 7(a)(ii) read alone and in the light

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<sup>18</sup> Article 2 of the OP states that a communication may be submitted regarding a violation of *any* of the rights set forth in the Covenant, and it is possible to infer from the OP's *travaux préparatoires* the intention to include article 1 in the communications procedure, since its initial exclusion (referring specifically to the jurisprudence of the Human Rights Committee) was finally removed.

of articles 1, 6, 11 and 12, in conjunction with article 2(2). The Committee therefore declares these claims inadmissible under article 3(e) of the OP.

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

### **C. Committee's consideration of article 4 of the Optional Protocol and Rule 13 of its Rules of procedure**

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

### **D. Committee's considerations of the merits**

#### **Facts and legal issues**

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

12.2 The Committee will proceed to consider which facts it deems to be established and relevant to the present complaints.

#### *Communication no. 251/2022*

12.3 The authors belong to a Sámi traditional semi-nomadic herding community, reindeer herding being a cornerstone of Sámi culture and way of life. On 28 March 2014, GTK applied for the permit for exploration works of 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 in the authors' traditional reindeer herding territory. Tukes sought written comments in 2014 from the Sámi Parliament and the Käsivarsi Reindeer Herders' Cooperative and invited them to participate in meetings in 2015 and 2016. Both institutions opposed the granting of the permit. Yet, the permit was granted on 7 July 2016. Both institutions appealed this decision. On 19 December 2018, the Administrative Court of Northern Finland dismissed the appeal and upheld the exploration permit. Both institutions appealed further to the SAC, which rejected their appeal on 21 June 2021 considering that the Sámi were sufficiently consulted for the purposes of the Mining Act, that the conditions set out in the exploration permit intended to reduce possible damage to reindeer herding were sufficient; and that the surface area of the exploration works was relatively small.

#### *Communication no. 289/2022*

12.4 On 16 March 2022, the company Element 92 Suomi Oy submitted to Tukes a request to reserve 284 square kilometres in the Kova-Labba Siida for the purpose of surveying the area for battery minerals (nickel, copper and cobalt). On 20 April 2022, Tukes granted the reservation for a period of two years, renewable by one more year. The authors were not contacted at any point in the process of granting of this permit. The authors did not file any domestic remedies since there are precedents from the SAC that a reservation decision does not affect the practice of reindeer herding, nor restricts the right of the Sámi as an Indigenous people to maintain and develop their culture; and that the Sámi do not have legal standing to appeal against the granting of a reservation area.

12.5 The Committee considers that the issue before it is to determine whether the granting of the exploration permit despite the authors' consistent opposition and in the absence of an

impact assessment (251/2022) and the granting of an area reservation (289/2022) on their traditional territory without obtaining their free, prior and informed consent, in the context of ongoing climate change and the cumulative effect of other interferences with reindeer herding, constitutes a violation of the authors' rights to take part in the cultural life of their community (article 15(1)(a)), read alone and in conjunction with articles 1, 2(2) and 11, of the Covenant.

### **Committee's general considerations**

13. The Committee reaffirms that human rights treaties are living instruments,<sup>19</sup> a view with which the State party agrees. The Committee will, therefore, read the Covenant in the light of the evolving interpretation of the rights of Indigenous Peoples, as reflected in the Committee's relevant general comments.

### **Article 15(1)(a), read alone and in conjunction with articles 1, 2(2) and 11**

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

14.2 The Committee recalls its General Comment 21, which elaborates that article 15(1)(a) recognizes a right to exercise their cultural practices and way of life,<sup>20</sup> and in the case of Indigenous Peoples, the value of communal dimension of cultural life should be given due account.<sup>21</sup> The Committee also recalls that the right to take part in the cultural life of a community includes traditional economic activities, such as reindeer herding and fishing, as a means of subsistence,<sup>22</sup> which has a bearing on the right to an adequate standard of living. The Committee further recalls that the communal dimension of Indigenous Peoples' cultural life, including traditional activities, is closely linked to their traditional lands, territories and resources, and is "indispensable to their existence, well-being and full development".<sup>23</sup> The Committee recalls its General Comments 21 and 26 on the right to land, which elaborate that article 15(1)(a) of the Covenant enshrines the inalienable right of Indigenous Peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.<sup>24</sup> In this respect, 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, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity."<sup>25</sup> The Committee observes that the protection of traditional lands, territories, and resources is also a prerequisite for the right to an adequate standard of living of Indigenous Peoples, as they are an important basis for their livelihoods.

14.3 The Committee notes that the recognition of Indigenous Peoples' right to land as an indispensable part of their right to take part in cultural life is in line with international human rights jurisprudence in this area. The CERD has affirmed that "the close ties of Indigenous Peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival; 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

<sup>19</sup> CCPR/C/137/D/3585/2019, para. 8.14; ECHR, *Tyrer v. The United Kingdom*, para. 31; IACrHR, *Awás Tingni*, para. 146.

<sup>20</sup> GC21, para.49(a).

<sup>21</sup> GC21, para.36.

<sup>22</sup> CCPR GC23, para.7.

<sup>23</sup> GC21, para.36.

<sup>24</sup> GC21, para. 36; GC26, para. 10.

<sup>25</sup> GC21, para. 36.

as a people.”<sup>26</sup> The Human Rights Committee has also recognized that “ownership of and control over ancestral territories are ‘essential to Indigenous Peoples’ survival as peoples, with the preservation of their distinct culture’; and that “any denial of the exercise of their territorial rights is detrimental to values that are very representative for members of Indigenous Peoples who are at risk of losing their cultural identity and the heritage to be passed on to future generations”.<sup>27</sup> The IACrHR has held that the culture of the members of Indigenous Peoples “corresponds to a specific way of life, of being, seeing and acting in the world, constituted on the basis of their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they are an integral element of their cosmology, their spirituality and, consequently, their cultural identity”.<sup>28</sup> Cultural rights have an intergenerational aspect which is fundamental to the cultural identity, survival, and viability of Indigenous Peoples.<sup>29</sup>

14.4 The Committee also recalls that “land is also closely linked to the right to self-determination enshrined in article 1 of the Covenant”.<sup>30</sup> Indeed, it is in the light of the right to self-determination set out in the Covenants that the IACrHR interprets the rights of Indigenous Peoples to traditional property, understood as traditional territories, lands and resources.<sup>31</sup> The Committee further observes that there is a “growing tendency to recognize more forcefully the right to self-determination as a key principle when it concerns the collective rights” of Indigenous Peoples.<sup>32</sup> In particular, the three United Nations mechanisms for the rights of Indigenous Peoples have considered that the most important right for Indigenous peoples is the right to self-determination, as without the enjoyment of this right, they could not enjoy their other fundamental human rights.<sup>33</sup> Accordingly, the Committee reiterates that “the realization of self-determination is an essential condition for the effective guarantee and observance” of the rights of Indigenous Peoples”,<sup>34</sup> and is also considered “the fundamental premise of the right to consultation and consent”.<sup>35</sup>

14.5 The Committee, therefore, is of the view that, in the context of Indigenous Peoples, article 15(1)(a), read in conjunction with articles 1 and 11, entails the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and requires States parties to “take measures to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources”.<sup>36</sup> It follows that States parties must ensure the effective participation of Indigenous Peoples in decision-making processes that may affect their way of life, particularly their right to land, based on the principle of their free, prior and informed consent, so as not to endanger the very survival of the community and its members,<sup>37</sup> as enshrined in article 32(2) of the UN Declaration on the Rights of Indigenous Peoples and reaffirmed in the Committee’s General Comments.<sup>38</sup>

14.6 In the case of communication no. 251/2022, the Committee notes that the State party invited comments from the Käsivarsi Reindeer Herders’ Cooperative and the Sámi

<sup>26</sup> CERD/C/102/D/54/2013, para.6.6, citing the IACrHR, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, para.149, and the Case of the Saramaka People v. Suriname, para.121.

<sup>27</sup> CCPR/C/137/D/3585/2019, para. 8.3, quoting IACrHR, Case of Yakye Axa Indigenous Community v. Paraguay, para.203; African Commission on Human and Peoples’ Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, 276/03, 2009, para.158 and 227, and African Court on Human and Peoples’ Rights, African Commission on Human and Peoples’ Rights v. Republic of Kenya, 006/2012, 2017, para.109.

<sup>28</sup> *Xákmok Kásek*, 2010, para. 174.

<sup>29</sup> Report from Erica-Irene Daes, E/CN.4/Sub.2/2001/21, para. 20.

<sup>30</sup> GC26, para. 11.

<sup>31</sup> *Saramaka*, para. 93.

<sup>32</sup> Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, in *Maya Kaqchikel Indigenous Peoples of Sumpango*, para. 69.

<sup>33</sup> Permanent Forum on Indigenous Issues, E/C.19/2013/16, para. 19. See also United Nations Declaration of the Rights of Indigenous Peoples, article 3.

<sup>34</sup> GC26, para.11; CCPR GC12, para.1; EMRIP, A/HRC/48/75, para. 62.

<sup>35</sup> IAComHR, *Right to Self-Determination of Indigenous and Tribal Peoples*, para. 177.

<sup>36</sup> GC21, para.36; Article 26(2) of the UN Declaration on the Rights of Indigenous Peoples.

<sup>37</sup> CCPR/C/132/D/2552/2015, para. 8.7; CCPR/C/137/D/3585/2019, para. 8.5.

<sup>38</sup> GC21, paras.37, 49(e) and 54(a); GC24, paras.12 and 17; and GC26, para.21.

parliament, and arranged two negotiation meetings to consider the exploration permit with them. The Committee also notes that despite both institutions' opposition, Tukes granted the permit to GSK. The Committee takes note that the SAC considered that the aforementioned procedure "provided conditions to ensure that the Sámi, as Indigenous people, had a de facto opportunity to participate in the permit procedure."<sup>39</sup> The Committee also observes that, throughout the process, there was no independent assessment of the impact of the exploration activities on the reindeer herding, as a fundamental part of the Sámi culture and livelihood, their intergenerational transmission of the practice, and the right of the Sámi as Indigenous Peoples. The Committee is of the view that an adequate and effective process of free, prior and informed consent, when the rights of Indigenous Peoples may be affected by projects carried out in their traditional territories, must include not only the sharing of information and the reception of comments from the affected community, but also an interactive and continuous dialogue through Indigenous Peoples' own representative institutions, from the outset and through culturally appropriate procedures, respecting the right of Indigenous Peoples to influence the outcome of decision-making processes affecting them. The Committee also considers that environmental, social and cultural impact studies, conducted by independent and technically competent entities, should be a precondition for a process of consultations aimed at obtaining the free, prior and informed consent.<sup>40</sup> The Committee notes the observation of the State party that the principle of free, prior and informed consent does not mean that a consensus should be reached if sufficient guarantees of effective participation have been provided. The Committee finds, nonetheless, that the procedure provided in this case does not meet the standard of effective participation in accordance with the principle of free, prior and informed consent.

14.7 In the case of communication no. 289/2022, the Committee notes that the authors were not contacted at any point in the process of granting of this permit, and there are precedents from the SAC that a reservation decision does not affect the practice of reindeer herding, nor restricts the right of the Sámi as an Indigenous people to maintain and develop their culture; and that the Sámi do not have legal standing to appeal against the granting of a reservation area. The Committee notes that a report commissioned by the Ministry of Economic Affairs and Employment of the State party on the functioning of the reservation mechanism under the Mining Act observed that while "a reservation under the Mining Act has not been considered to have legal effects extending beyond the parties engaged in exploration", "however, making a reservation notification creates uncertainty regarding the future opportunities to use and manage the area subject to the reservation".<sup>41</sup> The report further stated that this uncertainty "can also be considered to affect the Sámi people's views on conditions for practicing traditional economic activities and the perceived fairness in general of the claim procedure under the Mining Act".<sup>42</sup> The Committee notes that the area reservation concerns the traditional territory of the authors as Indigenous Peoples. The Committee considers, however, that the procedure for the granting of an area reservation takes no account of the rights of Sámi living on the affected area to control and use their land and transmit their traditional livelihoods from generation to generation.

14.8 In the light of above, the Committee considers that the State party has not demonstrated that the process of granting of the exploration permit (251/2022) and the area reservation (289/2022) adequately took into account the right of Indigenous Peoples to land, as part of the right to take part in cultural life, read alone and in conjunction with the rights to self-determination and to an adequate standard of living, and the obligation to ensure their effective participation, established in international human rights law.

14.9 In addition, the Committee observes that the State party did not refute that the Kova-Labba Siida is part of the authors' traditional territory. The Committee notes the submission by the State party that exploration work can be carried out with the consent of the landowner

<sup>39</sup> Judgment by the SAC, 21 June 2021, p. 3 and 26.

<sup>40</sup> *Cfr.* GC26, para. 21; GC24, para. 12 and 17; CERD/C/102/D/54/2013, para. 6.18; EMRIP, A/HRC/39/62; IACrHR, *Sarayaku*, para. 167; IACrHR, *Saramaka*, para. 133; IAComHR, *Indigenous and Tribal peoples' rights over their ancestral lands and natural resources*, para. 318 and 319.

<sup>41</sup> [https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/163950/TEM\\_2022\\_28.pdf?sequence=1&isAllowed=y](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/163950/TEM_2022_28.pdf?sequence=1&isAllowed=y), pp. 28 to 30.

<sup>42</sup> *Ibid.*

and exploration permit holder is obliged to pay compensation to the landowner in accordance with the Mining Act, and the owner of the area in both communications is the State. The Committee further notes the State party's observation that the legislation in question applies to both Sámi and non-Sámi reindeer herders and landowners, regardless of origin.

14.10 The Committee recalls its General Comment on article 2(2), which states that "eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations".<sup>43</sup> The Committee also recalls that "treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same".<sup>44</sup> Positive measures are required to prevent and eliminate conditions that perpetuate discrimination and to ensure equal enjoyment of rights in the Covenant.<sup>45</sup> In the context of Indigenous Peoples, it necessitates measures to give legal recognition, including collective ownership, and protection of their rights to their traditional lands, as an essential element of the right to take part in cultural life of the community, and to provide effective remedies when these rights are infringed.<sup>46</sup>

14.11 The Committee observes that the State party's failure to give legal recognition to the rights of Indigenous Peoples to their traditional lands, which are also the base for their livelihood and income, has led to a situation where the Sámi are not entitled to compensation when their traditional lands are subject to the mineral exploration (251/2022), and they are not recognized as the interested party in the granting of the area reservation (289/2022), which has the effect of nullifying the recognition, enjoyment or exercise by Indigenous Peoples, on an equal footing, of their rights to their traditional territories and natural resources.<sup>47</sup> The Committee, therefore, considers that the State party has not demonstrated how the processes of granting the permit and the reservation area under the Mining Act adequately took into account the authors' rights under article 15(1)(a) of the Covenant, in conjunction with article 2(2).

## E. Conclusion and recommendations

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

### Recommendations in respect of the authors

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

### General recommendations

17. The State party is under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the State party is requested to pursue its efforts to amend its legislation and administrative procedures to enshrine the international standard of free, prior and informed consent, and to include the environmental, social and cultural impact assessment.<sup>48</sup> The State party is also requested to initiate the process of legal

<sup>43</sup> GC20, para.8.

<sup>44</sup> CERD GR32, para. 8; ECHR, *Thlimmenos v. Greece*.

<sup>45</sup> GC20, paras.8-9.

<sup>46</sup> GC21, para. 36; GC26, paras.11 and 16; United Nations Declaration on the Rights of Indigenous Peoples, article 26.

<sup>47</sup> CERD/C/102/D/54/2013, para. 6.7.

<sup>48</sup> E/C.12/FIN/CO/7, para. 50 and 51.



recognition of the rights of Indigenous Peoples to their traditional lands, including through collective ownership.

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

## Annex

### Individual opinion of Committee member Ludovic Hennebel (concurring)

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

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

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

4. For the Sámi, reindeer herding is intimately connected to their land and is central to their cultural identity.<sup>5</sup> The Committee, as other human rights bodies has previously acknowledged that the cultural rights of Indigenous Peoples are inextricably tied to their access to and control over their traditional lands and resources. Without sustainable access to these lands, the Sámi's ability to exercise self-determination is compromised, and the transmission of their culture from one generation to the next is jeopardized. Therefore, the violation of the Sámi's land rights is, in effect, a violation of their right to self-determination.

5. The justiciability of Article 1 of the ICESCR, which enshrines the right of Peoples to self-determination, has historically been contested, with some states arguing that it is a political principle rather than a legally enforceable right. However, recent developments in international law, along with the evolving jurisprudence of treaty bodies and regional human

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<sup>1</sup> CCPR, *Roy v. Australia*, views, 15 March 2023, CCPR/C/137/D/3585/2019, paras. 7.2-7.3. Even though the Committee does not take the step of affirming the justiciability of Article 1, this jurisprudence is remarkable and signals real progress toward a direct protection of self-determination.

<sup>2</sup> African Commission on Human and Peoples' Rights, *Communication 588/15, Batwa v. Democratic Republic of the Congo*, April 21, 2022 - May 13, 2022, paras. 188 et seq.

<sup>3</sup> CERD/C/102/D/54/2013, para. 6.6; CCPR, *GC No. 23 (1994)*, para. 9. See also *Oliveira Pereira et al. v. Paraguay*, CCPR/C/132/D/2552/2015, para. 8.6; *Poma Poma v. Peru*, para. 7.2.; *Roy v. Australia*, para. 8.3.

<sup>4</sup> IACTHR: *Mayagna (Sumo) Awas Tingni v. Nicaragua*, Judgment of August 31, 2001, Series C No. 79; *Saramaka People v. Suriname*, Judgment of November 28, 2007, Series C No. 172; *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of June 27, 2012, Series C No. 245; *Kaliña and Lokono Peoples v. Suriname*, Judgment of November 25, 2015, Series C No. 309.

<sup>5</sup> CCPR, *Sara v. Norway*, views, 19 July 2024, CCPR/C/141/D/3588/2019, para. 10.3.

rights mechanisms, invite us to reconsider this obsolete approach and affirm that the right to self-determination is indeed fully justiciable within the framework of human rights law.

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

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

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

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