United Nations CCPR/C/119/D/2668/2015

International Covenant on Civil and Political Rights

Distr.: General
16 October 2018

Original: English

Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2668/2015*, **

Communication submitted by:	Tiina Sanila-Aikio (represented by counsel, Martin Scheinin)
Alleged victim:	The author
State party:	Finland
Date of communication:	2 October 2015 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 November 2015 (not issued in document form)
Date of adoption of decision:	28 March 2017
Subject matter:	Right to vote in elections to the Sami Parliament
Procedural issues:	Victim status; exhaustion of remedies; non-substantiation
Substantive issues:	Right of self-determination; non-discrimination; political rights; minority rights
Articles of the Covenant:	1, 25, 26, 27
Articles of the Optional Protocol:	1, 2

1.1 The author of the communication is Tiina Sanila-Aikio, a national of Finland born on 25 March 1983. She submits the communication on her behalf, on behalf of the Sami people of Finland and in her capacity as President of the Sami Parliament of Finland, as authorized by its Board. She claims that the State party has violated her rights under articles

* Adopted by the Committee at its 119th session (6–29 March 2017).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

1, 25, 26 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 2012. The author is represented by counsel.

1.2 On 2 November 2015, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to grant the author's request to issue an urgent request to the State party not to appoint the members of the new Sami Parliament before the Committee is able to address the merits of the communication.

The facts as submitted by the author

2.1 The 1999 Constitution of Finland contains two provisions regarding the Sami. Section 17 (3) stipulates that: "the Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture." Section 121 (3) states that: "in their native region, the Sami have linguistic and cultural self-government, as provided by an Act".

2.2 The functioning and powers of the Parliament are defined in the Act on the Sami Parliament (974/1995) ("the Act"). The tasks of the Parliament are described in section 5 of the Act as follows: "(1) … to look after the Sami language and culture as well as to take care of matters relating to their status as an indigenous people. (2) In matters pertaining to its tasks, the Sami Parliament may make initiatives and proposals to the authorities, as well as issue statements." The Parliament is composed of 25 individuals (21 members and 4 alternates). The candidates with the highest number of individual votes are elected, subject to certain quotas being allocated to municipalities.

2.3 Elections to the Parliament take place every four years and, under section 21 of the Act, every Sami has the right to vote from 18 years of age. As to the electoral roll, section 23 stipulates that the Election Committee of the Parliament shall draw up an electoral roll of the persons with the right to vote, on the basis of the previous electoral roll and the Population Information System. A Sami with the right to vote who has not been entered into the roll shall be entered into it upon request. Section 26 stipulates that "a person who before the counting of the ballots produces to the Election Committee, or on the election day produces to the polling committee, an order of the Supreme Administrative Court to the effect that he or she has the right to vote shall be reserved the opportunity to obtain the election documents and to vote". The Act provides for a right of judicial appeal against decisions of the Election Committee and the Board of the Parliament on issues concerning inclusion on the electoral roll, so that the highest court in administrative matters, the Supreme Administrative Court ("the Court"), becomes the ultimate arbiter.

2.4 Section 3 of the Act contains the following definition of who is to be regarded as a Sami for the purposes of being allowed to vote in the elections for the Parliament: "a Sami means a person who considers himself a Sami, provided: (1) That he himself or at least one of his parents or grandparents has learned Sami as his first language; (2) that he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or (3) that at least one of his parents has or could have been registered as an elector for an election to the Sami Delegation or the Sami Parliament."

2.5 Section 3 has been a subject of controversy between the State of Finland and the Sami indigenous people. According to the author, it is clear from the wording and has been confirmed through earlier rulings of the Court that the subjective element covered by the chapeau and the objective elements mentioned in subsections 1 to 3 are cumulative in the sense that a person can be registered as a voter only if he or she both considers oneself as a Sami and meets at least one of the three numbered objective criteria. However, there have been several campaigns organized by non-Sami inhabitants of the northern parts of Finland to register themselves as voters, with the aim of influencing the composition and positions of the Parliament. The Board of the Parliament has addressed all individual registrations and sought to determine a coherent and consistent approach to the question of membership, so that both the self-determination of the Sami as a people and the individual rights of the applicants can be respected.

2.6 In 2011, the Court adopted a number of controversial decisions that gave priority to an individual's wish to be registered as a voter over objective criteria related to actual active membership in the group or the group's recognition of the person as a member of the Sami indigenous people. As a result, the Government set up a drafting commission to revise the Act on the Sami Parliament, so that the uncertainty created through the judicial interpretation of the definition of a Sami could be removed. In 2013, the commission, with the participation of the Sami, agreed to a reform, which was presented to the Parliament of Finland in 2014 in the form of a government bill. Due to a de facto political link between the bill and the envisaged ratification by Finland of the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), the prospects of the bill being adopted became slim and in March 2015 the Government decided to withdraw it.

2.7 In the months prior to the elections for the Sami Parliament, which took place between 7 September and 4 October 2015, hundreds of people sought registration as new voters. In many cases, the Election Committee and the Board of the Parliament, as the first instances of appeal, decided that they did not meet the criteria of the definition. However, 182 persons appealed before the Court the decision of the Board not to include them in the roll. On 30 September 2015, the Court decided to accept the applications of 93 persons, who were then allowed to vote.

2.8 According to the author, in a majority of these decisions, the Court stated explicitly that the person did not meet any of the objective criteria spelled out in section 3. Resorting to what the Court referred to as "overall consideration" and stating that a person's own opinion about considering himself or herself a Sami was "strong", the Court ignored the explicit requirement of meeting at least one of the objective criteria. The Court justified this operation as being a "constitutional rights and human rights friendly" interpretation of the law, but did not specify which human rights it was promoting.

2.9 The author alleges that the Court's departure from statutory law breaches sections 17 and 121 of the Constitution, as well as the Covenant. The Court did not exercise deference in relation to the constitutionally guaranteed autonomy and internationally guaranteed self-determination of the Sami. Instead, the Court took full discretionary powers upon itself and nullified the capacity of the Sami Parliament to exercise a key dimension of Sami autonomy and self-determination, namely the right to participate in a meaningful way, but under a framework based on the rule of law, in determining who is a Sami. By departing from the wording of the statute, the Court created a situation of lawlessness, discrimination and arbitrariness.

2.10 An assessment of the Court's rulings reveals the following results:

(a) None of the 93 rulings was based on a finding of discrimination or arbitrariness in the decisions of the Election Committee or Board of the Sami Parliament when they had decided not to include those persons on the electoral roll;

(b) At least 53 of the 93 rulings were explicit in basing the outcome of whether to include a person on the electoral roll on an "overall consideration" rather than the combination of subjective self-identification and at least one objective criterion, as required by the statutory provision. Another 29 rulings were based on section 3 (3) and hence demonstrated a "domino effect": when one person was admitted on the basis of an "overall consideration" – even in the absence of any of the three alternative objective criteria – then the relatives of that person could be admitted with reference to subsection 3. In a further nine rulings, the logic of "overall consideration" was used even if the term was not, as they were based simply on section 3 of the Act and hence did not identify which one of the alternative objective criteria had been met. Not a single person was admitted on the basis of subsection 2, and only two persons on the basis of the original main criterion represented by subsection 1, namely the Sami language being a person's first language. In these two cases, the Court's assessment of the facts differed from the earlier assessment by the organs of the Sami Parliament;

(c) The rulings demonstrate a lack of understanding by the Court of Sami identity, culture and way of life, as many of the decisions were based on the idea that a person's "strong self-identification" as Sami can be proven by factors that the Court

believes relate to a person's Sami identity, but that in fact tell very little about whether the person has any connection with the Sami culture and way of life;

(d) When compared with the 89 cases in which the Court upheld the decisions of the organs of the Sami Parliament not to include individuals on the electoral roll, the 93 rulings in which the person was included amount to discrimination and arbitrariness. There are cases in which, for instance, two siblings received opposite rulings. In the Enontekiö municipality, all applicants whose last name was Vieltojärvi were admitted, while appellants whose last name was Keskitalo were rejected, even if the two groups belong to the same family tree and some have obtained their last name through marriage rather than lineage.

2.11 The election results were announced by the Election Committee on 6 October 2015.[1] The proportion of Court-approved voters was greatest in the Enontekiö municipality, in which the outcome of the elections was definitely affected. Thus, candidate N.V, who is a vocal proponent of Sami self-determination and land rights was not elected as a full member with his 68 votes. Instead, another candidate with a less prominent Sami-rights profile took the seat with 77 votes. This is a clear example of how the inclusion of 93 persons in the on the electoral roll affected the composition of the new Parliament, by moving its political centre of gravity away from policies that emphasize the indigenous distinctiveness of the Sami people and of their culture and a quest for Sami self-determination in respect of the Finnish State and across national borders. On the basis of section 3, hundreds of these new voters' relatives may seek registration as voters in future elections, a fact that will be an additional step in the forced assimilation of the Sami into the mainstream population through the gradual takeover of the Sami Parliament by members of the main (Finnish) population resident in the northernmost municipalities of Finland, in which the Sami constitute a minority in spite of being the recognized indigenous people. Such a situation would constitute irreparable damage for the rights of the Sami under the Covenant, as it would undermine their constitutionally guaranteed autonomy in matters pertaining to culture and language and of their internationally protected rights to enjoy their culture, to political rights of participation and to self-determination.

2.12 On 21 October 2015, several complaints from Sami individuals, either candidates who were not elected or voters for such candidates, were filed with the Election Committee, alleging that the Court's rulings constituted an intervention by the State in the exercise of the political rights and the right of self-determination of the Sami, and therefore were in conflict with the Finnish Constitution and various treaties ratified by Finland, including the Covenant.

The complaint

3.1 The author claims that article 1 of the Covenant has been violated, either on its own or in conjunction with articles 25, 26 and 27. The decisions of the Court granting the right to vote to 93 individuals who had not been considered eligible by the competent organs of the Sami Parliament amount to a direct intervention by a judicial organ of the State party into a core area of the enjoyment and exercise of the right of self-determination of the Sami indigenous people. This violation affects the author of the communication individually, as well as all other members of the Sami people in Finland.

3.2 The said intervention by an organ of the Finnish State into the affairs of the Sami Parliament affects the rights, under article 25 of the Covenant, of the author, other candidates standing for election and their voters to take part in the conduct of public affairs, to be elected in genuine periodic elections and to have access, in terms of equality, to public service in the Sami community in Finland, with national-level functions in the country as a whole.

[1] On 10 and 17 December 2015, the Government of Finland ordered the elected members to take up their duties for the four-year term of office, that is from 2016 to 2019.

3.3 The intervention of the Court impedes the enjoyment of the author and other members of the Sami people in Finland of their right to use their language and enjoy their culture in community with other members of the group. One of the main dimensions of the controversy concerning the definition of a Sami relates to the role of the comprehension of one of the Sami languages in the group's own understanding of who is a Sami, as contrasted with the understanding now imposed by the Court, which puts an emphasis on other criteria as well. The expected distortion of the composition of the new Sami Parliament will have an adverse impact on its capacity to act effectively in defence of the rights of the Sami people under article 27 of the Covenant.

3.4 In connection with the claims concerning violations of articles 25 and 27, the author makes reference to the functions of the Sami Parliament under the Act. Section 1 recognizes the Sami as the indigenous people of Finland and the status of their elected Parliament as the main instrument of the cultural and linguistic autonomy of the Sami. Section 5 defines the powers of the Parliament in general terms, and refers to it as an organ of political representation in relation to the Finnish State. Under section 6, the Parliament acts as representative of the Sami people in national and international matters. Section 9 imposes upon all authorities an obligation to negotiate with the Sami Parliament in a long list of matters that concern the Sami as an indigenous people or developments within the Sami homeland. These and many other provisions of the Act demonstrate how the effective functioning and the capacity to adequately represent the views of the Sami people are essential for the implementation by Finland of articles 25 and 27 of the Covenant. The Parliament is an important instrument for the Sami individually and collectively to enjoy and exercise these rights. Therefore, the Court's rulings amount to a violation of these provisions.

3.5 The author claims that, in making an assessment of the multiple criteria used to determine whether an individual is a member of the Sami people, the Court relied on isolated, individual facts the application of which results in the different treatment of identical cases, the identical treatment of distinctively different cases and in general arbitrariness. This affects not only the rights of those whose applications were rejected but also the right of every member of the Sami people, under article 26 of the Covenant, to equality before the law. The Court's arbitrariness impeded the integrity of the Parliament in representing the Sami people and its individual members. Furthermore, a majority of the 93 new voters admitted by the Court are male and also a majority of the 93 are over 50 years of age. The likely effect of the Court's decisions will be to counter the trend of relatively young Sami women gradually becoming more prominent in the composition of the Parliament and its leadership positions.

3.6 Finally, the author claims that, through the violations of articles 25, 26 and 27, the State party also violated the right of the Sami people to enjoy its right of self-determination, as protected under article 1 of the Covenant.

State party's observations on admissibility

4.1 On 4 and 27 January 2016, the State party submitted its observations on the admissibility of the communication. It indicates that the Sami constitute the only indigenous people in Finland. The Sami people have their own language, culture, cultural habits, traditions and livelihoods. Three Sami languages and forms of culture exist in Finland: Inari Sami, Skolt Sami and North Sami. Under section 17 (3) of the Constitution, the Sami, as indigenous people, have the right to maintain and develop their own language and culture. Section 121 (4) of the Constitution guarantees the Sami linguistic and cultural self-government within the Sami Homeland Area. The Act on the Sami Parliament regulates the implementation of self-government. For the tasks relating to their self-government, the Sami elect from among themselves the Sami Parliament. There are about 6,000 voters on the electoral roll, while there are about 10,000 Sami in Finland. The Parliament is not an authority but an independent institution, legal person under public law. It does not safeguard a public interest as such, but promotes the general interests of the Sami people.

4.2 At the time she submitted the communication, the author was acting President of the Parliament and thus its legitimate representative. Her term as such ended on 31 December

2015. She claims to submit her communication also on behalf of the members of the indigenous Sami people, as authorized by the Board of the Parliament. However, she does not provide any written authority showing that she acts on behalf of other persons.

4.3 The author's claims before the Committee are indirect or even hypothetical violations of the rights of Sami people in general. She does not allege violations of her individual rights, does not demonstrate having been directly affected by the violation of articles 1, 25, 26 and 27 of the Covenant and does not provide documentary evidence in support of her allegations. Hence, the State party considers that she has failed to substantiate her claim for the purposes of admissibility.

4.4 The State party indicates that the author was not party as such to the proceedings regarding the claims submitted to the Court by 182 persons who were not considered eligible to vote and that her claim before the Committee constitutes an *actio popularis*. Therefore, she has not exhausted all domestic remedies under article 5 (2) (b) of the Optional Protocol.

4.5 The State party submits that the Court thoroughly assessed the special status and rights of the Sami people, also taking account of the obligations of Finland under the Covenant. It is not for the Committee to re-evaluate the facts that have led a national court to adopt one decision rather than another, nor to question the findings and conclusions of national courts.

4.6 As the highest domestic appellate court for administrative matters, decisions of the Court cannot be appealed. However, as a mode of extraordinary appeal, the annulment of a decision may be requested from the Court itself.

4.7 On 18 November 2015, the Board of the Parliament accepted demands to rectify the election results on the basis that the Court had erroneously accepted the 93 persons as entitled to vote. As a result, the Board decided to hold a new election during 2016 on the basis of the electoral roll certified on 20 August 2015. Appeals against this decision were filed with the Court. On 13 January 2016, the Court quashed and set aside the Board's decision. The Court held that the Board had no competence to take up a matter that had already been adjudicated by the Court, and that the decisions of the Court are binding upon the Board. Therefore, the decision of the Board to hold new elections was unlawful. By granting the demands for rectification by its decision of 18 November 2015, the Board had in fact taken up for reconsideration the voting rights of the persons having appealed to the Court, ignoring the Court's decision of 30 September 2015. At the same time, the Board ignored the decision of the Election Committee of the Parliament, which confirmed the election results.

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

5.1 In a letter dated 16 March 2016, the author commented on the State party's observations. Regarding the State party's observations on the author's standing to act on behalf of the Sami people collectively, the author clarifies that she was the elected President of the old Parliament until 23 February 2016, when the new composition of the Parliament convened its first session. In that session, she was re-elected as President for the term 2016 to 2019. Hence, she remains without any interruption as the legitimate representative of the Parliament. Furthermore, the author submits to the Committee a copy of the official minutes of the meeting of 2 October 2015 by the Board of the Parliament, at which a decision was taken to submit a complaint to the Committee and to authorize the author to represent the Sami people to that effect.

5.2 Regarding the State party's observation that the claim is unsubstantiated because the author has not demonstrated that she was directly affected by the alleged violations of the Covenant, the author contends that such an observation is superficial and concerns the merits, even if it has the appearance of an admissibility argument. The author reiterates her initial arguments in that respect and adds that, as President of the Sami Parliament, she was confronted by a significant number of petitions against the outcome of the elections, as affected by the Court's rulings of 30 September 2015. The mere fact that several members of the Sami people by way of formal petition contested the election results demonstrates how State intervention has a divisive effect among the Sami community. The author and

her colleagues on the Board then decided to respond to the numerous petitions by ordering fresh elections, a decision later quashed by the Court. In addition, the Court ordered the Parliament to pay 500 euros for each of the 27 persons who had contested the decision to hold fresh elections, hence imputing an economic sanction to the Parliament and diminishing its capacity to spend its scarce resources in the best possible way to defend the rights and interests of the Sami.

5.3 The first session of the new Parliament was characterized by internal disagreements and strong protests by Sami youth against the threat of forced assimilation by the Finnish State and the dominant Finnish population. These developments weaken the Parliament from inside as an institution of Sami self-determination and autonomous governance, and affect the capacity of the author individually and of the Sami collectively to enjoy, exercise and protect their rights under articles 1, 25, 26 and 27 of the Covenant.

5.4 As President of the Parliament, one of its elected members and member of the Sami indigenous people, the author is now affected also by the external consequences that a more divided and less determined composition of the Parliament will face. The Parliament of Finland is considering a government bill (No. 132 of 2015) on the government forestry agency. When the bill was presented to the Parliament of Finland in December 2015, the Government deleted all the draft provisions that were aimed at giving special protection to the Sami against forestry and other commercial activities in, and privatization of, public lands and waters within the Sami Homeland. Had the Court not interfered in the elections for the Sami Parliament through its rulings of 30 September 2015, the Parliament would be more unified and in a stronger position to protest against, and perhaps even prevent, this negative development.

5.5 The State party's arguments that the communication is an *actio popularis* and that domestic remedies have not been exhausted are confusing. First, the communication does not seek to speak on behalf of the 182 persons who sought access to the electoral roll through an appeal to the Court. Secondly, the intervention of the Finnish State occurred through the actions of its highest administrative court. No domestic remedies are therefore available. As to the review by the same court, referred to by the State party, this is not a regular remedy and would have no prospect of success save for exceptional cases in which the Court itself admits having made an error. The subsequent ruling of 13 January 2016 demonstrates that the Court has already refused to reassess its rulings of 30 September 2015.

5.6 The author disagrees with the State party's statement that the Court took into account the international obligations of Finland, especially those under the Covenant. The Court based itself on its own earlier decisions of 2011 and the opinion of a domestic political body, the Constitutional Law Committee of the Finnish Parliament, when setting aside the concluding observations on Finland from the United Nations treaty bodies on the issue of the definition of a Sami.

5.7 Regarding the State party's statement that it is not for the Committee to re-evaluate the facts as considered by a national court, the author wishes to clarify that the issue is not about the facts but about the Court's failure to take into account the Covenant rights. It is within the jurisdiction of the Committee to assess whether the actions by an organ of the State, including a judicial organ, are incompatible with the Covenant.

State party's observations on the merits

6.1 The State party submitted observations on the merits on 4 May 2016. The State party indicates that the Act on the Sami Parliament provides a definition of a Sami. In 2012, the Ministry of Justice established a working group to prepare a proposal for the revision of the Act. The memorandum of the working group stated that the overall objective of the revision was to improve the operational preconditions of Sami cultural autonomy and of the Sami Parliament. Based on the proposal of the working group, a bill was submitted to Parliament on 25 September 2014, which contained, inter alia, provisions for the revision of the definition. The proposed definition was supported by the Sami Parliament. During the discussion of the bill at the parliamentary committee level, it became clear that the Parliament of Finland would not approve the definition proposed. Since the question of the

definition was the most important part of the bill, the Government decided, on 12 March 2015, to withdraw the bill. The Ministry of Justice intends to present a new bill to Parliament, but it is uncertain whether the new bill would aim at amending the definition of a Sami.

6.2 The State party indicates that, in the concluding observations of the Committee on the Elimination of Racial Discrimination regarding the seventeenth to nineteenth periodic reports of Finland under the International Convention on the Elimination of All Forms of Racial Discrimination, the same Committee reiterated its opinion that the State party's approach to the definition of who may be considered a Sami and thus fall under the relevant legislation established in favour of the Sami, as defined by the Act on the Sami Parliament and the specific interpretation provided thereon by the Supreme Administrative Court, is too restrictive (CERD/C/FIN/CO/19, para. 13). In its concluding observations regarding the twentieth to twenty-second periodic reports of Finland, the same Committee indicated that, while noting that the Supreme Administrative Court had relied on the Committee's prior concluding observations in its decision of 26 September 2011 defining who was a Sami entitled to vote for members of the Sami Parliament, it was concerned that the definition adopted by the Court gave insufficient weight to the Sami people's rights, recognized in the United Nations Declaration on the Rights of Indigenous Peoples, to self-determination (art. 3), in particular their right to determine their own identity or membership in accordance with their customs and traditions (art. 33), as well as their right not to be subjected to forced assimilation or destruction of their culture (art. 8) (art. 5 of the Convention). The Committee recommended that, in defining who was eligible to vote for members of the Sami Parliament, the State party should accord due weight to the rights of the Sami people to self-determination concerning their status within Finland, to determine their own membership and not to be subjected to forced assimilation (CERD/C/FIN/CO/20-22, para. 12).

6.3 Regarding the alleged violation of article 1 on its own, the State party recalls the Committee's jurisprudence that self-determination is not a right cognizable under the Optional Protocol, as reflected in general comment No. 23 (1994) on the rights of minorities[2] and its Views in *Lubicon Lake Band v. Canada*.[3] On the basis of the jurisprudence, article 1 on its own cannot be considered in the proceedings under the Optional Protocol.

6.4 As regards the definition of the Sami, the Government respects self-identification as a key criterion for determination of a group of persons or an individual as indigenous, as stipulated, inter alia, by article 1 (2) of the Indigenous and Tribal Peoples Convention. The Government also respects the Sami Parliament's right to determine its membership in accordance with Sami customs and traditions. Accordingly, measures have been taken to protect the identity of the Sami people and the rights of its members to enjoy and develop their culture and language in community with the other members of the indigenous people.

6.5 The State party recalls the Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote, which indicates that the rights under article 25 are related to, but distinct from, the right of peoples to self-determination. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes that constitute

[2] The State party cites paragraph 3 (1) of the general comment, according to which the Covenant draws a distinction between the right to self-determination and the rights protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol.

[3] A/45/40 (vol. II), annex IX, p. 1. In para 32.1, the Committee indicates that the Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in part III of the Covenant, articles 6 to 27 inclusive.

the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol (para. 2).

6.6 As article 25 deals with the right of individuals to participate in those processes that constitute the conduct of public affairs, the State party emphasizes that the right to vote at the elections of the Sami Parliament is established by law. In this regard, the Government has taken measures to ensure that all persons entitled to vote are able to exercise that right.

6.7 In principle, voting in the elections is based on a certified electoral roll. However, the Act on the Sami Parliament provides for a procedure by which a person may, through a demand for rectification, request to be entered on the electoral roll if they consider that they have been unlawfully omitted from it. Ultimately, the matter may be referred to the Supreme Administrative Court on appeal. Therefore, section 26d of the Act stipulates that a person can vote if, before the counting of the ballots, they produce to the Election Committee, or on the election day to the polling committee, an order of the Court confirming their right to vote. The person is also obliged to hand over the Court order or a certified copy of it to the Election Committee or the polling committee for an entry to this effect to be made in the electoral roll.

6.8 The State party reiterates its arguments regarding admissibility and recalls that the Court assessed all the complaints thoroughly and extensively, consulting both the Board of the Parliament and the appellants, also from the standpoint of the special rights of the Sami and taking into account, ex officio, its international human rights obligations, especially those deriving from the Covenant, and the International Convention on the Elimination of All Forms of Racial Discrimination. The State party concludes that no violations of the Covenant have taken place in the present case.

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

7.1 The author submitted comments on the State party's observations on 28 November 2016. The author reiterates her previous submissions and underlines that a close analysis of the 182 Court rulings of 30 September 2015, in which 93 persons were added to the electoral roll and the remaining applications rejected, has produced a situation of lawlessness and arbitrariness. Hence, the arbitrariness of the rulings do not only adversely affect the persons whose applications were rejected by treating them differently from certain others that were added to the electoral roll, but all Sami, which amounts to a violation of article 26 and hinders the capacity of the Parliament to represent the Sami indigenous people and its individual members.

7.2 The author makes reference to the main principles enshrined in the Act on the Sami Parliament, which show how the Parliament's effective functioning and capacity to adequately represent the views of the Sami indigenous people are essential for the implementation by the State party of articles 25 and 27 of the Covenant. The Parliament is an important instrument for the Sami individually and collectively to enjoy and exercise their rights under articles 25 and 27 of the Covenant. Section 9, in particular, imposes upon all authorities an obligation to negotiate with the Parliament in a long list of matters that concern the Sami as an indigenous people or developments within the Sami Homeland. Therefore, the recent Court rulings amount to a violation of these provisions. Through the violations of articles 25, 26 and 27, the State party also violates the right of the Sami indigenous people to enjoy its right of self-determination, as protected under article 1 of the Covenant.

7.3 Under the current composition, the Parliament continues to defend the rights and interests of the Sami indigenous people but often this is delayed or compromised because of the time and effort that is consumed in resolving internal disagreements that very often relate to the question of how the Parliament should relate to the Finnish State and its continuing interventions on Sami lands and the impact thereof on livelihoods. As a result, the Parliament was unable to stop the Government and Parliament of Finland from going

ahead with the enactment of a new act on the government forestry agency,[4] thus ignoring the concerns of the Sami and denying their future participation.

7.4 A similar ongoing development relates to a new draft treaty between Finland and Norway concerning the common border along the River Teno. The Sami have largely been excluded from effective participation in the negotiations between the two Governments, despite the fact that, since time immemorial, this river has been used by the Sami for salmon fishing. This activity constitutes and has always constituted the main source of livelihood for the local Sami population and is part of their way of life and culture. It determines their social organization, weekly and annual cycle of work, cross-border cooperation, handicrafts and arts, and folklore. The aim of the project is publicly presented as seeking to protect the sustainability of the salmon stock, while in fact it would constitute large-scale expropriation of the immemorial fishing rights of the Sami indigenous people. It would permanently exclude large parts of the Sami currently allowed to practice traditional forms of fishing, while at the same time disproportionally allowing holidaymakers to practice this activity. This is another practical example of the impact of the Court rulings of 30 September 2015 not only on the lives of the author and her fellow members of the elected Sami Parliament but also on the lives of all Sami in Finland.

7.5 The author reiterates her argument that she has provided to the Committee evidence of the decision dated 2 October 2015 by the Board of the Sami Parliament authorizing the author to represent the Sami before the Committee.[5] The author also reiterates her arguments regarding the State party's observation that the claim constitutes an *actio popularis* and that the author did not exhaust all domestic remedies.

7.6 The author comments on the State party's statement that, before issuing its rulings of 30 September 2015, the Court consulted the Board of the Parliament. She states that, in September 2015, the Parliament was confronted with almost 200 simultaneous appeals by persons who sought to be enrolled on the electoral list and the Court gave it only between 3 and 5 working days to respond. The Board did its best to provide an individualized assessment by engaging in a determination of whether the conditions prescribed in section 3 of the Act were met. The rulings demonstrate that the consultation was a mere formality. The views and arguments of the Parliament did not affect the conclusions of the Court, which were not based on a proper factual assessment and legal interpretation of the Act but, in most cases, on what the Court characterized as an "overall consideration" and "human rights friendly interpretation of the law", without a basis in factual circumstances or proper legal assessment, and without reference to the Covenant, the rights of indigenous peoples or any other specific individual human right.

7.7 The origin of the present case is the expansive application, especially by the Court, of section 3 of the Act. On the occasion of the elections in 2011 to the Parliament, the Court deviated from the wording of the Act to include in the electoral roll individuals who did not meet any of the objective criteria of section 3, in addition to the subjective criterion of individual self-identification. Those rulings triggered the concluding observations of the Committee on the Elimination of Racial Discrimination in 2012 and those of the Human Rights Committee in 2013,[6] both calling upon Finland to give more weight to Sami self-determination in decisions concerning inclusion on the electoral roll. The rulings also resulted in a negotiation process between the Government and the Sami Parliament. A solution that satisfied the Sami was reached in 2013 and was presented to the national Parliament in government Bill No. 167 of 2014. The Bill did not get enough support, largely because of pressure from the non-Sami majority population in northernmost Finland. This created a situation in which the Court was then able to continue its expansive application of section 3 beyond its wording.

[4] The act entered into force on 15 April 2016.

[5] A copy of the Board's minutes are on file with the Committee.

[6] CCPR/C/FIN/CO/6. In paragraph 16, the Committee recommended that the State party should advance the implementation of the rights of the Sami by strengthening the decision-making powers of Sami representative institutions, such as the Sami Parliament.

7.8 The author does not object to the Court being entitled in principle to review the application of section 3 of the Act by the pertinent bodies of the Sami Parliament. However, she emphasizes that, in order to be compatible with the Covenant, the standard for such external judicial review should be arbitrariness or discrimination. In none of the 93 cases did the Court establish that the decisions by the pertinent organs of the Parliament not to accept the individuals in question as eligible voters amounted to arbitrariness or discrimination.

7.9 The author adds that the Court's ruling of 13 January 2016 also amounts to a new violation of the rights of the author and her fellow members of the Sami indigenous people under articles 25 and 27, on their own and in conjunction with article 1, as they have weakened the capacity of the Parliament to defend the rights and interests of the Sami indigenous people, including the right of the author and other Sami individuals to enjoy their culture in community with other members of the group. The author also argues that, as a result of this ruling, the Parliament had to pay the legal costs of the 27 people who contested the decision to hold new elections, amounting to 11,645 euros. This has put an important financial burden on the already very limited budget of the Parliament.

7.10 The author reiterates that the Court rulings of 30 September 2015 violated the rights of the author and her fellow members of the Sami indigenous people under article 26, both on its own and in conjunction with article 1. The Court ignored the explicit statutory criteria spelled out in section 3 of the Act and applied its own indeterminate construction of "overall consideration", resulting in lawlessness, unforeseeability, arbitrariness and, ultimately, discrimination, as identical cases were treated differently and different cases identically.

7.11 Should the Committee conclude that the rulings by the Court have violated her rights and those of other members of the Sami indigenous people, the author requests it to order the State party to provide an effective remedy that should include: (a) a public apology for the violations of the right of Sami indigenous people to self-determination and of other human rights of its individual members, including their right to non-discrimination, to political participation and to enjoy their own culture; (b) immediate discontinuation of ongoing legislative, treaty-making or administrative processes that would significantly affect the rights and interests of the Sami indigenous people in cases in which the free, prior and informed consent of the Sami has not been obtained; (c) immediate initiation of an amendment to section 3 of the Act on the Sami Parliament in order to define the criteria regarding eligibility to vote in elections to the Parliament in a manner that respects the right of the Sami people to exercise its self-determination and that limits the external judicial review by State courts of decisions by the organs of the Parliament to situations in which a decision has been arbitrary or discriminatory; (d) compensating the Parliament for the legal fees it had to pay as a result of the ruling of 13 January 2016; and (e) compensating the Parliament for its own legal expenses involved in litigation before the Court in matters pertaining to the 2015 elections.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it 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 takes note of the State party's claim that the author of the communication has not exhausted all domestic remedies under article 5 (2) (b) of the Optional Protocol. The Committee notes that the decisions accepting the right of 93 persons to vote was rendered by the Supreme Administrative Court, which is the highest domestic appellate court for administrative matters. It also notes the State party's submission that the Court's decisions cannot be appealed but, as a mode of extraordinary appeal, the annulment

of a decision may be requested from the Court itself. The Committee further notes the author's submission that this is not a regular remedy and would have no prospect of success save for exceptional cases in which the Court itself admits having made an error, and that the subsequent ruling of 13 January 2016 demonstrates that the Court has already refused to reassess its rulings of 30 September 2015. The Committee notes that the State party has not showed that there was a reasonable prospect that an extraordinary appeal would have provided an effective remedy in the circumstances of the case. Accordingly, the Committee finds that article 5 (2) (b), of the Optional Protocol does not preclude it from considering the communication.

8.4 The Committee notes the State party's contention that the author has no standing to act on behalf of the Sami indigenous people collectively; that she does not allege violations of her individual rights and does not demonstrate having been directly affected by the violation of articles 1, 25, 26 and 27 of the Covenant; and that the author's claims are indirect or even hypothetical violations of the rights of the Sami indigenous people in general.

8.5 The Committee notes that the author submits the communication on her behalf, on behalf of the Sami indigenous people of Finland and in her capacity as President of the Sami Parliament as authorized by its Board.[7] The Committee recalls that, according to article 2 of the Optional Protocol, only individuals who claim that any of their rights under the Covenant have been violated can submit communications. The Committee further notes that, by submitting the communication on her own behalf, the author brings the communication to the Committee as member of the Sami indigenous people and as a member of the Parliament, of which she is the elected President. The Committee considers that, in this individual capacity, she may be affected by issues concerning the functioning of the Parliament and the elections thereto. Accordingly, the Committee considers that the author is not prevented from submitting a communication to the Committee under article 1 of the Optional Protocol, to the extent that she claims violations of her individual rights.

8.6 Regarding the author's claim under article 1 of the Covenant, the Committee recalls its jurisprudence that an author, as an individual, cannot claim under the Optional Protocol to be a victim of a violation of the right of self-determination enshrined in article 1 of the Covenant, which deals with rights conferred upon peoples, as such.[8] The Committee also recalls that the Optional Protocol provides for a procedure under which individuals can claim that their individual rights have been violated and that these rights do not include those set out in article 1 of the Covenant.[9] Accordingly, the Committee considers that the author's claim regarding violations of article 1 of the Covenant is inadmissible under article 1 of the Optional Protocol. Although the Committee does not have the competence under the Optional Protocol to consider a communication alleging a violation of the right of self-determination protected under article 1 of the Covenant, it may interpret article 1, when this is relevant, in determining whether rights protected in parts II and III of the Covenant have been violated.[10]

8.7 The Committee notes the author's claim that the Court's rulings of 30 September 2015 accepting the applications to vote of 93 individuals violate her rights and those of other candidates standing for election and their voters, under article 25 of the Covenant, to take part in the conduct of public affairs, to be elected in genuine periodic elections and to have access, in terms of equality, to public services in the Sami community in Finland. The author also claims that, in determining whether an individual is a member of the Sami indigenous people, the Court acted arbitrarily, that this affected the right of every member of the Sami people, under article 26 of the Covenant, to equality before the law and that the

[7] See para. 1.1.

[8] *Lubicon Lake Band v. Canada*, para. 13.3.

[9] General comment No. 23, para. 3.1; and *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006), para. 6.3.

[10] *Guillot et al. v. France* (CCPR/C/75/D/932/2000), para. 13.4; and *Mahuika et al. v. New Zealand* (CCPR/C/70/D/547/1993), para. 9.2.

rulings of the Court impeded the enjoyment of her right under article 27 of the Covenant, to use her language and enjoy her culture in community with other members of the group.

8.8 The Committee notes that the author is a member of the Sami indigenous people; that, as such, she has the right to enjoy her own culture, including in community with other members of her group; and that it is undisputed that the Sami Parliament is the institution that guarantees the Sami linguistic and cultural self-government within the Sami Homeland Area and that it may make initiatives and proposals to the State authorities, as well as issue statements. The Committee therefore considers that decisions taken by institutions of the Finnish State that have an impact on the composition of the Sami Parliament and the equal representation of the Sami can impact the right of individual members of the Sami community to enjoy their culture and to use their language in community with the other members, and their right to equality before the law. Hence, the Committee considers that the author, as a member of the Sami indigenous people and member of the Sami Parliament of which she is the elected President, may be affected, as an individual, by the Court rulings regarding the electoral roll for the Sami Parliament. Accordingly, the Committee considers that, for the purpose of admissibility, it is not prevented, under article 1 of the Optional Protocol, from examining the present communication with respect to the author's claims regarding articles 25, 26 and 27 of the Covenant.

9. The Committee considers that the author's claims under articles 25, 26 and 27 of the Covenant have been sufficiently substantiated for the purposes of admissibility.

10. The Committee therefore decides:

(a) To split consideration of admissibility from the merits of the communication;

(b) That the communication is admissible insofar as it raises issues with respect to articles 25, 26 and 27 of the Covenant;

(c) That the State party and the author are requested to submit to the Committee further explanations related to the merits of the author's claims and the remedies sought, including information regarding the assessment of the Supreme Administrative Court contained in the 93 rulings; the interpretation by the Finnish courts of the definition of a Sami contained in the Act on the Sami Parliament; and the impact of such an interpretation on the composition of the Parliament and its functioning as an institution of Sami self-government, resulting from the 2015 and previous elections. The Committee would also appreciate receiving information about the Sami Parliament's position related to forestry and other commercial activity in, and privatization, of public lands and waters within the Sami Homeland; and whether the Sami were excluded from effective participation in the negotiations with Norway concerning salmon fishing on the River Teno as a result of the rulings. Finally, the Committee would welcome observations from the parties on the impact of the Court rulings on the author's rights to enjoy her culture and to use her language in community with other members of the Sami indigenous people.

(d) That this decision shall be communicated to the State party and to the author.