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HUMAN RIGHTS COMMITTEE
Fiftieth session

DECISIONS

Communication No. 431/1990

Submitted by: O. Sara et al.
[represented by counsel]

Alleged victims: The authors

State party: Finland

Date of communication: 18 December 1990 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's decision under rule 91, dated 12 February 1991 (not issued in document form)
- CCPR/C/42/D/431/1990 (decision on admissibility, dated 9 July 1991)

Date of present decision: 23 March 1994

Revised decision on admissibility

[Annex]

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ANNEX

Decision of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - Fiftieth session concerning Communication No. 431/1990 *

Submitted by : O. Sara et al. [represented by counsel]

Alleged victims : The authors

State party : Finland

Date of communication : 18 December 1990

Date of decision on admissibility : 9 July 1991

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 1994,

Setting aside, pursuant to rule 93, paragraph 4, of its rules of procedure, an earlier decision on admissibility, dated 9 July 1991,

Adopts the following:

Revised decision on admissibility

1. The authors of the communication dated 18 December 1990 are Messrs. O. Sara, J. Näkkäläjärvi, O. Hirvasvuopio and Ms. A. Äärelä, all Finnish citizens. They claim to be the victims of a violation by Finland of article 27 of the International Covenant on Civil and Political Rights. They are represented by counsel.

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* Made public by decision of the Human Rights Committee.

The facts as submitted by the authors:

2.1 The authors are reindeer breeders of Sami ethnic origin. Together with the Herdsmen's committees (cooperative type bodies set up to regulate reindeer husbandry in Finland), they represent a substantial part of reindeer herding in Finnish Lapland. Mr. Sara is the chief and Mr. Näkkäläjärvi, the deputy chief of the Sallivaara Herdsmen Committee; Mr. Hirvasvuopio is the chief of the Lappi Herdsmen Committee. In terms of counted reindeer the Sallivaara Herdsmen Committee is the second largest herdsmen's committee in Finland; the Lappi Herdsmen's Committee is the third largest.

2.2 On 16 November 1990, the Finnish Parliament passed Bill 42/1990, called the "Wilderness Act" (erämaalaki), which entered into force on 1 February 1991. The legal history of this bill is the result of a delicate compromise reached after protracted discussions between the Samis, environmental protection lobbyists and the Finnish Forest Administration about the extent of logging activities in northernmost Finland, that is, close to or north of the Arctic Circle. Under the provisions of the Act, specifically designated areas are off limits for logging, whereas in others, defined as "environmental forestry areas" (luonnonmukainen metsänhoito), logging is permitted. Another, third, category of forest areas remains unaffected by the application of the Act.

2.3 An important consideration in the enactment of the Act, reflected in Section 1, is the protection of the Sami culture and particularly of traditional Sami economic activities. Section 3, however, reveals that the *ratio legis* of the Act is the notion and extension of State ownership to the wilderness areas of Finnish Lapland. The authors note that the notion of State ownership of these areas has long been fought by Samis. The implication of Section 3, in particular, is that all future logging activities in the areas used by them for reindeer husbandry will be matters controlled by different Government authorities. In particular, Section 7 of the Act entrusts a Central Forestry Board (C.F.B.) (metsähallitus) with the task of planning both use and maintenance (hoito-ja käyttösuunnitelma) of the wilderness area. While the Ministry for the Environment (ympäristöministeriö) may either approve or disapprove the plans proposed by this Board, it cannot amend them.

2.4 The authors indicate that the area used for herding their reindeers during the winter months is a hitherto unspoiled wilderness area. The border between the municipalities of Sodankylä and Inari nowadays divides this wilderness into two separate Herdsmen's Committees. Under the Wilderness Act, the largest part of the authors' reindeer breeding area overlaps with the Hammastunturi Wilderness Area; other parts do not and may therefore be managed by the C.F.B. Under preliminary plans approved by the Board, only small portions of the authors' breeding area would be off-limits for logging operations, whereas the major part of their areas overlapping with the Hammastunturi Wilderness would be subject to so-called "environmental forestry", a concept without a precise

definition. Furthermore, on the basis of separate decisions by Parliament, the cutting of forests within the Hammastunturi Wilderness would not begin, until the approval, by the Ministry for the Environment, of a plan for use and maintenance. The Act, however, is said to give the C.F.B. the power to start full-scale logging.

2.5 At the time of submission in 1990, the authors contended that large scale logging activities, as authorized under the Wilderness Act, were imminent in the areas used by them for reindeer breeding. Thus, two road construction projects into the authors' herding areas were started without prior consultation of the authors, and the roads are said to serve no purpose in the maintenance of the authors' traditional way of life. The authors claimed that the roads were intended to facilitate logging activities inside the Hammastunturi Wilderness in 1992 and, in all likelihood, outside the Wilderness as early as the summer of 1991. The road construction had already penetrated over a distance of six miles, at a breadth of 60 feet, into the reindeer herding areas used by the authors. Concrete sink rings have been brought on site, which the authors claim underline that the road is to be built for all season use by heavy trucks.

2.6 The authors reiterate that the area in question is an important breeding area for the Lappi Herdsmen's Committee, and that they have no use for any roads within the area. For the Lappi Herdsmen's Committee, the area is the last remaining natural wilderness area; for the Sallivaara Herdsmen's Committee, the area forms one third of its best winter herding areas and is essential for the survival of reindeers in extreme climatic conditions. As to the disposal of slaughtered reindeers, the authors note that slaughtering takes place at places specifically designed for that purpose, located close to main roads running outside the herding area. The Sallivaara Herdsmen's Committee already disposes of a modern slaughterhouse, and the Lappi Herdsmen's Committee has plans for a similar one.

2.7 The authors further note that the area used by them for winter herding is geographically a typical watershed highland, located between the Arctic Sea and the Baltic. These lands are surrounded by open marshlands covering at least two thirds of the total area. As in other watershed areas, abundant snow and rainfalls are common. The winter season is approximately one month longer than in other areas. The climate has a direct impact on the area's environment, in particular the trees (birch and spruce), whose growth is slow; the trees in turn encourage the growth of the two types of lichen that constitute the winter diet for reindeers. The authors emphasize that even partial logging would render the area inhospitable for reindeer breeding for at least a century and possibly irrevocably, since the destruction of the trees would lead to an extension of the marsh, with the resulting change of the nutrition balance of the soil. Moreover, logging would merely add to present dangers threatening the trees within the authors' herding area, i.e. industrial pollution from the Russian Kola district. In this context, it is submitted that silvicultural methods of logging (i.e. environmentally sensitive cutting of forest areas) advocated by the authorities for some parts of the wilderness area used by the authors would

cause possibly irreversible damage to reindeer herding, as the age structure of the forest and the conditions for the lichen growth would change.

2.8 With respect to the requirement of exhaustion of domestic remedies, the authors contend that the Finnish legal system does not provide for remedies to challenge the constitutionality or validity of an Act adopted by Parliament. As to the possibility of an appeal to the Supreme Administrative Tribunal against any future administrative decisions based on the Wilderness Act, the authors point out that the Finnish legal doctrine on administrative law has been applied very restrictively in accepting legal standing on grounds other than ownership. Thus, it is claimed that there are no domestic remedies which the authors might pursue in respect of a violation of article 27 of the Covenant.

The complaint :

3.1 The authors submit that the passage of the Wilderness Act jeopardizes the future of reindeer herding in general and of their livelihood in particular, as reindeer farming is their primary source of income. Furthermore, since the Act would authorize logging within areas used by the authors for reindeer husbandry, its passage is said to constitute a serious interference with their rights under article 27 of the Covenant, in particular the right to enjoy their own culture. In this context, the authors refer to the Views of the Human Rights Committee in cases Nos. 197/1985 and 167/1984, 1/ as well as to ILO Convention No. 169 concerning indigenous and tribal people in independent countries.

3.2 The authors add that over the past decades, traditional methods used for reindeer breeding have decreased in importance and have been partly replaced by "fencing" and artificial feeding, which the authors submit are alien to them. Additional factors enabling an assessment of the irreparable damage to which wilderness areas in Finland are exposed include the development of an industry producing forest harvesting machinery and a road network for wood transport. These factors are said to deeply affect the enjoyment of the authors' traditional economic and cultural rights.

3.3 Fearing that the C.F.B. would approve the continuation of road construction or logging by the summer of 1991, or at the latest by early 1992, around the road under construction and therefore within the confines of their herding areas, the authors requested the adoption of interim measures of protection, pursuant to rule 86 of the Committee's rules of procedure.

The State party's observations :

4.1 In its submission under rule 91 of the rules of procedure, the State party does not raise objections to the admissibility of the communication under article 5, paragraph 2(b), of the Optional Protocol, and concedes that in the present situation there are no domestic remedies which the authors should still pursue.

4.2 The State party indicated that for the Hammastunturi Wilderness, plans for maintenance and use currently in preparation in the Ministry of the Environment would not be finalized and approved until the spring of 1992; nor are there any logging projects under way in the residual area designated by the authors, which does not overlap with the Hammastunturi Wilderness. North of the Wilderness, however, minor "silvicultural felling" (to study the effect of logging on the environment) began in 1990 and would be stopped by the end of the spring of 1991. According to the C.F.B., this particular forest does not overlap with the area designated in the communication. The State party added that south of the wilderness, the gravelling of an existing roadbed would proceed in the summer of 1991, following the entry into force of the Wilderness Act.

4.3 The State party contends that the communication is inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant. In particular, it argues that the plans of the C.F.B. for silvicultural logging in the residual area outside the Hammastunturi Wilderness are not related to the passage of the Wilderness Act, because the latter only applies to areas specifically designated as such. The authority of the C.F.B. to approve logging activities in areas other than those designated as protected wilderness is not derived from the Wilderness Act. Accordingly, the State party denies that there is a causal link between the measures of protection requested by the authors and the object of the communication itself, which only concerns enactment and implementation of the Wilderness Act.

4.4 The State party further contends that the envisaged forestry operations, consisting merely of "silvicultural logging" and construction of roads for that purpose, will not render the areas used by the authors irreparably inhospitable for reindeer husbandry. On the contrary, the State party expects them to contribute to the natural development of the forests. In this connection, it points to a report prepared for the Ministry for Agriculture and Forestry by a professor of the University of Joensuu, who supports the view that timber production, reindeer husbandry, collection of mushrooms and berries and other economic activities may sustainably coexist and thrive in the environment of Finnish Lapland. This report states that no single forest or land use can on its own fulfil the income and welfare needs of the population; forest management of the whole area and particularly Northern Lapland must accordingly be implemented pursuant to schemes of multiple use and "strict sustainability".

4.5 The State party submits that the authors cannot be considered as "victims" of a violation of the Covenant, and that their communication should be declared inadmissible on that account. In this context, the State party contends that the ratio legis of the Wilderness Act is the very opposite from that identified by the authors: its intention was to upgrade and enhance the protection of the Sami culture and traditional nature-based means of livelihood. Secondly, the State party submits that the authors have failed to demonstrate how their concerns about "irreparable damage" purportedly resulting from logging in the area designated by them translate into actual violations of their rights; they are merely afraid of what might occur in the future. While they might legitimately fear for the future of the Sami culture, the "desired feeling of

certainty is not as such protected under the Covenant. There must be a concrete executive decision or measure taken under the Wilderness Act", before anyone may claim to be the victim of a violation of his Covenant rights.

4.6 The State party further argues that passage of the Wilderness Act must be seen as an improvement rather than a setback for protection of the rights protected by article 27. If the authors are dissatisfied with the amount of land protected as wilderness, they overlook that the Wilderness Act is based on a philosophy of coexistence between reindeer herding and forest economy. This is not only an old tradition in Finnish Lapland but also a practical necessity, as unemployment figures are exceptionally high in Finnish Lapland. The Act embodies a legislative compromise trying to balance opposite interests in a fair and democratic manner. While the Government fully took into account the requirements of article 27 of the Covenant, it could not ignore the economic and social rights of that part of the population whose subsistence depends on logging activities: "one cannot do without compromises in a democratic society, even if they fail to satisfy all the parties concerned".

4.7 Finally, the State party notes that the Covenant has been incorporated into domestic law and that, accordingly, article 27 is directly applicable before the Finnish authorities and judicial instances. Thus, if, in the future, the Ministry of the Environment were to approve a plan for forest maintenance and care which would indeed endanger the subsistence of Sami culture and thus violate article 27, the victims of such a violation could submit a complaint to the Supreme Administrative Court.

Admissibility considerations :

5.1 During its 42nd session in July 1991, the Committee considered the admissibility of the communication. It noted that the State party had raised no objection with regard to the admissibility of the communication under article 5, paragraph 2(b), of the Optional Protocol. It further took note of the State party's claim that the authors could not claim to be victims of a violation of the Covenant within the meaning of article 1 of the Optional Protocol. The Committee reaffirmed that individuals can only claim to be victims within the meaning of article 1 if they are actually affected, although it is a matter of degree as to how concretely this requirement should be taken. 2/

5.2 Inasmuch as the authors claimed to be victims of a violation of article 27, both in respect of expected logging and road construction activities within the Hammastunturi Wilderness and ongoing road construction activities in the residual area located outside the Wilderness, the Committee observed that the communication related to both areas, whereas parts of the State party's observations could be read in the sense that the communication only related to the Hammastunturi Wilderness.

5.3 The Committee distinguished between the authors' claim to be victims of a violation of the Covenant in respect of road construction and logging inside the Hammastunturi Wilderness and such measures outside the Wilderness, including

road construction and logging in the residual area south of the Wilderness. In respect of the former areas, the authors had merely expressed the fear that plans under preparation by the Central Forestry Board might adversely affect their rights under article 27 in the future. This, in the Committee's opinion, did not make the authors victims within the meaning of article 1 of the Optional Protocol, as they were not actually affected by an administrative measure implementing the Wilderness Act. Therefore, this aspect of the communication was deemed inadmissible under article 1 of the Optional Protocol.

5.4 In respect of the residual area, the Committee observed that the continuation of road construction into it could be causally linked to the entry into force of the Wilderness Act. In the Committee's opinion, the authors had sufficiently substantiated, for purposes of admissibility, that this road construction could produce effects adverse to the enjoyment and practice of their rights under article 27.

5.5 On 9 July 1991, accordingly, the Committee declared the communication admissible in so far as it appeared to raise issues under article 27 of the Covenant.

5.6 The Committee also requested the State party to "adopt such measures, as appropriate, to prevent irreparable damage to the authors".

The State party's request for review of the admissibility decision and the authors' reply :

6.1 In its submission under article 4, paragraph 2, dated 10 February 1992, the State party notes that the Committee's acceptance, in the decision of 9 July 1991, of a causal link between the Wilderness Act and any measures taken outside the Hammastunturi Wilderness has changed the substance of the communication and introduced elements in respect of which the State party did not provide any admissibility information. It reiterates that in applying the Wilderness Act, Finnish authorities must take into consideration article 27 of the Covenant, "which, in the hierarchy of laws, is on the same level as ordinary laws". Samis who claim that their Covenant rights were violated by the application of the Act may appeal to the Supreme Administrative Court in respect of the plan for maintenance and care of the Wilderness area approved by the Ministry of the Environment.

6.2 In respect of the activities outside the Hammastunturi Wilderness (the "residual area"), the State party submits that article 27 would entitle the authors to take action against the State or the C.F.B. before the Finnish courts. Grounds for such a legal action would be concrete measures taken by the State, such as road construction, which in the authors' opinion infringe upon their rights under article 27. A decision at first instance could be appealed to the Court of Appeal and from there, subject to certain conditions, to the Supreme Court. The provincial government could be requested to grant provisional remedies; if this authority does not grant such a remedy, its

decision may be appealed to the Court of Appeal and, subject to a re-trial permit, to the Supreme Court.

6.3 The State party adds that the fact that actions of this type have not yet been brought before the domestic courts does not mean that local remedies do not exist but merely that provisions such as article 27 have not been invoked until recently. Notwithstanding, the decisions of the higher courts and the awards of the Parliamentary Ombudsman in the recent past suggest that the impact of international human rights treaties is significantly on the increase. While the authors do not own the contested area, the application of article 27 gives them legal standing as representatives of a national minority, irrespective of ownership. The State party concludes that the communication should be deemed inadmissible in respect of measures taken outside the Hammastunturi Wilderness on the basis of article 5, paragraph 2(b), of the Optional Protocol.

6.4 Subsidiarily, the State party reaffirms that current road construction activities in the "residual areas" do not infringe upon the authors' rights under article 27. It observes that the authors do not specify that the construction has caused real damage to reindeer husbandry. In this context, it observes that the

> "concept of culture in the sense of article 27 provides for a certain degree of protection of the traditional means of livelihood for national minorities and can be deemed to cover livelihood and other conditions in so far as they are essential for the culture and necessary for its survival. The Sami culture is closely linked with traditional reindeer husbandry. For the purposes of ... article 27 ... it must be established, however, in addition to the afore-mentioned question of what degree of interference the article [protects] against, whether the minority practices its livelihood in the traditional manner intended in the article".

As Sami reindeer husbandry has evolved over time, the link with the natural economy of old Sami tradition has been blurred; reindeer husbandry is increasingly practised with help of modern technology, e.g. snow scooters and modern slaughterhouses. Thus, modern reindeer husbandry managed by herdsmen's committees leaves little room for individual, self-employed, herdsmen.

6.5 The State party further denies that prospective logging in areas outside the Wilderness will infringe upon the authors' rights under article 27: "there is no negative link between the entry into force of the Wilderness Act and logging by the C.F.B. outside the wilderness area. On the contrary - enactment of the law has a positive impact on logging methods used in the residual areas". The State party explains that under the Act on Reindeer Husbandry, the northernmost State-owned areas are set aside for reindeer herding and shall not be used in ways that impair reindeer husbandry. The C.F.B. has decided that highlands (above 300 metres altitude) are subject to the most circumspect forestry. In Upper Lapland, a land and water utilization strategy approved by the C.F.B. that emphasizes the principle of multiple use and sustainability of resources applies.

6.6 It is recalled that the area identified in the authors' initial complaint comprises approximately 55,000 hectares (35,000 ha of the Hammastunturi Wilderness, 1,400 ha of highlands, and 19,000 ha of conservation forest); out of this total, only 10,000 ha or 18 per cent are set aside for logging. The State party notes that "logging is extremely cautious and the interests of reindeer husbandry are kept in mind". If one considers that logging is practised with strict consideration for the varied nature of the environment, forestry and land use in the area in question do not cause undue damage to reindeer husbandry. Furthermore, the significant increase in the overall reindeer population in Finnish Lapland over the past twenty years is seen as a "clear indication that logging and reindeer husbandry are quite compatible".

6.7 In respect of the authors' claim that thinning of the forests destroys lichen (lichenes and usnea) in the winter herding areas, the State party observes that other herdsmen have even requested for such thinning to be carried out, as they have discovered that it alters "the ratio of top vegetation to the advantage of lichen and facilitates mobility. The purpose of [such] thinning is, inter alia , to sustain the tree population and improve its resistance to airborne pollution." Furthermore, according to the State party, lichen is plentiful in the highland areas where the C.F.B. does no logging at all.

6.8 The State party notes that Sami herdsmen own or co-own forests. Ownership is governed by a variety of legislative acts; the most recent, the Reindeer Farm Act and Decree, also applies to Sami herdsmen. According to the State party, the authors own reindeer farms. Thinning of trees or logging of private forests is governed by the Private Forests Act. According to the Association of Herdsmen's Committees, the income derived from logging is essential for securing the herdsmen's livelihood and, furthermore, forestry jobs are essential to forest workers and those Sami herdsmen who work in the forests apart from breeding reindeer. In the light of the above, the State party reaffirms that planned logging activities in the area identified by the complaints cannot adversely affect the practice of reindeer husbandry, within the meaning of article 27 of the Covenant.

7.1 In their comments, dated 25 March 1992, on the State party's submission, the authors contend that the State party's reference to the availability of remedies on account of the Covenant's status in the Finnish legal system represents a novelty in the Government's argumentation. They submit that this line of argument contrasts with the State party's position in previous Optional Protocol cases and even with that put forth by the Government at the admissibility stage of the case. The authors argue that while it is true that international human rights norms are invoked increasingly before the courts, the authorities would not be in a position to contend that Sami reindeer herdsmen have locus standi in respect to plans for maintenance and use of Wilderness areas, or in respect of road construction projects in state-owned forests. Not only is there no case law in this respect, but Finnish courts have been reluctant to accept standing of any others than the landowners; the authors cite several judgements in support of their contention. 3/

7.2 Inasmuch as the alleged direct applicability of article 27 of the Covenant is concerned, the authors claim that while this possibility should not theoretically be excluded, there is no legal precedent for the direct application of article 27; the State party therefore wrongly presents a hypothetical possibility as a judicial interpretation. The authors reaffirm that no available and effective remedies exist in relation to road construction and other measures in the "residual area", which consists exclusively of state-owned lands. The Government's reference to the fact that the Covenant is incorporated into the domestic legal system cannot be deemed to prove that the domestic court practice includes even elementary forms of the approach now put forth by the State party, for the first time, to a United Nations human rights treaty body.

7.3 The authors challenge the State party's assessment of the impact of road construction into the area designated in their communication on the enjoyment of their rights under article 27. Firstly, they object to the State party's interpretation of the scope of the provision and argue that if the applicability of article 27 depended solely on whether the minority practices its "livelihood in the traditional manner", the relevance of the rights enshrined in the provision would be rendered nugatory to a large extent. It is submitted that many indigenous peoples in the world have, over time and due to governmental policies, lost the possibility to enjoy their culture and carry out economic activities in accordance with their traditions. Far from diminishing the obligations of States parties under article 27, such trends should give more impetus to their observance.

7.4 While Finnish Sami have not been able to maintain all traditional methods of reindeer herding, their practice still is a distinct Sami form of reindeer herding, carried out in community with other members of the group and under circumstances prescribed by the natural habitat. Snow scooters have not destroyed this form of nomadic reindeer herding. Other than in Sweden and Norway, Finland allows reindeer herding for others than Samis; thus, the southern parts of the country are used by herdsmen's committees which now largely resort to fencing and to artificial feeding.

7.5 As to the impact of road construction into their herding area, the authors reiterate that it violates article 27 because

- construction work already causes noise and traffic that has disturbed the reindeer;

- the two roads form "open wounds" in the forests with, on the immediate site, all the negative effects of logging;

- the roads have changed the pattern of reindeer movements, by dividing the wilderness and thereby making it far more difficult to keep the herd together;

- any roads built into the wilderness bring tourists and other traffic disturbing the animals;

- as the government has failed to provide reasonable justifications for the construction of the roads, their construction violates the authors' rights under article 27, as a mere preparatory stage for logging within their area.

7.6 Concerning the State party's assessment of logging operations in the areas designated by the communication, the authors observe that although the area is small in comparison compared with Sami areas as a whole, logging within that area would re-start a process that lasted for centuries and brought about a gradual disintegration of the traditional Sami way of life. In this context, it is noted that the area in question remains one of the most productive wilderness areas used for reindeer herding in Finnish Lapland.

7.7 Still in the context of planned logging operations, the authors submit the reports of two experts, according to which (a) under certain conditions, reindeer are highly dependent on lichens growing on trees; (b) lichen growing on the ground are a primary winter forage for reindeer; (c) old forests are superior to young ones as herding areas; and (d) logging negatively affects nature-based methods of reindeer herding.

7.8 The authors insist that the area designated in their communication has remained untouched for centuries, and that it is only in the context of the coming into force of the Wilderness Act that the C.F.B. began its plans for logging in the area. They further contend that if it is true, as claimed by the State party, that highlands (above 300 metres) are in practice free of C.F.B. activity, then their herding area should remain untouched. However, the two roads built into their area partly run above the 300 metre mark, which shows that such areas are well within the reach of C.F.B. activities. In this context, they recall that all of the area delineated in their complaint is either above the 300 metre mark or very close to it; accordingly, they dismiss the State party's claim that only 1,400 ha of the area are highlands. Furthermore, while the authors have no access to the internal plans for logging in the area drawn up by the C.F.B., they submit that logging of 18 per cent of the total area would indeed affect a major part of its forests.

7.9 As to the alleged compatibility of intensive logging and practising intensive reindeer husbandry, the authors note that this statement only applies to the modern forms of reindeer herding using artificial feeding. The methods used by the authors, however, are traditional, and for that the old forests in the area designated by the communication are essential. The winter 1991-1992 demonstrated how relatively warm winters may threaten traditional herding methods. As a result of alternating periods with temperatures above and below 0 degree centigrade the snow was, in many parts of Finnish Lapland, covered by a hard layer of ice that prevented the reindeer from getting their nutrition from the ground. In some areas without old forests carrying lichen on their

branches, reindeer have been dying from hunger. In this situation, the herding area designated in the communication has been very valuable to the authors.

7.10 In several submissions made between September 1992 and February 1994, the authors provide further clarifications. By submission of 30 September 1992, they indicate that the Central Forestry Board's logging plans for the Hammastunturi Wilderness are still in preparation. In a subsequent letter dated 15 February 1993, they indicate that a recent decision of the Supreme Court invalidates the State party's contention that the authors would have locus standi before the courts on the basis of claims brought under article 27 of the Covenant. This decision, which quashed a decision of the Court of Appeal granting a Finnish citizen who had been successful before the Human Rights Committee compensation, 4/ holds that the administrative, rather than the ordinary, courts are competent to decide on the issue of the complainant's compensation.

7.11 The authors further indicate that the draft plan for use and maintenance of the Hammastunturi Wilderness was made available to them on 10 February 1993, and a number of them were going to be consulted by the authorities before final confirmation of the plan by the Ministry for the Environment. According to the draft plan, no logging would be carried out in those parts of the Wilderness belonging to the area specified in the communication and to the herding areas of the Sallivaara Herdsmen's Committee. The same is not however true for the respective areas of the Lappi Herdsmen's Committee: under the draft plan, logging would be carried out in an area of 10 square kilometres (called Peuravaarat) situated in the southernmost part of the Hammastunturi Wilderness and within the area specified in the original communication.

7.12 In submissions of 19 October 1993 and 19 February 1994, the authors note that negotiations on and preparation of a plan for use and maintenance of the Wilderness have still not been completed, and that the Central Forestry Board has still not made a final recommendation to the Ministry for the Environment. In fact, a delay until 1996 for the finalization of the maintenance plan is expected.

7.13 The authors refer to another logging controversy in another Sami reindeer herding area, where reindeer herdsmen had instituted proceedings against the Government because of planned logging and road construction activities in the Angeli district, and where the Government had argued that claims based on article 27 of the Covenant should be declared inadmissible under domestic law. On 20 August 1993, the Court of First Instance at Inari held that the case was admissible but without merits, ordering the complainants to compensate the Government for its legal expenses. On 15 February 1994, the Court of Appeal of Rovaniemi invited the appellants in this case to attend an oral hearing, to take place on 22 March 1994. According to counsel, the Court of Appeal's decision to grant an oral hearing "cannot be taken as proof for the practical applicability of article 27 of the Covenant as basis for court proceedings in Finland, but at least it leaves [this] possibility open".

7.14 In the light of the above, the authors conclude that their situation remains in abeyance at the domestic level.

Post-admissibility considerations :

8.1 The Committee has taken note of the State party's information, provided after the decision on admissibility, that the authors may avail themselves of local remedies in respect of road construction activities in the residual area, based on the fact that the Covenant may be invoked as part of domestic law and that claims based on article 27 of the Covenant may be advanced before the Finnish courts. It takes the opportunity to expand on its admissibility findings.

8.2 In their submission of 25 March 1992, the authors concede that some Finnish courts have entertained claims based on article 27 of the Covenant. From the submissions before the Committee it appears that article 27 has seldom been invoked before the local courts or its content guided the ratio decidendi of court decisions. However, it is noteworthy, as counsel to the authors acknowledges, that the Finnish judicial authorities have become increasingly aware of the domestic relevance of international human rights standards, including the rights enshrined in the Covenant. This is true in particular for the Supreme Administrative Tribunal, and increasingly so for the Supreme Court and the lower courts.

8.3 In the circumstances, the Committee does not consider that a recent judgement of the Supreme Administrative Tribunal, which makes no reference to article 27, should be seen as a negative precedent for the adjudication of the authors' own grievances. In the light of the developments referred to in paragraph 8.2 above, the authors' doubts about the courts' readiness to entertain claims based on article 27 of the Covenant do not justify their failure to avail themselves of possibilities of domestic remedies which the State party has plausibly argued are available and effective. The Committee further observes that according to counsel, the decision of the Court of Appeal of Rovaniemi in another comparable case, while not confirming the practical applicability of article 27 before the local courts, at least leaves this possibility open. Thus, the Committee concludes that an administrative action challenging road construction activities in the residual area would not be a priori futile, and that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met.

8.4 The Committee takes note of counsel's comment that a delay until 1996 for the finalization of the Central Forestry Board's plan for use and maintenance is expected and understands this as an indication that no further activities in the Hammastunturi Wilderness and the residual area will be undertaken by the State party while the authors may pursue further domestic remedies.

9. The Human Rights Committee therefore decides :

(a) the decision of 9 July 1991 is set aside;

(b) that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol;

(c) that this decision shall be communicated to the State party, to the authors and to their counsel.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

1/ Communication No. 197/1985 (Kitok v. Sweden), Views adopted on 25 July 1988, paragraph 9.8; communication No. 167/1984 (Ominayak v. Canada), Views adopted on 26 March 1990, paragraph 32.2.

2/ See communication No. 35/1978 (Aumeeruddy-Cziffra v. Mauritius), Views adopted on 9 April 1981, paragraph 5; communication No. 61/1979 (Hertzberg v. Finland), Views adopted on 2 April 1982, paragraph 9.3.

3/ See, for example, judgement of 16 April 1992 of the Supreme Court Administrative Court in the Angeli case.

4/ The case referred to is No. 265/1987 (Antti Vuolanne v. Finland), Views adopted on 7 April 1989.
