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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3588/2019*.*.*.*.*

Communication submitted by: Jovsset Ante Sara (represented by
counsel Trond Biti)

<i>Alleged victim:</i>	The author
<i>State party:</i>	Norway
<i>Date of communication:</i>	6 December 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 94 of the Committee's rules of procedure, transmitted to the State party on 12 April and 26 June 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2024
<i>Subject matter:</i>	Mandatory order to cull reindeer
<i>Procedural issues:</i>	None
<i>Substantive issue:</i>	Right to enjoy own culture
<i>Article of the Covenant:</i>	27
<i>Articles of the Optional Protocol:</i>	None

1.1 The communication is submitted on behalf of Jovsset Ante Sara, a national of Norway born in 1992. He claims that by ordering him to reduce his reindeer herd, the State party has violated his rights under article 27 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

1.2 On 24 May 2019, pursuant to rule 96 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures granted a request by the Sámi Parliament in Norway, joined by the Sámi Reindeer Herders' Association of Norway to submit a third-party submission on the complaint.

* Adopted by the Committee at its 141th session (1-23 July 2024).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Laurence R. Helfer, Carlos Gomez Martinez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernan Quezada Cabrera, José Manuel Santos Pais, Changrok Soh, Tijana Surlan, Kobauyah Tchamdja Kpatcha, Koji Teraya, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** Individual opinions by Committee members Marcia V.J. Kran, José Manuel Santos Pais and Koji Teraya (dissenting) are annexed to the present Views.

1.3 On 26 June 2019, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party to not enforce the culling orders issued to the author on 26 February 2013 and 20 February 2019 respectively, while the communication was under consideration by the Committee. The State party was also informed that the request was issued without prejudice to the implementation of aspects of the culling policy not covered by said orders.¹

1.4 On 23 September 2019, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures denied the State party's request to lift interim measures.

Facts as presented by the author

2.1 The author is a Sámi reindeer herder. He is the leader of a "siida unit" in herding district no. 20 in Fálá, in the county of Finnmark. A siida is a group of reindeer owners who engage jointly in reindeer husbandry in specific areas. A siida unit is a family group or an individual who is part of a siida, and who engages in reindeer husbandry under the leadership of one person. The author's father and grandfather also practiced reindeer husbandry until they discontinued their practices in 2001-2002 and 2003-2004, respectively. The author's grandfather transferred his reindeer to his daughter, the author's aunt, who in turn transferred her siida unit to the author in 2010. The author has always wanted to participate in reindeer husbandry, and after attending a Sámi upper secondary school he attended a reindeer husbandry school.

2.2 At the time the author took over as leader of the siida unit in 2010, the unit counted 71 reindeer. In 2011, the number of reindeer had increased to 94, in 2012 to 116 reindeer, in 2013 to 150 reindeer, in 2014 to 145 reindeer and in 2015 to 215 reindeer. At the time of the submission of the author's complaint in 2018 there were approximately 350 reindeer in the siida unit. The reindeer numbers from 2010 to 2014 are indicative of reindeer husbandry in the establishment phase. There are also nine other members in the siida unit. According to the reindeer husbandry report of 2014-2015 the author's aunt has 33 reindeer in the siida unit, while the author's grandfather, father, brother, sister and three cousins had from none up to four reindeer each.

2.3 The author's reindeer husbandry is economically marginal. From 2012, the operation has suffered a deficit. The income declined and expenses increased during this period. As the author's husbandry is in the establishment phase, it is necessary to build up the reindeer herd to achieve economically sustainable reindeer husbandry.

2.4 On 15 June 2007, the Reindeer Husbandry Act was adopted. It entered into force on 1 July 2007. Section 60 contains provisions on the number of reindeer per siida unit. Pursuant to section 60 (1) a maximum number of reindeer shall be stipulated for each summer for the reindeer grazing districts, based on the grazing resources available to the siida. Likewise, in order to establish responsible use of winter grazing areas, it is required that the number of reindeer be stipulated for the various winter siidas. Section 60 (3) of the Reindeer Husbandry Act contains provisions on herd reduction in cases where the number of reindeer exceeds the maximum number, setting out that the siida is obliged to prepare a culling plan. If the siida does not prepare a plan or fails to implement it, each siida unit must reduce its excess number of animals proportionally. The Reindeer Husbandry Board is responsible for ensuring that the reduction is carried out. Deadlines must be set for the preparation of a plan and implementation of the reduction of the number of reindeer.

2.5 An agreement on procedures for consultations between state authorities and the Sámi Parliament was signed by the Minister of Local Government and Regional Development and the President of the Sámi Parliament on 11 May 2005, regarding the consultation procedure on the provisions of the Reindeer Husbandry Act. The Sámi Parliament prepared position memorandums in this connection. A position memorandum dated 10 February 2006 stated that the Sámi Parliament supported the idea of minority protection in order to maintain

¹ In its observations of 14 October 2019, the State party confirmed that further to the Committee's request for interim measures the culling order issued to the author had not been enforced.

economically sustainable reindeer husbandry, also with a view to include the protection of those in the industry who were in the establishment phase. The consultations were concluded on 6 June 2006, after which the Ministry of Agriculture and Food (the Ministry) prepared a draft act that was submitted to the Sámi Parliament for review. The Sámi Parliament considered the draft act in September 2006 in a plenary session, it supported the view that siida units with 200 or fewer reindeer should be protected in the event of a reduction of the number of reindeer.² The Ministry however did not agree with the proposal to protect the smaller siida units as it considered that it could in the long-term result in an industrial structure that would weaken the overall and average profitability of the siida.

2.6 After the adoption of the Reindeer Husbandry Act, a process was initiated for setting the maximum number of reindeer in the herding districts. On 2 July 2011 the grazing district 20 Fálá applied for permission to herd a maximum of 2,000 reindeer, which was eventually approved by the Ministry. At the end of 2011, a maximum number had been set for all grazing districts, after which the Reindeer Husbandry Administration notified the district of an order to prepare a reduction plan, as the district had 3,105 reindeers as of 31 March 2012. On 2 July 2012, a notification was also sent to the author. He was notified that when the number of reindeer exceeded the stipulated number of reindeer, it entailed an obligation to prepare a reduction plan in accordance with the Reindeer Husbandry Act. He was also informed that if the Reindeer Husbandry Administration did not receive a reduction plan by the adopted deadline, the Reindeer Husbandry Board would carry out a proportionate reduction of the number of reindeer in accordance with the Reindeer Husbandry Act. The district was given until 10 September 2012 to prepare a reduction plan.

2.7 The herding district failed to agree on a reduction plan. However, four of its six siida unit leaders entered into an agreement on 8 September 2012, under which the four were jointly to herd 4/6 of the total number of reindeer in the herding district. The Reindeer Husbandry Administration did not accept the agreement as a reduction plan. At a meeting on 26 February 2013, the Reindeer Husbandry Board decided to order the author to cull the spring herd of his siida unit. The author was ordered to cull the herd from 116 to 114 reindeer by 31 March 2013, from 114 to 94 by 31 March 2014 and from 94 to 75 by 31 March 2015.

2.8 The author appealed the reduction order, and the case was reviewed by the Reindeer Husbandry Board on 20 November 2013. The appeal was dismissed but forwarded to the Ministry for review. The Ministry dismissed the appeal on 10 March 2014. On 16 September 2015, the Reindeer Husbandry Board ordered the author to cull his reindeer herd in accordance with the cull order by the Ministry of 10 March 2014. At the same time, a compulsory fine was imposed pursuant to the Reindeer Husbandry Act of NOK 2 (approx. 0.19 USD) for each reindeer per day that exceeded the maximum number. On 22 May 2015, the author brought an action against the State party before the Indre Finnmark District Court claiming that the Ministry's cull order of 10 March 2014 was invalid.

2.9 On 18 March 2016, the District Court held that the cull order was in violation of the author's right to protection of property under the first Additional Protocol to the European Convention on Human Rights, and thus invalid. In its assessment, the Court stressed that the author was one of very few reindeer herders who were strongly affected by the decision to reduce the number of reindeer, that its purpose could have been fulfilled otherwise and that it affected in particular young herders in their establishment phase. The state represented by the Ministry appealed the judgment to the Hålogaland Court of Appeal. The Court dismissed the appeal on 17 March 2017. It held that the cull order was invalid as it was in violation article 27 of the Covenant, namely the author's right to enjoy his own culture. The Court

² The author notes that during the plenary session in September 2006 the Sámi Parliament stated: "In accordance with the Law Committee's proposal, a provision must be included concerning the protection of those with average or less than average number of reindeer for a mandatory reduction pursuant to Section 64 of the draft. The siidas must stipulate a minimum number of reindeer. This shall be carried out by unanimous decision in the siida. Each of the responsible units that have more than the stipulated minimum number of reindeer, determined by the siida, shall reduce the excess number proportionally. If the siida cannot make a unanimous decision on the stipulated minimum number of reindeer, the Law Committee's proposal of 200 reindeer shall apply. This will contribute to protecting young persons engaged in reindeer husbandry in the establishment phase and ensure economically sustainable reindeer husbandry for all those engaged in reindeer husbandry."

found that it was impossible to earn an economic profit with a herd counting only 75 reindeer, and it found that the author would not be given security for a continued economic benefit for reindeer husbandry after the reduction of the number of reindeer in his herd.

2.10 The Ministry appealed the judgment to the Supreme Court which, on 21 December 2017 found that the cull order was not in violation of the author's rights. The Court noted that the validity of the cull order depended on whether it was in conflict with article 27 of the Covenant or the protection of property under the First Additional Protocol to the European Convention on Human Rights. The Court noted that the Reindeer Husbandry Act had been enacted to ensure ecological, economical and culturally sustainable reindeer husbandry based on the Sámi culture, tradition and customs in the interest of the herders and society in general. The Court noted that the reduction of the number of reindeer pursuant to the Reindeer Husbandry Act had been ordered in the interest of the reindeer herders due to problems with overgrazing. It noted that the Sámi Parliament had also agreed that the number of reindeer had to be reduced. It found that the proportionate reduction maintained the reindeer herders' interests as a group. The regulation affected everyone and in such a manner that the owners of the largest herds had to cull the largest number of reindeer. The Court found that the reduction system met the criteria of being objective, reasonable and necessary to maintain the interests of the reindeer herders. It found that the system deprived, at least for a period, the author of the possibility to develop his business into a profitable one but noted that his herd had been too small to begin with to yield an acceptable income. It noted that the Sámi Parliament had been consulted throughout the legislative process and had had the opportunity to influence the regulation. It concluded that there had been no violation of the author's rights under article 27 of the Covenant or his right to property under the First Additional Protocol to the European Convention on Human Rights.

2.11 The author notes that the reduction order of 26 February 2013 means that he must reduce the number of reindeer in his unit to 75. He argues that it would be impossible to engage in reindeer husbandry as a principal business with such a low number of reindeer. This number would give an estimated slaughter of 25 animals per year, which would correspond to sales revenue of approximately NOK 25,000 (approx. 2,338 USD). It is a requirement to be eligible for a grant in accordance with the Reindeer Husbandry Agreement that the leader of a siida unit has a minimum revenue of NOK 50,000 (approx. 4,676 USD), excluding VAT, for the last calendar year. Even with sales revenue that would trigger a production grant, the operating expenses would far exceed the operating revenue. The operating expenses, such as agricultural buildings and vehicles, are not proportionate to the size of the reindeer herd. As such siida units with fewer than 200 reindeer clearly have the highest cost per reindeer. Compliance with the culling order would thus mean that the author would be unable to engage in reindeer husbandry with an economic profit, entailing a real risk that he would have to discontinue his reindeer husbandry. Additionally, with only 75 reindeer there would be a real risk that the number of reindeer would fall to 50 in case of difficult weather conditions and due to predators. The author notes that Section 16 (4) of the Reindeer Husbandry Act stipulates that if a siida unit has fewer than 50 reindeer for five years, it must be terminated as a siida unit.

Complaint

3.1 The author claims that by ordering him to reduce his reindeer herd, the State party has denied him the right to enjoy his own culture in violation of his rights under article 27 of the Covenant. The author notes that while the purpose of the implementation of the Reindeer Husbandry Act concerning the reduction of the number of reindeer may have been based on reasonable and objective grounds, namely, to preserve ecological, economical and culturally sustainable reindeer husbandry based on Sámi culture, the method chosen for the regulation of the number of reindeer was however not reasonable or necessary.

3.2 The author notes that the reduction order means that he must reduce his herd by 35.6 %, or down to 75 reindeers. He argues that it would be impossible to make a financial profit from such a small herd and that it would mean that he would have to give up his reindeer husbandry practice. He notes that he was in the establishment phase of his practice and was cautiously building up his herd in order to operate at a financial profit level when the decision on the reduction of the number of reindeer was made. He argues that the decision of the State

party authorities prevents him from engaging in reindeer husbandry in accordance with the traditions of the reindeer husbandry culture³. He further argues that it was not reasonable or necessary in order to ensure the continued sustainability of the reindeer husbandry in the area to extend the reduction order to small reindeer units of less than 200 reindeer, considering the views of the Sámi Parliament that small siida units should be exempted from the reduction orders.

3.3 The author further notes that during the legislative process the Sámi Parliament, during a plenary session where it considered the draft Reindeer Husbandry Act, had requested siida units with 200 or less reindeer to be exempted from the reduction process. A request that was not accepted by the Ministry. He argues that the by failing to take the view of the Sámi Parliament into account the State party authorities failed to properly consult with the Sámi community and consider their right to self-determination and right to a real and effective participation in the decision-making process.⁴

State party's observations on the merits

4.1 On 14 October 2019, the State party submitted its observations on the merits of the communication. The State party notes that the subject-matter of the author's complaint is the Ministry's decision of 10 March 2014, upholding the earlier decision by the Reindeer Board of 26 February 2013, that ordered the author to reduce his herd from 116 to 75 reindeer by 31 March 2015. The State party confirms that further to the Committee's request for interim measures the culling order has not been enforced. It informs that the author has entered into an agreement with other reindeer herders for the transfer of the majority of his reindeer to another district by the end of 2019. By using the flexibility and self-governance inherent in the Reindeer Husbandry Act of 2007, the author has found a way to comply with the Ministry's decision.

4.2 The State party notes that in Norway, the right to carry out reindeer husbandry within the Sámi reindeer area is reserved exclusively for the Sámi population. About 94 percent of all reindeer in Norway are found in the Sámi reindeer area, which stretches from the county of Hedmark in the south, to the county of Finnmark, which is the northernmost county in Norway. Despite the vast area of land used for reindeer husbandry, the pressure on the industry and the grazing-land from existing reindeer herders and individuals who want to enter the industry has been high for decades and has reached critical levels. As such, over-grazing posed a threat to the welfare of the animals and the industry at the time of the enactment of the Reindeer Husbandry Act in 2007, it also had the potential to have severe effects on the Sámi reindeer husbandry in the area for decades to come due to the risk of long-term damage to the grazing land. The facilitation of an ecologically sustainable reindeer industry, where the number of reindeer is adjusted to the available grazing resources, was thus crucial to secure the basis for the industry for future generations of reindeer herders. It was therefore of utmost importance to succeed in bringing the number of reindeer down to a sustainable level.

4.3 Against this background the Norwegian Parliament decided to include the rule of proportionate reduction in the Reindeer Husbandry Act of 2007. At the same time, the legislature made the rule secondary in nature, meaning that it would a) only apply insofar as a district has not used the opportunities that the internal self-governance provides to the reindeer owners to make alternative arrangements, if they did not want a proportionate reduction, and b) only apply temporarily, until the reduction was carried out. Following the entry into force of the Act in 2007, the industry and the various reindeer herding districts spent about four years determining the maximum number of reindeer that the grazing land of each siida could support in a sustainable manner. This was necessary in order to establish which siidas had too many animals and therefore needed to reduce their herds. An interdisciplinary working group consisting of reindeer herders, scientists and representatives from the Ministry was established, with the aim of finding appropriate criteria for determining a sustainable maximum level of reindeer per siida. By the end of 2011, the

³ The author refers to the Committee's jurisprudence in *Kitok v. Sweden* (Communication 197/1985) and *Mahuika et al. v. New Zealand* (CCPR/C/70/D/547/1993).

⁴ The author refers to *Mahuika et al. v. New Zealand*.

maximum number of reindeer had been determined for all districts and siidas. In the county of Finnmark alone, 29 siidas consisting of 289 siida shares exceeded the maximum number of reindeer and needed to reduce their herds by a total of 42,700 animals. Of the 29 siidas and their 289 respective siida shares, everyone – except the author – complied with the reduction decisions, and together they managed to reduce the number of reindeer from a total of 191,012 reindeer in the reindeer husbandry year 2011/2012, to 145,795 animals by the end of the reindeer husbandry year 2014/2015.

4.4 The State party stresses that the rule of proportionate reduction was introduced in the Reindeer Husbandry Act with the aim, as stipulated in Section 1 (1) of the Act, to arrange for ecologically, economically, and culturally sustainable reindeer husbandry based on Sámi culture, tradition and customs for the benefit of the population conducting reindeer husbandry and of society in general. Section 60 of the Act stipulates rules regarding the determination of reindeer numbers for the siidas. Section 60 (3) stipulates that if the number of reindeer in the siida exceeds this maximum number, the siida must prepare a reduction plan. If the siida fails to do this or is not able to carry out the plan, each siida share shall reduce the excessive number proportionally.

4.5 The State party argues that at the time the author took over as siida unit leader, the available grazing land in Fálá did not give him any legitimate expectations of being able to increase his herd as the grazing resources of the district represented a natural cap on the number of reindeer that could be supported in a sustainable husbandry. When the author acquired his aunt's siida share in 2010, the maximum number of reindeer in the district of Fálá was 1,300. At the same time, the actual number of reindeer for the reindeer husbandry year 2009/2010 was 2,196. Hence, in 2010, there was no room for further growth of any of the siida shares. The State party also notes that the district has had very low slaughter weights in later years and reached an all-time low during the reindeer year 2016/2017 when the weights dropped to 13.9 kg. This shows that there was no room to increase the maximum number of reindeer in the district and emphasized the need for the author to reduce his herd.

4.6 Regarding the merits of the author's claims under article 27 of the Covenant the State party notes that it is undisputed that the Sámi population is an Indigenous People and therefore a minority within the meaning of article 27 of the Covenant, and that further it is undisputed that reindeer herding is a part of Sámi culture. The State party however emphasizes that since reindeer herding can also be a business activity, it does however find it necessary to reiterate that the term "culture" refers to *the way of life* related to reindeer herding, and not the economic aspects of reindeer herding per se.⁵ The State party also argues that the provision does not indicate that the right to enjoy culture cannot be regulated, nor does the wording imply that the right cannot be restricted. Hence, it argues that article 27 does not prevent a State party from regulating activity, including in cases where the activity is an essential element of the culture of an ethnic community.

4.7 The State party submits that the decision imposing a reduction order on the author does not represent a violation of the author's rights under article 27 of the because the author has not been denied the right to enjoy the Sámi reindeer husbandry culture for the following reasons: *i*) The reduction decision involved a time-limited obligation to reduce the author's herd from 116 to 75 reindeer, thereby bringing the number of reindeer in the siida down to a sustainable level; *ii*) the decision is limited in time, and it therefore only temporarily prevents the author from increasing his herd. When the decision has been complied with, he will be able to increase his herd provided that there is room for such increase within the maximum number of 2,000 reindeer that the siida can support; *iii*) each of the six siida shares were ordered to carry out a proportionate reduction of 35 percent of their herds and were thus to carry the burden of reduction collectively and in accordance with their abilities, thereby constituting a fair treatment of all Sámi reindeer herders in the siida and securing equal treatment in compliance with article 26 of the Covenant; and *iv*) the decision did not interfere with the author's legal right to own reindeer and to take part in the way of life associated with reindeer husbandry. In fact, the decision gave the author the possibility to continue to enjoy the way of life associated with reindeer husbandry to the very same extent as he could

⁵ The State party refers to General Comment no. 23, para. 7 and *Kitok v. Sweden* (Communication 197/1985), para 9.2.

reasonably have expected when he acquired the siida share in 2010. The State party stresses that when considering this case, it is important not to lose sight of this aspect, if the author is permitted to expand his herd, it will have a detrimental impact on the other families' established way of life. None of these families have a large income from reindeer herding. Most of the families who have reindeer husbandry as their primary source of income are unlikely to be able to reduce their herds significantly. Should the author and the other smaller siida shares in Fálá be entitled to increase their herds it would thereby force the established families to reduce even more than a proportionate share of their herds, leading to an unsustainable outcome for the established herders.

4.8 The State party further notes that under the Reindeer Husbandry Act, the allocation of reindeer between the Sámi siida shares is an internal matter within the siida. How a reduction shall take place if the number of reindeer is too high, is also primarily an internal matter. The siida in Fálá could therefore have shielded the author through a simple majority decision, by setting a cap on the number of reindeer per siida share. Alternatively, the siida shares could have agreed on a reduction plan, or the author could have enforced any private law rights vis-à-vis the other siida shares through ordinary legal action. In this connection, the State party notes that the Sámi Reindeer Herders' Association of Norway requested more matters to be left to the internal self-governance of the Sámi herders during the consultations prior to the enactment of the Reindeer Husbandry Act. As this request was met, it is to be expected that the industry makes use of the possibilities provided. Due consideration must be had to the secondary nature of the rule of proportionate reduction.

4.9 The State party argues that the proportionate reduction rule under the Reindeer Husbandry Act strikes a fair balance between interests of the smaller and the larger siida shares, and the proportionate reduction in the author's case meant that the relationship between the various siida shares were the same after the reduction. This is particularly important, since the other Sámi siida shares and families in Fálá also would be able to assert individual rights under article 27 of the Covenant.

4.10 Regarding the author's claims on the right of the Sámi to be consulted, the State party notes that consultations were carried out prior to the enactment of the Reindeer Husbandry Act. A total of seven consultations were held with the Sámi Parliament and the Sámi Reindeer Herders' Association of Norway. After the consultations were concluded at the end of June 2006, the Ministry prepared a draft bill which was sent to the Sámi Parliament for consideration at a full plenary meeting, the Reindeer Herders' Association was also given the opportunity to comment on the final draft. The Sámi Parliament's suggestion to shield siida shares with less than 200 reindeer in a reduction process, to which the author refers, was a legitimate political view. When enacting the rule of proportionate reduction, the Norwegian Parliament chose a solution that was more in line with the industry's request for more self-governance and the need to protect established families that have reindeer husbandry as a primary income. In this respect, the State party stresses the need to regard the reindeer legislation as a whole and appreciate the possibilities of self-governance provided to the Sámi reindeer husbandry. Finally, the State party argues that Sámi interests were also represented in the administration's decision-making process, as three of the seven members of the Reindeer Board, which ordered the proportionate reduction in the first place, are Sámi.

4.11 The State party further notes that the right of a minority group to be consulted does not feature in the Committee's previous cases of the same type as the matter at hand, namely cases where an individual claims individual rights that are in conflict with the interests and the exercise of parallel rights of other individuals within the group⁶. Hence, the question of a right to be consulted is not relevant when assessing whether there has been a violation of article 27 of the Covenant in the matter at hand. Secondly, even if a right to be consulted were to be applied in the present case, the State party argues that any such criteria must be considered to have been met. The right to be consulted cannot reasonably be understood as a veto right or the right to a particular outcome of the decision-making process. The aim of introducing a procedural aspect of article 27 must be to involve the minority group in the

⁶ The State party refers to *Lovelace v. Canada* (CCPR/C/13/D/24/1977), *Kitok v. Sweden*, and *Paadar et al v. Finland* (CCPR/C/110/D/2102/2011).

process to ensure that the facts and interests pertaining to the minorities are being brought to light, with the aim of reaching an agreement on proposed measures.

4.12 The State party thus argues that the allocation of reindeer between the various siida shares is a zero-sum game where each reindeer added to the author's herd will result in a corresponding reduction of another family's herd. In other words, there is a conflict between the asserted individual rights of the author and the parallel rights and interests of the other siida shares. The internal conflict of interest distinguishes the present case from cases where States take resources from the minority for the benefit of society at large, such as in *Poma Poma v. Peru*,⁷ or the three cases of *Länsman et al v. Finland*⁸. The State party also refers to the Committee's jurisprudence in *Kitok v. Sweden*⁹ and *Mahuika et al. v. New Zealand*¹⁰ and argues that in cases of internal conflict of interest there is no violation of article 27 of the Covenant if: a) the limitation of the enjoyment of culture serves the interests of the affected group, and; b) there is a reasonable and objective justification for the application of the limitation to the individual that claims to be adversely affected.

4.13 In the present case the State party argues that the rule of proportionate reduction served the interests of the affected siidas as it was necessary to reduce the number of reindeer as a result of overgrazing. The Sámi Parliament also agreed that reindeer numbers had to be reduced. In order to achieve this, the authorities introduced a rule which made effective enforcement possible. Equal treatment in the form of proportional reduction was the solution. The State party notes that in the preparation of the legislation the Ministry emphasised that protecting the smallest siida shares could give the industry an unfavourable structure, and that it could weaken its overall and average profitability. The Ministry believed that the opportunity to practise financially profitable reindeer husbandry could be undermined.¹¹

4.14 The State party reiterates its argument that the application of the rule of proportionate reduction to the author's herd had a reasonable and objective justification. By enacting a rule of proportionate reduction, a method was chosen, which meant that everyone contributed according to their abilities and thereby shared the burden of reducing the herds in a fair manner. The State party notes that the profitability in the reindeer husbandry is generally low, and the industry needs financial support from the State. The reason why the profitability is low is not because it is impossible to make money from reindeer husbandry but that there are too many people and too many reindeer involved for the industry to be able to fully support itself. The State party argues that it is imperative for the fair and equal treatment of other reindeer owners that the author does not benefit from resisting the reductions where others have taken their responsibility for preserving the Sámi reindeer herding culture for future generations.

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

5.1 On 3 February and 17 March 2020, the author submitted his comments on the State party's observations. He reiterates his claim that the reduction order issued in 2013 amounted to a violation of his rights under article 27 of the Covenant. He notes the State party's argument that the reduction order is time-limited, he however argues that the decision has long-term effects, and can be extended to a period of up to five years.

5.2 The author notes the State party's argument that a solution could have been found between the siida members, that would have protected him as herder with a small herd. He argues that this was only a theoretical possibility, as there would always be some members that would not join such an agreement. He reiterates his argument that it would not be possible to have a profitable operation with only 75 reindeer and his argument that when the Sámi Parliament considered the draft Reindeer Husbandry Act in September 2006, it supported the proposition to protect siida units with 200 or fewer reindeer in the event of a reduction, a

⁷ *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006)

⁸ *Länsman et al v. Finland*, (CCPR/C /52D /511/1992), (CCPR/C/58/D/671/1995) and (CCPR/C/83/D/1023/2001).

⁹ *Kitok v. Sweden*, para. 9.8.

¹⁰ *Mahuika et al. v. New Zealand* (CCPR/C/70/D/547/1993), para. 9.6.

¹¹ The State party refers to the Supreme Court judgment HR-2017-2428-A (case no. 2017/981), dated 21 December 2017, paras. 80-82.

proposal that was also supported by the Sámi Reindeer Herders' Association. However it was not supported by the Ministry and was thus not included in the Act. As such the participation of the reindeer industry and the Sámi Parliament had no impact on the content of the Act and cannot therefore be considered to fulfil the requirement of effective participation under article 27 of the Covenant. Clearly the Sámi Parliament and the Sámi Reindeer Herders' Association are best placed to determine the interests of the Sámi community and the reindeer husbandry industry. The author further argues that the consequences of protecting siida units with fewer than 200 reindeer would have had limited consequences for the larger siida units. He notes that a report by a working group on the regulation of reindeer numbers from 2012, in which several ministries, the Sámi Parliament and the Reindeer Herders' Association participated stated that in West Finnmark, where the Fållå district is located, 15 out of 157 siida shares had less than 200 reindeer before the reduction orders were issued.

5.3 The author further argues that the position of the Sámi Parliament and the Sámi Reindeer Herders' Association on the smallest siida units also entail that there is no conflict between individual and collective minority rights in the present case, and if the recommendation of the Sámi Parliament had been followed his herd would have been protected from reduction. He also argues that the decision to issue the reduction order in his case was not necessary in order to ensure the continued viability and welfare of the reindeer husbandry industry. The decision to not protect the smallest siida units was not done out of necessity but based on an assessment of what an appropriate industrial structure was considered to be.

Further observations by the State party

6.1 On 4 June 2020 and 3 November 2021 the State party submitted further observations on the communication. It notes the author's claims that there was only a theoretical possibility to find solutions in the siida because the reduction plan required a unanimous decision by the six affected siida shares. The State party maintains its position that the rule of proportionate reduction is of a secondary character, and that the internal self-government inherent in the Reindeer Husbandry Act provides realistic opportunities to influence how the burden of reduction shall be distributed between the siida shares if the number of reindeer exceeds the maximum permitted number of reindeer in the siida. The possibility for a siida to protect the smallest siida shares by setting an upper limit of reindeer per siida share, only requires a simple majority of votes.

6.2 The State party argues that in order for the author to expand his herd, someone else would have to reduce their own herd correspondingly. It argues that in a case such as the present, where the author's interests are in direct conflict with the reindeer husbandry of the other siida shares in the district, the question is whether there is a reasonable and objective justification for the application of the limitation to the individual that claims to be adversely affected.¹² The State party disagrees that the decision to reduce the number of reindeer to 75 has made the author's reindeer husbandry unprofitable. It argues that in fact, the author will have a better financial outcome with 75 healthy and properly fed reindeer, than with 116 malnourished reindeer. The State party does not dispute that the author is unlikely to be able to have reindeer husbandry as a primary source of income with 75 animals. However, it reiterates that the decision of proportionate reduction is temporary, as it only applies for the reduction period. Hence, the decision does not prevent the author from increasing his herd in the future. Whether there is room for future growth of the author's herd is a factual question that is not decided by the time-limited decision. Such room can be created if some of the other siida shares reduce their herds, or if the siida shares use the possibilities of self-determination provided by the Reindeer Husbandry Act. The reindeer district the author belongs to can for example change the district's usage rules to include a cap on the maximum number of reindeer per siida share, thereby allowing the author to increase his herd. Further, one must not forget that the author is able to take part in the way of life of reindeer husbandry to the same extent as his aunt was doing. The number of reindeer in his aunt's siida share for the ten years preceding the author's acquisition of the siida share in 2010 was less than 71 reindeer for most of the period preceding the author's acquisition of the siida share.

¹² *Mahuika et al. v. New Zealand*, para. 9.6.

6.3 Regarding the question of the number of reindeer in the author's herd at the time of the reduction orders, the State party stresses that the number 116 was the number of reindeer the author had submitted to the authorities for the reindeer year 2011/2012. This was the only number available when the reduction process in the siida was initiated in February 2013, as the numbers for year 2012/2013 were not reported until 1 April 2013. The State party maintains that the correct number to use as basis for the reduction is thus 116 reindeer. In any case, the question of whether the author had 116 or 150 reindeer cannot be decisive. What is more important, is that he did not have any legitimate expectation of increasing his herd from 71 animals in 2010, as the siida was already full. His subsequent increase of reindeer up to 150, and then up to 300-350 animals was unlawful and affected the other reindeer herders in the district negatively. The State party also stresses that there is no basis in the Covenant or elsewhere for a rule that guarantees any reindeer owner a particular financial outcome. In a situation of over-establishment and over-grazing, such a rule could threaten reindeer husbandry for future generations since it would then be practicably impossible to reduce the number of reindeer to a sustainable level.

Third party submission by the Sámi Parliament in Norway, joined by the Sámi Reindeer Herders' Association of Norway – summary by the Secretariat

7. On 3 June 2019, the Sámi Parliament in Norway, joined by the Sámi Reindeer Herders' Association of Norway submitted a third-party submission on the complaint. The submission aims to explain the domestic decisions in the author's case in light of the Committee's previous jurisprudence, the potential threats to the author's right to enjoy his own culture caused by the domestic legislation and the lack of effective participation in the decision-making process. For further information on the third-party submission and the State party's observations thereon, see annex 1 available in English only.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. The Committee notes that the State party has not objected to the admissibility of the present communication, the Committee therefore considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met. It further considers that the author has sufficiently substantiated his claims under article 27 of the Covenant for the purposes of admissibility, and it proceeds with its consideration on the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claims that by ordering him to reduce his reindeer herd, the State party has denied him the right to enjoy his own culture in violation of his rights under article 27 of the Covenant. The Committee further notes the author's submission that by failing to take the view of the Sámi Parliament and the Sámi Reindeer Herders' Association into account, the State party authorities failed to properly consult with the Sámi community and respect their right to a real and effective participation in the decision-making process, in violation of the requirements of article 27 of the Covenant. The Committee notes the State party's submission that the decision imposing a reduction order on the author does not represent a violation of his rights under article 27 of the Covenant as the author has not been denied the right to enjoy the Sámi reindeer husbandry culture. It notes the State party's further argument that the rule of proportionate reduction, as stipulated in the Reindeer

Husbandry Act, served the interests of the affected siidas as it was necessary to reduce the number of reindeer in the siida as a result of overgrazing, and that there was a reasonable and objective justification for the application of the reduction rule to the author. It also notes the State party's argument that there were extensive consultations with the Sámi community prior to the enactment of the Reindeer Husbandry Act as well as the State party's argument that there is a conflict between the asserted individual rights of the author and the parallel rights and interests of the other siida shares, regarding the number of the reduction of reindeer.

9.3 The Committee recalls that article 27 establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, the other rights that all persons are entitled to enjoy under the Covenant.¹³ In accordance with article 27, members of minorities groups shall not be denied the right to enjoy their culture and measures whose impact amounts to a denial of that right are incompatible with the obligations under article 27.¹⁴ The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them. The protection of these rights is directed to ensure the survival and continued development of cultural identity, thus enriching the fabric of society as a whole.¹⁵

9.4 The Committee notes that in the present case the author is a member of an Indigenous People within the meaning of article 27 of the Covenant and, as such, has the right to enjoy his own culture. It is undisputed that reindeer husbandry is an essential element of said culture.¹⁶ In this context, the Committee recalls its previous jurisprudence that economic activities may come within the ambit of article 27, if they are an essential element of the culture of a People.¹⁷ The Committee also recalls that, in the case of Indigenous Peoples, the enjoyment of culture may relate to a way of life which is closely associated with their traditional lands, territories and resources, including such traditional activities as fishing and hunting, and that the protection of this right "is directed towards ensuring the survival and continued development of the cultural identity"¹⁸. 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"¹⁹. Furthermore, the Committee recalls its jurisprudence that "the close ties of indigenous peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival"; their relations to the land are a material and spiritual element which they must fully enjoy "to preserve their cultural legacy and transmit it to future generations" and are, therefore, a prerequisite to "prevent their extinction as a people"²⁰.

9.5 The Committee notes that the author is directly affected by the regulation under the Reindeer Husbandry Act and the orders imposed on him to reduce the number of reindeer in his herd down to 75 reindeer. It notes that it is undisputed between the parties that the purpose behind the reduction regulation in the Reindeer Husbandry Act was based on reasonable and objective aims, namely, to preserve ecological, economical, and culturally sustainable reindeer husbandry. The parties however disagree as to the methods chosen for the reduction of the number of reindeer, and whether said methods were reasonable, justified, and necessary. In this connection the Committee notes the State party's argument that the proportionate reduction rule under the Reindeer Husbandry Act struck a fair balance between

¹³ General comment No. 23 (1994), para.1.

¹⁴ *Mahuika et al v. New Zealand*, para. 9.4 (CCPR/C/70/D/547/1993). See also *Länsman et al. v. Finland* (CCPR/C/83/D/1023/2001), para. 10.1.

¹⁵ General comment No. 23, paras. 6.1 and 9, *Poma Poma v. Peru*, para. 7.2 and *Roy v. Australia*, paras 8.2-3.

¹⁶ See also, for example, *Paader v. Finland* (CCPR/C/110/D/2102/2011), para. 7.5.

¹⁷ *Mahuika v. New Zealand*, para. 9.3, *Kitok v. Sweden*, para. 9.2.

¹⁸ General comment No. 23, paras. 3.2, 7 and 9; *Campo Agua'ẽ Indigenous community v. Paraguay* (CCPR/C/132/D/2552/2015), para. 8.6; *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006), para. 7.2.

¹⁹ *Campo Agua'ẽ Indigenous community v. Paraguay* (CCPR/C/132/D/2552/2015), para. 8.6; CESCR General comment No. 21, para. 36; United Nations Declaration on the Rights of Indigenous Peoples art. 20, 26.1 and 33.

²⁰ *Roy v. Australia*, para. 8.3; see also *Agren et al v. Sweden* (CERD/C/102/D/54/2013) para. 6.6.

the interests of the smaller and the larger siida shares, and that the allocation of reindeer between the various siida shares is a zero-sum game where each reindeer added to the author's herd would result in a corresponding reduction of another family's herd. The Committee recalls that in circumstances, where the right of individuals to enjoy their own culture is in conflict with the exercise of parallel rights by other members of the minority group, or of the minority as a whole, the Committee may consider *i)* whether the limitation in issue is in the interests of all members of the minority; *ii)* whether there is reasonable and objective justification for its application to the individuals who claim to be adversely affected; and *iii)* whether the limitation is necessary for the continued viability and welfare of the minority as a whole.²¹ In the present case the Committee considers that the reduction policy was issued in the interest of the reindeer herding community as a whole, as it was issued due to over-grazing and in the interest of preserving ecological, economical and sustainable reindeer herding currently and in the future. The question before the Committee is therefore whether there is reasonable and objective justification for not exempting herders with a small number of reindeer, such as the author, from the reduction policy, and whether issuing the reduction orders in question to herders like the author, who only had a small number of reindeer, was necessary for the continued viability and welfare of the community as a whole.

9.6 In this connection, the Committee notes the State party's argument that the first point to consider is that under the Reindeer Husbandry Act the proportionate reduction rule is secondary in nature as the allocation of reindeer between the siida shares is an internal matter within the siida, meaning that the siida in Fálá could have shielded the author from the reduction through a simple majority decision, by setting a cap on the number of reindeer per siida share. The Committee however notes the author's argument that this arrangement was only a theoretical possibility, as there would always be some members that would not join the agreement, and that in practice it was not possible to reach such an agreement within the siida. The Committee recognizes the State party's argument that the reduction order imposed on the author is time-limited and the author can thus increase his herd in the future. The Committee however notes the author's assertion that the reduction decision has long-term effects and can be extended to a period of up to five years. The Committee also observes that the author could only increase his herd in the future provided that there is room for such increase within the maximum number of 2,000 reindeer that the siida in question can support. Consequently, the Committee considers that the secondary nature of the proportionate reduction rule and the time-limited nature of the reduction order did not in practice shield the author from an order by the State party authorities to reduce his herd down to 75 animals.

9.7 The Committee notes the author's argument that it would be impossible to make a financial profit from a small herd of 75 reindeer in line with the reduction orders imposed on him, and that it would entail a risk that he would have to discontinue his reindeer husbandry practice, preventing him from engaging in reindeer husbandry in accordance with the traditions of the Sámi reindeer husbandry culture. It also acknowledges the State party's argument that the rule of proportionate reduction had a reasonable and objective justification as it meant that the biggest entities would have to bear the brunt of the stipulated reduction and that an exemption for small herds could in the longer term give the industry an unfavourable structure that would weaken both the total and average profitability of a siida, thus undermining the opportunity to practise financially viable reindeer husbandry. In this connection, however, the Committee further notes the author's argument that it was not reasonable and necessary to ensure the continued sustainability of the reindeer husbandry in the area to extend the reduction order to small siida units, such as his, of 200 or fewer reindeer, as the effect of protecting siida units with 200 or fewer reindeer would have had limited consequences for the larger siida units. The Committee also observes that the author's claim is supported by a report of a working group on the regulation of reindeer numbers from 2012, in which several ministries, the Sámi Parliament and the Reindeer Herders' Association participated. The report substantiates that in West Finnmark, where the Fálá district is located, 15 out of 157 siida shares had less than 200 reindeer before the reduction orders were issued,

²¹ *Mahuika v. New Zealand*, para. 9.6, *Kitok v. Sweden*, para. 9.8.

and that consequently exempting said small siida shares from the reduction policy would have had a limited impact on the community as a whole.²²

9.8 The Committee further observes that in the preparation of the Reindeer Husbandry Act the Sámi Parliament and the Sámi Reindeer Herders' Association supported exempting herders with 200 or fewer reindeer from the reduction policy. The Sámi Parliament and the Sámi Reindeer Herders' Association have also endorsed this position in their third-party submission in the present case (*see annex 1*). The Committee notes that the Sámi Parliament and the Sámi Reindeer Herders' Association in their third-party submissions also argued that the State party has failed to explain why the default minimum herd size per reindeer owner at 200 animals was not acceptable. The Committee notes that the Sámi Parliament also argued its position by referring to the importance of securing for young reindeer owners a situation of economic sustainability at a stage when they are establishing themselves as reindeer herders. The Committee finally notes the Sámi Parliament's and the Sámi Reindeer Herders' Association's argument that the author is a young father, who together with his spouse wishes to continue the centuries old tradition of reindeer herding, also transmitting this constitutive dimension of Sámi culture to the next generation. According to the Sámi Parliament and the Sámi Reindeer Herders' Association this supports the conclusion that the reduction order is not based on considerations related to securing the continued viability of Sámi reindeer herding and the continued welfare of the Sámi as an Indigenous People. In this connection the Committee notes that the author's argument -- that the Sámi Parliament and the Sámi Reindeer Herders' Association are best placed to determine the interests of the Sámi community and the reindeer husbandry industry - is consistent with the Committee's jurisprudence.²³

9.9 Finally, the Committee observes that the District Court, in the domestic proceedings pertaining to the present communication stressed that the author was one of very few reindeer herders who were strongly affected by the decision to reduce the number of reindeer, that its purpose could have been fulfilled otherwise and that it affected in particular young herders in their establishment phase (*see para. 2.9.*). The Court of Appeal likewise held that the cull order was invalid as it was in violation article 27 of the Covenant, finding that it would be impossible to earn a profit with a herd of only 75 reindeer, and that the author would not therefore be given security for a continued economic benefit for reindeer husbandry after the reduction of the number of reindeer in his herd.

9.10 The Committee thus recognizes that the reduction regulation enacted in the Reindeer Husbandry Act was in pursuit of a legitimate aim, namely, to preserve ecological, economical, and culturally sustainable reindeer husbandry. However, taking the above considerations into account (*see paras. 9.5-9.9*), the Committee considers that the State party has not demonstrated that the methods chosen to implement said reindeer reduction policy in the present case, i.e. by not exempting herders such as the author with 200 or fewer reindeer from the reduction policy, as per the positions of the Sámi Parliament and the Sámi Reindeer Herders' Association, was based on reasonable and objective justifications, nor has it demonstrated that not including such an exemption was necessary in order to ensure the continued viability and welfare of the Sámi reindeer husbandry industry. The Committee therefore concludes that the facts before it reveals a violation of the author's rights under article 27 of the Covenant.

9.11 Having thus concluded the Committee does not consider it necessary to further examine the author's remaining claims under article 27, concerning the right to effective participation in the decision-making process.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it discloses a violation of the author's rights under article 27 of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to

²² Regulation of reindeer numbers – consequences and actions: Report from working group established according to the Reindeer Husbandry Agreement for 2012-2013', November 2012.

²³ See also *Sanila-Aikio v. Finland* (CCPR/C/124/D/2668/2015), paras. 6.8-6.10 and *Käkkäläjärvä et al. v. Finland* (CCPR/C/124/D/2950/2017), paras. 9.8-9.10

individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to review the reduction orders issued to the author, taking into account the Committee's findings in the present Views. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing the provisions of section 60 of the Reindeer Husbandry Act in order to ensure that said provisions are in compliance with its obligations under article 27 of the Covenant.

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

Annex I

[English only]

Third party submission by the Sámi Parliament in Norway, joined by the Sámi Reindeer Herders' Association of Norway

1. On 3 June 2019, the Sámi Parliament in Norway, joined by the Sámi Reindeer Herders' Association of Norway submitted a third-party submission on the complaint.¹ The Sámi Parliament notes that it is the elected and representative body for the Sámi people, as the Indigenous People in Norway, while the Sámi Reindeer Herders' Association is an NGO representing Sámi reindeer herders in Norway.

2. It is noted in the third-party submission that in 2006 the Sámi Parliament expressed to the authorities the following position concerning amendments to the Reindeer Husbandry Act, related to the reduction of reindeer numbers: *i)* the proposal was submitted to the Sámi Parliament without full information about the law's preparatory work, and thus in violation of the State party's consultation obligations; *ii)* the Sámi Parliament objected to the proposal that it would be for the authorities of the State party to unilaterally decide about the reindeer numbers and their reduction; *iii)* the Sámi Parliament proposed that unless agreement could be reached within a *siida*, a minimum herd size of 200 animals per owner would apply before a proportional reduction was applied to the number of animals beyond this minimum. The Sámi Parliament specifically argued its position by referring to the importance of securing for young reindeer owners a situation of economic sustainability at a stage when they are establishing themselves as reindeer herders. However, the State party authorities decided to not follow the opinion of the Sámi Parliament. As a consequence, the complaint results from unilateral decisions by the State party authorities.

3. The present case primarily concerns the internal allocation of reindeer herd quotas between Sámi herders. In Norway, reindeer herding as an economic activity is reserved exclusively to be practiced by the Sámi people. As such, the complaint belongs to the line of cases such as *Lovelace v. Canada*, *Kitok v. Sweden* and *Mahuika et al. v. New Zealand*, that have related to the role of an individual or a group of individuals within the broader indigenous community, rather than to the line of cases related to interferences in traditional or typical indigenous activities through competing use of traditional lands, as tolerated or authorized by the State party. The Committee's General Comment No. 32 recognizes an obligation of States parties to apply measures to ensure the effective participation of members of minority communities in decisions which affect them. In cases concerning external interferences in traditional or typical indigenous activities the Committee has combined such a test of effective participation and continued sustainability, "continue to benefit" of the indigenous economic activity. In the case of *Poma Poma v. Peru*, the Committee's views suggest a move towards applying a more demanding test of free, prior and informed consent when addressing the permissibility of interferences. While said case concerned external interference in respect of an economic activity of an indigenous group, rather than internal allocation, the former is not irrelevant. If the current test for permissibility of interferences is now free, prior and informed consent, then it is clear that the standard for a role for the indigenous community itself in decisions concerning the internal allocation of a scarce resource cannot be lower than what is applicable in respect of external interferences.

4. It is highly instructive for the assessment of the present case that in its most recent cases under article 27 the Committee has introduced the notion of "internal self-determination" as an aspect of the rights of an Indigenous People under said provision and article 25, interpreted in light of article 1. In so doing the Committee explicitly relied upon the provisions of the Declaration of the Rights of Indigenous Peoples when interpreting the Covenant. In *Sanila-Aikio v. Finland* and *Käkkäljärvi et al. v. Finland* it was established that the State party had violated article 25 of the Covenant when it had intervened in then

¹ It is noted in the third-party submission that the submission was prepared by professors in international law Kirsti Strøm Bull, Martin Scheinin and Geir Ulfstein, at the request of the Sámi Parliament.

ongoing Sami Parliament elections of 2015 by ordering the inclusion of a relatively high number of individuals in the electoral rolls of the Sámi Parliament. In these cases, the Committee appeared to accept that there may be some room for an interference by the State party even in matters that fall under the indigenous group's internal self-determination but only when this is based on objective and reasonable criteria. The threshold for permissible State party interference in the decision-making in matters pertaining to the internal self-determination of an indigenous group, such as internal allocation of resources, must be higher than for external interferences in the economic activities of an indigenous group. There should be a presumption that the Sámi Parliament has exclusive jurisdiction in such internal matters. The State party should be required to demonstrate that the interference is necessary to the extent the matter has effects beyond the Sámi community. The State party has failed to show why the default minimum herd size per reindeer owner at 200 animals was not acceptable.

5. As has been confirmed by the domestic courts, it is not economically sustainable to maintain a herd of only 75 reindeer when a family seeks to participate in reindeer herding as the main source of its subsistence. Any regulation should be designed in a way that supports the purpose of article 27, i.e., to protect the minority community. Shielding a minimum number of reindeer from eventual cuts will more effectively protect the culture. It should be for the State party to show why such a measure is not feasible. The fact that the author is a young father, who together with his spouse wishes to continue the centuries old tradition of reindeer herding, also transmitting this constitutive dimension of Sámi culture to the next generation, supports the conclusion that the reduction order is not based on considerations related to securing the continued viability of Sámi reindeer herding and the continued welfare of the Sámi as an Indigenous People.

State party's observation on the third-party submission

6. On 14 October 2019, the State party submitted its observations on the third-party submission. It disagrees with the notion of "internal self-determination" as an aspect of the rights of an Indigenous People under the Covenant as argued in the third-party submission, and it argues that neither *Poma Poma v. Peru* nor *Mahuika v. New Zealand* can be taken as basis for such a right. It reiterates its submission that the test in cases where the exercise of parallel rights and interests are in conflict with each other are whether: a) the limitation of the enjoyment of culture serves the interests of the affected group; and b) there is a reasonable and objective justification for the application of the limitation to the individual that claims to be adversely affected. It further reiterates its argument that self-determination is provided to reindeer herders under the Reindeer Husbandry Act by giving the siidas the power to set a maximum number of reindeer per siida share through a simple majority decision. The State party emphasizes that it strongly objects to the assertion that it has not based its actions on a quest for the continued viability and welfare of the Sámi people and their reindeer herding, as argued in the third-party submission. It notes that the rule of proportionate reduction was based on the need to protect the interests of the established families, substantiated with evidence of the low profitability in the siida. The third-party submission fails to explain why the Sámi culture is better protected by making it even more difficult for the established families to make a living from reindeer herding, than what would follow from a proportionate reduction.

Annex II

Joint opinion by Committee members Marcia V. J. Kran , José Manuel Santos Pais and Koji Teraya (dissenting)

1. We have come to a different conclusion than the majority of the Committee which found a violation of the author's rights under article 27 of the Covenant.

2. The author is a Sámi reindeer herder, leader of a "*siida unit*" (para 2.1) since 2010 (para 2.2). He claims that since his reindeer husbandry is economically marginal and in the establishment phase, he needs to build up the reindeer herd to achieve economically sustainable reindeer husbandry (para 2.3). However, the level of his aunt's *siida* share in the last 10 years before he took over as a leader of a "*siida unit*" was less than 71 reindeer for most of the period preceding the author's acquisition of the *siida* share.

3. After consultations conducted in 2005-2006, the Norwegian government submitted a draft act to the Sámi Parliament for review. The Sámi Parliament considered that "*siida units*" with 200 or fewer reindeer should be protected in the event of a reduction of the number of reindeer, but the government did not agree, as this could in the long-term result in an industrial structure that would weaken the overall and average profitability of the *siida* (para 2.5). Ultimately, the Norwegian Parliament chose a solution more in line with the industry's request for more self-governance and the need to protect established families with reindeer husbandry as a primary income.

4. In June 2007, the Reindeer Husbandry Act was adopted containing provisions on the number of reindeer per "*siida unit*". A maximum number of reindeer was stipulated for each summer for the reindeer grazing districts, based on the grazing resources available to the *siida*, as well as for the various winter *siidas*. There would be herd reduction in cases where the number of reindeer exceeds the maximum number, the *siida* being obliged to prepare a culling plan. In the absence of such a plan, each "*siida unit*" must reduce its excess number of animals proportionally. The Reindeer Husbandry Board is responsible for ensuring the reduction is carried out (para 2.4).

5. In February 2013, the Reindeer Husbandry Board ordered the author to cull the spring herd of his "*siida unit*" from 116 to 75 reindeer by March 2015 (para 2.7). Three of the seven members of the Reindeer Board which ordered the proportionate reduction are Sámi.

The author, while entering into an agreement with other reindeer herders for the transfer of the majority of his reindeer to another district by the end of 2019 (para 4.1), appealed the reduction order. Both the Reindeer Husbandry Board and the Ministry dismissed his appeal. The author then brought an action against the State before the District Court claiming that the Ministry's cull order of March 2014 was invalid (para 2.8).

6. District Court (2016) and Court of Appeal (2017) held the cull order invalid, the latter court considering it was in violation of article 27 of the Covenant (author's right to enjoy his own culture) (para 2.9).

However, the Supreme Court, in December 2017, found differently. The Court noted that the Reindeer Husbandry Act was enacted to ensure ecological, economical and culturally sustainable reindeer husbandry based on Sámi culture, tradition and customs in the interest of herders and society in general; reduction of the number of reindeer was ordered in the interest of reindeer herders due to problems with overgrazing; Sámi Parliament had also agreed to reduce the number of reindeer, proportionate reduction maintaining reindeer herders' interests as a group; regulation affected everyone, owners of largest herds having to cull largest number of reindeer. The Supreme Court found that the reduction system met the criteria of being objective, reasonable and necessary to maintain the interests of reindeer herders.

7. We consider this to be a reasonable decision taken to attain a legitimate purpose. According to the State party, the pressure on the industry and the grazing land from existing reindeer herders and individuals wanting to enter the industry has been high for decades and

reached critical levels. As such, over-grazing posed a threat to the welfare of both animals and industry due to the risk of long-term damage to the grazing land (para 4.2).

9. Thus, the option chosen was a proportionate reduction in reindeer industry, applied temporarily and left to Sámi self-governance. An interdisciplinary working group of reindeer herders, scientists and representatives from the Ministry was also established to find appropriate criteria for determining a sustainable maximum level of reindeer per *siida* (para 4.3), aiming at ecologically, economically, and culturally sustainable reindeer husbandry based on Sámi culture, tradition and customs for the benefit of the population conducting reindeer husbandry (para 4.4).

10. In 2010, when the author took over as a leader of a “*siida unit*”, there was already no room for further growth of *siida* shares (para 4.5).

If the author expands his herd, this will likely have a detrimental impact on other families’ established way of life (paras 4.7, 6.2). Thus the proportionate reduction is necessary and strikes a fair balance between interests of smaller and larger *siida* shares (para 4.9).

Through the Reindeer Husbandry Act, Norwegian Parliament made the reduction provision “*secondary in nature*”, as it only applies insofar as a district has not used opportunities of internal self-governance for reindeer herders to make alternative arrangements (para 4.3; 9.6). The State party has made clear that the Reindeer Husbandry Act inherently prioritizes self-governance for Sámi reindeer herders, as it flexibly allows *siida* shares to distribute allocation of reindeer and their subsequent reduction orders by a simple majority vote (para 4.8, 6.1, 9.6).

11. The parties agree that a framework is necessary to manage and sustain reindeer husbandry. The Parliament agreed to the need for a reduction to attain a valid legislative objective. Furthermore, through seven prior consultations, the Sámi Parliament was thoroughly consulted by the State party with respect to the means to be taken. In these circumstances, we find the Norwegian government’s action reasonable and well-grounded and find no violation of the author’s rights under article 27 of the Covenant.

The majority relied on a third-party submission reflecting the interests of the Sámi Parliament and herders themselves. However, in the absence of scientific information countering the State party’s arguments, we consider the latter’s position more able to offer sustainability to reindeer husbandry industry, a vital aspect of Sámi culture.

It would be deeply regrettable for the Committee’s Views to negatively affect such sustainability while aiming at preserving Sámi culture, tradition and customs.
